CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD
REGIONAL BENCH, COURT NO. 2

CUSTOM APPEAL NO. 10336 OF 2024 - DB

(Arising out of OIO- KND-CUSTM-000-COM-15-2023-24 dated 16.03.2024 passed by Commissioner of Customs - Kandala)

M/s KRISHNA SHIPPING AND ALLIED SERVICES ....Appellant
Office No. 53/54 a TRANSPORT NAGAR
N H 8 Gandhidham Kutch,
Kutch, Gujarat- 370201.

VERSUS

COMMISSIONER OF CUSTOMS - KANDALA ......Respondent
Office of the Commissioner of Custom,
Near Balaji Temple, Kandla
Kutch, Gujarat- 370210.

Appearance:
Shri Vikas Mehta, Consultant for the Appellant
Shri Prashant Tripathi, Superintendent (AR) for the Respondent

CORAM:
HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Final Order No. 11706/2024

DATE OF HEARING: **28.06.2024**
DATE OF DECISION: **02.08.2024**

RAMESH NAIR

The present appeal has been filed by the appellant against the Order-in-Original No. KND-CUSTM-000-COM-15-2023-24 dtd. 16.03.2024. In this Order the adjudicating authority, has ordered revocation of the licence held by the appellant as Customs broker. Further, he has ordered forfeiture of the full amount of security deposit furnished by the customs broker and also imposed a penalty of Rs. 50,000/-.

2. Briefly stated the facts of the case are that an inquiry was initiated by the DRI Ludhiana against Shri Pankaj K. Thakker, F Card holder in CB firm M/s Krishna Shipping and Allied Services who was engaged in import of 1792 MT of Black Papper (CTH 0904) into KASEZ, allegedly from Afghanistan between October 2022 and March 2023 in which customs duty of Rs. 66.10 crore was evaded in collusion with M/s

Cuthbert Winner LLP and M/s. Cuthbert Oceans LLP on 1596 MT of 'black pepper' removed into DTA at NIL rate of Customs duty by claiming it to be of Afghanistan origin. DTA clearance to M/s. Cuthbert Winner LLP and M/s Cuthbert Oceans LLP was made through M/s Aditya Exports which is controlled and operated by Shri Pankaj Thakker only. Investigation revealed that delivery of goods in India, were fake and that Black Pepper had actually sailed for India from Jebal Ali only. Further, the partners in M/s Aditya Exports, Shri Naimish Himatlal Sodha and Shri Mehul Pujara admitted in their statements that they were mere fronts and the entire warehousing business was actually operated by the Shri Pankaj Thakker of Ghandhidham, who was a partner in Customs Broking firm M/s. Krishna Shipping and Allied Services.

3. Accordingly a show cause notice dtd. 22.09.2023 was issued to the appellant under Regulation 14 and 18 of CBLR 2018 alleging various contravention under Regulation 10(a),10(d),10(e),10(f),10(n) and 13(12) of the CBLR, 2018 which culminated into impugned order wherein the Commissioner revoked the license and ordered for forfeiture of entire security deposit and imposed penalty of Rs. 50,000/-. The appellant is in appeal against this impugned order.

4. Shri Vikas Mehta Ld. Consultant appearing on behalf of the Appellant submits that the impugned order passed by the Ld. Commissioner being in gross violation of principles of natural justice is not legally sustainable. As the Appellant was never provided the copy of offence reports prepared by DRI as well as statements recorded by DRI based on which these offence reports were prepared and on the basis of which the show cause notice was issued that has eventually resulted in revocation of the Customs Broker licence of Appellant.

5. He also submits that the lower authorities have defined the settled law that statements cannot be relied without offering the deponent for cross-examination. They have neither provided copy of statements not offered such persons for cross-examination before revoking the Customs Broker licence issued to the Appellant. Therefore on this ground also, the impugned order is liable to be quashed and set aside.

