**(2014) 03 KAR CK 0151**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 13335 of 2014 (T)

DHL Express India Private Limited APPELLANT

Vs

Union of India RESPONDENT

**Date of Decision :** 20-03-2014

**Acts Referred:**

**Citation :** (2015) 316 ELT 651 : (2014) 6 KarLJ 263

**Hon'ble Judges :** Dr. Jawad Rahim, J

**Bench :** Single Bench

**Advocate :** Kiran S. Javali, Advocate for the Appellant; Dinesh Kumar P.S, Advocate for the Respondent

## Judgement

Dr. Jawad Rahim, J.—Petitioner, a company incorporated under the provisions of the Companies Act, 1956, and a licensed courier under the provisions of the Courier Imports and Exports (Clearance) Regulations, 1998 (hereinafter referred to as the ''Regulations'', for brevity), has, in this writ action, brought in question the order dated 14-3-2014 in No. VIII/48/79/2002 Cus. Tech (Courier) at Annexure-B suspending the licence issued to the petitioner and has sought consequential relief in the nature of a writ of mandamus to direct the 2nd respondent or his officers to forbear from acting in any manner in pursuance to the suspension order and permit it to act as authorised courier under the Regulations. I had the benefit of hearing the persuasive arguments of Mr. Kiran S. Javali and with equal vehemence the educative arguments of learned Counsel for the Revenue, Mr. Dinesh Kumar. Perused records in supplementation thereto.

2. The contextual facts needing consideration as borne out from the records would show, petitioner is granted licence under the Regulation 7 of the Regulations and is an accredited courier about which there is no dispute by the respondent-Customs Department.

3. During the course of its business, it appears petitioner received a consignment to be delivered to the consignee in India. The consignment was received at the

Kempegowda International Airport (earlier known as Bangalore International Airport Limited). One parcel imported by the petitioner in the name of M/s. Rotmac Distributors, ''Anugraha'', 11th Cross, Bhuvaneswari Nagar, Dasarahalli, Hebbal Kempapura, Bangalore, aide bill of Entry No. 26629, dated 11-3-2014 was checked. It was found to contain CISCO Desktop Switches (7 numbers) with a declared value of Singapore S252. On inspection by the Customs officers, 6 gold bars weighing one k.g. each in six packages and 10 gold bars weighing 100 gms. each was found. The gold bars so recovered were tested by the approved valuer who determined its purity as 999.9 with the estimated value of Rs. 2,14,27,000/-. They were seized under mahazar drawn on 11-3-2014 by the officers of SUB, Air Cargo Complex, Bangalore, on the reasonable belief that they were liable for confiscation under the provisions of the Customs Act, 1962.

4. In the follow-up action, Customs officers found the consignment was addressed to M/s. Rotmac Distributors which was not in existence. Enquiry with personnel of the petitioner revealed 17 such consignments were imported at Bangalore from the period November 2013 from the same consignor, i.e. Electronics Bazaar, No. 6, Morris Road, Singapore. Those consignments are said to have been delivered to various consignees in Bangalore by the petitioner-courier.

5. On preliminary investigation, the statements of one Joseph Noby, Radhakrishnan K. Nair, Service Centre Manager and Ravishankar S. courier boy of the petitioner were recorded. The statements so given brought out that the petitioner had not obtained any authorization from the consignee-M/s. Rotmac Distributors. The antecedents, IEC number, address, etc. was not verified by the petitioner and the consignments imported in the past were also from the same consignor which appears to have not been delivered at the door of the consignee.

6. Based on this material, the officers opined Regulation 13(a) of the Regulations was attracted and the petitioner was liable to discharge the obligation imposed on it under the said provision. The officers also opined Regulation 14(1) had to be invoked which provides for revocation of registration of licence for acts of malfeasance and misfeasance. For such reasons, the Commissioner of Customs has passed the impugned order suspending the licence of the petitioner which is brought in question.

7. Mr. Kiran Javali submits, the role of the petitioner is very limited. The petitioner is merely a courier which receives consignment from the consignor and delivers it to the consignee and is not expected to, or knows about the contents. He would submit, petitioner cannot be attributed with knowledge of any consignment in contravention of the provisions of the Act because the assignment begins and ends by receiving the consignment and delivery. In other words, he submits petitioner has to be absolved of all liability which may be on the consignor and consignee. He submits, petitioner-company is a part of DHL Group which has good market repute and a leader in logistics industry and its network called DHL Express Network of which the petitioner is one unit connects

 

more than 1,20,000 destinations, over 500 airports around the world; it maintains a sophisticated standardised air express routes which are served by DHL-owned airlines.

