
(2010) 07 P&H CK 0031
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 12408 of 2010

Naresh Sharma

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

Customs House Agents Licensing Regulations, 2004 — Regulation 20(2), 22

Citation : (2011) 266 ELT 335

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Judgement

Adarsh Kumar Goel, J.—This petition seeks quashing of order dated 7-7-2010, Annexure P-6, passed by the Commissioner of Customs, suspending the licence of the petitioner, as Customs House is under the provisions of the Customs House Agents Licensing Regulations, 2004 (for short, "the Regulations").

2. According to the allegations in the impugned order, it was found that certain prohibited goods were being exported clandestinely and the export shipping bills in respect thereof were presented by the petitioner. Shri Raman-preet Singh Bawa, an employee of the petitioner, was found to be facilitating the customs clearance of goods, who stated that he was using the name of the petitioner for Rs. 20,000/- per month. It is further stated that further investigation was in progress and to avoid hampering investigation and to prevent the possibility of further irregularities, licence of the petitioner was required to be suspended under Regulation 20(2) of the Regulations till completion of investigation.

3. We have heard learned counsel for the petitioner.

4. Contention raised on behalf of the petitioner is that merely on the statement of Ramanpreet Singh Bawa, who claimed to be an employee of the petitioner but who in fact was not an employee of the petitioner, action could not be taken. In any case, remedy was available to take action under Regulation 22 of the Regulations, after prior hearing and action under Regulation 20(2) could be taken

only where immediate action was necessary and where inquiry was pending. In the present case, no immediate action was required as the incident took place about three months back.

5. We are unable to accept the submission. There being allegation of the nature contemplated in Regulation 20, the Commissioner of Customs could suspend the licence. No doubt, power under Regulation 20(2) is more drastic compared to power under Regulation 22, but both the Regulations operate in different situations. Where immediate action is required, power under Article 20(2) can certainly be invoked. In the present case, reason given for immediate action is that investigation was pending which could be hampered and further irregularities could take place unless licence was suspended. We cannot reappreciate correctness of such assessment. Such power has to be exercised on assessment of a fact situation by the concerned authority. Such assessment can be interfered only if exercise of power was arbitrary or mala fide. It is not possible to hold that there was no reason whatsoever for taking action under Regulation 20(2) of the Regulations, so as to call for interference by this Court.

6. We also find that under Regulation 20(3) of the Regulations, opportunity of hearing is required to be given within 15 days of the order of suspension. There is no challenge to the scheme of the Regulations for not providing prior hearing. No doubt where a party is affected, normal rule of natural justice is that hearing is to be given to the affected party before passing an order, but in emergent situation, order can be permitted to be passed, subject to the hearing being given within reasonable time. The petitioners will have an opportunity to put forward her case before the concerned authority within 15 days of the passing of the order. If the concerned authority is satisfied with the view point of the petitioner, the suspension can be revoked.

7. In these circumstances, we do not find any ground to interfere at this stage. It is made clear that we have not expressed any opinion on merits.

8. The petition is disposed of.