6. He further submits that the impugned order revoking license and imposing penalty has been passed in violation of Regulation 17 of CBLR,

2018. It is an undisputed dictum of law that when a statute requires a thing to be done in a certain manner it shall be done in that manner alone. In this case despite repeated requests the Inquiry officer never provided copy of the statements which he has relied for preparing the Inquiry report. Hence, the appellant's right to cross-examine all such persons have been deliberately scuttled. As a result, the onus to ascertain the correct position that is case upon the Inquiry officer in terms of Regulation 17(3) of CBLR, 2018 has not been discharged by the Inquiry officer.

7. He also argued that the show cause notice admits that the name of CB was not appearing on the import/exports documents filed by M/s Aditya Exports. Ld. Commissioner has also observed at para 31 that Shri Pankaj K. Thakkar was the actual person who used to handle and manage working including discussion with overseas shippers, arranging transportation and other operations in M/s. Aditya Exports. In the facts and circumstances where it is admitted that the appellant was not appointed as CB and it was Shri Pankaj Thakkar who had involved himself in the operations of M/s Aditya Exports in his personal capacity, Ld. Commissioner has erred in sustaining the allegations levelled against the appellant regarding breach of Regulations.

8. He also argued that Appellant were never employed by M/s Aditya Exports as a Custom Broker and were never given any authorization to transact the business of Customs Broker. The Inquiry officer has also not brought any evidence in the form of appointment in this regards. As a matter of fact, it is admitted in the show cause notice that the documents did not bear the name of appellant. Hence the impugned order revoking the customs broker licence under Regulation 14 of CBLR, 2018 is without jurisdiction.

9. He further submits that Ld. Commissioner has erred in failing to appreciate that a Customs Broker and his employee are two different legal entities and hence, a Customs Broker cannot be held responsible for the act or omissions of his employee where there is no appointment to act as Customs Broker. In this case, the license under the CBLR, 2018 is issued to the appellant and not Shri Pankaj Thakkar, who is a different legal entity.

10. Shri Prashant Tripathi, Learned Superintendent (AR) appearing on behalf of department reiterated the findings given by Learned Commissioner of Customs.

11. Heard both sides and perused the records.

12. We find that in the present matter the Ld. Commissioner nowhere disputed the facts that the appellant requested for relied upon documents and cross-examination of witness. Alleging violation on the part of the appellant Customs Broker, the Commissioner Customs initiated proceeding under CBLR, 2018 (erstwhile CBLR, 2013) by issuing a notice to the appellant; Inquiry Officer was appointed and on the basis of the said Inquiry report, in the impugned order the adjudicating authority directed revocation of license, forfeiture of security deposit and imposition of penalty of Rs. 50,000/- on the appellant.

13. We find that the main contention of the Appellant is that neither the Inquiry officer nor the Ld. Commissioner gave an opportunity to Appellant to bring the correct facts on records by way of cross-examination of the persons whose statements were relied upon by the Department. Further they have not provided the copy of statement and Inquiry report, hence the impugned order is not sustainable in law. We find force in argument and submission of Appellant in this context. We noticed that Regulation 17 of CBLR, 2018 prescribes the procedure for revoking the license or imposing penalty.

14. It is necessary to set forth the relevant regulations applicable to the present case. Customs Broker Licensing Regulation, 2018 was notified on 14-5-2018. The relevant extracts of Regulation 17(1), 17(5) & 17(7) are set forth below:-

> ***17. Procedure for revoking license or imposing penalty. -***
> **"***(1) The Principal Commissioner or Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the license or impose penalty requiring the said Customs Broker to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement*

whether the Customs Broker desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(5) At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall prepare a report of the inquiry and after recording his findings thereon submit the report within a period of ninety days from the date of issue of a notice under sub-regulation (1).

(7) The Principal Commissioner or Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs Broker, pass such orders as he deems fit either revoking the suspension of the license or revoking the license of the Customs Broker 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) :

Provided that no order for revoking the license shall be passed unless an opportunity is given to the Customs Broker to be heard in person by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be."

