(2007) 05 DEL CK 0248

In the Delhi High Court

Case No : Writ Petition (C) No. 3124 of 2007

KRBL Limited APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 04-05-2007

Acts Referred:
Foreign Trade (Development and Regulation) Act, 1992 — Section 13, 8, 8(1)

Citation : (2009) 15 STR 371

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Bishwajit Bhattacharya and Md. Qamar Ali, for the Appellant; Rajeeve Mehra and Dincur Bajaj, for the Respondent

Final Decision : Disposed Off

Judgement

Badar Durrez Ahmed, J.—This writ petition has been filed by the petitioner being aggrieved by the interim order dated 24.04.2007 passed by the Director General of Foreign Trade, Ministry of Commerce and Industry, Government of India, New Delhi. By virtue of this order, the petitioner''s IEC No. 0595031790 has been suspended with immediate effect till further orders. The impugned order has been passed on the assumption that the petitioner has committed violations of the provisions of the Customs Act, 1962 and the provisions of the Foreign Trade Policy made under the Foreign Trade (Development and Regulation) Act, 1992 and, Therefore, the provisions of Section 8(1)(a) of the latter Act have been attracted.

2. Mr. Bhattacharya, who appears on behalf of the petitioner, submitted that this order suffers from various infirmities. First of all, he submitted that the impugned order has been passed u/s 8(1)(a) of the Foreign Trade (Development and Regulation) Act, 1992 (hereinafter referred to as the ''said Act'') whereas the show cause notice issued on 09.04.2007 to the petitioner was u/s 8(1)(b) of the said Act.

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3. Secondly, Mr. Bhattacharya submitted that the allegation mentioned in the show cause notice was that the petitioner had made fraudulent amendments/ manipulations and had made exports referred to in the show cause notice in a fraudulent manner in violation of the provisions of the Act. He submitted that no details of the purported fraudulent amendments/manipulations have been mentioned in the show cause notice. It is also not indicated as to how the provisions of the Customs Act as also of the Foreign Trade Policy and the said Act have been violated. Therefore, according to Mr. Bhattacharya, the petitioner was not made fully aware of the allegations against him and did not know as to what the petitioner had to answer to.

4. Thirdly, Mr. Bhattacharya submitted that the show cause notice made no mention of any report of the Director of Revenue Intelligence. Yet, the impugned order has reference to the said report in paragraph 4. In fact, the impugned order is based upon the said report. The learned Counsel submits that this report was not disclosed to the petitioner and no copy of it was given to him and Therefore, it could not have been relied upon against the petitioner.

5. Fourthly, Mr. Bhattacharya submitted that no opportunity of personal hearing was granted to him. He states at the Bar that in the impugned order it is erroneously recorded that a personal hearing was granted to the petitioner on 13.04.2007. He states, as a responsible officer of the Court, that he was the counsel for the petitioner before the Director General of Foreign Trade and the ''hearing'' did not last for more than a few seconds. He submits that he was not even permitted to sit. According to him, this clearly indicates that the bogey of personal hearing was a sham.

6. Fifthly, Mr. Bhattacharya submitted that the principles of natural justice are inbuilt, in express terms, into Section 8 of the said Act, which requires the Director General to give a notice in writing informing the effected person of the grounds on which the IEC number is proposed to be suspended or cancelled. The provisions of Section 8 also make it clear that a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice be also given. The provision also stipulates that if the person so desires, he shall be heard. It is only thereafter that the Director General may suspend the Importer-exporter code Number and that too for a specified period of time. In the present case, Mr. Bhattacharya points out that the show cause notice was issued on 09.04.2007 and was served upon the petitioner through a special messenger on the same day. The date for the purported personal hearing was fixed on 13.04.2007 granting the petitioner only three days time to reply to the show cause notice. Furthermore, documents referred to in the impugned order were not supplied to the petitioner. The grounds that were given in the show cause notice were vague. The hearing that was given on 13.04.2007, if it could be called a hearing, was illusory. And, finally, the suspension order itself did not specify the period of suspension but was an open ended suspension order for all times to come.

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7. Mr. Bhattacharya lastly submitted that while u/s 8(1)(b) of the said Act an interim order of suspension may be passed, if the provisions of Section 8(1)(a) of the said Act are to be invoked then the order of suspension can only be a final order and cannot be an interim order because the said provision requires the Director General to return conclusive findings with regard to contravention etc. He submitted that, merely on the basis of a prima facie view, the Importer-exporter code Number cannot be suspended u/s 8(1)(a) of the said Act.

8. Although Mr. Bhattacharya made submissions with regard to the merits of the matter, in my view, it is not necessary for this Court to go into the same at this stage.

9. Mr. Rajeeve Mehra, who appears on behalf of the respondents, submitted that the mentioning of Section 8(1)(b) in the show cause notice was a typographical error and the show cause notice is one which was issued u/s 8(1)(a) and u/s 13 of the said Act. However, with regard to the other objections which have been raised by the learned Counsel for the petitioner, while controverting the same, Mr. Mehra submitted that in order to obviate any further difficulty in the adjudication proceeding which is going on, he has instructions from Mr. C. Gangadaharan, Deputy D.G.F.T to submit that a fresh show cause notice would be issued to the petitioner along with all relied upon documents and a full opportunity would be granted for making a written representation as well as of a personal hearing if they so desire and it is only thereafter that an appropriate order would be passed in accordance with law.

10. Without commenting any further on the merits of the matter, in my view, this is a very fair statement made by the learned Counsel for the respondent and it would serve the ends of justice if the provisions of Section 8 are followed both in letter and spirit. Accordingly, the impugned order is set aside. It would be open to the respondents to issue a fresh show cause notice, along with documents upon which they rely, giving the petitioner full opportunity of submitting a written representation as well as of being personally heard, if they so desire. The sum and substance of this order is that the respondents shall comply with the requirements of natural justice embodied in Section 8 of the said Act. With these directions, this writ petition stands disposed of.

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