

Alankar Shipping and Clearing P. Vs. Collr. of Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-25-1999

Reported in : (2000)(116)ELT304TriDel

Appellant : Alankar Shipping and Clearing P.

Respondent : Collr. of Cus.

Judgement :

1. The above appeal arises out of the order of the Commissioner of Customs, Mumbai who has suspended the Custom House Agent Licence held by the appellants herein, pending enquiry proceedings under Regulation 23 of the Custom House Agent Licensing Regulation, 1984 for revokation of their licence and the ground for suspension is the appellants' alleged involvement in evasion of Customs duty running into several crores of Rupees, in collusion with Mumbai based importing firms viz.

Montana Valves and Compressors P. Ltd., M/s. Seaking Marine Services and M/s. Fairlon Engineering Pvt. Ltd., importers of assorted engineering cargo from various countries, who had imported consignments of engineering cargo and declared it as "ship stores" meant for Indian Navy, which were cleared without payment of import duty thereon.

2. The order is challenged on the ground that it does not spell out any necessity for immediate action the alleged offence of fraudulent import was detected in September, 1997, the show cause notice for recovery of duty and for imposition of

penalty against the importers and the appellant firm was issued on 2-12-1997, the notice was adjudicated in March, 1998, while the impugned order of suspension has been passed after a period of 9 months, i.e. in December, 1998 and it was communicated to the appellants only in July, 1999. The appellants rely upon the decision of the Hon'ble Calcutta High Court in the case of N.C. Singha & Sons v. Union of India reported in 1998 (104) E.L.T. 11 (Cal.) wherein the Hon'ble High Court has set aside the suspension of the Custom House Agent Licence on the ground that the order of the Commissioner did not spell out that any immediate action was required to be taken in the matter, and upon the decision of the Hon'ble Delhi High Court in the case of Rajinder Kumar Goyal v. Collector of Customs reported in 1995 (79) E.L.T. 54 (Del.) wherein the suspension order passed under Regulation 21(2) of the Custom House Agent Licensing Regulation, 1984 was set aside for the reason that immediate action for suspension of licence was not taken and the licence had been suspended only after 11/2 years of detection of alleged illegality. He also relied upon the decision of the Madras High Court in the case of East West Freight Carriers P. Ltd. v. Collector of Customs, Madras reported in 1995 (77) E.L.T. 79 which expressed the same view.

3. The order is defended by the learned DR who submits that the action of suspension was warranted since they are clearly involved in fraud, in collusion with certain firms, and that they had intentionally and wilfully withheld information regarding imported cargo with a view to gain pecuniary advantage to themselves. He further submits that the appeals against the order levying duty on the imported firms and imposing penalty upon them and upon the appellants herein have already been heard and orders have been reserved. Therefore, the present appeal should be taken up for hearing only after the decision in those cases is announced.

4. We have carefully considered the submissions of both sides. From the sequence of events as set out in the opening paragraph of this order, it is clear that the impugned order does not spell out that any immediate action was required to be taken. The alleged offence in collusion with other firms took place between 1992 and 1997, the adjudication proceedings in respect thereof were concluded in March, 1998 while the suspension order has been passed after a delay of over 9

months. There has also been a further delay of over 9 months in communication of the order till July, 1999 as seen from the letter dated 22-7-1999, from the Office of the Commissioner in response to the appellants' letter dated 20-7-1999 in which they requested for a copy of the suspension order since no such order had been received by them prior to that date. Therefore, we are of the view that this is not a case where any immediate action has been taken by the Customs authorities and, therefore, hold that the action taken under Regulation 21(2) of the Custom House Agent Licensing Regulation, 1984 is not sustainable in the light of the various decisions set out above, and we accordingly set aside the same.

5. The Commissioner is at liberty to initiate appropriate proceedings in terms of Regulation 21(4) of the Custom House Agent Licensing Regulation, 1984 against the appellants.

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