REGISTERED / AD

FAX : 011-26108426

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

Dated: 29/10/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/53273/2015-CU[DB]** dated **14/10/2015**

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/51684/2015	C/51560/2015	**Sada Nand Choudhary** Rzf 777/24e, Street No. 15, Rajnagar Part 2, Pala, Colony NEW DELHI-110077
			Name and Address of Respondent
2			C.C.-New Delhi(import & General) NEW CUSTOM HOUSE,NEAR IGI AIRPORT, NEW DELHI

Copy To

3 Advocate(s) / Consultant(s):

Ashutosh
Chamber No.143, Patiaala House Court,
New Delhi

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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/ Decision:14.10.2015

Customs Appeal No.C/51560/2015

[Arising out of Order-in-Original No.05/DPS/POLICY/2014 dated 5.12.2014 passed by the Commissioner of Customs (General) New Delhi]

M/s.Sada Nand Choudhary — Appellants

Vs.

CC (General) — Respondent

Appearance:

Rep. by Shri Ashutosh, Advocate for the appellant.
Rep. by Shri Amresh Jain, DR for the respondent.

For approval and signature:

Hon'ble Shri Justice G. Raghuram, President
Hon'ble Shri B. Ravichandran, Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should 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 Departmental authorities?	

Coram: Hon'ble Shri Justice G. Raghuram, President
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 53273/2015 dated:14.10.2015

Per Justice G. Raghuram:

Heard the ld. Counsel for the appellant and ld. DR for the respondent/Revenue.

2. The facts presented in this appeal illustrate gross injustice meted to the appellant, serious violation of due process and transgression of appellant's fundamental right to carry on his occupation and business, guaranteed under Article 19 of the Constitution.

3. From the material on record and on the uncontested factual scenario, on 26.03.2012, a shipping bill was filed by one M/s. Akar Iron Creations Pvt. Ltd. declaring export cargo of purported 249 cartons of furniture, processed purportedly through the appellant as a Customs House Agent. On the basis of an intelligence received on 10.04.2012, that there was an attempt to export a consignment of Red Sanders Logs under the guise of export of furniture through the Mumbai Port to Dubai from ICD, TKD, New Delhi, the container in question was intercepted, seized and a letter addressed to the Commissioner of Customs, New Delhi on 30.04.2012 intimating the seizure. On 16.05.2012, a statement was recorded from an employee of CMC, New Delhi, which stated that the said shipping bill was filed through CMC by the appellant as CHA as per the entry in the export job register. Mr. Dev Singh Rawat, the employee of CMC purportedly stated that the shipping bill was filed by one Shri Surender Kumar Singh, G.Card Holder of the appellant and that some other person, whose name he did not know, had approached him for the said shipping bill. Mr. Rawat also appears to have informed Shri Surender Kumar Singh, G.Card Holder of the appellant about this incident and that he had not handed over the papers to that person but asked him to bring the G. Card Holder.

4. On 16.05.2012, the appellant's G. Card Holder, Shri Surender Kumar Singh denied having filed the said shipping bill. He however stated that he was informed by Mr. Dev Singh Rawat, employee of CMC. On the same day, a statement of the appellant was recorded, wherein the appellant categorically denied having filed

the shipping bill and also stated that he was not informed by his G.Card Holder anything about the incident. In his further statement dated 18.05.2015, the G. Card Holder asserted that he did not consider it necessary to inform either the Department or the appellant about the matter.

5. On 25.05.2012, the offence report was received and an interim licence suspension order was passed on 12.06.2012 under Regulation 20(2) CHALR, 2004. After a ritual of personal hearing, an order of confirmation of suspension was passed on 10.07.2012. In Customs Appeal No.3982 of 2012, the appellant assailed the order dated 10.07.2012 whereby suspension of his license was confirmed under Regulation 20(3) of CHALR, 2004. By the judgement dated 3.7.2014, this Tribunal allowed the appeal and set aside the order dated 10.07.2012 confirming the appellant's suspension until conclusion of proceedings under Regulation 20(2) of CHALR, 2004.

6. It is pleaded in this appeal and the appellant reiterates the assertion in oral argument that despite confirmation of his licence suspension having been invalidated by this Tribunal, the appellant was not allowed to function as CHA. This plea categorically pleaded by the appellant is not denied by the respondent.

7. On 11.06.2014, after over 22 months from the date of receipt of the offence report and in gross violation of CHALR, 2004, as amended in 2010, a show cause notice proposing revocation of appellant's licence was issued. On 16.09.2014, the Dy. Commissioner concerned furnished his inquiry report drawn up in pursuance of the show case notice. This report concluded that contravention of CHALR Regulations, 2004 by the appellant herein, as alleged in the show cause notice, is not proved. The report clinically analyses the relevant facts and records reasons to substantiate the finding that allegations in the show cause notice have not been proved.

