IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

C/194/2012 & C/CO/6/2012

(Arising out of Order-in-Original No. 18862/2012 dated 28.05.2010 passed by the Commissioner of Customs (Seaport-Import), Chennai).

CC (Port-Import), Chennai : Appellant

Vs.

M/s. Freight Field Madras Pvt. Ltd. : Respondent

Appearance

Shri A. Cletus, ADC(AR)
for the appellant

Ms. K. Nancy, Advocate
for the Respondent.

CORAM:

Hon'ble Shri V. Padmanabhan, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing/Decision: **31.05.2018**

FINAL ORDER No**.** **41695/2018**

Per: V. Padmanabhan

The present appeal is filed by the Revenue challenging the OIO No. 18862/2012 dated 28.05.2012.

2. The respondent is a regular Custom House Agent (CHA) authorized to operate in Chennai Custom House. They field a

Shipping Bill No. 3245398 dated 26.08.2006 on behalf of the exporter M/s. India Lanka General Impex, Chennai, declaring the goods as "SS Grinder" with spare parts. But DRI investigated into the export consignment and found that the goods were not as declared by the respondent. The consignment was found to contain "Ketamine hydrochloride" which was a substance prohibited for export. Separate proceedings were initiated for confiscation of the export goods and proceedings were initiated against the respondent by issue of SCN dated 15.05.2007 under the CHALR,2004, proposing to revoke the CHA licence issued to the respondent . The licensing authority ie., the Commissioner of Customs, Chennai, finalized the matter by issue of the impugned order in which he ordered forfeiture of the security deposit of Rs.25,000/- submitted by the respondent. The Revenue filed the present appeal contending that the violation noticed by DRI in the export consignment for which shipping bill was filed by the respondent, were very serious. They have submitted that the punishment by way of forfeiture of the security deposit ordered by the Commissioner is too lenient view and the case merits revocation of CHA licence.

3. In this connection we heard Ld. AR, Shri A. Cletus, ADC on behalf of the Revenue as well as the Ld. Advocate, Ms. K. Nancy for the respondent.

4. The Ld. AR explained the grounds of appeal. He emphasized the fact that the CHA filed the shipping bill which was

found to be grossly mis-declared and the substance prohibited for export was found concealed in the consignment. He submitted that the violations were serious and hence the punishment imposed by the Commissioner is too lenient and merits revocation of the CHA licence. He also brought to our notice the fact of the case that the CHA has allowed the licence to be mis-used by unauthorized person by handing over blank form which was found to have been filled and signed by the unauthorized person.

5. The Ld. Advocate appearing on behalf of the respondent raised the preliminary objection that the CHA Licence Regulations under which the present proceedings have been initiated, does not provide for an appeal to be filed by the Revenue. The regulations provide only for an appeal to be filed by the CHA. Hence it is her submission that the appeal of the Revenue is not maintainable. In this connection she relied on the following decisions:-

1. *Commissioner of Customs, New Delhi Vs. M/s. Falcon India* – 2018 (3) TMI 650-Cestat New Delhi.
2. *Commissioner of Customs, New Delhi Vs. M/s. PSB Logistics Pvt. Ltd*. – 2017 (11) TMI 553

6. We have considered the submissions made by both sides and perused the records.

7.1 The impugned order has been passed at the culmination of the proceedings initiated against the respondent under the CHALR, 2004. After the due process of Regulations, the

Commissioner has refrained from revoking the CHA licence of the respondent but has ordered forfeiture of the security deposit amounting to Rs. 25,000/-. Revenue is aggrieved by the said decision and has filed the present appeal praying for more severe punishment. In this connection we have carefully examined the case laws cited on behalf of the respondent. In the Tribunal decision in the case of *M/s. Falcon India* (supra), the Delhi Bench of the Tribunal has observed that the Revenue does not enjoy the right to file an appeal under CHALR, the observation of the Tribunal are as under:-

> "5. We have heard both sides and perused the material available on record. Regarding the preliminary legal objection of the Respondent, we note that the Tribunal in the cases mentioned above (supra), it has been categorically laid down that the conditions of CBLR, 2013 did not provide for an appeal by the Revenue against the order of the licensing authority. At this juncture, the learned DR submitted that, the Larger Bench decision of the Tribunal in the case of Gaurav Pharma Ltd. vs CCE&ST, Rohtak, 2015 (326) ELT 561 (Tri.- LB), should have relevance to decide the right of Revenue to file the appeal. He specifically drew our attention to para 20, 34 & 38 of the said order of the Larger Bench (supra). We have perused the same and noticed that the Larger Bench had examined the right of the owner of the goods to file an appeal against the decision for provisional release by the adjudicating authority under Section 110A of the Customs Act, 1962. The Tribunal had no occasion to examine the provisions of CBLR, 2013 as the same was not the point of dispute there. Further, the learned DR laid emphasis that any decision of "adjudicating authority" will involve persons and one of the persons should have a legal right to file an appeal for remedy. He submitted that, Section 129A provides for appeal to Appellate Tribunal of any person aggrieved by any order of the Commissioner of Customs. As already noted that the issue regarding right of the Revenue to file an

> appeal under CBLR, 2013 was specifically examined by the coordinate Bench in more than one occasions and concluded that in the presence 4 of specific provision for CHA as well as no specific provision for the Revenue, such appeal is not contemplated or permissible under CBLR, 2013 on the part of the Revenue. We have no reason to differ with the said decisions and accordingly by following the ratio of the said decisions (supra), we find that the appeal by the Revenue is not maintainable and the same is dismissed."

7.2 The present proceedings have been initiated under CHALR 2004, but we are of the view that the view expressed by the Tribunal is equally applicable.

8. By following the above decision, we dismiss the appeal filed by the Revenue on the ground that the CHALR does not provide for a right of Revenue to file an appeal. The cross-objection filed by the respondent also stands disposed.

(Order pronounced in the open Court)

(P. DINESHA)
MEMBER (JUDICIAL)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

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