

**Trinity Forwarders Vs. Commissner of Customs**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

**Decided On :** Sep-03-2001

**Reported in :** (2002)(140)ELT203Tri(Chennai)

**Appellant :** Trinity Forwarders

**Respondent :** Commissner of Customs

**Judgement :**

1. The appellant is a Custom House Agent. He is aggrieved with the order of suspension dated 5-5-2001 in F. No. R-609-CHA passed by Commissioner of Customs, Chennai by which he has suspended CHA Licence No. R-609/CHA under Regulation 21(2) of CHALR 1984 pending investigation and finalisation of the matter.

2. Ld. Counsel Shri Murugappan seeks for disposal of the appeal itself by allowing the miscellaneous application seeking for early hearing in view of the matter being covered by Larger Bench judgment rendered in the case of Freightwings & Travels Ltd. v. CC, Mumbai [2001 (129) E.L.T. 226], Varun Forwarders v. CC, Mumbai reported in [2001 (129) E.L.T. 384 (TriMum.), Kothari & Sons v. CC, Jaipur reported in 2000 (40) RLT 1078 (CEGAT)] and the judgment rendered by this bench in the matter of K.P.S. and Co. v. CC, Madras vide Final Order No. 1763/2000, dated 8-12-2000 [2001 (129) E.L.T. 128 (T)].

3. Ld. D.R. Shri A. Jayachandran reiterates the findings contained in the impugned order, particularly in para 3 to 6 and the order contained in para 7 to 8 which are

extracted herein below :- 3. On further investigation it was found that the goods covered by all the 10 shipping bills did not belong to M/s. A.K. Enterprises.

The declarations filed along with the shipping documents were shown as signed by Manager, A.K. Enterprises and on verification it was found that the declarations were not signed by Mr. Aneesur Rehman, Manager, A.K. Enterprises.

4. Sr. S. Krishnanadh, Proprietor and authorised signatory of M/s.

Trinity Forwarders (Madras) in his statement recorded by SUB, Custom House, Chennai has admitted that he does not know the exporter and he did not verify the genuineness of the exporter before submitting the documents to customs. Also from the statements recorded from the Steamer Agents regarding the previous clearance effected in the name of M/s. A.K. Enterprises it appears that Sri. S. Krishnanadh has suppressed the facts with a mala fide intention. Sri. S. Krishnanadh has also admitted that he did not have any authorisation from M/s. A.K. Enterprises to act as their Customs Clearing Agent.

5. From the foregoing, it appears that M/s. Trinity Forwarders (Madras) have misused their CHA licence and have not complied with the obligations set out in CHALR and specifically the obligations set out in Regulation 14(a) and (1) of CHALR, 1984 (as amended).

6. The action of M/s. Trinity Forwarders (Madras) amount to serious misconduct on their part which in my opinion has rendered them unfit to transact any business in any Customs station.

7. In the above circumstances, I order suspension of CHA licence No. R609/CHA issued to M/s. Trinity Forwarders (Madras), Chennai-3 under Regulation 21(2) of CHALR, 1984 pending investigation and finalisation of the matter.

8. This order is issued without prejudice to any other action that may be taken against the CHA and their employees/representatives etc. under the provisions of Customs Law or any other law for the time being force in the Union of India.

4. Ld. Counsel Shri Murugappan has submitted that this issue is no longer res integra in view of the fact that no show cause notice has been given before suspension and no enquiry was also held before suspending the licence, therefore there is violation of principles of natural justice and in view of the judgment rendered by the Larger Bench in the case of Freightwings and Travels Ltd. & the orders of other co-ordinate benches referred supra, the order of the Id.Commissiner is required to be set aside on the above grounds.

5. Heard both sides and we are of the considered opinion that the issue is no longer res integra and this has been now well settled by the Larger Bench in the case of Freightwings & Travels Ltd. v. CC, Mumbai (supra) in which it has been held that immediate suspension of licence under the sub-Regulation (2) of Regulation 21 is contemplated only where the conduct of the CHA is of a very serious nature and procedure of show cause notice and personal hearing as provided under Regulation 23 is not applicable to the functions under Sub-Regulation (2) of Regulation 21, though it is strictly applicable to the suspension or revocation of the licence under Sub Regulation (1) of Custom House Agents Licencing Regulation 1984. It has also been held that before suspension of licence under Regulation 21(2), reasonable opportunity of hearing should also be granted. Since the person against whom punitive or damaging action is taken by any authority in its quasi judicial capacity must at least be given the minimal fairness of a post-decisional hearing. Therefore, the Commissioner of Customs should have given a personal hearing to the appellants before passing a speaking order under Regulation 21(2) of the Custom House Agent Licencing Regulation 1984. Similarly, in Varun Forwarders v. CC, Mumbai (supra), it has been held that mere suspension of CHA permitted others to use his licence cannot be a ground for suspension of licence and the Custom House Agent is to be suspended only when there is evidence to support prima facie view of continuance of agent is so undesirable that immediate suspension is called for. Otherwise, suspension is premature and hasty within the meaning of Regulation 21(2) of Custom House Agent Licence Regulation 1984. Similarly, CEGAT, New Delhi in the matter of Kothari & Sons v. CC, Jaipur, the order of suspension of CHA licence was set aside as the impugned order neither disclosed the necessity of immediate action nor did it mention the matter in respect of which an inquiry was pending or

contemplated. This bench has also in the case of K.P.S. & Co. v. CC, Madras vide Final Order No. 1763/2000, dated 8-12-2000 [2001 (129) E.L.T. 128 (T)] have held that the exercise of the powers under Regulation 21(2) has been exercised without any basis and the findings also did not lead that a case under Regulation 21(2) was called for. The order of suspension, therefore under Regulation 21(2) was held to be not sustainable due to lack of sufficient material in this case. Hence, the order of suspension was set aside.

Respectfully following the above decisions of the Larger Bench, the coordinate benches and of this bench, we are of the considered view that the exercise of powers under Regulation 21(2) in this case has been exercised without any basis and the findings in the present order also did not lead that a case under Regulation 21(2) was called for.

The order of suspension, therefore, under Regulation 21(2) cannot be sustained due to lack of sufficient material in this case to be brought out under the said Regulation and hence the order of suspension is required to be set aside. Ordered accordingly. The appeal is allowed.

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