

Saini Consultants Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-28-2008

Reported in : (2008)(128)ECC180

Judge : S Kang, Vice, S T T.V.

Appellant : Saini Consultants

Respondent : Cc

Judgement :

2. The appellant filed this appeal against the order passed by the Commissioner of Customs whereby CHA licence of the appellant was suspended under Regulation 20(2) of the Customs House Agents Licensing Regulations, 2004.

3. The main contention of the appellant is that no notice was issued before passing suspension order. It is also submitted by the appellant that the Tribunal in various decisions held that notice is necessary before passing the suspension order. The appellant also submitted that the order is passed without application of mind as there is no evidence against the appellant that he is party to fraud committed by two other persons. The contention is that prior to passing the impugned order the statements were recorded where they admitted that they had defrauded the Custom authorities.

4. The appellant relied upon the decision of Single Bench of the Tribunal in the case of Unison Clearing (P) Ltd. v. CC and where the licence of another CHA was

suspended on the basis of the same investigation. The Tribunal after following the Division Bench decision of the Tribunal in the case of Unison Clearing (P) Ltd. v. CC reported in 2006 (198) ELT 513 set aside the order of suspension.

5. The appellant also relied upon the various decisions of Hon'ble High Court where it has been held that suspension of licence is not sustainable because impugned order does not spell out that any immediate action was required to be taken in the matter nor the order indicate that such action was indeed warranted.

6. The contention of the Revenue is that the show cause notice for revocation of the licence has been issued on 7.12.06 and appellant also filed a detailed reply to that show-cause notice. The Revenue relied upon the following decisions of the Hon'ble Madras High Court: Sindhu Cargo Services Ltd. v. CC 7. The Revenue also relied upon the decision of Hon'ble Bombay High Court in the case of CC v. Raj Clearing Agency . The contention of the Revenue is that in the above decisions, the Hon'ble High Court held that as per the provisions of Regulation 20(2) of the Regulations even without giving notice the licence could be suspended.

8. The contention of the Revenue is that in this case the appellant signed the bill of entries which was subsequently found that the forged entry was made regarding payment of duty and whereby the goods were cleared by mentioning to fictitious DEPB licence numbers and signatures of the Custom officers were also forged.

9. We find that in this case the main contention of the appellant is that no show-cause notice has been issued prior to passing the suspension order. We find that the Tribunal in some cases held that notice is required before passing the order for suspension under Regulation 20(2). We find that this issue is came before the Hon'ble Bombay High Court in the case of CC v. Raj Clearing Agency. The Hon'ble High Court held as under: In the facts and circumstances of the instant case, it was a case for invoking Regulation 20(2) of the said Regulations which is meant only in cases where immediate action is necessary. In such a case even without giving notice the licence could be suspended. We make it clear that the observations of the CESTAT that in all cases of suspension the procedure under Regulation 22(1) out to have been followed in the sense prior notice before

suspension ought to be given cannot be sustained.

9.1 The Hon'ble Madras High Court in the case of Cargomar v. CCE (supra) had also taken the same view. In view of above decision of Hon'ble High Court we find no merit in the contention that notice is necessary before passing the order under Regulation 20(2).

9.2 Further, we find that in the present case in the impugned order, the Commissioner after taking into consideration the fraud to the tune of Rs. 1.68 crores by making clearance of imported goods by way of making duty payment under DEPB scheme against various bills of entries.

The appellants are not disputing that these bills of entries were not dealt with by him. In these circumstances, we find that it is not a case where the impugned order does not spell out reasons of any immediate action. In view of the discussion and in view of the various decisions of High Court where it has been held that notice is not necessary before issuing order of suspension under Regulation 20(2) of the Regulation. We find no merit in the appeal, the same is dismissed.

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