CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85907 OF 2016

[Arising out of Order-in-Original No: 87/2013/CAC/CCG-/PKA-CHA(Admn) dated 22nd July 2013 passed by the Commissioner of Customs (General), Mumbai.]

Muni Cargo Movers Pvt Ltd
402 Apollo Arcade, RK Singh Marg
Andheri (E), Mumbai - 400069 … ***Appellant***

versus

Commissioner of Customs (General)
New Custom House, Ballard Estate, Mumbai - 400001 ***…Respondent***

APPEARANCE:

Shri Ashwani Kumar Prabhakar, Advocate for the appellant

Shri D S Maan, Deputy Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: A / 85356/2023

DATE OF HEARING:	01/09/2022
DATE OF DECISION:	01/03/2023

PER: C J MATHEW

M/s Muni Cargo Movers Pvt Ltd is in appeal before us challenging the revocation of their 'customs broker' licence (no.

11/929 issued under Customs House Agents Licencing Regulations (CHALR), 2004) under regulation 22(7) and 20(1) of Customs House Agents Licensing Regulations (CHALR), 2004, and not once but twice, in order[1] of Commissioner of Customs (General), Mumbai.

2. The licencing authority resorted to disposal of two proceedings, initiated separately and chronologically spanned, by common order after the first, arising from 'offence report' of 5th December 2008 and culminating in revocation that was appealed against before the Tribunal with plea of not having been placed on notice of intent of Commissioner of Customs to disagree with inquiry report holding three of the four charges as not proved, was remanded back for adherence to procedural prescriptions by order of 23rd April 2013 and the second, arising from offence report of 15th February 2010, was awaiting decision of Commissioner of Customs upon submission of inquiry report dated 30th March 2012 holding all four charges as proved. Disagreement memo in the former issued on 25th June 2013 had been responded to 15th July 2013 which sets the time-frame of disposal within reason though the elapse of time after response of 'customs broker' in the other matter filed on 17th July 2012 remains untouched in the impugned order.

3. We have heard Learned Counsel for the appellant and Learned Authorized Representative.

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[1] [order no. 87/2013/CAC/CCG-/PKA-CHA(Admn) dated 22nd July 2013]

4. Before proceeding to consider the respective submissions on merits, we find ourselves compelled to take up peculiarities in the disposal by the licencing authority, both in form and content, that may not have parallels in the annals of such proceedings. The disciplining of ‘customs brokers’, governed by the special provision crafted in section 146 of Customs Act, 1962 and operationalized through Regulations in force from time to time, commences with ‘offence report’ and culminates in order of detriment. Hence, the genesis of any, or each such, proceedings under the authority of the extant Regulations is a distinct offence report and each consequential proceedings stands on its own with revocation erasing existence of the licence along with the jurisdiction of the licencing authority over the licence. There cannot be any justification of ignorance of lack of empowerment in the Regulations, and except by appellate sanction, for resumption of erased jurisdiction merely for meting another erasure.

5. It certainly fails in appeal to logic and reason that a licence, issued under the Customs House Agents Licensing Regulations, 2004 that has been revoked by competent authority accompanied by forfeiture of security deposit, can, in the same metaphorical breath, be revived by the same authority for being subjected to revocation and forfeiture of deposit once again. Nor can it don the saving grace of rational purpose in such sequential detriment unless, at best, it had

occurred to the licensing authority that one of the two erasures lacked sufficient foundation to sustain or, at worst, that ‘customs brokers’ are fair game for whimsical scattering of retribution. The patent non-application of mind in, thus, merging two separate, and independent, proceedings for reasons not adduced, and incomprehensible, should not pass unnoticed.

6. The cross-examination of two individuals, whose statements had been relied upon by the licencing authority to differ with the conclusions of the inquiry authority, as sought for in response to disagreement memo communicated to the ‘customs broker’ upon direction of the Tribunal in the remand order, is seen to have been disposed off thus

> *‘18.7 The CHA have requested for cross examination of two witnesses viz Shri Bhupendra Shambulal Joshi @ Maharaj and Shri Arun Laxman Gayake during the personal hearing granted to them. It is surprising that the CHA has made such a belated request for cross-examination. My detailed discussions below will reveal that besides the admissions by Shri Bhupendra Joshi alias Maharaj and Shri Arun Gayake, the admissions by the CHA and his employee are even more incriminating and even if taken independently they unerringly point to the guilt of the CHA in the violation of the charges against them. The statements of Shri BS Joshi & Shri Arun Gayake have merely served to corroborate the guilt of the CHA. The denial by the CHA during the oral deposition before the Inquiry Officer is clearly a result of carefully planned afterthought and cannot be given credence over the*

> *statements recorded under Section 108 of the Customs Act, 1962 by the investigating authority. Hence I am of the considered view that the belated request by the CHA for cross-examination of the witnesses is a dilatory tactic and does not deserve consideration. Moreover, cross-examination cannot be claimed as matter of right as held in various judgments of the Tribunal and High Courts. Accordingly I reject the request of the CHA.'*

in the impugned order.

7. In the circumstances in which the appellant approached the Tribunal on the former occasion, *viz*., unanticipated revocation despite favourable findings in inquiry report, with no premonition of the justification likely to be appropriated for extinguishment of licence, neither would it have been necessary to visit the statements of the persons till responding to disagreement memo nor to impugn those statements in appeal before the Tribunal then. Hence, such cavalier dismissal of request for cross-examination affects the credibility of the disagreement memo.

8. In combining both the proceedings and, that too, of one which had been remanded by the Tribunal, specifically directing that the deficit, in the not so usual circumstances of supplanting of inquiry findings, be bridged, with another that was on entirely different facts and imputation of breach of obligations, the licencing authority has desecrated the sanctity of higher judicial authority, and compromised

the impugned order thereby, warranting *status quo ante* for revisit of each, separately, for shedding the taint of extraneous influence and prejudiced disposal.

9. We, therefore, do not propose to subject the merit of the submissions to scrutiny and evaluation but, instead, set aside the impugned order and remand both proceedings back to the licencing authority for fresh decisions while adjuring strict compliance with the earlier order of the Tribunal.

10. Accordingly, appeal is allowed by way of remand.

(Order pronounced in the open court on 01/03/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*