(2018) 01 DEL CK 0200

In the Delhi High Court

Case No : Civil Writ Petition No. 10181, 11474 Of 2017

Hlpl Global Logistics Pvt. Ltd APPELLANT

Vs

Commissioner Of Customs (General),New Customs House,New Delhi & Anr RESPONDENT

Date of Decision : 04-01-2018

Acts Referred:

Customs Act, 1962 — Section 108
Customs House Agents Licensing Regulations, 2004 — Regulation 9(1)
Customs Brokers Licensing Regulations, 2013 — Regulation 11(d), 11(e), 18, 20, 22

Citation : (2018) 01 DEL CK 0200

Hon'ble Judges : Sanjiv Khanna, J;Chander Shekhar, J

Bench : Division Bench

Advocate : Priyadarshi Manish, Anjali Manish, Sanjeev Narula, Abhishek Ghai,

Final Decision : Disposed Of

Judgement

Sanjiv Khanna, J

1. Counsel for the respondents prays and is granted permission to file counter affidavit in W.P. (C) No.10181/2017. He states that this affidavit may be also read as affidavit and response to W.P. (C) No.11474/2017.

2. We take the statement made by the counsel for the respondents on record and the counter affidavit filed by the respondents is taken on record in W.P. (C) No.10181/2017 and will be also read as affidavit/response to show cause notice in W.P. (C) No.11474/2017.

3. Counsel for the parties states that as a short issue arises for consideration, arguments may be heard and the writ petitions may be disposed of.

4. HLPL Global Logistics Pvt. Ltd., a company registered under the Companies Act, is inter alia, engaged in providing services for custom clearance of exports and imports. They have been issued Customs Housing Agent License No. R-49/2012 by the Commissioner of Customs (I&G), New Delhi under Regulation

9 (1) of Customs House Agents Licensing Regulations, 2004, which is valid up to 31st October, 2022.

5. Show cause notice dated 17th August, 2017, was issued to the petitioner for contravention of Regulations 11(d) and 11 (e) of the Customs Brokers Licensing Regulations, 2013, seeking reply why the Customs Housing Agent License should not be revoked and the security submitted by the petitioner, partly or wholly, should not be forfeited in terms of Regulations 18 and 20 of the Customs Brokers Licensing Regulations, 2013. The petitioner was also asked to respond as to why penalty should not be imposed on them in terms of Regulation 22 read with Regulation 20 of the aforesaid Regulations.

6. The Inquiry Officer appointed vide letter dated 11th September, 2017, informed the petitioner about his appointment and that the matter had been fixed on 5th October, 2017 or 6th October, 2017 or 3rd November, 2017 at about 11.30 hours. The petitioner or his authorized representative was required to appear on the stipulated date and time along with written submissions, if any. In case of non-appearance, inquiry report would be prepared on the basis of material available on record without further reference.

7. In response to this notice, the petitioner wrote letter dated 15th September, 2017, stating that the show cause notice was unclear about the documentary evidence on which reliance had been placed. Even names of witnesses had not been disclosed. In these circumstances, it was not possible for the petitioner to submit an extensive and detailed reply. It was stated that the statements recorded under Section 108 of the Customs Act cannot be considered as evidence. Reliance was placed upon certain judgments. In case the Inquiry Officer would choose to rely upon statements of third persons other than the petitioner recorded under Section 108 of the Act, clause (4) of Regulation 22 of the 2004 Regulations would apply. This was followed by similarly worded letter dated 21st September, 2017.

8. The petitioner thereafter wrote letter dated 3rd October, 2017, to the Inquiry Officer requesting that documentary and oral evidence which the Inquiry Officer wants to take into consideration should be furnished. Reliance was placed upon several judgments mentioned in the letter. Several other contentions and submissions were made.

9. The Inquiry Officer vide letter dated 6th October, 2017, informed the petitioner that the show cause notice was self-explanatory and all facts had been stated therein. The inquiry proceedings were time-bound and cross-examination would not be permitted. In case any document or clarification was required with respect to the show cause notice, the same should be obtained from the office of the show cause notice issuing authority. This letter warned that final opportunity was being granted to the petitioner to file defence/reply and appear for personal hearing on 13th November, 2017.

