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

Dated: 04/03/2014

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/50769/2014-CU[DB] dated 25/02/2014

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/517/2012	C/30/2012	**AVI CLEARING AGENCY,** G-30, RATNA SAGAR, M.S.B. KA RASTA, JOHRI BAZAR, JAIPUR.
			Name and Address of Respondent
2		C/30/2012	**C.C.(JODHPUR)** HQ AT NEW CENTRAL REVENUE BUILDING, STATUE CIRCLE, 'C' SCHEME, JAIPUR 302005.

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s):

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4 Bar Association, CESTAT, Delhi
5 Director Publications, Customs, Excise. I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram,
New Delhi-110 066

COURT – II

C/Misc./517/2012 with Customs appeal No. 30/2012

[Arising out of Order-in-Original No. 09/CHA/2011 dated 29.11.2011 passed by the Commissioner of Customs, Jaipur]

Date of hearing/decision: 26th February, 2014

M/s. AVI Clearing Agency, Appellants

Versus

C.C., Jaipur Respondent

Present for the Assessee: Shri Jitin Singhal, Advocate
Present for the Revenue : Shri V.P. Batra, A.R.

Coram: Hon'ble Shri Ashok Jindal, Judicial Member;
Hon'ble Shri Manmohan Singh, Technical Member

FINAL ORDER NO. 50369/2014

Per Ashok Jindal:

The appellant (CHA) is in appeal against the order dated 29.11.2011 whereby CHA license was suspended. He has also filed an application to bring additional ground on record. The facts of the case are that on the basis of intelligence gathered by the DRI, Zonal Unit, Ahmedabad, that some importers engaged in the import of Glass Chatons, Furniture and Mobile Accessories were resorting to gross undervaluation with the connivance of the CHA M/s. Fairdeal Shipping Agency Pvt. Ltd., Jaipur. Searches were carried out by the DRI at their office premises and recovered various incriminating documents. The e-mail account of the said CHA was accessed and print outs of various mails were retrieved from the inbox and sent folder of the mail

Cont p.2

account. It was observed that the import invoices, from two overseas suppliers M/s. Perfect Trading, Hongkong and M/s. Sunland Trading Ltd., Hongkong, were received in the inbox folder of the e-mail account of the said CHA from the e-mail of the overseas supplier. The invoices received from the overseas supplier were in MS-Excel format and complete in all respect, except the rate and value columns, which were found blank. These two columns of Rate and Value were filled up by the CHA with grossly undervalued figures and after taking a printout of such invoices they were presented before Customs for seeking clearance of the imports. Shri Vinod Kumar Sharma, Director of the said CHA firm in his statement recorded by DRI admitted to have committed the offence of undervaluation by way of tampering of import invoices and clearing the import consignments on t he basis of such fabricated import documents. He also admitted that he had committed the above offences in order to enable the importers to evade customs duty, in the process of which he also benefitted. Thereafter, proceedings under Regulation 20(2) of CHALR, 2004 were initiated and the CHA license was suspended on 5.9.2011. After suspension of CHA license, a personal hearing was granted to the appellant on 8.11.2011. Thereafter, impugned order was passed for continuation of suspension of CHA license. But after that no proceedings were initiated under Regulation 22 of CHALR, 2004 against the appellant. In these circumstances the appellant is in appeal with a prayer that the order of suspension of CHA license dated 29.9.2011 be revoked.

2. Learned Counsel appearing on behalf of the appellant submits that as per circular No. 9/2001 proceedings against CHA can be

contd p. 3

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initiated on the basis of offence report received against the CHA and license can be suspended but the proceedings under Regulation (22) of CHALR are to be completed within 9 months from the date of receipt of offence report. As of now more than 2 years have been passed but proceeding under Regulation (22) has not been completed. Therefore, impugned order be set aside in the light of the decision of the this Tribunal in the case of Vinod Tomar, reported in 2011 (272) ELT 564 (Tri.-Del.).

3. On the other hand, learned A.R. submits that as the matter is still in investigation of DRI and the offence alleged against the appellant is grave and serious, therefore, impugned order is required to be continued till investigation is completed.

4. Heard both sides and considered the submissions.

5. As per Board's circular dated 8.4.2010 proceedings against CHA is required to be completed within 9 months of the date of receipt of offence report. Admittedly, in this case time has been passed for more than 2 years after receipt of offence report. Therefore, relying on the decision in the case of Vinod Tomar (supra) the appellants are entitled for relief. In these circumstances we revoke the suspension of CHA license No. 01/CHALR/2011 ordered vide impugned order dated 29.9.2011.

6. Revenue is at liberty to proceed against the appellant under Regulation (22) of CHALR, 204. Appeal is disposed off in the above manner. Accordingly, Misc. application is also disposed off.

(Dictated and pronounced in the Open Court.)

27.2.2014

(MANMOHAN SINGH)
TECHNICAL MEMBER

RK

26/02/14

(ASHOK JINDAL)
JUDICIAL MEMBER