CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 89130 OF 2013

[Arising out of Order-in- Original No: 78/2013/CAC/CC (G)/PKA/CHA (Admn) dated 13th June 2013 passed by the Commissioner of Customs (General), Mumbai.]

Commissioner of Customs (General)
New Customs House, Mumbai - 400001 … ***Appellant***

versus

Bajaj Enterprises
B-15, Sejal Apartment, Devidayal Road, Mulund (W)
Mumbai – 400 080 …***Respondent***

APPEARANCE:

Shri Ram Kumar, Assistant Commissioner (AR) for the appellant

Shri Anil Balani, Advocate for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A/ 85520 /2023

DATE OF HEARING:	20/03/2023
DATE OF DECISION:	20/03/2023

PER: C J MATHEW

This appeal of Commissioner of Customs (General), Mumbai, against his own order[1] restricting the penalty under Customs House Agents' Licensing Regulations (CHALR), 2004 to forfeiture of security deposit and consequent replenishment thereof, in proceedings initiated under regulation 20 of Customs House Agents' Licensing Regulations, 2004 for breach of four obligations devolving on M/s Bajaj Enterprises (holder of license No. 11/948), has been occasioned by the prompting of Committee of Chief Commissioners of Customs, conferred with responsibility of reviewing of adjudication orders of Commissioners of Customs/Principal Commissioners of Customs under section 129D of Customs Act, 1962, that the said agent should have had its license revoked for connivance in two import consignments under investigation.

2. The cavil in this appeal is that the respondent-agent is a habitual offender associated with certain operators in the misuse of 'import export code (IEC)' for import of heavily undervalued goods and that the penalty of forfeiture a security deposit is not harsh enough for the gravity of the offence. In the proceedings initiated under Customs House Agents Licensing Regulations (CHALR), 2004, the enquiry authority had held all four charges as 'not proved' despite which the Commissioner of Customs, as licensing authority in the said Regulations, went ahead to revoke the license and, taking note of breach of procedure in not furnishing 'disagreement note' proposing

[1] [order no. 78/2013/CAC/CC (G)/PKA/CHA (Admn) dated 13th June 2013]

to impose penalty despite ‘clean chit’ in statutory enquiry, the appeal of the respondent-agent was disposed of by the Tribunal by way of remand for remedial action.

3. In the *de novo* proceedings, the licensing authority, after giving due notice of proposal to disagree with the enquiry report, held that three of the four charges were proved and that forfeiture of security deposit would suffice in the circumstances. Among the charges framed in the proceedings, that of the respondent alleged to have transferred the license was held to be unsubstantiated. Neither the appeal nor the contention of Learned Authorised Representative suggests that the finding on this charge is incorrect. It is also seen from the contents of the appeal that the findings in the impugned order have not been controverted but that the Committee of Chief Commissioners appears to be aggrieved only by the evaluation of the licensing authority that the lesser of the two penalties would suffice. Simply put, the appeal desires us to intervene in an aspect that is normally left to the licensing authority, *viz*., quantum of punishment.

4. We have heard Learned Authorised Representative and Learned Counsel for the respondent.

5. We take note that, in *Commissioner of Customs (General) v. Mukadam Freight Systems Pvt Ltd [2018 (359) ELT 612 (Tri - Mumbai)]*, the Tribunal, on consideration of the special law that

section 146 of Customs Act, 1962 is and the legislative intent therein while designating the Central Board of Excise & Customs (CBEC) as the authority to frame appropriate Regulations, independent of the general power conferred elsewhere, held that

> *‘10. It is axiomatic that in all such proceedings, culminating in termination of such a relationship or is, in any other way, detrimental to the servant, the principles of natural justice require that the power to penalise vests with the author of its being, viz., the appointing authority, that there be a code of conduct which, when violated, brings retribution in the form of a penalty, that the entity who is sought to be proceeded against is served with charges, and supporting evidence thereof, which is subject to an enquiry as a pre-requisite for imposition of penalties. There is no scope for insinuating any higher authority to exercise superintendence over the appointing authority.*
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> *11. In terms of Customs House Agents Licensing Regulations, 1984 (which we are concerned with in the present instance), the power to license is vested in the Commissioner of Customs. That authority is, therefore, the ‘master’ to whom the agent owes its existence. It is the Commissioner of Customs who is responsible for the operation and functioning of the Customs House and any detriment to efficient functioning of the Customs House will ultimately reflect on that authority. There is no other authority more concerned with weeding out of unacceptable elements and, therefore, there is no cause for any other authority to sit in judgment on the decision of a Commissioner that continued operation of licensee is detrimental to the functioning of the Customs House.*

