CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH REGIONAL BENCH AT HYDERABAD
BENCH - DB
COURT - I

Appeal(s) Involved:

C/30597/2017-DB

(Arising out of Order No. 02/2017 dt. 28.03.2017 dated passed by Commissioner of Customs (Preventive Commissionerate), Vijayawada)

Babaji Shivram Clearing & Carriers Pvt. Ltd.	Appellant(s)

Versus

Commissioner of Customs, Vijayawada	Respondent(s)

Appearance:

Mr. Prashant Patankar, Consultant for the Appellant.
Mr.M. Chandra Bose, (ADC) A.R. for the Respondent.

CORAM:

HON'BLE Mr. M.V.RAVINDRAN, MEMBER (JUDICIAL)
HON'BLE Mr. MADHU MOHAN DAMODHAR, MEMBER (TECHNICAL)

Date of Hearing: 30/01/2018
Date of Decision: 30/01/2018

Final Order No. 30367/2018

[Order per: Madhu Mohan Damodhar] .

M/s.Babaji Shivram Clearing & Carriers Pvt. Ltd., the appellants herein, are a Customs Broker under provisions of Customs Broker Licensing Regulations, 2013 (CBLR 2013). The appellants, vide a letter dt. 21.12.2016 submitted an application in Form C, to Kakinada Customs for renewal of permission of extension of their custom broker agency to operate at Kakinada Customs. The jurisdictional Customs Commissionerate addressed a letter to original license issuing authority, namely, Principal Commissioner of Customs (General), CBS, New Custom House, Mumbai seeking a report on antecedents of the appellant and also requesting to furnish any objection in permitting the said Customs Broker to operate at Kakinada Customs. In reply, the Asst. Commissioner (General), New Custom House, Mumbai submitted that the CB license of the appellant is valid till 31.12.2026, that two inquiry cases are pending against them, there were no deviations from the obligations prescribed under Regulation 11 of CBLR 2013 and that they have no objection with the customs broker operating at Kakinada Customs. However, on the grounds of two pending cases registered by the parent licensing authority, the request of the appellants for extension of their CB licence to operate at Kakinada Customs was denied by jurisdictional Commissioner and communicated vide a letter dt. 13.12.2017. In further correspondence, the Asst. Commissioner New Custom House, Mumbai informed that there is only one Inquiry (S/8-39/2010-11-Admn.) pending against the appellant, that the Inquiry in No.S/8-40/2013-14 has been concluded and all the charges against CB have been dropped. Subsequently, the appellant made further representation to Kakinada Customs on 17.02.2017 to reconsider renewal of extension. For the reason that one inquiry was still pending in New Custom House Mumbai, the competent authority did not reconsider the request for renewal, which decision was communicated to appellant vide letter dt. 28.02.2017. Yet another representation dt. 07.03.2017 was made by appellant again requesting reconsideration of the decision and also requesting grant of Personal Hearing. After grant of personal hearing by the Commissioner on 08.03.2017, a speaking order No.02/2017 dt. 28.03.2017 (impugned order) was issued with the following decision :

> "I decline to renew the permission granted to M/s.Babaji Shivram Clearing & Carriers Pvt. Ltd. for operation / transacting businesses as Customs Broker Licence at Kakinada Customs House under Regulation 7 (2) read with Regulation 23 of the Customs Brokers Licensing Regulations, 2013."

Aggrieved, the appellants are before this forum.

2.1 On 03.01.2018 when the matter came up for hearing, the appellant represented by Ld. Consultant Mr. Prashant Patankar put forth various submissions which can be broadly summarized as under :

(i) The Commissioner has not appreciated that there was no case against them in Kakinada Custom House under CBLR and has only relied upon the inquiry pending against appellant in parent Commissionerate vide S8-39/2010-11-Admn.

(ii) Commissioner has failed to appreciate that parent Commissionerate had renewed their license for 10 years upto 31.12.2026 in spite of pending enquiry.

