CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Application(s) Involved:

C/Stay/20089/2019 in C/20166/2019-DB

C/Early Hearing/20090/2019 in C/20166/2019-DB

Appeal(s) Involved:

C/20166/2019-DB

[*Arising out of Order-in-Original No. COC-CUSTM-000-COM-41-18-19 dated 01/01/2019 passed by Commissioner of CUSTOMS, COCHIN.*]

M/s. MBK Logistix Pvt. Ltd.
39/6720 H Bab Tower M G Road
Cochin - 682015
Kerala

Appellant(s)

Versus

The Commissioner of Customs
CUSTOM HOUSE
Wellingdon Island
COCHIN – 682 009.
KERALA

Respondent(s)

Appearance:

Mr. Joseph Kodiathara, Sr. Counsel and Mr. P.G. Jayashankar
M/s. P.G. Law Associates
'PULLUKATTE', SRM ROAD,
ERANAKULAM, NORTH KOCHI
KOCHI – 682 018.
KERALA

For the Appellant

Mr. Gopa Kumar, AR

For the Respondent

Date of Hearing: 19/02/2019
Date of Decision: 22/02/2019

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON'BLE SHRI SANJIV SRIVASTAVA, TECHNICAL MEMBER

Final Order No. 20192 /2019

Per : SANJIV SRIVASTAVA

This appeal is directed against the Order-in-Original No.COC-CUSTOMS-000-COM-41/18-19 dated 1.1.2019 of Commissioner of Customs, Cochin. By the said order, the Commissioner has held as follows:

(i) *"The Registration granted to M/s. MBK Logistix Pvt. Ltd. as per CBIC Circular no.30/2004 dated 16.4.2004 to operate as Steamer Agent, Console Agent and Shipping Line Agent under this Commissionerate is cancelled/revoked on account of the violation of provisions of the Customs Act, 1962 which amounts to a violation of condition under which the said registration was granted.*

(ii) *I impose a penalty of Rs.50,000/- on M/s. MBK Logistix Pvt. Ltd. under the provisions of Section 117 of the Customs Act, 1962.*

(iii) *No separate penalty is imposed on Shri Santhosh Kumar, Senior Manager, M/s. MBK Logistix Pvt. Ltd. as the firm has been imposed penalty under Section 117 of the Customs Act, 1962.*

(iv) *No separate penalty is imposed on Smt. Anita Prabhakaran, Managing Director, M/s. MBK Logistix Pvt. Ltd., as firm has been imposed penalty under Section 117 of the Customs Act, 1962.*

(v) I impose a penalty of Rs.50,000/- on Shri Joakim Yesudasan, Andhakaranazhi, P.O., Cherthala, Alappuzha – 688 531 under the provisions of Section 117 of the Customs Act, 1962.

(vi) I impose a penalty of Rs.25,000/- on Shri Antony Sijo, Velipparambil House, Palluruthi, Ernakulam – 682 006 under the provisions of Section 117 of the Customs Act, 1962.

(vii) This order is issued without prejudice to any other action that may be taken against the noticees under this Act or under any other Act for the time being in force in the Republic of India."

2.1 Appellants challenged the order of the Commissioner before High Court of Kerala, Ernakulam by way of Writ Petition No.226 of 2019. High Court vide its order dated 12.02.2019 decided the matter giving following directions:

"2. We had kept the matter pending only to ensure that an appeal filed by the appellant herein would be taken up for consideration; atleast of the interim applications, expeditiously. We are happy that the learned Assistant Solicitor General has taken expeditious steps and ensured that a statement is placed on record appraising us of the steps taken to hear urgent matters by the Bangalore Bench. On instructions from the Principal Bench of CESTAT, we are informed that there would be a sitting of the Bangalore Bench between 18.2.2019 to 22.02.2019. The learned Senior Counsel appearing for the appellant also assures us that an appeal will be filed on

Thursday, i.e., day after tomorrow. Hence, if a proper appeal is filed, then we request the Bangalore Bench to take it up for admission and interim orders atleast on the 19th of February, 2019. We make it clear that the observations made by us in the extracted order are only prima facie observations, which need not govern the consideration of the application for an interim order filed in the appeal. We close the above Writ Appeals, leaving the appellants to agitate their cause before the CESTAT. No costs."

