

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH – COURT NO. I

**Customs Appeal No. 41241 of 2013**

(Arising out of Order-in-Original C.No.VIII/13/01/1984-CHAL dated 06.03.2013 passed by the Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin – 628 004)

**M/s. VNMS Ayyachamy Nadar & Bros.,**

**: Appellant**

Door No. 16 A, South Raja Street,  
Tuticorin – 628 001

**VERSUS**

**The Commissioner of Customs**

**: Respondent**

Custom House, New Harbour Estate,  
Tuticorin – 628 004

**APPEARANCE:**

Shri N. Manickam, Advocate for the Appellant

Shri S. Balakumar, Assistant Commissioner for the Respondent

**CORAM:**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**

**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 40472 / 2023**

DATE OF HEARING: 07.06.2023

DATE OF DECISION: 23.06.2023

**Order : [Per Hon'ble Mr. P. Dinesha]**

Brief facts of the case, as could be gathered from the Show Cause Notice dated 19.06.2012, are that it appears that there was an investigation by the Directorate of Revenue Intelligence (DRI), Tuticorin and by their investigation report dated 05.06.2010, it appears to have come to light that the Import Export Code (IEC) of various exporters were being misused by few individuals for fraudulent exports of low quality shoe uppers, etc., thereby availing ineligible duty drawback without realization of any export proceeds.

1.2 Based on the above, it appears that the Revenue entertained a doubt that the appellant herein had violated / failed to fulfil the obligations cast upon them under Regulations 10, 13(a), 13(b), 13(d), 13(o) and 19(8) of the CHALR, 2004.

2.1 It appears that on 21.05.2010 i.e., much before the aforesaid investigation report by the DRI (dated 05.06.2010), statement of one Mr. D. Ananda Raj, Partner of the appellant-CHA was recorded, who appears to have stated that their firm has been in the said business for over sixty years. In respect of the leather shoe uppers, he has stated that one Mr. B. Mohan, Manager of the company, who was working with them for a long period of time, was given their licence to carry on with the CHA work; they never suspected him nor did they ever ask him about the CHA work undertaken by him. It also appears from his statement that their licence was misused by one Mr. M. Vijay Anand, son of the said Mr. B. Mohan, and that the appellant did not interact with the exporters and hence, they had no occasion to verify the credentials of the exporters.

2.2 From the record, it appears that Mr. M. Vijay Anand had filed about 225 Shipping Bills by misusing 14 IECs, which involved about Rs.2 crores of ineligible duty drawback. Further, it appears that the statement of Mr. M. Vijay Anand was also recorded on 07.04.2010, wherein he appears to have *inter alia* admitted as under: -

- (i) His father did not have Rule 9 Licence; he used to get signature from one Mr. Durai Raj, a Rule 9 Licence Holder of the appellant;
- (ii) His father was also the proprietor of M/s. Meenakshi Agency, wherein he was the Managing Director of the company;

- (iii) He met one Mr. Gibri (Zipreel) of Chennai in 2007, who introduced two exporters by name Rahman and M. Kalandar Seeni Ahmed of Chennai;
- (iv) It was Mr. Gibri who informed him that they wanted to export leather shoe uppers to Malaysia and Dubai under drawback scheme.
- (v) They did not have the IE Code, for which Mr. M. Vijay Anand was asked to furnish the same on commission basis;
- (vi) He approached one Mr. T. Joseph John Britto (alias John), Tuticorin, who, according to him, was an agent for taking IE Codes and also provided him with 11 IE Codes;
- (vii) He offered a commission of Rs.5,000/- per IE Code for every consignment and utilized all those 11 IE Codes in the export of leather shoe uppers during a seven-month period;

It appears that a further statement of Mr. M. Vijay Anand was also recorded on 10.04.2010 wherein it appears that he has not denied the role played by him.

