

OD-10

APOT/199/2022

GA/1/2022

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF
CUSTOMS, AIRPORT & ACC
COMMISSIONERATE

-Versus-

M/S. PROTOCOL LOGISTICS PVT.
LTD. & ORS.

Appearance:

Mr. Vipul Kundalia, Adv.

Mr. Tapan Bhanja, Adv.

...for the appellant.

Mr. Biswajit Mukherjee, Adv.

Mr. Soumyajit Mishra, Adv.

.. . for the respondent.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 13th December, 2022.

The Court : This intra-Court appeal, at the instance of the Customs Department, is directed against the order dated 5th August, 2022 passed in WPO/2378/2022. The respondent herein filed the said writ petition challenging an order dated 15th July, 2022 passed under the provisions of the Customs Broker

Licensing Regulation, 2013 (CBLR) by prohibiting the appellant from working in all sections under the jurisdiction of Kolkata Customs Commissionerate (Port Commissionerate and Airport & ACC Commissionerate) with immediate effect under Regulation 15 of CBLR until further orders.

From the reading of the order passed in the writ petition, we find that the writ petition has been allowed/disposed of at the admission stage and the learned Writ Court has also recorded so. In page 2 the learned Writ Court has recorded that the learned Advocate appearing for the appellant/department could not produce any specific document or make any specific submission in denial or disputing the allegation made by the appellant that before passing the prohibitory order, no opportunity of hearing was given to the respondent/writ-petitioner. It is contended before us on behalf of the appellant/department that adequate opportunity was not granted to the department to file affidavit and produce the records. In any event, it is submitted that under the relevant regulation such a procedure of hearing is not contemplated.

The learned Advocate appearing for the respondent/writ-petitioner, on the other hand, would submit that there are several decisions of this Court and the other High Courts which have laid the principles of natural justice into the CBLR and

have held that an opportunity of hearing was required to be given.

Learned Advocate appearing for the appellant/department submitted that there are decisions of the High Courts which also lay down the principle that no such opportunity is required to be granted. In any event, these are all fine questions of law which can be agitated after an affidavit has been filed by the appellant/department more particularly when the provisional order dated 15th July, 2022 has set out certain reasons as to why the respondent/petitioner should be prohibited in terms of Regulation 15 of the CBLR. Thus, we are of the view that an opportunity should be granted to the appellant/department to file their affidavit-in-opposition to the writ petition after which the writ petition should be heard and disposed of on merits.

For the above reasons, the appeal is allowed and the order passed in the writ petition is set aside and the writ petition is restored to the file of the learned Single Judge for being heard afresh. Consequently, the order dated 15th July, 2022 stands restored.

The appellant/department is directed to file their affidavit-in-opposition not later than 22nd December, 2022; reply, if any, shall be filed by 2nd January, 2023. Let the

writ petition be listed before the appropriate court on 5th January, 2023.

Accordingly, the appeal [APOT/199/2022] stands disposed of.

Consequently, the connected application [GA/1/2022] stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

As./ S.Das