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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/36 /2011 - CU[DB], C/S/166/11, C/M/24, 50/2011 Date **08/03/2011**

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

To :
SHRI SUNIL BHATIA, PROPRIETOR OF
M/S KUNAL TRAVELS (CARGO), A-6, 1ST FLOOR,
SOUTH CITY-2, SOHNA ROAD, GURGAON
(HARYANA)

SHRI SUNIL BHATIA, PROPRIETOR OF Appellant

Vs

C.C. NEW DELHI (IMPORT & GENERAL) M.O. NO.C/27/11, S.O. NO.C/59/2011 Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/101/ 2011 CU[DB]** dated 04.03.2011 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
C.C. NEW DELHI (IMPORT & GENERAL)
NEW CUSTOM HOUSE,
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2. Adv. / Consult
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NEW DELHI-110014
3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.IV

C/Misc No.24/11, C/M 50/11, C/S 166/11, C/A 36/11

(Arising out of order in original No.31/VKG/Policy/2010 dated 13.1.2011 passed by the Commissioner of Customs(Import & Gen), New Delhi)

Date of Hearing: 1.3.2011

For Approval and signature:

Hon'ble Mr Ashok Jindal, Judicial Member
Hon'ble Mr.Mathew John, Technical Member

1.	Whether Press Reporters may be allowed to see The order for publication as per Rule 27 of the CESTAT(Procedure) Rules, 1982?	Yes
2.	Whether it would 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?	No
4.	Whether order is to be circulated to the Department Authorities?	No

~~Sinil~~ Sunil Bhatia Prop
M/s Kunal Travels — Appellant

Vs

CC, New Delhi — Respondent

Appeared for the Appellant: Shri Pradeep Jain, Advocate
Appeared for the Respondent: Shri K.K.Jaiswal , SDR

Coram: **Hon'ble Mr Ashok Jindal, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical)

M.O. No. C/27/11
Final ORDER No. C/101/11
S.O. No. C/59/11

Per Mathew John:

M/s Kunal Travels (Cargo) are holding Customs House License No. R-95/91(AAFPB 6161 LCH 001) valid up to 20.10.2015 (hereinafter called the CHA) issued and renewed by the Commissioner of Customs (I&G), NCH, New Delhi under Regulation 9(1) of Customs House Agents Licensing Regulations, 2004 (hereinafter called as "the CHALR") to transact customs clearance work within the jurisdiction of Delhi Commissionerate and jurisdictions of other Commissioners of Customs under Regulation 9(2) of CHALR.

2. The Applicant is in Appeal against Order-in-Original No. 31/VKG/POLICY/2010 dated13-01-2011 suspending their CHA license. MA 24/2011 is for early hearing of the Appeal. MA 50/2011 is a request to raise additional grounds on the basis of Board's Circular 9/2010 dated 8-4-2010.

3. We find that the appellants are now stopped from carrying on their profession and for this is enough reason to give early hearing accordingly MA 24/2011 is admitted. We also see that the additional grounds sought to be argued are quite relevant and does not involve any questions of fact to be verified by the lower authority. So MA 50/2011 also is admitted.

4. The Appellant was acting as CHA and transacting business of customs clearances in the jurisdiction of Commissioner of Customs, Customs House, Kandla (Gujarat) among other stations.

5. The reason for suspension of the license as seen from the order is that M/s Gorala Arya Impex Pvt. Ltd. Delhi attempted to

export non-basmati rice ,(a prohibited item for export) as basmati rice (not prohibited for export from Mundra Port). The Appellant had acted as CHA for the impugned export consignments and filed the relevant Shipping Bills.

6. The impugned Shipping Bills were filed on 2nd and 3rd of June 2010. The shipping Bills were filed declaring the goods to be "Basmati Rice" but on testing of samples the goods were found to be Non-Basmati rice which is prohibited for export. The DRI alleged involvement of the CHA in the matter and sent a report in the matter to Commissioner of Customs Kandla who in turn forwarded the report to Commissioner of Customs Delhi, competent to take action under Regulation 20(2) of CHLAR. Commissioner of Customs, Delhi suspended the license of the CHA with effect from 15-12-2010.

7. One of the charges against CHA was that Shri Maliram an employee of the exporter, M/s Goralal Arya at Gandhidham had signed all concerned documents including SDF declaration as "Prateek" who was a Director of the company exporting goods and thus the export documents were forged ones. The investigation report alleges that the CHA was aware of the fraudulent nature of the signatures but did not disclose it to the customs department. There is also a charge that during the investigations the CHA did not disclose information about other Shipping Bills which were filed, but against which goods had been not been exported. Based on this report, the license of the CHA was suspended w.e.f from 15-12-2010.

8. The suspension of license of a CHA knocks out the CHA from business causing fatal blows to the owners as well as the employees and hence has to be done with due deligence. CBEC recently issued guidelines vide circular No. 9/2010 dated 8-04-2010 on how to proceed in such matters. The relevant paragraphs of the circular are reproduced below.

