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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: **28/09/2015**

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

Final Order No. **C/A/52965/2015-CU[DB]** dated **16/09/2015**

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/55392/2014	**Ramvir** Village-piyala P.o. Asaoti, Teshil-ballabgarh, FARIDABAD HARYANA
		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):

Mohan Lal, Adv.
B-67, Flatted Factires Complex,
Okhala Phase-III,
Delhi-110020

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 16.9.2015

Customs Appeal No.55392 of 2014

Arising out of the Order-in-original No.54/NLB/Policy/2014 dated 8.8.2014 passed by the Commissioner of Customs (I & G), New Delhi.

For approval and signature:

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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?	

Ramvir ... Appellant

Vs.

C.C. (I & G)I), New Delhi .... Respondent

Appearance:

Present Shri Vaibhav Singh with Shri G.P. Singh, Advocate for the appellant
Present Shri Ranjan Khanna, A.R. for the respondent

Coram: Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Technical Member

Final Order No. 52965/2015

Per R.K. Singh:

This appeal has been filed against the order dated 8.8.2014 in terms of which the Commissioner in exercise of power conferred under

Regulation 19(2) of CBLR, 2013 confirmed the continuation of the appellant's Customs Broker (CB) licence which was suspended in terms of Regulation 19(1) of the CBLR, 2013 vide order dated 21.7.2014 for violation of Regulations 11(a), 11(d) and 11(n) of CBLR, 2013

2. The facts of the case are as under:

- The appellant filed shipping bill No. 9816453 dated 1.2.2014 in respect of exporter M/s All Crafts Exports. It was found during examination of the consignment that it consisted of 463 packages instead of declared 390 packages of "Jaipur Bench and Wooden Floor Lamps". In addition, red sander wood and sandal wood was found concealed in the consignment. Red sanders and sandal wood are prohibited for export. Having regard to the gravity of the offence the suspension of licence was confirmed vide the impugned order.

3. During the hearing the appellant contended that (i) there was no ground ~~of~~ for immediate suspension of the licence. The licence was not suspended soon after ~~immediate~~ examination of the goods. (ii) It was held in the case of N.C. Singha & Sons vs. UOI - 1998 (104) ELT 11 (Cal.) that suspension of CHA was not sustainable because the Commissioner's order does not spell out any immediate action which was required to be taken in the matter or any such action was warranted. It also cited the judgment in the case of Kothari & Sons vs. C.C., Jaipur - 2000 (122) ELT 828 (Tribunal) to advance the proposition that the order of suspension must indicate that Commissioner has formed an opinion that immediate action was necessary to suspend the licence. It also cited the following case-law to advance the proposition that merely because the goods were received from freight forwarder, no suspension was called for:

(a) Kunal Travel (Cargo) vs. .C.C., New Delhi - 2005 (180) ELT 345 (Tri-Del.)

(b) Sidhant Logistics vs. C.C., New Delhi - 2014 (303) ELT 545 (Tri-Del.)

(c) Baraskar Brothers vs. C.C., Mumbai - 2013 (294) ELT 415 (Tri-Mumbai)

(d) Bombay Shipping Agency vs. C.C. (General), Mumbai - 2014 (299) ELT 352 (Tri-Mumbai).

4. We have considered the facts of the case. At the outset it must be mentioned that illegal export of red sander and sandal wood which are prohibited for export is a grave offence. In the present case, not only the goods were misdeclared but the red sanders and sandal wood was found concealed in the consignment. As has been spelled out in CBEC Circular No.9/2010-Cus dated 8.4.2010, in the case of individuals features to be verified by a Custom broker while taking up the assignment are (i) legal name and any other names used (ii) present and permanent address in full, complete and correct. It has been admitted by the appellant that it did not conduct verification of permanent and present address of the exporter which was a proprietorship firm and not a company, partnership firm or trust/foundation. Even with regard to the documents obtained, it has been recorded that PAN card and IEC copy etc. were obtained by the CHA not directly from its client i.e. the export4er but through some third person namely Shri Mohd. Hussain Khan who was reprsenting a Freight Forwarder Agent. Regulations 11(a), 11(d) and 11(c) of

CBLR, 2013 require a customs broker to require a Customs broker to

> *(a) obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;*
>
> *(d) advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;*
>
> *(n) verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;*

Thus in terms of Regulation 11(n) of CBLR, 2013 the Customs Broker is required to verify the antecedent, correctness of IE code, identity of his client and functioning of his client at the declared address by using reliable, independent and authentic documents data or information. It is evident that the appellant was handling the consignment of the said exporter for the first time but had neither met the exporter nor verified its antecedents.. It did not verify its permanent and present address. This constitutes serious violation of Regulation 11 of CBLR, 2013 on the part of the appellant.

