(2014) 28 GSTR 476

Madras High Court

Case No: Civil Miscellaneous Appeal Nos. 1422 to 1426 of 2014

Commissioner of Customs		APPELLANT
	Vs	
Customs, Excise And Service Tax Appellate Tribunal		RESPONDENT

Date of Decision: July 27, 2014

Acts Referred:

- Customs Act, 1962 - Section 129, 129A, 129A(1), 146, 22

Citation: (2014) 28 GSTR 476

Hon'ble Judges: N. Paul Vasantha Kumar, J; M. Sathyanarayanan, J

Bench: Division Bench

Judgement

1. The official respondents in the appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Chennai is the appellant. The Commissioner of Customs (Port-Import), Customs House, Chennai has passed an order of suspension dated June 23, 2011 under regulation 20(2) of the Customs House Agents Licensing Regulations, 2004, suspending the customs house agent licence of the second respondent herein and the said order was challenged before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chennai Bench and was allowed and aggrieved by the same, the present appeal is filed.

2. The second respondent is a licensed customs house agent (CHA), which is valid up to March 29, 2014 issued under the provisions of the above-said regulations and such regulations came to be framed in terms of section 146 of the Customs Act, 1962. Investigation was initiated against one M/s. Ravi Enterprises, Surat, State of Gujarat on the allegation that they are indulging in misuse of the advance authorisation scheme in violation of the provisions of export and import policy and the conditions of the notification dated September 11, 2009. Since the investigation revealed that the imports of yarn

made by the said firm duty-free under the above-said scheme was diverted to some high sea sale sellers who were said to have sold the goods on high sea sale basis, show-cause notice was issued to the said firm on March 14, 2011, demanding a duty of Rs. 3.30 crores, proposing confiscation of seized goods and penalty on the firm/persons concerned. The investigation also revealed that the role played by the second respondent in aiding and abetting M/s. Ravi Enterprises to commit the said acts of violation and misconduct.

3. The Directorate of Revenue Intelligence (DRI), has also proposed for revocation of the licence granted to the second respondent herein under the Customs House Agents Licensing Regulations and pending enquiry also, suggested suspension of licence granted to them by the Commissioner of Customs, Chennai. The Commissioner of Customs (Port-Import), Chennai, after taking into consideration the report submitted by the Directorate of Revenue Intelligence found that a prima facie case has been made out against the second respondent herein as to the non-compliance of the obligations set out in the Customs House Agents Licensing Regulations, 2004 and further found that if the second respondent is allowed to continue and operate, it would be detrimental to the interest of the Revenue and, hence, felt that it is necessary to take immediate action against them to prevent them from further misuse/misconduct of the customs house agent licence and accordingly, passed an order dated June 23, 2011, in exercise of the powers conferred under regulation 20(2) of the Customs House Agents Licensing Regulations, 2004, suspending the customs house agent licence of the second respondent with immediate effect until further orders and also indicated that the said order is issued without prejudice to any other action that may be taken against them and their employees/representatives, etc., under the provisions of the customs law or any other law for the time being in force and also granted an opportunity of personal hearing to the second respondent to present their case on July 11, 2011 at 11.00 hours in the office of the Commissioner of Customs (Imports).

4. The second respondent, aggrieved by the said order of suspension, filed Writ Petition No. 16180/2011 and it was disposed of on July 28, 2011 by directing the respondent/Department to issue notice again to the petitioner, fixing the date of hearing and on that date, grant liberty to the petitioner/second respondent herein to raise all the points before the authority concerned and thereafter, the respondent therein was directed to pass orders within a period of two weeks.

5. The Commissioner of Customs (Imports), in compliance of the orders passed in the above-said writ petition, has granted opportunity of personal hearing to the second respondent herein on August 18, 2011 and on that date, the second respondent did not appear, but on August 19, 2011, has filed a written statement. The original authority, namely, the Commissioner of Customs (Imports), on consideration of the materials placed before him and the written statement, has passed an order dated September 2, 2011, continuing the suspension of the customs house agent licence granted to the second respondent without prejudice to any other action taken against them under the provisions

of the Customs Act, 1962, rules and regulations made thereunder or any other law for the time being in force.

