IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Appeal No. C/50157/2016- CU(DB)

[Arising out of Order-in-Appeal No. 129/SM/POLICY/2015 dated 07-12-2015, passed by the Commissioner of Custom, New Delhi]

For approval and signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

M/s A.S.A Enterprises **...Appellants**
Vs.
CC -N. Delhi **....Respondent**

Appearance:

Sh. Rakesh Ballabh, Advocate for the Appellant
Dr. S.K. Sheoran, DR for the Respondent

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing: 15.12.2016

FINAL ORDER NO. 56387/2016-CU(DB)

Per V. Padmanabhan

The appeal is directed against the order dated 07.12.2015 passed by the Commissioner of Customs IGI airport, New Delhi. The appellant has Custom Broking Licence No.- R-41/87, which was valid upto 31.12.2016, issued by the Commissioner of Customs, New Delhi. The Customs Broker was allowed to function at Mumbai Custom in terms of Regulation 9(2) of CHALR, 2004 [New Regulation 7(2) of CBLR 2013]. The Directorate of Revenue Intelligence investigated certain syndicates engaged in the export of fabrics and readymade garments, by inflating the value to avail undue and inadmissible export benefits such as Duty Drawback and DEPB. The investigation report from DRI was received by Commissioner (Customs), Delhi in February, 2010. The CHA licence of the appellant was suspended on 2.3.2010 and Show Cause Notice dated 22.08.2012 was issued to the appellant CHA proposing revocation of their licence. However, on 24.9.2012, the proprietor of the CHA firm Shri Arun Kumar Sikka expired. After the enquiry, Officer submitted his report to the Commissioner (Customs), New Delhi, who passed Order-In-Original dated 13.8.2013 revoking the suspension of the licence.

2. On completion of investigation, DRI issued a Show Cause Notice on 12.1.2015 to various unscrupulous exporters. The appellant CHA was not included in the DRI Show Cause Notice. However, on receipt of the DRI Show Cause Notice proceedings against the appellant under CBLR was re-initiated and second Show Cause Notice was issued proposing to revoke the licence. The impugned order was passed by Commissioner (Customs), on receipt of a second enquiry report and the representation submitted by the appellant against the same.

3. With the above background, we heard Shri Rakesh Ballabh, ld. Advocate appearing for the appellant CHA, as well as Dr. S.k. Sheoran, ld. Departmental Representative for the Revenue.

4. The Ld. Counsel for the appellants emphasized their argument that the department had already initiated the proceeding against the appellant in the context of DRI investigation against certain unscrupulous exporters, on whose behalf the appellant had filed the shipping bills. However, in the proceedings which followed, the appellant was cleared and the CHA licence, which was originally suspended, was reinstated and they were allowed to operate once again. The department re-opened their case for revoking the CHA licence of the appellant on the same set of facts, on receipt of the Show Cause Notice issue by the DRI to the exporters. As a consequence of re-opening of the case against the appellant, their CHA licence was revoked in the impugned order. The Ld. Counsel submitted that the Department did not have jurisdiction to re-open the case which has been decided in their favour after the due process of law. Accordingly, he prayed that the impugned order be set aside.

5. Ld. Departmental Representative on the other hand reiterates the findings of the Adjudicating Authority.

6. In the impugned order, the CHA licence of the appellant stands revoked. As outlined in the above paragraph, the proceedings initiated under CBLR 2013, is a consequence of the investigation undertaken by DRI against certain syndicates, who were indulging in fraudulent exports of readymade garments with a view to avail

inadmissible drawback on highly inflated prices for export goods. The appellant, as a CHA, has filed shipping bills in respect of many such exporters. It is seen from records that DRI intimated the Commissioner (Custom), Delhi in February, 2010 about the investigations conducted by them. On the basis of this investigation report, which could be considered as an offence report, for the purposes of CBLR, proceedings stand already initiated for revoking the CHA licence of the appellant. Such proceedings, initiated vide the order dated 13.8.2003 by the Commissioner of Customs, Delhi concluded with the revocation of suspension of the CHA licence. It is relevant to note that the appellant is a proprietorship firm, whose proprietor was Shri Arun Kumar Sikka, at the relevant time. However, it is on record that Shri Arun Kumar Sikka, expired on 24.09.2012. In the present appeal, Ld. Counsel has submitted that all liabilities on the proprietorship firm would stand abated with the death of the proprietor. Subsequently, the firm was reconstituted with Smt. Anita Sikka, wife of the deceased proprietor as the new proprietor.

In the second round of litigation initiated by Commissioner (Customs) on receipt of the DRI Show Cause Notice to some of the exporters, Show Cause Notice was issued once again to the appellant and second enquiry conducted. On culmination of proceeding, vide the impugned order, the CHA licence of the appellant has been revoked.

7. On going through the records of the case, we find that both proceedings initiated against the appellant CHA are triggered by the same set of facts. The Original investigation report dated 1.2.2010 was issued by the DRI to Commissioner (Customs), Delhi after investigating the unscrupulous exporters from September, 2009. The second Show Cause Notice & proceeding got triggered by issue of DRI Show Cause Notice against some of the unscrupulous exporters. We are of the view that reopening the case against the appellant CHA after completion of the Original proceedings is not contemplated under CBLR. Commissioner having passed the original order in favour of the appellants cannot reopen the issue with a fresh Show Cause Notice and pass fresh orders revoking the licence. With a passing of the first order, Commissioner becomes *Functus Officio* and will not enjoy the power to decide the matter afresh.

8. Another argument advanced by the appellant is that Shri Arun Kumar Sikka, who was the proprietor of the appellant at the relevant time when the alleged took place activity expired on 24.9.2012. The submission of Ld. Counsel for the appellant is that the proprietorship firm terminates with the death of the proprietor and the proceedings against the proprietor would stand abated. Accordingly, their case is that no fresh Show Cause Notice can be issued to the new proprietor.

We find force in such arguments. In any view of the matter, the adjudicating authority is not empowered to issue second Show Cause Notice on the same set of facts comprised in the offence. Accordingly, we hold that the impugned order is not sustainable.

9. In view of the above, appeal is allowed and the impugned order set aside.

[Operative portion of the order already Pronounced in the open Court]

Ashok Jindal
(Member Judicial)

V. Padmanabhan
(Member Technical)

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