2.2 As per directions of the High Court, this appeal has been filed before the Tribunal and taken up for hearing on 19.2.2019. On hearing the matter, we find that the issue is in very narrow compass for reconsideration at this stage and hence, instead of considering the interim applications, we take up the appeal itself for final disposal.

3.1 We have heard Shri Joseph Kodanthara, Sr. Counsel along with Mr. P. G. Jayashankar, Counsel appearing on behalf of the appellant and Mr. Gopa Kumar, AR for the Revenue.

3.2 Arguing for the appellants, the learned counsel submitted that-

i. for certain offences committed by some employee of the company, the registration to work as shipping line agent/shipping agent granted to them has been cancelled by the learned Commissioner vide above mentioned order;

ii. Appellant as such was not aware or had in any way has directed any of its employees for the misconduct by them. Commissioner has in his order exonerated the Senior management of the Company and has not imposed any penalties on Ms Anita Prabhakar Managing Director and Shri Santosh Kumar Senior Manager working with them. Penalties have only been imposed on two officers against whom the charge of stealing the Custom seal and manipulating the documents has been made. They are not opposing the penalties on the said employees or in any way justifying their acts or conduct;

iii. the consequence in terms of cancellation of registration to operate as shipping line agent is disproportionate to the offence for which they have been penalized;

iv. by referring to series paragraphs in the order he showed us that company as such was not responsible for various offences committed.

v. para XIVA to show that Commissioner himself has held that Shri Joakim Yesudasan, staff of the firm was responsible for the misconduct of stealing and modifying the custom seal and also for forging the signatures of the Custom Officers;

vi. in the entire proceedings, the Commissioner has in no way pointed out what was the benefit that would have accrued to the company, as such, for the reason of manipulation of the seals and signatures; no finding has been referred in this regard.

vii. submissions made during cross-examination of various officers and witnesses show that even such manipulation of seals and signatures would not have impacted the physical examination and clearance of the crew.

viii. even if it is assumed without any admission that certain irregularities were committed, the punishment of cancellation of registration is disproportionate completely.

ix. Cancellation of registration is impacting his right to work difficult and he is out of business now for nearly 78 days. He, accordingly, requested that matter should be taken up specifically with regards to the cancellation of registration.

x. the employees responsible for misconducting have been suspended from the company and will not be allowed to operate further;

xi. he is not aware whether those employees on whom penalties have been imposed have filed any appeal;

xii. in the decision of Falcon Air Cargo and Travels (P) Ltd [2002 (140) ELT 8 (Del)], Delhi High Court has held the license should be renewed/ suspended/ revoked only after considering gravity of infraction and mitigating circumstances. Similar view has been expressed by the Delhi High Court in case of Ashiana Cargo Services [2014 (3020 ELT 161 (Del)], Bombay High Court in case A S Vasan & Sons (Bombay) [2010 (249) ELT 492 (BOM)] and Madras High Court in case of Transport Logistics {2016 (338) ELT 380 (MAD)]

3.3 Arguing for the Revenue, learned AR submitted that-

i. it is a case where employees or appellants were responsible for forgery of customs related documents and such forgery should been seen for possible repercussions it could have on economy and security of the Nation.

ii. at the time of granting registration, vide condition in para 3 of the Registration certificate, appellants were made aware of possible cancellation of registration granted and any other penal action under Customs Act in case of any misconduct and excess charging by them or failure to comply with any other provisions of the Customs Act.

iii. employees of the appellant had admitted to the misconduct in relation to stealing and forging of Custom seals and custom related documents for clearance of crew.

iv. taking into account the gravity of offence committed by the appellants and moral obligation/ vicarious liability of the respondent, the registration of appellants to operate in Cochin Port has been cancelled;

v. all other Ports at which he was operating informed for similar action.

vi. Madras High Court in the case of ***Chandra CFS & Terminal Operators P. Ltd. vs. CC, Chennai-VIII: 2015 (326) ELT 122 (Mad.)*** and Bombay High Court in the case of ***CC (General) vs. Worldwide Cargo Movers: 2010 (253) ELT 190 (Bom.)***, has upheld the action of suspension of license of the employer for the acts of the employees.

vii. Accordingly, he supported the cancellation of registration and the penalty imposed upon the appellant.

