Customs, Excise & Service Tax Appellate Tribunal,
West Zonal Bench : Ahmedabad

REGIONAL BENCH - COURT NO. 3

Custom Appeal No. 11073 of 2019

[Arising out of Order-in-Appeal No OIO-KND-CUSTM-000-COM-02-2019-20 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-KANDLA]

M/s B N Thakkar And Co .... **Appellant**

Room No 207, 2nd Floor,
Nilesh Park Building,
Behind Kdba Gymkhana,
Gandhidham Kutch,
Gujarat-370201

VERSUS

C.C. Kandla .... **Respondent**

Custom House,
Near Balaji Temple,
Kandala-Gujarat

APPEARANCE :

Sh. S.J. Vyas, Advocate for the Appellant
Sh. S.N. Gohil (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. A/ 11474/ 2019

DATE OF HEARING: 05.08.2019
DATE OF DECISION: 05.08.2019

RAMESH NAIR

The impugned order was passed by the Principle Commissioner, whereby the CB license of the appellant was suspended in a Custom case where the export goods were found to be overvalued and in that custom case, the SCN was issued on 07.09.2017 and the same was adjudicated vide order dated 26.02.2019. Thereafter, vide the impugned order dated 30.04.2010 the suspension order was passed. Being aggrieved by impugned order, the appellants filed the present appeal.

2. Sh. S.J. Vyas Ld. Counsel appearing on behalf of the appellant submits that as per Rule 16 of Customs Brokers Licensing Regulations 2013, the suspension if required in a particular case, it should be done as immediate action whereas in the present case even though the seizure of the good was made on 10.03.2017 and SCN was issued on 07.09.2017, the suspension was ordered after almost 2 years from

seizure of goods i.e. on 30.04.2019. He submits that suspension can be made only when there is immediate action is required. The act of revenue shows that there is no urgency to the revenue to take immediate action, therefore, on this ground itself, the suspension is not legal and correct. He placed reliance on the decision of this Tribunal in case of P. Sawasji & Co. Vs. CC (General), Mumbai 2018 (5) TMI 521 (Cestat-Mumbai)

3. Sh. S.N. Gohil Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that there is no dispute that the goods with reference to which the suspension order was passed was seized on 10.03.2017 and the SCN was issued on 07.09.2017. If at all the revenue is of view, customs broker should be prohibited from carrying out the work of customs broker, the license should have been suspended immediately after detection of the case by the customs authority whereas in the present case admittedly, the order for suspension was passed almost after 2 years from the date of seizure. In the identical facts, this Tribunal has passed the order in P. Sawasji & Co (supra), the operating portion of the order is reproduced below:

> ***"4.*** *On careful consideration of the submissions made by both sides and on perusal of the records, we find that the case under Customs Act was detected at the time of filing Bill of Entry itself i.e. on 1-3-2017. Thereafter, a show cause notice in that Customs case was issued on 27-9-2017. If at all the Revenue is of the view that the case, which was registered under the Customs Act is very serious. The Customs Brokers License could have been suspended immediately after detection of the case as the Revenue need not to wait for issuance of show cause notice for the purpose of proceedings under CBLR, 2013. The suspension order was passed exercising the power vested under Regulation 19(1) of CBLR, 2013, which is read as under :*
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> *"**Suspension of licence.** - (1) Notwithstanding anything contained in regulation 18, the Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the licence of a Customs Broker where an enquiry against such agent is pending or contemplated.*
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> *(2) Where a licence is suspended under sub-regulation (1) the Commissioner of Customs shall within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs Broker whose licence is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be within fifteen days from the date of hearing granted to the Customs Broker."*

> ***5.*** *From the plain reading of the above provision, it is clear that the Commissioner of Customs may in appropriate cases, where immediate action is necessary suspending the licence of a Customs Broker is not mandatory in each and every case, even though, the proceedings under CBLR, 2013 are undergoing by the Commissioner of Customs. Secondly, the suspension can be made only in appropriate cases, where immediate action is necessary.*
>
> ***6.*** *From the facts narrated above, we find that the case is related to import for which the Bill of Entry was filed in March 2017 for which a show cause notice under Customs Act was issued in September 2017, if at all there was necessity to suspend the licence, the department should have taken action immediately after detection of the case, which was not done so in this case and the department waited for more than six months. Therefore, this clearly shows that there was no immediate requirement of suspension of the licence. The Hon'ble Jurisdictional Bombay High Court has in the case of National Shipping (supra) clearly held that the power of suspension is an emergent power to be used in those cases, where it is required that CHA licence be immediately suspended. The ratio of the Hon'ble Bombay High Court is clearly applicable in the facts of the present case. Accordingly, the order suspending the Customs Broker licence is set aside. Principal Commissioner of Customs has liberty to conduct enquiry and conclude the proceedings under CBLR, 2013. The appeal is allowed in above terms. Stay petition stand disposed of."*

5. The above judgment of this Tribunal was passed taking reliance of the Hon'ble Bombay High Court judgment in the case of National Shipping (Supra), being an identical issue involved, we following the above order do not agree with the Ld. Commissioner in passing suspension order. Accordingly, the impugned order is set aside. Appeal is allowed. The order to be given dasti.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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