8. Several other submissions are to show the creditworthiness of the petitioner and to dispel attribution of mala fides or connivance in any such contravention. He submits, petitioner''s business is at its peak and it has received several hundreds of consignments which are now blocked on account of suspension of licence which was validly obtained. He submits, no grounds are made out for suspension of its licence; no prior notice was issued to the petitioner nor opportunity given before passing the impugned order. According to him, the Regulations do not confer power or jurisdiction on the 2nd respondent to suspend courier registration of the petitioner without prior notice and without affording an opportunity. He thus describes the impugned order as arbitrary, unjust and unwarranted in the facts and circumstances of the case.

9. Learned Counsel gains support to his contentions relying of Regulation 14 which deals with the power of the Commissioner of Customs to revoke on any of the grounds enumerated therein. He submits none of those grounds are made out and therefore the impugned order is illegal. According to him, the power conferred under the second proviso to Regulation 14(1) can be exercised only when ground for revocation of registration cannot be established without enquiry and pending enquiry registration can be suspended. He submits, in the instant case, action is under Regulation 14(1) and therefore without prior notice, the impugned order could not have been passed. He would submit, even if recovery of such contraband is done by the authority, the 2nd respondent should have identified the offender for which the petitioner is willing to fully and effectually co-operate and ensure there is no recurrence of such act. He submits, the petitioner is not prima facie found to have indulged in failure to comply with any of the conditions mentioned in Regulation 11 and is not shown to have failed to comply with any of the regulations nor there is any misconduct. Mere random discovery by the authorities cannot be used against the petitioner to deprive it of the licence obtained under law. He submits, similar attempt was made by the officers on 5-2-2014 regarding the consignment in Air Way Bill No. 5707780164, but on checking they found nothing wrong. He has narrated other references also to show that the petitioner has not indulged in any illegal act.

10. The last ground urged is, because of suspension the entire business activity has come to a standstill affecting employees and survival of officials and officers including day-to-day operation or releasing the consignment. He would submit, hundreds of consignment received in the Territory of India are held by the Customs Department and petitioner is unable to process it because licence is suspended consequent to which consignees are likely to suffer. He struck an emotional note contending, the suspension order has resulted in all consignments being held up, consequent to which important items like medicines and life saving drugs cannot be delivered to the respective destinations. He

 

submits there is no efficacious remedy provided against suspension and therefore this Court may quash the suspension order permitting the respondents to proceed with the enquiry against the petitioner in which it will fully co-operate and render able assistance as may be required.

11. This in short, is the gist of grounds on which the impugned order is brought in question.

12. Learned Standing Counsel for the Revenue, Mr. Dinesh Kumar would very fairly submit that the 2nd respondent has no pre-conceived opinion against the petitioner. The authority has received credible information that the contraband was being transported by the consignor to the consignee whose antecedents were doubtful. One of the consignments checked in random revealed the contraband of 7 kgs. gold was smuggled; he submits because of the creditworthiness of the petitioner, the Department would not subject each consignment to thorough checking on the belief that the petitioner has been discharging its obligations under the licence and as a matter of routine, random search is made. He submits, 17 consignments received in the past from the same consignor have been delivered. He refers to the statements of employees of the petitioner which makes it clear that the consignees did not have any permanent place of business and many of them were those who had delivered the consignment at the address other than what was mentioned in the consignment. He would submit, prima facie this action shows there is some sinister design and one such discovery has put the Department on alert. In the interest of the security of the nation and also in the interest of enforcing the law, the authorities have acted in right earnest. He submits, having obtained licence, petitioner has the obligation to ensure no contraband is either exported or imported as he virtually acts as an agent.

13. He would further submit, Regulation 13 imposes a statutory duty upon a licensed courier to act as an agent of the consignor. In this regard my attention is drawn to clauses (a) and (b)(1) (sic) of Regulation 13 which read thus:

"13. Obligations of Authorised Courier. --(1) 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 consignor, as the case may be, for clearance of such import or export goods by the proper officer;

(b)...

(i) verify the antecedent, correctness of Importer Exporter Code (IEC) Number, identity of his client and the functioning of his client in the declared address by using reliable, independent authentic documents, data or information".

Keeping Regulation 12 cited above would certainly show that by a legal fiction the petitioner steps into the shoes of the exporter or importer and has legal responsibility which crystalises into legal liability to answer any contravention or fraud or, for that matter, any criminality in conduct. As of now, we notice one of the consignments was found to contain contraband of 7 kgs. gold valued at Rs. 2,14,27,000/-. Thus prima facie there is criminality. The petitioner if not directly vicariously becomes liable for such act and therefore has to answer. Regulation 14 confers the power of deregistration in '' the circumstances enumerated at clauses (a), (b) and (c). Prima facie it is shown if not directly, non-compliance of Regulation 13 has resulted in such incidents occurring. Therefore enquiry in that regard is certainly necessary. The commissioner has in his opinion thought fit to order an enquiry and as it attracts penal provisions of other laws, necessarily other investigating agencies are also to be involved. Pending such investigation power conferred for cancellation/suspension of licence has been exercised by the Commissioner as provided by the proviso to Regulation 14".

