(2014) 10 DEL CK 0207

In the Delhi High Court

Case No : W.P. (C) No. 5439 of 2014 and C.M. No. 10809 of 2014

Bombino Express Pvt. Ltd. APPELLANT

Vs

Chief Commissioner of Cus., Delhi Zone RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:
Customs Act, 1962 — Section 111(m), 112

Citation : (2015) 315 ELT 496

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Yusuf Iqbal and Bhavya Sethi, Advocates for the Appellant; Satish Kumar, SC, Advocates for the Respondent

Judgement

Vibhu Bakhru, J.—The petitioner impugns the order dated 21-2-2014 passed by the Commissioner of Customs (I & G), New Delhi and an order dated 17-6-2014 passed by the Chief Commissioner of Customs. The said orders are hereinafter referred to as the ''impugned orders''. By the impugned order dated 21-2-2014, the registration granted to the petitioner as an authorised courier by the custom authorities was revoked and a penalty of Rs. 2,00,000/- was imposed. The appeal preferred by the petitioner against the impugned order dated 21-2-2014 was dismissed by the impugned order dated 17-6-2014. Essentially, the petitioner has challenged the revocation of its licence as authorised courier on the ground that the said punishment inflicted is disproportionate to the allegations and that the impugned order dated 21-2-2014 was beyond the allegations made in the show cause notice.

2. Briefly stated the relevant facts for considering the controversy in the present petition are as under:

2.1 The petitioner is one of the authorised couriers operating at the New Courier Terminal (NCT). The petitioner was issued a show cause notice dated 4-7-2013 calling upon the petitioner to show cause as to why the petitioner not be held responsible for contravention of Regulation 13(a), 13(g) & 13(j) of the Courier

Imports and Exports (Clearances) Regulations, 1998 (hereafter ''1998 Regulations'') and why the petitioner''s registration under the 1998 Regulations be not revoked. The allegations levelled against the petitioner were that the petitioner had not been submitting the authorisations for delivery of the consignments to the consignees and further, the signatures appearing on several authorisations appeared to be similar, which indicated that the signatures on the authorisations were forged/fabricated. In addition, it was alleged that petitioner had availed of the services of another courier without any prior permission of the Commissioner of Customs as required by virtue of Regulation 13(j) of the 1998 Regulations.

2.2 The petitioner responded to the show cause notice and contended that the authorisations and the delivery receipts were available with the petitioner and if given an opportunity, the petitioner would be able to furnish the said documents. It was further submitted that it was a common practice that every courier agency availed the services of other agencies in order to perform their work. Although the petitioner admitted that prior permission to use another courier agency, namely DTDC, had not been taken, nonetheless, the petitioner contended that DTDC was a responsible and an authorised courier and, therefore, the lapse in obtaining prior permissions be condoned. The petitioner further asserted that it had not knowingly or deliberately done any act which was illegal or in violation of the customs rules and regulations.

2.3 The Commissioner of Customs (I & G), respondent No. 2, found that the petitioner had not maintained proper records as it has failed to submit the authorisations to the customs department in spite of repeated requests. The Commissioner of Customs (I & G) further found that although the petitioner had submitted delivery certificates pursuant to the letters issued to the petitioner, the signatures thereon appeared to be forged/fabricated and, apparently, recorded by a common single individual against different consignees. Further, the authorisations by the consignees authorizing the courier to act as their authorised representative for clearance of the import consignments had not been submitted. The Commissioner of Customs (I & G), thus, held that the petitioner had violated the provisions of Regulation 13(a) and 13(g) of the 1998 Regulations.

2.4 In view of the aforesaid findings, the Commissioner of Customs (I & G) forfeited the security amount of Rs. 2,00,000/- and also ordered revocation of the registration of the petitioner as an authorised courier agency.

2.5 The petitioner preferred an appeal before respondent No. 1, the Chief Commissioner of Customs, inter alia, asserting that the findings by the Commissioner of Customs (I & G) were vague and the penalties imposed were harsh and disproportionate. At the hearing, afforded by the Chief Commissioner of Customs, the representative of the petitioner contended that the mistakes in question had been committed by its manager whose services had since been terminated. It was further submitted that the violations were procedural violations and there was no case of evasion of duties or smuggling of goods.

