(16)

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REGISTERED / AD

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

Dated: **14/08/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/52532/2015-CU[DB]** dated **29/07/2015**

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/4850/2012, C/MISC/58762/2013, C/MISC/52573/2014	C/3841/2012	**Vetri Impex**
			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):

JATIN MAHAJAN ADV
37, LGF, VINOBAPURI,
LAJPAT NAGAR-II NEW
DELHI-110024

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 C.D.R. 15 Office Copy 16 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 : 29.7.2015

Appeal No. C/3841/2012-CU(DB)

(Arising out Order-in-Original No. 13/NLB/POLICY/2012 dated 18.9.2012 passed by the Commissioner of Customs, 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 Vetri Impex — Appellant

Vs.

CC, New Delhi — Respondent

<u>Appearance:</u>

Shri Jatin Mahajan, Advocate - for the Appellant

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

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

F. Order No. 52532/2015

Per **R.K. Singh :**

Appeal has been filed against Order No. 13/NLB/Policy/2012 dated 18.9.2012 in terms of which Commissioner of Customs (Import & General), New Delhi in exercise of the powers conferred under sub-regulation (3) of Regulation 20 of the CHALR, 2004 confirmed the suspension order No. 09/POLICY/VKG/2011 dated 2.5.2011 suspending the CHA licence of the appellant CHA till the proceedings contemplated against it under Regulation 22 ibid were completed.

2. The facts of the case are as under.

Mumbai Customs reported that the export consignment of M/s VACKs Enterprise, Bhiwandi under four Shipping Bills all dated 26.8.2010 covering the goods viz. ladies garment accessories (made of manmade 100% polyester filament yarn) (scarves) having total declared FOB value of Rs.86.88 lakhs were found to be overvalued and that the appellant's local brand head in Mumbai (Mrs. Sasidharan Kunju Pillai) admitted that he did not meet the exporter personally and the job was received through a forwarder named M/s Swastik Exim and a representative of said Swastik Exim also could not lead to the main person (exporter). The CHA (appellant) was thus held guilty of violation of Regulation 13(a) on the ground that neither the exporter nor the suspected middleman could be found at their available addresses and that the CHA also failed to follow Regulation 13(a), 13(k) and 13(o) by not obtaining authorisation from the exporter (as none was produced before the investigation officer), not maintaining the prescribed job register and not verifying the identity and antecedents of the exporter. The appellant also failed to exercise proper supervision over its employee Shri

Sasidharan Kunju Pillai and thereby violated Regulation 19(8) of CHALR, 2004.

2. In the wake of the foregoing, the Commissioner has passed the following order: "

> "In exercise of the Powers conferred under Sub-Regulation (3) of Regulation 20 of the CHALR, 2004, I confirm the suspension Order No. 09/POLICY/VKG/2011 dated 2.5.2011 till the proceedings contemplated against the said CHA under Regulation 22 ibid are completed.
>
> This order is being issued without prejudice to any other action that may be taken against the CHA or any other person (s)/ firm (s) etc. under the provisions of the Customs Act, 1962 and Rules/Regulations framed there under or any other law for the time being in force for the present or any other past violations committed by them."

3. The appellant has contended that:

(i) The investigation by SIIB, Bombay commenced on 21.9.2010 and the suspension was ordered on 2.5.2011. Thereafter the hearing for confirmation of suspension was conducted on 28.2.2012 and the impugned order was issued on 19.9.2012. Thus there has been clear violation of the time lines prescribed in respect of Regulation 22 of the CHALR, 2004 which vitiated the said order and for that reason, the same should be set aside.

4. The ld. D.R. contended that the impugned order is a speaking one and the time-lines are only advisory and not mandatory.

5. We have considered the contentions of both sides. As the issue involved is suspension of the licence and not revocation thereof, it is not necessary to go into the details of the merits of the case. It is seen that CBEC vide Circular No. 9/2010-Cus. dated 8.4.2010 inter alia communicated the following decision with regard to "time limit for completion of suspension proceedings against CHA licencee under Regulation 22:

> "7.2. In cases where immediate suspension action against a CHA is required to be taken by a Commissioner of Customs under Regulation 20(2), there is no need for following the procedure prescribed under Regulation 22 since such an action is taken immediately and only in justified cases depending upon the seriousness or gravity of offence. However, it has been decided by the Board that a 'post-decisional hearing' should be given in all such cases so that errors apparent, if any, can be corrected and an opportunity for personal hearing is given to the aggrieved party. Further, Board has also prescribed certain time limits in cases warranting immediate suspension under Regulation 20(2). Accordingly the investigating authority shall furnish its report to the Commissioner of Customs who had issued the CHA license (Licensing authority), within thirty days of the detection of an offence. The Licensing authority shall taken necessary immediate suspension action within fifteen days of the receipt of the report of the investigating authority. A post-decisional hearing shall be granted to the party within fifteen days from the date of his suspension. The Commissioner of Customs concerned shall issue an adjudication order, where it is possible to

> do so, within fifteen days from the date of personal hearing so granted by him." (emphasis added

In the present case, we find that personal hearing was granted after more than nine months after the date of suspension. Not only that, after completion of hearing, the Commissioner took almost seven months to issue the order. We are aware ~~when~~ that the time lines prescribed by CBEC are advisory in nature and cannot be given status of mandatory time lines. However, even advisory time lines have certain sanctity inasmuch as if such time lines have been exceeded beyond all reasonable limits, with regard to completion of suspension proceedings, Such proceedings will have to be held to be fatally vitiated, more so when such proceedings have a direct and adverse bearing on some-one's livelihood and freedom to pursue a profession. Here is the case where the hearing was grant~~ing~~ed nine months after the suspension order while the time limit was 15 days and order was issued almost seven months after the hearing while it was expected to be issued in about 15 days. We note that the word used in the above quoted paragraph No. 7.2 in the sentences underlined is "shall" and not "will" which is indicative of the seriousness which the CBEC sought to ~~achieve~~ attach to the prescribed time-lines and therefore these time-lines deserve to be given serious consideration and due weightage even if these are not mandatory.

5. In these circumstances, we are of the view that at this point of time which is almost two years and nine months after the date of the impugned order, we do not find any justification in allowing the impugned order to remain alive. Accordingly, we set aside the impugned order and allow the appeal.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

RM