

***In The Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad***

Appeal No.C/10212/2018-DB

[Arising out of OIO-KDL/Commr/PVRR/125/16-17 dated 01.03.2017 passed by the Commr. of Customs-Kandla]

M/s Mb Kotak

Appellant

Vs

C.C.Kandla

Respondent

Represented by:

For Appellant: Mr. Dhaval Shah (Advocate)

For Respondent: Mr. T. G. Rathod (AR)

CORAM:

HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Date of Hearing: 13.11.2018

Date of decision: 05.12.2018

Final Order No. A/ 12710 /2018

Per: Raju

This appeal has been filed by M/s. Mb Kotak, Custom Broker, against revocation of license.

2. Ld. Counsel pointed out that a case was booked involving smuggling of Cigarettes at JNCH Nhava Sheva Port. The bill of entry in the said case was filed by M/s Jude International through office of the Customs Broker J D Impex. During interrogation statements were recorded of Shri Dattatray Weling, Prop. Of M/s D. S. Agencies, Shri Chandrakant Sakharam Sawant, Director m/s Inter Express Logistics (P) Ltd., Shri Jaikishan B. Kotak (son of the Prop. of appellant firm) and Shri Bipin Pragi Kotak (husband of the prop. of the appellant custom broker). Statement of Sh. Dinesh Ojha, an employee of the appellant firm was also recorded. In all these statements it transpired that Sh. Jaikishan B. Kotak, Bipin Pragi Kotak and Sh. Dinesh Ojha have actively

participated in conspiring and organizing the smuggling in the aforementioned import at JNPT, Nhava Sheva. The offence report in the said case was issued on 10.11.2015 and the custom SCN was issued on 19.11.2016.

2.1 Thereafter proceedings against the appellant were initiated by suspension of their license on 14.06.2016 and the said suspension was confirmed on 31.07.2016. The proceedings culminated in the impugned order revoking the license of the appellant.

2.2 Ld. Counsel argued that no charge against the appellant can be made on the basis of the actions of Shri Jaikishan B. Kotak (son of the Prop. of appellant firm) and Shri Bipin Pragi Kotak (husband of the prop. of the appellant custom broker) of the proprietor of the appellant firm in their personal capacities. He also argued that Shri Dinesh Ojha, employee of the appellant firm also acted in his personal capacity as the imports were not being handled by the appellant firm as custom broker.

2.3 Ld. Counsel pointed out that no statement of the proprietor of the appellant firm was recorded. He argued that the appellant firm was not in any matter involved in the imports made at JNPT Nhava Sheva. The appellant had not acted as custom broker in the said import. It was argued that in these circumstances there was no role of the appellant custom broker in the said transaction and therefore, no charges can be made against the appellant.

2.4 Ld. Counsel further pointed out that SCN issued to Inter Express Logistics (P) Ltd., custom broker in respect of the role of Shri Chandrakant Sakharam Sawant in the same case has been set aside by Tribunal vide order No. A/85769/2018 dated 22.03.2018. He argued that the role of Shri Jaikishan B. Kotak (son of the Prop. of appellant

firm) and Shri Bipin Pragi Kotak (husband of the prop. of the appellant custom broker) and Shri D. Ojha is similar to the role of Shri Chandrakant Sakharam Sawant of Inter Express Logistics (P) Ltd. and thus the proceedings should be set aside.

2.5 Ld. Counsel further argued that there has been delays in the proceedings in violation of Regulation 20 of the Custom Broker License Regulation 2013.

3. Ld. AR relies on the impugned order. He argued that Sh. D. Ojha was a G Card Holder of the appellant Custom Broker. He pointed out that the inquiry report clearly brings out the role of Sh. Dinesh Ojha in the entire smuggling activity. He thus argued that the impugned order needs to be upheld. He relied on the following judgments:

- K M Ganatra & Co. 2016 (332) ELT 15 (SC)
- Worldwide Cargo Movers 2010 (253) ELT 190 (Bom)
- Sri Durga Shipping Agenceis 2014 (299) ELT 97
- HB Cargo Services 2011 (268) ELT 448 (AP)

4. We have gone through rival submissions. We find that regulation 17(1), 17(9), 11(e) and 11(i) have been invoked. The said regulations read as follows:

"17. Employment of persons. —

(1) A Customs Broker may, having regard to the volume of business transacted by him, employ any number of persons to assist him after verifying their antecedent and identity at the declared address by using reliable, independent, authentic documents, data or information :

Provided that the minimum educational qualification of such persons so employed shall be 10+2, or equivalent.

(9) 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.

11. Obligations of Customs Broker. — *A Customs Broker shall -*

(e) 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;

(i) not attempt to influence the conduct of any official of the Customs Station in any matter pending before such official or his subordinates by the use of threat, false accusation, duress or the offer of any special inducement or promise of advantage or by the bestowing of any gift or favour or other thing of value;”

A perusal of regulation 17(1) shows that a custom broker is required to verify the antecedents of the employees before hiring by identifying the antecedents and identity at the declared address by using reliable independent authentic documents, data or information. It is seen that the charge made in the proceedings does not clearly bring out as to how the custom broker has failed in this regard. In absence of specific charge, the said allegation cannot be confirmed. Similarly, Regulation 17(9) excepts supervision of employees in the transaction of business. This charge can only be made in respect of cases where the imports are made through the Custom Broker themselves in transaction of business. Any action by any employee in a personal capacity, not in transaction of business of the custom broker, cannot be held against the custom broker. Similar Regulation 11(e) is in respect of the transactions between the custom broker and his client. In the instant case the importer was not client of the Custom Broker and hence no charge under Regulation 11(e) can be substantiated. The charge under Regulation 11(i) relates to Customs Broker attempting to influence the officials of the Custom Station in any matter. In the instant case, there is no charge that the custom broker tried to influence the officials of the Customs Stations. The charge if any of influencing the officer is against

Shri Jaikishan B. Kotak (son of the Prop. of appellant firm) and Shri Bipin Pragi Kotak (husband of the prop. of the appellant custom broker) of the Custom Broker and the Employee Shri Dinesh Ojha. Since there is no charge against the custom broker of attempting to influence the Customer Officer, the charge under Regulation 11(i) cannot be upheld. Ld. AR relied on the decision of K M Ganatra & Co. (supra). It is seen that in the said case the facts were different in so far as the appellant in that case was the Custom Broker through which the import documents were filed. The same distinction applies to all the cases cited by the Ld. AR. Therefore, the said cases do not apply to current situation, where the import document were not filed through the appellant custom broker.

5. In view of above, we do not find merit in the impugned order and the same is set aside.

(Pronounced in the open court on 05.12.2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

Neha