

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

Dated: 18/07/2014

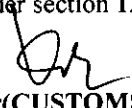
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/52807/2014-CU[DB] dated 04/07/2014

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/4034/2012	UNIYAL CARGO MOVERS PVT LTD A-62, VINOD NAGAR(WEST DELHI),NEW DELHI 110092

Name and Address of
Respondent

2		Commissioner of CUSTOMS(IMPORT & GENERAL)- NEW CUSTOM HOUSE, NEAR IGI AIRPORT, NEW DELHI,
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Copy To

3 Advocate(s) / Consultant(s):

**Anuj Kumar Garg & Co.
C-167, C.L. JOSEPH BLOCK,
TEES HAZARI,DELHI
110054**

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.II, R.K. PURAM, NEW DELHI-110066.
COURT - II

Appeal No.C/4034 of 2012-CU(DB)

[Arising out of Order-in-Original No.12/NLB/POLICY/2012 dated 18.09.2012 passed by the Commissioner of Customs (Import & General), New Delhi]

M/s. Uniyal Cargo Movers : ...Appellants
Pvt.Ltd.

Vs.

CC (Import & General), N.D. : ... Respondents

Present for the Appellants : Sh. Tarun Garg, Advocate

Present for the Respondents : Shri Rakesh Puri, DR

Coram: Hon'ble Mr. D.N.Panda, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

FINAL ORDER NO. 52807 / , DATED: 04.07.2014

PER: D.N.PANDA

The matter has been heard from time to time. An officer of the Department has brought the records today. The appellant is facing suspension of CHA licence in terms of order dated 31.12.2016 passed under regulation 9(1) of CHALR, 2004. It was implicated in respect of export of "Indian Hand Tufted Woollen Floor Covering Carpet" and "Indian Floor Covering Carpet (Saggy Pol.)" alleging that the CHA appellant failed in its duty to follow KYC norm.

2. Consequent upon receipt of investigation report, Id. commissioner, passed an order temporarily suspending the



CHA licence on 27.07.2012 under Regulation 20(2) of CHALR, 2004. That order was confirmed by the impugned order, dated 18.09.2012.

3. Summarily, the allegations of the Department against the appellant under Regulation 20 of CHLAR, 2004 as appearing in para 18 of Show Cause Notice dated 13.05.2014 were as under:-

(1) *"The CHA has failed to supervise and control the action of his employees & has filed the said Shipping Bill without following the KYC norms.*

(2) *The CHA has failed to advise his clients to comply with the provisions of the act & in case of non-compliance, to bring the matter to the notice of Deputy Commissioner of Customs.*

(3) *The CHA has failed to ascertain the correctness of the information that he imported to the client with reference to any work related to clearance of cargo.*

(4) *The CHA has not ensured proper conduct of his employee [Sudhir Rama Chandra, G- Card holder] which is mandatory on the part of the CHA.*

(5) *The CHA has not exercised due diligence in the clearance as he made, signed & used fabricated & forged documents for the said export.*

(6) *The CHA failed in his obligation to ensure that the entries made in the S/B are correct & true declaration of value & description of goods is made."*

4. Reading of the aforesaid paragraph throws light that the Department has brought out only negligence of the CHA in respect of the goods of aforesaid description exported from Mumbai. Also reading para 17 of the said Show Cause Notice indicates that the appellant deposed in his statement that someone else had used his name as CHA to attempt export of the goods stated aforesaid from ICD, Tughlakabad. He categorically stated that Shri Sudhir Rama Chandra Ghatge, G card-holder has committed the offence without knowledge of the CHA appellant.

5. Enquiry was made as to the involvement of the appellant to find out whether he had any exclusive knowledge or special knowledge of attempt to export of the goods through M/s. A.S. Exports, Mumbai. Materials on record do not suggest active involvement of the appellant to conclude that offence was committed by appellant. Therefore before completion of the proceedings under Regulation 22 of CHALR, 2004 ^{any opinion by Tribunal} would result in miscarriage of justice.

6. It is apparent from the record that two years have expired from the order of suspension under Regulation 20 (2) of CHALR, 2004. Proceedings under Regulations 22 of CHALR, 2004 has already commenced. Looking into the time already expired, it would be appropriate to set aside the order dated 27.07.2012 till conclusion of the proceedings under Regulation 22 of CHALR, 2004.

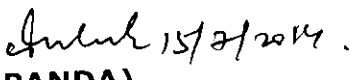
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Appeal No.C/3982/2012

7. With the above conclusion, the appeal is allowed to the extent indicated above.

(Dictated and pronounced in the Open Court)


(RAKESH KUMAR)
TECHNICAL MEMBER


(D.N.PANDA)
JUDICIAL MEMBER

Ckp.