6. The second respondent, aggrieved by the same, filed an appeal before the Customs Excise and Service Tax Appellate Tribunal and the Customs, Excise and Service Tax Appellate Tribunal found that immediate suspension of licence is permitted only when an enquiry is pending or contemplated and the non obstante clause of regulation 20(2) makes an exception only in the matter of suspension and not in the matter of revocation and hence, it is implied that such enquiry has to be completed within the time frame prescribed in various sub-regulations of regulation 22 and a final view in the matter of revocation of licence is to be taken. The Tribunal further found that even after two years from the date of suspension not even the show-cause notice is issued for initiation of enquiry, which should have been followed in the case of an enquiry "pending or contemplated" on passing of the order of suspension dated September 2, 2011 and such an approach is against the provisions contained in regulations 20 and 22 of the Customs House Agents Licensing Regulations, 2004 and citing the said reasons, has set aside the impugned order of suspension and allowed the appeal and aggrieved by the same, the official respondents in the said writ petition, has filed this appeal.

7. In the grounds of appeal, the following substantial questions of law are raised :

"(a) As per regulation 22(1) of the Customs House Agents Licensing Regulations, 2004 :

(i) 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 licence and requiring the said customs house agent to submit, within such time as may be specified in the notice, not being less man forty five days, to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defence 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 or Assistant Commissioner of Customs".

(ii) The customs broker was issued with order of suspension wherein the violation of the provisions of regulations under the Customs House Agents Licensing Regulations, 2004 was elaborately brought out and the customs broker was given an opportunity of personal hearing before the Commissioner of Customs.

(iii) The customs broker along with their counsel appeared for the personal hearing and submitted a written submission during the course of personal hearing.

(iv) The violations committed by the customs house agent were discussed in the order of suspension and after taking into consideration the written submission of the customs broker, the Commissioner of Customs passed an order continuing the suspension.

(v) All these proceedings completed within 90 days from the date of receipt of investigation report. In view of the above, objectives of regulation 22(1) of intimating the customs house agent of the violations committed by them and taking into consideration their submissions in writing and during personal hearing have been substantially complied with. Hence, it appears that the hon''ble Customs, Excise and Service Tax Appellate Tribunal''s order is not legal and proper.

or

(1-a) Whether the hon''ble Customs, Excise and Service Tax Appellate Tribunal is correct in setting aside the order-in-original dated June 23, 2012 passed by the Commissioner of Customs when the substantial provisions of regulations 22(1) of the Customs House Agents Licensing Regulations, 2004 are complied with?

(b) Whether the hon''ble Customs, Excise and Service Tax Appellate Tribunal is right in setting aside the order-in-original dated September 2, 2011 passed by the Commissioner of Customs when the order of the hon''ble High Court in Writ Petition No. 16180 of 2011, directing the Department to issue a notice again to the (petitioner) the second respondent herein fixing the date of personal hearing and on that date, the petitioner is liberty to raise all the points before the authority concerned and after such personal hearing, the respondent-Commissioner of Customs, Madras can pass orders within a period of two weeks and the Department be complied with direction?

(c) Whether the hon''ble Customs, Excise and Service Tax Appellate Tribunal is right in setting aside the order-in-original dated September 2, 2011 passed by the Commissioner of Customs when the order of the hon''ble High Court in Writ Petition No. 16180/2011 was passed after following the reported judgment in P.T. Rajan Vs. T.P.M. Sahir and Others, ?".

Civil Miscellaneous Appeal Nos. 1423 to 1426 of 2014.

8. Civil Miscellaneous Appeal No. 1423 of 2014 pertains to M/s. D. Thimmeswara Rao, represented by its proprietrix, C. Subbulakshmi, Civil Miscellaneous Appeal No. 1424 of 2014 pertains to M/s. Setwin Shipping Agency, represented by its proprietor, Mr. Chandrasekara Raju, Civil Miscellaneous Appeal No. 1425 of 2014 pertains to M/s. N. Taylor, represented by its proprietrix, Mrs. Nicola Taylor and Civil Miscellaneous Appeal No. 1426 of 2014 pertains to M/s. Lotus International Services, represented by its proprietor, Shri T.S. Kamalakannan, and all of them are customs house agents (CHAs).

