IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 41705 of 2017

(Arising out of Order-in-Original Sl. No.: 01/2017-(Cus.) Commissioner dated 30.01.2017 passed by the Commissioner of Customs, Central Excise and Service Tax, 6/7, A.T.D. Street, Race Course Road, Coimbatore – 641 018)

M/s. Premier Enterprises **: Appellant**
123, Pillaiyar Koil Street,
Kattoor, Ram Nagar,
Coimbatore – 641 009

VERSUS

Commissioner of Customs, Central Excise and Service Tax **: Respondent**
6/7, A.T.D. Street, Race Course Road,
Coimbatore – 641 018

APPEARANCE:

Shri Shravan Kochar, Advocate for the Appellant

Shri R. Rajaraman, Assistant Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 40077 / 2024

DATE OF HEARING: 28.11.2023

DATE OF DECISION: 24.01.2024

Order : [Per Hon'ble Mr. P. Dinesha]

This appeal is filed by the Custom House Agent/appellant against the Order-in-Original Sl. No.: 01/2017-(Cus.) Commissioner dated 30.01.2017 passed by the Commissioner of Customs, Central Excise and Service Tax, Coimbatore.

2. Heard Shri Shravan Kochar, Ld. Advocate for the appellant and Shri R. Rajaraman, Ld. Assistant Commissioner for the Revenue.

3. Facts, as could be gathered, are that: -

(i) The appellant had made a request vide letter dated 13.01.2011 requesting to replace Mr. R. Mahadevan with Mr. Bose Thomas as their authorized person, to transact Custom House work on behalf of the appellant-firm, which appears to have been accepted by the Deputy Commissioner (Customs), Coimbatore vide communication dated 12.04.2011.

(ii) The appellant vide letter dated 27.05.2011 sought for issuance of duplicate CHA Licence for the reasons set out therein.

(iii) Much later i.e., on 13.03.2012, the appellant appears to have submitted Form-A and other relevant documents, including the 'Minutes of meeting held on 27-12-2010 for removal of Shri R. Mahadevan and inclusion of Shri Bose Thomas as an authorized person to transact Custom House Work' (Sl. No. 7 of the contents, at page 49 of the appeal memorandum) to the Deputy Commissioner of Customs (Policy), Coimbatore.

(iv) On account of dispute, it appears that Mr. R. Mahadevan filed a civil suit, but no supporting documents have been filed before us in this regard other than print-outs of telegrams dated 16.07.2012 (placed at pages 45-A, 45-B and one unnumbered page in the appeal memorandum).

(v) Application dated 14.12.2015 was filed by the appellant for renewal of Customs Broker's Licence. Form-A records the fact (at row no. 4) that 'R. MAHADEVAN' was being replaced by a person by name 'K. SRIRAM' (page 44), which is contrary to the enclosure at Sl. No. 7 of the appellant's letter dated 13.03.2012 (placed at page 49 of the appeal memorandum).

(vi) The renewal application dated 14.12.2015 was returned vide communication dated 22.01.2016 (placed at page 40 of the appeal memorandum) on account of discrepancies/deficiencies. In the said communication, it is also observed that there was suppression as to the inclusion of Mr. Bose Thomas and that the clarification sought vide letter dated 16.07.2012 regarding the status of Mr. Bose Thomas was not submitted.

4.1 Thereafter, the appellant appears to have approached Hon'ble High Court of Madras, the reason being its non-renewal of license. For brevity, we deem it appropriate to refer to paragraph 3 of the Order of the Hon'ble High Court in W.P. No. 42073 of 2016 dated 30.11.2016, which reads as under: -

> *"3. It is seen that the petitioner's application for renewal was well within the period of limitation and it was submitted on 08.12.2015. On 14.12.2015, the petitioner submitted 10 documents and requested the third respondent to consider the same and renew the customs broker license. After receipt of those documents, the fourth respondent issued a notice, dated 22.01.2016 returning the petitioner's application for reasons stated therein. The petitioner re-presented the application along with their letter dated 25.02.2016, giving clarification for the queries pointed out. It is thereafter, once again, the fourth respondent issued another communication dated 01.04.2016 stating that there are deficiencies and discrepancies in the application for renewal and returned the application. The said application was re-presented by the petitioner along with the letter dated 11.04.2016. However, in the said letter, the petitioner has not specifically clarified the deficiencies and discrepancies pointed out in the communication dated 01.04.2016 of the third respondent, but has requested the third respondent to refer to his reply dated 25.02.2016. However, the said reply, dated 25.02.2016 has not been appended to this Writ Petition and therefore this Court is not in a position to readily examine as to what was the contents of the reply."*

4.2 After hearing both sides, the following Order came to be passed by the Hon'ble High Court: -

> *"5. In the light of the above, there will be a direction to the petitioner to submit a clarification to the deficiencies and discrepancies pointed out in the*

> *Communication, dated 01.04.2016 issued by the fourth respondent within a period of two weeks from the date of receipt of a copy of this order and also enclose a copy of this order. On receipt of the same, the fourth respondent shall consider and pass a speaking order on merits and in accordance with law, within a period of three weeks from the date of receipt of the reply."*

4.3 Thereafter, vide letter dated 29.12.2016, a request was made by the appellant for renewal of Licence in terms of the Order of the Hon'ble Madras High Court (*supra*).

