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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

Appeal No. C/214 /2006 Date 04/02/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S. SAINI CONSULTANTS
206, SAVITRI COMPLEX DHOLEWAL CHOWK, GT
ROAD, LUDHIANA

M/S. SAINI CONSULTANTS Appellant

Vs

COMMISSIONER OF CUSTOMS Respondent

I am directed to transmit herewith a certified copy of Final order No. C/12/08 Customs dated 28/1/08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   COMMISSIONER OF CUSTOMS
   C.R.BUILDING, THE MAL, AMRITSAR
   143001
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Custom Appeal No. 214 of 2006-CST Br.

(Arising out of Order-in-Original No. VIII(HQ)13/22/Cus/97/4063 dated 2.12.2005 passed by the Commissioner of Customs, Amritsar)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE DR. T.V. SAIRAM, 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?**	W
3.	**Whether their Lordships wish to see the fair copy of the order?**	
4.	**Whether order is to be circulated to the Departmental authorities.**	

M/s Saini Consultants — Appellant

Vs.

CC, Amritsar — Respondent

Appearance:
Shri Ravi Raghvan, Advocate - For appellant
Shri A.P.S. Suri, DR - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE DR. T.V. SAIRAM, MEMBER (TECHNICAL)

Date of Hearing: 28.1.08

Final Order No. C/12/08 dated 28/1/08

Per S.S. Kang:

Heard both sides.

2. The appellant filed this appeal against the order passed by the Commissioner of Customs whereby CHA licence of the appellant was suspended under Regulation 20(2) of the Customs House Agents Licensing Regulations, 2004.

3. The main contention of the appellant is that no notice was issued before passing suspension order. It is also submitted by the appellant that the Tribunal in various decisions held that notice is necessary before passing the suspension order. The appellant also submitted that the order is passed without application of mind as there is no evidence against the appellant that he is party to fraud committed by two other persons. The contention is that prior to passing the impugned order the statements were recorded where they admitted that they had defrauded the Custom authorities.

4. The appellant relied upon the decision of Single Bench of the Tribunal in the case of **Unison Clearing (P) Ltd. Vs. CC** and where the licence of another CHA was suspended on the basis of the same investigation. The Tribunal after following the Division Bench decision of the Tribunal in the

case of **Unison Clearing (P) Ltd. Vs. CC** reported in 2006 (198) ELT 513 set aside the order of suspension.

5. The appellant also relied upon the various decisions of Hon'ble High Court where it has been held that suspension of licence is not sustainable because impugned order does not spell out that any immediate action was required to be taken in the matter nor the order indicate that such action was indeed warranted.

6. The contention of the Revenue is that the show cause notice for revocation of the licence has been issued on 7.12.06 and appellant also filed a detailed reply to that show-cause notice. The Revenue relied upon the following decisions of the Hon'ble Madras High Court :-

(1) **Sindhu Cargo Services Ltd. Vs. CC** reported in 2006 (203) ELT 218.

(2) **Cargomar Vs. CCE** reported in 2006 (203) ELT 549.

7. The Revenue also relied upon the decision of Hon'ble Bombay High Court in the case of **CC Vs. Raj Clearing Agency** reported in 2006 (199) ELT 602 . The contention of

the Revenue is that in the above decisions, the Hon'ble High Court held that as per the provisions of Regulation 20(2) of the Regulations even without giving notice the licence could be suspended.

8. The contention of the Revenue is that in this case the appellant signed the bill of entries which was subsequently found that the forged entry was made regarding payment of duty and whereby the goods were cleared by mentioning to fictitious DEPB licence numbers and signatures of the Custom officers were also forged.

9. We find that in this case the main contention of the appellant is that no show-cause notice has been issued prior to passing the suspension order. We find that the Tribunal in some cases held that notice is required before passing the order for suspension under Regulation 20(2). We find that this issue is came before the Hon'ble Bombay High Court in the case of **CC Vs. Raj Clearing Agency.** The Hon'ble High Court held as under :-

> "In the facts and circumstances of the instant case, it was a case for invoking Regulation 20(2) of the said Regulations which is meant only in cases where immediate action is necessary. In such a case even without giving notice the licence could be suspended. We make it clear that the observations of the CESTAT that in all cases of suspension the procedure under Regulation 22(1) out to have been followed in the sense prior notice before suspension ought to be given cannot be sustained".

10. The Hon'ble Madras High Court in the case of **Cargomar Vs. CCE** (supra) had also taken the same view. In view of above decision of Hon'ble High Court we find no merit in the contention that notice is necessary before passing the order under Regulation 20(2).

11. Further, we find that in the present case in the impugned order, the Commissioner after taking into consideration the fraud to the tune of Rs.1.68 crores by making clearance of imported goods by way of making duty payment under DEPB scheme against various bills of entries. The appellants are not disputing that these bills of entries were not dealt with by him. In these circumstances, we find that it is not a case where the impugned order does

not spell out reasons of any immediate action. In view of the discussion and in view of the various decisions of High Court where it has been held that notice is not necessary before issuing order of suspension under Regulation 20(2) of the Regulation. We find no merit in the appeal, the same is dismissed.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

(DR. T.V. SAIRAM)
MEMBER (TECHNICAL)

RM