9. Investigation was carried out in respect of the functions of the above-said customs house agents and all of them had handled certain bills of different passengers through air cargo complex, Chennai and on a specific intelligence, it was found that the baggage through air cargo complex, Chennai have been cleared using falsified documents. Statements were recorded from the authorised signatories of the above-said customs house agents and the Commissioner of Customs (Import) found that all of them had

indulged in non-compliance of the obligations set out in the Customs House Agents Licensing Regulations, 2004 and having found that a prima facie case against them and having arrived at a finding that allowing them to operate would be detrimental to the interest of the revenue, has passed an order of suspension with immediate effect until further orders by invoking regulation 20(2) of the Customs House Agents Licensing Regulations, 2004 and also granted opportunity of personal hearing to the authorised signatories of the customs house agents and all of them made a challenge to the order of suspension by filing Writ Petition Nos. 15000 to 15003 of 2012 and this court had disposed of the said writ petitions on Jury 2, 2012, with a direction directing the respondents to follow the procedure contemplated under regulation 22(2) of the Customs House Agents Licensing Regulations, 2004 within the stipulated time and till such disposal, the impugned order of suspension should be kept in abeyance.

10. The Commissioner of Customs (Imports), aggrieved by the above-said common order passed in the writ petitions, filed Writ Appeal Nos. 2808 to 2811 of 2012 and a Division Bench of this court, vide common judgment dated January 4, 2013, has disposed of the writ appeals by directing the respondents/customs house agents to file an appeal under section 129A(1) of the Customs Act, 1962 within a period of two weeks from the date of receipt of a copy of the order and with a further direction directing the appellate authority to dispose of the same on its own merits and in accordance with law and accordingly, the appeals have been preferred before the Customs, Excise and Service Tax Appellate Tribunal by the above-said customs house agents and all the appeals were taken up together and were disposed of by a common order dated November 12, 2013 holding that despite the order dated July 2, 2012 passed by this court to follow the procedure under regulation 22(2) of the Customs House Agents Licensing Regulations, 2004, no notice was issued till date and therefore, continuation of suspension orders by the impugned orders dated May 23, 2012 under regulation 20(3) of the Customs House Agents Licensing Regulations, 2004 are not justified and therefore, the orders were set aside with an observation that the order allowing the appeal would not affect the enquiry proceeding, if any, as provided under the law.

11. The official respondents in the above-said appeals/Revenue, aggrieved by the same, had filed Civil Miscellaneous Appeal Nos. 1423 to 1426 of 2014 and raised the very same substantial questions of law as that of Civil Miscellaneous Appeal No. 1422 of 2014.

12. Mr. K. Mohanamurali, learned counsel appearing for the appellant/Revenue would vehemently contend that in Civil Miscellaneous Appeal No. 1422 of 2014, the order of suspension came to be passed based on the enquiry report under regulation 20(2) of the Customs House Agents Licensing Regulations, 2004 and after giving them opportunity of personal hearing, order came to be passed for continuation of the order of suspension and similarly in Civil Miscellaneous Appeal Nos. 1423 to 1426/2014 also, after placing the respondents therein under suspension, final orders came to be passed under regulation 20(3) of the Customs House Agents Licensing Regulations, 2004 for continuing the order of suspension and the said orders came to be passed after due and proper application of

mind to the materials placed before it and therefore, the reasons assigned by the Customs, Excise and Service Tax Appellate Tribunal that no notice has been issued under regulation 22(1) of the Customs House Agents Licensing Regulations, 2004, on the face of it is unsustainable. It is the further submission of the learned counsel appearing for the appellant/Revenue that in fact the orders continuing the order of suspension came to be passed after affording opportunity of personal hearing to the respective respondents/customs house agents and in letter and spirit, the procedure contemplated under regulation 22(1) has been complied with and the said vital aspect has been completely overlooked by the Customs, Excise and Service Tax Appellate Tribunal while allowing the appeals and hence, prays for interference.

