

HCJD/C-121
ORDER SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

W.P. No. 3024 of 2014

Euro Duty Free Shop (Pvt.) Ltd.
Versus
Federation of Pakistan etc.

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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23-6-2014	Barrister Khurram Hashmi, for the Petitioner. Mrs Misbah Gulnar Sharif Advocate for the respondents. Mr Shahzad Ahmed Superintendent, Customs.
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In the present petition appearance was made on behalf of the respondents in compliance with the notice of this Court. Through a short order the petition was allowed and the same is reproduced below:-

On Court notice Mrs Misbah Gulnar Sharif learned Counsel for the respondents appeared alongwith Mr Shahzad Ahmed Superintendent Customs. When confronted with the legal provisions, particularly Sub-section 3 & 4 of Section 13 of the Customs Act, 1969, they took a fair stance by admitting the obligation of meeting the requirements of due process as in the present case no show cause notice has been issued by the Collector under Section 13. In view of the fair stance taken by the respondents as well as the learned Counsel for the petitioner and for the reasons to be recorded later, the petition is allowed on the terms consented by the parties, which are as follows:-

- i. The impugned order dated 18-6-2014 is hereby set aside,*
- ii. In case there is material regarding infringement of any condition of licence granted to the petitioner or any violation of any of the provisions of the Customs Act, 1969, or any rules made there under, the Collector of Customs shall be at liberty to issue a show cause notice and thereafter to proceed in accordance with law, particularly providing proper opportunity of hearing to the petitioner.*

- iii. *After issuance of show cause notice as contemplated under Sub-section 3 ibid, the Collector shall be at liberty to exercise powers under Sub-section 4 ibid. However, before passing any order under Sub-section 4, the petitioner shall be given a hearing.*
- iv. *In the meanwhile, the consignment held-up at the port shall be forthwith removed to the warehouse and inbonded in accordance with provisions of Customs Act, 1969. However, the appropriate officer of the warehouse shall be at liberty to exercise the powers vested under the Customs Act, 1969.*
- v. *This order shall not prejudice any proceedings which may be pending against the petitioner or which may be initiated in accordance with law. The petition is, therefore, allowed in the above terms.*

2. Briefly stated facts of the case are that petitioner, a Private Limited Company duly registered under the Companies Ordinance, 1984, is managing and operating a private warehouse in pursuance of a licence issued by respondent No.3, in exercise of powers vested under Section 13 of the Customs Act, 1969 (hereinafter referred to as "Act"). The respondent No.3 issued the licence on 19-3-2013 in accordance with guidelines issued by Federal Board of Revenue. The licence was renewed and remains valid till 16-12-2014. The procedure relating to licenced warehouses has been provided under the Act and the rules made there under. From the time of import of goods till its disposal by way of exbonding, the respondents and the officials under their jurisdiction, remain in complete control, so much so, that under Section 117 of the Act, the warehouse remains in double lock and key, one of which is in possession of the

appropriate Customs officer. The petitioner's grievance relates to the order dated 18-6-2014, whereby the licence of the petitioner has been suspended.

3. Barrister Khurram Hashmi, learned counsel for the petitioner *inter alia*, argued that the order dated 18-6-2014 is in violation of Section 13 of the Act; no show cause notice was issued as required under Section 13 (3); respondent No.4 has no jurisdiction to pass the impugned order; Section 13 (4) is not an independent provision and is subject to the conditions stipulated under Section 13(3); even in case the conditions stipulated under Section 13 (3) have been fulfilled, yet the principle of due process of law have to be observed before passing an order under Section 13(4).

4. In compliance with this Court's order, Mrs Misbah Gulnar Shareef alongwith Mr Shahzad Ahmed Superintendent Customs, appeared for the respondents. On the Court's query it was conceded that no show cause notice has been issued under Section 13(3) of the Act. It was argued by the learned counsel for the respondents that the respondent No.3 is vested with powers to suspend the licence under Section 13 (4); it was further argued that Rule 345 of the Customs Rules, 2001, empowers the Collector to suspend the licence and thereafter, issue the show cause notice under sub-section 3 of Section 13 of the Act.

5. In the light of the arguments as stated above, the questions for consideration are as follows:

- a) Whether the powers vested under Section 13(4) are independent or they are to be read with sub-section 3 of Section 13 *ibid*.
- b) Whether Rule 345 of the Customs Rules, 2001, vests power in the Collector to suspend the licence and thereafter issue show cause notice under Section 13 (4) of the Act.
- c) Whether the powers under Section 13 (4) of the Act can be exercised without complying with the principles of due process of law.

6. In order to examine the above questions it would be pertinent to reproduce Section 13 of the Act and Rule 345 of the Customs Rules, 2001, which are as follows:-

Section 13 of the Customs Act, 1969:

13. Power to licence private warehouses.- (1) *At any ware housing station, the Collector of Customs may, from time to time, licence private warehouses wherein dutiable goods may be deposited [without payment of customs-duty.]*

(2) *Every application for a licence for a private warehouse shall be made in such form as may be prescribed by the Collector of Customs.*

[(3) *A licence granted under this Section may be cancelled by the Collector of Customs for infringement of any condition laid down in the licence or for any violation of any of the provisions of this Act or any rules made thereunder, after the licensee has been given proper opportunity of showing cause against the proposed cancelation].*

(4) *Pending consideration whether a licence be cancelled under sub-section (3), the Collector of Customs may suspend the licence.*

Rule 345 of the Customs Rules, 2001:

345. Suspension of Licence.- (1) *Pending consideration whether a licnese be cancelled under rule 345, the Collector may suspend the license if he is of the opinion that it is expedient to do so and for the reasons to be recorded, in writing, thereof by him.*

(2) In a case referred to in sub-rule (1) the reasons to show cause shall be communicated to the licensee within a week of such suspension.

