CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Appeal No. C/27769/2013

(Arising out of Order-in-Original No. 08/2013 Adjn. (Cus) (Commnr) dated 25.06.2013 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-II)

V. Chandrasekhar Reddy .....Appellant(s)

Vs.

Commissioner of Customs, Central Excise & Service Tax, Hyderabad-II .....Respondent(s)

Appeal No. C/20613/2014

(Arising out of Order-in-Original No. 15/2013 –Adjn. (Cus) (Commnr) dated 18.11.2013 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

V. Chandrasekhar Reddy .....Appellant(s)

Vs.

Commissioner of Customs, Central Excise & Service Tax, Hyderabad-II .....Respondent(s)

Appearance
Shri B. Venugopal, Advocate for the Appellant.
Shri AVLN Chary, Superintendent (AR) for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 29/10/2018
Date of Decision: 29/10/2018

FINAL ORDER No. A/31425-31426/2018

[Order per: P. Venkata Subba Rao]

The issue involved in both these appeals is the same with respect to the same appellants and hence are being disposed of together.

2. The facts in brief are that the appellant herein is a holder of Customs House Agent Licence issued by the Department under Custom House Agents Licensing Regulations, 1984. They have also been operating in other parts of the country under the license issued to them by the Department in Hyderabad. During an investigation conducted by the DRI at Mumbai, it was found that the appellant had violated various conditions of the CHA licensing regulations and therefore his license was revoked by the Commissioner of Customs vide is Order-in-Original No. 08/2013-ADJ. (Cus) (Commnr) dated 25.06.2013. Aggrieved by this Order-in-Original, the appellant preferred appeal No. 27769/2013. Thereafter, it was also found that the appellant had violated same conditions of licence through their operations in Chennai and their Order-in-Original No. 15/2013 dated 18.11.2013 was issued and the license was again revoked which had already been revoked by the earlier order. This order reads as follows:

"This order is issued without prejudice to the earlier order issued vide Order-in-Original No. 08/2013 dated 25.06.2013 and any other action that may be taken against the customs brokers employees/representatives etc., under the Customs Act, 1962 or any other law." Appeal No. ST/20613/2014 is filed against the Order-in-Appeal No. 15/2013 dated 18.11.2013 on the simple ground that the order is not sustainable because on the day this order was passed the licence had already been revoked by an earlier order and did not exist and it cannot be again revoked subject so as to foreclose any future legal decisions. Learned Counsel placed reliance on the order of the Tribunal in the case of *S.A. Dalal & Co. Vs. Commissioner of Customs (General) Mumbai* [2017 (358) ELT 366 (Tri.- Mumbai)] (in which one of us Shri M.V. Ravindran, was a member) in which, it was held that a licence already revoked cannot be again revoked subject to it being reinstated by higher authorities. Para 4 of this order is reproduced below:

> "***4.*** *We find that the impugned order is non est order for the simple reason that the Commissioner of Customs (General); Mumbai, has recorded that the CHA licence of the appellant is already revoked by Order-in-Original No. 59/CAO/CC(G)/PKA/2013-14, dated 16.04.2013, and stated that this impugned order in this appeal or revocation will automatically become operative in the eventuality of the order dated 16-04-2013 being set aside by any appellant or higher judicial authority, as this order is being issue under independent separate proceedings. In our considered view, the impugned order is non est order inasmuch, order for revocation of licence cannot be in thin air. A CHA licence which is already revoked, cannot be again revoked subject to it being reinstated by higher authorities. In our view, this order of the adjudicating authority is not correct passed without any application of mind and needs to be set aside and we do so."*

