CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Customs Appeal No. 53130 of 2016

(Arising out of Order-in-Original No. 68/SM/SUSPENSION/POLICY/2016 dated 27.09.2016 passed by the Commissioner of Customs (General), New Delhi)

DATE OF HEARING : 30.03.2017
DATE OF DECISION : 30.03.2017

M/s Innovative Cargo Services …. Appellants
(Rep by Sh. Piyush Kumar, Adv.)

VERSUS

CC, New Delhi …. Respondent
(Rep. by Sh. K. Poddar, DR)

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 52636/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed against the Order-in-Original No. 68/SM/SUSPENSION/POLICY/2016 dated 27.09.2016 passed by the Commissioner of Customs (General), New Delhi.

2. The brief facts of the case are that the assessee-Appellants is an authorised Customs House Agent (CHA) who was facilitating to avail the drawback of more than Rs. 700 crores by exporting sub-standard Ready Made Garments at higher value through dummy/front/fake of about 350 non-existing

firms and consequently their licence was suspended. Being aggrieved, the assessee-Appellants have filed the present appeals.

3. With this background, we have heard Shri Piyush Kumar, learned counsel for the assessee-Appellants and Shri K. Poddar, learned DR for the Department.

4. In the instant case, on 18.03.2015, DRI had searched the office premises of the assessee-Appellants in connection with an investigation. On 24.08.2016, the report was forwarded by the DRI Office to the Commissioner concerned. On the basis of the report, the Commissioner vide order dated 30.09.2016 suspended the licence of the assessee-Appellants. On 27.09.2016, the Commissioner (General) confirmed the suspension of the licence. The learned counsel for the assessee-Appellants submits that as per Regulation 20 of the Customs Brokers Licensing Regulation, 2013 the period is 90 days, but till date no notice has been issued. For this purpose, he relied upon the ratio laid down in the case of **Master Cargo Services vs Commissioner of Customs (Seaport-Import), Chennai,** 2015 (330) ELT 465 (Tri.-Chennai); **Gunjan Sharma vs Commissioner of Customs, New Delhi,** 2015 (318) ELT 513 (Tri.-Del); and **Manjunatha Shipping Services Ltd. vs Commissioner of Customs (Import), Chennai,** 2014 (313) ELT 226 (Tri.-Chennai). He vehemently argued that after a period of 90 days, the assessee-Appellants are entitled for the revocation of the licence. On the other hand, Shri K. Poddar, learned DR for the Department, supported the impugned order and relied upon the ratio of the Madras High Court in the case **A.M. Amahed & Co. Vs Commissioner of Customs (Imports), Chennai,** 2014 (309) ELT 433 (Mad.), wherein it was held that :

> "18. The above regulation has only 3 ingredients namely (i) failure to comply with the bond conditions, (ii) failure to comply with the

> regulations and (iii) a misconduct, for any of which, the licence can be revoked. Since the above regulation does not use the expression "offence report", we have to presume that a report indicating the availability of any one of the above 3 ingredients should be construed as an offence report. Consequently, the date of knowledge gained by the Commissioner, by means of any communication, be it show cause notice or order-in-original, has to be construed as the date of receipt of the offence report. Otherwise, a report about anyone of the above 3 ingredients can be sent at any time, even after five years or ten years."

The learned DR also submits that for suspension, no time limit is prescribed.

5. After hearing both sides and on perusal of the records, it appears that in the instant case the licence was suspended long back and since then notice has not been issued. This is the question of livelihood of not only of the assessee-Appellants but also of their and their employees' family. Hence, we direct the concerned authorities to issue the show cause notice within 15 days and complete the proceedings within the prescribed time limit of three months thereafter by passing a speaking and reasonable order. The assessee-Appellants assured full cooperation to the Department.

6. With the above observations, the appeal stands disposed of.

7. A copy of this order be given ***DASTI*** to the learned DR today itself who will serve the same to the concerned authorities within a period of three days.

(Dictated & pronounced in the open court)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

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