10. As per the petitioner, the letter dated 6th October, 2017, was posted on 7th

November, 2017 and was received by them on 8th November, 2017. Annexures have been filed in support. The aforesaid factual position is not disputed by the respondents. No explanation as to why there was a delay of more than one month in posting the letter after it was signed on 3rd October, 2017 and bears the date "06.10.2017". It may be pertinent to mention that this letter refers to the personal hearing before the Inquiry Officer on 5th October, 2017 and therefore was possibly signed after 5th October, 2017. This "Lapse" may require administrative action, which is for the authorities to examine.

11. The petitioner thereafter filed W.P. (C) No.10181/2017, which came up for hearing before this Court on 17th November, 2017. Noticing the submissions made and also the contention that the Inquiry Officer had not furnished copy of documentary and oral evidence, the Court passed an interim order, restraining the Inquiry Officer from passing the final order. The said interim order was passed at 11.25 a.m. The order dated 17th November, 2017, had directed that the counsel for the respondents would immediately inform the Inquiry Officer about the stay.

12. Thereafter, the writ petition was taken up for hearing on 22nd November, 2017 and 7th December, 2017. On the latter date, counsel for the respondents had handed over a copy of statements recorded under Section 108 of the Customs Act to the counsel for the petitioner.

13. However, it transpires that the Inquiry Officer had submitted his report dated 14th November, 2017, before the restraint order was passed on 17th November, 2017. This report was served on the petitioner on 23rd November, 2017 vide communication posted on 22nd November, 2017.

14. The respondents in the counter affidavit have pointed out that the report of the Inquiry Officer dated 14th November, 2017, was diarized and had been communicated to the different authorities including the office of the General Commissionerate on 15th November, 2017 and others on 16th

15. Counsel for the petitioner has made allegation that this report has been back dated. However, we need not go into this aspect in detail in the present writ petitions, for there are other grounds and reasons to allow the present writ petitions.

16. The order dated 11th December, 2017 passed in W.P. (C) No. 10181/2017 records the statement and assertion of the petitioner that they had not been furnished copy of the statements made by the proprietors of Jagson Trading Company and Chaman Lal & Sons referred to in paragraph

29 of the Inquiry Report. Similarly, statements made by Rajesh Chhabra (incorrectly recorded as "Rajesh Chadha") had not been furnished.

17. The respondents in the counter affidavit have stated that as far as the relied upon documents are concerned, it had been learnt that the Directorate of Revenue Intelligence had issued a show cause notice under the Customs Act and

these documents were supplied. Reliance is placed upon the communication received from the Directorate of Revenue Intelligence on 29th December, 2017. However, a copy of the said letter has not been filed with the counter affidavit. The respondents have also not stated and given the date on which the show cause notice was issued by the Directorate of Revenue Intelligence. Moreover, we find that this averment made in the counter affidavit is contrary to the assertion recorded in the letter/communication dated 6th October, 2017, written by the Inquiry Officer, which had required the petitioner to obtain documents or clarification with regard to show cause notice directly from the show cause notice issuing authority. It may be relevant to state here that the Inquiry Report dated 14th November, 2017, in paragraph 30 itself records that till then no show cause notice had been issued to the importers/custom brokers under the Customs Act.

18. The counter affidavit thus accepts and admits that the respondents had not furnished statements and other documents relied upon by them. These were partly furnished in the court on 7th December, 2017 and recently in the form of CD-ROM. Hard copy has also been furnished to the petitioner.

19. Keeping in view the aforesaid factual position, which is undisputed, we would allow the present writ petitions and quash the Inquiry Report dated 14th November, 2017. A fresh inquiry would be held by the Inquiry Officer in terms of the the Regulations without being influenced by the earlier Inquiry Report. The petitioner or his authorized representative would appear before the Inquiry Officer on 16th January, 2018 at 11.30 a.m. for the said purpose. It will be open to the Inquiry Officer to fix further date(s) as and when, required or necessary. Inquiry report would be submitted by 15th March, 2018. It is clarified that we have not commented on merit or on the petitioner's claim for right to cross-examination. This is an aspect which will be considered and examined by the Inquiry Officer/authorities.

20. The writ petitions are disposed of. In the facts of the present cases, there would be no order as to costs.

Dasti under signature of the Court Master.