4.1 We have considered the submissions made in the appeal and during the course of arguments,

4.2 Appellants have been transacting their business as Console Agent, Shipping Agent and Shipping Line Agent as per registration granted by the Commissioner of Customs, Cochin on the basis of procedure laid down in Board Circular No.30/2004-Cus. dated 16.4.2004. Appellants were operating through Smt. Anita Prabhakar as Managing Director and Shri Santhosh Kumar as the Senior Manager for the appellants. Among other employees, Mr. Joakim Yesudasan and Mr. Antony Sijo worked for the appellants.

4.3 During the course of preliminary enquiry, it was observed that signatures of Shri P. Gopinathan, Superintendent of Customs and Shri Ritesh Kumar Singh, Inspector of Customs and the seal of Preventive Department on the documents submitted by the appellants for sign-on the vessel MV Varada V004E appeared to be forged. Thereafter, detailed investigations undertaken and it was found that Mr. Joakim Yesudasan has stolen and forged the custom seal along with the signatures of the said officers. In his act, it was found that Shri Antony Sijo has assisted him.

4.4 After detailed investigation and enquiry, Commissioner has cancelled the registration granted to the appellant to operate at the Cochin Port. For various acts of misconduct, penalty of Rs.50,000/- has also been imposed under Section 117 of the Customs Act.

4.5 As per Commissioner, the act of boarding /de-boarding of crew or loading or unloading of cargo is done by the port terminal. Each of these activities are done as per specific documents maintained by the Port/ Customs Department.

4.6 In the present case, show-cause notice has been issued under Section 124 of the Customs Act and states contravention of various provisions of the Customs Act in the matter. Section 124 of Customs Act is reproduced below:

> ***"SECTION 124. Issue of show cause notice before confiscation of goods, etc.*** *— No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person –*
>
> *(a) is given a notice in [writing with the prior approval of the officer of Customs not below the rank of [an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*
>
> *(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and*
>
> *(c) is given a reasonable opportunity of being heard in the matter :*
>
> ***Provided*** *that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral :*
>
> ***Provided*** *further that notwithstanding issue of notice under this section, the proper officer may issue a*

> *supplementary notice under such circumstances and in such manner as may be prescribed."*

4.7 A show-cause notice under Section 124 is adjudicated as per Section 125 of the Customs Act. Section 125 of the Customs Act provide for confiscation of the goods and for redemption of the same on payment of redemption fine invoked. A proceeding under Section 124 could have led to the cancellation of the registration issued to the appellant for undertaking various activities in the Port.

4.8 Commissioner has recorded that Mr. Joakim Yesudasan by forging the sign on documents have contravened the provisions of Section 34 of the Customs Act and by producing the said documents for clearance of the vessel, provision of Section 42(2)(c) of Customs Act also got contravened. Thereby contravening provisions of Section 42(2)(b) for the act committed by the said employee, Commissioner holds that appellant responsible for submission of forged documents for clearance of vessel and hence, was the beneficiary of the said forged act. Commissioner states that accordingly, he holds appellants contravening the Sections 42(2), 34 ibid Section 98 and which is enough for the cancellation of the registration granted and penal action against them.

4.9 Sections 34, 42 and 98 of Customs Act provides as follows:

> ***SECTION 34.*** *Goods not to be unloaded or loaded except under supervision of customs officer. — Imported goods shall not be unloaded from, and export goods shall not be loaded on, any conveyance except under the supervision of the proper officer :*
>
> ***Provided*** *that the Board may, by notification in the Official Gazette, give general permission and the proper officer may in any particular case give special permission, for any goods or class of goods to be unloaded or loaded without the supervision of the proper officer.*
>
> ***SECTION 42.*** *No conveyance to leave without written order. — (1) The person-in-charge of a conveyance which has brought any imported goods or has loaded any export goods at a customs station shall not cause or permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.*
>
> *(2) No such order shall be given until –*
>
> *(a) the person-in-charge of the conveyance has answered the questions put to him under section 38;*
>
> *(b) the provisions of section 41 have been complied with;*
>
> *(c) the shipping bills or bills of export, the bills of transshipment, if any, and such other documents as the proper officer may require have been delivered to him;*
>
> *(d) all duties leviable on any stores consumed in such conveyance, and all charges and penalties due in respect of such conveyance or from the person-in-charge thereof have been paid or the payment secured by such guarantee or deposit of such amount as the proper officer may direct;*
>
> *(e) the person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on him*

under section 116 or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct;

(f) in any case where any export goods have been loaded without payment of export duty or in contravention of any provision of this Act or any other law for the time being in force relating to export of goods, -

(i) such goods have been unloaded, or

(ii) where the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that it is not practicable to unload such goods, the person-in-charge of the conveyance has given an undertaking, secured by such guarantee or deposit of such amount as the proper officer may direct, for bringing back the goods to India.

