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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

To

Dated: **28/01/2014**

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/50200/2014-CU[DB]** dated **09/01/2014**

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/55229/2013	**SIDHANT LOGISTICS** 383/5A, EKTA VIHAR, MITHAPUR EXTENSION, N DELHI, 110044
		Name and Address of Respondent
2		**COMMISSIONER OF CUSTOMS(IMPORT & GENERAL)-** NEW CUSTOM HOUSE, NEAR IGI AIRPORT, NEW DELHI,

Copy To

3Advocate(s) / Consultant(s):

SAURABH KAPOOR, ADVOCATE
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147001

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.

Date of hearing/decision: 09.01.2014

For Approval and Signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Customs Appeal No. 55229 of 2013
(Arising out of the Order in original No. 25/NLB/ POLICY/2012 dated 29.10.2012 passed by the Commissioner of Customs (Import & General), New Delhi).

M/s Sidhant Logistics — Appellant

Vs.

CC, New Delhi — Respondent

Appearance:

Shri Saurabh Kapoor, Advocate for the appellant
Dr. Devender Singh, Jt. CDR for the Revenue

Coram:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Final Order No. 50200/2014

Per: Archana Wadhwa:

The present appeal stands filed against the order of Commissioner of Customs vide which he has suspended the CHA license of the appellant in terms of Customs House Agent Regulations Rules, 2004 (hereafter referred to as CHALR).

2. After hearing both the sides and on going through the impugned order of the Commissioner, it is seen that certain imports were made by M/s Ansh Enterprises and M/s Al Barkat Trading Co., who undervalued their goods. It is seen that the work of the said two importers was handled by the appellant's employee Shri Mahipal Singh, 'G' Card holder. The said Shri Mahipal Singh in his statement recorded during investigation deposed that he did not know M/s Ansh Enterprises and M/s Al Barkat Trading Co. and he was getting all the imports documents from Sh. Mohd. Rofi who is Director of the freight forwarding firm - M/s B.M.R. Cargo Service. The Commissioner has observed that inasmuch as the consignment was cleared through the present CHA whose agent i.e. 'G' card holder has not followed the prescribed norms and has contravened the provision of Regulation 13 of the CHALR, the present CHA's license has to be suspended.

3. The imports were made in the month of January and goods were seized on 19.01.2012. The appellant's CHA license was temporarily suspended on 06.08.2012 and after post decision hearing, vide the present impugned order passed on 29.~~12~~10.2012. As such it is

seen that the suspension has come after a period of more than six months. Ld. Advocate has drawn our attention to the Board's Circular No. 502/5/2008-Cus.VI dated 8.4.2010 laying down that inasmuch as completion of regular suspension proceedings take a long time since it involved enquiry proceedings and there is no time limit prescribed for completion of such proceedings. Hence, it has been decided by the Board to prescribe an overall time limit of nine months from the date of receipt of offence report, by prescribing time limits at various stages of issue of show cause notice, submission of inquiry report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs recording his findings on the issue of suspension of CHA license, and for passing of an order by the Commissioner of Customs. Ld. Advocate submits that the Tribunal by taking note of said instruction of the Board as in a number of cases held that the suspension after the prescribed period is not justified and has set aside the same. In the present case, the alleged offence was committed by the importers in January, 2012 whereas the suspension order has been passed in 29.10.2012. He draws our attention to various decisions of the Tribunal.

4. In the case of ***Aman Cargo Pvt. Ltd. vs. CC, New Delhi*** – 2013 (295) ELT 52 (Tri. Del.) it stands held that the only case brought out so far is that the appellant had handled three consignments in May 2010 of an importer who later on filed Bills of Entry in his own name and in such Bills of Entries some discrepancies has been detected. Inasmuch as the appellant's licenses has been suspended for more

than a year, the same should be set aside on this limited ground itself. Similarly in the case of ***Kashyap Shipping Pvt. Ltd. vs. CC, Kandla*** – 2011 (266) ELT 235 (Tri. Ahmd.), the Tribunal observed that as the license has been suspended for more than eight months, and the only ground for suspension was filing of B.E. without an enquiry on the part of the CHA leading to mis-declaration of export goods, the same required revocation . In the case of ***R.S. Yadav & Company vs. CC, New Delhi*** – 2012 (284) ELT 361 (Tri. Del.) the Tribunal observed that the suspension of license has to be reviewed from time to time depending on the gravity of the act committed by the CHA and the extent of his involvement and the time that has lapsed from the date of event to the date of review of the suspension itself. Inasmuch as no direct involvement of the CHA in fraudulent export of goods found in that case. Tribunal by taking note of the Board's Circular No. 9/2010-Cus and the time limit prescribed therein, set aside the suspension. In the case of ***Vinod Tomar vs. CC, New Delhi*** – 2011 (272) ELT 564 (Tri. Del.), the Tribunal again took note of the guidelines of the Circular issued by the CBEC Circular No. 9/2010 dated 8.4.2010 laying down issuance of show cause notice etc. within a total period of nine months from the date of receipt of report and non compliance of the same by the Revenue authorities and set aside the suspension. The list is unending and it is not possible to refer to all such precedent decision. Suffice it to say that in such cases, where the period prescribed in terms of the Board Circular has not been complied with the Tribunal has set aside the suspension order.

5. In the present case also we find that first of all the charges against the CHA are not very serious so as to call for his suspension. It is a fact on record that CHA was not involved in presenting the papers before the Customs. The work is being done through his 'G' card holder. Secondly, the imports took place in January whereas the impugned order stands passed in October 2012 and still continuing even after lapse of more than one year. Thirdly, we are informed that show cause notice for cancellation of licence stands issued and the proceedings would be finalised soon. Taking note of all the facts of the above, we deem it fit to set aside the suspension of the CHA licence. We order accordingly and allow the appeal.

17/1/14

(Archana Wadhwa)
Member (Judicial)

17/1/14

(Rakesh Kumar)
Member (Technical)

Pant