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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decision delivered on: 21.09.2022

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W.P.(C) 12082/2022**M/S AH ASSOCIATES****..... Petitioner****Through: Mr Akhil Krishan Maggu with Mr
Vikas Sareen, Advocates.***versus***COMMISSIONER OF CUSTOMS (AIRPORT AND GENERAL),
NEW CUSTOM HOUSE, NEW DELHI & ANR. Respondents****Through: Mr Ajit K. Kalia, Sr. Standing
Counsel with Mr Abhinav Kalia,
Advocate.****CORAM:****HON'BLE MR JUSTICE RAJIV SHAKDHER****HON'BLE MS JUSTICE TARA VITASTA GANJU****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):****1. Following substantive prayers have been made in the writ petition:**

*“i.issue an appropriate writ, order or direction of mandamus to thereby directing the respondents to intimate/convey the reasons for suspending the custom broker licence bearing number 09/2001 of the petitioner;
ii. issue an appropriate writ, order or direction of mandamus to thereby directing the respondents to revoke the suspension of the custom broker licence bearing number 09/2001 of the petitioner;
iii. issue an appropriate writ, order or direction of mandamus order direction thereby declaring that in absence of any show cause notice under the customs broker licensing regulations, 2018 and rules(s) made thereunder, the respondents have no authority to suspend the custom broker licence of the petitioner.”*



2. The instant petition came up for hearing before the Court on 22.08.2022, when, after hearing the counsel for the parties, the following was recorded:

“CM APPL.36129/2022

1. Allowed, subject to the petitioner filing legible copies of annexures, at least three days before the next date of hearing.

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2. Mr Akhil Krishan Maggu, who appears for the petitioner has drawn our attention to Annexure P-7 (See page 57 of the case file). A perusal of the said communication reveals that it has emanated from the Noida Customs Commissionerate.

2.1 Paragraphs 2 and 3 of the said communication read as follows:

“2. As per Regulation 16 read with Regulation 7 (3), the Customs Broker License No. 09/2001 endorsement is preferred to be suspended for all the ports/CFS under Noida Customs Commissionerate with effect from 17th May, 2022.

3. In this regard, I have been directed to inform you that the date of personal hearing in the case is fixed on 30.05.2022 at 3:00 PM, before Principal Commissioner, Noida Customs Commissionerate.”

2.2 Clearly, what is evident is that the petitioner’s suspension has been ordered vis-à-vis all ports/CFS under the Noida Customs Commissionerate, with effect from 17.05.2022.

3. Furthermore, the petitioner was given an opportunity of personal hearing on the date mentioned in the notice dated 30.05.2022.

4. On being queried, Mr Maggu says that the reply to the said notice was filed. However, the reply filed, if any, is not



on record.

4.1 Mr Maggu says that he will place the reply on record.

5. Furthermore, Mr Maggu will also inform us, as to whether or not the petitioner's representative attended the hearing on 30.05.2022 and if so, whether any order has been passed.

6. A plain reading of the first proviso of Regulation 16 of the Customs Brokers Licensing Regulations, 2018 does indicate, that where the Principal Commissioner or Commissioner of Customs deems fit, he may for the reasons to be recorded in writing, suspend the license for a specified number of Customs Stations. For the sake of convenience, the aforesaid Regulation is extracted hereunder:

"16. Suspension of license. —(1) Notwithstanding anything contained in regulation 14, the Principal Commissioner or Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the license of a Customs Broker where an enquiry against such Customs Broker is pending or contemplated:

Provided that where the Principal Commissioner or Commissioner of Customs may deem fit for reasons to be recorded in writing, he may suspend the license for a specified number of Customs Stations.

(2) Where a license is suspended under sub-regulation (1), the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, shall, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs Broker whose license is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case maybe, within fifteen days from the date of hearing granted to the Customs Broker:

Provided that in case the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, passes an order for



continuing the suspension, further procedure thereafter shall be as provided in regulation 17.”