5. Personal Hearing was granted and it appears that the appellant appeared in the Personal Hearing before the Commissioner, as evidenced by the Record of Personal Hearing dated 18.01.2017, which is placed on record before us. Thereafter, the Order-in-Original Sl. No.: 01/2017-(Cus.) Commissioner dated 30.01.2017 came to be passed, against which the present appeal has been filed before this forum.

6. Initially, the appellant-firm was having only two partners, which was reconstituted with the induction of Mr. R. Mahadevan as per the "Deed of Reconstitution of Partnership" dated 30.05.2000 (placed at pages 60 to 67 of the appeal memorandum). The appellant was granted Licence to transact Custom House business (as per Section 146 of the Customs Act, 1962) for five years.

7. The contentions of the appellant are as under: -

- The dispute / exclusion of Mr. R. Mahadevan was purely an internal matter. Mr. R. Mahadevan was sent out of firm due to serious differences and he had retained the original license of the appellant.

  Our observation: The above contention is incorrect since as per the communication dated 27.05.2011, which is placed at page 50 of the appeal memorandum, the appellant through its Managing Director had pleaded for issuance of duplicate CHA Licence for the reason that the original CHA Licence was not traceable.

- The Reconstitution was informed to the Department and renewal was granted for ten years, but subsequent renewal was not made.

- The appellant has a right for renewal of the Licence, which has to be looked into only in terms of the Customs Brokers Licensing Regulations (CBLR), 2013; the Revenue should have taken up the application for renewal even before the expiry of the Licence.

- The appellant had a good track record of work as a CHA and hence, the non-renewal of Licence by the Department is clearly erroneous.

- The application for changing the person authorized to do customs clearance work was pending consideration for more than three years for no fault of the appellant. Initially, Mr. R. Mahadevan was the authorized signatory, who was deleted from the firm with effect from 12.04.2011. Subsequently, Mr. Bose Thomas was appointed and he too resigned in July 2012. Immediately thereafter, the appellant appointed Mr. K. Sriram as the authorized signatory for carrying out the customs clearance work. Non-acceptance of the same by the Department vide communication dated 22.01.2016 was without any rhyme or reason.

8.1 *Per contra*, the Ld. Assistant Commissioner for the Revenue supported the order of the Commissioner. He has also referred to the letter dated 12.04.2011 from the Deputy Commissioner (Customs) to the appellant, which is placed at page 56 of the appeal memorandum, wherein the said authority has intimated the acceptance of the appellant's request to replace Mr. R. Mahadevan with

Mr. Bose Thomas as the authorized person to transact Custom House work on their behalf under Regulation 17 of the CHALR, 2004.

8.2 He would also refer to the findings at various paragraphs of the impugned order, the relevant portions of which are reproduced hereunder: -

- *"Then Shri K.N. Pai, Managing Partner of M/s. Premier Enterprises approached this office to issue a Duplicate Customs Broker Licence as the same is missing/non-traceable for which this office informed him to get a FIR copy from Police regarding non-traceability/missing and he submitted the same and this office issue duplicate Customs Broker Licence on 22.07.2011. Later on, Shri Mahadevan, the other Partner submitted the original Customs Broker Licence issued to them which reveals that the Managing Partner Shri K.N. Pai knows that the original licence is with the disputed partner and hiding this fact he has applied for duplicate Customs Broker Licence."*

- *"During 05.07.2012, the Managing Director of M/s. Premier Enterprises approached this office to include Shri Shriram as authorized signatory for which this office asked clarification regarding the existing authorized signatory Shri Bose Thomas which was not replied till now and hence the same was not accepted. Further, it is a fact that during 2012 itself,* *Shri Bose Thomas resigned from M/s. Premier Enterprises, the same fact was not informed to Customs by the partners of the firm and also not requested this office to delete Shri Bose Thomas from the Customs authorized signatory of M/s. Premier Enterprises."*

- *"As such, M/s. Premier Enterprises is not having any customs authorized signatory from 2012 onwards which makes their Customs Broker Licence invalid/could not be operated. But Shri K.N. Pai, Managing Director of M/s. Premier Enterprises knowing fully well of the above facts operated the licence without the Customs authorized signatory continuously for 3 years i.e. 2013, 2014 and 2015 and cleared various consignments which can be seen from their business volume details."*

8.3 He would also draw our attention to the letter dated 01.04.2016 of the Assistant Commissioner (Customs) addressed to the appellant with regard to renewal of Customs Broker Licence, which is placed at page 36 of the appeal memorandum, the relevant paragraph of which reads as under: -

"03. Even though, Shri Mahadevan was removed by you as a Partner of the Firm, it was not officially accepted by this office as Shri Mahadevan vide his letter given during 2012 informed this office that there is a dispute between the Partners. As the

> *above said deletion of Shri Mahadevan from the Partnership was not accepted by Commissioner, the application for renewal of Customs Broker Licence should contain Shri Mahadevan's name as one of the Partners and not that of the other two new Partners whose names have not been accepted by the Commissioner till date."*

9. In his rejoinder, the Ld. Advocate reiterated the grounds urged, highlighting that the dispute, if at all, between the appellant and one of the erstwhile partners was a private dispute; the renewal of the Licence in question is to be judged only in terms of the Regulations and that the findings in the impugned order and the consequent decision not to renew the Licence are vitiated on account of the same taking into account irrelevant and extraneous materials. The appellant has also urged in their grounds-of-appeal that the impugned order had serious civil consequences and the appellant's operation as a CHA has come to a complete standstill due to non-renewal of its Licence.

