(17)

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

Appeal No. C/244-246 /2008 -SM[BR]   Date 04/07/2008

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

To :

SH. HARISH KUMAR SHARMA,
S/O SH. JAGDISH PRASAD SHARMA,
H.NO. 1360, GANGAPLOE,
RAWALJI KA BAZAR,
JAIPUR

[2] SHRI ISHWAR PRASAD GUPTA [PROP]
M/S SIPGT CARGO SERVICES, 124 /321, AGARWAL FARM
MANSAROVER, JAIPUR
[3] M/S NARESH KUMAR MEENA,
CG /5/ 13, NEHRU PLACE TONE ROAD , JAIPUR .

SH. HARISH KUMAR SHARMA,   Appellant

Vs

C.C.E. JAIPUR I   Respondent

I am directed to transmit herewith a certified copy of **Final order No.**1039 -1041 /2008 -SM[BR] dated 16.5.2008 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
MR.A.SAMAD
55, 3RD FLOOR, MASJID LANE, JANGURA, BHOPAL
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH

NEW DELHI, COURT NO. III

Customs Appeal No.244-246 of 2008-SM (BR)

[Arising out of common Order-in-original No.01/2008-Comm. Of Customs dated 9.1.2008 passed by the Commissioner of Customs, Jaipur]

Date of Hearing/Decision:16.5.2008

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

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 should be released under Rule 27 of the 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? :
4. Whether Order is to be circulated to the Departmental authorities? :

Appellant

1. Shri Harish Kumar Sharma
2. Shri Ishwe Prasad Gupta
3. M/s. Naresh Kumar Meena

[Rep. by Shri V.K. Agarwal, Advocate]

Vs.

CCE, Jaipur

Respondent
[Rep. by Mr. B.S. Suhag, DR)

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final **ORDER NO. 1039-1041 / 2008-SM(BR) /Dated:.16.5.2008**

Per P.K. Das:

Common issue involved in these appeals, and therefore, all the appeals are taken up together for disposal.

2. The relevant facts of the case as per record, in brief, are that while examining Draw Back Claim of M/s. Enkay Export (I) Ltd., Deficiency Memo in respect of Shipping Bill No.321 and 322 both dated 6.6.2003 were issued to the exporter. It has been alleged that Appellant No.3 Customs House Agent failed to discharge various obligations as required under Customs House Agent Licensing Regulation Act, 1984 (now 2004) in so far as he did not verify the identity of the person, who was authorized to sign the export documents by the exporter. It has further been alleged that CHA firm has irregularly allowed their CHA licence to be used by M/s IPG Cargo Services, Jaipur to carry out business to the Appellants No.1 and 2 who got "G. Card and H. Card". The Adjudicating Authority revoked the CHA licence of Appellant No.3 and security amount furnished by them was forfeited. The Adjudicating Authority also cancelled G. Card and H. Card of the Appellants No.1 and 2 forthwith.

3. Ld. Advocate on behalf of the Appellants submits that the Inquiry Officers observed that there was carelessness and negligence on the part of the CHA. It has also been observed that mala fide intention is not visible on the part of the CHA firm and the mistake is

not so grave, which warrants revocation of the licence. He drew the attention of the Bench to the letter dated 1.5.2006 of the CHA requesting the Dy. Commissioner of Customs to supply a copy of the authority letters submitted along with shipping bills. In reply to that letter, Joint Commissioner of Customs (Technical) informed that copy of authority letter submitted along with Shipping bill has not been relied upon in the show cause notice and it was not supplied to the Appellant. It is his submission that the CHA firm submitted authority letter along with shipping bills, which was not relied upon in the show cause notice and the allegation on this issue is not maintainable. He further submits that the Adjudicating Authority agreed with Inquiry Officer on first issue. But he disagreed on the second ~~record~~ issue with the Inquiry officer without assigning any reason. He relied upon the various decisions of the Tribunal as under:-

(1) Krishan Kumar Sharma Vs. CC, New Delhi
2000 (122) ELT 581 (Tribunal)

(2) Falcon Air Cargo & Travel (P) Ltd.
2002 (141) ELT 284 (T-D)

(3) Nanda International Vs. CC, Chennai
2004 (176) ELT 524 (Tribunal-Chennai)

4. Ld. DR reiterates the findings of the Commissioner ~~(Appeals)~~. He submits that there is a serious lapse on the part of the CHA inasmuch as the shipping bills were signed without verifying the identity of the person. He further submits that CHA filed the

declaration without verification and, therefore, revocation of licence is justified. He also submits that it is established that the other Appellant No.1 and 2 are Shri I.P. Gupta, proprietor of M/s. IPG Cargo Services and Shri Harish Kumar Sharma, employee of M/s. IPG Cargo Services. It is evident from the record that CHA license was allowed to use G and H Cards to the other appellants in irregular manner. So, the Commissioner rightly cancelled their G and H cards.

