IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. C/409/2010

(Arising out of Order-in-Original No. 03/CUS/2010/C dated 19.3.2010 passed by Commissioner of Customs, Nagpur)

Air Master Freight Service **Appellant**

Vs.

Commissioner of Central Excise, Nagpur **Respondent**

Appearance:

Shri N.D. George, Advocate, for appellant
Shri Manoj Kumar, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. Raju, Member (Technical)

Date of Hearing: 9.4.2018
Date of Decision: 8.6.2018

ORDER No. **A/86756/2018**

Per: Ramesh Nair

This appeal is directed against order of the Commissioner whereby CHA licence of the appellant was suspended in terms of provision of Regulation 20 of CHALR, 2004 and penalty of Rs. 6,18,000/- was imposed under Section 114(i) of the Customs Act, 1962. The case of the department was that while assessing shipping bill No. 335 dated 24-01-2009, the Appraising Officer, I.C.D. Nagpur ordered to examine the cargo on 27-01-2009. On examination of the said goods on

28-01-2009, the said goods were found to be a stone carving and, it was found to be an obscene figure/article as much as the stone carved panel depicted sexual intercourse by four naked figures, three of women and one of man therefore goods attempted to be exported were prohibited as per M.F. (R.D.) Notification No. 69-Cus dated 29 Jul, 1950 as amended by M.F. (D.R.)Notification No. 87-Cus dated 13 Oct, 195, M.F. (R.D.) Notification No. 48-Cus dated 28 Apr 1951 issued under Section 11 of Custom Act, 1962. The allegation on the appellant is that they have not advised their client (exporter) regarding the prohibition of the goods, therefore they have violated the provision of CHALR, 2004, hence made themselves liable for penalty and suspension of the licence. The Adjudicating authority in the impugned order suspended the licence and imposed penalty of Rs. 6,18,700/- under Section 114(i) of Custom Act. This Tribunal vide stay order dated 17-1-2011 stayed the suspension of the licence and also held that there is no provision in law to impose penalty on CHA in the proceedings initiated under CHALR 2004. The stay order is reproduced below:-

> *5. After hearing both sides, we are of the view that the suspension of the CHA licence and the penalty imposed on them are prima facie, unwarranted. The Joint Commissioner's order which was passed in adjudication of the show cause notice issued to the*

exporter indicates that the CHA was not informed of the dubious intention of the exporter. We have not been told that the above finding of the Joint Commissioner in favour of the CHA was reviewed by the department for appeal to the Commissioner (Appeals). Apparently, the said findings was accepted. If that be so, there was no reason for suspension of the CHA licence. Further, there was neither any provision of law nor any need to impose a penalty on CHA in a proceedings initiated under the CHALR, 2004. Hence the penalty was also unwarranted.

6. In the result, both stay applications filed by the CHA are liable to be allowed. Accordingly, there will be stay of operation of the suspension order and stay of recovery of the penalty amount. Needless to say that there will be waiver of pre-deposit of the penalty amount.

2. Shri. N.D. George, Ld. Counsel for the appellant as regard the suspension of the licence submits that though the licence was suspended vide impugned order dated 19-03-2010 which was stayed by the this Tribunal vide order dated 17---2011 but till date no proceedings under CHALR, 2004 was concluded therefore suspension automatically stands vacated. As regard penalty, he submits that firstly under CHALR,2004 no penalty provision is made therefore penalty imposed under Section 114(i) of Customs Act, 1962 could not have been imposed with reference to proceedings under CHALR, 2004.

3. On the other hand, Shri. Manoj Kumar, Ld. Asstt. Commissioner(A.R.) appearing on behalf of the Revenue reiterates the findings of the impugned order. He placed on record a letter dated 6-4-2018 issued by Shri. A.K. Pandey, Asstt. Commissioner, Customs, Headquarters, Nagpur addressed to Asstt. Commissioner(A.R.) CESTAT Mumbai confirming that no proceedings against CHA was initiated under Regulation 22 of CHALR 2004. It was also mentioned in the said letter that licence of CHA was being renewed on yearly basis and in the year 2017 which has been renewed for a period of 10 years.

4. We have carefully considered the submissions made by both sides and perused the records.

5. We find that firstly no proceedings were carried out under CHALR 2004 for revocation of licence during the last 8 years. Even though this Tribunal has stayed the suspension of the licence ordered by the impugned order but nothing prevented Commissioner to proceed under CHALR, 2004 therefore commissioner has chosen not to proceed against the CHA. On this basis itself impugned order does not sustain. Penalty was imposed with reference to the suspension of the licence, however there is no provision under CHALR, 2004 to impose penalty under Section 114(i) of customs Act, 1962. Moreover on facts itself we observed that CHA only filed shipping bill wherein the description of

the goods is as per the export documents. It is only on physical examination of the custom department it was noticed that goods is prohibitive nature and was not allowed to export. It is not expected from the CHA to physically verify the goods. There is no other charge on the CHA that they were knowingly involved in the export of prohibited goods therefore even though it is established that the goods attempted to be exported were prohibited goods but responsibility for such wrong doing lies with the exporter and not with the CHA. In these circumstances, impugned order does not sustain. Hence the same is set aside. Appeal is allowed.

(Pronounced in court on 8.6.2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

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