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**Commissioner of Customs Vs. Sindhu Cargo Services Ltd. and Customs, Excise and Service Tax Appellate Tribunal**

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**SooperKanoon Citation : [sooperkanoon.com/782849](http://sooperkanoon.com/782849)**

**Court : Chennai**

**Decided On : Nov-23-2006**

**Reported in : 2007(114)ECC305; 2007LC305(Madras)**

**Judge : P.D. Dinakaran and ;P.P.S. Janarthana Raja, JJ.**

**Acts : [Customs Act, 1962](#) - Sections 113, 130 and 146; Customs House Agents Licensing Regulations, 2004 - Regulations 13, 19(8), 20, 20(1), 20(2), 22, 22(7) and 22(8); Customs House Agents Licensing Regulations, 1984 - Regulation 10(2); Customs Law**

**Appeal No. : Civil Miscellaneous Appeal No. 3240 of 2006**

**Appellant : Commissioner of Customs**

**Respondent : Sindhu Cargo Services Ltd. and Customs, Excise and Service Tax Appellate Tribunal**

**Advocate for Pet/Ap. : J. Ravindran, ACGSC**

**Disposition : Appeal dismissed**

**Judgement :**

**P.P.S. Janarthana Raja, J.**

1. The present appeal is filed under Section 130 of the [Customs Act, 1962](#) by the Revenue against the order dated 06.12.2005 passed by the Customs, Excise & Service Tax Appellate Tribunal, Chennai, raising the following substantial questions of law:

1. While the order of suspension has been passed under Regulation 20(2) of the CHALR, 2004 and the post decisional hearing as required under Regulation 22 has been set in motion and the CHA also participated in the proceedings by submitting a representation against the order of suspension of the License and and requesting for a personal hearing, whether it is correct for the Hon'ble Tribunal to obstruct the due process of law by prescribing a limited frame and declaring the very suspension order null and void if the enquiry could not be completed within the specified time?

2. When as per Regulation 22(8) of the CHALR, 2004 that a Customs House Agent could become aggrieved only on account of any decision or order passed under Regulation 20 which is subject to compliance with the requirement of Regulation 22 and Sub-regulation (7) of Regulation 22 for the purpose of preferring appeal to the CESTAT, whether the Tribunal is at right to entertain the order passed under Regulation 20(2) which has specifically empowered the Commissioner to give post decisional hearing to the CHA? And

3. When the Hon'ble Tribunal is convinced as to the collusion and connivance of the CHA with Exporters to defraud the astronomical sum of drawback, i.e., Rs. 3.5 Crores approximately, whether the Tribunal could cite the humanitarian grounds as the mitigating circumstances to expedite the proceedings within the minimum possible time and in the event of non-compliance declaring the very order of suspension passed under Regulation 20(2) of the CHALR, 2004 as null and void especially when the investigation is handled by the CBI?

2. The brief facts leading to the above questions of law are as under:

M/s. Sindhu Cargo Services Limited, Classic Towers No. 1547, Trichy Road, Coimbatore-18 are a Licensed Custom House Agent ('CHA' in short) under License No. CHA/CBE/12/2002, which is valid upto 16.12.2007. The said License

was issued based on their Original License No. 1/92 in the Bangalore Custom House, under Regulation 10(2) of Customs House Agents Licensing Regulations, 1984, ('CHALR' in short) which were framed in terms of Section 146 of the [Customs Act, 1962](#). Shri. Mohammed Aneez, Branch Manager and Authorised Signatory of M/s. Sindhu Cargo Services Limited, Coimbatore in association with his staff P.Senthilkumar (I.D. No. 16/2004), Executive Operations, R. Sakthivel (I.D. No. 73/2004), Executive Operations and K. Rajkumar, Office Assistant, involved in fraudulent availment of export incentives by the following exporters operated through the said M/s. Sindhu Cargo Services Limited, Coimbatore.

- 1) Aargee Exports, Tirupur.
- 2) A.S.P. Trading, Tirupur.
- 3) Christle India, Tirupur.
- 4) Royal Stitch, Tirupur.
- 5) Lintas Int, Tirupur.
- 6) Raghu Exports, Coimbatore.
- 7) Maha Fashions, Tirupur.
- 8) Uma Maheswari Exports, Tirupur.
- 9) Sri Vari Textiles, Tirupur.
- 10) Thiru Anamalai Exp, Tirupur.
- 11) Surya Overseas, Coimbatore.
- 12) Titanic Tex, Tirupur.
- 13) Mahima Exports, Coimbatore.
- 14) Varshini Exports, Tirupur.
- 15) Vishal Textiles, Coimbatore.

