(2014) 08 CAL CK 0088

In the Calcutta High Court

Case No : Writ Petition No. 153 of 2014

Nepa Agency and Co. Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 04-08-2014

Acts Referred:
Customs Act, 1962 — Section 108

Citation : (2015) 5 CHN 628 : (2014) 310 ELT 713 : (2015) 2 WBLR 261

Hon'ble Judges : I. P. Mukerji, J

Bench : Single Bench

Advocate : V.K. Purohit, A. Joyshree and A. Banerjee, Advocate for the Appellant; K. Dey, P.K. Roy and T.M. Siddiqui, Advocate for the Respondent

Judgement

I. P. Mukerji, J.—The outcome of this writ application would have been much different had the writ petitioners come to court within proper time. Instead, this writ application appears to have been filed about seven months after the suspension order dated 25th July, 2013 and about five and half months after the final order dated 11th September, 2013 confirming the suspension. The writ petitioner company carries on the business of a clearing and forwarding agent described as a broker in the under mentioned regulations. At the moment, they are facing two proceedings. One is for revocation of their licence under Section 20 of the Customs Brokers Licensing Regulations, 2013. The other is a show cause notice dated 13th December, 2013 issued by the Directorate of Revenue Intelligence asking the petitioners why penalty etc. mentioned therein should not be paid by them for the cause of action of the regulation 20 notice.

2. According to the above regulations, the Commissioner of Customs has the power to issue an immediate suspension order under Section 19, even without hearing the customs and clearing house agent or broker if he thinks that there is violation of the conditions mentioned in Section 18 of those regulations.

3. However, within fifteen days from the date of suspension the broker is required to be given an opportunity of hearing. After such opportunity is

provided, the Commissioner is enjoined with a duty to decide whether to revoke the suspension or to continue with it. If the suspension is revoked, the Commissioner may or may not take any step for starting proceedings under Section 20 for revoking the licence. In my opinion, even without suspending the licence the Commissioner may start a case under regulation 20. There is no bar if the Commissioner decides to continue the suspension, then I suppose that taking steps under Section 20 is mandatory. The issue whether to suspend the licence or not is like evaluating the prima facie case and passing an interim order. The proceedings may continue with or without the interim order.

4. It has happened in this case. By his final order dated 11th September, 2013 the Commissioner confirmed the suspension of the writ petitioners. A notice under Section 20 of the above regulation has also been issued.

5. According to the writ petitioners statements under Section 108 of the Customs Act, 1962 were obtained and relied upon by the Customs. One of the persons, who made the statements was a Jaladhar Khaskel described as an authorised representative of the writ petitioner company. He made statements before the authorities on 29th June, 2013 and 1st July, 2013 implicating the writ petitioners. His statement was that the writ petitioners were not acting for themselves but for one "Baid Organization". The licence of this "organization" had been revoked on 17th October, 2012. Baid had been using the writ petitioners to do exactly the same thing which he was prohibited from doing by revocation of his licence.

6. Mr. Manoj Baid, Director of "Baid Organization" made his statement on 1st July, 2013. He corroborated the statements of Jaladhar Khaskel. Another employee of the writ petitioner company Sanat Kumar Mondal, a jetty sarkar was also examined.

7. Principally, on the basis of these statements the Commissioner of Customs passed the order dated 25th July, 2013 suspending the writ petitioner company and his final order dated 11th September, 2013 confirming the suspension.

8. According to Mr. Banerjee, learned counsel for the writ petitioners there was a breach of the principles of natural justice. Copies of the statements under Section 108 of the Customs Act, 1962 were not furnished to the writ petitioners. No opportunity was given to them to deal with those statements by cross-examination or otherwise.

9. Mr. Dey, learned advocate supplemented by Mr. Roy for the respondents submitted that if one perused the reply to the show cause notice one would find that the statements had not been denied by the writ petitioners. Therefore, they had admitted those statements. The writ petitioners had not evinced any interest in getting copies of these statements. Neither did they want to cross-examine these three persons making the statements. Therefore, those statements were not sent to the writ petitioners.

10. Thereafter, it was submitted that the final order of 11th September, 2013 was

an appealable order. Hence, the alternative remedy provided by law has not been exhausted. The writ application is not maintainable.

11. I do not find from the reply to the show cause notice made by the writ petitioners that there was any admission or that they had waived their right to receive the Section 108 statements or their right of cross-examination. The material parts of the reply are paragraphs 5 and 6, which are set out below:

"5. We submit that the transactions at the Port was dealt only by our customs approved staff and in nowhere the alleged CHA firm M/s. Baid Organisation [whose license was revoked by the customs] was allowed to act on our behalf and/or allowed to accompany with our staff and/or also was allowed to use our license at any point of time. It is a case where this job was brought by Sri Manoj Baid. Besides that in no way the said Sri Baid was allowed to use our license for their job.

6. We also submit that our Jaladhar Khaskel is the only authorized signatory against our license sitting at Head Office. He has no participation and interaction with any of our clients and/or to know the details of the clients and/or to meet the clients. Client dealing was bestowed only on the senior officer Sri Shekhar Parajuli as in this case. Sri Shekhar Parajuli was to interact with the client and checking of antecedents of the clients and to settle undertaking of any job Hence, the alleged statement, so had been recorded from Sri Jaladhar Khaskel the authorized signatory, that he simply signed the paper without knowing the importer is correct to the extent of his personal knowledge and not of the information of the company. This hard fact was also stated before the Investigating Officer during interrogation which was not allowed to record but as Sri Jaladhar was the authorized signatory his statement only was recorded, it is also accepted and admitted fact that the said Sri Manoj Baid was bringing the job to us for the last 4 months against consideration but at no point of time he was allowed to fake clearance of any goods of their firm by using our license."

12. It does not matter whether a party expressly asks for document or prays that the maker of the statements should be cross-examined. It is for the adjudicator to comply with the rules of natural justice and direct that copies of all documents, which are being relied upon to implicate a person have been made available to him to put forward his defence. Whether the person implicated would have a right of cross-examination or not would depend on the rules applicable to different Tribunals.

13. Here, mere reliance on those statements without the writ petitioners having been given an opportunity of dealing with the same was in breach of the principles of natural justice and the Commissioner was in gross procedural error.

14. However, the circumstances of the case demand that the existing proceedings against the writ petitioners are expedited.

15. I order that the show cause issued by the Directorate of Revenue Intelligence

dated 13th December, 2013 along with the show cause issued under regulation 20 of the above Regulations be disposed of by 30th December, 2014 by giving an adequate opportunity to the writ petitioners to show cause and by way of a reasoned order.

16. Since the writ petitioners have come to Court challenging the suspension order after five and half months, I am not staying the same but directing the Commissioner of Customs [Airport and Administration] to review this suspension order according to the above observations by giving an opportunity to the writ petitioners to be heard and an opportunity to the writ petitioners be given to contradict the Section 108 statements, within six weeks from date. Copies of the statements under 108 have to be made over to the writ petitioners by the Customs Authorities within seven days of communication of this order. It would be open for the Customs to write to the writ petitioners that they already possess copies of the Section 108 statements. The order of review should be reasoned.

17. The writ petitioners will be permitted to file their reply to the said regulation 20 notice without prejudice to the rights and contentions by 22nd August, 2014.

18. This writ application is disposed of accordingly. Certified photocopy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.