(2014) 06 CAL CK 0077

In the Calcutta High Court

Case No : Writ Petition No. 471 of 2014

Shipping and Clearing (Agents) Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 10-06-2014

Acts Referred:
Customs Act, 1962 — Section 129A, 146(2)

Citation : (2014) 308 ELT 45

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Arijit Chakraborty, R. Bharadwaj and K.K. Maity, Advocate for the Appellant

Judgement

Harish Tandon, J.—By the order passed by the Joint Commissioner of Customs (Preventive), West Bengal communicated to the petitioner by Joint Commissioner of Customs CC (P), West Bengal, dated 10th March, 2014, the petitioner is prohibited from working as Customs House Agent in the jurisdiction of the Commissioner of Customs (Preventive) with immediate effect until further order. The challenge is basically made on the ground of violation of principles of natural justice. It is no longer res Integra that the order passed by the Commissioner of Customs under Regulation 23 of the Customs Brokers Licensing Regulations, 2013 is not amenable to be challenged in an appeal under Section 129A of the Customs Act. The aforesaid regulation is promulgated in exercise of powers conferred under Section 146(2) of the Customs Act providing full mechanism pertaining to the duties obligations and/or penal provisions relating to the custom house agent.

2. Regulation 23 of the said regulations contains a non obstante clause and empowers the commissioner of Customs to prohibit any custom broker working in any one or more sections of the Customs stations provided he is satisfied that the custom broker has not fulfilled the obligations laid down in Regulation 11 of the said regulations. Since the aforesaid regulation begins with the non obstante

clause, the power to be exercised by the Commissioner of Customs under the said provisions is not subjected to other provisions contained in the said regulations. The said provision neither expressly provide for hearing to be afforded to the custom broker nor taken away the power of hearing to be given to the Custom Broker.

3. The Division Bench of the Bombay High Court in the case of S.R. Sale and Co. Vs. Union of India and Others, held that where the statute or the statutory regulations are silent in regard to the compliance with the principles of natural justice, the natural justice is to be read within the provisions. It is further held that in extreme and exceptional cases which requires an immediate prohibition under the aforesaid regulation the Commissioner of Customs is not denuded of such power and can pass an order for prohibition but for a limited period and then shall afford an opportunity of hearing to the petitioner before taking any final decision on prohibition.

4. The Apex Court in the case of Uma Nath Pandey and Others Vs. State of U.P. and Another, held that violation of principles of natural justice is opposed to the fair adjudication and conscience. The party should be made aware of the allegations made against him which may result into a penal order and any infraction shall entail the action liable to be struck down for violation of principles of natural justice. It would be apt to quote paragraph 19 of the said judgment:-

"19. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice."

5. Since the order impugned is passed without affording an opportunity of hearing and the allegations as indicated in the impugned order does not appear to this Court to be so emergent and exceptional where the order of prohibition is inevitable.

6. This Court, therefore, finds that the said order suffers for violation of principles of natural justice and cannot be sustained.

7. The order impugned is thus set aside.

8. However, the Commissioner of Customs (Preventive), West Bengal is directed to issue a notice upon the petitioner specifying the violation of the obligations enshrined under Regulation 11 of the said Regulation 2013 and shall afford an opportunity to the petitioner to file reply thereto within reasonable time and shall thereafter proceed to decide the same after affording an opportunity of personal hearing to the petitioner before passing an order prohibiting the petitioner from working as a customs broker within his jurisdiction. With these observations this writ petition is disposed of without any order as to costs.