7. Annexure P-7 does indicate, that the suspension of license ordered was only vis-a-vis the Noida Customs Commissionerate.

8. Therefore, the petitioner’s grievance is that without suspending the license, it is impeded from operating under the Delhi Commissionerate.

9. Mr Maggu has drawn our attention to the communications dated 01.08.2022 and 08.08.2022, addressed in this regard, to the Deputy Commissioner of Customs (Airport & General), New Custom House, New Delhi.

10. Issue notice to respondents via all permissible modes, including email.

10.1 Mr Ajit Kumar Kalia accepts notice on behalf of the respondents.

11. Mr Kalia will return with instructions.

11.1 In case instructions are received to resist the writ petition, counter affidavit will be filed, at least three days before the next date of hearing.

12. List on 21.09.2022.”

3. As would be evident from the extract of the order dated 22.08.2022, after etching out the broad contours of the case, we had given an opportunity to the respondents, to file a counter-affidavit in the matter.

3.1. We may note that no counter-affidavit has been filed.

4. As is also apparent from a perusal of the order dated 22.08.2022, the petitioner’s fate is hanging fire, insofar as the Delhi Commissionerate is concerned, since May 2022.

5. Counsel for the respondents has drawn our attention to a communication dated 18.05.2022, which has been addressed by the Deputy



Commissioner (Policy), Noida Customs Commissionerate, to the Deputy Commissioner (EDI System), Customs (Airport & General), New Customs House.

5.1. The relevant part of the said communication is set forth hereafter:

“Subject: Suspension of Customs Broker Licence No. R-09/2001 (PAN : ACBPV3271B) in respect of M/s A.H. ASSOCIATES – reg

It is to inform that Shri Javed Khan, G-Card Holder No.15/2021 dated 19.03.2021 of Customs Broker M/S A.H. Associates has allegedly engaged himself in the act and omission/commission of concealment of Green Peas, a restricted goods for import and violation of port restrictions as well, thus rendering the outrightly smuggled goods liable to confiscation under Section 111 of the Customs Act. He has violated the CBLR, 2018 and not met the obligations under Regulation 10, ibid.

As per Regulation 16 read with Regulation 7(3), the Customs Broker License No.09/2001 endorsement is ordered to be suspended for all the ports/CFS under Noida Customs Commissionerate with effect from 17th May, 2022.

It is, therefore, requested to kindly immediately suspend endorsement in EDI system of Customs Broker License No.09/2001 (PAN ACBPV3271B) in respect of M/s A.H. Associates at Noida Customs Commissionerate.

This issues with the approval of Competent Authority.

Submitted please.”

[Emphasis is added.]

6. A perusal of the aforementioned communication dated 18.05.2022 would indicate that the Deputy Commissioner (Policy), Noida Customs Commissionerate has requested her counterpart, the Deputy Commissioner



(EDI System), Customs (Airport & General), New Customs House, to suspend the licence of the petitioner for all ports and CFS with effect from 17.05.2022, by exercising powers under Regulation 16 read with Regulation 7(3) of the Customs Broker Licensing Regulations, 2018.

7. We have queried counsel for the respondents, whether any specific order has been passed, pursuant to the receipt of the said communication dated 18.05.2022.

7.1. Mr Ajit K. Kalia, who appears on behalf of the respondents, states that no specific order has been passed.

8. In these circumstances, in our view, for the moment, the petitioner cannot be prevented from carrying on its business, at least in the Delhi Commissionerate.

8.1. That being said, it would be open to the respondents to take requisite steps, in accordance with Regulation 16 read with Regulation 7(3) of the Customs Broker Licensing Regulations, 2018 and other applicable provisions of law.

9. The writ petition is disposed of, in the aforesaid terms.

10. For the purpose of good order and record, the Registry will scan and upload the copy of the aforementioned communication dated 18.05.2022, so that the same remains embedded in the case file.

11. The parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

SEPTEMBER 21, 2022 / tr