IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

COURT-I

Date of Hearing/Decision : **23.01.2017**

Customs Appeal No. C/53047/2016 –CU (DB)
(Stay Application No. C/Stay/51745/2016)

[Arising out of the Order in Oiginal No. 74/SM/POLICY/2016 dated 13.10.2016 passed by Commissioner Customs, New Delhi]

Nitco Logistics Pvt. Limited … Appellants
[Earlier known as Nitco Roadways Pvt. Limited]

Vs.

Commissioner of Customs, (General) New Delhi … Respondent

Appearance:

Rep. by - Shri Prabhat Kumar, Advocate for the appellant
Rep. by - Shri Amresh Jain, DR for the respondent.

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 50501/2017-CU

Per Justice Dr. Satish Chandra

The present appeal is directed against Order-in-Original No. 74/SM/POLICY/2016 dated 13.10.2016 passed by Commissioner Customs, New Delhi.

2. The brief facts of the case are that the appellant was holding CHA license issued from Delhi Customs office with authorization to work at Mumbai Port. In the year 2009, certain syndicates were engaged in the export of fabrics and readymade garments of inferior quality through Hind Terminal CFS and Ameya CFS of JNPT, Nhava-Sheva, Mulund CFS by grossly inflating value to avail undue and inadmissible export benefits such as Duty Drawback and DEPB. The appellant being CHA had provided logistic support

to these syndicates. After knowing the offence, the license of the appellant was suspended by the Mumbai branch of Customs. Against this suspension, the appellant filed an appeal [Appeal No. C/282/2010-Mum] before the CESTAT. The CESTAT vide order dated 15.12.2011 issued directions to the Commissioner to complete the proceedings within a period of three months. When the formalities were not completed within a stipulated time, the appellant had moved Miscellaneous Application No. C/MA/(Ors)1033/12 before the CESTAT, which was disposed of on 21.05.2012 with a direction to withdraw the order of suspension of CHA licence No. 11/1051 with immediate effect. We note, the aforesaid directions issued by CESTAT were never challenged by the department. However, suddenly by the impugned order, the licence of the appellant was revoked again for the same offence committed in the year 2009. Being aggrieved, the appellant has filed the present appeal.

3. With the above background, we have heard Shri Prabhat Kumar, ld. Advocate and Shri Amrish Jain, ld. DR appearing for the parties.

4. After considering the facts and circumstances of the case, it appears that the appellant was providing logistic support to certain syndicates which were involved in the scandal of availing undue and inadmissible export benefits such as Duty Drawback, DEPB etc. For this offence, the licence of the appellant was suspended in the year 2009 at Mumbai Office of Customs. Mumbai Customs office had also intimated about the suspension of licence to Delhi Customs office. The licence was restored as per the order of CESTAT dated 21.05.2012. However, the Delhi Customs office has not taken cognizance of the CESTAT order and by an Administrative order, F. No. S/8-52/2009-Admn/227 dated 28.05.2012, revoked the licence again.

5. We note that when Delhi Customs office, after receiving the CESTAT order and reports from Mumbai Customs office had not taken any action, when the licence of appellant was restored by setting aside the suspension, then there is no occasion for Delhi Customs office to restart administrative action for revocation of the licence. It amounts to double jeopardy. As per Article 20 of the Constitution of India, no person can be punished twice for the same offence. Hence, we set-aside the impugned order and restore the license of the appellant.

6. In the result, the appeal is allowed. Stay application also disposed of.

[Order dictated & pronounced in open court]

(V. Padmanabhan) Member (Technical)	(Justice Dr. Satish Chandra) President

KL.