5. After hearing both the sides and on perusal of the records, it is seen that inquiry was conducted by the Inquiry Officer under Customs House Agent Licensing Regulation 1984 (now 2004). The relevant portion of the findings of the Inquiry Report as recorded in the impugned order are reproduced below:-

> " The facts of the case clearly manifests that there was carelessness and negligence both on the part of the CHA and the exporter in dealing with the export documents like shipping bills. From the facts of the case, it is also apparent that there is no allegation of loss of revenue. The entire case revolves around the fact that the shipping bills have been prepared without any authorization and without signature of the proper person/authorized person. On the documents, the CHA has mentioned manufacturer exporter in place of merchant exporter because of the fact that the letter head of the exporter clearly indicates and printed as 'manufacturer and exporter', which was supplied by the exporter. Moreover, in mentioning 'manufacturer exporter' in place

of 'merchant exporter', the malafide intention is not visible as the rate of DBK is same for both the merchant exporter as well as manufacturer exporter. Furthermore, from the facts of the case, CHA cannot be squarely blamed for failure to exercise due diligence to ascertain the correctness of the information. The exporter was also required to provide correct information to the CHA. If any incorrect information has been given by the exporter, which in the instant case has not been done by the exporter. It is evident that Shri Ajay Jain, Director of the exporter firm in his statement recorded on 12.01.2004, stated that the relevant invoice and documents were sent through E-mail to M/s. N.K. Meena, CHA firm by them without signature and neither any director nor any authorized person of his company came to Jaipur to fulfill the export formalities.

x x x x x

The entire series of events and facts involved in the case are indicative of transaction that occurs in the ordinary course of business activity. It is a general practice of any business that new source is required to be developed for the purpose of developing business and in course of such normal practice of business, the transaction between M/s. N.K. Meena and M/s. I.P.G was purely commercial. I find that the actual work of Customs clearances was being carried out by the CHA. Thus, it is clear that Shri N.K. Meena, CHA had not allowed M/s. IPG to use his licence for exportation of goods nor M/s. IPG Cargo Services has transacted business on the strength of CHA licence issued to M/s. N.K. Meena."

6. The Inquiry Officers observed that mistake is not so grave, which warrants revocation in view of the above discussions. He also observed that "G card and H card" of the other appellants may be cancelled and both should be barred from working as employees of the CHA. The Adjudicating Authority agreed with the conclusion of the Inquiry Officer. But he did not agree with the conclusion of the Inquiry Officer for allowing CHA licence to be used by the other firms as there are ample evidence on record to prove that M/s. IPG Cargo Services was doing CHA business in the name of the appellant No. 3. Commissioner had not discussed the ample evidence on record apart from that which were placed by the Inquiry Officers. It is seen that the transaction between the CHA and the other appellants are totally on commercial basis. This fact was not disputed by the Commissioner in the impugned order. The Tribunal in the case of Falcon Air Cargo & Travel (P) Ltd. (supra) (para-7) observed that it is required to be examined under which situation action of revocation of CHA license is involved. The Tribunal also discussed the decision of Delhi High Court. The relevant portion of the said decision is reproduced below:-

> " The Delhi High Court, while remanding the matter, had expressed the view that "when revocation is directed it has to be only in cases where infraction is of a very serious nature warranting exemplary action on the part of the authorities, otherwise two types of actions (suspension and revocation)

> would not have been provided for.........the authorities while dealing with the consequences of any action which may give rise to action for suspension, revocation or non-renewal have to keep several aspects in mind. Primarily, the effect of the action vis-à-vis right to carry on trade or profession in the background of Article 19(1) (g) of the Constitution has to be noted. It has also to be borne in mind that the proportionality question is of great significance as action is under a fiscal statute and may ultimately lead to a civil death."

There is no allegation of loss of revenue. The CHA explained the irregularity, which was not refuted in the impugned order. Therefore, the revocation of CHA licnece is not justified. However, I find force in the submission of the ld. DR that Shri I.P. Gupta is himself a "G. Card" holder as well as proprietor of I.P.G. Cargo Services and his employee, Shri Harish Kumar Sharma unlawfully obtained the "H Card" by declaring himself as employee of appellant No.1, which are very serious nature.

7. In view of the above discussion, revocation of license and forfeiture of security against the Appellant No.3 M/s. N.K. Meena, CHA firm is set aside. So, the appeal No.C/246/08-SM (BR) is

P.T.O

allowed with consequential relief. Appeal No.C/244-245/08 are rejected.

(Order dictated & pronounced in open court on 16.5.2008.)

(P. K. Das)
Member (Judicial)

Ckp.