8. The Inquiry report was forwarded to the appellant by a letter dated 19.09.2014 calling upon the appellant to submit his representation, within 30 days. It is axiomatic and elementary that since the inquiry report exonerated the appellant, there was no occasion for the appellant to explain or contest the report. Neither the inquiry officer nor the respondent herein, who by the impugned order revoked the appellant's licence, intimated to the appellant any proposal to disagree with the reasoning, analyses or conclusions set out in the inquiry report or intimated any proposal to record contrary conclusions or analyses of facts; or for imposition of penalty or revocation of the licence.

9. It would appear that after communication of the inquiry report, the respondent directed the appellant to present himself for personal hearing. For what reason the appellant was being called for a personal hearing was neither intimated to the appellant nor is apparent even today.

10. Responding to the call for a personal hearing, the appellant submitted a detailed written reply on 20.11.2014 wherein he adopted and summarized the analyses and conclusions in the inquiry report and requested restoration of his licence to carry on his business.

11. Thereafter the impugned order dated 5.12.2014 was passed by the Commissioner of Customs (General). This order revoked appellant's CHA licence and forfeited the entirety of his security deposit of Rs.75,000/-, purportedly under Regulation 18 read with Regulation 20(7) of the Customs Broker Licencing Regulation , 2013.

12. Suffice it to notice that in para 27 of the impugned order, the respondent while disagreeing with the analyses and reasons set out in the inquiry report dated 18.07.2014 concludes that the appellant violated CHALR, Regulation, 2004. This conclusion is on the basis of the statement of the CMC employee, Shri D.S. Rawat.

13. Having carefully considered the sequence of events adverted to supra, the conclusion is irresistible and compelling that there has occurred gross violation of due process and there was total non-application of mind which culminated in the impugned order. The inquiry report dated 16.09.2014 exonerated the appellant wholly on analyses of the material on record referred to and reliance on statements of the appellant; of the appellant's G. Card Holder, Shri S.K. Singh and rejection of the statement of Shri D.S. Rawat, the CMC employee, to the extent that such statement inculpates the appellant's G. Card Holder as having been associated with the transaction in issue.

14. If the respondent intended to disagree with the inquiry report, elementary principles of natural justice and equality obligations mandated by Article 14 of required the respondent to issue a show cause notice to the appellant proposing to disagree with the analyses and conclusions in the inquiry report, duly recording clear and specific reasons for proposing to disagree with the Inquiring authority's analyses and proposing to revoke the licence. This process was admittedly not followed. There is another fatal and fundamental infirmity in the impugned order. If the respondent intended to rely upon the statement of the CMC employee, Shri Rawat, a show cause notice should have explicitly intimated to the appellant about such a course of action intended. In the event, the appellant would have exercised his right to cross examine Shri Rawat, which is also a procedural right guaranteed, as integral to due process. Since the respondent did not consider it necessary to even issue a show cause notice proposing to disagree with the inquiry report, the appellant was deprived the opportunity to seek cross examination of Shri D.S. Rawat.

15. It is specifically alleged in the memorandum of appeal that despite this Tribunal's order dated 3.7.2014 setting aside the order dated 10.07.2012

(confirming suspension of the appellant's licence), the appellant was not permitted to pursue his business nor was his licence restored. The respondent has thus, contrary to and in gross abuse of law, disabled the appellant from exercising his fundamental and guaranteed right to carry on his occupation and business, guaranteed under Article 19(1) (g) of the Constitution.

16. We record our strong disapprobation of the arbitrary conduct of departmental officers, particularly the respondent in prohibiting the appellant from exercising his constitutionally entrenched right to pursue his occupation/business, without authority of law and what is more, contrary to rights declared in his favour pursuant to the final order of the Tribunal dated 3.7.2014. Revocation of his licence by the impugned order is another instance of acting without a semblance of an authority of law and in egregious abuse of seminal and elementary principles of due process. A senior officer of the rank of Commissioner of Customs is expected to be familiar at least with elementary standards of fairness and of principles of procedural principles.

17. As a consequence of the perverse and shoddy processing of the case, the appellant is made a victim of patently incompetent administration of the law. We therefore consider it to appropriate, in the facts and circumstances of the case, to declare the impugned order dated 5.12.2014 passed by the Commissioner of Customs (General), New Delhi as void ab initio. We direct the respondent to forthwith; and at any rate within a week from the date of receipt of this order restore the CHA licence of the applicant by issuing a formal order in this behalf. Such order shall be served on the appellant within the said period of one week. In the peculiar facts and circumstances of the case, we also consider it appropriate to impose costs of Rs.10,000/- to be paid by Revenue to the appellant within one week from the date of receipt of this order. We clarify that it shall be open to the

Union of India or the appropriate authority to identify the person or persons responsible for gross deprivation of the appellant's right, for appropriate administrative or departmental action including recovery of the amount of costs paid to the appellant in accordance with law. The appeal is allowed with costs of Rs.10,000/- as indicated above.

[order dictated and pronounced in open court]

(Justice G. Raghuram)
President

(B. Ravichandran)
Member (Technical)

Ckp.