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Date: 22.04.2025

CESTAT Chennai Declares Customs Broker Suspension Appeals Infructuous Following High Court Quashing

The Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Chennai Bench – Court No. I disposed of two appeals filed by M/s HSN Shipping Pvt. Ltd. related to the suspension and continued suspension of its Customs Broker Licence (No. R-308/CHA), declaring them infructuous in light of a prior Madras High Court order that had already quashed the impugned orders.

Case Background:

- HSN Shipping Pvt. Ltd. was a licensed customs broker under CBLR, 2013, holding valid licence No. R-308/2014.
- The company handled clearance of a consignment imported by M/s R.S. Enterprises under Bill of Entry No. 6102740 dated 15.07.2014.
- Allegations were made that the broker forged an “open chit” document at the CFS and improperly obtained signatures, leading to an order of suspension on 09.06.2015 and a subsequent Order-in-Original dated 02.07.2015 continuing the suspension under Regulation 19(2) of the CBLR, 2013.

Grounds of Suspension:

- Violation of Regulation 17(9): Failure to supervise employees’ conduct.

- Violation of Regulation 11(b): Deployment of an unapproved employee (Mr. Tauseef Ahamed) within the Customs area.

High Court Proceedings:

- HSN Shipping challenged the suspension orders by filing W.P. Nos. 38433 & 38434 of 2015 before the Madras High Court.
- In its order dated 03.01.2020, the High Court:
 - Quashed both the initial suspension order dated 09.06.2015 and the notice dated 07.07.2015 continuing suspension.
 - Held the notice as time-barred and found no justification to keep the license suspended any longer.
 - Directed the Customs authorities to restore the licence with consequential relief.

CESTAT Order Highlights:

- In view of the High Court's judgment, the CESTAT bench comprising Mr. Ajayan T.V. (Judicial Member) and Mr. Vasa Seshagiri Rao (Technical Member) noted that the appeals against the suspension orders have become infructuous.
- Accordingly, the Tribunal closed both appeals without examining the merits.

Significance:

- Reinforces the binding nature of High Court orders on quasi-judicial authorities like CESTAT.
- Emphasizes the importance of adhering to procedural timelines under the Customs Brokers Licensing Regulations.
- Provides relief to customs brokers from prolonged suspensions in the absence of sustained legal basis.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Chennai

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

REGIONAL BENCH – COURT No. I

Customs Appeal No. 41902 of 2015

(Arising out of Order of Suspension F.No. R-308-CHA dated 09.06.2015 passed by Commissioner of Customs, Custom House, No. 60, Rajaji Salai, Chennai – 600 001)

And

Customs Appeal No. 41903 of 2015

(Arising out of Order-in-Original No. 39410/2015 dated 02.07.2015 passed by Commissioner of Customs, Custom House, No. 60, Rajaji Salai, Chennai – 600 001)

M/s. HSN Shipping Private Limited

Old No. 45, New No. 89,
II Floor, Marine Towers,
Thambu Chetty Street,
Chennai – 600 001

...Appellant

Versus

Commissioner of Customs

Chennai VIII Commissionerate,
Custom House, No. 60,
Rajaji Salai,
Chennai – 600 001.

...Respondent

APPEARANCE:

For the Appellant : Mr. A.K. Jayaraj, Advocate

For the Respondent : Mr. Sanjay Kakkar, Authorised Representative

CORAM:

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

HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER Nos. 40446-40447 /2025

DATE OF HEARING : 01.04.2025

DATE OF DECISION : 17.04.2025

Per Mr. VASA SESHAGIRI RAO

These Customs Appeals Nos. C/41902&41903/2015
have been filed by M/s. HSN Shipping Private Limited

(hereinafter referred to as 'Appellant') against the Order of Suspension dated 09.06.2015 and also the Order-in-Original No. 39410/2015 dated 02.07.2015 passed by the Commissioner of Customs, Chennai continuing the suspension of the Customs Broker Licence No. R-308/CHA of M/s. HSN Shipping Private Limited, Chennai.

2. Brief facts of the appeals are as follows: -

2.1 The appellant is a holder of regular licence No.R-308/2014 under Regulation 7(1) of CBLR, 2013, issued at Chennai Commissionerate and the licence is valid till 27.04.2024. The Appellant has handled the Bill of Entry No. 6102740 dated 15.07.2014 filed by M/s. R.S. Enterprises for import of furniture under one Container No.TCNU5748662 (1 X 40) from China through their Customs Broker M/s. HSN Shipping Pvt. Ltd. The subject bill of entry was given out of charge on 31.07. 2014 but the consignment was not taken out of the CFS immediately. After two days, the custodian M/s. German Express Shipping Agency complained to the CFS Superintendent that the Customs Broker forged the document namely "open chit" and also forged the signature of CFS clerk on the open chit. The Open chit (Open order) is a document issued by the CFS for each container/bill of entry for opening of the container. This is a computer document

generated by the CFS Clerk and signed by CFS Clerk, Preventive Officer, CFS Surveyor and Customs Broker representative. The complaint was that the Customs Broker generated this document on his own and signed in the place of CFS Clerk. Further, the Customs Broker obtained the signatures of Preventive Officer, CFS Surveyor and Customs Broker representative on the above forged document.

