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

Appeal No. C/88194/2018

(Arising out of Order-in-Original No. 09/CAC/PCC(G)/SKD/ CBS(ADMN) dated 23.07.2018 passed by the Principal Commissioner of Customs (General), Mumbai).

M/s Shiv Kumar Gupta	Appellant

Vs.

Principal Commissioner of Customs (General), NCH, Mumbai	Respondent

Appearance:

Shri Vinay Ansurkar, Advocate	for Appellant
Shri Ramesh Kumar, AC (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. S. SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 14.01.2019

Date of Decision: 14.01.2019

ORDER NO. **A/85090 / 2019**

Per: Dr. D.M. Misra

This is an appeal filed against Order-in-Original No. 09/CAC/PCC(G)/SKD/CBS(ADMN) dated 23.07.2018 passed by the Principal Commissioner of Customs (General), Mumbai.

2. Briefly stated the facts of the case are that the appellant operates as a Customs Broker against Customs Broker License

No. 11/700 issued by Commissioner of Customs (General), Mumbai under Customs Broker Licensing Regulations (CBLR), 2013. On the basis of investigation against certain imports, *prima facie* on finding that the appellant has acted in contravention of the CBLR, 2013, the license was suspended by order dated 22.03.2016 and continuation of suspension order was passed on 8.7.2016. Aggrieved by the said order, they filed an appeal before this Tribunal, which was allowed vide Order No. A/89928/17/CB dated 25.9.2017. Consequently, their suspension order was revoked on 14.2.2018. Thereafter, the revocation proceeding was completed and their license was revoked by the Department by order dated 23.7.2018. Hence, the present appeal.

3. Learned Advocate Shri V.N. Ansurkar for the appellant submits that the inquiry report was submitted to the adjudicating authority, which was conducted ex-parte and the appellants were not afforded reasonable opportunity to present their case before the Inquiry Officer. It is his contention that the notices of personal hearing mentioned in the inquiry report were not received by them since the same were sent to their old address. He has submitted that after change in address much before the inquiry proceedings were initiated, by letter dated 4.11.2015 and 30.9.2017, they had communicated the new address to the Department. The appeal before the Tribunal against suspension order was also filed indicating the new address. He prays that they may be given an opportunity to present their defence before Inquiry Officer and the learned Advocate categorically submits that they would not seek any unwarranted and unnecessarily adjournments during the inquiry

proceedings and assures the Tribunal that they have no objection in putting a time limit of the inquiry of one month for completion of the said inquiry against the appellant.

4. Learned AR for the Revenue reiterates the findings of the learned Commissioner. He has submitted that the appellant was provided ample opportunity by the Inquiry Officer but they failed to respond to the notices of hearing, accordingly, the inquiry officer proceeded to complete the proceedings and submitted his report. He has no objection in remanding the matter for fresh adjudication. However, he prays that the time fame may be fixed.

5. Heard both sides and perused the records.

6. It is not in dispute that on the basis of allegation against the appellant, initially the appellant's customs broker license was suspended, which later set aside by the Tribunal vide order dated 25.9.2017. It is the grievance of the appellant that they could not receive notices of personal hearing issued by the inquiry officer mentioning the wrong address therein resulting into ex-parte inquiry report. It is their contention that they should be given an opportunity to present their case before the inquiry officer. We find merit in the contention of the learned Advocate for the appellant. Consequently, we set aside the impugned order and remand the matter to the adjudicating authority with the direction to conduct a fresh inquiry and complete the inquiry proceeding as far as practicable within one month from the date of communication of this order and thereafter the adjudication proceedings be completed within three months from the

completion of the inquiry. Needless to mention that the appellant be provided opportunity by the authorities before passing any order.

7. The learned Advocate undertakes to co-operate with the Department in completion of the inquiry as well as adjudication proceedings without seeking unwarranted and unnecessary adjournments. In any case, it is expected that as far as practicable the inquiry be completed within one month and thereafter adjudication proceedings within three months from the date of communication of the order.

8. The impugned order is set aside and the appeal is allowed by way of remand.

(Operative portion of the order pronounced in Court)

(S. Srivastava)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

Sinha