

(2014) 11 BOM CK 0185
In the Bombay High Court
Case No : Writ Petition No. 9873 of 2014

Riddisiddhi Bullions Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-11-2014

Acts Referred:

Foreign Trade (Development and Regulation) Act, 1992 — Section 9

Citation : (2015) 319 ELT 662

Hon'ble Judges : S.C. Dharmadhikari, J;A.A. Sayed, J.

Bench : Division Bench

Advocate : Prakash Shah and H.K. Sudhakara i/b. Prompt Legal, for the Appellant; Pradeep S. Jetly and S.V. Bharucha, for the Respondent

Final Decision : Allowed

Judgement

1. Not on Board. Mentioned. This Writ Petition was mentioned in the Morning Session by Mr. Shah. On being satisfied with the urgency, we have taken up the Petition out of turn at 3.00 p.m.

2. The Petitioner is a limited company and is inter alia in the business of dealing in bullion. It has, in para 1, set out as to how it is in this business and the recognition has also been given for the same.

3. It has been pointed out that the Foreign Trade (Development and Regulation) Act, 1992 was enacted to provide for development and regulation of foreign trade by facilitating imports into, and augmenting exports from India and for matters connected there with or incidental thereto. Our attention has been invited by Mr. Shah appearing for the Petitioner to several provisions of the Act. If the Act empowers issuance of a licence so as to facilitate the party like the Petitioner to undertake foreign trade activity, it contains provisions so that the authorities can cancel the licence and in an appropriate case, suspend it. Our attention has been invited to Section 9 of the said Act, which deals with issue of suspension and cancellation of licence. Mr. Shah also invited our attention to sub-

section (4) of Section 9 and which reads as under:

"(4) The Director General or the officer authorised under sub-section (2) may, subject to such conditions as may be prescribed, for good and sufficient reasons, to be recorded in writing, suspend or cancel any licence, certificate, scrip or any instrument bestowing financial or fiscal benefits granted under this Act:

Provided that no such suspension or cancellation shall be made except after giving the holder of the licence, certificate, scrip or any instrument bestowing financial or fiscal benefits a reasonable opportunity of being heard."

4. Mr. Shah submits that upon perusal of this provision, it is clear that a suspension or cancellation can be made only after giving a reasonable opportunity of being heard to the holder of the licence, certificate, scrip or any instrument bestowing financial or fiscal benefits under the Act. Mr. Shah submits that the Petitioner was served with a show cause notice dated 14th October, 2014 and which sets out as to how the Petitioner was issued a nominated agency certificate and for import of precious metals from 1st April, 2013 to 31st March, 2014. In the show cause notice, it is alleged that 550 kg. of gold imported by the Petitioner was not exported in its entirety, though that should be the compliance in terms of the export obligation. The export quantity is 350 kg. and 200 kg. of gold was sold in the domestic market. This is a violation of the conditions of nominated agency certificate dated 9th April, 2013 and RBI Circular dated 22nd July, 2013.

5. Mr. Shah submits that if an incident of July, 2013 is the basis for issuance of a show cause notice in October, 2014, then, there was no need or necessity of passing a suspension order on 31st October, 2014 and that too without giving a reasonable opportunity of being heard to the Petitioner. Thus, the impugned order at page 35 of the paper book is contrary to section 9 sub-section (4) proviso and also principles of natural justice. There being no emergent situation requiring immediate intervention of the authority and by stepping in it has exceeded its powers, so as to pass a suspension order. Mr. Shah submits that the impugned order is vitiated in law and should be set aside.

6. Mr. Jetly, on the other hand, submits that the Petition is filed to challenge an order of suspension i.e. dated 31st October, 2014. Against such an order as well as in terms of sub-section (5) of section 9, an appeal lies to the Appellate Authority. In that regard, he invited our attention to the wording of sub-section (5) of section 9 and submits that this Writ Petition is not maintainable. It is also not maintainable because there was material for suspension of the authorization pending cancellation proceedings. That material is contained in an communication dated 30th October, 2014 and which is a Annexure to the show notice. He submits that the reasons for taking such steps are set out in this communication and there being a serious violation, the authority thought it appropriate to intervene. That in the meanwhile, the nominated agency certificate was renewed up-till 2015 would not carry the case of the Petitioner

