

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Stay Application No.50115 of 2019

(on behalf of Appellant)

In

Customs Appeal No. 50312 of 2019 [DB/SM]

[Arising out of Order-in-Original No. 55/MK/Policy/2018 dated 17.10.2018 passed by the Commissioner of Customs (Airport & General), New Delhi]

Commissioner of Customs,
Airport & General Commissionerate
New Custom House, New Delhi-110037

...Appellant

Vs.

M/s. D.S. Cargo Agency,
(Prop.Sh. Diva Kant Jha)
B-29A, Shyam Vihar, Phase-I
Najafgarh, New Delhi-110043

...Respondent

APPEARANCE:

Shri Awnod Singh, Advocate for the Appellant
Shri Ashok Jindal, Authorised Representative for the Respondent

Coram: HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER No. 50625/2019

DATE OF HEARING : 11 April, 2019
DATE OF DECISION: 03 May, 2019

ASHOK JINDAL:

Revenue is in appeal against the impugned order wherein the proceedings against the respondent has been dropped by the Commissioner of Customs under Customs Brokers Licensing Regulations, 2013 alongwith an application for stay of operation of the impugned order.

2. The Id. Counsel appearing on behalf of the respondent took the preliminary objection that the appeal is not maintainable

against the proceedings dropped by the Commissioner of Customs in the impugned order in terms of Regulation 21 of Customs Brokers Licensing Regulations, 2013 stating that against the order of Commissioner of Customs or Principal Commissioner of Customs, appeal can be preferred by only Customs Broker or 'F' Card holder if they are aggrieved by any order passed by the Commissioner of Customs. Admittedly, in this case, the Revenue has filed the appeal. As there is no provision under Customs Brokers Licensing Regulations, 2013 to file appeal by the Revenue, therefore, appeal is not maintainable.

3. In support of his contention, he relied on the decision of this Tribunal in the case of **CCE (Import & General), New Delhi vs. PSB Logistics Pvt. Ltd., Customs Appeal No.52289 of 2015 vide Final Order No. 56964/2017 dated 04.10.2017, Commissioner of Customs (General), Mumbai vs. JAC Enterprises reported in 2016 (334) ELT 89 (Tri-Mum.), Commissioner of Customs, Mumbai vs. Impex Cleaning & Shipping Agency reported in 2003 (161) ELT 483 (Tri.-Mum.)**. He also relied on the decision of the Hon'ble High Court of Bombay in the case of **A.S. Vasan & Sons vs. Union of India reported in 2009 (238) ELT 217 (Mum.)**. He also relied on the decision of this Tribunal in the case of **Commissioner of Central Excise, Mumbai vs. Thakkar Shipping Agency reported in 2014 (308) ELT 500 (Tri.-Mum.)**.

4. On the preliminary objections raised by Id. Counsel for the respondent, the Id. AR submits that the order of this Tribunal in the case of **Thakkar Shipping Agency** (supra), the Revenue has filed appeal before the Hon'ble Bombay High Court, wherein appeal has been admitted. Therefore, the said decision cannot be relied upon. He further submitted that the Customs Brokers Licensing Regulations is subordinate legislature, whereas the appeal has been filed under the Customs Act, which have mandate from the

Parliament of India. It is his basic contention that the Section 129A of Customs Act, 1962 prescribed to file an appeal aggrieved from the impugned order before this Tribunal. He also relied on the Larger Bench decision of this Tribunal in the case of **Gaurav Pharma Ltd. vs. Commissioner of Central Excise & Service Tax, Rohtak, Delhi reported in 2015 (326) ELT 561 (Tri. – LB)** to say that appeal is maintainable before this Tribunal. He also relied on the decision of the Hon'ble Apex Court in the case of **St. Johns Teachers Training Institute vs. Regional Director, National Counsel for Teacher Education in Civil Appeal No.1068/2003 vide judgement dated 07.02.2003** to say that regulations made under power conferred by statute are supporting legislation and have the force and effect if validly made. Therefore, he submits that the objection raised by Id. Counsel for the respondent is to be turned down.

5. Heard the parties.

6. On preliminary objection raised by the Id. Counsel for the respondent and examined the issue, which is as follows:-

Whether an appeal filed by the Revenue is maintainable under Section 129A of the Customs Act against the Order of Commissioner of Customs passed under Customs Brokers Licensing Regulations or not?

7. The main thrust of the Id. AR is on the decision of the Hon'ble Apex Court in **St. Johns Teachers Training Institute (Supra)**, wherein he relied on the observations made by the Hon'ble Apex Court as under:-

"Rules and Regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is

permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details. The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the frame work of policy. The need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the Rule, after coming in to force of the Act, is in a better position to adapt the Act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes. Rules and Regulations made by reason of the specific power conferred by the Statutes to make Rules and Regulations establish the pattern of conduct to be followed. Regulations are in aid of enforcement of the provisions of the Statute. The process of legislation by departmental Regulations saves time and is intended to deal with local variations and the power to legislate by statutory instrument in the form of Rules and Regulations is conferred by Parliament. The main justification for delegated legislation is that the legislature being over burdened and the needs of the modern day society being complex it can not possibly foresee every administrative difficulty that may arise after the Statute has begun to operate. Delegated legislation fills those needs. The Regulations made under power conferred by the Statute are supporting legislation and have the force and affect, if validly made, as the Act passed by the competent legislature."