"**(iii) <u>Suspension or revocation against CHAs operating on 'C' form intimation basis:</u>**

5.1. CHALR, 2004 provide a facility for the CHAs who have been issued a license from a particular customs station to operate under Form 'C' intimation at another customs station. In case of such CHAs, who are found to have violated any provision of the CHALR, 2004 at any customs station, it is clarified that the suspension action against CHA's operations may be taken by the Commissioner of Customs at the station who issued the CHA license and such action would either be limited to a particular customs station where a violation has been noticed or action against the CHA in general, applicable at all customs stations where the CHA operates, depending upon the gravity and seriousness of the violation. Where the CHA licence is suspended, all 'G' and 'H' cards issued in respect of that licence would become non-operational.

5.2. Further, it is also clarified that the Commissioner of Customs at a customs station who had authorised a CHA to operate on 'C' form intimation, should inform the details of violations to the Commissioner of Customs at the customs station from where the CHA licence was issued for such CHA, so that necessary action for suspension or revocation of CHA licence, could be initiated by him. This would avoid duplication and ensure uniformity in adjudication of a case against a CHA in suspension or revocation proceedings by the Customs field formations. However, the Commissioner of Customs, who had authorised a CHA to operate on 'C' form intimation at a customs station, may take action in deserving cases under regulation 21 of CHALR, 2004 for prohibiting the working of such defaulting CHA in any section of the Custom House/Customs Station.

(v) <u>Time limit for completion of suspension proceedings against CHA licensee under regulation 22:</u>

7.1. The present procedure prescribed for completion of regular suspension proceedings takes a long time since it involves inquiry 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. Suitable changes have been made in the present time limit of forty five days for reply by CHA to the notice of suspension, sixty days time for representation against the report of AC/DC on the grounds not accepted by CHA, by reducing the time to thirty days in both the cases under the Regulations.

7.2. In cases where immediate suspension action against a CHA is required to be taken by a Commissioner of Customs under regulation 20(2), there is no need for following the procedure prescribed under Regulation 22 since such an action is taken immediately and only in justified cases depending upon the seriousness or gravity of offence. However, it has been decided by the Board that a 'post-decisional hearing' should be given in all such cases so that errors apparent, if any, can be corrected and an opportunity for personal hearing is given to the aggrieved party. Further, Board has also prescribed certain time limits in cases warranting immediate suspension under Regulation 20(2). Accordingly, the investigating authority shall furnish its report to the Commissioner of Customs who had issued the CHA license (Licensing authority), within thirty days of the detection of an offence. The Licensing authority shall take necessary immediate suspension action within fifteen days of the receipt of the report of the investigating authority. A post-decisional hearing shall be granted to the party within fifteen days from the date of his suspension. The Commissioner of Customs concerned shall issue an Adjudication Order, where it is possible to do so, within fifteen days from the date of personal hearing so granted by him."

9. The main grievance of the Appellant is that these guidelines have not been followed in their case. They place the following time chart of events in their case.

Event	**Date**
Seizure of goods	16-07-2010 and 20-08-2010
Report by DRI, the investigating authority	24-10-2010
Report by Commissioner of Customs Kandla to Commissioner of Customs, New Delhi	08-12-2010
Date of Issue of Suspension Order	15-12-2010
Date of post decisional personal hearing	04-01-2011
Date of Order confirming suspension	13-01-2011

10. It is argued on behalf of the Appellant that the investigating authority send a report only after three months of the event and this shows that they did not find any reason to "immediately" suspend the license as envisaged in Regulation 20 (2) of CHLAR. It is further argued that even after preparation of the report they did not send the report to the Authority competent to suspend the license but to Commissioner of Customs Kandla. Finally suspension order was issued 52 days from the date of the report in violation of the norms prescribed by the Board. The appellants rely on the decision of this Tribunal in OM Freight Forwarders Pvt Ltd Vs. CC General (Mumbai) 2011-TIOL 73-CESTAT-MUM and argue that they should also be provided similar relief. They also submit that the exporter who is the real culprit is still doing his business but he who acted as the CHA for the seized consignment has been thrown out of business and this is quite an inequitable punishment.

11. We note that there has been considerable delay in issue of the suspension order when adjudged against the time frames prescribed by the Board. So following judicial discipline we take note of the order of the Tribunal in Om Freight Forwarders (Supra). However we are of the view that stay on suspension order has the same effect as revocation of suspension. So we propose to dispose of the Appeal itself revoking the suspension order dated 15-12-2010.

12. We wish to state that we are not passing any opinion on the culpability of the CHA and it is open to the department to take action as per Regulation 20(1) of CHALR, after following the procedure laid down by the Board.

Ashok Jindal
(Member-Judicial)

Mathew John
(Member-Technical)