CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. IV

Date of hearing/decision: 12.12.2017

Customs Appeal No. 51502 of 2017
(Arising out of order in original No. 10/SM/Policy/2017 dated 01.03.2017 passed by the Commissioner of Customs (General) New Customs House, New Delhi)

Chander Sharma Appellant

Vs.

CC, New Delhi Respondent

Appearance:

Sh. G. K. Sarkar & Sh. Prashant Srivastava, Advocates for the appellant
Sh. A. K. Singh, AR for the Respondent

Coram:

Hon'ble Mr. S. K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 58387/2017

Per: **B. Ravichandran**:

The appeal is against the order dated 01.03.2017 of Commissioner of Customs (General), New Customs House, New Delhi. The appellant is a customs broker. They are engaged in processing and clearance of goods through customs. Based on certain enquiries conducted with reference to export of readymade garments under claim for drawback by a group of firms of Sh Ramesh Wadhra, proceedings were initiated against the appellant for their role in various violations in the export of such goods. The appellant were held to have violated the provisions of Customs Brokers Licensing Regulations, 2013. Notice was issued to them; enquiry was conducted;

enquiry report was submitted. The case was finally adjudicated resulting in the impugned order. The licensing authority through this impugned order revoked the customs broker license of the appellant and also forfeited amount of Rs. 75,000/- as security deposited by the appellant.

2. Ld. Counsel appearing for the appellant submitted that the Customs Broker licence of the appellant was earlier suspended on 13.07.2016 in the same case. Challenging the suspension the appellant filed appeal before the Tribunal. The Tribunal vide final order No.54830/2017 dated 06.07.2017 remanded the matter back to the original authority for giving effective hearing before confirmation of such suspension. Ld. Counsel submitted that the matter is still pending with the original authority. In the meantime, regular proceedings under CBLR have been initiated, resulting in the present order revoking the custom broker licence. Contesting the present order, ld. Counsel submitted that statements of various persons who are employees of the appellant were relied upon by the Enquiry Officer as well as original authority. They have specifically pleaded for an opportunity to cross examine such persons in terms of Section 138B of the Customs Act, 1962. No finding was recorded by the original authority except stating that the statements which were given under Section 108 before the Customs Officer, which were not retracted and are admissible as an evidence. He submitted that the relevancy of such statements are to be put to test in terms of Section 138B of the Act.

3. Ld. AR appearing for the Revenue reiterated the findings of the lower authority. He submitted that various documents and copies of statements which formed basis for the decision have been supplied in time to the

appellant. There is no grievance on this ground. When the statements were voluntary and no retraction was made on the statement, there is no reason not to rely on such statements.

4. We have heard both the sides and perused appeal record.

5. Ld. Counsel for the appellant is raising a preliminary legal issue regarding violation of principles of natural justice and provisions of Section 138B of the Customs Act. We have considered his submission. Admittedly, various statements given by the employees have also formed basis in the proceedings against the appellant. It is the legal requirement under Section 138B that such statements are to be examined for admission. In the present case, admittedly no cross examination was allowed / conducted before proceeding with the admission of the said statement. We note that the ld. AR submitted that seeking cross examination at the time of adjudication is belated. Whereas before the inquiry officer the appellant did not seek cross-examination as provided under Regulation 20, as such the matter cannot be agitated again, much later. We note that the enquiry report is only a basis for adjudication by the competent licensing authority. The provision of Section 138B and principles of natural justice demand that before passing an order based on certain statements, the authority has to follow the principles mentioned therein. By now it is a well settled principle that when specific request for cross examination is made the original authority has to give his finding on such request in terms of Section 138B of the Customs Act. In the present case, we find that the procedure stipulated for due admission has not been followed. Accordingly, we set aside the impugned order and remand the

matter to the original authority for a fresh consideration by providing adequate opportunity, more specifically for cross examination of the witnesses whose statements have been relied upon for proceedings against appellant.

6. In view of the above observation, we set aside the impugned order and remand the matter to the adjudicating authority for a fresh decision.

(Dictated and pronounced in the open Court).

(B. Ravichandran) Member (Technical)	(S. K. Mohanty) Member (Judicial)

Pant