

HONOURABLE SRI JUSTICE U. DURGA PRASAD RAO
AND
HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA
Writ Petition No.12562 of 2023

ORDER: *(Per Hon'ble Smt. Justice Venkata Jyothirmai Pratapa)*

The writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

"...to issue a Writ or Order more in the nature of Mandamus declaring the impugned orders dated 24.03.2023 and 11.04.2023 issued by the respondent is illegal, arbitrary, capricious and in violation of Regulation 16 of CBIR 2018 and Articles 14, 19 and 21 of the Constitution of India and consequently to quash the impugned orders dated 24.03.2023 and 11.04.2023 issued by the respondent..."

2. Petitioner's case in a nutshell

2.1. Petitioner company is a Customs Broker with Licence No.02/2011, which assists importers in Customs clearance of imports and exports, engages in trading of various goods and, imports goods from other countries for sale in India. All activities of the Company are looked after by the Managing Director and no other Directors are conversant with its day-to-day affairs.

2.2. Petitioner company contacted NOOR AL SHAWAL GENERAL TRADING LLC, an exporter of dried dates, and on terms of the trade, commenced the process for import of 56,000 Kg. of dried dates by issuing a purchase order, vide Invoice No.RM-22-23-001, dated 02.01.2023. Next, the exporter issued a Commercial Invoice-cum-Packing List No.TD2301011, dated 23.01.2023. On complying the statutory requirements, the exporter exported the goods on 05.02.2023 through Globe Opus Shipping Line UK Ltd.

2.3. Petitioner being Customs Broker filed a Bill of Entry No.5008577 dated 11.03.2023 declaring the cargo as Dried Dates and the import value as Rs.16.37 lakhs. However, on examination by the Customs on 17.03.2023, it was found that the cargo contained both Areca Nuts and Dried Dates. Believing that the petitioner mis-declared both the value and goods, the Customs Authorities, Visakhapatnam seized the goods, vide Memo F.No.S22/04/2023-SIIB, dated 18.03.2023.

2.4. On the very next day i.e., 19.03.2023, the Managing Director of the petitioner company was summoned by the Customs

Authority and arrested in terms of Section 104 of the Customs Act, 1962 and was subsequently remanded to judicial custody. The Commissioner of Customs issued a suspension order suspending the Customs Broker Licence of the petitioner under Regulation 16 (1) of the Customs Broker Licencing Regulations, 2018 (for short "CBLR") for non-fulfilment of Regulations 10 (d) and 10 (e).

2.5. Vide the suspension order, a personal hearing was fixed on 04.04.2023 at 11:30 under Regulation 16 (2) of CBLR, 2018 and any written representation should reach before the date of hearing. Petitioner made several representations vide letters dated 05.04.2023, 06.04.2023, and 10.04.2023 requesting Commissioner of Customs to postpone the date of personal hearing as the Managing Director of the petitioner was in judicial remand and the other Directors or CEO of the company are only nominal and are not conversant with the procedure and nature of work.

2.6. Though time was requested till 20.04.2023 on the ground that the Managing Director would be released on bail, without hearing the petitioner company, the 1st respondent issued the

impugned Order F.No.GEN/CB/LIC/F/45/2021-CB-CBS, dated 11.04.2023 for continuing the suspension of Customs Broker Licence till conclusion of the investigation.

2.7. The Managing Director of the petitioner company was released on bail on 19.04.2023, but the 1st respondent issued the impugned order arbitrarily without affording any hearing and it falls against the principles of natural justice. Hence, Writ Petition.

3. Version of the Respondent

3.1. The 1st respondent filed its counter stating that under Regulations 16 or 17, a Customs Broker, who is aggrieved by any order passed by Principal Commissioner of Customs or Commissioner of Customs, may prefer an appeal to Customs, Central Excise and Service Tax Appellate Tribunal, vide Section 129A of the Customs Act, 1962 and as per the Customs Broker Regulations, 2018. The petitioner without availing such appellate remedy has directly approached this court by filing the writ petition to circumvent statutory procedure established by law. Reliance was placed on judgment of the Hon'ble Apex Court in

*Assistant Collector of Central Excise v. Dunlop India Ltd. and others*¹ and various Hon'ble High Courts reported in

- M/s.Garware Plastics & Polyester Ltd. and another (1986 (24) ELT 449 Bom)
- M/s.Madhura Coats Ltd. (2000 (118) ELT 320 (Mad)
- M/s.Cyrstal Trades (2009 (247) ELT 10 (Mad)
- M/s. IVES Drugs (India) Pvt. Ltd. 2015 (327) ELT 26 (M.P.)
- NFPA Agency Co. Private Ltd. v. Union of India 2015 (321) E.L.T. 620 (Cal)

3.2. Further, it is submitted that on examination it has been found by the authorities certain undeclared cargo of Areca nuts were stuffed weighing about 46.640 MT against the declared quantity of 56 MTS of Dries Dates in the Bill of Entry. Normally the importer or Customs Broker are different, but, in the instant case, they are one and the same. The Managing Director of the petitioner company voluntarily gave his statement under Section 108 of the Customs Act and referred the name of one Vivek Raj from Mumbai, who is suspected to be conduit in this case.

