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**Vs. Commissioner of Customs (Airport and Administration) and ors.**

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**SooperKanoon Citation : [sooperkanoon.com/1060103](http://sooperkanoon.com/1060103)**

**Court : Kolkata**

**Decided On : Jan-04-2013**

**Judge : Indira Banerjee**

**Respondent : Commissioner of Customs (Airport and Administration) and ors.**

**Judgement :**

ORDER

SHEET W.P.No.1080 of 2012 IN THE HIGH COURT AT CALCUTTA  
Constitutional Writ Jurisdiction ORIGINAL SIDE THE INDIA MERCANTILE  
AGENCY & ANR.

Petitioners Versus COMMISSIONER OF CUSTOMS (AIRPORT &  
ADMINISTRATION) & ORS.Respondents BEFORE: The Hon'ble JUSTICE  
INDIRA BANERJEE Date :

4. h January, 2013.

For Petitioners : Mr.S.N.Bhattacharyya, Adv.For Respondents : Mr.P.K.Roy with  
Mr.S.K.Saha, Adversus This writ application has been filed inter alia challenging  
CHA Order No.06/2012 whereby the Customs House Agents License No.1-20  
held by the petitioner No.1, M/S.India Mercantile Agency, has been suspended  
with immediate effect, in exercise of power under Regulation 20(2) of the Customs  
House Agents Licensing Regulations, 2004, hereinafter referred to as CHALR,  
2004.

The charges against the petitioners are serious.

The Directorate of Revenue Intelligence has booked a case of fraudulent export of misdeclared goods under a Duty Drawback Scheme against two exporters, namely M/S. Krish Export and M/S. Tara India, for whom M/S. India Mercantile Agency acted as Customs House Agent.

It appears that investigation revealed that M/S. Tara India did not even exist at the declared address and the said export firm had not been operating business since August 2010.

The said M/S. Tara India apparently let out the IEC [Import Export Code] of M/S. Tara India and M/S. Krish Export to one Delhi based person, namely Pankaj Sharma for monetary consideration.

In course of examination it transpired that Sr. Dipankar Sen, Partner of M/S. India Mercantile Agency, admitted that he had never met the exporters nor talked to them.

The Commissioner of Customs [Airport & Administration] was of the view that the firm failed to discharge its obligation as prescribed under Regulation 13 of CHALR, 2004.

Under Regulation 13 of CHALR, 2004 a customs house agent is required to obtain authorisation of each of the companies, firms or individuals by whom he is, for the time being, deployed as Customs House Agent and produce such authorisation whenever required by Deputy Commissioner of Customs or Assistant Commissioner of Customs. In this case, the Customs House Agent, M/S. India Mercantile Agency, apparently acted on the basis of instructions given by Sanjay Singh Maria of M/S. Trexim Shipping Corporation, who handled the export consignments.

Mr. Bhattacharyya, learned Counsel appearing on behalf of the petitioner, submits that the Customs Authorities have already initiated proceedings under Section 124 of the Customs Act against the concerned exporters. Mr. Bhattacharyya submits that two parallel proceedings could not be continued at the same time.

The submission of Mr. Bhattacharyya is, in my view, not sustainable in law and difficult to accept.

The proceedings under Section 124 of the Customs Act are separate and independent proceedings which have no connection with the proceedings under Regulations 20/22 for suspension and revocation of the Customs House Agents license.

The proceedings under Section 124 are inter alia for imposition of penalty whereas the instant proceedings are for suspension and/or revocation of Customs House Agents license.

There is no legal bar to parallel proceedings being initiated under different provisions of law.

The charges being serious and a show cause notice having been issued, the petitioner ought to have replied to the show cause notice and taken the defence available to him before the Adjudicating Authority.

The interference of this Court at this stage is not warranted.

The writ application is disposed of by granting the petitioners opportunity to reply to the show cause notice.

The petitioners shall forthwith, and in any case, within a fortnight from the date of communication of this order, reply to the show cause notice.

The respondent authority shall conclude the adjudication within one month from the date of receipt of the reply to the show cause notice, after giving the petitioner, that is the Customs House Agent, a reasonable and fair opportunity of hearing.

The writ application is disposed of.

Affidavits not having been called for, the allegations contained in the writ petition shall be deemed not to have been admitted.

Urgent certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(INDIRA BANERJEE, J.) K.

Banerjee A.R.[C.R.].

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