3.1 In the above backdrop, in the Show Cause Notice dated 19.06.2012 issued to the appellant, it is seen that the Revenue had alleged infringement of various regulations of the CHALR *ibid.* and thus, their CHA Licence came to be suspended in terms of Regulation 20(2) of the CHALR, 2004 by the Commissioner, Custom House, Tuticorin vide Order dated 12.06.2010 pending inquiry against the appellant.

3.2 It was thus proposed in the said Show Cause Notice as to the revocation of the CHA Licence along with forfeiture of security deposit in terms of Regulation 20(1) *ibid.*

4.1 The appellant was given an opportunity to file its reply with the Assistant Commissioner of Customs, Tuticorin, who was appointed as the Inquiry Officer as per Regulation 22(1) *ibid*. It appears that the appellant filed a detailed reply dated 18.07.2012 by countering each of the allegations levelled against it, thereby requesting for non-revocation of its CHA Licence as otherwise, they would be deprived of their livelihood.

4.2 It appears that the Assistant Commissioner, after considering the above reply of the appellant, issued an inquiry report dated 15.11.2012 wherein, after observing that the appellant-CHA had failed to discharge their obligations under Regulations 10, 13(a), 13(b), 13(d), 13(o) and 19(8) *ibid*. and that the charges levelled against the appellant were proved, he had recommended for revocation of CHA Licence under Regulation 20(1) *ibid*., apart from forfeiture of security deposit.

4.3 It appears that the appellant filed a rebuttal to the above inquiry report with the Commissioner of Customs, Custom House, Tuticorin vide reply dated 18.12.2012 wherein they appear to have pleaded that they had an unblemished record for the last over sixty years and their firm is one of the oldest firms in Tuticorin Port; though reliance has been placed on the statements of various persons, but however, the fact remains that the appellant-CHA was not directly involved in any of the activities resulting in the alleged infringement. They also appear to have pleaded, in view of the specific admission by Mr. M. Vijay Anand, that the revocation of their CHA Licence could be highly disproportionate and hence, they requested for a lenient view.

5. The Commissioner of Customs, Tuticorin, however, vide impugned Order-in-Original C.No.VIII/13/01/1984-CHAL dated 06.03.2013 having considered the plea of the appellant as well as the inquiry report filed by the Assistant Commissioner, has ordered revocation of CHA Licence of

the appellant and also ordered forfeiture of security deposit of Rs.75,000/-.

6. It is against this order that the present appeal has been filed before this forum.

7. Heard Shri N. Manickam, learned Advocate for the appellant and Shri S. Balakumar, learned Assistant Commissioner.

8.1 Learned Advocate would submit at the outset that the investigation report of the DRI dated 05.06.2010 is required to be considered as an offence report consequent to which the appellant's licence was suspended on 12.06.2010 and much later, i.e., on 06.03.2013, vide the impugned Order-in-Original, the licence of the appellant-CHA was revoked, which itself shows that there has been serious violation of the time-limit prescribed under Regulation 22(7) *ibid*.

8.2 He also drew our attention to the Board's instructions vide Circular No. 09/2010-Cus. dated 08.04.2010 wherein adhering to the time-limit prescribed for completion of proceedings after the receipt of offence report has been reiterated.

8.3 Without prejudice to the above, he would also submit that even going by the inquiry report dated 15.11.2012 filed by the Assistant Commissioner, the revocation order dated 06.03.2013 passed by the Commissioner of Customs is also after the lapse of the period of limitation prescribed under Regulation 22(7) *ibid*. of ninety days, which is a serious irregularity which makes the impugned Order-in-Original *non est* in the eye of law. For this reason also, he would submit that the order of revocation in the impugned order is liable to be set aside.

8.4 Without prejudice to the above, he would also submit that the appellant has been holding CHA Licence for more than sixty years and had no antecedents of

infringements or violations of any regulations and therefore, the suspension order would deprive the appellant of their livelihood and also of their employees.

9. *Per contra*, the learned Assistant Commissioner supported the findings of the lower authorities. He would also submit that there has been loss to the exchequer because of the fraudulent exports, which had resulted in claiming of ineligible duty drawbacks and that in the case on hand, the fake/impersonated IECs have been used for carrying out the exports; the action of the appellant in lending its CHA licence is a serious infringement of various regulations.

