

S/L 64
28.6.2023
Court No.26
SD

WPA 3967 of 2019
With
CAN 2 of 2019
(Old CAN 12434 of 2019)
(Assigned)

Nepal Cargo Handling Agents Association
Vs.
Commissioner of Customs (Port), Kolkata & Ors.

Dr. Samir Chakraborty
Mr. Abhijit Biswas
Mr. Bhaskar Sengupta

...for the Petitioner.

Mr. Bhaskar Prasad Banerjee

...for the Customs Authority.

This is a writ petition wherein the petitioner had challenged a public notice bearing no.08/2019 dated January 25, 2019 issued by the Commissioner of Customs (Port), Kolkata.

By an order dated June 12, 2019, this Court, upon hearing both the parties at an interim stage, had stayed the operation of the impugned notice and an e-mail dated March 22, 2019 that had put a complete stoppage to the earlier procedure as per the Indo-Nepal Treaty. The Court had clarified that the importers from the Nepal shall be allowed to follow either of the two procedures, that is, the earlier procedure or the new procedure under the impugned notice. Subsequently, this interim order has been extended from time to time.

In the meantime, a notification bearing no.68/2019-Customs (N.T.) dated 30th September, 2019 has been issued

by the Central Board of Indirect Taxes and Customs bearing the title “Transshipment of Cargo to Nepal under Electronic Cargo Tracking System Regulations, 2019”. This notification culls out the procedure to be adopted by the authorized carrier for transshipment of goods to Nepal using the Electronic Cargo Tracking System. Based on this notification, a vacating application has been filed by the Customs Authority seeking vacating of the order dated June 12, 2019.

Upon perusal of the notification, counsel appearing on behalf of the petitioner has submitted that the same is a notification clarifying the manner in which the transshipment to Nepal is to take place via the Electronic Cargo Tracking System. This notification does not in any manner bar the importers from using the earlier system that prevails under the Indo-Nepal Treaty.

Per contra, the submission of the counsel appearing on behalf of the respondent is, relying on clause 5 of the notification, that goods destined to Nepal are only to be sent through the Electronic Cargo Tracking System. Counsel has further relied on paragraphs 11 and 12 of the vacating application to buttress his argument that the earlier system has been scraped by way of this notification. He further submits that this notification has overruled the public notice and email that had been stayed by the order of the Court and those are not in play at the moment.

It is indeed a fact that the notification no.68/2019-Customs (N.T.) is not under challenge in this writ petition.

The cause of action for filing of this writ petition was the public notice issued by the Commissioner and email dated March 22, 2019 that had put a complete stoppage to the old procedure that was being followed by the pilot project.

In light of the above, the writ petition that challenged the public notice and the email dated March 22, 2019 is allowed.

I make it clear that this Court has not gone into the merits of the new notification and the implications thereof as the same is not under challenge before this Court.

The petitioner shall be at liberty to approach this Court challenging the same notification, if so advised.

In view of the above order passed, the writ petition is disposed of. Since this Court has not gone into the new notification, the vacating application being CAN 2 of 2019 (Old CAN 12434 of 2019) is disposed of as infructuous.

The observations, if any, made in this order with regard to new notification are tentative and are not to be taken as precedent in any future proceeding.

All parties are to act on the basis of the server copy of this order.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Shekhar B. Saraf, J.)