14. Mr. Dinesh Kumar is right in pointing out that the impugned order is in exercise of the second proviso which envisages ''In case the Commissioner of Customs considers that any of such grounds against an authorised courier shall not be established prima facie without an enquiry in the matter, he may conduct an enquiry to determine the ground and in the meanwhile pending completion of such enquiry, may suspend registration of authorised courier. If no ground is established against the authorised courier, the registration so suspended shall be restored''.

Learned Counsel for the Department is also right in pointing out that as the impugned order is passed in exercise of the said power, it is amenable to be questioned by the aggrieved party as provided by the second part of the proviso which envisages ''any authorised courier or the officer of Customs authorised by the Chief Commissioner of Customs in this behalf, if aggrieved by the order of the Commissioner of Customs passed under sub-regulation (1), may represent to the Chief Commissioner of Customs in writing against such order within sixty days of communication of the impugned order to the Authorised Courier and the Chief Commissioner of Customs shall, after providing the opportunity of being heard to the parties concerned, dispose of the representation as expeditiously as may be possible...

15. However, Mr. Kiran would submit, that is no provision of appeal and therefore there is no statutory remedy provided against suspension though the remedy of appeal may be available against revocation. He submits the proviso does not create the right of appeal and it is only this Court which could intervene at this juncture to prevent unjustified suspension order remaining in force.

16. I am unable to agree with the contention of Mr. Kiran Javali for the reason while the proviso provides for and confers jurisdiction on the Commissioner to order suspension, the second part of the same proviso confers right on the person affected, like the authorised courier, to apply to the Chief Commissioner in writing against such order and time stipulation is also given. Therefore it is sufficient efficacious remedy provided against suspension of licence ordered

 

under Regulation 14 referred to supra. In this view, it cannot be said that the petitioner has no alternate efficacious remedy except filing of writ petition.

17. Be that as it may, we have to see equity and possible hardship to the bona fide consignees. While Mr. Kiran submits the suspension order has not only adversely affected its interest, but also against the interest of several customers in India who have indented medicines as also abroad, Mr. Dinesh Kumar for the Revenue submits respondents are very much willing to permit the petitioner to clear its consignments which had been received as on date. He brings to my notice the communication addressed by the 2nd respondent to the petitioner which reads thus:  To,

Shri Noby Joseph, Gate-way Manager, DHL Express (India) Private Limited, Bengaluru International Airport, Devanahalli, Bangalore.

Sir,

Sub.: Permission to transfer/Tranship shipment.

Please refer to letter DHL/Custodian/01, dated 15-3-2014 on the above mentioned subject. In this connection you are requested to immediately list out and segregate the cargo relating to the following categories:

Courier-commercial shipments

Courier-non-commercial shipments

All other cargo for transfer to Air Cargo Complex.

The list should be submitted to this office immediately so that necessary action to clear the pending cargo could be taken expeditiously. You may also keep all documents such as authorisation, IEC Code, KYC requirements, etc. as are required in terms of Courier Imports and Exports (Clearance) Regulations, 1998, and the Customs Act, 1962, ready for verification.

(Reena Shetty) Joint Commissioner.

The said communication is dated 19-3-2014 within a few days after passing of the impugned order on 14-3-2014. Petitioner has been intimated of it. Even assuming it has not received the said communication, a copy of it is placed on record. As the Joint Commissioner of Customs has clearly informed the Gateway Manager of the petitioner that they may segregate the cargo relating to categories mentioned therein to enable it to clear it immediately. Therefore petitioner can take advantage of the said facility offered by the Joint Commissioner and in this regard petitioner may approach the concerned officers of the Customs Department complying with the requirement of letter dated 19-3-2014 upon which the respondents, in terms of their undertaking may clear the consignment at the earliest. This will safeguard the interest of all concerned.

Being of this view, I do not find any ground in the writ petition sufficient to interfere with the order of suspension. Thus I dispose of the writ petition with the following order: The writ petition is rejected. However, respondents are directed to permit the petitioner to get the consignments. Cleared as stated in the letter dated 19-3-2014 if the petitioner complies.

Mr. Dinesh Kumar is permitted to file memo of appearance within three weeks.

 