## 16) Sureka Exports, Coimbatore.

The exporters noted against Sl. Nos. 1 to 12 above, were found to have operated through one M. Selvanathan, Proprietor of M/s. Titanic Tex, Tirupur. The Purchase Order, Packing List and Invoices of the above said exporters were received through fax from M/s. Titanic Tex, Tirupur, and the required number of copies were photocopied and Shipping Bills were prepared and signed by the above staff of M/s. Sindhu Cargo. The other documents, namely, G.R. Forms, Drawback Declaration, Pre-receipt, Cenvat Non-availment Certificate etc. were also authenticated by the above persons without any authorisation of the above said companies. The above staff, namely, Mohammed Aneez, Senthil Kumar, Sakthi Vel and K. Raj Kumar, in their statements, have admitted the above facts. The rubber stamps of various exporters handed over by M/s. Sindhu Cargo and the correspondence pertaining to the above exporters recovered from the premises of CHA, clearly established the fact of involvement of the CHA in the fraudulent export activities indulged by the said exporters. The CHA themselves, had associated with Selvanathan for availing export incentives (drawback) to the tune of Rs. 3.5 Crores, approximately, during the period from 2003-04 to 2005-06 and indulged in the above activities which resulted in loss of revenue to the Government. On further investigation, Shri. Balaraju, Managing Director of M/s. Sindhu Cargo Services Limited, produced the copies of the fake BRC of the following exporters, which were available with him:

- 1) Raghu Exports
- 2) Uma Maheswari Exports
- 3) Varshini Exports
- 4) Fine Style Garments

The said investigation revealed that the CHA had transacted business for non-existing exporters as none of them were found to be transacting or carrying out business in the declared premises as given in the IEC license. The correspondence of the Department, sent to the above exporters were returned as

undelivered. As per the said Regulations, the CHA failed to comply with the obligations imposed upon them under the said Regulations. Such non-compliance of provisions of CHALR, 2004 and non-compliance of obligations amounted to violation and contravention of CHALR, 2004 for which the CHA is liable to be punished by way of suspension and revocation of licence issued to them in terms of provision of Regulation 20(1) of CHALR, 2004. In view of the same, the first respondent, M/s. Sindhu Cargo Services Ltd., Coimbatore, Custom House Agent, have actively connived, colluded and helped to defraud the Government to the tune of Rs. 3.5 Crores, producing false documents, fraud certificates and fraudulent claims for the non-existing export companies. The first respondent has not only failed to fulfil the obligation under Regulation 13 of Customs House Agent Licensing Regulations, 2004, but also remained part and parcel of the fraud committed against the Department in contravention of Section 113 of [Customs Act, 1962](#) and Rule 16A of Drawback Rules. The first respondent as well as its Managing Director are fully aware of the fraud taken place in their Branch Office at Coimbatore. In view of the same, the Revenue was of the view that it is essential to cancel the license of CHA under Regulation 20(1) of CHALR, 2004. Further investigation reveals the following irregularities:

(i) The CHA has failed to obtain authorisation from its clients for processing documents in Customs and hence it appears that the CHA has not complied with Regulation 13(a) of CHALR, 2004.

(ii) The CHA failed to advise his clients to comply with provisions of the [Customs Act, 1962](#) and thus failed to comply with the obligations imposed upon them in terms of Regulation 13(d) of the CHALR, 2004.

(iii) The CHA failed to exercise due diligence to ascertain the correctness of any information with regard to work handled in its name. Thus it appears that the CHA has failed to comply with the obligation under Regulation 13(e) of CHALR, 2004.

(iv) The CHA did not have control over the Customs clearance work and thereby failed to exercise supervision ensuring proper contact of the persons who transacted business. Hence the CHA apparently failed to comply with the provisions of Regulation, 19(8) of the CHALR, 2004.

