

**(2011) 02 CAL CK 0004**

**Calcutta High Court**

**Case No:** Custa No. 12 of 2009 and G.A. No. 2883 of 2009

Mishra and Mishra (Agencies)  
Enterprises

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision:** Feb. 24, 2011

**Acts Referred:**

- Customs Act, 1962 - Section 130
- Customs House Agents Licensing Regulations, 2004 - Section 20(1)
- Customs, Excise Service Tax Appellate Tribunal (Procedure) Rules, 1982 - Rule 41

**Citation:** (2011) 266 ELT 330

**Hon'ble Judges:** Sambuddha Chakrabarti, J; Bhattacharya, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

1. The Court : This appeal u/s 130 of the Customs Act 1962 is directed against Order dated 4th May, 2009 passed by the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata in Miscellaneous Application No. 179 of 2008 in connection with Customs Appeal No. 134 of 2004 thereby dismissing an application for recalling and modifying a final order dated 7th December, 2007.

2. It appears from record that the appellant preferred an appeal before the said Tribunal against Order dated 16th June, 2004 passed by the Commissioner of Customs (Preventive), Kolkata revoking CHA licence of the appellant u/s 20(1) of C.H.A.L.R., 2004 (old Regulation 21(1) of CHALR, 1984) and the order for forfeiture of whole of security given against the bond executed at the time of grant of licence. The Tribunal by order dated 7th December, 2007 dismissed the said appeal by confirming the order of the authority below.

3. Subsequently the appellant filed an application for review of the said order on the sole ground that although some of the decisions cited by the appellant before the Appellate Tribunal were taken note of in the order impugned, yet there was no discussion of those in the judgment.

4. By the order impugned herein, the Tribunal has rejected such application for review.

5. Being dissatisfied the appellant has come up with the present appeal.

6. After hearing the learned advocate for the appellant and after going through the materials on record, we find that the appellant has not preferred any appeal against order dated 7th December, 2007 which has attained finality. Instead of filing any appeal, it subsequently filed an application for review although there is no provision of review under the Customs Act against any decision passed by the Tribunal. The learned advocate appearing on behalf of the appellant has drawn our attention to Rule 41 of Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1984 which is quoted below in support of his contention that there is provision of Review.

Rule 41. Orders and directions in certain cases :- The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect or in relation to its order or to prevent abuse of its procedures or to secure the ends of justice.

7. After going through the said Rule, we find that the said Rule is intended to prevent abuse of the process of the Tribunal and to secure the ends of justice. In our opinion, by taking aid of that Rule, one cannot file any application for review of an order on merit which can be done only if there exists a specific provision of Review like that of an appeal.

8. We, thus, find that in the facts of the present case, there is no scope of review of the original order dated 7th December, 2007 at the instance of the appellant merely on the ground that some of the decisions cited by the appellant was not discussed in detail in the judgment.

9. We, therefore, find that no question of law is involved in this appeal and, consequently, we dismiss this appeal summarily.

10. Photostat certified copy of this order be made available to the parties upon compliance of usual formalities.