

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/657 /2008 – SM[BR]

Date 07/01/2009

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

To :
M/S CARGO WORLD.,
L-222, STREET NO. 7-B, 2ND FLOOR, MAHIPALPUR
EXTENTION, NEW DELHI.
M/S CARGO WORLD.,

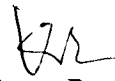
Appellant

Vs
Respondent

C.C. NEW DELHI (IMPORT & GENERAL)

I am directed to transmit herewith a certified copy of **Final order No. 6 / 2009 - SM[BR]** dated 1.1.2009

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. NEW DELHI (IMPORT & GENERAL)

NEW CUSTOM HOUSE, NEAR I.G.I. AIRPORT, NEW DELHI 110037.

2. Adv. / Consult

MR.PIYUSH KUMAR,ADV

B-25,LAJPAT NAGAR-III,N.DELHI

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 Publications (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3

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), Thyagarava Road, T. Nagar, Chennai

13 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kuni, New Delhi - 110070

14 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-1

15 Office Copy

16 Guard file


Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Custom Appeal No. 657 of 2008-SM

(Arising out of Order-in-Original No. 06/POLICY/MKG/2008 dated 18.9.2008 passed by the Commissioner of Customs, New Delhi)

M/s Cargo World

Appellant
Shri Piyush Kumar, Advocate

Vs.

CC, New Delhi

Respondent
Shri R.K. Sain, DR

Date of Hearing: 1.1.2009

CORAM: HON'BLE MR. D.N. PANDA, MEMBER (JUDICIAL)

Find Order No. 06/09-SM(BR) dated.....

Per D.N. Panda:

Ld. counsel Shri Piyush Kumar submits that power under Regular 20 of Customs House Agent Licensing Regulation 2004 cannot be mechanically exercised. He submits that there are three laid down grounds which should be essentially present to invoke Regulation 20. His further submission is that the order passed has to show that Regulation 22 was given a fair play and such order should demonstrate how and the manner in which

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requirement of Regulation 22 was fulfilled. In absence of reason being shown by that order that order becomes fatal.

2. Ld. counsel further submits that page 2 of the impugned order shows that the Id. Commissioner has acted on surmise and suspicion. If qualification of Shri Moolchand Sharma was in question that question is answerable by Regulation 19. But the Id. Commissioner erroneously decided the issue proceeding to examine graduation degree certificate of that person whereas essential qualification prescribed by Regulation 19 is 10 + 2, or equivalent. Ignoring this aspect of the law, Id. Commissioner arbitrarily suspended the licence of the appellant. So also he held that Shri Moolchand Sharma was not eligible for issue of H-card. Therefore, the impugned order on both the issue is unsustainable.

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3. Ld. counsel further submits that when the order is passed under the law, that order should also show the manner of grant opportunity and examination of the evidence. That was not done. Therefore, the impugned order being unreasoned and non-speaking fails to stand. He therefore, categorically submits that the authorities should exercise the power in accordance with law to get approval of the law.

4. Ld. DR appearing for the Revenue supports the order of the authorities below.

5. Heard both sides and perused the record. When the matter before the Id. Commissioner was to consider the request of issuance of H-card to Shri Moolchand Sharma on the basis of qualification prescribed by law, failure to examine that issue in accordance with law results in denial of justice. When a qualification is prescribed by

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law how the Id. Commissioner assumes that qualification ^{of a} degree is a requisite is inconceivable. The last sentence of para-1 at page-2 of impugned order clearly proves that Id. Commissioner has passed a premature order when he himself appreciated that "moreover, investigation are still in progress". When such observation was there, the Commissioner should not have proceeded to cause failure of justice.

6. Ld. Counsel's argument on both the counts that the qualification prescribed under Regulation 19 (1) is to be followed and secondly in relation to existence of essential ingredients of Regulation 20 read with Regulation 22 of Customs House Agent Licence Regulation 2004 are to be brought to record for a proper proceeding cannot be brushed aside. It may be appreciated that an order passed does not gets sanction of law unless that is in

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accordance with law. Therefore without setting aside the order it has become necessity in the justice that the Id. Commissioner should get an opportunity to re-examine the issue before him on the touchstone of law. That authority should decide the issue before him without misdirecting to matters not in controversy and not before him. It may be stated that suspicion however grave may be is not substitute of proof. Therefore the Id. authority should grant fair opportunity to the appellant and first determine the issue before him, state the reason for his decision and his decision by a speaking and reasoned order to see the light of the day. If such due process of justice is not followed and the provisions of law are ignored, any order passed shall not get sanction of law. It is needless to mention that not only justice is to be done but justice must be seemed to have been done.

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7. With the aforesaid observation and findings this matter is remitted back to the Authority below setting aside the order dated 18.9.08 passed by the Id. Commissioner.

8. Ld. Counsel at the fag ends of dictation of this order submits that if a time frame is prescribed by this order and the appellant is dealt expeditiously under the law there shall not be prejudice to the interest of justice. Considering that the appellant has already undergone sufferings due to the impugned order it would be proper if the Id. Commissioner decide the issue before him by **31st Jan. 2009**, following due process of law.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

RM.