13. Per contra, the learned counsel appearing for the second respondent in all these appeals has invited the attention of this court to the Customs House Agents Licensing Regulations, 2004 as well as the Customs House Agents Licensing Regulations, 2012 and 2013 and would submit that the Commissioner of Customs (Imports) in exercise of the powers conferred under regulation 20(2) of the Customs House Agents Licensing Regulations, 2004, has placed the respective respondents under suspension and thereafter, passed separate orders continuing the orders of suspension, but thereafter, failed to follow the procedure contemplated under regulation 22 for suspending the order revoking the licence. It is the further submission of the learned counsel appearing for the second respondent in all these appeals that regulation 22 also contemplates time limit for doing certain things and after passing orders continuing the order of suspension, the appellant herein/official respondents has failed to issue any notice to the respondents in these appeals within 90 days from the date of receipt of the offence report in accordance with regulation 22(1) of the Customs House Agents Licensing Regulations, 2004, in spite of such a direction given in Writ Petition Nos. 15000 to 15003 of 2012 and the said fact has been rightly taken into consideration by the Customs, Excise and Service Tax Appellate Tribunal in allowing the appeals. It is also the submission of the learned counsel appearing for the second respondent in these appeals that suspension cannot be allowed to continue indefinitely and ultimately, the appellant herein has to take a decision as to revoke or suspend the licence by way of punitive measure and since the said exercise was not done within the stipulated time frame as contemplated under regulation 22 of the Customs House Agents Licensing Regulations, 2004, the impugned orders passed in the appeals are sustainable in law and hence, prays for dismissal of these appeals.

14. This court paid its best attention to the rival submissions and also perused the materials available on record.

15. It is relevant to extract regulations 20 and 22 of the Customs House Agents Licensing Regulations, 2004 as under :

20. Suspension or revocation of licence.--(1) The Commissioner of Customs may, subject to the provisions of regulation 22, revoke the licence of a customs house agent and order

for forfeiture of part or whole of security, or only order forfeiture of 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 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, within fifteen days from the date of receipt of a report from investigating authority, suspend the licence of a customs house agent where an enquiry against such agent is pending or contemplated.

(3) Where a licence is suspended under sub-regulation (2), notwithstanding the procedure specified under regulation 22, the Commissioner of Customs may, within fifteen days from the date of such suspension, give an opportunity of hearing to the customs house agent whose licence is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the customs house agent.

22. Procedure for suspending or revoking licence under regulation 20.--(1) The Commissioner of Customs shall issue a notice in writing to the customs house agent within ninety days from the date of receipt of offence report, staring the grounds on which it is proposed to suspend or revoke the licence and requiring the said customs house agent to submit within thirty days, to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defence 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 or Assistant Commissioner of Customs :

Provided that the procedure prescribed in regulation 22 shall not apply in respect of the provisions contained in sub-regulation (2) to regulation 20.

(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 sub-regulation (1), direct the Deputy Commissioner of Customs or Assistant Commissioner of Customs to inquire 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 inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry 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 grounds 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 and submit his report within ninety days from the date of issue of a notice under sub-regulation (1).

(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 thirty 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 within ninety days from the date of submission of the report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, under sub-regulation (5).

(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 under section 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."

16. In Civil Miscellaneous Appeal No. 1422 of 2014, the investigation/offence report was prepared on May 24, 2011 and it was submitted to the appellant herein for conducting further course of action in accordance with regulation 22(1) and (2) of the Customs House Agents Licensing Regulations, 2004. The appellant herein has invoked regulation 20(2) of the Customs House Agents Licensing Regulations, 2004 and passed the order of suspension dated June 23, 2011 and by invoking regulation 20(2) has also granted opportunity of personal hearing to the second respondent in the said appeal. The second respondent, namely, M/s. Manjunatha Shipping Services Ltd., filed a writ petition in Writ Petition No. 16180 of 2011 and it was disposed of by directing the

respondent/Department to issue notice again to the petitioner, fixing the date of hearing and on that date, granted liberty to the petitioner/second respondent herein to raise all the points before the authority concerned and thereafter, the respondent was directed to pass orders within a period of two weeks and accordingly, opportunity of personal hearing was granted on August 18, 2011 and the respondent did not appear and on August 19, 2011, had filed his written statement. The appellant, after considering the materials placed before him, has passed the order dated September 2, 2011, continuing the order of suspension without prejudice to any other action that may be against them.

17. In so far as the other appellants are concerned, similar orders of suspension came to be passed on April 25, 2012 and by series of orders dated May 23, 2012, the appellant had passed orders continuing the orders of suspension and all of them, namely, D. Thimmeswara Rao, M/s. Setwin Shipping Agency, M/s. N. Taylor and M/s. Lotus International Services filed Writ Petition Nos. 15000 to 15003 of 2012 and the said writ petitions were disposed of with a direction to the respondents to follow the procedure contemplated under regulation 22(2) of the Customs House Agents Licensing Regulations, 2004 and it was also made clear that till the matters are disposed of in terms of regulation 22(7) of the Customs House Agents Licensing Regulations, 2004, the impugned orders of suspension shall be kept in abeyance. The appellant herein, aggrieved by the said common order, filed Writ Appeal Nos. 2808 to 2811 of 2012 and they were disposed of with a direction directing the respective respondents therein to file appeals under section 129A(1) of the Customs Act, 1962 within a stipulated time frame and with a further direction to dispose of the appeal on its own merits and in accordance with law and in pursuance to the directions, the appellants filed the appeals and all the appeals were allowed.