5. The judgment in the case of Bombay Shipping Agency (supra) cited by the appellant held that having regard to the facts and circumstances of that case suspension of the licence need not be continued after 10 months of suspension. The cases of N.C. Singha & Sons (surpa) and others cited by the appellant deal with very different facts and circumstances. It is pertinent to mention here that the documents filed by CHA are treated with a certain degree of trust by Customs and such trust was completely violated in the present case. Nothing can possibly be a graver mis-conduct on the part of a CHA than to file Shipping Bill without making even preliminary enquiries about the genuineness of exporter in the name of which the S/B was filed. Such dereliction of duty on the part of a CHA, can potentially have even graver financial/security consequences. Thus the appellant totally failed to discharge its duties as CHA as laid down in Regulation 11 of CBLR 2013. We may add here that the

present appeal is not against preliminary suspension but against an order which confirmed the continuation of suspension. We find that the Commissioner has analysed the facts and circumstances to form a clear opinion that continuation of suspension of CB licence is warranted. In the case of ***Worldwide Cargo Movers*** - 2010 (253) ELT 190 (Bom.) , the Bombay High Court apart from upholding the principle of liability of the CHA for the act of its employees went on to observe as under :

*"**27.** We have noted what the Tribunal has observed in the impugned order. In our view, the finding given by the Enquiring Officer and thereafter the order passed by the appellant in original are fully justified on the facts of the case. The authorities relied upon by Mr. Kantawala undoubtedly are mostly of the Tribunal. Even the judgment of the Calcutta High Court speaks about the suspension of licence not to be continued indefinitely. Here, we are concerned with revocation which has been resorted to after a due enquiry. We are conscious that the punishment has to be commensurate with the misconduct and that by revocation the respondent and its employees are going to suffer. At the same time, we cannot forget that though it is the right of a citizen to carry on his business or profession, it is subject to reasonable restrictions and conditions. In the present case, those conditions were already stipulated. In the case of Arvind Bhagat (supra), the order of Madras High Court has been left undisturbed by the Apex Court. It was a case where the CHA had failed to discharge his obligation to exercise proper supervision. In the case of Sri Kamakshi Agency (supra), the CHA was held responsible for the fraudulent activities of a third party whom it had delegated its functions. That was also left undisturbed by the Supreme Court. The present case is some what similar to one of Sri Kamakshi Agency, if not worse. Here, the CHA has brazenly defended his Regulation 8 employee who gave a fake name of his brother as an importer for undervaluing the imported car. Thus, the employee of the CHA was party to the Firm. The CHA has not disowned him and has, in fact, defended him in the reply filed by him before the appellant. That being so, he is clearly responsible vicariously. (emphasis added).*

***28.** In our view, the Tribunal has committed a grave error in interfering with the decision of a domestic authority. In a departmental proceeding one has to see whether the principles of natural justice are followed and the findings are justified from material on record. Once both these aspects are satisfied if an outsider Tribunal interferes, its findings and order will be improper and perverse which is what has happened in the present case. Similarly when one comes to the disciplinary measures, one must not lose sight of the fact that the appellant-Commissioner of Customs is responsible for happenings in the Customs area and for the discipline to be maintained over there. If he takes a decision necessary for that purpose, the Tribunal is not expected to interfere on the basis of its own notions of the difficulties likely to be faced by the CHA or his employees. The decision is best to be left to the disciplinary authority save in exceptional cases where it is shockingly disproportionate or mala fide. That is not the case here. (emphasis added).*

***29.** In the circumstances, we allow Customs Appeal No. 37 of 2006 filed by the appellant-Commissioner of Customs since the CESTAT was not justified in setting aside the revocation of the CHA licence in the facts and circumstances of the case and on the material on record. The order of the CESTAT setting aside the order of the appellant-Commissioner of Customs was clearly perverse in law. Appeal No. 37 of 2006 is, therefore, allowed. The order dated 4-4-2006 passed by the CESTAT is set aside and the order dated 17-1-2006 passed by the appellant-Commissioner of Customs is restored".*

The ratio contained in the above reproduced paras (specially in para 28) of the High Court judgement in the case of ***World Wide Cargo Movers*** (supra) is squarely applicable to the present case.

Andhra Pradesh High Court in the case of ***H.B. Cargo Services*** - 2011 (268) ELT 448 (A.P.) in para 16 has also held as under :

> *"While great emphasis is placed by Shri C. Kodandaram, Learned Senior Counsel appearing on behalf of the respondent, on the previous unblemished record of the CHA, it must be borne in mind that <u>a single act of corruption is sufficient to award the maximum penalty which under the CHALR, is of revocation of the license</u> (State of Punjab V. Ex-Constable Ram Singh - (1992) A-SCC-54." (emphasis added)*

6. In the light of the above analysis, we do not find any infirmity in the impugned order. Appeal is therefore rejected.

(Justice G. Raghuram)
President

(R.K. Singh)
Technical Member

scd/