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Ashiana Cargo Services Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-18-2006

Judge : M Ravindran

Appellant : Ashiana Cargo Services

Respondent : Cce

Judgement :

1. This appeal is directed against the order-in-original dated 21st April, 2005 wherein the CHA Licence was suspended under Regulation 20 of CHA Licencing Regulations, 2004.

2. The brief facts that arise for consideration are : The appellants are holding CHA Licence No. 11/97 issued to them under CHA Licence Regulation. The appellants herein procured G-Card in the name of two persons. These persons were found to be utilizing the said G-Card fraudulently to export prohibited narcotic drugs in connivance with M/s V.K. International Pvt. Ltd. This was detected by the Special Intelligence and Investigation Branch of the Customs Department.

Accordingly, a show cause notice for suspension of his Licence under Regulation 20 of CHA Licencing Regulations, 2004 was issued. The adjudicating authority after granting personal hearing came to the conclusion that CHA Licence has to be suspended as per the provisions of Regulation 20(2) of CHA Licencing Regulations, 2004 and suspended the Licence and directed the CHA to surrender all CHA/G/H/helper Cards to the Department. The CHA immediately surrendered

all the cards.

3. The learned advocate appearing for the appellants submits that the CHA Licence was suspended on 21.04.2005 and till date no inquiry officer is appointed as provided under Regulation 22 of the CHA Licencing Regulations, 2004. Since the CHA is out of business for almost nine months, his livelihood and his employees livelihood is at stake. He pleads for leniency and seeks for allowing the appeal and reinstating the licence to the CHA. He relies upon the case law of Smita International v. Commissioner of Customs (Gen.). Mumbai .

4. The learned DR submits that the suspension of the CHA Licence was correctly done so by the Commissioner. It was submitted that the goods sought to be exported in this case are prohibited Narcotic Drugs which would have wider ramifications and hence there is no such leniency to be shown to the appellants. At the most she (DR) submits that the appointment of the inquiry officer and subsequent proceedings may be speeded up in order to do justice to the CHA.5. Considered the submissions made by both sides and perused the records. I find that the suspension of the CHA Licence vide Regulation 20 was done by the Commissioner of Customs after following the principles of natural justice and I also find that the suspension was initiated because of a serious nature of fraudulent export of prohibited Narcotic Drugs. At the same time, it has to be kept in mind that the CHA and his employees' livelihood is linked to CHA Licence. It has to be kept in mind that though the goods were prohibited goods, which were sought to be exported by M/s V.K. International (P) Ltd., there is no evidence on record to show that CHA was involved in exporting the same.

6. To my mind, the suspension of the licence for nine months and continuing it further without conducting any inquiry and coming to any conclusion, would definitely deprive the livelihood of the CHA and his employees. I find that the procedure for suspension and revoking the licence is provided under Regulation 22 of the CHA Licencing Regulations, which requires appointment of an inquiry officer and issuance of the show cause notice to the CHA. At this stage, the learned advocate submits that he is ready to cooperate with the authorities in conducting the inquiry at all levels within the time frame as directed by the

Tribunal.

7. Considering all the facts and circumstances; of the case, since no inquiry officer was appointed by the authorities till date, I direct the authorities below to appoint an inquiry officer as early as possible to conduct the inquiry and take the decision on the revoking or otherwise of the CHA Licence of the appellants. To my mind, the authorities below should conduct the inquiry within a period of two months from today and give a decision not later than 31st March, 2006, to which the learned advocate for the appellants, as submitted above, will cooperate in full.

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