2.6 After hearing the petitioner, the Chief Commissioner of Customs concluded that the action taken against the petitioner was warranted. The relevant extract of the said decision is as under:-

"17. I find that the applicant company had cleared 308 consignments covered under 40 Bills of Entry during the period of 16th October, 2012 to 31st October, 2012. They did not submit authorization certificates in respect of any of the consignees. They only submitted delivery certificates and that too in respect of 16 consignments only. In respect of remaining consignments even delivery certificates were not submitted. This raises serious doubts not only about the genuinity of the consignees but even about the delivery of the consignments. The violations are not merely procedural in nature as pleaded by the applicant company but are serious in nature having/involving revenue implications. The charges also include manipulation of documents and forging/fabrication of signatures and the applicant company have remained silent on this aspect in their submissions. Further the revenue implication of the matter are evident from the fact that the applicant company have been issued a show cause notice by the Additional Commissioner (Exports) for denial of benefit of Notification No. 154/94-Cus., dated 13-7-1994 and proposing recovery of duty amounting to Rs. 2,91,310/- in respect of these 308 consignments and imposition of penalty under Section 112 of the Customs Act, 1962 for having rendered the imported goods liable for confiscation under Section 111(m) alleging that in the absence of concrete evidence of genuinity of consignees all the consignments belonged to the applicant company and they had filed Bills of Entry in different fictitious names and that the value in each such case was kept below Rs. Ten Thousand to avail duty free clearance of the goods under Notification No. 154/94-Cus., dated 13-7-1994. The nature of the offence as brought out above is thus serious and the penal action as prescribed in the Courier Imports and Exports (Clearances) Regulations, 1998, taken against the applicant company is warranted."

3. It is contended by the petitioner that the above findings returned, by the Chief Commissioner of Customs, in the impugned order dated 17-6-2014, were beyond the scope of the show cause notice as well as the impugned order dated 21-2-2014 and, therefore, the petitioner had no opportunity to deal with the allegations. It was submitted that the impugned order dated 17-6-2014 was a post facto attempt by the respondent to justify a harsh and unjustifiable penalty.

4. The learned counsel for the respondent submitted that in addition to the show cause notice dated 4-7-2013 another show cause notice had been issued by Additional Commissioner (Exports) for recovery of duty amounting to Rs. 2,91,310/- in respect of 308 consignments and imposition of penalty under Section 112 of the Customs Act, 1962 as the consignees were, apparently, not genuine and it was alleged that in the circumstances, the consignments belonged to the applicant company. The Bills of entry were alleged to have been filed in fictitious names to ensure that the value of the consignments were kept below

Rs. 10,000/- to avail of duty free import of goods.

5. I have heard the learned counsel for parties.

6. It is apparent that the petitioner has failed to approach this Court with clean hands. The details of the proceedings initiated against the petitioner in respect of clearing goods under fictitious names has not been disclosed. Although, the impugned order dated 17-6-2014 refers to show cause notice issued by the Additional Commissioner (Exports) for denial of benefit of Notification No. 154/94-Cus., dated 13-7-1994. The relevant facts pertaining to the said proceedings have not been mentioned in the writ petition.

7. Apparently, the allegations against the petitioner are not merely procedural but serious as the genuineness of the consignees is in doubt. The least that was required of the petitioner was to, candidly, disclose the nature of all allegations made against the petitioner. However, even though the impugned order dated 17-6-2014 refers to other proceedings, the petitioner has carefully ensured that the writ petition is bereft of any details as to the other proceedings that were initiated against the petitioner in respect of the consignments purportedly delivered by the petitioner. The writ petition is, thus, liable to be dismissed on this ground alone.

8. Since it is alleged that the petitioner had violated Regulation 13(a), 13(g) and 13(j) of the 1998 Regulations, it is necessary to refer to the said regulations and the same are quoted below:-

"13. Obligations of Authorised Courier.-

An Authorised Courier shall-

(a) obtain an authorisation, from each of the consignees of the import goods for whom such Courier has imported such goods or consignors of such export goods which such courier proposes to export, to the effect that the Authorised Courier may act as agent of such consignee or consigner, as the case may be, for clearance of such import or export goods by the proper officer:

Provided that for import consignments having a declared value of ten thousand rupees or less, the authorization may be obtained at the time of delivery of the consignments to consignee.

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(g) maintain records and accounts in such form and manner as may be directed from time to time by an Assistant Commissioner of Customs or Deputy Commissioner of Customs and submit them for inspection to the said Assistant Commissioner of Customs or an officer authorised by him, wherever required.

