IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No.

APPEAL No. C/88871/2018

(Arising out of Order-in-Original No. 34/2018-19 dated 12.9.2018 passed by Principal Commissioner of Customs (General), Mumbai-I)

Greenity Logistics Pvt. Ltd. **Appellant**

Vs.

Commissioner of Customs (G), Mumbai **Respondent**

Appearance:

Shri Jhamman Singh, Advocate, for appellant
Ms. Vinita Sekhar, Deputy, Commissioner (AR), for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Mr. C.J. Mathew, Member (Technical)

Date of Hearing: 05.10.2018
Date of Decision: 05.10.2018

ORDER No. **A/87542/2018**

Per: Dr. D.M. Misra

This is an appeal filed against order-in-original No. 34/2018-19 dated 12.9.2018 passed by Principal Commissioner of Customs (General), Mumbai-I.

2. Briefly stated the facts of the case are that the appellant is a licensed Customs Broker and operating in Chennai and Mumbai. On the basis of an investigation initiated by DRI against the importer M/s. Mahaveer

Impex, Mumbai and others relating to undervaluation and short payment of duty against import of cold rolled and hot rolled stainless steel coil strips in the year 2015, show cause notices were issued for recovery of the customs duty short paid by the said importer amounting to Rs.17,97,008/-. During the investigation against the importer, it was revealed that one of the employee of the appellant-broker, Shri Harshad Sakharam Nadekar was instrumental in procuring false test certificates facilitating undervaluation of the goods by the importer, resulting into short payment of duty. Consequently, by the impugned order, the learned Commissioner prohibited the appellant under the provisions of Regulation 23 of the Customs Brokers Licensing Regulations, 2013 (now, Regulation 15 of CBLR, 2018) from working in all sections of Mumbai zones I, II & III with immediate effect. Aggrieved by the said order, the present appeal is filed.

3. At the outset, learned Advocate for the appellant vehemently argued that the appellant was not put to notice nor any pre-decisional hearing or post-decisional hearing was granted to them while issuing the impugned order prohibiting them to operate in Mumbai Customs zones I, II & III. It is his contention that Shri Harshad Sakharam Nadekar was neither their employee

nor he was authorized in any manner to represent them. He has further submitted that the learned Commissioner erroneously directed prohibiting the appellant to operate in all the three zones without any basis. Hence the order is liable to be set aside. In support, the learned Advocate has referred to the judgment of this Tribunal in the case of *Pioneer (Customs Broker) vs. CC(G), Nhava Sheva-I – Order No. A/87044/2018 dated 6.8.2018* and *Eastern Clearing & Forwarding Agency Pvt. Ltd. vs. CC, Mumbai – Order No. A/86472/2018 dated 23.5.2018*.

4. Per contra, learned AR for the Revenue has submitted that there is no necessity to afford opportunity of personal hearing before directing prohibition to operate as Customs Broker within the specified Customs area. It is her contention that while directing prohibition, the learned Commissioner recorded involvement of the employee of the appellant, Shri Harshad Sakharam Nadekar, which has been confirmed by the Director of the appellant, Shri Stephen Muthiah Nadar, in his statement dated 24.7.2017. She has submitted that Shri Harshad Sakharam Nadekar has played an active role in obtaining false and fabricated test certificates facilitating undervaluation of the imported steel items. Therefore, continuation of the

said Broker is detrimental to the interest of the Revenue. Accordingly, they have been prohibited from operating in all the three zones in Mumbai. She submits that there is no requirement under the CBLR, 2013 to hear the appellant before passing the prohibition order. In support, she has referred to the judgment of the Hon'ble Bombay High Court in the case of *S.R. Sale & Co. vs. UOI – 2013 (296) ELT 289 (Bom.)* and *CC(G) vs. Worldwide Cargo Movers – 2010 (253) ELT 190 (Bom.)*.

5. Heard both sides and perused the records.

6. By the impugned order, the appellant has been prohibited from working in Mumbai Customs zones I, II & III with immediate effect. It is the grievance of the appellant that before passing the said prohibition order, even though the import & alleged violation relates to the year 2015 and investigation continued for more than three years and the appellant had co-operated with the investigation in furnishing the documents, no opportunity was accorded to them to explain their position. Precisely, their plea is that since prohibition to operate as broker adversely affected their interest of employment, and since they were neither put to notice nor afforded any opportunity of personal hearing, the Order is issued in gross violation of the principles of

natural justice. Revenue's contention, on the other hand, is that there is no stipulation in the CBLR, 2013 to allow an opportunity of hearing before an order of prohibition is passed. They have relied upon the judgment of the Hon'ble Bombay High Court in *S.R. Sale & Co.* (supra).

7. We find that the Hon'ble Bombay High Court in laying down the principles, observed as follows:-

> *"3. Regulation 21 does not exclude the requirement of complying with the principles of natural justice. As a matter of first principle, even when a statute or statutory regulation is silent in regard to compliance with the principles of natural justice, natural justice is to be read into the provision. However, it is equally well settled that in a case where urgent action is required, particularly in public interest, it may not always be appropriate or efficacious to furnish a pre-decisional hearing. Where immediate action is required, the authority can be directed to give an opportunity to the person who is affected by the order opportunity of a hearing after passing a protem order for a limited period. In the case of a suspension. Regulation 20(2) contemplates immediate action being taken, where it is required, after which an opportunity has to be given to the agent whose licence is suspended within fifteen days from the date of the suspension. In our view, Regulation 21 has to be so interpreted so as to balance the requirement of fairness to the Customs House Agent on the one hand, which would warrant compliance with the principles of natural justice together with the need, on the other hand to protect the public interest essentially where immediate action is warranted.*

Hence, where immediate action is warranted, to prevent a customs house agent from carrying out activities which are prejudicial, a prohibitory order can be passed under Regulation 21 for a limited period. During that period an opportunity of a hearing can be afforded in compliance with the principle of natural justice. Where immediate action is necessary, a predecisional hearing can be dispensed with if such a hearing will defeat the requirement of public interest in the orderly and proper functioning of the Customs Station. On the other hand, where immediate action is not required, a prohibitory order can await compliance with the requirements of natural justice. Ordinarily, a predecisional hearing must be the rule. Dispensation is to be an exception."

8. On a careful reading of the laid down principle, we find that observing principles of natural justice is the rule, and dispensing it, is the exception to the said rule. Needless to mention the exception could be resorted to only in extraordinary circumstances. In other words, the situation is such that the personal hearing if allowed would defeat the very of purpose of directing prohibition, then it should be resorted to. On going through the impugned order, we do not find any evidence or observation by the learned Commissioner justifying direction of prohibition dispensing with the personal hearing to the appellant. At the cost of repetition, we reiterate that observation of principles of natural justice is the rule of law and dispensing the same, is the exception to the said rule. In these circumstances, we have no other option but to set aside

the impugned order and remand the matter to the adjudicating authority to decide the issues afresh after affording a reasonable opportunity of hearing to the appellant.

7. Appeal is allowed by way of remand.

(Pronounced in court)

(C.J. Mathew)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

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