14.09.2020
D/L No. 04
Court No.24
s.biswas

WPA 6390 of 2020
With
CAN 1/2020 (Old No. CAN 4979 of 2020)

M/s. DEC Agrotech Pvt. Ltd. & Anr.
Vs.
Union of India & Ors.

(Through Video Conference)

Mr. Arijit Chakraborti
Mr. Nilotpal Chowdhury
Mr. Prabir Bera
Ms. Amrin Khatoon
… … for the petitioners
Mr. Kaushik De
… … for the respondent nos.2 & 3
Mr. Amitabrata Roy
Mr. B. P. Banerjee
… … for the Customs GST Authority

CAN 4979 of 2020 is an application for urgent hearing of the writ petition and is disposed of by taking up the writ petition for consideration.

The writ petitioners assail an order dated June 24, 2020 issued by the Additional Director General, Directorate of Revenue of Intelligence, Kolkata Zonal Unit, Kolkata, exercising powers under Section 110 read with Section 124 of the Customs Act, 1962.

Learned advocate appearing for the petitioners submits that the impugned notice suffers from breach of principles of natural justice. He relies upon two Supreme Court decisions, namely, *AIR 1972 Supreme Court 689 [The Assistant Collector or Customs and Superintendent, Preventive Service Customs, Calcutta & Ors. vs. Charan Das Malhotra]* and *AIR 1989 Supreme Court 1884 [I.J. Rao,* *Assistant Collector of Customs & Ors. vs. Bibhuti Bhushan Bagh & anr.]* in support of the contention that the power under the first proviso under Section 110(2) of the Act of 1962 is quasi judicial in nature and requires a judicial approach. He points out that the first proviso under Section 110(2) of the Act of 1962 underwent an amendment. According to him, the essential requirement of the exercise of power under Section 110(2) of the Act introduced in 2018 protects the character of quasi judicial proceeding and therefore obliges the adjudicating authority to take judicial approach.

Learned advocate appearing for the respondent nos.2 and 3 submits that Section 110(2) of the Act of 1962, so far as first proviso is concerned, underwent an amendment in 2018 and therefore, the principles laid down by the authorities cited on behalf of the petitioner are not applicable. He draws attention of the Court of the first proviso of Section 110(2) of the Act of 1962 and submits that, the adjudicating authority who was required to give reasons about the extension and to inform the writ petitioner, which the adjudicating authority did. There is no infirmity in the actions taken by the adjudicating authority. The adjudicating authority acted in the manner as prescribed by law. Therefore, the actions taken by the adjudicating authority including the impugned order should not be interfered with. The petitioner is not entitled to any hearing before passing of the order of extension.

The respondent no.4 is represented. Learned advocated appearing for the respondent no.4 adopts the submissions made on behalf of the respondent nos.2 and 3.

The customs authorities on receipt of specific intelligence from the Directorate of Revenue Intelligence, Kolkata Zonal Unit, that the writ petitioners were attempting exports of very inferior quality tobacco products by highly inflating their value with an intent to illegally claim IGST and Tobacco Cess, etc. initiated an investigation. The customs authorities seized the alleged offending goods. In the process of investigation, the impugned order dated June 24, 2020 was passed by the respondent no.2. The order is an exercise of powers under Section 110(2) of the Act of 1962.

The provision of Section 110(2) of the Act of 1962 was considered by the Supreme Court in *Charan Das Malhotra* (supra) and *Bibhuti Bhushan Bagh* (supra).

In *Charan Das Malhotra* (supra), the Supreme Court laid down that, the power under the proviso of Section 110(2) of the Act of 1962 is quasi judicial and at any rate one requiring a judicial approach. It laid down that extension order is not required to be passed mechanically. Moreover, the power under Sub-section (1) cannot be equated with the power under the proviso to Sub-section (2) of Section 110 of the Act of 1962.

In *Bibhuti Bhushan Bagh* (supra), the Supreme Court held that notice was required to be issued to the person from whom goods were seized before expiry of six months.

When *Charan Das Malhotra* (supra) was decided, the first proviso to Section 110(2) of the Act of 1962 was follows:

"Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Principal Commissioner of Customs or Commissioner of Customs for a period not exceeding six months."

Subsequently, the first proviso to Section 110(2) of the Act of 1962 was amended and came into effect from March 29, 2018. The amended first proviso to Section 110(2) of the Act of 1962 is as follows:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to the recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:"

An adjudicating authority is required to adhere to the principles of natural justice in any adjudicating proceedings, unless permitted by the statute not to do so. Provisions of Section 110(2) of the Act of 1962, prior to the amendment of the first proviso were interpreted by the Supreme Court in *Charan Das Malhotra* (supra) to mean that the authorities were exercising quasi judicial powers. Therefore, essentially the authorities were required to adhere to the principles of natural justice while exercising powers under Section 110(2) of the Act of 1962. The amendment introduced to the first proviso incorporates two additional burdens on the authorities. One of such additional burden is that the authorities are required to record reasons for the extension of time and the other burden is to inform the person from whom the goods were seized before the expiry of the period specified. The amendment does not obviate the requirement of adherence to the principles of natural justice while powers under Section 110(2) of the Act of 1962 are exercised. The amendment introduced also does not take away the character of quasi judicial powers exercised and the requirement to take judicial approach while exercising powers under Section 110(2) of the Act of 1962.

In the fact and circumstances of the case, no doubt the authorities complied with the first proviso to Section 110(2) of the Act of 1962. However, in exercise of powers under Section 110(2) of the Act of 1962 as amended the authorities overlooked the fact that they were acting in a quasi judicial manner and they were required to take a judicial approach and not otherwise. The authorities were required to give an opportunity of hearing to the person from whom the goods were seized before exercising power under Section 110(2) of the Act of 1962 which they did not do while issuing the impugned order.

Simply on the ground of breach of principles of natural justice, the impugned order is set aside. No observation made by the Court in this order is to be considered as a decision of the merits of the rival claims before the authority. The authorities are at liberty to take steps in accordance with law.

In the event the authorities issue notice in exercising powers under Section 110(2) of the Act of 1962 to the writ petitioners in addition to the notice issued to the writ petitioners, a notice to the electronic mail identity of the learned advocate appearing for the writ petitioner provided to the High Court Administration for the purpose of filing of the writ petition will be considered as sufficient notice upon the writ petitioners herein.

Since the Court did not invite filing of affidavits, the allegations made in the writ petition are deemed be denied by the respondents.

WPA 6390 of 2020 is disposed of.

(Debangsu Basak, J.)