any further. There was indeed a situation which required intervention by the authority. That is to control perpetuation of a act similar to what is alleged in the show cause notice. For these reasons and the material being pointed out in the addendum to the show cause notice, this Court should not interfere in its Writ Jurisdiction. Lastly, Mr. Jetly submits that the adjudicating authority will prepone the date of hearing and grant a personal hearing to the Petitioner on 5th November, 2014 instead of 11th November, 2014. It will pass the necessary Order expeditiously. This is an additional reason why the Writ Petition should not be entertained. Alternatively and without prejudice Mr. Jetly submits that the authority would give post decisional hearing on the suspension. Hence, the Writ Petition be dismissed.

7. We have, with the assistance of Mr. Jetly, perused the Writ Petition and all annexures. We have perused the show cause notice and the addendum thereto. We have also perused the relevant statutory provisions. We are mindful of the fact that there is a power in the authority to suspend pending cancellation proceedings as well. We are equally mindful of the fact that the order of suspension is passed after a satisfaction is recorded and for reasons in writing that immediate intervention of the authority is required and to control a situation of further violations and illegalities. If the allegations in the show cause notice are serious enough and require the authority to step in to initiate cancellation proceedings, then, pending cancellation proceeding being concluded and for the reasons which may reflect adequate material for immediate action, the suspension also can be directed. We are aware of the fact that the violations and which have to be controlled and checked would preserve and protect the mandate of the Foreign Trade (Development and Regulation) Act, 1992.

8. Even if these principles and which are settled are taken into consideration, what we find is that the show cause notice was issued on 14th October, 2014, the Petitioner was called for a personal hearing on 11th November, 2014. There may be a addendum to the show cause notice, however, that makes a reference to the nominated agency certificate dated 5th May, 2014 for the period 2014-15. Thus, the continuing authorization or the nomination and which has been granted on 5th May, 2014 is admitted by the authority. However, we find that, from pages 4 to 6 in this addendum, beyond seeking some details of the imports and exports during the year 2013-14, so as to enable the authority to scrutinize and examine the record properly, nothing has been alleged, which would indicate that the matters have been precipitated by the Petitioner, beyond stating that a statement was submitted on 25th June, 2014 by the Petitioner that resulted in the show cause notice being issued. If the authority was of the opinion that the explanation given on record and till that date was inadequate and that the certificate has been renewed till 2015 by connivance or collusion or by perpetrating a fraud, we do not find any basis for the order of suspension. That order was passed on 31st October, 2014. At this stage, we do not find any material other than the addendum, which merely reiterates the contents of the show cause notice. True it is that the authority has a power to suspend the

licence. However, here the authority must equally be aware of what it has contemporaneously done and namely to issue a certificate for import of precious metals by nominated agencies. That is in favour of the Petitioner. There is nothing, in the suspension order, which would enable us to hold that some situation which requires immediate and emergent attention of the authority has taken place. For these reasons, the order of suspension can safely termed as high handed. If the authority suspends the licence, it must make a order in writing that must indicate some application of mind and to relevant and cogent material. In the present case, beyond reference to the show cause notice, there is absolutely no material in the order of suspension and which could be said to be the basis for exercise of the power. Mere pendency of cancellation proceedings without anything more could not be the foundation for such a drastic order.

9. As a result of the above discussion, the Writ Petition succeeds. The impugned order is quashed and set aside. The Petitioners authorization and which is valid up to 2014-15 and vide the above communication at Annexure "M" at page 66 shall continue to be effective and operative till that date, but subject to the pending proceedings for cancellation initiated by the authority vide the show cause notice dated 14th October, 2014. In other words, subject to the outcome thereof, the authorization or the nominated agency certificate to remain valid till the date stipulated therein. The Petitioner shall co-operate with the authority in early conclusion of the proceedings initiated pursuant to the show cause notice dated 14th October, 2014 and its addendum dated 30th October, 2014. With the above clarification and by also observing that our intervention in Writ Jurisdiction at this stage shall not be construed as expression of any opinion on the rival contentions and particularly on the allegations in the show cause notice we allow this Writ Petition. There would be no order as to costs.