

IN THE HIGH COURT OF BOMBAY

Customs Appeal No.20 Of 2019

**COMMISSIONER OF CUSTOMS
(GENERAL)**

Vs

RAZVI SHIPPING AGENCY

M S Sanklecha & Sandeep K Shinde, JJ

Dated: July 01, 2019

Appellant Rep by: Mr Pradeep S Jetley

Respondent Rep by: Dr Sujay Kantawala with Mr Sujit Sahoo I/by Mr Brijesh Pathak

Cus - This appeal under Section 130 of Customs Act, 1962 takes exception to the order dated 18th April, 2017 passed by Tribunal - The impugned order of Tribunal set aside the revocation of Customs Brokers licence granted to respondent besides forfeiting the security deposit - This on account of inordinate delay in disposing of disciplinary proceedings against respondent being violative of Regulation 22 of CHALR, 2004 - The impugned order holds the Regulation 22 itself provides timeline within which proceedings for suspending/revoking licence of Customs House Agent/Customs Broker should be completed - This Court in *Unison Clearing P. Ltd. - 2018-TIOL-1826-HC-MUM-CUS* held that the timeline provided in Regulation 22 were directory in nature and not mandatory - The said decision of this Court would apply on all fours to the present appeal - Therefore, the substantial question of law is answered in negative i.e. in favour of Revenue - Consequently the impugned order is set aside: HC

Appeal allowed

Case laws cited:

Principal Commissioner of Customs (General), Mumbai v. Unison Clearing P. Ltd. - 2018-TIOL-1826-HC-MUM-CUS... Para 4

JUDGEMENT

1. This Appeal under Section 130 of the Customs Act, 1962 takes exception to the order dated 18th April, 2017 passed by the Customs, Excise and Service Tax Appellate Tribunal (Tribunal).

2. The appellant/revenue has urged following questions of law for our consideration:

"Whether in the facts and circumstances of the case and in law, the Tribunal was right in setting aside the revocation of the Customs Broker License and forfeiture of the entire amount of security deposit on the ground of inordinate delay in completing the inquiry proceedings ?"

- 3. The Appeal is admitted on the above substantial question of law.**
- 4. It is agreed position between the parties that the issue arising herein stands concluded by the decision of this Court in *Principal Commissioner of Customs (General), Mumbai v. Unison Clearing P. Ltd.* 2018 (361) E.L.T. 321 = **2018-TIOL-1826-HC-MUM-CUS**. Thus, at the request of the parties, this appeal is being disposed of at this stage.**
- 5. The impugned order dated 1st April, 2017 of the Tribunal set aside the revocation of the Customs Brokers licence granted to the respondent besides forfeiting the security deposit. This on account of inordinate delay in disposing of the disciplinary proceedings against the respondent being violative of Regulation 22 of the Customs House Agents Licence Regulation, 2004 (CHLR, 2004). The impugned order dated 18th April, 2017 holds the Regulation 22 of CHLR, 2004 itself provides timeline within which proceedings for suspending/revoking licence of the Customs House Agent/Customs Broker should be completed.**
- 6. This Court in *Unison Clearing P. Ltd.* (Supra) held that the timeline provided in Regulation 22 of the CHLR, 2004 were directory in nature and not mandatory. Consequently, it would be open to the Revenue to explain the delay in passing the orders of suspension/revocation under Regulation 22 of CHLR 2004. In above view, this Court in *Unison Clearing P. Ltd.* (Supra) had restored all the appeals, which were subject matter of consideration along with *Unison Clearing P. Ltd.* (Supra) to the Tribunal for fresh consideration.**
- 7. The aforesaid decision of this Court in *Unison Clearing P. Ltd.* (Supra) would apply on all fours to the present appeal. Therefore, the substantial question of law is now answered in the negative i.e. in favour of the Revenue. Consequently the impugned order dated 18th August, 2017 is set aside. The appeal is restored to the Tribunal for passing fresh order after taking note of the fact that timeline provided in Regulation 22 of CHLR, 2004 is merely directory. The Tribunal to consider the explanation, which the Revenue has to offer for delay in completing revocation proceedings in respect of the respondent.**
- 8. Mr. Jetley, the learned counsel for the respondent on instructions very fairly states that till such time as the Tribunal takes a fresh decision on the appeal of the respondent, consequent to this order of this Court, Revenue will not enforce the order dated 11th March, 2015 passed by the Commissioner of Customs (General), which is subject matter of appeal before the Tribunal.**
- 9. Accordingly, appeal allowed in above terms. No order as to costs.**