
(2015) 10 BOM CK 0060
In the Bombay High Court
Case No : Writ Petition (L) No. 2876 of 2015

TNT India Private Limited

APPELLANT

Vs

Principal Commissioner of Customs (II) and Others

RESPONDENT

Date of Decision : 12-10-2015

Acts Referred:

Citation : (2015) 10 BOM CK 0060

Hon'ble Judges : S.C. Dharmadhikari and B.P. Colabawalla, JJ.

Bench : Division Bench

Advocate : Pradeep Sancheti, Senior Advocate, Birendra Saraf, Sairam Subramaniam, Chakrapani Misra, Ayush Mehrotra, Vaisakh Shaji and Natasha Kachalia i/b. Khaitan and Co., for the Appellant; Pradeep S. Jetly, for the Respondent

Final Decision : Allowed

Judgement

S.C. Dharmadhikari, J.—Rule. Respondents waive service. By consent, Rule made returnable forthwith.

2. We had heard both sides at length on the earlier occasion. The matter was placed today only to enable Mr. Jetly to take instructions. However, Mr. Jetly submits that the concerned officials are of the view that it would be better if the Court passes an order and with regard to the legality and validity of the suspension effected by the communication/order dated 1st October, 2015. It is in these circumstances that we are required to pass a brief order.

3. The Petitioner before us is a private limited company incorporated and registered under the Indian Companies Act, 1956. It is a subsidiary of M/s. TNT Express N V. It is claimed that this global entity operates in about 200 countries.

4. The Respondents to this Writ Petition are the Union of India and the Department of Customs and their senior officials, who are posted at the Mumbai Airport.

5. The case of the Petitioner is that the freights and parcels are distributed by it. The Petitioner is in this business since 1993 and has large turnover. Operations are carried out after the Petitioner has obtained authorisation/registration as authorised courier under the Courier Imports and Exports (Clearance) Regulations, 1998. Such a registration, in favour of the Petitioner, is for various airports, including Metro Cities.

6. The Petitioner claims that in the last financial year 2014-15, the Mumbai office of the Petitioner handled 7 lakh consignments and contributed Customs Duty of about 101,97,47,402/-. None of the consignments out of the above mentioned 7 lakh were detained or seized by the Customs Department. The Petitioner thus claims that they have been duly following the Regulations and abide by all the clauses and stipulations thereof.

7. However, on 8th September, 2015, the Special Investigation and Intelligence Bureau of the Airport Security Customs received information of a case of gold smuggling. That is how they visited the courier cell on 9th September, 2015. An import consignment bearing the name and address of certain entity styled as importer and set out in the Petition in para 5(f) was found to be imported into India. In terms of the accompanying documents, this consignment was declared to be containing "spare piston rings". However, on scrutiny and examination of it in detail, the disputed consignment was found to be containing parts weighing 2620 grams made by gold and covered in silver cover. The Petitioner was found to have presented the relevant documents, including the bill of entry in relation to this consignment. The Petitioner had obtained the "Know Your Customer" (KYC) documents from Mr. Nilesh Phapale, the proprietor of the importer proprietorship firm. The relevant documents were also scrutinized and it was found that certain addresses were given of Mumbai and Thane Districts. The search team of the Customs was sent to these addresses, but it was found that the premises do not belong to the proprietor of the importer firm. We are not concerned with the details of this scrutiny and verification.

8. However, the Petitioner states that for similar case and for detention of the goods in the month of May, 2015, a show cause notice dated 20th May, 2015 came to be issued and the allegations in the notice have been duly replied on 22nd July, 2015. There was a personal hearing held before Respondent No. 1, but though such personal hearing was held in August, 2015, no order was passed in pursuance of this show cause notice.

