(2012) 09 BOM CK 0207

In the Bombay High Court

Case No : Customs Appeal No''s. 56-57 of 2010

Shri Venkatesh Shipping Services Pvt. Ltd. — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 10-09-2012

Acts Referred:
Customs Act, 1962 — Section 108, 114(iii), 129, 129A, 50(1)

Citation : (2013) 196 ECR 350 : (2013) 287 ELT 266

Hon'ble Judges : R.Y. Ganoo, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : Pallasena Sivaramkrishna Parmesh, Managing Director, for the Appellant; Pradeep S. Jetly, for the Respondent

Judgement

R.Y. Ganoo, J.—These two appeals were admitted on 10-8-2010 and following substantial questions of law were framed.

(a) Whether Exhibit B (wrongly typed as Exhibit D) and declaration contained therein would be construed as authorization under Regulation 13(a) in favour of CHA?

(b) Whether the Tribunal was right in holding that there was a violation of Regulation 13(b) on the part of the Appellant CHA?

We have heard Mr. Parmesh, the Managing Director, of Appellant in person, and learned Advocate Mr. Jetly in so far as question (a) is concerned. We have perused Exhibit B. It is on the letterhead of the appellant. It is titled as shipping instructions. As a part of this document, a declaration is purported to be signed by the exporter. This document at Exhibit B is not referred to in the order-in-original dated 22-8-2008 passed by the Commissioner of Customs (General), Mumbai Zone-I and order dated 25-8-2008 passed by the Commissioner of Customs (General), Mumbai Zone-1. Similarly, this document is not referred to in the order dated 12-1-2010 passed by the CESTAT in Appeal Nos. C/1162 & 1202/2008 [2010 (261) E.L.T. 880 (Tri. - Mum.)]. In view of this, we refrain from answering this question (a).

2. So far as the substantial question (b) is concerned, after hearing both the sides it was noticed that it was alleged by the respondents that the appellant has violated Regulation 13(a), 13(b), 13(d) and 13(e) of the Customs House Agents Licensing Regulations, 2004. (For short "said Regulations"). On account of this, issue no. (b) is reframed as under:

(b) Whether the Tribunal was right in holding that there was a violation of Regulation 13(a), 13(b), 13(d) and 13(e) of the said Regulations on part of the appellant?

3. These two appeals can be disposed of by a common order as the point involved therein is common. Few facts necessary for the disposal of these two appeals are as under:

The appellant i.e. Shri Venkatesh Shipping Services Pvt. Ltd. (For short "said Company") were holding licence under the said Regulations. It is the case of the Respondents that the appellant tendered various documents for exporting goods owned by M/s. Darshan International as well as M/s. Kumar Enterprises. The two shipping bills concerning M/s. Darshan International, Surat and 6 shipping bills of M/s. Kumar Enterprises were filed so as to export the cargo of these two companies through one Mr. Vikas Doshi who represented the said company in the matter of export of the said cargo without any authorization. According to the respondents, on account of this, there was violation of Section 50(1) of the Customs Act, 1962 (For short "said Act"). It is also the case of the Respondents that the said goods were over valued/misdeclared. It is noticed that the said goods were intercepted by the officers of the D.R.I. and it was detected that the CHA Licence granted in favour of the said company was used by Mr. Vikas Doshi and said company did not have any authorization on behalf of the exporters.

4. After the cargo was intercepted, action was taken in accordance with law and Show Cause Notice bearing No. DRI/MZU/NS/INV-05/2007-08/Part-1/223 dated 30-1-2008 concerning cargo of M/s. Darshan International was issued to various persons including Mr. Parmesh, the Managing Director of the said company. By this notice said persons were directed to show cause as to why appropriate action under the said Act should not be taken including imposing penalty u/s 114(iii) of the said Act. A similar notice bearing No. DRI/MZU/NS.INV-04 and 06/2007-08/Part-I/214 dated 30-1-2008 was issued to Mr. Parmesh and others concerning the cargo of M/s. Kumar Enterprises. The adjudication proceedings were conducted. In so far as the Show Cause Notice No. 223 dated 30-1-2008 the Joint Commissioner of Customs (Export) JNCH Nhava Sheva came to the conclusion that no action is required to be taken against Mr. Parmesh and an order was passed absolving Shri P.S. Parmesh, Managing Director of the said company. So far as the Show Cause Notice No. 214 dated 30-1-2008, the Addl. Commissioner of Customs (Export) also came to the conclusion that no penalty is required to be imposed upon Mr. Parmesh, Managing Director of the said

company. Consequently, he exonerated Mr. Parmesh in the adjudication proceeding.

5. In so far as the alleged violation of said regulations by the said company, a notice of enquiry was issued being Notice No. S/8-46/2008/ADM/366 dated 9-6-2008 in regard to the two shipping bills of M/s. Darshan International. In regard to the shipping bills of M/s. Kumar Enterprises, notice of enquiry bearing No. S/8-47/2008/ADM/369 dated 10-6-2008 was issued. Mr. Parmesh in his capacity as Managing Director of the appellant replied to these two show cause notices.

6. In the enquiry proceeding the appellant company had to face following charges.

(i) As per Regulation 12 of the CHALR, 2004, "every licence granted or renewed under these regulations shall be deemed to have been granted or renewed in favour of the licensee, and no licence shall be sold or otherwise transferred.

(ii) As per Regulation 13(a) of CHALR, 2004, "A Custom House Agent shall obtain an Authorization from each of the companies, firms or individuals by whom he is for the time being employed as Custom House Agent and produce such authorization whenever required by the Dy. Commissioner of Customs or Assistant Commissioner of Customs".

(iii) As per Regulation 13(b) of the CHALR, 2004, "A Custom House Agent shall transact business in the Customs Station either personally or through an employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(iv) As per Regulation 13(d) of the CHALR, 2004, "A Custom House Agent shall advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Dy. Commissioner of Customs or Assistant Commissioner of Customs".

(v) As per Regulation 13(e) of the CHALR, 2004, "A Custom House Agent shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage."

7. The said company contended that the said company has not violated Regulation 12, 13(a), 13(b), 13(d) and 13(e) of the said Regulations. After the said reply, an enquiry under the said Regulations was conducted by the Assistant Commissioner of Customs, Mumbai, Zone 1. It must be mentioned that before issuing the aforesaid show cause notice and at the stage of investigation statements of various persons u/s 108 of said Act were recorded. Statement of Mr. P.S. Parmesh was recorded on 3-1-2008. Statement of Mr. Vikas Doshi who is said to have acted for and on behalf of the said company without authorization was recorded on 4-9-2007 u/s 108 of the said Act. These statements were used in the aforesaid enquiry proceedings. The Enquiry Officer submitted his report in

respect of the aforesaid two cases. He, by his order dated 6-8-2008 held that the charges framed against the appellant in both the cases have been duly proved.

8. This enquiry report was thereafter placed before the Commissioner of Customs (General), Mumbai, Zone 1 (For short "Commissioner"). Said Commissioner considered the enquiry report, gave an opportunity to the said company to address on the said report. Mr. Parmesh appeared before the said Commissioner and advanced his submissions to see that the said enquiry report is rejected by the said Commissioner. The said commissioner after considering the entire record, accepted the enquiry report and held that all the five charges framed against the said company have been duly proved. The said Commissioner in the proceeding concerning shipping bills of M/s. Darshan International came to the conclusion that the CHA Licence issued in favour of the said company should be revoked permanently. He also came to the conclusion that the security deposit submitted by the said company should be forfeited. The said Commissioner therefore on 22-8-2008 passed the following order:

I order immediate revocation of the CHA Licence No. 11/560 held by M/s. Shri Venkatesh Shipping Services Pvt. Ltd., and simultaneously forfeit the entire security deposit under the provisions of CHALR, 2004.

9. In so far as the enquiry concerning the cargo of M/s. Kumar Enterprises, the Commissioner came to the conclusion that all five charges leveled against the said company are duly proved. On 25-8-2008, he passed the following order in the second enquiry:

In terms of violation of CHALR of M/s. Shri Venkatesh Shipping Services Pvt. Ltd., (the then CHA) as stated above, the CHA licence merits revocation. However, as the licence has already been revoked vide Order No. 43/2008 dated 22-8-2008, and it does not exist, no further order for canceling it again can be passed.

10. The said company was aggrieved by the aforesaid two orders namely Order No. 43 of 2008 dated 22-8-2008 and Order No. 44 of 2008, dated 25-8-2008. The appellant filed two separate appeals before the CESTAT being Appeal No. C/1162 and 1202 of 2008. These two appeals were decided by the CESTAT by common order dated 12-1-2010 [2010 (261) E.L.T. 880 (Tri. - Mum.)]. The CESTAT dismissed these two appeals.

11. Being aggrieved by the aforesaid common order dated 12-1-2010 the said company has filed these two appeals.

12. Before us, the said company was represented by Mr. P.S. Parmesh, Managing Director of the said company. Learned Advocate Mr. Jetly had represented the Respondents.

13. Mr. Parmesh appearing on behalf of the appellant took us through the enquiry proceedings, the order-in-original passed by the Commissioner as also the CESTAT. Mr. Parmesh had tendered in court a separate compilation containing therein statements of various persons recorded in the course of investigation. He

had read to us his own statement as also the statement of Mr. Vikas Doshi, who is said to have participated in clearing the consignment in question for export.

14. Mr. Parmesh had submitted that the Commissioner as well as the CESTAT erred in coming to the conclusion that the appellant had violated Regulations 13(a), 13(b), 13(d) and 13(e) of said Regulations. Mr. Parmesh submitted that the necessary documents duly signed by the exporters namely M/s. Darshan International and M/s. Kumar Enterprises were lodged with the customs department and the steps were taken to see that the cargo is cleared. He contended that the cargo was properly cleared through custom. He had submitted that his employee by name Mr. Krishna Nikharge attended the said job and Mr. Vikas Doshi being the person concerned with the said cargo was authorized by the said company to attend examination of cargo by DRI Officers. He submitted that all the necessary formalities were carried out and Let Export Order was issued by the Department. He had therefore submitted that the necessary procedure for clearance of the cargo was completed and that is why the stand of the respondents that said Company had violated Regulation 13(a), 13(b), 13(d) and 13(e) of the said Regulations is not correct.

15. Mr. Parmesh had taken us through the adjudication proceedings initiated against him as Managing Director of said company and other persons concerning for M/s. Darshan International and M/s. Kumar Enterprises. He read to us the said orders passed by the Adjudicating Authorities and pointed out that the Adjudicating Authorities have exonerated him. He submitted that the Adjudicating Authorities did not impose any penalty upon him. Mr. Parmesh had therefore submitted that the finding recorded by the Enquiry Officer should not have been accepted by the said Commissioner as also by the CESTAT. He submitted that the Enquiry Officer erred in passing the orders. As regards contents of the cargo and over invoicing he submitted that the role of the said company was restricted to carting and clearing exported consignment and that the necessary documents were submitted to the custom officers and that the custom officers had examined the said documents and Let Export Order was issued. According to him, issuance of Let Export Order in regard to the cargo was a fact in favour of the said company and on that ground it should have been held that the charges against him in terms of Regulation 13(a), 13(b), 13(d) and 13(e) of the said Regulations are not proved.

16. Mr. Parmesh had submitted that the Commissioner passed an order of revocation of his CHA licence and forfeiting the entire security deposit. He submitted that considering the nature of the allegations against the said company, imposing of the punishment viz. revocation of the CHS Licence permanently and forfeiture of the entire security deposit is a harsh. He submitted that in accordance with Regulation 20 and Regulation 22 of the said Regulations the said Commissioner should have imposed lesser punishment.

17. Mr. Parmesh submitted that the CHA Licence of the said company was suspended with effect from 19-3-2008 pending inquiry. He submitted that the

said licence was revoked by order dated 22-8-2008. He submitted that considering the relevant dates as of today the said company has stopped functioning the last four years and five months. Mr. Parmesh therefore submitted that the stoppage of business of the company as Customs House Agent be considered as adequate punishment. He therefore submitted that a lenient view be taken an the CHA Licence of said company be restored.

18. Mr. Jetly, learned Advocate appearing on behalf of the respondents opposed the submissions advanced by Mr. Parmesh. He clarified that though the Commissioner had held that charges against the said company under Regulation 12, 13(a), 13(b), 13(d) and 13(e) of the said Regulations are proved, the CESTAT accepted the contention of the said company and decided in favour of the said company so far as Regulation 12 is concerned, and exonerated said company from charge concerning Regulation 12 of the said Regulations.

19. Learned Advocate Mr. Jetly had submitted that before the Enquiry Officer said Parmesh, on behalf of the said company has led evidence. He also pointed out that the inquiry officer had relied upon the statement of Mr. Parmesh made by him on behalf of the said company on 3-1-2008. Mr. Jetly pointed out that in the statement dated 3-1-2008 Mr. Parmesh has admitted that he did not have authorization letters from M/s. Darshan International or M/s. Kumar Enterprises. He further pointed out that Mr. Parmesh had indicated that Mr. Vikas Doshi had agreed to pay to the company Rs. 1000/- per shipment. Mr. Jetly had submitted that this admission was rightly appreciated by the said Commissioner as well as by the CESTAT to hold that said company had permitted Mr. Vikas Doshi to use the CHA Licence of the said company without there being authorization letter from M/s. Darshan International and M/s. Kumar Enterprises. Mr. Jetly had taken us through the statement of Mr. Vikas Doshi and had submitted that the said Commissioner as well as the said Tribunal accepted the stand of the Respondents that Shri Vikas Doshi was getting the goods cleared from the customs on the strength of the CHA Licence of the said company even though there was no authorization issued in favour of said company duly executed by M/s. Darshan International and M/s. Kumar Enterprises. Mr. Jetly had therefore submitted that the said Commissioner had rightly appreciated the evidence placed before the Enquiry Officer and had rightly accepted the report of the Enquiry Officer. Mr. Jetly submitted that the said Commissioner has rightly passed an order revoking the CHA Licence of the said company as the said Commissioner had held that the said company has violated Regulations 13(a), 13(b), 13(d) and 13(e) of said Regulations. He further submitted that the security deposit of the CHA Company was rightly forfeited.

20. Learned Advocate Mr. Jetly, had submitted that the CESTAT had considered the case of the said company and had accepted the findings given by the said Commissioner and had confirmed the order of the said Commissioner by which CHA Licence of the said company was revoked and security deposit was forfeited.

21. Learned Advocate Mr. Jetly had submitted that it may be true that Mr.

Parmesh as a Managing Director of the said company was exonerated from the adjudication proceeding, however, that by itself is not the point to come to the conclusion that the finding recorded by the said Commissioner in the enquiry proceeding were erroneous. According to him both the proceedings stood on a different footing. He, therefore, submitted that though the adjudication proceedings ended in favour of Mr. Parmesh, that cannot be a ground to set aside the order of revocation of CHA Licence and forfeiture of security deposit. He had submitted that as per Regulation 22 of said Regulations, the said Commissioner was empowered to pass order revoking CHA Licence and forfeit security deposit. Learned Advocate Mr. Jetly submitted that the said company was involved in export of in all 6 shipping bills and as such the allegations against the said company were of serious nature and that the said allegations have been duly proved upto the stage of hearing of the matter upto CESTAT. He submitted that the punishment imposed upon the said company is proper and the same should not be modified as prayed for by Mr. Parmesh, the Managing Director of the said company.

22. We have considered the entire record. We have considered the rival submissions. It is noticed that the two shipping bills on behalf of M/s. Darshan International were submitted for clearance of the cargo. Similarly 6 shipping bills were submitted on behalf of M/s. Kumar Enterprises. In the enquiry proceedings, necessary evidence was recorded. Similarly, the statement of Mr. Parmesh dated 3-1-2008 as well as statement of Mr. Vikas Doshi dated 4-9-2007 were read. These statements have not been retracted at any point of time. These two respective statements were recorded u/s 108 of the said Act. On account of this, the Enquiry Officer as well as the said Commissioner was empowered to read those statements to decide the matter on merits.

23. In view of the arguments advanced before this Court, we have gone through the statement of Mr. Parmesh as well as Mr. Vikas Doshi. It is noticed that Mr. Vikas Doshi managed to get the cargo of M/s. Doshi International and M/s. Kumar Enterprises for export. The statements of Mr. Parmesh and Mr. Vikas Doshi clearly indicate that documents such as invoices, SDF Form along with Annexure B duly signed by the exporter/exporter''s representative were received by the department from the exporter through Shri Vikas Doshi. The Annexure B was signed by Shri Parmesh, Managing Director of the said company and that was countersigned by Shri Krishna Nikharge, employee of the said company. It is also noticed that all the documents filed for export were duly accepted and Let Export Order was granted to the said cargo. This is being observed on the basis of what is stated in the order of adjudication passed by the Joint Commissioner of Customs (Export), JNCH, Nhava Sheva. This would mean that certain documents necessary to clear the cargo for export were filed. However, the fact remains that the authorization as contemplated in Regulation 13(a) and 13(b) were not filed in respect of the shipping bills of M/s. Darshan International and M/s. Kumar Enterprises. The statements of Mr. Parmesh as well as Mr. Vikas Doshi clearly go to show that Mr. Parmesh or any other employee of the said company

were not knowing the exporters i.e. M/s. Darshan International and M/s. Kumar Enterprises. It is seen that Mr. Vikas Doshi, procured the documents from M/s. Darshan International and M/s. Kumar Enterprises and by using the CHA Licence of the said company the cargo was sought to be cleared without authorization. The said cargo came to be intercepted by DRI and the adjudication proceedings were initiated against Mr. Parmesh in his capacity as Managing Director of the said company along with others. It is true that Mr. Parmesh was exonerated in the adjudication proceeding. The said Commissioner has considered inquiry report and all other documents which were placed before inquiry officer. Said Commissioner gave opportunity to Mr. Parmesh to advance his submissions. It is noted that said Commissioner after considering the entire record, came to the conclusion that the said company had violated Regulation 12, 13(a), 13(b), 13(d) and 13(e) of said Regulations.

24. We have considered the record. We are satisfied that appropriate opportunity was given to Mr. Parmesh to represent his case and that the said Commissioner as well as the CESTAT has considered the record in the proper perspective and has rightly held that the said company had violated Regulations 13(a), 13(b), 13(d) and 13(e) of the said Regulations.

25. Having recorded the finding that the said company has violated Regulation 13(a), 13(b), 13(d) and 13(e) of the said Regulations, the said Commissioner was required to pass orders in terms of Regulation 20 and Regulation 22 as regards the enquiry proceedings which were conducted against the said company. The said Commissioner thought it fit to revoke the licence of the said company. He also thought it fit to forfeit the security deposit.

26. We have considered the submissions of Mr. Parmesh as well as Mr. Jetly. The question now to be decided is whether the order of revocation of CHA Licence as well as the forfeiture of the security deposit should be confirmed.

27. We have read the order bearing No. 118/2011 dated 30-3-2011 passed in Adjudication Proceeding concerning the Cargo of M/s. Darshan International. While deciding the said adjudication proceeding qua Mr. Parmesh, Managing Director of the said Company, the Joint Commissioner of Customs (Export), JNCH, Nhava Sheva has observed as under as regards furnishing of various documents.

From paragraph 4.12.2.

(a) It has been averred by the noticees that the customs clearance work of the shipping bill nos. 5429178 and 5429220 both dated 18-7-2007 were undertaken by them on the basis of written contract dated 21-5-2007 with Shri Vikas Doshi on the terms and conditions stated therein. As per the contract, a format for shipping instructions was prescribed by them to Shri Vikas Doshi wherein the necessary columns were to be filled in by the respective exporters and was to be returned by the exporters after being duly stamped and signed. The same was produced. The clearance job for M/s. Darshan International was done after receipt of the shipping instructions and after the various documents like invoices and the SDF form, along with Annexure "B" duly signed by the exporter/ exporter''s representative was received from the exporter through Shri Vikas Doshi. The Annexure "B" was signed by Shri Pallasena Sivaramakrishna Parmesh, Managing Director of the CHA firm and Annexure "C" was countersigned by Shri Krishna Nikharge, employee of the CHA firm, on behalf of the noticees. Thus, the documents were filled by them alone and not by Shri Vikas Doshi. Further, since Shri Vikas Doshi was not authorized by them to undertake any custom clearance job, as has also been averred in the show cause notice, and the fact that he had no authorization as mentioned in para 10 of the impugned notice, the question of his doing any custom clearance on behalf of M/s. Shri Venkatesh Shipping Services Pvt. Ltd., does not arise. These facts have not been controverted in the show cause notice.

From paragraph 4.12.5.

(b) In this regard, I find that all the documents filed for export were duly accepted and LEO granted to the said exports. Hence, it cannot be said that this omission, has rendered the said goods liable to confiscation. At best, it can be said to be a technical omission, in the absence of any intention attributed by way of any evidence in the show cause notice

28. These observations were accepted by the Addl. Commissioner of Customs (Export) while deciding the Adjudication Proceeding against Mr. Parmesh, the Managing Director of the said company concerning the cargo of M/s. Kumar Enterprises, We have considered the afore quoted observations for the purpose of deciding whether the order of revocation of CHA Licence as well as forfeiture of the security deposit should be modified. It is noticed that the said Commissioner has treated the violation of Regulation 13(d), 13(b), 13(d) and 13(e) of said Regulations, a serious act and has imposed punishment. In the wake of the observations quoted above in the adjudication proceedings, we are inclined to hold that the said company can be dealt with in a lenient manner as regards its CHA Licence. We have noted the fact that the said company has been carrying on business as Customs House Agent for a long time and that this is for the first time it is alleged against the said company that they have violated some of the Regulations. The Respondents have not been able to point out any instance in the past as regards violation of said Regulations. The Respondents have not been able to point out that the said company or its Directors have been ordered to pay penalty in any adjudicating proceedings.

29. We have noticed that the CHA Licence of the said company was suspended pending inquiry with effect from 19-3-2008. The said Licence has been revoked as per order of said Commissioner dated 22-8-2008. This would mean that with effect from 19-3-2008, the said company is unable to work as Customs House Agent. This would mean that for last 4 years and 5 months (as of 14-8-2012) the business of the said company is stopped. It is seen that the said company submitted documents as indicated in the portion quoted above and Let Orders

were also granted as regards the cargo which was sought to be cleared by Mr. Vikas Doshi for and on behalf of the said company. It is true that the authorization contemplated under the said regulation was not produced by the said company. While seeking clearance of consignments of M/s. Darshan International and M/s. Kumar Enterprises for export various documents as mentioned in the portion quoted above were filed by the said company and Let Export Order was also granted. On account of the facts discussed above and in the peculiar facts and circumstances, we are of the view that the orders passed by the respective Commissioner to revoke CHA Licence of said company as also to forfeit the security deposit seem to be too harsh. Regulations 20 and 22 of said Regulations are as under:-

REGULATION 20:

Suspension or Revocation of License. - (1) The Commissioner of Customs may subject to the provisions of regulation 22, revoke the licence of a Custom House Agent and order for forfeiture of part or whole of security, or only order forfeiture or part or whole of security, on any of the following grounds, namely:

(a) failure of the Customs House Agent to comply with any of the conditions of the bond executed by him under Regulation 10.

(b) failure of the Customs House Agent to comply with any of the provisions of these regulations, within the jurisdiction of the said Commissioner of Customs or anywhere else;

(c) any misconduct on his part, whether within the jurisdiction of the said Commissioner of Customs or anywhere else which is in the opinion of the Commissioner renders him unfit to transact any business in the Customs Station.

(2) Notwithstanding anything contained in sub-regulation (1), the Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the license of a Custom House Agent where an enquiry against such agent is pending or contemplated.

REGULATION 22:

Procedure for suspending or revoking license under Regulation 20. - (1) The Commissioner of Customs shall issue a notice in writing to the Customs House Agent stating the grounds on which it is proposed to suspend or revoke the license and requiring the said Customs House Agent to submit, within such time as may be specified in the notice, not being less than forty-five days, to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Customs House Agent desires to be heard in person by the said Deputy Commissioner of Customs of Assistant Commissioner of Customs.

(2) The Commissioner of Customs may, on receipt of the written statement from the Customs House Agent, or where no such statement has been received within

the time-limit specified in the notice referred to in the sub-regulation (1), direct the Deputy Commissioner of Customs or Assistant Commissioner of Customs to enquire into the grounds which are not admitted by the Customs House Agent.

