

(2016) 04 GUJ CK 0051

In the Gujarat High Court

Case No : Special Civil Application No. 103 of 2016

Rajshree Forwarders

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Citation : (2016) 336 ELT 306

Hon'ble Judges : Akil Kureshi and A.Y. Kogje, JJ.

Bench : Division Bench

Advocate : C.J. Gogda and Vikas V. Nair, Advocates, for the Petitioner; Y.N. Ravani, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Akil Kureshi, J.(Oral)—Petitioner No. 1 is a partnership firm. Petitioner No. 2 is partner. Petitioners have challenged an order dated 3-6-2015, by which Principal Commissioner of Customs, Kandla rejected application of the partnership for granting customs broker licence. The relevant portion of the order reads as under :-

"2. In this connection, it is to inform that your application for Customs Broker Licence has been rejected by the Hon'ble Principal Commissioner in view of the fact that you have failed to fulfil the conditions prescribed under Regulation 5(e) of the CBLR, 2013, as penalty of Rs. 1 Lakh each under Sections 112(a) and 114AA of the Customs Act, 1962 was imposed on one of the partner and the person qualified under Regulation 6 of CBLR, 2013 Shri Jitendra Abhaymarsingh Chauhan vide OIO No. KDL/COMMR/PVRR/ 25/2014-15, date 31-3-2015 passed by Hon'ble Commissioner, Customs, Kandla."

2. From the above, it can be seen that only ground for refusing the application of the petitioners was that one of the partners was visited with the penalty of Rs. 1,00,000/- under the provisions of the Customs Act, 1962 by the Commissioner of Customs, Kandla. Case of the petitioners is that against such order, an appeal

has been filed, which is pending before the CESTAT. In any case, the impugned order was passed without an opportunity of hearing being given to the petitioners. If such opportunity was granted, the petitioners could have pointed out to the authorities the correct facts.

3. From the record, it emerges undisputedly that impugned order was passed without granting any hearing to the petitioners. The order of rejection, which results into civil consequences, was thus passed in breach of principles of natural justice. From the order, it further emerges that the sole ground on which the Principal Commissioner decided to reject the application for licence was that one of the partners of the firm has been visited with personal penalty.

4. In view of such facts, impugned order dated 3-6-2015 is set aside only on the ground of non-hearing. Now that the petitioners are aware about the factors adverse to them, it would be open for them to make a detailed representation to the competent authority latest by 30-4-2016. If so done, the authority shall pass a fresh order in accordance with law after taking into account the materials that may be placed before him by the petitioners. The petitioners would not be, as a matter of right, entitled to personal hearing. We leave it to the discretion of the competent authority.

5. Petition disposed of accordingly.