
(2014) 10 BOM CK 0130
In the Bombay High Court
Case No : Writ Petition (L) No. 2680 of 2014

Bombino Express Pvt. Ltd.

APPELLANT

Vs

Chief Commissioner of Customs

RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:

Citation : (2015) 315 ELT 194

Hon'ble Judges : S.C. Dharmadhikari, J; A.K. Menon, J

Bench : Division Bench

Advocate : Yusuf Iqbal Yusuf and Neville Majra and Abdul Rahman instructed by Yusuf and Associates, Advocates for the Appellant; Pradeep S. Jetty, Advocates for the Respondent

Judgement

1. This writ petition is filed against the order passed by the Commissioner of Customs, CSI, Airport, Mumbai, dated 25th September, 2014, a copy of which has been annexed to the writ petition at Annexure-A, page 25 of the paper-book. The petitioner is a courier agency holding licence under Courier Imports & Exports (Clearance) Regulations, 1998 and as amended from time to time. The petitioner had been allowed to transact business of clearing express cargo, imported/exported through the courier mode as authorised courier subject to the procedures laid down in the Notification and Regulations. That registration is valid upto 15th November, 2017. What has been noted by the authorities is that the petitioner did not obtain prior permission to sublet/outsourcing any of the components in the door to door supply chain. Secondly, the regulations contemplated passing of an examination. Thirdly, and what is emphasised today before us is that the petitioner has not maintained proper record in electronic format while engaging third party courier for the last mile delivery. They have no mechanism in place for procuring authorisation for such imports. Their software system is not capable of storing record for exports and authorisation records for import in electronic forms. The Regulations 13(a) and 13(j) read with circular are violated by the petitioner.

2. It is upon such allegations that a show cause notice was issued by the Commissioner and thereafter it states that for the purpose of satisfying itself with regard to any violations, an inquiry will be necessary and pending that inquiry, it is just and proper that the authorisation is suspended.

3. It is this suspension which has been challenged on several grounds. Firstly, it is submitted that this step is taken under Regulation 14 and it is under sub-regulation (1) proviso. The first proviso deals with the opportunity of making a representation prior to revocation of the registration and the second proviso permits the suspension of the registration in case the Commissioner of Customs considers that any of such grounds against the 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.

4. It is submitted that in this case the suspension is to conduct an inquiry, but no inquiry has been conducted till date. Secondly, if the grounds are not to be found and even prima facie established, then, an inquiry for the purpose is contemplated. Before that inquiry, suspension is ordered and automatically that would be an economic death for a party like the petitioner, who has been functioning as a courier for a number of years. It has 365 employees. Reliance is placed upon the judgment of Division Bench of Delhi High Court in *Clarence Brandenburg Vs. State of Ohio*, 395 U.S. 444 (1969). Reliance is also placed upon the Tribunal's orders in that regard.

5. Having perused the impugned order, we are of the opinion that it would be proper for us not to interfere in our writ jurisdiction. The matter has been brought before us at the stage of suspension, pending inquiry. The show cause notice sets out the violation and for the purpose of establishing the grounds, an inquiry can be conducted by the Commissioner. The Commissioner has discretion to carry out an inquiry so as to establish prima facie ground and pending such inquiry, suspend registration. It has been observed by the Commissioner of Customs, CSI, Airport, Mumbai that the petitioner is directed to show cause why the licence granted under Regulation 10 should not be revoked. However, pending conclusion of inquiry, registration has been suspended. To our mind, it will not be proper to read the regulations as they appear, in isolation. Sub-regulation (1) of Regulation 14 which provides for de-registration states that the Commissioner is empowered to revoke the registration of an authorised courier and also order forfeiture of security on any of the grounds, namely, failure of the authorised courier to comply with any of the conditions of the bond executed under Regulation 11 or to comply with any of the provisions of the regulations and misconduct 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 area. However, the proviso speaks about a

notice before revocation and setting out the ground for proposed revocation and to give an opportunity of making a representation in writing and further an opportunity of being heard in the matter, if so desired.

6. However, inquiry that is contemplated by the further proviso is not to justify issuance of notice but for establishment of the grounds to enable the concerned to record a finding as to whether the revocation could be visited or not. When that inquiry is contemplated by the second proviso and an inquiry has to be held, only if the Commissioner is satisfied that the grounds cannot be established without such inquiry, then, he may hold an inquiry and in the meanwhile, he has discretion to suspend the registration of the authorised courier. We find that the allegations in the show cause notice are indeed serious. If the Commissioner is to be prima facie satisfied and in terms of this further proviso, then, he is empowered to hold an inquiry and has also the further discretionary power. The suspension cannot be said to be arbitrary due to the seriousness of the allegations and to ensure that the petitioner is not committing acts which would result in further violations of the regulations. In such circumstances, it cannot be said that there is no power to suspend the registration. Further, reliance is erroneously placed on the Division Bench judgment of Delhi High Court. The Division Bench found that the licence in that case had been revoked. It was no longer in existence. It was revoked on 15th July, 2000. It was found that the licence was not functional after 13th January, 2000. If it was not functional then such licence cannot be revoked. Thus, there is no question of revoking a non-functional licence. The discussion in that behalf by the Division Bench in para 13 of its judgment read in its entirety shows that far from supporting the case of the petitioner before us it will lend credence to the conclusion reached by us and on test of proportionality, it is not for a writ Court to substitute its views with that of the Authority. The Commissioner is the best judge of the situation and if he is satisfied about the necessity to hold an Inquiry and pending it the suspension as aforesaid, then, the same should not be interfered with unless his view is completely perverse or vitiated in law and to such an extent as no reasonable person would reach that conclusion. It could also be interfered with if it is found to be arbitrary and mala fide. In such circumstances, the Division Bench judgment does not assist the petitioner at all.

7. As a result of the above discussion, the writ petition fails and is dismissed. No costs. However, we direct that the inquiry initiated upon the show cause notice be completed as expeditiously as possible and in any event on or before 15th December, 2014. In the event an adverse order is passed, the same can be challenged in accordance with law. The inquiry shall proceed without being influenced by our prima facie opinion on order of suspension.