# Sharp Cargo Movers Vs. Commissioner of Customs

Sharp Cargo Movers Vs. Commissioner of Customs

**SooperKanoon Citation** : sooperkanoon.com/30602

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

**Decided On :** Apr-10-2003

**Reported in** : (2003)(88)ECC686

**Judge** : A T V.K., P Bajaj

**Appellant** : Sharp Cargo Movers

**Respondent** : Commissioner of Customs

**Judgement** :

1. In this appeal, the appellants who are CHA, have questioned the validity of the impugned order-in-original dated 4.7.2002 vide which the Commissioner has declined their request for renewal of the Licence.

2. The facts are not much in dispute. The appellants were holder of a regular Licence No. 0099/93 which was valid upto 30.6.99. They were, however, found involved in the fraudulent export of ready-made garments made by certain fictitious exporters, as in all those exports the shipping bills were filed by them. The goods which were exported were highly over invoiced and this fact was in the knowledge of the appellants and Shri Satish Gupta, Managing Director of the appellants, even admitted this fact. After finding the appellants guilty of entering into criminal conspiracy for availing wrongful benefit of drawback in the names of fictitious and non-existent export companies, the Licence of the appellants was suspended vide Order dated 24.6.99, for having contravened the provisions of Regulation 14(b), (e), (f), (I) and (m) of CHALR 1984 pending enquiry against

them. Show cause notice was separately issued to them. After holding the enquiry, and on getting reply from the appellants on the show cause notice, their Licence was revoked by the Commissioner of Customs vide order dated 3.10.2000. But that order was set aside by the Tribunal in appeal filed by the appellants vide order dated 18.6.2001 with the observations that before the passing of the impugned order, the Licence of the appellants already stood expired on 3.6.99. The Tribunal also gave direction for considering the application of the appellants for renewal of the Licence in accordance with law and further observed that the Commissioner will be at liberty to proceed with the show cause notice dated 3.12.99 already issued to the appellants separately for having indulged in fraudulent export of ready-made garments.

3. When the Commissioner after the above order of the Tribunal, failed to pass any order on the application of the appellants for renewal of Licence, the appellants approached the Hon'ble Delhi High Court and the Hon'ble Delhi High Court vide order dated 28.5.2002 gave direction to the Commissioner to consider the application of the appellants for renewal/grant of the Licence in accordance with the law within six weeks, after observing that the consideration of application of the appellants for renewal or for grant of Licence is an independent exercise to be undertaken by the respondents (Commissioner) dehors the adjudication proceedings.

4. After passing of the above-said order by the High Court, the Commissioner passed the impugned order refusing to renew/grant Licence to the appellants.

5. We have heard both sides. The bare perusal of the impugned order shows that the prayer of the appellants for renewal/grant of the Licence has been declined by the Commissioner on the ground that they had failed to comply with the obligations cast on them under Regulation 14 of the CHALR 1984 as they had been found to be indulging in grave misconduct by taking fraudulent drawback claim. They had been found to aid and abet the export of highly overvalued export garments. But there is nothing on record to suggest if the show cause notice dated 3.12.99 issued on these very allegations of the appellants for having indulged in fraudulent export of readymade garments for claiming drawback in the names of fictitious

firms had been adjudicated upon by the competent authority. Therefore, the bald allegations contained in the show cause notice which so far had not been found to be correct by the Enquiry Officer/adjudicating authority before whom the adjudication is stated to be pending, could not be made basis for passing the impugned order.

That show cause notice unfortunately had not been adjudicated upon till now, although a period of over 3 years had lapsed. The appellants are without any work since June 99 when their Licence expired in due course. Before receiving the findings of the adjudicating authority on the show cause notice dated 3.12.99, it is difficult to legally conclude/observe as had been done by the Commissioner, that the appellants had indulged in fraudulent export of ready-made garments and thereby committed the misconduct in terms of Regulation 12(2)(b) of the Customs Act (sic) so as to deny them the renewal of the Licence. The learned Commissioner should not have ignored this aspect that the appellants had been rendered jobless/workless since June 99 when their Licence expired, without there being any findings of the adjudicating authority against them of having committed any misconduct by indulging in fraudulent export. He should have also realised that if ultimately the allegations contained in the show cause notice were found to be incorrect/false, who will compensate the appellants and in what manner, for having been thrown out of the work since June 99 without any proved misconduct. In a case of suspended employee, we find that there is a provision in Service Rules for allowing him arrears of his salary for the suspended period and upto the date of reinstatement, if ultimately the charges on which he was suspended had been found to be not proved/incorrect/false by the Enquiry Officer. But no such provision we find in the CHALR Rules that the CHA would be compensated in a particular manner if the alleged grounds of misconduct on which his Licence was suspended or not renewed, by the Commissioner, ultimately did not stand proved against him.

6. Therefore, keeping in view all the above referred facts and circumstances, we are of the opinion that it is a fit case where at least temporary renewal/grant of the Licence deserves to be allowed to the appellants so that they are able to earn their livelihood, till the adjudication of the show cause notice dated 3.12.99 alleging

misconduct against them, especially when there is nothing on the record to indicate that the adjudication of that show cause notice is near completion and the adjudicating authority is likely to submit the report shortly.

7. In the light of the discussion made above, the impugned order of the Commissioner is set aside and he is directed to issue temporary/provisional working CHA Licence to the appellants till the final adjudication of the show cause notice dated 3.12.99. However, the appellants will furnish an undertaking before the Commissioner that they will discharge their obligations during that period as per Regulation 14 of the CHALR. Accordingly, the appeal of the appellants stands disposed of in the above terms.