(iii) Moreover, the parent Commissionerate had categorically given NOC for renewal in response to reference made

(iv) Not only had the parent Comissionerate renewed appellant's license for a period of 10 years, but also, other customs stations such as Mundra, Noida, Kolkatta, Ahmedabad and Aurangabad have also endorsed renewal the appellant's license for transacting business at the respective customs stations.

(v) The Commissioner has erred in ignoring CBEC instructions under F.No.502/6/2007-Cus. VI dt. 08.06.2007

3.2 Ld. Consultant also drew our attention to CBEC Circular No.42/2004 dt. 10.06.2004 which laid down that applicant who has been granted license under sub-regulation (1) (in the parent Commissionerate) shall be eligible to work as customs broker in all customs stations subject to intimation in Form-C to the Commissioner of Customs of the Customs station where he intends to transact business. Thus only intimation in Form-C was required in Kakinada Customs.

4. On the other hand, Ld. A.R., Shri Chandra Bose (ADC) supports the adjudication.

5. Heard both sides and have gone through the facts.

6. The sole ground for rejection of the application for renewal of the CB license to operate at Kakinada Customs is that an inquiry is pending in the parent Custom House. The adjudicating authority has also taken a view that intimation in Form C under Regulation 7 (2) of the CBLR 2013 does not give any automatic entitlement to a customs broker to operate in that particular customs station and that right to operate in that customs station is subject to acceptance or permission of jurisdictional Commissioner .

7. We are not able to appreciate this conclusion of the lower authority. The appellant has submitted an application for renewal as

far back as 02.12.2016. The reference made by Kakinada Customs to the parent Commissionerate, namely, New Custom House, Mumbai, seeking report on antecedents and NOC was understandable. We find that while the new Customs House, Mumbai in their reply have indicated that two inquiries are pending against the licensee. But, it was also conveyed that appellant's license has been renewed by New Custom House and is valid upto 31.12.2026, that there are no deviations from obligations under Regulation 11 and most importantly, that New Custom House have no objection with the appellant operating at Kakinada Custom House. Viewed in this light, we are at a loss to fathom why the renewal of the license was still not allowed. We find that the New Custom House, Mumbai vide a subsequent communication dt. 16.02.2017 had informed about the dropping of proceedings in one of the pending enquiries. Even in respect of the remaining enquiry pending against the appellant in Mumbai, in F.No.S/8-39/2010-11-Admn, the appellants have submitted that the said enquiry was based on a show cause notice issued by Jawaharlal Nehru Customs House, Nhava Sheva, which was adjudicated vide an order dt. 28.05.2015, wherein all the charges levelled against the appellants were dropped by the adjudicating authority. This being the case, we find merit in the contention of the

Ld. Consultant that balance of equity was in favour of the appellant even in respect of the remaining enquiry. In any case, even at an earlier stage when both the enquiries were pending against the appellant, the parent licensing authority, namely New Custom House, Mumbai had conveyed their NOC for renewal of permission to operate at Kakinada Customs. The appellants have also submitted that in spite of said extant enquiries, not only the New Custom House, Mumbai but also a number of other Customs Houses had renewed the permission of the appellant to continue their operation. In fact, the New Custom House, Mumbai has renewed the CB license for further 10 years upto 31.12.2026. In the face of these clarifications and No Objection from the parent Commissionerate, the impugned order declining permission to continue the operations at Kakinada Custom House, in our considered opinion, is not justified. Ld. Consultant has time and again emphasized that although there is no bar for verification of particulars given in Form "C" however these should not be used as a "means" of operating or denying the right of the CHA to operate in that Commissionerate. The rejection of the permission to continue to operate at Kakinada Customs is therefore a peremptory one and is not supported by law. This being so, impugned order cannot be sustained and is set aside which will have the effect of according to the appellant renewal of the validity to transact business and also operate as Customs Broker at Kakinada Customs till the validity of the original license, unless the said CB license is suspended or revoked in the future for any other reason under the CBLR 2013

(operative part of the order pronounced in open court)

MADHU MOHAN DAMODHAR	**M.V.RAVINDRAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

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