10. We have considered the rival contentions and perused the documents placed on record.

11. Regulation 9 of the CBLR, 2013 reads as under:-

> *"9. Period of validity of a licence.*
>
> *(1) A licence granted under regulation 7 shall be valid for a period of ten years from the date of issue and shall be renewed from time to time in accordance with the procedure specified in sub regulation (2):*
>
> *Provided that a licence granted to a Customs Broker, authorised under the Authorised Economic Operator Programme referred to in Board's Circular No. 28/2012 Customs dated 16.11.2012, shall not require renewal till such time the said authorisation is valid.*
>
> *(2) The Commissioner of Customs may, on an application made by the licensee before the expiry of the validity of the licence under sub-regulation (1),* ***renew the licence for a further period of ten years from the date of expiration, if the performance of the licensee is found to be satisfactory with reference, inter alia, to the obligations specified in this regulation including the absence of instances of any complaints of misconduct.***
>
> *(3) The fee for renewal of a licence shall be five thousand rupees."*

(Emphasis added)

12. Regulation 13(1) of the CBLR, 2013, as applicable, which is also relevant, reads as under: -

> *"Regulation 13. Change in constitution of any firm or a company. — (1) In the case of any firm or a company, holding a licence under these regulations, any change in the constitution thereof shall be reported by such firm or company, as the case may be, to the Principal Commissioner or Commissioner of Customs as early as possible, and any such firm or a company indicating such change shall make a fresh application to the said Principal Commissioner or Commissioner of Customs within a period of sixty days from the date of such change for the grant of licence under regulation 7, and the Principal Commissioner or Commissioner of Customs may,* ***if there is nothing adverse against*** *such firm or company, as the case may be, grant a fresh licence:"*

(Emphasis added)

13.1 From the above Regulations, we find that any licence granted under the CBLR is always a conditional one and not absolute and that the granting authority has a discretion to allow the renewal as well, as and when requested for. In the impugned order, the Commissioner has highlighted the conduct of the Managing Director of the appellant-firm: firstly, it appears that the Managing Partner suppressed the fact of the original licence having been available with the other partner namely, Mr. R. Mahadevan, and approached the Revenue for issuance of a duplicate licence on the ground that the same was missing / not traceable; it is also an undisputed fact that the said Managing Director reported the loss of licence to the police and obtained a copy of FIR from the police. Secondly, a subsequent application for issuance of licence is alleged to have been made "***with the same old date and some pages were changed … This forgery of partnership deed was carried out by the Managing Partner…***". Thirdly, the subsequent application was made for the inclusion of Mr. Sriram as the authorized signatory, for which the office sought clarification as the records indicated that the existing authorized signatory was one Mr. Bose Thomas.

13.2 Further, there is also an observation in the impugned order, at page 6, that the appellant-firm was not having any Customs authorized signatory from 2012 onwards and hence, their Customs Broker Licence could not be operated, but the appellant, knowing fully well, had operated the Licence without the Customs authorized signatory continuously for three years i.e., 2013, 2014 and 2015 and cleared various consignments, which could be seen from their business volume details. The above observations are quite serious, having known that the other party had with him the original licence, the appellant appears to have filed a false complaint with the police alleging about the loss of the original licence, a copy of which was also filed with the Revenue authorities requesting for a duplicate of the same on the very same ground of loss/misplacement. There was also an allegation of forgery. The appellant against whom the above serious allegations/observations were made was therefore required to offer reasonable explanation and establish his *bona fides*, but however, the above allegations remain unanswered even before us. The other crucial misconduct which is highlighted in the impugned order is that the appellant had operated the licence without the Customs Authorized Signatory for three years, which fact also shakes the *bona fides* of the appellant. Instead of offering plausible explanation for the said misconduct, the appellant has only questioned the authority of the Commissioner as going beyond the issue.

14. In the light of our above observations and discussions, we do not find any irregularity or illegality committed by the Commissioner, Regulations of the CBLR authorize the Commissioner to check if there is anything adverse against a firm or company seeking fresh licence and to grant renewal of the same if there are no instances of any complaints of misconduct.

15. Hence, we do not find any merit in the appeal filed by the appellant, for which reason the appeal is dismissed.

(Order pronounced in the open court on **24.01.2024**)

Sd/-	Sd/-
(M. AJIT KUMAR)	**(P. DINESHA)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

Sdd