
(2014) 09 KL CK 0197
In the High Court Of Kerala
Case No : W.P. (C) No. 24284 of 2014

Portlines Logistics & Courier Services (P). Ltd.	APPELLANT
Vs	
Commr. of Customs	RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Citation : (2015) 315 ELT 542

Hon'ble Judges : A. Muhamed Mustaque, J

Bench : Single Bench

Advocate : P. Radhakrishnan and Madhu Radhakrishnan, Advocates for the Appellant; Thomas Mathew Nellimoottil, SC, Advocates for the Respondent

Judgement

A. Muhamed Mustaque, J.—This writ petition is filed by an Authorised Courier under the provisions of Courier Imports and Exports (Clearance) Regulations, 1998, for transacting business through the Cochin International Airport, Nedumbassery. The petitioner approached this court aggrieved by an order passed by the Commissioner of Customs by Ext. P6. As per Ext. P6 order, petitioner's licence has been de-registered and ordered forfeiture of security. Before taking action against the petitioner, a show cause notice was issued. Ext. P2 is the show cause notice. Petitioner gave Ext. P3 reply. Thereafter, the Commissioner of Customs appointed an enquiry officer who is a Deputy Commissioner of Customs. By Ext. P4, the enquiry officer prepared a report and recommended the following actions:

"In view of the above findings, it is recommended that all action against the authorized courier M/s. Portline Logistics & Courier Services (P) Ltd. be dropped. But, however, they shall be reprimanded for violation of Regulation 13(i) CIECR, 1998. All other charges in the SCN levelled against them are not proved as discussed above."

The Commissioner of Customs, it seems, the authority initiated the action has disagreement with the report of the enquiry officer. It is open to such authority

to take a different view if facts and circumstances warrant. The Commissioner of Customs, by an elaborate order passed in Ext. P6, differed with the views and finding of the facts entered by the enquiry officer and came to a different conclusion and based on that the impugned order has been passed. It is also seen from Ext. P6 that the petitioner represented through a counsel before the Commissioner. However, it is apparent that the finding of facts and conclusions of reasons for difference had not been communicated to the petitioner before a final decision is taken in the matter.

2. The learned counsel for the petitioner submits that the respondent, Commissioner of Customs has no jurisdiction to decide this matter. Apart from that, it is also contended by the learned counsel that the petitioner was not given an opportunity of being heard before the final order is passed on a different finding of facts and conclusions.

3. The principles of natural justice is not an empty formality. In a matter like this, civil rights likely to be affected by the impugned actions, any adverse finding must be communicated to the affected parties before a decision is finally taken in the matter. The power that may be available to the Commissioner of Customs to take a different view cannot take away the right of the affected parties. It is even without reference to any regulations or statutes, this right as a natural right is available to any affected parties. A contrary view of finding of fact definitely requires a notice to the petitioner before the conclusion and action of de-registration is taken.

4. The learned counsel for the respondent submits that in view of the decision reported in Delta Logistics Vs. Union of India and Another, , it is not necessary to the Commissioner of Customs to hear the objection of the petitioner on a decision made by the Commissioner of Customs on the finding of the enquiry officer. The above judgment only refers to the powers of the Commissioner to disagree.

5. As has been noted that where the Commissioner disagrees with the enquiry report, he should record the reasons for disagreement and forward the same to the Customs House Agent for his comments before passing a final order.

6. In the facts and circumstances, I am of the view that Ext. P6 shall be treated as show cause notice against the petitioner on disagreement entered by the respondent and the petitioner shall furnish his objection to the findings of disagreement, within a period of four weeks. The proceedings shall be finalised within a further period of three weeks. Status quo ante of Ext. P6 shall be maintained. The writ petition is disposed of as above.