18. Regulation 20 of the Customs House Agents Licensing Regulations, 2004 speaks about suspension or revocation of licence and as per sub-regulation (2), notwithstanding anything contained in sub-regulation (1), the Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the licence of a customs house agent where an enquiry against such agent is pending or contemplated. As per sub-regulation (3), after the order of suspension is passed under sub-regulation (2), the Commissioner of Customs, notwithstanding the procedure specified under regulation 22, may within 15 days from the date of such suspension, give an opportunity of hearing to the customs house agent, whose licence is suspended and may pass such orders as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the customs house agent.

19. In the case on hand, orders of suspension came to be passed based on enquiry report dated May 24, 2011 in respect of M/s. Manjunatha Shipping Services Limited/second respondent in Civil Miscellaneous Appeal No. 1422 of 2014 and the enquiry report dated March 20, 2012 in respect of the second respondents in Civil Miscellaneous Appeal Nos. 1423 to 1426 of 2014 and based on the enquiry report, the respondent in Civil Miscellaneous Appeal No. 1422 of 2014 was placed under suspension

on June 23, 2011 and the respondents in Civil Miscellaneous Appeal Nos. 1423 to 1426 of 2014 were placed under suspension, vide separate orders dated April 25, 2012 and after affording them opportunity of hearing, the appellant passed final orders on September 2, 2011 in respect of the respondent in Civil Miscellaneous Appeal No. 1422 of 2014 and on May 23, 2012 as against the respondents in Civil Miscellaneous Appeal Nos. 1423 to 1426 of 2014 for continuing the orders of suspension.

20. It is the primordial submission of the learned counsel appearing for the appellant in these appeals/Revenue that the procedure followed for continuing the orders of suspension against the respondents in these appeals is nothing but the procedure contemplated under regulation 22(1) of the Customs House Agents Licensing Regulations, 2004 and the stand taken by them that they should be issued with separate notices in terms of regulation 22(1), on the face of it is unsustainable. It is the further submission of the learned counsel appearing for the appellant that the Customs, Excise and Service Tax Appellate Tribunal mainly proceeded on the footing that the order passed by the learned single judge in Writ Petition Nos. 15000 to 15003 of 2012 in respect of the respondents in Civil Miscellaneous Appeal Nos. 1423 to 1426 of 2014 has not been complied with and further, in terms of regulation 22(2), no notices have been issued to the respective respondent in these appeals and the said reasons, on the face of it are unsustainable for the reason that the common order dated July 2, 2012 passed in Writ Petition Nos. 15000 to 15003 of 2012 has been modified by the common judgment dated January 1, 2013 in Writ Appeal Nos. 2808 to 2811 of 2012 and further the procedure contemplated under regulation 22(1) has been complied with in letter and spirit while passing the orders dated September 2, 2011 and May 23, 2012, respectively, and the Tribunal ought not to have set aside the orders of suspension.

21. No doubt, on the basis of the enquiry report/offence report, it is open to the appellant herein to suspend the services of the respective customs house agents under regulation 20(2) of the Customs House Agents Licensing Regulations, 2004 and he has done so. Thereafter, the appellant herein by following the procedure contemplated under regulation 20(3), gave opportunity of personal hearing to the respective second respondents in these appeals and passed orders continuing the orders of suspension and the said order is also appealable under regulation 22(8) of the Customs House Agents Licensing Regulations, 2004.

22. Regulation 22(1) stipulates that 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 licence and requiring the said customs house agent to submit, within such time as may be specified in the notice, not being less than 30 days, to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defence. The proviso to regulation 22(1) says that the procedure prescribed in regulation 22 shall not apply in respect of the provisions contained in sub-regulation (2) to regulation 20.

