

IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

Appeal No. C/85612/18

(Arising out Order-in-Original No. 48/2017-18 dated 10.11.2017 passed by the Commissioner of Customs (Gen), Mumbai)

For approval and signature:

Hon’ble Shri Ramesh Nair, Member (Judicial)
Hon’ble Shri C J Mathew, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	Yes

Eastern Clearing & Forwarding Agency Pvt. Appellant
Ltd.

Vs.

Commissioner of Customs, Mumbai Respondent

Appearance:

Shri Anil Balani, Advocate for the appellant
Shri M.K. Mall, AC (AR) for the respondent

CORAM:

Hon’ble Shri Ramesh Nair, Member (Judicial)
Hon’ble Shri C J Mathew, Member (Technical)

Date of hearing : 27.03.2018
Date of decision : 23.05.2018

O R D E R No: A/86472/2018

Per: Ramesh Nair

This is an appeal against the order of prohibition under Regulation 23 of CBLR 2013 to the custom broker from working in all section of Mumbai Customs – Zone I, II and III, on the ground that the custom broker has *prima facie* not fulfilled their obligation laid down under the regulation 11D, 11E, 11F and 11N of CBLR, 2013.

2. Shri Anil Balani, Id. Counsel appearing on behalf of the appellant submits that prohibition order was issued alleging that the appellant *prima facie* contravened certain regulation of CBLR 2013 inasmuch the goods proposed to be cleared through the appellant i.e. customs broker was misclassified. He submitted that the appellant has no role in misclassification made by the importer therefore, this harsh action should not have been taken by the Commissioner. He further submitted that the Principal Commissioner of customs has passed the order of prohibition arbitrarily without following the principles of natural justice as neither the show-cause notice was issued nor any hearing was granted. Thus no opportunity was provided to the appellant to put forth the explanation. Therefore the order is not maintainable on this ground alone. He submits that even though there is no specific

provision under Regulation 23 for show-cause notice and hearing but in the judgment in the case of *Harjeet Singh Johar* 2017 (353) ELT 33 (Del) and *Harish Sethi* 2017 (346) ELT 134, it was held that the appellant should have been put to notice and opportunity of hearing should have been given.

3. Shri M.K. Mall, Ld. AC (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. He further submitted that firstly this order of prohibition is not appealable before this Tribunal as held in the case of *Balaji Logistics* 2012 (286) ELT 241. He further submitted that the Commissioner has power to pass a prohibition order under Regulation 23 of CBLR. He exercised this power after satisfying himself that the prohibition is warranted. Therefore, the order does not deserve any interference being an interim order.

4. We have carefully considered the submissions made by both sides. We do not incline to go into the nature of the offence for which custom broker was prohibited from working in Mumbai. However, we find that the adjudicating authority has passed the order without following the principles of natural justice. Even though explicit provision is not there under the Regulation 23 of CBLR but for taking any such decision it is incumbent upon the authority to follow the principles of natural justice. Accordingly, we

direct the adjudicating authority to consider the representation, if any, made by the appellant and thereafter pass a fresh order. In the meantime, the prohibition from working in Mumbai Zone I, II, and III is revoked.

5. Appeal is disposed of in the above terms.

(Pronounced in Court on)

(C J Mathew)
Member (Technical)

(Ramesh Nair)
Member (Judicial)