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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: **18/11/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/53437/2015-CU[DB]** dated **23/10/2015**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **129-A(4)** of the **Customs Act, 1962.**

Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1 C/MISC/51157/2015	C/51743/2015	**Atharya Globl Logistics** (customs House Broker, 11/15/1578) Cha, 142, Mahkali Mansion,3rd Floor, Petin Nariman Street, Fort, Mumbai Mumbai Maharastra-400001

Name and Address of Respondent

2 C.C.-New Delhi(import & General)
NEW CUSTOM HOUSE,NEAR IGI
AIRPORT,
NEW DELHI

Copy To
3Advocate(s) / Consultant(s):

B. R. Tripathi
A-23/90, RAJA WADI CHS,
CHITRANJAN NAGAR,
GHAT KOPAR (E),
MUMBAI,
MAHARASHTRA
400077

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi
6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order : 23.10.2015

Appeal No. C/51743/2015-CU(DB)

[Arising out of Order-in-Original No. 9/NK/Policy/2015 dated 13.2.2015 passed by the Commissioner of Customs (Import & General), New Delhi]

For Approval & Signature :

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. R.K. Singh, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

M/s Atharva Global Logistics — Appellant

Vs.

CC, New Delhi — Respondent

Appearance:

Shri B.R. Tripathi, Advocate - for the Appellant

Shri Amresh Jain, D.R. - for the Respondent

Coram : **Hon'ble Mr. Ashok Jindal, Member (Judicial)**
Hon'ble Mr. R.K. Singh, Member (Technical)

F. Order No. 53437/2015

Per **Ashok Jindal :**

The appellant is in appeal against the impugned order wherein Commissioner of Customs (General), New Delhi has revoked the Custom Broker License of the appellant exercising the power under

Regulation 20 read with Regulation 12(7) of the Customs Broker Licensing Regulation, 2013 and forfeited the bank guarantee of Rs.75,000/- furnished by the appellant vide order dated 13th Feb. 2015.

2. The facts of the case are that the appellant is a Custom House Broker operating under license issued by the Commissioner of Customs (General), New Delhi. Initially vide order dated 16.12.2013 the Custom Broker License was suspended on the ground that the appellant failed to exercise supervision to ensure proper conduct of his employees in transaction of business and accordingly is responsible for mis-conduct of his employees. Thereafter, the proceedings were initiated against the appellant under Regulation 20 by issuance of the Show Cause Notice dated 17.6.2014 and thereafter their CHA licence was revoked by way of impugned order on the ground that one M/s Harsh Enterprises had imported the consignment declared to be 'DVD Parts DVM3 MN-IW in the Bill of Entry, the appellant of its clearance on examination, the goods were found to be DVE Pick Up Unit and accordingly, the department, declared value of the goods was on lower side. It was alleged that the appellant being custom broker has involved with the importer and has failed to discharge his obligation as Customs Broker has envisaged under Custom Broker Licensing Regulation 2013. Accordingly, pending the completion of enquiry, the Commissioner

vide order dated 6.12.2013 suspended the appellant's license and thereafter post suspension decision, hearing was also granted and finally their license was suspended. Thereafter, a Show Cause Notice was issued to the appellant on 17.6.2014 to initiate proceedings in terms of Regulation 22 of CHALR, 2004 and Regulation 20(1) of CBLR, 2013 and thereafter their Custom Broker licence was revoked vide order dated 13.2.2015. Aggrieved from the said order, the appellant is before us.

3. The ld. Counsel for the appellant appeared and submits that in this case the DRI, intimated to the adjudicating authority on 7.10.2013 which was received in their office on 18.10.2013 and thereafter DRI issued a Show Cause Notice dated 30.10.2013 under Customs Act, 1962 and the Show Cause Notice under Regulation 18 read with Regulation 20 of the Custom Broker Licensing Regulation 2013 was issued on 17.6.2014 which is beyond the prescribed time limit as per Regulation 20 of the said Regulation. Therefore, the order of revocation of Custom Broker Licensing is to be set aside in the light of the decision of this Tribunal in the case of ***M/s Surpass Freight Forwarders*** vide Final Order No. 41020/2015 dated 26.8.2015. He also relied on the decision of the Hon'ble High Court of Madras in the case of ***CC Vs. A.M. Ahmed & Co.*** in writ petition No. 371/2015 vide order dated 2.7.2015.

4. On the other hand, ld. DR opposed the contention of ld. Counsel and submits that it is admitted fact that the appellant has violated the regulation of Custom Broker Licensing Regulation 2013 and their license was also suspended. Therefore, the show cause notice was issued and after issuing of the Show Cause Notice the order is passed on merits.

