IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH : NAGPUR

Customs Appeal No. 3/2007
(The Commissioner of Central Excise, Nagpur vs. M/s AIR Masters Freight Services, Nagpur & anr.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.

Shri S.N. Bhattad with Shri K.Nalamwar, Advocates for appellant.
Shri Anand Parchure with R.M. Vaidya, Advocates for respondent No.1.

CORAM : M.S. SANKLECHA & MANISH PITALE, JJ.

DATE : 28.6.2017.

P.C.:-

This appeal under Section 130 of the Customs Act, 1962 challenges order dated 4th May, 2007 passed by the Customs Excise & Service Tax Appellate Tribunal (Tribunal). By the impugned order, the respondents' licence as Customs House Agent (CHA) was restored and the Commissioner of Customs was directed to renew the licence of the respondent in terms Customs House Agents Licensing Regulations, 2004 (2004 Regulation)

2. This appeal was admitted on 21st February, 2008 on the following substantial question of law:-

"Whether the CESTAT was right in directing the Commissioner to renew the CHA Licence of Respondent

No.1, in violation to Regulation 11(2)(a) of the CHALR, 2004 and norms framed by the Commissioner in this regard, over looking the fact that the respondent No.1 did not fulfill the present norms of volume/value of business for 4 years at a stretch due to sickness, especially when he had another authorized person by name Shri Rajesh S. Satnak to undertake the job?”

3. Briefly, the facts leading to this appeal are as under:-

(A) The respondent was granted CHA licence on 23rd April, 1999. The licence was valid for a period of 5 years from the date of issue i.e. upto 22nd April, 2004. By letter dated 4th March, 2004, the respondent sought renewal of its CHA licence.

(B) After due enquiry, the Commissioner of Customs & Central Excise, Nagpur by an order dated 6th November, 2006, rejected the renewal application and revoked respondent's CHA dated 23 April, 1999.. This on the ground that the respondent had for the years 1999-200, 2001-2002 and 2002-2003 not performed work as CHA, except for filing four Bills of Entry in the year 2000-2001. Thus, relying upon the Public Notice No. 9/98 as amended by 5/2004 dated 21st April, 2004, the Commissioner of

Customs found that the respondent had not carried out minimum prescribed work both volume wise and revenue wise so as to continue his work as a CHA.

(C) Being aggrieved, the respondent filed an appeal to the Tribunal. By the impugned order, the Tribunal noted the fact that the respondent has suffered multiple injuries due to an accident on 12th March, 2001, and was hospitalized till 2nd April, 2002. Thereafter, he was advised complete bed rest. However, due to negligence, his condition worsened and he had to re-admitted to hospital for surgery intermittently during the period of 2002 to February, 2004. During the aforesaid period, the respondent – Assessee was immobile and could walk with great difficulty, only with the aid of crutches. It was only on 5th March, 2004, he was found to be medically fit to resume normal duties. Consequent to that, for the year 2003-2004, he has been able to transact business amounting to Rs. 2.40 crores, which satisfied the requirements of the public notice for that year.

(D) In view of the aforesaid facts, the impugned order of the Tribunal placed reliance upon the decision of Delhi High Court in ***Premier Clearing Agency vs Commissioner of Customs(General), New Delhi 2001(133) ELT 533(Del)*** and set aside the order of the Commissioner of Customs. It further directed the Commissioner of Customs to renew the respondent's licence.

4. We are informed that thereafter, the respondent's licence is being renewed from time to time. Further, even today, he operates as CHA, at the Nagpur Commissionerate.

5. Mr. Bhattad learned counsel for appellant – Revenue in support of appeal submits that in view of the failure of the respondent to do necessary business during the year 1999-2000 to 2000-2003, the revocation of the licence were justified. This particularly so as according to revenue, there is discretion available with the authorities under the Act to continue licence and/ or renew a licence when minimum requirement of business as laid down by the public notice are not satisfied. In the present facts, this discretion should not have been interfered by the Tribunal.

6. We find that the reliance upon the decision of the Delhi High Court in case of Premier Clearing Agency (supra) by the impugned order was most appropriate. The Delhi High Court in the above case was dealing with an identical provision regarding renewal of licence as contained in Customs House Agents Licensing Regulations, 1984. In the above case, the Court held that Collector has discretion whether or

not to renew a licence, even in cases where the performance of CHA has been unsatisfactory. The Court held that the Regulation itself indicates that the Collector has discretion whether or not to renew a licence. Therefore, the Collector would be justified in taking a liberal view to renew the licence, if shortfall in the business was on account of medical problems. We find that the 2004 Regulations also specifically provides that the Commissioner could renew a licence, if he satisfied with the performance of the licensee when benchmarked against the quantity or value of cargo cleared by such licensee. These norms, as may be prescribed are not cast in stone and the same could be relaxed, if the Commissioner is satisfied with the reasons for its non-satisfaction as is evident for Rule 11 of the 2004 Regulations. Thus, in an extraordinary situation, the Commissioner should exercise its discretion for renewing a licence even where the quantity or value of cargo/business done by the licensee is less than the prescribed norms, if the facts and circumstances, so justify, as in the present facts.

7. Further, we are informed that the respondent's CHA licence continues to be valid today after having been renewed from time to time by the Commissionerate at Nagpur. This indicates that on being medically fit, the respondent has achieved the prescribed norms of business.

8. In the above view, we find no fault in the impugned order of

the Tribunal. Accordingly, the substantial question of law is answered in the affirmative i.e. in favour of the respondent and against the appellant-revenue.

9. Therefore, the Appeal is dismissed. No order as to costs.

(MANISH PITALE, J.) **(M.S.SANKLECHA, J.)**

Gohane