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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/15 /2011 - CU[DB] Date **27/06/2011**
C/M/13/11, C/S/62/11

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

To :
M/S SHIVA LOGISTICS PVT. LTD.

FLAT NO. 303, 18/20, WEA KAROL BAGH, NEW DELHI.

**M/S SHIVA LOGISTICS PVT. LTD.** Appellant

Vs

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

I am directed to transmit herewith a certified copy of **Final order No.C/270/ 2011 CU|DB|** dated 17.06.11

passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Alongwith Stay Orde No C/218/11 & Misc Order No C/129/11

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.ANUJ KUMAR GARG & CO. (ADVOCATES)**
C-167, C.L. JOSEPH BLOCK, TEES HAZARI, DELHI-110054.

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)

**IN THE CUSTOMS, EXCISE & SERVICE TAX**
**APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**
**COURT NO. III**

**Date of Hearing : 3.6.2011**

**Custom Misc. No. 13 of 2011, Stay No. 62 of 2011 and Appeal No. 15 of 2011**

[Arising out of Order-in-Original No. 21/Policy/VKG/2010 dated 21.10.2010 passed by the Commissioner of Customs, New Delhi]

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

| | | |
|---|---|---|
| 1. | Whether Press Reporter 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 Whether their Lordships wish to see the fair copy of the order? | Seen |
| 4. | Whether order is to be circulated to the Department Authorities? | NO |

M/s Shiva Logistics Pvt. Ltd. Appellant

Vs.

CC, New Delhi Respondent

**Appearance:**

Appeared for Appellant : Shri Anuj Kumar Garg, Advocate
Appeared for Respondent : Shri S.N. Srivastava, Jt. CDR

**Coram:**

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

Stay Order No. C/218/11
Final Order No. C/270/11 dated 17.6.11

Per **Mathew John:** M.O. No. C/129/11

The Appellant is a Custom House Agent whose licence was suspended on 19.7.2010. A post-decisional hearing was given on

11.8.2010 and the suspension was confirmed by the Commissioner of Customs vide order dated 25.10.2010. Aggrieved by the said order, the Appellant has filed this Appeal. The main charge against the Appellant is summarised in para-16 and 17 of the impugned order which are re-produced below :-

> "16. I have carefully gone through the facts of the case already on record as well as the submissions made by the Advocate. From the foregoing, it is found that the judgments quoted by the party have no relevance with the instant case and hold no substance. Since CHA M/s Shiva Logistics Pvt. Ltd. have violated the Regulation 12 and the relevant provisions of CHALR, 2004 by lending their CHA licence to unauthorised persons for monetary consideration even without knowing the actual export, which is a mandatory condition of Regulation 12 of CHALR, 2004, which stipulates that "every licence granted or renewed under these regulations shall be deemed to have been granted or renewed in favour of the licencee, and no license shall be sold or otherwise transferred."

> "17. It is also fact that the CHA M/s Shiva Logistics Pvt. Ltd. had wilfully with malafide intention, colluded with Shri Khaled Ashraf Begawala, for clearing the consignments of overvalued exports in respect of the tainted IEC holders, through one Krishna Kumar Garg, representative from M/s Shiva Logistic Pvt. Ltd. and Sh. Rahul, an agent of Sh. Khaled Ashraf, who had full knowledge of tainted and fake IEC holders, and creating this syndicate, they had filed approx. 100 to 120 S/B's which caused huge loss to Govt. exchequer."

2. The Counsel for the Appellant submitted that the Appellant ~~has~~ was licenced as a Custom House Agent by the Commissioner of Customs in New Delhi and the Appellant has been working mainly in New Delhi. The Appellant had some corporate clients which wanted

them to handle the documents at Mumbai also and, therefore, they opened an office in Mumbai and got permission as required under the CHA Regulations and started functioning in Mumbai. The events leading to the allegations happened at Mumbai because one or two employees who are engaged to work in Mumbai acted on their own keeping the management in the dark. The Appellant submit that the licence holder was not aware of the slip ups that were happening in their Mumbai office. As soon as the matter was known those persons were terminated from their services. The Appellant submits that the licence has been suspended for the last ten months, but no final notice as envisaged by Board's Circular 9/2010 dated 8.4.2010 has been issued. Since the licence is suspended the employees of the Appellant are without any work and the Appellant itself is not able to earn any income. The pleading is for restoration of license till the matter is settled and the Appellant undertakes to avoid any such lapses by their employees in future.

3. Ld. DR, on the other hand, points out that the Appellant is responsible for the action of its employees and if the Appellant is not able to monitor its employees properly ~~and~~ the employees' action results in loss to the Government. There is no reason why the Appellant should be allowed to function as a CHA. He submits that full matter relating to the loss caused to revenue is under investigation and proper Show Cause Notice will be issued soon and during such time it is not

desirable that a company like the Appellant is allowed to function as a CHA.

4. Considered arguments on both the sides.

5. The Board has laid down norms regarding time frame for completing proceedings against CHA vide Circular No. 9/2010 dated 8.4.2010. As per this, the final notice, disclosing all the evidence appearing against the CHA, should be issued within nine months from the date on which the incident is reported to the licencing authority. Such a period is already over. Yet there is no indication of any time frame within which Revenue will issue such notice. Considering this and the fact that the employees of CHA are without any work we consider it proper to allow the CHA to function in Delhi as he was doing before suspension. In Mumbai it is proper that the Appellant should be allowed to function as a CHA only for its well known corporate clients for whom the Appellant was handling work prior to suspension of licence. In Mumbai the Appellant should not be allowed to take up business of any new importer or exporter till a final notice in the matter is issued and the matter decided. The Appellant is advised to prepare a list of such corporate clients for whom the Appellant was doing business in Mumbai prior to the suspension and place the list before the Commissioner of Customs where the Appellant wants to do such business. The Commissioner concerned will scrutinise such list and approve the names as per guidelines above. During the pendency of the matter, the Appellant is also

directed not to take on any work at any other customs location. Suspension order is modified accordingly. Stay petition and appeal itself are also disposed of in the above terms.

(Pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM