(2009) 03 BOM CK 0104

In the Bombay High Court

Case No : Customs Appeal No. 11 of 2009

Commissioner of Cus. (General) APPELLANT

Vs

Rinku Shipping Agency RESPONDENT

Date of Decision : 23-03-2009

Acts Referred:

Customs House Agents Licensing Regulations, 1984 — Regulation 14, 14(1), 20(7), 23(7), 23(8)

Citation : (2010) 254 ELT 445

Hon'ble Judges : Ranjana Desai, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : S.V. Bharucha, for the Appellant; M.S. Sankhalecha, instructed by N.D. George, for the Respondent

Final Decision : Dismissed

Judgement

1. The appellant has challenged in this appeal Order dated 22-7-2008 passed by the Customs, Excise and Service Tax Appellate Tribunal (for short, "the Tribunal").

2. The respondents are Custom House Agents. A case of abuse of Custom House Licence (for short, "CHA Licence") was reported against them. According to the appellant, the consignments covered under the Shipping Bills filed by the respondents, on examination, revealed lower quality goods. Four charges were levelled against the respondents. The respondents were alleged to have committed breach of Regulations 14(a), 14 (d), 14(1) and 20(7) of the Customs House Agents Licensing Regulations, 1984 (for short, "CHALR"). The Commissioner of Customs held that all the four charges were proved against the respondents. He, therefore, ordered revocation of CHA licence of the respondents.

3. The respondents carried an appeal to the Tribunal. The Tribunal by the impugned order concurred with the Commissioner''s view that the violation of Regulations 14(a), 14(d), 14(1) and 20(7) of CHALR had been proved. However, the Tribunal observed that the respondents are out of business for about one year and five months. The Tribunal modified the Commissioner''s order and

directed that the revocation order will be in operation only upto 31-8-2008 and that it will cease to be in operation with effect from 1-9-2008 and that the respondents can transact business as Custom House Agents with effect from 1-9-2008 onwards. The Tribunal observed that this punishment is sufficient to meet the ends of justice in this case. Being aggrieved by this order, the appellant has preferred the instant appeal.

4. We have heard learned Counsel for the appellant. Placing reliance on the judgment of the Tribunal in 2002 (102) ECR 571 counsel for the revenue submitted that while upholding the decision of the Tribunal, the adjudicating authority in revoking the licence, was not justified in allowing the respondents to transact the business as Custom House Agent from 1-9-2008 onwards. Counsel for the revenue submitted that since a clear question of law is involved in this appeal which deserves consideration of this Court, the appeal be admitted.

5. We are not impressed by the above submissions. It is true that a deliberate and serious contravention of CHALR has to be viewed seriously. In gross cases, taking a lenient view may lead to adverse effects. However, in a given case, where the violation of the CHALR is not very serious in nature and borders on to procedural irregularities, the Tribunal''s power to modify the order imposing penalty cannot be questioned. Section 23(8) of the Customs House Agents Licensing Regulations, 1984 provides for an appeal against an order passed under Regulation 23(7). Power of the appellate authority under Regulation 23(8) is not restricted. Therefore, it would not be correct to state that the appellate authority under Regulation 28(8) of CHA Licensing Regulations, 1984 does not have the power to restore the licence revoked by the lower authorities in an appropriate case.

6. In the facts of this case, the contravention of the CHALR is of a procedural nature. Besides, as observed by the Tribunal, the respondents are out of business for a considerable time. The penalty imposed by the Tribunal is therefore, proportionate to the nature of violations alleged against the respondents. There is no substantial question of law involved in this appeal. The appeal is, therefore, dismissed.

