TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. C/728 /2009 - CU[DB] Date **17/06/2011**

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

To :
M/S VINOD TOMAR,
B-21, PALAM VIHAR, NEAR DHARMA PROPERTIES,
GURGAON. (HARYANA)

M/S VINOD TOMAR, Appellant

Vs

C.C. NEW DELHI (IMPORT & GENERAL) Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/251/ 2011 CU[DB]** dated 13.06.2011 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, NEAR I.G.I.
AIRPORT, NEW DELHI 110037.

2. Adv. / Consult
MR.PIYUSH KUMAR,ADV
B-25,LAJPAT NAGAR-III,
NEW DELHI – 110 024.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
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. 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,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.III

C/Appeal No.728/2009

(Arising out of order No.27/Polic/MKG/2009 dated 25.11.09 passed by the Commissioner of Customs, New Delhi)

Date of Hearing:30.5.2011

For Approval and signature:

Hon'ble Ms Archana Wadhwa, 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?

2. Whether it would be released under Rule 27 of the CESTAT (Procedure) rules, 1982 for publication in any authoritative report or not?

3. Whether their lordships wish to see the fair copy of the order?

4. Whether order is to be circulated to the Department Authorities?

Vinod Tomar Appellants

Vs

CC, New Delhi Respondent

Appeared for the Appellant: Shri Piyush Kumar, Advocate
Appeared for the Respondent: Shri Sonal Bajaj,SDR

Coram: **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical

Final order No. C/251/11

Per Mathew John:

The Appeal is against an order suspending the license grated to the Appellant to function as Custom House Agent. The license was suspended on 02-09-09. A personal hearing was granted on12-11-09 to decide whether to confirm the suspension. After considering the submissions of the Appellant the Commissioner confirmed the suspension vide his order dated 25-11-09. The Appellant is challenging this order.

2. The main charge against the Appellant is stated in para 10 and 11 of the impugned order which are re-produced below

"10. *I have carefully gone through the facts of the case already on record as well as the submissions made by the CHA. In the instant case, Directorate of Revenue Intelligence, Mumbai initiated investigation against M/s Nitco Limited, who were regular importer of natural and artificial market block/slabs and vitrified tiles. M/s Nitco Limited used to misdeclare the polished artificial marble slabs as unpolished slabs. Shri Janardhan Prasad Tiwari sole proprietor of M/s Ashish Shipping Agency freight and forwarders used to file Bill of Entry. Shri Tiwari in his statement before DRI officers stated that he ran his own agency by the name of M/s Ashish Shipping Agency and had been using Vinod Tomar's licence to carry out customs clearance in Mumbai* *by showing him as an employee of said CHA since 2003. He also stated that he was paying 10% of his monthly turnover to Shri Vinod Tomar as a consideration for use of his licence.*

11. As per facts on record, Nitco's mis-declaration of goods with the intention to evade duty was well within the knowledge of Shri Tiwari but he instead of following the law used to manage the clearance of mis-declared goods by concealing the facts and by in collusion with the customs officers. Shri Tiwari admitted that he repeatedly and intentionally got cleared such goods. The customs duty evaded was reported to be more than 30 crores."

3. Thus the main charge is that the CHA had let out his license for use by another firm and the person so authorized to use the license, and who filed the Bills of Entry, was aware of the misdeeds of the importer and was abetting it and even bribing the officers. On enquiry with the Ld. DR he is not able to confirm whether any action has been initiated against the officers who were bribed and whether the investigation has been completed and whether the Department is in a position to issue notice to the Appellant under Regulation 22 of Custom House Agents Licensing regulations for a final suspension or revocation of the license.

4. The guideline given by CBEC in such matters vide Circular No. 9/2010 dated 08-04-2010 lays down a norm that such SCN

should have been issued within nine months from the date of receipt of report regarding offense committed. This has not been complied with.

5. Now the license stands suspended for almost 21 months. There is no indication regarding any time frame within which a final SCN will be issued. In such circumstances the balance of convenience shifts in favour of the Appellant, since he has been deprived of earning his livelihood due to interim orders. So we find it proper to revoke the suspension order. It is made clear that this order is without prejudice to the department's right to issue notice for final suspension or revocation and pass appropriate orders after considering the submissions of the Appellant.

6. The Appeal is thus allowed by setting aside the impugned order.

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)