IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Customs Appeal No. C/51496/2018[DB]

[Arising out of Order-in-Original No. 10/2018-COMMISSIONER dated 08/06/2018 passed by the Commissioner, Customs, Jaipur]

M/s Poonia & Brothers ...Appellant

Vs.

C.C. (Preventive), Jodhpur ... Respondent

Present for the Appellant : Mr. Arun Goyal, Advocate
Present for the Respondent: Mr. R.K. Majhi, DR

Coram: HON'BLE MR. C. L. MAHAR, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing: 20.07.2018
Pronounced on : 31.07.2018

FINAL ORDER NO. 52655/2018

PER: RACHNA GUPTA

Present is an Appeal against the Order of Commissioner of Customs (Preventive), Jodhpur bearing No. 2725 dated 08.06.2018 vide which the application filed by the appellant dated 15.02.2018 for renewal of his CHA license No. 02/CHAL/R/2003 has been rejected in terms of Regulation 9(2) of Customs Brokers Licensing Regulation, 2013 (CBLR in short).

2. The facts relevant for the purpose are that the appellant is a Custom House Agent vide the above mentioned license. The Commissioner of Customs, Jodhpur Headquarters at Jaipur, in the case of import of plastic resin stones and plastic beads under bill of entry No. 6084427 dated 12.07.2014 by M/s Spectrum Enterprises issued a Show Cause Notice to the appellant calling them upon as to why the aforesaid license shall not be cancelled/ revoked, security furnished by the appellant shall not be forfeited and the penalty be not imposed under Regulation 18 read with Regulation 22 of CBLR for knowingly submitting the incorrect details/ custom declarations while getting cleared five consignments of M/s Spectrum Enterprises since March, 2014 without verifying the identity of the importer. The said Show Cause Notice was adjudicated vide Order of Principal Commissioner bearing No. 985 dated 02.02.2016 vide which revocation of the appellant's license and forfeiture of security deposit of the custom broker was declined however the penalty of Rs. 50,000/- under Regulation 22 read with Regulation 20 CBLR was imposed upon the appellant holding that the custom broker licence of the appellant was still validated for 2 years i.e. upto 23.06.2018. When the appellant applied for renewal of his license prior the said expiry that the Order under challenge was passed denying the renewal thereof, resultantly, the present Appeal.

3. We have heard Shri Arun Goyal, Ld. Advocate for the appellant and Shri R.K. Majhi, Ld. DR for the Department.

4. It is submitted on behalf of the appellant that the licence of appellant was allotted by Jaipur Commissionerate however the same was endorsed at Mumbai Commissionerate. In the case of import by M/s Spectrum Enterprises, the license of appellant was suspended however, the suspension was later revoked subject to the penalty upon the appellant. It is impressed upon that the said penalty stands deposited. The Ld. Advocate further submitted that the licence of the appellant was scheduled to expire in June, 2018. Much prior to expiry of the validation thereof, the appellant, in January 2018, had applied for the renewal. However, the Order under challenge has rejected the renewal. Ld. Advocate has relied upon the decision of Madras High Court in the case of **D. Thimmeswara Rao Vs. C.C.E., Chennai 2017 (346) E.L.T. 177 (Madras)** impressing upon that once the suspension has been set aside, it would be wholly untenable for revenue to rely upon the same unsubstantiated allegations for denying renewal of the license. It would have been different matter if Order of suspension was upheld after establishing guilt of petitioner by following the prescribed procedure. Denial of renewal on same set of unsubstantiated allegations is impressed upon to be not sustainable also for the reason that no person can be vexed twice on same set of facts. Ld. Advocate has also relied upon

Falcon Air Cargo and Travels (P) Ltd. Vs. Union of India 2002 (140) ELT 8 (Del.) to impress upon that it has been clearly held by Hon'ble High Court in the said case that where there are no definite findings recorded and the judgement is non reasoned, pronounced without dealing with the contentions of the petitioner, it amounts to violation of principles of natural justice and such an Order is not sustainable. Based on these arguments, Ld. Advocate has prayed for the Order under challenge to be set aside and Appeal to be allowed.

