IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II

DATE OF HEARING : 04/10/2017.
DATE OF DECISION: 04/10/2017.

Customs Appeal No. 52289 of 2015

[Arising out of the Order-in-Original No. 30/NK/Policy/2015 dated 04/03/2015 passed by The Commissioner of Customs, General, New Custom House, New Delhi.]

CC (Import & General), New Delhi — Appellant

Versus

M/s PSB Logistics Pvt. Ltd. — Respondent

Appearance

Shri Govind Dixit, Authorized Representative (DR) – for the Appellant.

Shri Prabhat Kumar, Advocate – for the Respondent.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 56964/2017 Dated : 04/10/2017

Per. B. Ravichandran :-

The appeal is by Revenue against order dated 04/03/2015 of Commissioner of Customs (General), New Custom House, New Delhi. The respondent is a licensed custom house agent involved in clearing of import/export cargo through customs. Certain proceedings were initiated against the respondent for violating the provisions of Customs House Agent Licensing Regulation

(CHALR), 2004. The case was adjudicated resulting in the impugned order. The Original Authority held that the security deposit of Rs. 50,000/- provided by the respondent before the Licensing Authority shall stand forfeited for violations of the provisions by the respondent.

2. The Original Authority did not order revocation of license which was proposed in the show cause notice dated 06/01/2012. Revenue is aggrieved by this order and filed this appeal. The learned AR elaborating the grounds of appeal submitted that the respondent were involved in activities which are in clear violation of CHALR, 2004 and the Original Authority failed to take commensurate action of revocation of license of the respondent. Regarding the maintainability of the appeal, he submitted that any order or decision passed by the Commissioner is apealable under Section 129A of the Customs Act, 1962 before the Tribunal. He relied on the decision of the Tribunal in **Gaurav Pharma Ltd. vs. CCE & ST, Rohtak, Delhi – 2015 (326) E.L.T. 561 (Tri. – LB)**.

3. Contested the appeal by the Revenue both on maintainability as well as on merit, the learned Counsel for the respondent submitted that regarding maintainability of the appeal, CHALR, 2004 is a self-contained code. The Tribunal in various earlier cases held that no provision has been made in the said Regulations for the Revenue to file an appeal against non-revocation of license by the Commissioner. He relied on case laws in support of his contention. On the merits of the Revenue's

appeal, he submitted that the show cause notice was issued on 06/01/2012, whereas the impugned order was issued on 04/03/2015. It is clearly beyond the time prescribed under CHALR, 2004. By now, it is a well settled legal principle that a time limit mentioned in the Regulations are to be strictly adhered to by the Licensing Authority for action against the CHA. He also relied on case laws in support of his contention.

4. We have heard both the sides and perused the appeal records. First, we consider the admissibility of the appeal by the Revenue. We note that the Tribunal as well as High Court in various decisions reported : **CC (General), Mumbai vs. JAC Enterprises – 2016 (334) E.L.T. 89 (Tri. – Mumbai), CC, Mumbai vs. Impex Clearing & Shipping Agency – 2003 (161) E.L.T. 483 (Tri. – Mumbai)** and **A.S. Vasan & Sons vs. Union of India – 2009 (238) E.L.T. 217 (Bom.)**, held that the CHALR, 2004 being a self-contained code specifically provided for appeal by the CHA when aggrieved by the order of the Licensing Authority. Admittedly, it did not provide for an appellate remedy to the Revenue. The submission of the learned AR is that this order have been issued by the Adjudicating Authority in terms of CHALR, 2004 which is framed under Customs Act, 1962. Hence, the same should be appealable in terms of Section 129A. He referred to the Larger Bench decision in **Gaurav Pharma Ltd.** (supra). In the said decision, the Tribunal was examining the maintainability of appeal against order for provisional release of seized goods under Section 110A of the Act. The Tribunal held

that a order or a decision by the Adjudicating Authority shall be appealable in terms of Section 129A to the Tribunal. The submission of the Revenue is that CHALR, 2004 having been framed under the provisions of Customs Act, appeal against a decision under such Regulation should automatically be available to them. We note that such proposition is acceptable in case the CHALR, 2004 did not provide for appellate remedy separately. It is clear that CHALR, 2004 specifically provided an appellate remedy for the aggrieved CHA against the action by the Licensing Authority. No provision has been made for Revenue for appeal. In case no provision for appeal has been made in the CHALR, 2004 for both the parties it will follow that general principles of Customs Act shall automatically be applied. In other words, the appeal remedy having been contained in the regulation itself are to be interpreted. The Tribunal in various decisions mentioned above, held that the Revenue cannot file appeal against the order of the Commissioner issued under CHALR, 2004. Following the ratio of the said decisions, we find that the present appeal is not maintainable.

5. We also note that the proceedings resulting in the impugned order were badly delayed by more than three years which also makes the order without jurisdiction. The time limit prescribed under CHALR, 2004 is to be strictly followed by the Licensing Authority. The same has been repeatedly upheld by the Tribunal as well as various High Courts. A reference can be made to the decisions of Hon'ble Delhi High Court in **Indair Carrier**

Pvt. Ltd. vs. CC (General) – 2016 (337) E.L.T. 41 (Del.) On this ground also impugned order could not have been issued beyond the period mentioned in the regulation.

6. In view of the above discussion, we find that the present appeal is not maintainable and the same is dismissed.

(Order dictated and pronounced in the open court.)

(Ashok Jindal)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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