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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-15-2004

Reported in : (2005)(179)ELT585TriDel

Judge : A T V.K., P Bajaj

Appellant : Cargo Care

Respondent : Commissioner of Customs

Judgement :

1. In this appeal M/s. Cargo Care are challenging the suspension of their Customs House Agent (CHA) Licence.

2. Shri Bipin Garg, learned Advocate, submitted that the Commissioner has suspended their CHA licence on the ground that they had indulged in fraudulent and illegal practice in the clearances of export consignment and colluded with exporters in claiming drawback fraudulently relating to 15 shipping bills; that the appellants or their employee are not at all concerned with the alleged 15 shipping bills; that the allegation has been made in the impugned Order even without supplying the copies of the shipping bills; that, therefore, they are not even aware as to whom the shipping bills relate to and who has signed and presented them before the Customs. He, further, submitted that the impugned Order has been passed without any basis in violation of the principles of natural justice; that there is no case, whatsoever, for alleging that they were actively involved in any manner in the attempt of fraudulent and illegal act in their functioning as CHA; that more

than 18 months have passed, no further action has been taken after suspending their licence. He relied upon the decision in the case Vetri Impex v. C.C., Trichy, 2001 (135) E.L.T. 95 (Tri. - Chennai), wherein it has been held that as there is nothing on record showing any emergent situation to warrant immediate action under Regulation 21(2) of Customs House Agents Licensing Regulations, 1984, the suspension of the CHA licence cannot be upheld. Reliance has also been placed on the 'decision in the case of V.K Singh v. C.C., Hyderabad, 2004 (92) ECC 746 (Tri.) (Tri. - Bangalore) and Hexagen Shipping Services v. C.C., Chennai, 2002 (149) E.L.T. 958 (Tri. - Chennai). Learned Advocate also mentioned that no show cause notice was issued to them before suspending their licence; that it has been held by the Tribunal in the case of Trinity Forwarders v. C.C., Madras, 2002 (140) E.L.T. 203 (Tri. - Chennai) that suspension of licence without show cause notice and enquiry before suspension is violative of principles of natural justice.

3. Countering the arguments, Shri U. Raja Ram, learned D.R., submitted that the CHA's licence was suspended by the Commissioner as preliminary investigations in the case reveal that they had indulged in fraudulent and illegal practice in the clearance of export consignment and colluded with exporters for claiming drawback fraudulently; that penal action under Section 114 of the Customs Act has been proposed against the appellants in those show cause notices, which are pending adjudication; that enquiry regarding violation of Customs House Agent's Licensing Regulations, is still pending against the appellants as they had not cooperated with the Department since they have not produced the desired documents despite letters issued to them since April, 2003. The learned D.R. requested that the appellants may be directed to cooperate in the investigation so that the enquiry in violation of Regulations is completed against them. He, finally, submitted that as the appellants are not cooperating with the Department, their appeal may be rejected.

4. We have considered the submissions of both the sides. Sub-Regulation (2) of Regulation 21 provides that the Commissioner may, in appropriate cases where immediate action is necessary, suspend the licence of the CHA where an enquiry against such agent is pending or contemplated. It has been submitted by the

learned D.R. that the enquiry pertaining to 15 shipping bills has been completed and the show cause notices have been issued for further action against exporting as well as the appellants under the provisions of Customs Act for imposition of penalty. We observe that the licence of the appellant was suspended in March, 2003 and since then no action has been taken to revoke the same.

We do not find any substance in the submissions of the learned D.R.that the CHA is not producing the desired documents for completing the enquiry against him. The enquiry has to be conducted by the Customs Department and if the CHA does not comply with their directions the Department is at liberty to initiate the action against such CHA. The suspension of the licence entails severe consequence for the appellant; that as he is deprived of his profession witness, no valid reasons had been advanced by the Revenue to continue the suspension of the appellant's CHA licence. Accordingly, we set aside the suspension order and allow the appeal of the appellants with liberty to the Revenue to proceed against the CHA for cancellation of his licence if deemed fit.

The appeal is disposed of in above manner.