5. Heard the parties. Considered the submissions.

6. It is case of revocation of Custom Broker License under Custom Broker Licensing Regulation, 2013. Regulation 20 of such regulations deals with the procedure for revoking license or imposing penalty which is re-produced as under:

> (1) The Commissioner of Customs shall issue a notice in writing to the Customs House Agent within ninety days from the date of receipt of offence report, stating the grounds on which it is proposed to suspend or revoke the licence and requiring the said Customs House Agent to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Customs House Agent desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.
>
> Provided that the procedure prescribed in regulation 22 shall not apply in respect of the provisions contained in sub-regulation (2) to regulation 20.
>
> (2) The Commissioner of Customs may, on receipt of the written statement from the Customs House Agent, 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 to inquire into the grounds which are not admitted by the Customs House Agent.

(3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs 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 House Agent, for the purpose of ascertaining the correct position.

(4) The Customs House Agent 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 shall prepare a report of the inquiry recording his findings and submit his report within ninety days from the date of issue of a notice under sub-regulation (1).

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

(7) The Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs House Agent, pass such orders as he deems fit 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).

(8) Any Customs House Agent aggrieved by any decision or order passed under regulation 20 or sub-regulation (7) of regulation 22, may prefer an appeal under section 129A of the Act to the Customs, Central Excise and Service Tax

> Appellate Tribunal established under sub-section (1) of section 129 of the Act.

As per Regulation 20(1), the Commissioner of Customs is required to issue a notice in writing to the Custom Broker within a period of 90 days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the license or impose penalty. Admittedly, in this case the DRI has intimated to the Commissioner regarding offence vide their letter dated 7.10.2013 which was received in the office of the Commissioner on 8.10.2013. Furthermore, a Show Cause Notice was also issued to the appellant by the DRI under Customs Act, 1962 on 31.10.2013 and the Show Cause Notice under Regulation 20(1) has been issued on 17.6.2014 which is admittedly beyond a period of 90 days prescribed under Regulation 20(1) of the Customs Broker CBLR. 2013. Therefore, we hold that proceedings against the appellant are not sustainable being time-barred as held by this Tribunal in the case of ***M/s Surpass Freight Forwarders*** (supra) wherein this Tribunal has observed as under :

> "5. Be that it may as to the involvement of the appellant and commitment of the offence, the limitation prescribed by law cannot be given goby. When customs failed to adhere to the limitation, it lost its remedy under Regulation 20 of CBLR 2013, following the decision of the Hon'ble Madras High Court in the aforesaid judgement.
>
> "6. Record reveals that against the allegation of the commitment of the offence by appellant, it was issued notice dated 31.10.2013 under Customs Act, 1962. There

is no result of that proceedings on record nor either side informed.

7. No doubt, consequent upon the allegation made by DRI as to the commitment of the offence made by appellant, prohibitory order was issued on 29.10.2013 by the Commissioner of Customs, Mumbai. The appellant replied against that prohibitory order on 8.11.2013 to the Commissioner of Customs (General), Mumbai. Even the appellant also filed reply to the offence report dated 7.10.2013 on 22.11.2013 before the Commissioner of Customs, Chennai. Despite entire materials were there on record, before the Commissioner of Customs, Chennai, he failed to proceed against the appellant in terms of Regulation 20 within the stipulated time. When that Regulation is mandatory and requires the public authority to act publicly to pass public order and he fails to do so within the time prescribed, recourse to that provision is no more available to him on the expiry of the period so stipulated. Therefore, when the mandatory requirement of the Regulation was paid scanty regard, the appellant is correct to plead that he is entitled to the benefit of the principles relating to limitation laid down by the judgment of the Hon'ble Madras High Court in the aforesaid judgement.

8. It is surprising that when the offence report came to record on 7.10.2013, revocation of licence was made on 19.1.2015 and that too without a notice issued within the period stipulated by Regulation 20 of CBLR 2013. In the meantime, 16 months have elapsed. No doubt the action under the Custom Broker Licensing Regulation, 2013 is without prejudice to the consequence under Customs Act, 1962. But violation of principles of natural justice by a belated action of the authority made its order fatal. Therefore, appeal is allowed following the decision of the Hon'ble Madras High Court in the aforesaid judgement and the impugned order is set aside."

We further find that the same view was taken by the Hon'ble High Court of Madras in the case of ***CC Vs. A.M. Ahmed & Co*** (supra) wherein the Hon'ble High Court held that the date of show cause notice issued by DRI shall be the date of receipt of offence report and within 90 days thereof notice under Regulation 20 could have been issued. As the time limit prescribed by the Regulation under CBLR,. 2013 has not been followed by ld. Commissioner of Custom (General), New Delhi. Therefore we set aside the proceeding initiated against the appellant under CBLR, 2013. In result, the order of revocation of CHA Custom Broker License and forfeiture of security deposit is set aside by making the custom broker licence operative with immediate effect.

9/11/15

(Ashok Jindal)
Member (Judicial)

(R.K. Singh)
Member (Technical)

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