23. A joint reading of regulations 20 and 22 of the Customs House Agents Licensing Regulations, 2004 would lead to the only inference that the orders of suspension passed under regulation 20(2) and its continuation under regulation 20(3) is only an interim measure and the authority, namely, the appellant herein has to take further steps to suspend the licence permanently or revoke the licence by invoking regulation 22. Though it is vehemently contended by the learned counsel appearing for the appellant that the order dated June 23, 2011 in respect of the respondent in Civil Miscellaneous Appeal No. 1422 of 2014 and the order dated April 25, 2012 in respect of the respondents in Civil Miscellaneous Appeal Nos. 1423 to 1426 of 2014 came to be passed only in accordance with regulation 22, in the considered opinion of the court, it is not so for the reason that all the said orders came to be passed only under regulation 20(2) of the Customs House Agents Licensing Regulations, 2004 and not under regulation 22.

24. As per the notification and instruction dated January 20, 2014, time limit has been prescribed in respect of the procedure contemplated under regulation 22 and as per sub-regulation (1) of regulation 22, the Commissioner of Customs shall issue a notice in writing to customs house agent within 90 days from the date of receipt of offence report, stating the grounds on which it is proposed to suspend or revoke the licence and require the said customs house agent to submit within 30 days. In Civil Miscellaneous Appeal No. 1422 of 2014, the enquiry report is dated May 24, 2011 and in respect of the respondents in Civil Miscellaneous Appeal Nos. 1423 to 1426 of 2014, the enquiry/offence report is dated March 20, 2012 and earlier to the said notification, time limit was prescribed to customs house agents to submit their response within 45 days to the notice issued under regulation 22(1), but as per the above-said notification, time limit has also been prescribed for the issuance of such notice also. The Tribunal has noted the fact that though the order of suspension came to be passed on June 23, 2011 in Civil Miscellaneous Appeal No. 1422 of 2014 in respect of M/s. Manjunatha Shipping Services, which was ordered to continue, vide the order dated September 2, 2011 and in respect of Civil Miscellaneous Appeal Nos. 1423 to 1426 of 2014, the original orders of suspension came to be passed on April 25, 2012, which was ordered to continue, vide the order dated May 23, 2012, the appellant did not take any steps to issue notice under regulation 22(1). In terms of the notification dated January 20, 2004 prescribing time limit to regulations 20 and 22 of the Customs House Agents Licensing Regulations, 2004, it is not open to the first respondent to issue notice under regulation 22(1) as the time limit of 90 days from the date of offence report/enquiry report has expired long back.

25. The Government of India, Ministry of Finance (Department of Revenue), Central Board of Excise and Customs, New Delhi has also issued Circular No. 9/2010-Customs, dated April 8, 2010 see [2010] 2 GSTR (St.) 80 in F. No. 502/2008-Customs VI, wherein clarification on procedures in issuance of licence to customs house agents have been issued and it is relevant to extract the following paragraph (page 82 of 2 GSTR (St.)) :

"(v) Time limit for completion of suspension proceedings against customs house agent licensee under regulation 22 :

7.1 The present procedure prescribed for completion of regular suspension proceedings takes a long time since it involves inquiry proceedings, and there is no time limit prescribed for completion of such proceedings. Hence, it has been decided by the Board to prescribe an overall time limit of nine months from the date of receipt of offence report, by prescribing time limits at various stages of issue of show-cause notice, submission of inquiry report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs recording his findings on the issue of suspension of customs house agent licence, and for passing of an order by the Commissioner of Customs. Suitable changes have been made in the present time limit of forty five days for reply by customs house agent to the notice of suspension, sixty days time for representation against the report of AC/DC on the grounds not accepted by the customs house agent, by reducing the time to thirty days in both the cases under the regulations.

7.2 In cases where immediate suspension action against a customs house agent is required to be taken by a Commissioner of Customs under regulation 20(2), there is no need for following the procedure prescribed under regulation 22 since such an action is taken immediately and only in justified cases depending upon the seriousness or gravity of offence. However, it has been decided by the Board that a "post-decisional hearing" should be given in all such cases so that errors apparent, if any, can be corrected and an opportunity for personal hearing is given to the aggrieved party. Further, the Board has also prescribed certain time limits in cases warranting immediate suspension under regulation 20(2). Accordingly, the investigating authority shall furnish its report to the Commissioner of Customs who had issued the customs house agent licence (licensing authority), within thirty days of the detection of an offence. The licensing authority shall take necessary immediate suspension action within fifteen days of the receipt of the report of the investigating authority. A post-decisional hearing shall be granted to the party within fifteen days from the date of his suspension. The Commissioner of Customs concerned shall issue an adjudication order, where it is possible to do so, within fifteen days from the date of personal hearing so granted by him."

