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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/20 /2011 - CU[DB] Date **24/08/2011**

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

To :
M/S AMAN CARGO PRIVATE LIMITED,
15-16/5, NARAINA PHASE-I (NR. PVR)
NEW DELHI.110028

M/S AMAN CARGO PRIVATE LIMITED, Appellant
Vs
C.C. NEW DELHI (IMPORT & GENERAL) Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/362/ 2011 CU[DB]** dated 10.08.2011 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.JYOTI MENDIRATTA,ADVOCATE
A-323, DEFENCE COLONY
(LOWER GROUND FLOOR)NEW DELHI.110024

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 (Harvana)
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.

Date of Hearing : 2.8.2011
Date of Pronouncement: 10.8.2011

Custom Appeal No. 20 of 2011

[Arising out of the Order-in-Original No. 25/POLICY/VKG/2009 dated 29.11.2010 passed by the Commissioner of Customs, New Delhi]

Coram:

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

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?	Yes
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?	Yes

M/s Aman Cargo Private Limited — Appellant

Vs.

CC, New Delhi — Respondent

Appearance:

Appeared for Appellant : Ms. Jyoti Mendiratta, Advocate
Appeared for Respondent : Shri Sonal Bajaj, SDR

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

Final Order No. C/362/11 dated 10.8.11

Per Mathew John :

The Appellant is a Custom House Agent licenced under Regulation 9 of the Custom House Agents License Regulation, 2004 (hereinafter referred to as CHALR). Their licence was suspended on 19.8.2010 under Regulation 20(2) of the CHALR. After that they were given a post decisional ~~hearing~~ hearing on 23.9.2010 and the Commissioner vide his impugned order ~~confirming~~ confirmed the suspension order dated 18.10.2010. Aggrieved by the order dated 29.11.2010, the Appellant is before the Tribunal.

2. The license of the Appellant was suspended for the reason that they did not comply with the norms laid down in the regulation and the circular issued by CBEC before taking up the business of one of their clients viz. M/s A & N Impex, Ludhiana. Revenue has pointed out that this is a proprietorship firm registered in the name of Mr. Navdeep Singh who was a dummy acting on behalf of one Mr. M.K. Arora who imported consignments. The charge against the Appellant is detailed in para 4, 5 and 6 of the impugned order which are reproduced below :-

> "4. The sub-regulation (o) of regulation 13 of the Customs House Agents Licensing Regulations, 2004 inserted vide Notification No. 30/2010 – Customs (NT) dated 8.4.2010 stipulates that the CHA shall :-
>
> *"verify antecedent, correctness of Importer Exporter Code (IEC) Number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information."*
>
> 5. During investigation Shri Anand Singh, 'G-card holder' (G-card no. 03/2005) of the CHA and Mr.

Gulshan K. Mediratta, Partner of CHA firm in their respective statements dated 1.6.2010 and 21.6.2010 had admitted the lapses on their part by not following KYC Norms as required by him vide the CBEC circular No. 9/2010-Customs dated 8.4.2010 as per the requirements under the sub-regulation (o) of regulation 13 of the Customs House Agents Licensing Regulations, 2004. Also no authorisaton from Sh. Navdeep Singh was obtained as required under the sub-regulation (a) of regulation 13 of the Customs House Agents Licensing Regulations, 2004. All the clearances were got done by CHA on basis of documents submitted by one Shri M.S. Arora without verifying whether these documents were signed by Sh. Navdeep Singh or not.

6. It was observed that if the CHA would have followed his obligations under the Customs House Agents Licensing Regulations, 2004, Shri M.K. Arora would not have been successful in his modus operandi."

3. The ld. Counsel for the Appellant submits that they had filed only three Bills of Entry on behalf of M/s A & N Impex that was during May 2010. In the consignments cleared by the Appellant, no mis-declaration or duty evasion was noticed by the department. Later, the importer directly filed Bills of Entry for certain consignments and in those cases the Directorate of Revenue Intelligence (DRI) detected some discrepancies. DRI has not yet submitted the final investigation report clarifying revenue loss or showing the involvement of the Appellant. They also submitted that before taking up the business of the said client, they had collected enough documents to satisfy themselves about the

identity of the importer and his address. They also submitted that the department has no case that the impugned importer was not found at the address declared. They submitted that in the case of new clients ~~and~~ it is very difficult to verify the antecedents of the clients because they might not have done any business in the past at all. Thus they contend that they had taken adequate care to be satisfied about the identity and address of the person. Further, the person concerned was available at the address and the Appellant's involvement in any smuggling activity has not been proved. They plead that it is very harsh to keep their license under suspension. They submitted that they have been licensed as a Custom House Agent since 1987 in New Delhi and they were permitted to work in Ludhiana under Regulation 9(2) of CHALR. The impugned smuggling activity has taken place in Ludhiana. They say that they have been out of business for almost one year due to suspension and undue hardship is caused to the proprietor and also their employees and they pray for revocation of the suspension.

4. Ld. DR, on the other hand, submits that the impugned imports were made in the name of persons who just lent IEC code for doing smuggling activity and which persons disappeared after making a few imports. Whenever any smuggling activity is detected, such persons vanish causing loss of revenue to the department. It is to block such leakage of Revenue that the Government has issued Notification No.

30/2010-Customs dated 8.4.2010 putting onus on the Custom House Agent to know their clients. In the impugned case, the CHA had never met the client. Actually the documents to prove identity was submitted by one Shri M.K. Arora who was actually doing the business and thus the Appellant had failed in discharging his responsibility under CHALR. The ld. DR submits that investigation regarding the revenue loss that might have occurred is still ~~under investigation~~ continuing ~~and role~~ and the role of the Appellant in the matter also is under investigation and it will be premature to revoke the suspension of ~~his~~ their license and such action will be prejudicial to the interest of Revenue.

5. We have considered arguments on both the sides. The facts unearthed by Revenue so far does not indicate any active involvement by the Appellant in doing smuggling or facilitating smuggling. The only case brought out so far is that the Appellant had handled three consignments in May 2010 of an importer who later on filed Bills of Entry in his own name and in such Bills of Entries some discrepancies (not clearly specified by Revenue) has been detected. We also note that the license of the Appellant has remained suspended for almost one year and the Revenue had ample opportunity to conduct necessary investigation against any involvement by the Appellant. We are of the view that continuing suspension of the licence will be unduly harsh based on the evidence that has been so far brought to the notice of the

Tribunal. Therefore, we are of the view that the suspension of ~~his~~ their license should be revoked and we order accordingly. It is made clear the Revenue is at liberty to issue notice under Regulation 22 for revocation of license of the Appellant, if ~~adequate evidence showing his~~ their involvement in any smuggling activity can be proved by acceptable evidence.

6. The Appeal of the Appellant is allowed by setting aside the impugned suspension order.

(Pronounced in open Court on 10-8-11)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM