**(2015) 01 BOM CK 0086**

**In the Bombay High Court**

**Case No :** Customs Appeal No. 19 of 2014 and Notice of Motion No. 1331 of 2014

Commissioner of Customs, (GENERAL) APPELLANT

Vs

The West End Shipping Agency RESPONDENT

**Date of Decision :** 05-01-2015

**Acts Referred:**
Customs Act, 1962 — Section 108, 124

**Citation :** (2015) 317 ELT 660 : (2015) 51 GST 554

**Hon'ble Judges :** S.P. Deshmukh, J.;C.S. Dharmadhikari, J.

**Bench :** Division Bench

**Advocate :** Pradeep S Jetly, for the Appellant; Prakash Shah and Sagar Kasar, Advocates for the Respondent

## Judgement

S.C. Dharmadhikari, J.—Heard both sides. Perused the order passed by the Tribunal. The Appeal raises substantial questions of law. It is admitted on the following substantial questions of law:

(i) Whether the CESTAT is right in law in holding that the charges under Regulation 12 and other Regulations of the CHALR, 2004 stand not proved, by holding that Statements recorded before Investigating Authorities under Section 108 of the Customs Act, 1962, are not relevant for the purposes of proceedings under CHALR, 2004 and that only evidence tendered before the Inquiry Officer during the course of inquiry proceedings can be held as relevant for deciding whether charges are proved or otherwise, particularly when the evidence tendered during the inquiry proceedings have been controverted by the Inquiry Officer giving cogent reasons and also in view of the decision of the Hon''ble Delhi High Court in Jasjeet Singh Marwaha Vs. Union of India (UOI) and Others, ?

(ii) Whether the CESTAT is right in law in relying on the judgment of CESTAT in the case of Thakkar Shipping Agency vs. Collector of Customs1993 (47) ECR 545 for holding that the CHALR, 2004 does not contain any provision which authorizes use of statement recorded under section 108 of the Customs Act, 1962 as evidence and that since specific procedure has been provided for under Regulation 22 of CHALR, 2004, the general procedure laid down under sections 108/124 of the Customs Act, 1962 is not applicable to such proceedings?

2. Respondent waives service.

3. The Registrar (Judicial)/Registrar, High Court, Original Side, Bombay to ensure that the original record in relation to this Appeal is summoned from the Tribunal and offered for inspection of the parties. This paper book is treated sufficient for the purpose of admission of this Appeal. However, the Registry must further ensure preparation of complete paper book in accordance with the Rules. The Registry in the first instance must send intimation of admission of this Appeal enclosing therewith a copy of this order so as to enable the Tribunal to act accordingly.

4. We have heard both sides on the Notice of Motion, which filed by the Revenue for interim relief.

5. The order under challenge (the main order of the Tribunal) is dated 31st July, 2013. That Allows the Appeal of the Respondent M/s. The West End Shipping Agency. The Tribunal''s order therefore set aside the order in original, by which, the Customs House Agent Licence of the Respondent was revoked and security deposit made by it was forfeited. The Tribunal''s order has not been implemented.

6. The Tribunal has passed an order in the present case on the Miscellaneous Application on 8th September, 2014 directing restoration of the Customs House Agent Licence and if that order or direction of the Tribunal is not complied with, the Tribunal intends to initiate contempt of Court proceedings. Mr. Jetly submits that neither the Revenue nor its officers are at fault. They have filed Appeals to this Court and the Appeals are registered but do not reach admission. They are not heard for admission not because of any fault of the officers or the Advocates but because of pressure of work on this Court. The Tribunal therefore should not have passed such an order and visiting the party with contempt proceedings for failure to implement it.

7. We have considered the request of Mr. Jetly as a substantive one. He desires that the order passed on 31st July, 2013 by the Tribunal be stayed as the present Appeal is admitted. Since it is admitted and involves substantial question of law, the operation, implementation and enforcement of the same be stayed.

8. After hearing Mr. Jetly on this point and perusing the order passed by the Tribunal so also the questions of law, we are not inclined to grant the stay of the order of the Tribunal. The Tribunal has allowed the Appeal of the Respondent. The Tribunal''s findings raised substantial questions of law. A particular finding or an observation based on understanding of the Tribunal of a provision of law must not visit the party like the Respondent with adverse consequences. The Tribunal''s order can be given effect to subject to the pending Appeal by the Revenue in such cases. Ordinarily, this would not require any application before

the Tribunal or before this Court.

9. In the given facts and circumstances, we direct that the licence of the Respondent Agency be restored subject to the outcome of the instant Appeal. The restoration will not prejudice the rights of the Revenue in this Appeal.

10. Bearing in mind the peculiar and procedural formalities required to be complied with before this Court can take the Appeals of the Revenue for admission, ordinarily the Tribunal should not pass drastic orders as have been passed in the present Miscellaneous Application. The Tribunal proceeded on the footing that there is deliberate non-compliance or defiance of the order passed in the main Appeal. It should not pass a blanket order on a Miscellaneous Application of the aggrieved Customs House Agent and in every case. There cannot be a general rule that the order passed by the Tribunal must be implemented. As the Revenue has right to Appeal to this Court, equally, it has further right to request this Court for grant of stay of the order appealed against. The Tribunal cannot defeat or frustrate the right of the Revenue or the litigation itself. In these circumstances, we would expect the Tribunal not to undertake such an exercise and as a matter of routine. It should decide on case to case basis and the Revenue should get opportunity to seek a stay of implementation of the orders. The Tribunal should not therefore, as a matter of course, pass orders as have been passed on the Miscellaneous Application. We would expect that this much will suffice the purpose of both, the Revenue and the Tribunal.

11. The Motion is dismissed with the aforesaid observation. No costs.