7.1 We have gone through the submissions made by the Id. AR and find that thereafter the Hon'ble Apex Court finally observed as under:-

"It cannot, therefore, be urged that the power conferred on the State Government or Union Territory, while considering an application for grant of a NOC, is an arbitrary or unchanelled power. The State Government or the Union Territory has to necessarily confine itself to the guidelines issued by the Council while considering the application for grant of a NOC. In case the State Government does not take into consideration the relevant factors enumerated in Sub-section (3) of Section 14 of the Act and the guidelines issued by the Council or takes into consideration factors which are not relevant and rejects the application for grant of a NOC, it will be open to the institution concerned to challenge the same in accordance with law. But, that by itself, cannot be a ground to hold that the Regulations which require a NOC from the State Government or the Union Territory are ultra vires or invalid."

7.2 Further, we have gone through the Customs Brokers Licensing Regulations, which is extracted herein below:-

"21. Appeal by Customs Broker.- A Customs Broker, who is aggrieved by any order passed by the Commissioner of Customs under these regulations, may prefer an appeal under section 129A of the Act to the Customs, Central Excise and Service Tax Appellate Tribunal established under sub-section (1) of section 129 of the Act."

7.3 We further take note of the fact that these Regulations have been framed in terms of Section 146 (2) of the Customs Act, 1962. The said provision is extracted below:-

"SECTION ¹⁴[146. Licence for customs brokers —(1) No person shall carry on business as a customs broker relating to the entry or departure of a conveyance or the import or export of goods at any customs station unless such person holds a licence granted in this behalf in accordance with the regulations.

(2) The Board may make regulations for the purpose of carrying out the provisions of this section and, in particular, such regulations may provide for –

- (a) the authority by which a licence may be granted under this section and the period of validity of such licence;**
- (b) the form of the licence and the fees payable therefor;**
- (c) the qualifications of persons who may apply for a licence and the qualifications of persons to be employed by a licensee to assist him in his work as a customs broker;**
- (d) the manner of conducting the examination;**
- (e) the restrictions and conditions (including the furnishing of security by the licensee) subject to which a licence may be granted;**
- (f) the circumstances in which a licence may be suspended or revoked; and**
- (g) the appeals, if any, against an order of suspension or revocation of a licence, and the period within which such appeal may be filed.]"**

7.4 As per the said provisions, the Legislature have empowered the broad the procedure of appeal to be filed against an order of

suspension of revocation of license. Admittedly, as per the said provisions, an appeal can be filed before this Tribunal against the revocation of Customs Broker License and it is not the case of revocation of suspension of Customs Broker Licenses. In fact, the proceedings initiated against the customs broker has been dropped by the impugned order by the Commissioner of Customs. An identical issue has been examined by this Tribunal in the case of **CCE, (Import & General), New Delhi vs. PSB Logistics Pvt. Ltd.** (supra), wherein this Tribunal after considering the decision of the Larger Bench of this Tribunal in the case of **Gaurav Pharma** (Supra) relied upon by the Id. A.R. observed as under:-

"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 an 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."

7.5 Further, in the case of **Thakkar Shipping Agency** also this Tribunal has examined the issue and observed as under:-

"5.1 *We find that CHALR, 1984, did not provide for filing of an appeal by the department against an order passed by the Commissioner under the said Regulations. Only a CHA aggrieved by any decision or order could appeal to the Tribunal in terms of sub-regulation (8) of Regulation 23. Section 129D under which the present appeal has been filed enables the Committee of Chief Commissioners to file an appeal against an order passed by the Commissioner under the Customs Act. It does not provide for filing of an appeal in respect of orders passed under the CHALR. Further, Section 129A of the Customs Act provides that only a decision or order passed by the Commissioner of Customs as an adjudicating authority is appealable before the Tribunal. This would imply that only when the Commissioner of Customs adjudges duty, interest, fine or penalty, an appeal against the said order would lie before the Tribunal. Revocation of a CHA licence or dropping of proceedings under CHALR cannot be said to be an order passed by the Commissioner as an adjudicating authority. Therefore, in the absence of a specific provision in the CHALR, 1984, enabling the department to file an appeal against the order passed by the Commissioner under the said Regulations, the appeal is not maintainable before this Tribunal. Accordingly, we dismiss the appeal filed by the Revenue as not maintainable."*

7.6 The contention of the Id. AR that the appeal against the order of this Tribunal in the case of **Thakkar Shipping Agency (supra)** has been admitted by the Hon'ble High Court of Mumbai, it does not mean that the order of this Tribunal has been stayed by the Hon'ble High Court.

8. We do agree with the observations made by this Tribunal in the case of **PSB Logistics Pvt. Ltd.** (Supra). Therefore, we find force in the preliminary objection raised by the learned Counsel for the respondent.

9. In these terms, we hold that appeal is not maintainable against the impugned order before this Tribunal. Therefore, Stay Application has also not maintainable.

10. Accordingly, the appeal as well as Stay Application are dismissed as not maintainable.

[Pronounced in the open Court on 03/05/2019]

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)

Anita