As far as the appeal No. 27769/2013 is concerned, it is the submission of the Learned Counsel that their licence was revoked on the basis of an investigation report by the Customs Authorities in Mumbai in respect of M/s Ganapathi Overseas and M/s HZJ International, filed Bills of Entry Nos. 5510483 and 5510484 respectively both dated 20.12.2011 in JNCH. Both bills of entry were filed as per the documents made available by the importer. The imported goods were examined by the Customs Authorities and they found firecrackers concealed in the containers. Hence investigation was initiated by the Customs Authorities. Statements of their employees Shri Gajendra Gaur and Shri Rajesh Gaur were recorded. Both these employees had filed the bills of entry on the strength of documents supplied to them by Shri Sunil Yadav, who is a freight forwarder from Delhi. It appears that the importers have mis-declared the description of the goods and tried to smuggle in restricted goods viz., fire crackers into India. They had contacted the importers through Shri Sunil Yadav and they had filed the Bills of Entry as per the papers provided by him. This is no allegation in the show cause notice or in the Order-in-Original that they had colluded with the importer in importing fire crackers. The inquiry officer only made an allegation that they have not fulfilled the obligations cast on them in terms of regulations 13(o), 13(d) & 19(8) of the CHALR, 2004, inasmuch as they had not verified the antecedents of the importers, the names of various IEC holders & other documents. He submitted that his employees acted in good faith, played a proactive role in detecting the fraud and co-operated with the department. He further submits that the fees of Rs. 5,000/- which they charged as service charges is the normal rate which supports their claim of innocence and that they were not involved in any other offence and it was only a normal job undertaken by them. Their licence has been revoked under CHA Licensing Regulations, 2013 and for the last five years their business has stopped. This itself is an adequate penalty for any mistakes committed by them.

3. Learned Departmental Representative reiterates the findings of the Commissioner and argues that the behavior of the appellants shows that they have not received the import of documents directly but through Shri Sunil Yadav who was neither an employee nor the representative of the said importer. Shri Gajendra Gaur never tried to contact the actual importers and it was also agreed that Shri Sunil Yadav would be arranging the bank drafts for payment towards customs duty and infact received a total of 8 drafts for an amount of Rs. 15 to 16 lakhs. Further, as seen from the statements of Shri Sunil Yadav & Shri Rakesh Kumar Chopra & Shri Purushottam Sharma submitted by the CHA, it appears that the said fraudulent importation of firecrackers in the guise of glassware was known to them from the beginning. Though the actual nature and extent of mis-declaration of the goods and value may not be known to the employees of CHA, but it was clear to them that they are helping in illegal clearance of certain goods at the behest of Shri Sunil Yadav. He further argues that the appellant obtained blank GATT declaration which is not signed by the importer also.

4. He further argues that this trend and pattern continued in the other case with respect to the clearances in Chennai and therefore the license of the appellant has been correctly revoked. On the question of revocation of license twice it was his submission that First revocation is violation committed in Mumbai whereas the second revocation was in some revocation with respect to the violation committed in Chennai even if the First revocation is set aside, the second one would survive.

5. We have gone through the records of the case and considered the arguments on both sides. As far as appeal No. 20613/14 is concerned, Order-in-Original No. 15/2013-ADJN dated 18.11.2013 has revoked the CHA license of the appellant which had already been revoked on 25.06.2013. Therefore the licence was *non-est* at the time of passing this order hence needs to be set aside on this ground alone as you cannot revoke a licence which does not exist. In an identical case of S.A. Dalal & Co. (supra) it has been held that the CHA license which is already revoked cannot be again revoked subject to it being reinstated by higher authorities. Respectfully, we follow the ratio of this decision and hold that Order-in-Original No. 15/2013 needs to be revoked and appeal No. C/20631/2014 needs to be allowed and we do so.

6. As far as appeal No. 27769/2013 is concerned, after considering the records of the case and arguments made by both sides, we find that they were definite lapses on the part of the appellant; that he has not verified the credentials of the importer, that he has got the documents through Shri Sunil Yadav a 3rd party; that he also obtained the GATT declarations which were blank and not signed by the importers. However, there is nothing on records, to show that the appellant was aware that firecrackers were being imported under guise of glassware in the container. Even the statements which were recorded by the Customs Authorities only point to the negligence on behalf of the CHA and it is employees but not to any complicity or collusion. Learned Counsel for the appellant also submits that even the show cause notice for smuggling of firecrackers

was also not issued to them. Under these circumstances, we find that revocation of licence of the appellant is a strong measure which is not warranted in this particular factual matrix. The Order-in-Original No. 08/2013 is therefore liable to be set aside and we do so, the CHA licence stands restored as on the date of Order-in-Original.

7. The appeal No. 27769/2013 is allowed and the Order-in-Original No. 08/2013 dated 25.06.2013 is set aside. Appeal No. 20613/2014 is allowed and the Order-in-Original No. 15/2013 dated 18.11.2013 is set aside.

8. The appeals are allowed and the impugned orders are set aside with consequential relief.

(Operative part of this order was pronounced in open court
on conclusion of hearing)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi....