CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SZB, CHENNAI

COURT : No. III - DB

APPEAL No. C/40609/2016-DB

(Arising out of Order-in-Original No. 43242/2015 dated 30.11.2015 passed by the Commissioner of Customs, Chennai VIII Commissionerate, Custom House, Chennai).

The Commissioner of Customs, **Appellant**
Chennai VIII Commissionerate,
No. 60, Rajaji Salai,
Custom House, Chennai-600 001.

Vs.

M/s. P.R. Agencies **Respondent**
No. 7, Morrison, 1st Street,
Alandur, Chennai-600 016.

APPEARANCE

FOR APPELLANT : Shri S. Balakumar, AC, Authorized Representative

FOR RESPONDENT: Shri Derrick Sam, Advocate

CORAM

Hon'ble Ms. Sulekha Beevi, Member (Judicial)
Hon'ble Shri P. Anjani Kumar, Member (Technical)

Date of Hearing: **27.01.2022**
Date of Pronouncement: **01.02.2022**

FINAL ORDER No. 40028/2022

Per: Anjani Kumar

The appellant M/s. P. R. Agencies are Customs Broker. A complaint dated 05.06.2015 was received by the Revenue from Chennai Port Trust stating that the customs broker had tampered and forged the Import Application No.2079582 dated 03.03.2014 and the "B" form of the Import Application, showing the port charges as Rs.13,01,456/-in place of Rs. 11,93,150/-. It appeared that the customs broker had violated Regulation 11 (g) of CBLR, 2013. As such an order prohibiting the customs broker was passed on 24.06.2015. Customs Broker submitted his written submissions dated 15.07.2015. Learned Commissioner having gone through the facts of the case has vide Order dated 10.12.2015 ordered for revocation of prohibition ordered vide order dated 24.06.2015. The department is in appeal against the same.

2.1 Learned Counsel for the appellant submits that in terms of paragraph 5.2 of CBEC Circular No. 9/2010-Customs, the Commissioner who permits the customs broker at a station other than the station where the licence is granted can only issue a prohibition order. The said paragraph 5.2 reads as under:-

> "Further, it is also clarified that the Commissioner of Customs at a customs station who had authorised a CHA to operate on 'C' Form intimation, should inform the details of violations to the Commissioner of Customs at the customs station from where the CHA licence was issued for such CHA, so that necessary action for suspension or revocation of CHA licence, could be initiated by him. This would avoid duplication and ensure uniformity in adjudication of a case against a CHA in suspension or revocation proceedings by the customs field formations. However, the Commissioner of Customs, who had authorised a CHA to operate on 'C' form intimation at a customs station, may take action in deserving cases under regulation 21 of CHALR, 2004

> for prohibiting the working of such defaulting CHA in any section of the Custom House/Customs Station."

In the instant case, the authority who has issued the licence has issued the prohibition order and not the Commissioner who permitted the Customs Broker to operate in their station by issuing 'C' form.

2.2 Learned Counsel for the appellant also submits that the Commissioner at the station where the licence is given can suspend/revoke the licence by following the procedure contained in Regulation 19/20 of Customs Broker Licensing Regulations, 2013 (CBLR, 2013 in short). He submits that paragraph-20 of the said Regulation reads as under.

> "Procedure for revoking licence or imposing penalty
>
> (1) The Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the licence or impose penalty requiring the said Customs Broker to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defence and also to specify in the said statement whether the Customs Broker desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.
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> (2) The Commissioner of Customs may, on receipt of the written statement from the Customs Broker, or where no such statement has been received within the time limit specified in the notice referred to in sub-regulation (1), direct the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, to inquire into the grounds which are not admitted by the Customs Broker.
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> (3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall, in

the course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings, and he may also put any question to any person tendering evidence for or against the Customs Broker, for the purpose of ascertaining the correct position.

(4) The Customs Broker shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings, and where the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing.

(5) At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall prepare a report of the inquiry and after recording his findings thereon submit the report within a period of ninety days from the date of issue of a notice under sub-regulation (1).

(6) The Commissioner of Customs shall furnish to the Customs Broker a copy of the report of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, and shall require the Customs Broker to submit, within the specified period not being less than thirty days, any representation that he may wish to make against the said report.

(7) The Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs Broker, pass such orders as he deems fit either revoking the suspension of the license or revoking the licence of the Customs Broker or imposing penalty not exceeding the amount mentioned in regulation 22 within ninety days from the date of submission of the report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, under sub-regulation (5) : Provided that no order for revoking the license shall be passed unless an opportunity is given to the Customs Broker to be heard in person by the Commissioner of Customs.”

He submits that in the instant case, neither a notice has been issued to the Customs Broker even 90 days of the receipt of the offence report nor an enquiry was initiated/conducted in this regard. It has been more than six years and till date no such notice has been given.

2.3 He further submits that in view of the above, the order issuing prohibition is invalid and is liable to be set aside. He relies upon the following case laws:-

1. *Commissioner of Customs, Chennai Vs. CESTAT, Chennai* – 2014 (310) ELT 673 (Mad.)

2. *Santon Shipping Services Vs. The Commissioner of Customs* – MANU/TN/3305/2017.

3. Learned AR for the Revenue reiterated the grounds of appeal and submits that the enquiry and action if any, to be initiated by the Port Trust Authorities is pending.

4. Heard both sides and perused the records of the case.

5. We find that the appellant has made a strong case in their favour. Ongoing through the relevant provisions of law and the Board's Circular issued in this regard, we find that the prohibition order was issued by the Commissioner of Customs of the station where the appellants have been given licence whereas, the same is to be given only by the Commissioner of Customs where the Customs broker is permitted to operate under 'C' form, in terms of the above cited circular. We also find that till date the due notice for revocation of licence if any,

as contemplated under Regulation 20 of CBLR, 2013, has been issued even after the lapse of the prescribed period of 90 days. We find that as submitted by the learned Counsel for the appellants, the said period is also over by a wide margin and as such no proceedings can be initiated against the customs broker, at this juncture, on the offence report given by Port authorities way back, under the said Regulation 20. Therefore, we find that the present appeal filed by the department is not maintainable either on the facts or on the law and is liable to be dismissed.

6. We accordingly dismiss the appeal filed by the Revenue.

(Order pronounced in the Open Court on **01.02.2022**)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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