(3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs shall, in the course of enquiry consider such documentary evidence and take such oral evidence as may be relevant or material to the enquiry in regard to the grounds forming the basis of the proceedings, and he may also put any question to any person tendering evidence for or against the Customs House Agent, for the purpose of ascertaining the correct position.

(4) The Customs House Agent shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings, and where the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines to examine any person on the ground that his evidence is not relevant or material, he shall record his reasons in writing for so doing.

(5) At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs shall prepare a report of the inquiry recording his findings.

(6) The Commissioner of Customs shall furnish to the Customs House Agent a copy of the report of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, and shall require the Customs House Agent to submit, within the specified period not being less than sixty days, any representation that he may wish to make against the findings of the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(7) The Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs House Agent, pass such orders as he deems fit.

(8) Any Customs House Agent aggrieved by any decision or order passed under regulation 20 or sub-regulation (7) of regulation 22, may prefer an appeal u/s 129A of the Act to the Customs, Central Excise and Service Tax Appellate Tribunal established under sub-section (1) of Section 129 of the Act.

30. As per Regulation 20 and 22(7) of the said Regulations, the Commissioner of Customs can pass an order as he deems fit. We have considered these Regulations while considering the submissions advanced by Mr. Parmesh on the question of showing leniency to the said company and we are of the view that in a fit case the order of revoking the CHA Licence can be modified and in its place appropriate order can be passed, so as to impose punishment on Customs House Agent.

31. In view of this we are inclined to hold that the interest of justice would be met if the CHA Licence then held by the said company could be restored in favour of the said company with effect from 1-10-2012. By this arrangement, the said company would be without a CHA Licence from 19-8-2008 till 30-9-2012

which would mean that the total period for which the said company would be out of business will be 4 years and 7 months. As regards the forfeiture of the security deposit, we are inclined to confirm the said order. In our view, the aforesaid arrangement would meet the ends of justice. We will also like to clarify that aforesaid arrangement is restricted to facts of this case and cannot be treated as precedent.

32. Now that we are inclined to restore the CHA licence in favour of the said company, and as the security deposit of the said company has been forfeited, if deposit of security deposit on or before 30-9-2012, the CHA Licence will get restored with effect from 1-10-2012. If the security deposit is deposited on or after 1-10-2012, the CHA Licence of the appellant shall be restored with effect from the day when such security deposit is deposited with appropriate officer of the Respondents.

33. For all the aforesaid reasons the decision of the Tribunal in upholding the decision of the Commissioner to the effect that the major charges levelled against the appellant stand proved cannot be faulted. However, looking to the charges levelled and looking to the fact that this is the first time the appellant is found guilty and the appellant has already suffered for 4 years and 5 months, the penalty to the extent of aforesaid period would be justified and it would be just and proper to allow the appellant to carry on business from 1-10-2012. For the reasons mentioned aforesaid, following order is passed:

ORDER

(i) We do no wish to express any view on the substantial question no. (a). The question no. (b) is answered in favour of the respondents and against the appellant. In the peculiar facts and circumstances and for the reasons mentioned above, the order No. 43 of 2008 dated 22-8-2008 passed by the Commissioner of Customs (General), Mumbai Zone-1 and Order No. 44 of 2008 dated 25-8-2008 passed by the Commissioner of Customs (General), Mumbai Zone-1, duly confirmed by the CESTAT vide its common order dated 12-1-2010 in Appeal Nos. C/1162 and 1202 of 2008 is modified as follows:

The CHA Licence of the Appellant shall stand suspended from 19-8-2008 till 30-9-2012. If the Appellant M/s. Shri Venkatesh Shipping Services Pvt. Ltd., deposits the security deposit as per the present rules and regulations, with the appropriate officer of respondents on or before 30-9-2012 the CHA Licence No. 11/560 then held by the appellant shall stand restored with effect from 1-10-2012. If the security deposit is deposited on or after 1-10-2012, the CHA Licence of the appellant shall be restored with effect from the day on which such security deposit is deposited with the appropriate officer of Respondents.

(ii) There shall be no order as to costs.

