FAX : 011-26108426 **REGISTERED / AD**

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

Dated: **22/10/2014**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/54091/2014-CU[DB]** dated **10/09/2014**

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/52977/2014	**Atharva Global Logistics** Cha No.r-46-del-cus-2012 320, Badam Singh Complex, RANGPURI NEW DELHI-110037
		Name and Address of Respondent
2		**Commissioner of CUSTOMS(IMPORT & GENERAL)-New Delhi(import & General)** NEW CUSTOM HOUSE, NEAR IGI AIRPORT, NEW DELHI

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Copy To

3Advocate(s) / Consultant(s):

B. R. Tripathi
A-23/90, RAJA WADI CHS,
CHITRANJAN NAGAR,
GHAT KOPAR (E),
MUMBAI,
MAHARASHTRA-400077

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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

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 10/09/2014.
DATE OF DECISION : 10/09/2014.

Customs Appeal No. 52977 of 2014

[Arising out of the Order-in-Original No. 11/POLICY/NLB/2013 dated 06/12/2013 passed by The Commissioner of Customs (Import & General), New Delhi.]

For Approval and signature :
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, 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 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 Atharva Global Logistics — Appellant

Versus

CC (I&G), New Delhi — Respondent

Appearance

Shri B.R. Tripathy, Advocate – for the appellant.

Shri Amresh Jain, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No.54091/2014 Dated : 10/09/2014

Per. Rakesh Kumar :-

The facts leading to filing of this appeal are, in brief, as under.

1.1 The appellant is a customs broker (earlier known as Customs House Agent) operating under a licence issued by Commissioner of Customs (Imports & General), New Customs House, Delhi. The Commissioner vide order-in-original dated 06/12/13 issued under Regulation 20 (2) of Customs House Agents Licensing Regulations, 2004 [corresponding to Regulation 19 (1) of Customs Brokers Licensing Regulation, 2013] has suspended the license on the ground that the appellant failed to exercise supervision to ensure proper conduct of his employees in the transaction of business and accordingly is responsible for the misconduct of his employees.

1.2 M/s Harsh Enterprises, Mumbai, had imported a consignment declared to be containing DVD Parts – DVM3 – MN1W" and they filed the bill of entry through the appellant for its clearances. The goods on examination were found to be DVD Pick Up Units and according to the Department, the declared value of the goods was also on lower side. According to the customs, the appellant as CHA has colluded with the importers and has failed to discharge his obligations as CHA as envisaged under Customs House Agents License Regulations, 2004 as well as Customs Brokers License Regulations, 2013. Accordingly pending the completion of inquiry, the Commissioner vide order dated 06/12/13 suspended the Appellant's licence. on the basis of the suspension order dated 06/12/13 issued by the Commissioner of Customs (Import & General), New Customs House, New Delhi, the Commissioner of Custom (General), Mumbai issued a prohibitory order dated 12/11/13 prohibiting the appellant to operate in the Customs House at Mumbai. Subsequently a post-decisional hearing was given and the order dt. 6/12/13 was confirmed vide order-in-original No. 11/POLICY/NLB/2014 dated 11/02/2014. Against this order of Commissioner, this appeal has been filed praying for setting aside of the orders dated 06/12/13 and 11/2/14, passed by Commissioner of Customs (Imports & General), New Delhi and also the order dated 12/11/13, passed by Commissioner of Customs (General), Mumbai.

2. Heard both the sides.

3. Shri B.R. Tripathi, Advocate, the learned Counsel for the appellant, assailed the impugned orders and pleaded that though the licence had been suspended since 06/12/13 and suspension was confirmed after post-decisional hearing on 11/02/14, the notice for revocation of licence has still not been issued in terms of Regulation 20 (1) of the Customs Broker License Regulations, 2013, though in terms of this regulation, the Commissioner is required to issue a notice to the Customs Broker within a period of 90 days from the date of receipt of offence report stating the ground on which it is proposed to revoke the licence, that in view

of this, there is no justification for continued suspension of the licence and that the impugned order suspending the appellant's licence and confirming the suspension may please be set aside.

4. Shri Amresh Jain, the learned DR, pleaded that the misconduct of the appellant is of serious nature, that for this reason only, his licence had been suspended and that in view of this, there is no justification for revoking the suspension.

5. We have considered the submissions from both the sides and perused the records.

6. The Customs House Licence of the appellant had been suspended under Regulation 20 (2) of the Customs House Licensing Regulations, 2004 [Regulation 19 (1) of Customs Brokers Licensing Regulation, 2013] vide order-in-original dated 06/12/13 and subsequently after giving post-decisional hearing, the suspension order was confirmed vide order dated 11/02/14. Under Regulation 19 (2) of Customs Broker Licensing Regulations, where a licence is suspended under Regulation 19 (1), the Commissioner of Customs shall, within 15 days from the date of such suspension, give an opportunity of hearing to the Customs broker whose licence has been suspended and may pass such order, as deemed fit, either revoking the suspension or continue it, as the case may be, within 15 days from the date of hearing granted to the Customs broker. In terms of proviso to Regulation 19 (2), in case the Commissioner passes an order for continuing the suspension, the further procedure thereafter shall be as

provided in Regulation 20. Thus, once the licence of a Customs broker has been suspended and if after granting post-decisional hearing within 15 days from the date of suspension, the Commissioner decides to continue the suspension, regulation 20 becomes applicable. In terms of regulation 20 (1) the Commissioner of Customs shall issue a notice in writing to the Customs Broker within 90 days from the date of receipt of the office report, stating the ground on which it is proposed to revoke the licence or impose penalty on him and the Customs broker is required to submit his reply within 30 days. On receipt of the reply of the Customs broker, or if no reply has been received, within period of 30 days from the date of issue of the notice, the Commissioner is required to nominate a Deputy/Assistant Commissioner of Customs for inquiring into the grounds which are not admitted by the Customs broker. Final decision is required to be taken by the Commissioner on the basis of the inquiry report of the Deputy/Assistant Commissioner and after hearing the Customs broker in respect of the same. Thus, where the licence of a Customs broker has been suspended and it has been decided to continue the suspension, the issue of notice within 90 days from the date of receipt of the offence report is mandatory. In this case, as mentioned in para 2 of the order dated 06/12/13, the offence report mentioning the alleged misconduct of the appellant had been received from the Directorate General of Revenue Intelligence on 7th October, 2013 and as such the investigation into the matter regarding the role of the Customs broker is complete, but the required notice in terms of Regulation 20 (1) was not issued within 90 days from the date of receipt of the offence report. The show cause notice was issued only on 17/6/14, long after 90 days from the date of receipt of the offence report. In view of this, we hold that there is no justification for continued suspension. The suspension order dated 06/12/13 confirmed vide order dated 11/2/14 passed by the Commissioner of Customs, Delhi is, therefore, set aside. The appeal is allowed.

(Operative part of the order pronounced in the open court.)

20/10/14
(Archana Wadhwa)
Member (Judicial)

20/10/14
(Rakesh Kumar)
Member (Technical)

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