SECTION 98. *Application of certain provisions of this Act to coastal goods, etc. — (1) Sections 33, 34 and 36 shall, so far as may be, apply to coastal goods as they apply to imported goods or export goods.*

(2) Sections 37 and 38 shall, so far as may be, apply to vessels carrying coastal goods as they apply to vessels carrying imported goods or export goods.

(3) The Central Government may, by notification in the Official Gazette, direct that all or any of the other provisions of Chapter VI and the provisions of section 45 shall apply to coastal goods or vessels carrying coastal goods subject to such exceptions and modifications as may be specified in the notification.

4.10 From the reading of the said Sections, it is evident that Section 34 provides that no goods should be loaded or unloaded on a vessel except under supervision of a Customs Officer. In his order, Commissioner has not shown in how and what manner the provisions of these Sections has been contravened in the present case. Secondly, how appellants were responsible for such contravention.

4.11 Similarly, how provisions of Section 42(2) have been contravened is not clear. It is not the case of the Commissioner in adjudication order that vessel MV Varda V 0004E had sailed without written permission from the Custom officer.

4.12 Section 98 is making applicable provisions of certain Sections for coastal goods where the appellants are dealing in relation to such coastal goods has not been brought on record. The clearance of the crew is done under Chapter XI of the Customs Act and Section 91 of the Customs Act specifically bar application of the provisions of Chapter in relation to coastal goods to the baggage and the stores.

4.13 We do not find any merits in such averments made by the Commissioner in his order, in relation to various contraventions made. In fact the case of the department is to the effect that certain documents on the basis of which crew has been cleared were manipulated at the initiation stage, but were presented to the custom officers for the clearance of crew. The crew was in fact cleared on the said documents after proper and physical examination.

4.14 In the cross-examination, the officers had admitted that no person has boarded or de-boarded the vessel nor any cargo loaded or unloaded without actual physical verification and explicit approval of the Customs Department.

4.15 Notwithstanding, it is a fact that certain documents have been forged on the basis of stolen seals from the Custom office and Commissioner has stated that such forgery should be seen for possible repercussion that could have on the economy and security of the Nation. We do not find much force in such a submission without pointing out how it has been impacted the economy and security of the Nation.

4.16 Rule 6 of Baggage Rules, 2016 read as follows:

"**9. Application of these rules to members of the crew.** - (1) These rules shall also apply to the members of the crew engaged in a foreign going conveyance for importation of their baggage at the time of final pay off on termination of their engagement.

(2) Notwithstanding anything contained in sub-rule (1), a member of crew of a vessel or an aircraft other than those referred to in sub-rule(1), shall be allowed to bring articles like chocolates, cheese, cosmetics and other petty gift items for their personal or family use which shall not exceed the value of one thousand and five hundred rupees."

4.17 In terms of the said Rule, Crew Clearance is done and on the basis of which documents relating to baggage declaration of crew is made on the form which is facilitated by the shipping agent/ shipping line agent. Shipping line agent only facilitates the clearance of crew whereas actual clearance of crew is done by the Customs Officers at the port.

4.18 It is not even the case of the Commissioner that in garb of the forgery undertaken by the employees of appellant, crew was found carrying goods beyond their entitled baggage allowance. It is also not the case of the Commissioner that the crew was found carrying certain prohibited / restricted goods in person. In the absence of any such finding, a drastic action of cancellation of registration to operate in the Port is highly disproportionate to the offence alleged.

4.19 It is settled principle in law that procedures prescribed for performance of duties assigned under the law or the rules/ regulations made under the law should be respected and followed. Any person who has been assigned the duty under provisions of law and found manipulating the same is liable to punishment. However the punishment should be proportionate to the offence committed.