¹ 1985 SCR (2) 190

3.3. The 1st respondent duly followed the procedure under the Customs Act and passed the impugned order. Opportunity of personal hearing was accorded to the petitioner on 05.04.2023 and again on 06.04.2023 i.e., within fifteen days from the date of preliminary suspension order dated 24.03.2023. The petitioner has not availed the opportunity and only requested for postponement of personal hearing till 20.04.2023. It is a case of illegal import of Areca Nuts by way of mis-declaration with an intention to evade customs duty amounting to Rs.5.93 crores and there are no merits in the writ petition and prays to dismiss the writ petition *in limini* with costs.

4. Heard Sri P.S.P. Suresh Kumar, learned counsel on behalf of Sri K.Srinivasa Rao, learned counsel for petitioner and Sri Suresh Kumar Routhu, learned standing counsel for CBIC.

5. The points that would emerge for determination are Whether the writ petition is maintainable despite availability of alternate remedy? If so, to what relief the petitioner is entitled to?

6. Learned counsel Sri P.S.P. Suresh Kumar, would submit that the petitioner company is not challenging the order impugned on its merits since they could not file their objections on the notice issued by the 1st respondent. He would submit that it is a clear case of utter disregard to the principles of natural justice in terms of Regulation 16 (2) of CBLR, 2018. He argues that prescribed time schedule that is to be followed for suspension of licence was not followed as within fifteen days from the date of preliminary suspension, personal hearing has to be concluded and the authorities are supposed to pass orders either for revocation or continuation of suspension. He would further submit that despite making several requests to postpone the hearing as the Managing Director of the Petitioner was in judicial custody, the 1st respondent arbitrarily passed the order for continuation of suspension. As such, opportunity should be given to the petitioner to submit their objections.

7. Per contra, Sri Suresh Kumar Routhu, learned standing counsel would submit that the impugned orders are on correct lines and that the 1st respondent passed the impugned order

after duly following the procedure under the Customs Act. Moreover, in case the Petitioner is aggrieved, it must avail the statutory remedies and prays to dismiss the writ petition.

8. As seen from the impugned order dated 24.03.2023, the petitioner company was asked to submit any written representation against the suspension order on or before 04.04.2023. The pain of the petitioner is visible as the 1st respondent has clearly mentioned in the order that the petitioner vide their letter dated 05.04.2023 requested for postponement of personal hearing till 20.04.2023 on the ground that the Managing Director of the company was under judicial remand and that they were not conversant with the procedure and nature of work. Personal hearing was fixed on 06.04.2023 at 10.00 hours. The order further reveals that the petitioner addressed a letter dated 06.04.2023 once again requesting for postponement of personal hearing till 20.04.2023 for providing necessary explanation challenging the suspension order.

9. It is beneficial to extract the finding of the 1st respondent for concluding to pass the order impugned dated 11.04.2023, which reads as under:

“.....In this case, orders for suspension was issued on 24.03.2023 and as such personal hearing has to be concluded on or before 08.04.2023 i.e. 15 days from the date of suspension order and pass orders either for revoking or continuation of suspension, within 15 days from date of personal hearing i.e. on or before 22.04.2023. In view of the legal time frame fixed under the CBLR, 2018, I am inclined to reject the request of the Customs Broker for postponement of personal hearing till 20.40.2023. Accordingly, I am proceeding to examine whether the suspension against the Customs Broker needs to be continued or revoked in view of the case pending investigation against them.”

10. The order referred supra is vivid on the point that the Managing Director of the petitioner company was in judicial remand. Though repeated requests were made by the petitioner company, their request was rejected on the ground that the legal time frame fixed under the CBLR, 2018 would lapse. The Managing Director of the company could not have any opportunity to submit his explanation to the notice issued by the

authorities and while he was in judicial custody, the impugned order was passed. We are of the view that it is nothing but gross violation of principles of natural justice. It is a settled principle of law that adequate opportunity of being heard i.e., "audi alteram partem" forms a cornerstone in the doctrine of principles of natural justice. The opportunity must be real, reasonable, and effective and not a mere empty formality as laid down by the Hon'ble Supreme Court in ***Maneka Gandhi v. Union of India***.² Limitation of time cannot come in the way of giving a real and reasonable opportunity to the affected party for an effective hearing.

11. Further, the position of rule of alternate remedy vis-à-vis maintainability of writ petitions, has been examined by several judgments of the Hon'ble Apex Court and this Court as well, but it is profitable to refer to a judgment rendered by the Hon'ble Supreme Court in ***M/s Radha Krishan Industries v. State of Himachal Pradesh and others***³, relying on ***Whirlpool***

² (1978) 1 SCC 248.

³ (2021) 6 SCC 771

Corporation v Registrar of Trademarks, Mumbai,⁴ and ***Harbanslal Sahnia v Indian Oil Corpn. Ltd,***⁵ summed up the principles at para 27 which read thus;

“27.1 The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2 The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3 Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

⁴ (1998) 8 SCC 1

⁵ (2003) 2 SCC 107

27.4 An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5 When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6 In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

12. In the circumstances of the case and in view of the legal position, this Court is of the view that the writ petition can be entertained despite the availability of alternative remedy.

13. In result, the writ petition is disposed of and the Managing Director of the petitioner company is permitted to submit their written explanation to the notices issued by the 1st respondent within two (2) weeks from the date of receipt of a copy of this order. On receipt of such explanation, the 1st respondent is directed to pass appropriate orders according to law after affording opportunity of personal hearing to the petitioner. No costs.

As a sequel thereto, miscellaneous petitions, if any, shall stand closed.

U. DURGA PRASAD RAO, J

VENKATA JYOTHIRMAI PRATAPA, J

Date: 21.06.2023

Ksn