5. Ld. DR while rebutting the said arguments has submitted that the Order under challenge has been announced under Regulation 9(2) of CBLR thereby rejecting the request of renewal of CHA license. It is submitted that for seeking renewal of the license, Regulation 5 of CBLR only is applicable. The only difference is that at the time of renewal, the applicant need not to reappear for the examination as is required for a fresh applicant under Regulation 4 of CBLR. Rest all conditions of Regulation 5 have mandatorily to be satisfied by the appellant while seeking renewal. Condition (d) thereof makes it a mandate that applicant should not have been convicted by any competent court for any offence nor any criminal proceedings to be pending against him in any court of law. It is impressed upon that since vide Order dated 02.02.2016, of the competent authority, the appellant was already penalised

with imposition of penalty, the Commissioner Customs has not committed any error while rejecting the renewal. Finally, the Order has been justified by the Ld. AR with the submission that the Order is well reasoned and has been passed after affording the reasonable opportunity of hearing to the appellant, that the Ld. AR has prayed for Appeal to be set aside.

6. After hearing both the parties to this list, we are of the opinion as follows:

Appellant is a Custom House Agent. Hon'ble Apex Court in the case **Commissioner of Customs Vs. M/s K. M. Ganatra & Company 2016 TIOL 13 (S.C.)** – Cus has held:

> *The CHA occupies a very important position in the Custom House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. Carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/ exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to*

invite upon the CHA the punishment listed in the Regulations.

7. The Order dated 02.02.2016 has observed that there has been negligence on part of the custom broker in conducting KYC of the EIC holder and he has failed to verify the functioning at the given address of the importer. Thereby, the contravention of Regulation (n) of CBLR read with Circular No. 9 of 2010-Cus is held to have been proved. The *mensrea* in respect of all the allegations as stated in the Show Cause Notice dated 01.06.2018 is held to have been established beyond doubt. However, the suspension was revoked keeping in view that the same has completely halted the business of the appellant all over India for almost an year and has thrown out of gear his operation as well as the families of his employees, especially in a condition where still time of validation of his license is there. From the said findings, we opine that it stands clear on record that the appellant has failed to observe obligation (d), (e), and (f) of Regulation 14 of CBLR.

8. Now, coming to the impugned order under challenge we observe that the Commissioner Customs has denied renewal of the CHA license of the appellant bearing No. 2/CHAL/R/2003 rejecting the application of the appellant dated 15.02.2018 for renewal of license in terms of CBLR 2018. The appellant has

challenged the same on the ground that he cannot be vexed twice for the same set of facts. But we are of the opinion that said ground is not sustainable in the given circumstances as non renewal of license under Order 9 Sub-Rule 2 of CBLR and the revocation thereof are two different things. For this reason, the ground taken by appellant that the license has not been revoked but the suspension thereof, does not extend an unfettered right to the CHA to seek renewal of the said license at the time of its expiry without meeting the mandatory criteria for the same. It is apparent from CBL Regulations that the provision under which the renewal can be sought is again Regulation 5 only where a fresh license can be obtained by the applicant with the only difference that Regulation 4 shall not be applicable in case of renewal. Resultantly, the fact remains is that the conditions (a) to (h) of Regulation 5 CBLR have to be fulfilled by the CHA even at the time of the renewal thereof. Conditions (d) and (e) thereof are relevant for the present adjudication. The Order dated 02.02.2016 though is about revoking the suspension of the license but as already observed above, the *mensrea* of committing the alleged guilt is opined present and that the penalty has been imposed and suspension is revoked only on humanitarian grounds. The fact still remains is that the appellant stands penalised/ convicted for the offence alleged against him vide Show Cause Notice dated 01.06.2018 except for the allegation of failure on his part to advice the importer to declare the actual description of the goods imported.

9. Regulation 9 is the provision which speaks about the period of validity of a license. Sub-rule 2 thereof empowers the Commissioner of Customs to renew the license for a further period of 10 years from the date of the expiration provided the performance of the applicant/licensee is found satisfactory with reference, *inter alia,* to the obligations specified in this Regulation including the absence of instances of any complaints of mis-conduct. The Order dated 02.02.2016 is definitely an instance of the complaint of mis-conduct. Hence we opine that Commissioner Customs has committed no error while denying the renewal of the licence. As already held above, the non renewal and revocation are two separate things under two distinct provisions of the Regulation, question of appellant to have been vexed twice, as is raised by him, is not sustainable. The authorities relied upon by the appellant are also not held applicable to the present facts and circumstances because present is not the case of unsubstantiated allegations. Order dated 02.02.2016 has already held the presence of *mensrea* with the appellant while committing the alleged mis-conduct.

10. In view of the entire above discussion, we are of the opinion that there is no infirmity in the Order under challenge. The same is hereby upheld and Appeal is accordingly rejected.

[Pronounced in the open Court on 31.07.2018]

(RACHNA GUPTA)	**(C. L. MAHAR)**
MEMBER (JUDICIAL)	**MEMBER (TECHNICAL)**

D.J.