4.20 Next question that comes for consideration is whether the appellants should be held vicariously liable for the act of manipulation of the documents by their employees. In our view because of Master Servant relationship such vicarious liability shall follow. Same view has been expressed by the Madras High Court in case of ***Chandra CFS Terminal Operators P Ltd {2015 (326) ELT 122 (MAD)]***

> ***"123.*** *It cannot be heard to say that the appellant was not aware of the illegal removal of the seized container from their CFS. Equally, it is not able to be countenanced that the appellant could not be held responsible for the acts committed by their employees.*
>
> ***124.*** *It is trite law that the employer is vicariously liable for the acts of its employee acting in the course of his employment. There*

are grounds to believe that the alleged act was done in the course of the employment by their employees and therefore, the appellant must be ready to take the responsibility".

4.21 Various High Courts have held that punishment for the offences should be proportionate to the gravity of offence. In the present we don not find that appellants were in any way responsible for forging the documents themselves but are vicariously responsible for the acts of their employees. We also find that no attempt in the present case was made to contravene the provisions of Customs Act leading to confiscation of any goods for the reason that they were prohibited/ restricted or were sought to be cleared without payment of appropriate duty. The contraventions were only in the manner of facilitation of clearance of crew.

4.22 Delhi High Court has in case of ***Falcon Air Cargo and Travels (P) Ltd [2002 (140) ELT 8 (DEL)]*** held as follows:

"13. *By order dated 15-7-2000, licence was revoked. It is not clear how there could be revocation when the licence itself was not functional after 13-1-2000. Licence can be suspended or revoked on any of the grounds as mentioned in Regulation 21. It is, therefore, clear that if any of the grounds enumerated existed, two courses are open to the Commissioner. One is to suspend the licence and the other is to revoke it. Suspension would obviously mean that licence would be for a particular period inoperative. An order of revocation would mean that licence is totally inoperative in future, it loses its currency irretrievably. Obviously, suspension/revocation, as the* *case may be, has to be directed looking to the gravity of the situation in the background of facts. For minor infraction or infraction which are not of very serious nature order of suspension may suffice. On the contrary, when revocation is directed it has to be only in cases where infraction is of a very serious nature warranting exemplary action on the part of the authorities, otherwise two types of actions would not have been provided for. Primarily it is for the Commissioner/Tribunal to decide as to which of the actions would be appropriate but while choosing any of the two modes, the Commissioner/Tribunal has to consider all relevant aspects and has to draw a balance sheet of gravity of infraction and mitigating circumstances. The difference in approach for consideration of cases warranting revocation or suspension or non-renewal has to be borne in mind while dealing with individual cases. In a given case the authorities may be of the view that non-renewal of licence for a period of time would be sufficient. That would be in a somewhat similar position to that of suspension of licence though it may not be so in all cases. On the other hand, there may be cases where the authorities may be of the view that licencee does not deserve a renewal either. Position would be different there. Though we have not dealt with the question of proportionality, it is to be noted that the authorities while dealing with the consequences of any action which may give rise to action for suspension, revocation or non-renewal have to keep several aspects in mind. Primarily, the effect of the action vis-a-vis right to carry on trade or profession in the background of Article 19(l)(g) of the Constitution has to be noted. It has also to be borne in mind that the proportionality question is of great significance as action is under a fiscal statute and may ultimately lead to a civil death."*

4.23 Delhi High Court has in case of ***Ashiana Cargo Services[2014 (302) ELT 161 (DEL)]*** held as follows:

"11. *Viewing these cases, in the background of the proportionality doctrine, it becomes clear that the presence of an aggravating factor* *is important to justify the penalty of revocation. While matters of discipline lie with the Commissioner, whose best judgment should not second-guessed, any administrative order must demonstrate an ordering of priorities, or an appreciation of the aggravating (or mitigating) circumstances. In this case, the Commissioner and the CESTAT (majority) hold that "there is no finding nor any allegation to the effect that the appellant was aware of the misuse if the said G cards", but do not give adequate, if any weight, to this crucial factor. There is no finding of any mala fide on the part of the appellant, such that the trust operating between a CHA and the Customs Authorities (as a matter of law, and of fact) can be said to have been violated, or be irretrievably lost for the future operation of the license. In effect, thus, the proportionality doctrine has escaped the analysis.*

