

**Continental Cargo Services Vs. Commr. of Cus.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Dec-03-1998

**Reported in :** (1999)(108)ELT768TriDel

**Appellant :** Continental Cargo Services

**Respondent :** Commr. of Cus.

**Judgement :**

1. This application for stay of the operation of the impugned order of the Commissioner of Customs dated 20-11-1998 was taken up at short notice, in pursuance of the directions made by the Delhi High Court in disposing of C.W.P. No. 6097/98, dated 1-12-1998.
2. Vide the impugned order, the Commissioner suspended the licence given to Shri Bhupinder Singh in his capacity as Custom House Agent, using the power vested in her under Regulation 21(2) of the Customs House Agents Licensing Regulations, 1984.
3. Shri R.K. Anand, Senior Advocate appearing with Shri Sawhney, Advocate referred to the Calcutta High Court judgment reported in 1998 (104) E.L.T. 11 (Cal.) in the case of N.C. Singha & Sons v. Union of India. He stated that in identical circumstances the High Court had not found favour with such suspension. He stated that the necessity for immediate action was not substantiated. The sequence was that the shipping bills were filed on 7-9-1998, the statement of the CHA was recorded on 21-9-1998 and the alleged over-

valuation was detected on 28-9-1998. The impugned order was dated 20-11-1998. This action was taken two months after the alleged over-valuation could not be termed to be "immediate action." He further submitted that the order in listing the circumstances leading thereto does not establish connivance on part of the CHA with the exporter. Shri S.K. Saran submitted that an application for stay was provided under the Customs Act only in terms of Section 129E. This section speaks of, disposing, pending appeal, deposit of the duty, interest or penalty demanded or levied. Where such demand was not made such applications could not lie.

5. Regulation 23(8) of the said Regulations permits an appeal to be filed under Section 129A of the Customs Act, 1962 before the Tribunal.

Section 129E provides for deposit of the duty or penalty confirmed or levied as the pre-condition to hearing of the appeal. The proviso to the said Section permits the Appellate Tribunal to dispense with such deposits. The applications for dispensation of such deposit are termed as stay applications. That does not mean that the Tribunal is competent to exercise jurisdiction limited only to Section 129E. Section 129B of the Act clothes the Tribunal with wide powers including passing of such orders on the appeal received as it thinks fit. Such powers would include the power to stay operation of an order adverse to the legal interest of the appellant. We are, therefore, not persuaded by the argument of the learned Departmental Representative that the Tribunal cannot deal with an application as it is before us.

6. In the CEGAT [Procedure] Rules, 1982 also a provision exists in the form of Rule 41 whereby the Tribunal is competent to make order or give appropriate directions to prevent abuse of its process or to secure ends of justice.

7. On reading the order we find that there was considerable time gap between detection of excess valuation and the need to take "immediate action". From the narration we are not able to co-relate the action on part of the exporter in over-invoicing the goods to any action taken by the present applicant. Thus, on the face of the order also we find no reason to resort to the extra-ordinary action provided for in the said Regulation.

8. In view of our finding we stay the operation of the order. The applicant shall be permitted to continue their business as Custom House Agents during the pendency of the appeal.

9. We make it clear that this order would not operate as a bar for the Commissioner to proceed with the enquiries contemplated under the same Regulations.

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