12. It cannot be said that revenue collection stands on that very footing. Levy of duties and the intent of the law relating to collection of revenue flows from legislative authority. For the purposes of tax administration, officers are commissioned to assess duty liability and to effect, wherever not levied or short-levied, recovery of duties. A finality in tax matters is not, therefore, intended to be vested in an administrative authority because collection of the Legislated tax is for the benefit of the citizens of the country and in accordance with the power to tax having been invested by the citizenry on the sovereign Legislature. The adjudication and appellate orders are, for that reason, subject to scrutiny of the review authority established in the taxing statute itself as enacted by the sovereign Legislature. There is no such provision for review in the Customs House Agents Licensing Regulations, 1984.

13. The consequential question that begs an answer is the scope of taking recourse to the general provision in Chapter XV of Customs Act, 1962 on the assumption that Regulation 23 of the Customs House Agents Licensing Regulations, 1984 is a special provision contemplating appeal only to aggrieved licensee and that Revenue authorities cannot be discriminated against. Such a proposition does not appear to be congruent with legislative intent as the special provision itself is not warranted if general provision in Section 129A of Customs Act, 1962 could have been resorted by an aggrieved licensee. On the contrary, legislative intent is abundantly clear in empowering the Regulation making authority to provide for an appellate mechanism distinct from that enacted by the sovereign Legislature in the Customs Act, 1962 and the Regulation-framing authority has, in accord with the wisdom of generations, entitled only the licensee to appeal. As the

> *sovereign Legislature has specifically empowered a separate appellate structure, the intent to deny the replication of the normal appellate remedy to the disciplinary authority against its own order is emphatic. We cannot countenance reading down the general provisions of review and appeal to apply to dropping of disciplinary proceedings against customs house agents in the face of specific and deliberate non-inclusion of such contingency in Section 146 of Customs Act, 1962 and the Regulations framed thereunder.'*

which is further cause for pause in considering the appeal on merit, such as it is, and, thereby, reading down an authority that the Regulations did not specify nor contemplated in the legislative enactment.

6. The appellant-Commissioner does not appear to be oblivious to this legal impediment and, accordingly, has submitted, *vide* communication dated 9th February 2023 addressed to the office of Authorised Representative, that the role of Commissioner of Customs has to be delineated as licensing, for the purpose of administration, and as adjudicatory, for imposition of detriment, for Revenue to seek appellate remedy available under the general scheme of appellate remedy in Customs Act, 1962 in the absence of specific bar to such. It is also contended in the same communication that the Regulations, having been framed under Customs Act, 1962, cannot be said to have independent existence outside the framework of the said statute.

7. We do understand that the appellant-Commission is before the

Hon’ble High Court of Bombay against the order of the Tribunal in *re Mukadam Freight Systems Pvt Ltd*; however, to suggest that the Learned Authorised Representative argue by relying on what, probably, are grounds of appeal there the proposition that the Tribunal was in error, even as that is pending, is ‘courage’ of sorts in demonstrating, as well as instigating, lack of judicial discipline. It would also appear that the appellant-Commissioner has also not grasped the essential difference between an adjudicatory and administrative exercise of power. As an adjudicating authority, the Commissioner of Customs weighs the submissions of an assessee *vis-à-vis* the interests of the State expressed in legislative enactment; ultimately, it is the detriment to the State that is, statutorily, scrutinized by the reviewing authority and, thus, the empowerment of an authority higher than the adjudicator being designated to pursue appellate remedies that it cannot administratively interfere in. On the contrary, in administration of the licensing regime, the Commissioner of Customs, as the creator of license, determines the continued existence of such creation; the weighment in proceedings under the Regulation is that of the interest of the agent *vis-à-vis* the interest of the administering Commissioner. That such administering jurisdiction has also been made subject to appellate oversight is specific legislative design insofar as section 146 of Customs Act, 1962 is concerned. Therefore, it is inappropriate for the appellant-

Commissioner to claim that, despite the ruling on lack of jurisdiction vested in the Committee of Chief Commissioners to direct appeal against orders of the licensing authority, the merit of the present appeal should be considered as though in challenge to an 'adjudication order' under Customs Act, 1962.

8. For the above reasons, we find no reason to entertain this appeal and dismiss the same.

(Operative Part of the Order pronounced in the open court on 20th March 2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*