FAX : [redacted]-26108426 **REGISTERED / AD**

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

Dated: **21/01/2016**

To

- Appellant as per address in table below
- Respondent as per address in table below

Final Order No. **C/A/53909/2015-CU[DB]** dated **23/12/2015**

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.**

**Deputy/Asstt. Registrar (CUSTOMS Appeal Branch)**

| Application | Appeal | Name and Address of Appellant |
|---|---|---|
| 1 C/Stay/52140/2015, | C/53380/2015 | **Zen Cargo Movers Pvt Ltd**<br>Ag-50, Sanjay Gandhi<br>Transport Nagar, G.t. Karnal<br>Road, By Pass<br>NEW DELHI-110042 |

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):

**GARVIT CHAUHAN ADV**
**H.NO. 82-L, NEW COLONY,**
**GURGAON-122001, HARYANA**

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

21/01/16

**Deputy/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 : 23.12.2015**

## No. C/Stay/52140/2015 & C/53380/2015-CU(DB)

(Arising out of Order-in-Original No. 108/NK/Policy/2015 dated 1.9.2015 passed by the Commissioner of Customs (Import & General), New Delhi)

**For Approval & Signature :**

**Hon'ble Mr. Justice G. Raghuram, President**
**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 Zen Cargo Movers Pvt. Ltd. — Appellant

Vs.

CC, New Delhi — Respondent

**Appearance**

Shri B.K. Singh, Advocate
Shri Garvit Chauhan, Advocate - for the appellant

Shri Ranjan Khanna, D.R. – for the respondent

CORAM: **Hon'ble Mr. Justice G. Raghuram, President**
**Hon'ble Mr. R.K. Singh, Member (Technical)**

Final Order No. 53909/2015

Per **R.K. Singh:**

Appeal is filed against order-in-original dated 20.8.2015 in terms of which the CHA licence of the appellant was revoked and forfeiture of the whole amount of security deposit was ordered.

2. Ld. Advocate for the appellant pleaded that he is not arguing the issue on merit but only the issue of non-observance of the time lines prescribed in the CHA Licensing Regulations, 2004 adding that the show cause notice in this case was issued on 17.7.2013 while the enquiry report was submitted on 26.6.2015 which was beyond the time period prescribed in Regulation 22 of the said Regulations, and that such violation of the prescribed time limit makes the impugned order unsustainable.

3. The ld. DR, on the other hand stated the said time lines are essentially directory in nature and therefore violation thereof would not be fatal to the impugned order.

4. We have considered the contentions of both sides. The issue involves is violation of the time lines prescribed in Regulation 22 of the Regulations of 2004. The regulation is reproduced below:

> **"22. Procedure for suspending or revoking licence under Regulation 20.-**
>
> (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."

It is evident from the above quoted regulation that under sub-regulation (5) thereof, the Deputy Commissioner is required to submit his inquiry report recording his findings within 90 days from the date of issue of a notice under sub-regulation (1). In the present case, the notice under sub-regulation (1) of Regulation 22 was issued on 17.7.2013 and the inquiry report by the Deputy Commissioner in terms of Regulation 22 (5) was submitted more than 22 months after that (on 26.6.2015). Sub-regulation (2) of Regulation 20 deals with suspension of licenses and therefore proviso to sub-regulation 1 of Regulation 22 has no relevance to the present proceedings.

The Hon'ble Delhi High Court in ***Shankar Clearing & Forwarding vs. CC (Import & General)*** - 2012 (283) ELT 349 (Del.), the Hon'ble Madras High Court in ***Sanco Trans Ltd. Vs. CC, Sea Port/Imports, Chennai*** - 2015 (322) ELT 170 (Mad.), this Tribunal in ***Rajeev Mayaer Vs. CC (Import & General), New Delhi*** - 2014 (308) ELT 146 (Tri.-Del.), in ***Om Freight Forwarders Pvt. Ltd. Vs. CC (General), Mumbai*** - 2014 (311) ELT 793 (Tri.-Mumbai) and in ***Sri Radhakrishna Shipping (P) Ltd. Vs. CC, (General), Mumbai*** - 2015 (318) ELT 660 (Tri.-Mumbai) have uniformly held that if any of the intermediary steps such as issue of show cause notice, drawing up of an inquiry report, or passing of a revocation order is beyond the periods mandated under Regulation 20 of the 2013 Licensing Regulations, (corresponding to Regulation 22 of the Customs House Agents Licensing Regulation, 2004 as amended in 2010), the eventual order of revocation would be invalid.

5. For the aforesaid reasons and on the preceding analysis, the impugned order cannot be sustained and is accordingly quashed. Appeal is allowed.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

RM