CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SZB, CHENNAI

COURT : Division Bench B1

**C/40332/2018**

(Arising out of Order-in-Appeal No. 58313/2017 dated 11.09.2017 passed by the Commissioner of Customs, Chennai-VIII Commissionerate, Chennai)

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| M/s. Vee Vee Clearing and Forwarding Pvt. Ltd.<br>New No.4, Door No.18, 3rd Floor, 2nd Avenue<br>Anna Nagar (West)<br>Chennai – 600 040. | Appellant |
| Vs. | |
| The Commissioner of Customs,<br>Chennai-VIII Commissionerate,<br>No. 60, Rajaji Salai,<br>Custom House, Chennai-600 001. | Respondent |

APPEARANCE

FOR APPELLANT : Shri N. Viswanathan, Advocate,

FOR RESPONDENT : Ms. T. Usha Devi, DC (AR), Authorized Representative for the Respondent

**CORAM**

**SHRI MADHU MOHAN DAMODHAR, HON'BLE TECHNICAL MEMBER**
**Shri P.DINESHA, HON'BLE JUDICIAL MEMBER**

Date of Hearing: 08.03.2019
Date of Decision: 08.03.2019

**FINAL ORDER No. 40678 /2019**

**Per P. Dinesha**

By this appeal the assessee-appellant has challenged the rejection of renewal of Customs Broker License. This is the second time, at the instance of the assessee, that the matter has travelled up to this forum.

The following are some of the relevant dates which are of importance:-

| DATE | EVENT |
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| 22.11.2011 | Order-in-Original No. 17717/2011 ordering continuation of suspension of Customs Broker License. |
| 25.03.2014 | Inquiry Report. |
| 03.11.2014 | Order-in-Original No. 30601/2014 revoking license for failure to comply with Regulation 13(a), (d) & (o) of CBLR. |
| 20.07.2016 | Final Order by CESTAT direction restoration of license. |
| 28.04.2017 | CMA by Department before the High Court, Heard, Order reserved. |
| 30.05.2017 | Renewal Order under Regulation 9 (2) of CBLR validating the license for ten years, up to 09.08.2026, requiring the licensee to bring original license for making endorsement. |
| 08.06.2017 | Order of the High Court in WP 7635/2017- any order of renewal is subject to outcome of WP. |
| 11.09.2017 | Impugned order. |

2. The First Order-in-Original by which the license of the appellant-Custom Broker Agent was placed under suspension, is dated 10.10.2011 and vide Order-in-Original No. 17717/2011 dated 22.11.2011, thereafter, continuation of the suspension order was made based on an enquiry report dated 25.03.2014 and then another Order-in-Original No. 30601/2014 came to be passed by revoking the license for the reasons that the Custom Broker had failed to fulfil its obligations under Regulation 13 (a), (b) & (o) of CHALR, 2004. The assessee feeling aggrieved came before this Court for the first time and this Court vide Final Order No. 42355/2016 dated 20.07.2016 had directed restoration of the license with immediate effect. It is also very clear from the findings of this Bench that there was an inordinate delay of about 30 months between the incidence and the submission of report of enquiry, with no evidence of contributory negligence on the part of the appellant, the delay being on the part of the commissioner which was unexplained. The Revenue has not bothered to implement the above order of the Tribunal, though

they have preferred an Appeal (CMA) before the Hon'ble High Court of Madras, but there is no stay order staying the operation of the order of this Court. As submitted, the above CMA has been finally been heard and the judgment is reserved by the Hon'ble High Court.

3. In the meanwhile, the assessee filed a writ petition, in WP No. 7635 of 2017 seeking the intervention of the Hon'ble High Court, for a direction for implementation of the order of this Court by the Revenue and the Hon'ble High Court, vide it's order dated 08.06.2017, after observing the subsequent developments of renewal of license through the proceedings dated 30.05.2017 and also taking note of the arguments of the Ld. Counsel for the Revenue, directed the assessee to appear before the Commissioner of Customs on or before 15.06.2017 for enabling the Commissioner/ Revenue to issue further orders. The Hon'ble Court had also made a categorical observation that any order passed thereafter by the Commissioner was subject to the outcome of the appeal pending before the Division Bench of the Court.

4. It is the case of the appellant that in the meanwhile it received the impugned Order-in-Original No. 58313/2017 dated 11.09.2017 from the Commissioner and the Commissioner, in the said order, has again rejected the renewal of license on the grounds of pending criminal proceedings against the Managing Director Shri M. Radhakrishnan booked by the CBI, which fact according to the Commissioner, was not disclosed and that the loss of license which should have been reported to the Commissioner of Customs, was also not done.

5.1 We have heard Ld. Advocate, Shri N. Viswanathan for the assessee-appellant and Ld. DR, Ms. T. Usha Devi, DC, for the Revenue.

The main contention of the Revenue is that the offence report dated 05.10.2011 was received from the DRI subsequent to raids by both DRI and CBI in the year 2012 and the pending case which was at the stage of prosecution evidence as observed in the impugned order are sufficient reasons for the rejection of renewal of the license. We are afraid these facts are not of any help to the Revenue at this stage because all these took place much prior to the Order-in-Original dated 03.11.2014 and those events definitely are the part of records as these were no new events. The Commissioner who passed the above order is presumed to be aware of the facts on records while passing the above adjudication order dated 03.11.2014. The matter thereafter travelled before this Bench and then to the High Court, and apparently the Revenue having known all these developments, has suffered the above orders.

5.2 We also cannot go into the assessee satisfying or not, of the conditions or non-disclosure of criminal cases, since, as observed by us in the above paragraph these are no new events but the Revenue was very much aware of it since 2012 and, in any case, these are orders after that and as of now, the issue is pending before the Hon'ble High Court. Moreover, communication dated 30.05.2017 is also clear when the Assistant Commissioner has indicated the approval of the Commissioner of Customs (Chennai-VIII) Commissionerate in renewing Customs Broker License on 26.05.2017, the same also indicates the life of the renewed license which is ten years thereafter. This would only mean that a decision as to renewal had been taken and duly communicated. In the end, at Sl.No. 7, however, the Asst. Commissioner directs the production of the original license for making necessary endorsement. This requirement of production therefore, according to us, cannot come in the way of granting license since it is only a formality of the sort of affixing the stamp and nothing else. If the same is held to be a condition precedent, then, what should happen to the FDR (at Sl.No.4) for Rs.50,000/-, is not spelt out in any of the orders. The impugned order is passed in September 2017, just four months after the above communication (dated 30.05.2017) and the criminal case was not booked after the above communication but clearly, the same is an offshoot raids that took place in 2012.

5.3 In any case, there is a direction of the Hon'ble High Court in Writ Petition (supra) that granting of license was subject to the outcome of the appeal pending before the Division Bench of the Court. We were also informed that the Division Bench of the Hon'ble Court has already heard the CMA and reserved its judgment and hence it's a matter of time that would decide the fate of the license. But, till then the order of this Bench with no stay, has to be implemented.

6. For the above reasons, the impugned order cannot sustain for which reason the same is set aside and consequently, the appeal is allowed.

(Operative part of the Order pronounced in the Open Court on 08.03.2019)

(MADHU MOHAN DAMODHAR)
TECHNICAL MEMBER

(P. DINESHA)
JUDICIAL MEMBER

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