Tulsi Clearing and Forwarding Vs. Commr. of Cus. (Gen.)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-20-2005

Judge : J Balasundaram, Vice-, S T S.S.

Appellant : Tulsi Clearing and Forwarding

Respondent : Commr. of Cus. (Gen.)

Judgement :

1. This is an appeal against the order of the Commissioner of Customs cancelling the CHA licence of the appellant herein and ordering forfeiture of security amount of Rs. 25,000/-. The CHA licence has been cancelled on the ground that the articles of charge that the CHA allowed preparation of two sets of invoice in his office while clearing export consignments on behalf of M/s. Attire Inc., thus resulting in contravention of the provisions of Regulation 14(d) of the CHALR, 1984, and non-maintenance of job register in respect of the export consignments cleared by the CHA, stand proved.

3. We find that the entire case revolves around the question as to whether the appellant assisted M/s. Attire Inc., the export firm whose proprietor was one Mr. Manoj Khubchandani, in obtaining excess inadmissible drawback by over-invoicing the shipping bills. The contention of the appellant is that although the events occurred in the years 1997 to 2000, no show cause notice has been issued either to the export firm for recovery of excess drawback or to the CHA for penalty under the Customs Act for aiding and abetting the export firm in obtaining inadmissible excess drawback. The department has, therefore, not established that there has

been any case of availment by the export firm of any drawback amount over and above what it was entitled to.

This being so, the appellant submits that the cancellation cannot be sustained as the main event of availment of excess drawback itself has not been found upon.

4. The learned SDR draws our attention to the impugned order and submits that the offence of allowing preparation of two sets of invoices in the office of the CHA is itself a ground to warrant cancellation of the CHA licence and he would, therefore, pray that the order of cancellation be upheld and appeal rejected.

5. We have carefully considered the rival submissions and find force in the contention of the appellants that unless the charge against the main person, viz. the export firm, is established, penalty arising as a consequence of aiding and abetting/assisting the main person in defrauding revenue, cannot be sustained. The cancellation, therefore, cannot be sustained in view of what is set out above. Therefore, on the merits of the matter, we hold that the cancellation is required to be set aside, and accordingly set aside the impugned order and allow the appeal.