26. The hon''ble Supreme Court of India in the decision in M/s. Ranadey Micronutrients etc. Vs. Collector of Central Excise, has held that the Board circular issued by the Central Board of Excise and Customs is binding on the Revenue and they cannot be challenged on the ground of inconsistency with any statutory provisions.

27. A similar view was taken in Commissioner of Customs, Calcutta Vs. Indian Oil Corporation Ltd. and Another, .

28. In the decision in Suhas H. Pophale v. Oriental Insurance Company Ltd. and Estate Officer [2014] 4 SCC 657 the hon''ble Supreme Court held that circular/guidelines can be used for limited purpose of throwing light on the intention behind the statute.

29. In the light of the said legal position, it is not open to the appellant/Revenue to take a contra stand in respect of the time limit prescribed under regulation 22 of the Customs

House Agents Licensing Regulations, 2004.

30. The learned counsel appearing for the respective respondents has also brought to the knowledge of this court the show-cause notice issued by the office of the Commissioner of Central Excise, Coimbatore in C. No. VIII/13/9/98-Vol.II-PF-Cus. Pol/9, dated January 24, 2012 in respect of M/s. Jay Yess Agencies under regulation 22. The said document also supports the case of the respondents herein on the ground that the appellant is following and issuing notice under regulation 22 of the Customs House Agents Licensing Regulations, 2004, but for the reasons best known to him, has not chosen to issue notice under the said regulations to the respondents in these appeals. No doubt, the appellant is entitled to pass initial order of suspension under regulation 20(2) and to continue the order of suspension under regulation 20(3) and however, it must be followed by a notice under regulation 22 and the authority has to take a decision to suspend the licence permanently or revoke the licence under regulation 22(1) and admittedly, such a step has not been taken in respect of the cases on hand.

31. As already pointed out by the Tribunal in the impugned order passed in the appeals that no person''s right to carry on his profession can be stopped for a prolonged period through the means of a suspension order and such an approach is against the provisions in regulations 20 and 22 of the Customs House Agents Licensing Regulations, 2004. In fact, the Customs, Excise and Service Tax Appellate Tribunal, South Zone, Chennai, in the decision in Maharaja Cargo v. Commissioner of Customs [2012] 17 GSTR 47 (Trib.-Chennai) : [2012] 284 ELT 409 (Trib.-Chennai), has found that the order of suspension under regulation 20(2) is sustainable and observed that the action to suspend the customs house agent is only a preliminary and interim measure and the authorities are required to hold an enquiry and decide whether any action is required to be taken against the appellant and this is not a stage for the Tribunal to pre-judge the issue and influence the enquiry and subsequent proceedings and once the final order is passed, the appellants will have ample opportunity to approach the Tribunal, if they are aggrieved by the said order.

32. As already pointed out in the earlier paragraphs that the initial order of suspension under regulation 20(2) and final order under regulation 20(3) to continue the order of suspension are to be followed by an enquiry under section 22 and admittedly, it has not been done so within the time limit prescribed. The orders of suspension passed against the second respondent in these appeals cannot continue and the concerned authority, namely, the appellant herein has to take a decision whether to suspend or revoke the licence in terms of regulation 22 and if he fails to do so, the only result is to set aside the impugned orders of initial suspension and its continuance and in the considered opinion of the court, the Tribunal has rightly done that exercise by correct appreciation of facts and application of regulations 20 and 22 of the Customs House Agents Licensing Regulations, 2004.

33. The compliance of procedure under regulation 20 would not be tantamount with compliance of regulation under 22 and therefore, the substantial questions of law raised in these appeals are answered in negative against the appellant in these appeals. In the result, all these civil miscellaneous appeals are dismissed, confirming the order dated October 10, 2013 in Final Order No. 40461 of 2013 (Manjunatha Shipping Sendees v. Commissioner of Customs [2014] 28 GSTR 454 (Trib.-Chennai)), and the order dated November 12, 2013 in Final Order No. 40566 to 40569 of 2013 (D. Thimmeszoara Rao v. Commissioner of Customs [2014] 28 GSTR 468 (Trib.-Chennai)), respectively, on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai Bench, Chennai. No costs. Consequently, the connected miscellaneous petition is closed.