(j) not sub-contract or outsource functions permitted or required to be carried out by him in terms of these regulations to any other person, without the written permission of the Commissioner of Customs."

9. The petitioner had stated that "The activities at the petitioner''s office in Delhi were supervised by the petitioner''s erstwhile Manager Sh. Shyam Sharma who somehow did not maintain the records in the prescribed manner and was negligent in handling the documentation". This clearly indicates that the allegation that proper records had not been maintained is not disputed. The petitioner has also admitted that it had used services of DTDC couriers without the permission of the Commissioner of Customs. Thus, even on the petitioner''s pleadings, it is apparent that Regulation 13(g) of the 1998 Regulations, which requires proper maintenance of the accounts, and Regulation 13(j) of the 1998 Regulations, which prescribes outsourcing of functions without the written permission of the Commissioner of Customs, have been violated. Although, the petitioner had contended that it had the requisite authorisations, admittedly, the same had not been submitted at the material time. This is evident from the petitioner''s contention that "The Noticee has all the related documents with respect to the consignment i.e. the authorization certificate and the delivery certificate. Therefore, if given an opportunity, the Noticee will be able to furnish to you the concerned documents." This also indicates that the petitioner had failed to perform its obligation under Section 13(a) of the 1998 Regulations.

10. I am also not inclined to accept the contention of the petitioner that he did not have sufficient opportunity to meet the allegations levelled against the petitioner. The show cause notice dated 4-7-2013 contained an allegation that the petitioner had not been submitting authorisations which were statutorily required. It was further alleged that the signatures on delivery proofs of consignments imported were forged/fabricated and the petitioner had sublet delivery of goods to another courier without prior permission as required. The impugned order dated 17-6-2014 had further specifically noted that the petitioner had not submitted authorisation certificates in respect of 40 bills of entries during the period 16-10-2012 to 31-10-2012. The allegation with respect to non-submission of authorisation certificates had been indicated in the show cause notice. In addition, the imports made by the petitioner were, apparently, subject matter of another show cause notice referred to by the Chief Commissioner of Customs in the impugned order dated 17-6-2014. The petitioner, thus, had full knowledge of the allegations and also had the opportunity for meeting the same.

11. The contention of the petitioner that its licence could be suspended instead of revoking the same as a punitive measure also cannot be accepted. Regulation 14 of the 1998 Regulations only envisages suspension of licence pending completion of enquiry and does not provide for suspension of licence as a separate punitive measure. Regulation 14(1) of the 1998 Regulation is quoted below:-

"14. Deregistration.-

(1) The Commissioner of Customs may revoke the registration of an Authorised Courier and also order forfeiture of security on any of the following grounds namely:-

(a) failure of the Authorised Courier to comply with any of the conditions of the bond executed by him under regulation 11;

(b) failure of the Authorised Courier to comply with any of the provisions of these regulations;

(c) misconduct on the part of Authorised Courier whether within the jurisdiction of the said Commissioner or anywhere else, which in the opinion of the Commissioner renders him unfit to transact any business in the Customs Station:

Provided that no such revocation shall be made unless a notice has been issued to the Authorised Courier informing him the grounds on which it is proposed to revoke the registration and he is given an opportunity of making a representation in writing and a further opportunity of being heard in the matter, if so desired:

Provided further that, in case the Commissioner of Customs considers that any of such grounds against an Authorised Courier shall not be established prima facie without an inquiry in the matter, he may conduct the inquiry to determine the ground and in the meanwhile pending the completion of such inquiry, may suspend the registration of the Authorised Courier. If no ground is established against the Authorised Courier, the registration so suspended shall be restored."

12. In view of the above, the reliance placed by the petitioner on the judgment of this Court in National Basketball Association and NBA Properties Inc. v. Motorola Inc., 105 F. 3d. 841 (1997) is also misplaced as the said decision has been rendered in respect of Customs House Agents Licensing Regulations, 1984 which provide for both suspension and revocation of licence as separate measures on the ground as specified in Regulation 21 of the said Regulations. The provisions of Regulation 21 of the said Regulations and Regulation 14 of the 1998 Regulations are not pari materia. Accordingly, I find no reason to interfere with the impugned orders. The writ petition and the application are, accordingly, dismissed.