15. We also find that department in the present matter relies upon the statements of witnesses. The right of cross-examination has been recognized under Regulation 17(4) of the CBLR Regulations, 2018, which requires Inquiry Officer to give reasons if he intends to deny such right to the Customs Broker. Recognizing the right of cross-examination, in the case of *Flevel International* v. *Commissioner of Central Excise* - 2015 SCC OnLine Delhi 12173 : 2016 (332) E.L.T. 416 = [2015] 62 taxmann.com 294 (Delhi)/52 GST 827 (Delhi) held as under :-

"42. It is settled law that the denial of an opportunity of cross-examination of a witness whose statements have been relied upon in the adjudication order would vitiate the order of adjudication. In Basudev Garg v. Commissioner of Customs - 2013 (294) E.L.T. 353 (Del.), this Court referred to Section 9D of the CE Act and noted that even while upholding its constitutional validity in J & K Cigarettes Ltd. v. Collector of Central Excise - 2011 (22) S.T.R. 225 (Del.), a Division Bench of this Court had observed that the circumstances under which the right of cross-examination can be taken away would have to be

'exceptional'. This would include circumstances where the person who had given the statement was dead or cannot be found or is incapable of giving evidence or is kept out of the way by adverse party or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances, the Court considers unreasonable. It was held by the Court in Basudev Garg (supra) that "it is clear that unless such circumstances exist the noticee would have a right to cross-examine the person whose statements are being relied upon even in quasi judicial proceedings."

16. In yet another case, in the matter of *Him Logistics Pvt. Ltd.* v. *The Principal Commissioner of Customs*, 2016 SCC On Line Del 1236 = 2016 (336) E.L.T. 15 (Del.), observed as under :-

> *"16. In the present case, it is an admitted fact that the Respondent Department is placing considerable reliance on the statements of Mr. Shyam Lal and Ms. Preeti, the partners of the importer, in support of the case made out in the SCN. The impugned order of the AA does not indicate that any prejudice would be caused to the Department by providing the Petitioner the right of cross-examination. On the other hand the denial of such right would prejudice the Petitioner since the said statements are adverse to the Petitioner. In the circumstances, the denial of the Petitioner's right of cross-examination is held contrary to the law explained in Basudev Garg (supra)."*

17. In the present case, the Appellant questioned the integrity of the statements of the persons recorded under Section 108 of the Customs Act, 1962. Such statements were required to be tested through cross-examination. Despite specific request by the Appellant to cross examine such witnesses, no attempt was made to secure their presence in the adjudication proceedings. As per Regulation 17(4) of CBLR, 2018, if the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines the permission to examine any person on the ground that his evidence is not relevant or material, he needs to record the reasons in writing for doing so but the Inquiry Officer assigned no reason what so ever. The Commissioner of Customs ignored the error on the part of the Inquiry Officer to grant an opportunity of cross examination of the witnesses. Provisions of Regulation 17(4) were given a complete go-by. Not allowing the Customs broker an opportunity to cross-examine the persons examined in support of the grounds forming the basis of these proceedings has resulted in serious prejudice to the Appellant.

18. We also find force in argument of appellant that Customs Broker and his employee are two different legal entities, hence a customs broker cannot be held responsible for the act or omissions of his employee where there is no appointment to act as Customs Broker. We find that Section 2(d) of Customs Brokers Licensing Regulations, 2018 "Customs Broker" means a person licensed under these regulation to act as an agent on behalf of the importer or an exporter for purpose of transaction of any business relating to the entry or departure of conveyances of the import or export of goods at any Customs Station including audit. In the present there is no dispute on the fact that license under the CBLR, 2018 is issued to the Appellant and not Shri Pankaj Thakkar, who is a different legal entity.

19. Moreover, we also notice that in the present matter it is on records that appellant have not handled any customs documents. The documents did not bear the name of appellant.

20. In these circumstance, impugned order revoking the Customs Broker Licence under Regulation 14 of CBLR, 2018 is legally not sustainable. Accordingly, we set aside the impugned order. The appeal of the appellant is allowed with consequential relief.

(Pronounced in the open court on **02.08.2024** *)*

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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