3. The first respondent has prima facie failed to comply with the above obligations and they are liable for action under Regulation 20(1) of CHALR, 2004. In view of the same, the Commissioner of Customs, passed order exercising the power conferred under the provisions of Regulation 20(2) of the Customs House Agents Licensing Regulations, 2004, and suspended the first respondent's CHA License issued earlier, pending further investigation and finalisation of the matter. It is also further stated that the suspension order is issued without prejudice to any other action that might be taken against the CHA and its employees under the provisions of Customs Law for time being in force. Aggrieved by the order, the first respondent filed an appeal to the Customs, Excise and Service Tax Appellate Tribunal ('Appellate Tribunal' in short). The Appellate Tribunal passed an order directing the Revenue, the appellant herein, to complete the enquiry against CHA within a stipulated time, failing which the Suspension Order would be set aside.

4. Learned Standing Counsel appearing for the Revenue submitted that the Appellate Tribunal ought not have imposed a stipulated time limit for passing the order, which would amount to compel the Revenue to decide the issue within a short time without considering the gravity of the offence as well as time that would have been required to complete the pending investigation. The Commissioner of Customs is right in suspending the License of Custom House Agent, wherein enquiry against such agent is pending. Therefore, it is wrong on the part of the Appellate Tribunal to give a mandatory direction to complete the enquiry and pass final orders against the CHA within a stipulated time. Hence the order of the Appellate Tribunal is wrong, illegal, without basis and justification.

5. Heard the counsel. The Appellate Tribunal, after considering the facts and materials, passed the order as follows:

7. It is necessary for the ends of justice that the inquiry proceedings against the CHA be initiated without any further delay and be concluded in accordance with law and the principles of natural justice within the minimum possible time, having regard to the fact that the suspension of CHA Licence has affected the livelihood of the employees of the CHA. In the case of Freightwings and Travels Ltd. v. Commissioner reported in , a Larger Bench of this Tribunal disposed of a similar

case with a direction for post-decisional hearing. Following that decision, I direct the Commissioner of Customs, Coimbatore to complete enquiry against the CHA and pass final order within a period of four months from today after duly considering the CHA's explanation dated 10.11.05 and other submissions. In the event of any final order not being passed within the period stipulated in this order, the impugned order of suspension will stand set aside. The appeal is disposed of in the above terms.

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8. In this appeal, the challenge by the CHA is against an order passed by the Commissioner of Customs, Tuticorin suspending their licence. After examining the records and hearing both sides, I find that the impugned order was passed by the Commissioner on the basis of the investigative results pertaining to the CHA's activities within the jurisdiction of the Commissioner of Customs, Coimbatore. NO decision has been brought to my notice to the effect that suspension of CHA's licence within the jurisdiction of one Commissionerate of Customs on the basis of investigative results pertaining to the CHA's activities within the jurisdiction of another Commissionerate of Customs is ipso facto unsustainable in law. Hence, bearing in mind the judicial view on the effect of fraud vide ICI India Ltd's case (supra), I am not inclined to grant any stay of operation of the suspension order. However, in terms of the Tribunal's Larger Bench decision in the case of Freightwings and Travels Ltd. (supra), the CHA should be given a post-decisional hearing at the earliest and the Commissioner should take a decision as to whether the suspension order should be allowed to continue. An order in this behalf should be passed within fifteen days from the date of receipt of this order, failing which, it is made clear, the impugned order will stand set aside. The appeal is disposed of along with the applications therein.

From a reading of the above, it is clear that only a direction was given to the Commissioner of Customs to complete the enquiry and pass final orders against the CHA, within a stipulated time. The reason for giving such direction was that, the suspension of License would affect the livelihood of the employees of the CHA. Merely giving a direction to pass order within a stipulated time would not

affect the interest of the Revenue. The learned Standing Counsel is also unable to produce any material or evidence or compelling reason as to how the direction given by the Appellate Tribunal would affect the interest of the Revenue. Further, we are of the view that, if the Revenue is unable to pass a final order against CHA within a stipulated time, as directed by the Appellate Tribunal, the Revenue can very well approach the Appellate Tribunal for extension of time, if it is required. The reasons given by the Appellate Tribunal are also based on valid materials and evidence and hence We do not find any error or legal infirmity in the order of the Appellate Tribunal.

6. Under these circumstances, the order passed by the Appellate Tribunal is in conformity with law and the same does not require interference. Hence, no substantial questions of law arise for consideration of this Court and accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, M.P. No. 1 of 2006 is closed.

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