7. Section 13 of the Act, when read as a whole leaves no doubt that the Collector of Customs i.e. respondent No.3 has exclusive jurisdiction to licence private warehouses wherein dutiable goods may be deposited without payment of Customs duty. Sub-section 3 of Section 13, provides that a licence granted may be cancelled by the Collector of Customs for infringement of any condition laid down in the licence or for any violation of any of the provisions of the Act or any rules made there under. The provision further provides that such cancellation of a licence is subject to and qualified by pre-condition i.e. giving proper opportunity of showing cause against the proposed cancellation. The said provisions places two statutory obligations on the Collector of Customs prior to making an order of cancellation of licence, firstly a show cause notice has to be issued, and, secondly give proper opportunity to the licensee to meet the allegations before passing a final order.

8. Sub-section 4 of Section 13 of the Act empowers the Collector to suspend the licence while the matter relating to cancellation of a licence is "pending consideration". "Pending consideration", inevitably has to be read with Section 13 (3). When the two provisions are read together/harmoniously, the event which would give rise to "pending consideration" is issuance of a show cause notice under Section 13(3) and will continue till the final order is passed. During the period when the show cause notice is issued under sub-section 3 of

Section 13 for the proposed cancellation of the licence, till the passing of the final order, the cancellation of licence will remain "pending consideration". It is, therefore, contemplated under Section 13 (3) that the powers to suspend the licence under Section 13 (4) may be exercised when the proposed cancellation is pending consideration. Contrary to the view taken by the learned counsel for the respondents, Rule 345 of the Customs Act, 2001, not only re-affirms that the issuance of a show cause notice under Section 13(3) is a pre-condition to the exercise of powers under Section 13(4), rather it extends the obligation of the Collector to form an "opinion that it is expedient to do so, and for the reasons to be recorded, in writing, thereof by him". The said Rule further provides that the reasons to show cause shall be communicated to the licensee within a week of such suspension.

9. The learned counsel for the respondent interprets sub-rule (2) of Rule 345 of the Customs Rules, 2001, as a power to suspend the licence and thereafter to issue a show cause notice within a week of such suspension. Such a view is contrary to the settled law as rules have to be consistent with the parent statute and in case of conflict the primary statute shall prevail. However, when Section 13 of the Act and Rule 345 of the Customs Rules, 2001, are read harmoniously, conclusion may be summarized as follows:-

- I) Sub-section 3 and 4 of Section 13 of the Act must be read as an integral whole and as being interdependent.

- II) The issuance of show cause notice under Section 13 (3) and providing proper opportunity to the licensee is a pre-condition to the exercise of powers vested under Section 13 (4) of the Act;
- III) In case a show cause notice has been issued under Section 13 (3) of the Act, the exercise of powers under sub-section 4 of Section 13 shall be subject to observing the principles of due process of law as guaranteed under Article 10-A of the Constitution, including giving an opportunity of hearing, before passing the order of suspension.
- (IV) Reasons, in writing, for suspension of the licence under Section 13(4) shall be communicated to the licensee as provided in sub-rule (2) of Rule 345 of Customs Rules, 2001.

10. At this stage it is also relevant to briefly mention the minimum requirements for observing due process of law. The Honourable Supreme Court in case of "*Muhammad Nadeem Arif & others Vs. Inspector General of Police, Punjab, Lahore & others*" reported as 2011 S.C.M.R. 408, has summarized the minimum requirements of due process of law as follows:-

- a) due notice of proceedings affecting the rights of citizen shall be given;

- b) reasonable opportunity to defend shall be given;
- c) a forum before rights are to adjudicated is so constituted as to give reasonable assurance of honesty and impartiality; and
- d) the forum is of competent jurisdiction.

11. It is further to be noted that 'hearing' is to be meaningful, particularly when some action detrimental to the rights of citizens is to be taken. A hearing held in a mechanical or perfunctory manner cannot be treated a hearing for the purposes of due process of law. This Court concurs with the meaning of 'hearing' elaborated by the Lahore High Court in case of "*Maqbool Ahmed & others Vs. District Officer (R) & others*" reported as P.L.D. 2010 [Lahore] 332. For convenience the relevant portion is reproduced as below:-

"Hearing is not a mere mechanical and perfunctory ritual or a desultory cosmetic requirement that has to be hurriedly complied with. There is a deeper meaning to a hearing. Hearing first of all requires that the person against whom the action is proposed is made a part of the decision making process and the officer exercising discretion has given due weightage to the submissions made during the hearing. Additionally, in-built in a hearing is the wisdom that there might be alternative choices available to resolve the problem, which can surface once the hearing takes place. As every law is in the public interest and made for the welfare of the people, this inherent and intrinsic welfare embedded in

every law necessitates that alternatives or options are to be deliberated upon in the public interest.”

12. In the light of the above discussion, the impugned order of suspension dated 18-6-2014 is declared as illegal, arbitrary, having been passed without lawful authority and jurisdiction, the same is hereby set aside. However, as noted in the short order, the respondents shall be at liberty to proceed in accordance with law, after observing the requirements of due process of law.

(ATHAR MINALLAH)
JUDGE

*Luqman/

Approved for reporting.