9. Now, for the subject violation and breach and of September, 2015, the impugned suspension order has been passed. That has been passed on 1st October, 2015 and according to Mr. Sancheti, the learned Senior Counsel appearing for the Petitioner, the order of suspension invokes Regulation 14 of the 1998 Regulations as amended. The Principal Commissioner states that he ordered an inquiry to determine whether the registration of the authorized courier should be revoked and if so, the ground for the same. Pending the completion of the said inquiry, the registration of the Petitioner has been

suspended.

10. The only contention raised before us by Mr. Sancheti is that the order invokes Regulation 14, copy of which is at page 47 of the paper book.

11. Mr. Sancheti would submit that the power of suspension is to be exercised provided the Principal Commissioner of Customs decides to revoke the registration of an authorized courier and order forfeiture of the security on the ground inter alia of misconduct on the part of the authorized courier whether within the jurisdiction of the Principal Commissioner or the Commissioner or anywhere else and which in the opinion of the Principal Commissioner or the Commissioner renders him unfit to transact any business. Inviting our attention to the first proviso it is submitted by Mr. Sancheti that the revocation cannot take place unless a notice has been issued to the authorized courier informing him the ground on which it is proposed to revoke the registration and giving an opportunity of making representation in writing and a further opportunity of being heard in the matter if so desired. Thus, the contention is that if the notice proposing revocation has been issued on any of the grounds enumerated in Regulation 14 sub-Regulation (1) clauses (a) to (c), then in terms of the second proviso and if the Commissioner is of the opinion that the grounds shall not be established prima facie without inquiry of the matter, he would conduct an inquiry to determine the ground and in the meanwhile, pending the completion of such inquiry, may suspend the authorisation/registration. If no ground is established, the registration so suspended shall be restored. Inviting out attention to sub-Regulation (2) of Regulation 14, it is submitted that the opportunity contemplated thereby of a representation can never be said to be efficacious simply because after suspending all operations of the courier agency like the Petitioner, the authorities have adversely affected the interest of those importers who have engaged the Petitioner as their courier. Several such entities would suffer and the consignments would not be cleared simply because of the drastic action. Even otherwise, this drastic action was unjustified in the case of the Petitioner, as the Principal Commissioner has yet to pass an order in furtherance of the show cause notice dated 20th May, 2015, though personal hearing was held long time back. Now, there is no notice issued proposing revocation and for the incident of September, 2015. In any event, similar incidents are alleged to have taken place earlier and the Petitioner faulted therefor in the earlier show cause notice of May, 2015. Thus, there was no warrant for passing an order of suspension and without compliance with the Regulations. For these reasons, it is submitted that the order of suspension shall be set aside.

12. Mr. Jetly appearing for the Respondents, apart from urging that there is an alternate remedy of a representation under sub-Regulation (2) of Regulation 14, would submit that the allegations are too serious. This is not the first time that the Petitioner is found to be actively smuggling gold in the garb of seeking clearance of consignments such as blood pressure machines and in the present

case, the consignment details were not completely and properly set out. This time also an attempt was made to smuggle gold. In these circumstances, if drastic order was required to be passed to stop the incidents of this nature, then, the discretion exercised cannot be termed as arbitrary or unreasonable much less capricious, calling for intervention in Writ Jurisdiction. Now, the Principal Commissioner will hold the requisite inquiry and take a final decision within the period stipulated by this Court. For these reasons, the Petition should be dismissed.

13. We are concerned with Regulation 14 of Courier Imports and Exports (Clearance) Regulations, 1998. Regulation 14 reads as under:-

"14. Deregistration. - (1) The Commissioner of Customs may revoke the registration of an Authorised Courier and also order forfeiture of security on any of the following grounds namely:-

(a) failure of the Authorised Courier to comply with any of the conditions of the bond executed by him under regulation 11;

(b) failure of the Authorised Courier to comply with any of the provisions of these regulations;

(c) misconduct on the part of authorised courier whether within the jurisdiction of said Commissioner or anywhere else, which in the opinion of the Commissioner renders him unfit to transact any business in the Customs Station:

Provided that no such revocation shall be made unless a notice has been issued to the Authorised Courier informing him the grounds on which it is proposed to revoke the registration and he is given an opportunity of making a representation in writing and further opportunity of being heard in the manner, if so desired:

Provided further that, in case the Commissioner of Customs considers that any of such grounds against an Authorised Courier shall not be established prima facie without an inquiry in the matter, he may conduct the inquiry to determine the ground and in the meanwhile pending the completion of such inquiry, may suspend the registration of the Authorised Courier. If no ground is established against the Authorised Courier, the registration so suspended shall be restored.