2.2 Consequently, investigation conducted by the SIIB, Custom House, Chennai revealed that the Customs Broker sent his employees Mr. Murugesan and Mr. Tauseef Ahamed to attend to the clearance work. Mr. Tauseef Ahamed was not an approved customs card holder but was found to be engaged in working in the customs area. It was also revealed that the employee Mr. Tauseef Ahamed was found transacting customs business without identity card issued by the Customs Authorities. Thus, it was alleged that the customs broker had failed to ensure to supervise the proper conduct of Mr. Tauseef Ahamed during the course of transaction of the above business. Thus, Customs Broker violated the provisions of the Customs Broker Licensing Regulations, 2013 as below: -

- i. Regulation 17(9) has been violated in as much as they did not exercise any supervision as may be necessary

to ensure the proper conduct of his employees in the transaction of business and hence is held responsible for all acts or omissions of his employees during their employment.

- ii. Regulation 11(b) has been violated in as much as they had engaged their employee without identity card issued by the Customs in the Customs area.

As per CBLR, 2013

- i. Regulation 17 (9) of CBLR, 2013 *"The Customs Broker shall exercise such supervision as may be necessary to ensure the proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment"*.
- ii. Regulation 11 (b) of CBLR, 2013 *"A Customs Broker 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, as the case may be"*.

2.3 As the Customs Broker has *prima facie* was found to have failed in discharging their obligations as Custom Broker as required under Regulation 17(9) and 11(b) of CBLR, 2013, the Commissioner of Customs, Chennai had suspended the Licence No. R-308-CHA of the Appellant with

immediate effect by his order dated 09.06.2015 pending enquiry before the Deputy Commissioner Customs.

2.4 The Commissioner of Customs, Chennai *vide* Order-in-Original No. 39410/2015 dated 02.07.2015 has observed that mis-conduct of the employee by way of forgery amounts to failure in exercising such supervision as may be necessary to ensure the proper conduct of the employees of the Customs Broker in the transaction of business, the Customs Broker shall be held responsible for all acts or omissions of his employees during their employment and the Customs Broker has violated the provisions of Regulation 17(9) of CBLR, 2013. Consequently, the above suspension was ordered to be continued against the Appellant in terms of Regulation 19(2) of the Customs Brokers Licensing Regulations (CBLR), 2013.

3. The Ld. Advocate Mr. A.K. Jayaraj representing the appellant has informed that against the above orders of the Commissioner of Customs, Chennai, the Appellant has approached the Hon'ble High Court of Madras by filing Writ Petition Nos. 38433 and 38434 of 2015 under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the entire records of the Customs Authority leading to

issuance of the impugned notice proceedings in both the orders i.e., Suspension and Continued Suspension of the CHA in F.No. R-308/CHA and quash the same. The Ld. Advocate has submitted that the Hon'ble High Court of Madras in the order dated 03.01.2020 has quashed the impugned orders. The relevant portions of the order of the Hon'ble High Court read as: -

"By this Common order, both the Writ petitions are being disposed.

2. The petitioner was issued with the Customs Broker license on 02.05.2014. By an order dated 09.06.2015, the petitioner's license was suspended under Regulation 19(1) of the Customs Broker Licensing Regulations, 2013. The reason for suspending the aforesaid license of the petitioner was on account of certain irregularities attributed to the petitioner due to alleged forgery by staff of the petitioner of the signature of the clerk of the Container Freight Station pursuant to a complaint by the custodian of the imported goods namely M/s. German Express Shipping Agency. It appears there was also an admission of forgery by the staff of the petitioner. Thereafter, vide impugned order in Original No.39410/2015 dated 02.07.2015, the order of suspension dated 09.06.2015 was continued until further orders.

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7. I have considered the arguments of the learned counsel for the petitioner and the respondents. The issue is

squarely covered by the above decision of this Court cited by the learned counsel for the petitioner. Therefore, the impugned notice dated 07.07.2015 (Impugned in W.P. No.38434 of 2015) is liable to be quashed.

8. As far as the impugned order dated 9.6.2015, (impugned in W.P. No.38433 of 2015) to suspend the petitioner's Customs Brokers License is concerned and its subsequent extension though in terms of Regulation 19, nevertheless is liable to be quashed at this point of time as the impugned notice dated 07.07.2015 is being quashed as being issued beyond the period of limitation. Therefore, there is no justification keeping the petitioners' license suspended any longer. Therefore, impugned order dated 09.06.2015 (impugned in W.P. No.38433 of 2015) is also quashed.

9. In the light of the above discussion, both be writ petitions are allowed with consequential relief to the petitioner. Consequently, connected miscellaneous petitions are closed. No costs."

4. The Ld. Authorized Representative Mr. Sanjay Kakkar represented the Department. The findings in the impugned orders were reiterated by the Ld. AR.

5. Heard both sides and perused the order of the Hon'ble High Court of Madras.

6. In view of the Orders of the Hon'ble High Court of Madras dated 03.01.2020, both the impugned orders i.e., suspension order dated 09.06.2015 and the Order-in-Original (order of continuation of the suspension) dated 02.07.2015 have been quashed, and so the appeals have become infructuous and need to be closed. Ordered accordingly.

(Order pronounced in open court on 17.04.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

MK

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