10. We have considered the rival contentions and we have perused the documents placed on record as also the orders of the lower authorities, including the inquiry report which is part of the appeal memorandum.

11.1 The Regulations in question specifically provide the guidelines for a Customs House Agent / Broker, which are mandatory in nature and in case of violations thereto, the same prescribes consequences, visiting them with penalty or revocation of licence or both, depending upon the gravity of the violation/s. It is the settled position of law that revocation of licence of a Customs House Agent / Broker is an extreme step. No doubt, such revocation results in throwing the CHA, their dependants and their employees and their dependents out of their livelihood. Therefore, it is the duty of the proper officer to very carefully examine the gravity of infringement/s of the CHA vis-à-vis their role, either directly or indirectly, in the alleged infringement/s, either intentionally or unintentionally.

11.2 The above Regulations also prescribe guidelines for authorities in the form of time-limit at various stages, which are also to be adhered to strictly by the officers, which are again mandatory in nature. It is also the settled position of law that courts have clearly held that not

following or not adhering to the time-frame prescribed under the Regulations is detrimental to the Revenue, which means no action, including revocation, could be ordered.

11.3.1 Admittedly, there are two inquiry / investigation reports on record - one as early as in 2010 by the DRI authorities, based on which the licence of the appellant was kept under suspension. If this is considered as the inquiry report, then, the order of revocation vide impugned Order-in-Original which was passed in 2013 is clearly beyond the time-limit prescribed under the statute.

11.3.2 If the second / other inquiry report by the Assistant Commissioner is considered, which is in November 2012, then, again, the revocation order vide impugned Order-in-Original in March 2013 is also beyond the prescribed ninety-day time limit, which is against the principles underlying the statute.

12.1 Be that as it may, when we consider the issue on merits, the sole basis for the revocation is stemming out of the second inquiry report wherein, apparently, only statements are relied upon, which are no doubt uncorroborated. No other incriminating documentary evidence is made available on record nor has the outcome of investigation been placed on record by the Revenue to implicate or even suggest the active role of the appellant. Further, the Assistant Commissioner-Inquiry Officer has applied the Regulations and alleged violation of the same based on the statements *per se*. He has not apparently looked at the action or inaction on the part of the appellant-CHA and whether such action or inaction alone resulted in the violation or infringement of the CHAL Regulations. This is because the authorities cannot apply the Regulations before analysing the action or inaction, but they have to go by the action or inaction and then check if such action or inaction has resulted in any violation of the Regulations.

12.2 But in any case, we are satisfied that the impugned order has been passed beyond the time period allowed

under the Regulations and therefore, the order as well as the consequential revocation is held to be not in accordance with law, for which reason the impugned order insofar as it relates to the revocation stands set aside.

12.3 The decisions relied upon by the learned Advocate support our view.

13.1 For the very same reasons, we are of the view that the forfeiture of entire security deposit is disproportionate, also since there is no specific allegation as to the involvement of the appellant; rather, the culprits have clearly been identified as Mr. M. Vijay Anand and Mr. B. Mohan, who, admittedly, having misused the fake IECs, it is they who are actually liable for any penalty.

13.2 In view of the above, we deem it proper that a nominal amount of Rs.10,000/- (Rupees Ten Thousand only) could be forfeited out of the security deposit, but not the entire amount of Rs.75,000/-. Accordingly, the impugned order to the extent of forfeiture of security deposit is modified to the above extent.

14. In the result, the appeal is: -

- (i) Allowed insofar as the revocation of CHA licence is concerned.
- (ii) Partly allowed insofar as forfeiture of security deposit is concerned.

(Order pronounced in the open court on **23.06.2023**)

Sd/-  
**(VASA SESHAGIRI RAO)**  
MEMBER (TECHNICAL)

Sd/-  
**(P. DINESHA)**  
MEMBER (JUDICIAL)

Sdd