12. *Learned Senior Standing Counsel for the Customs has stressed that the infraction in this case is not a routine matter, but rather, illegal smuggling of narcotics by the G card users. However, given the factual finding that the CHA was not aware of the misuse of the G cards (and thus, also unaware of the contents being smuggled), no additional blame can be heaped upon the CHA on that count alone. Rather, the only proved infraction on record is of the issuance of G cards to non-employees, as opposed to the active facilitation of any infraction, or any other violation of the CHA Regulations, whether gross or otherwise. Neither have any such allegations been raised as to the past conduct of the appellant, from the time the license was granted in January, 1996. Equally, it is important to note that the appellant has - as of today - been unable to work the license for 8 years, and thus been penalized in this manner. This is not to say that the trust operating between the Customs Authorities and the CHA is to be taken lightly, or that violations of the CHA Regulations should not be dealt with sternly. A penalty must be imposed. At the same time, the penalty must - as in any ordered system - be proportional to the violation. Just as the law abhors impunity for infractions, it cautions against a disproportionate penalty. Neither extreme is to be encouraged. In* *this case, in view of the absence of any mens rea, the violation concerns the provision of G cards to two individuals and that alone. A penalty of revocation of license for this contravention of the CHA Regulations unjustly restricts the appellant's ability to engage in the business of the CHA for his entire lifetime. As importantly, it skews the proportionality doctrine, substantially lowering the bar for revocation as a permissible penalty, especially given the dire civil consequences that follow. On the other hand, the minority Opinion of the CESTAT, delivered by the Judicial Member, correctly appreciates the balance of relevant factors, i.e. knowledge/ mens rea, gravity of the infraction, the stringency of the penalty of revocation, the fact that the appellant has already been unable to work his license for a period of 6 years (now 8 years), and accordingly sets aside the order of the Commissioner dated 24-1-2005."*

4.24 Bombay High Court has in case of ***AS Vasan & Sons (Bombay)[2010 (249) ELT 492 (BOM)]*** held as follows:

"6. *As regards the first ground in paragraph no. 13 of the order dated 20th May 2009, the respondent has observed that at the time of hearing, Mr. Unnikrishnan gave visiting cards (proposed for noting the persons or seeking entry) into the customs area for hearing of the petitioner firm showing that it was a Custom House Agent. The petitioner firm was thus representing that it possessed a CHA licence even after the CHA licence had expired and not renewed. The explanation by Mr. Unnikrishnan that the visiting cards were printed two years ago when the CHA licence was still valid and he had simply used the same card without any intention of making any false representation was not accepted by respondent no. 2. In our opinion, the explanation offered by Mr. Unnikrishnan was a plausible explanation and there was no material on record, that for except giving of the visiting card to the respondent no. 2 himself at the time of hearing that the petitioner was using the visiting cards anywhere else and/or misrepresenting that they were still possessing CHA licence. In our view, giving of the visiting card to*

> *respondent no. 2 was even assuming if amounted to misconduct was too insignificant a thing warranting cancellation of the licence or its refusal of its renewal."*

4.25 Madras High Court has in case of ***Transport Logistics [2016 (338) ELT 380 (Mad)]*** held as follows:

> ***"13.*** *In any event, for giving signed blank forms to third parties, the revocation of licence is harsh penalty and the punishment should commensurate for guilty of offence. Therefore, the order of the Commissioner of Customs revoking the CHA licence as confirmed by the CESTAT is set aside.*
>
> ***14.*** *By this order, this Court only restore the CHA licence. However, forfeiture of the security deposit is concerned, there is a violation of CHA regulation by the appellant. Interest of justice would be met by restoring the CHA licence and confirming the order of forfeiture of security deposit."*

4.26 We also take note of the fact that for last four year, appellants have been awarded best Steamer Agent in Cochin Port. Copy of such awards given to them have been placed at page 27, 28, 29 and 30 of the Paper Book. Looking into the past records of the Department itself appreciating the performance of the appellants, we are of the view that act of cancellation of registration is highly disproportionate to the offence alleged.

4.27 However, we hold that penalty under Section 117 which have been imposed is necessary to deter appellants or for that matter anybody else to indulge into such activities in future.

Section 117 of the Customs Act provided for penalties for contravention not expressively mentioned. Section 117 are reproduced below:

> ***"SECTION 117. Penalties for contravention, etc., not expressly mentioned.*** *— Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [one lakh rupees]."*

In our view, a penalty under Section 117 would suffice to deter the happening of similar incidence in future.

5. In the result, we allow the appeal filed to the extent of cancellation of registration of the appellants. Apart from such modification, we uphold the penalties imposed by the Commissioner on them. Appeal is disposed of accordingly.

(Order was pronounced in Open Court on **22.02.2019.)**

SANJIV SRIVASTAVA
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

rv

24