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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4816 OF 2024

M/s. Aiyer Shipping Agency Pvt. Ltd. & Anr.

...Petitioners

Vs.

Union of India & Ors.

...Respondents

Mr. Rafiq Mohammed a/w Ms. Rashmitha Ramchandran, Biju Joseph, A. Prakash and Bhoomika M., i/b Lloyd & Johnson, for Petitioners.

Mr. Subir Kumar a/w Ms. Kavita Shukla and Ms. Shruti Kalyanikar, for Respondents.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.

DATE: 28 MARCH, 2024.

P.C.

1. We have heard learned Counsel for the parties on the present proceedings.

2. This petition assails the order dated 14 March 2024 (Exhibit K) passed by the Commissioner of Customs (G), JNCH, Mumbai Zone-II, by which the operations of the petitioners – company are interalia suspended under Regulation 11 of the Sea Cargo Manifest and Transhipment Regulations of 2018 (for short ‘SCMTR, 2018’) for the alleged failure to comply with the provisions of Regulations 5 & 10(1)(m) of the SCMTR, 2018 and Section 33, 34, 39, 40 & 41 of the Customs Act, 1962. The period of suspension is from 1 April 2024 to 15 April 2024. There are also other directions which are issued

against the petitioners including of confiscation of goods and imposition of penalties as set out in Clause 15(ii) to (vii) of the operative part of the order.

3. The primary contention as urged on behalf of the petitioners, is to the effect that in passing such drastic order, no show cause notice was issued to the petitioners as also no opportunity of hearing was granted to the petitioners. It is hence, the petitioners' contention that the order of the nature as passed, which certainly has civil consequences, could not have been passed in such manner, *ex facie* in breach of the principles of natural justice. It is, therefore, submitted that on this count alone the impugned order would be required to be quashed and set aside.

4. Mr. Subir Kumar, learned counsel for the respondents has supported the impugned order. He has relied on the communication dated 9 November 2023 of the petitioners addressed to the Deputy Commissioner of Customs which according to the Commissioner would amount to consent of the petitioners for non-issuance of a show cause notice and for passing of such orders.

5. Having heard learned Counsel for the parties and having perused the record, we are not in agreement with Mr. Subir Kumar on his contention that the letter dated 9 November 2023 of the petitioners would be any blanket consent of the petitioners so as to not avail of an opportunity of hearing or for issuance of a show cause notice. In our opinion, such reading of the letter by the Commissioner itself is wholly misconceived.

6. In the facts and circumstances of the case, as the petitioners are handling the cargo of third parties and if the order-in-original is not suspended, it would be a serious and an irreparable prejudice not only to the petitioners but also to third parties with whom the petitioners have contracts to handle their cargo. Thus, in our opinion, it is in the interest of justice that the proceedings are remanded to the Commissioner of Customs for a fresh order to be passed after an opportunity of hearing is granted to the petitioners after issuance of a show cause notice, so that the petitioners are made aware in regard to the allegations intended to be made against the petitioners for such action to be resorted and on which the petitioners can be heard by the Adjudicating Officer. Thus, for such course of action to be adopted, the impugned order dated 14 March 2024 would be required to be quashed and set aside, as also the consequences emanating from the said order namely the Public Notice dated 20 March 2024 would also be required to be not acted upon. Ordered accordingly.

7. We, accordingly, dispose of this petition in terms of our aforesaid observations.

8. Let a show cause notice be issued to the petitioners within a period of two weeks from today and the same be replied by the petitioners within two weeks thereafter. The Commissioner to fix an appropriate date for hearing and after hearing the petitioner on all its contentions, the Commissioner shall proceed to pass an order in accordance with law.

9. The respondents shall also notify the withdrawal of the public notice dated 20 March 2024 as also take appropriate steps to communicate the same and place the corrective notice on the notice board.

10. Disposed of. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI , J.)