(2) Any Authorised Courier or the officer of the Customs authorised by the Chief Commissioner of Customs in this behalf, if aggrieved by the order of the Commissioner of Customs passed under sub-regulation (1), may represent to the Chief Commissioner of Customs in writing against such order within sixty days of communication of the impugned order to the Authorised Courier and the Chief Commissioner of Customs shall, after providing the opportunity of being heard to the parties concerned, dispose of the representation as may be possible."

14. A bare perusal thereof would indicate that it deals with deregistration. It is the Principal Commissioner who has the discretion to revoke the registration of an authorised courier and also order forfeiture of security on any of the grounds,

namely, (a), (b) and (c) set out above. The first proviso requires the Principal Commissioner to issue a notice of such revocation setting out the grounds on which it is proposed to revoke the registration and give an opportunity of making representation in writing and a further opportunity of being heard in the matter, if so desired. The second proviso, which follows the first proviso states that if the Principal Commissioner of Customs or the Commissioner, as the case may be, considers that any of such grounds against an authorised courier shall not be established prima facie without an inquiry in the matter, he may conduct the inquiry to determine the ground and in the meanwhile pending the completion of such inquiry, may suspend the registration of the authorised courier. If the ground is not established, the suspension shall stand set aside and the registration restored.

15. In the present case, on the own showing of the Respondents, for the second incident of smuggling of gold and allegedly on 8th September, 2015, there is no show cause notice or notice proposing revocation within the meaning of Regulation 14. The first proviso, thus, is not complied with. There is thus no communication informing the ground on which it is proposed to revoke the registration. Rather, there is no proposal presently to revoke the registration. Without any such proposal before the Commissioner nor he directing issuance of any notice within the meaning of the first proviso, he has chosen to suspend the authorisation/registration of the Petitioner. We do not see why if the incident is so clear and if all the details are allegedly obtained and the breach or violation of the Petitioner is apparent to the Principal Commissioner that no notice has been issued. Possibly, the reason is that the notice proposing revocation and which was for the earlier violation is yet to be taken to its logical end. In the meanwhile, the second incident occurred and it is also equally serious. If that is serious, then, an independent notice and based on the incident of 8th September, 2015 could have been issued. If that notice proposes the grounds and enumerated in clauses (a) to (c) of sub-Regulation (1) of Regulation 14, then, nothing prevented the Commissioner from recording his satisfaction that such grounds or any of them shall not be established prima facie without any inquiry. Pending such inquiry and to avoid such incidents as well, he could have then issued a suspension order. We do not find any such step or measure taken in this case. We do not think that in the given facts and circumstances and after having kept the earlier show cause notice pending and passing no orders thereon, was the Principal Commissioner justified in suspending the registration of the Petitioner. That is patently unsustainable being contrary to the plain language of Regulation 14. We are of the view that on this short ground alone the Writ Petition must succeed.

16. We clarify that we are not required to express any opinion on the conduct of the Petitioner and the incident of 8th September, 2015/the proceedings of 9th September, 2015 and any involvement or extent of complicity of the Petitioner therein. The authorities are free to take a decision based on the incident and involvement of the Petitioner. The authorities are also free to issue an

independent show cause notice and take steps within the meaning of Regulation 14 or such other Regulation which is applicable. Having found that the order of suspension, impugned in this Petition is illegal and unsustainable, we proceed to quash and set aside the same. The Petition is allowed in these terms, but without any order as to costs. Rule made absolute accordingly.