

(2020) 03 DEL CK 0197

In the Delhi High Court

Case No : Civil Writ Petition No. 1045 Of 2020

Its My Name Pvt. Ltd

APPELLANT

Vs

Directorate General Of Foreign Trade

RESPONDENT

Date of Decision : 18-03-2020

Acts Referred:

Foreign Trade (Regulation) Rules, 1993 — Rule 9(2), 10

Foreign Trade (Development and Regulations) Act, 1992 — Section 9(4), 15

Citation : (2020) 03 DEL CK 0197

Hon'ble Judges : Navin Chawla, J

Bench : Single Bench

Advocate : Saurabh Kirpal, Jyoti Taneja, Vineet Malhotra, Vishal Gohri,
Shubhendu Kaushik

Final Decision : Allowed

Judgement

Navin Chawla, J

1. This petition has been filed by the petitioner praying for the following relief:-

"1. To set aside the action carried out by the respondent's office in listing the name of the Petitioner Company M/s Its My Name Pvt Ltd in Denied Entity List, without following the principles of natural justice and without giving any opportunity of being heard to the Petitioner, which has deprived the Petitioner of the rightful benefits under the FTDR Act;

2. In continuation to the above prayer(s) to direct Respondents to remove the name of Petitioner from the Denied Entity List and reinstate the License of the Petitioner if any of the License has been consequentially revoked/suspended and allow the Petitioner to apply for Licenses in future, as such action is in violation of the procedure prescribed and is also against the principles of natural justice the Petitioner,;

3. To set aside the Show Cause Notice F No. 05/02/001/0019/AM/-20/ECA/CLA/1352844 dated 27.06.2019 issued by the Respondent, which is vague and

the allegations have not been substantiated neither the relied upon documents have been supplied to the Petitioner inspite of various reminders in writing and visits by the counsel of the Petitioner, which has caused undue hardship to the Petitioner;"

2. It is the case of the petitioner that the petitioner was never supplied with the copy of the order placing the petitioner company in the Denied Entities List (DEL). The learned counsel for the petitioner further submits that in any case, the said order having been passed without issuing any Show Cause Notice to the petitioner or granting an opportunity of hearing to the petitioner, is in violation of principle of natural justice.

3. As far as the Show Cause Notice dated 27.06.2019 is concerned, it is the case of the petitioner that the same is completely vague and in spite of repeated request of the petitioner to supply the complete documents giving details of the allegations against the petitioner, the same has not been supplied by the respondent.

4. On the other hand, the learned counsel for the respondent places reliance on Rule 10 of the Foreign Trade (Regulation) Rules, 1993 (hereinafter referred to as the ?Rules?) to submit that the Director General may cancel any license where the licensee has committed a breach of any of the conditions of the license. He submits that in the present case, the proceedings before the respondent have been initiated on a letter received from the Directorate of Revenue Intelligence, which shows the nature of allegations against the petitioner. He further submits that in terms of Rule 9(2) of the Rules, the Director General can suspend the operation of any license where proceedings of cancellation of such license have been initiated under Rule 10.

5. I have considered the submissions made by the learned counsels for the parties. The Show Cause Notice dated 27.06.2019 merely refers to the letter received from the DRI and records as under:-

"01. Whereas DRI Hqrs. has informed that firm M/s Its My Name Pvt. Ltd. (IEC No.0514037342) is suspected to be misusing the Advance Authorization and the Exhibition Re-import Scheme through circular trading of gold jewellery exported under the guise of goods for exhibition purpose from India through hand carriage."

6. The Show Cause Notice, therefore, merely states that DRI has informed that the petitioner Firm is "suspected to be misusing the Advance Authorisation". Details of the allegations against the petitioner have not been given in the Show Cause Notice.

7. As far as the order placing the petitioner on DEL is concerned, the same is stated to have been passed on 26.06.2019, that is even prior to the issuance of the Show Cause Notice. In terms of Rule 9(2) of the Rules, the same was clearly premature and not permissible as on that date proceedings of cancellation of the

license of the petitioner had not been initiated in accordance with Rule 10 of the Rules.

8. The ?Guidelines for maintaining the Denied Entities List (DEL)? dated December 31, 2003 (hereinafter referred to as the Guidelines) in Clause C mandates compliance with the principle of natural justice even while suspending the license. It reads as under:-

"C. Right to be heard before passing an Order

The powers related to refusal, suspension or cancellation of licenses will also require, as is the case while exercising any executive authority under the statute, strict adherence to the principle of natural justice. Implying thereby that licensing authority will refuse, suspend or cancel any license after giving the holder of license a reasonable opportunity of being heard and thereafter by passing a reasoned order to be recorded in writing."

(Emphasis Supplied)

9. Proviso to Section 9(4) of The Foreign Trade (Development and Regulations) Act, 1992 mandates grant of reasonable opportunity to the licensee of being heard before suspending the license.

10. The learned counsel for the respondent has also produced before me the office file containing the purported order placing the petitioner on DEL. A perusal of the same shows that it records no reasons for placing the petitioner on DEL. It is merely a note on the letter received from DRI.

11. It is further not denied that not only the purported order dated 26.06.2019 has not been served on the petitioner but infact, in accordance with Clause D(1) of the guidelines, it should have also stated that an appeal against the refusal of the license shall lie under Section 15 of the Act. There is no such order which is even available in the file.

12. The Impugned Order dated 26.06.2019, placing the petitioner on DEL, is therefore, clearly in breach of not only the Act, the Rules but also the Guidelines.

13. In view of the above, the purported order dated 26.06.2019 placing the petitioner on DEL is set aside. As recorded hereinabove, even the Show Cause Notice dated 27.06.2019 is vague and is also set aside.

14. This order, however, shall not bar the respondent from issuing a proper Show Cause Notice to the petitioner and taking action in accordance with law.

15. The petition is allowed in the above terms. There shall be no order as to costs.