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

REGIONAL BENCH- COURT NO.3

Customs Appeal No.10734 of 2021

(Arising out of OIO-KND-CUSTM-000-COM-03-2020-21 dated 17/06/2021 passed by Commissioner of CUSTOMS-KANDLA)

UNIQUE SPEDITORER PVT LTD **.........Appellant**
Plot No. 126, Sector-1/A, Gandhidham
Kutch, Kutch, Gujarat

VERSUS

C.C.-KANDLA **.........Respondent**
Custom House, Near Balaji Temple,
Kandla, Gujarat

APPEARANCE:
Vikas Mehta, Consultant for the Appellant
Shri. A R. Kanani, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

Final Order No. 12023 /2024

DATE OF HEARING: 11.09.2024
DATE OF DECISION:11.09.2024

RAJU

This appeal has been filed by UNIQUE SPEDITORER PVT LTD against imposition of penalty of Rs. 25,000/-.

2. Learned counsel pointed out that the appellant is Customs Broker, they had cleared the goods for their client under EPCG scheme. The goods were cleared in the Year-2007. Their client fail to fulfil the export obligation under EPCG Licence and on that count proceedings were initiated against the Customs Broker, which ultimately culminated in dropping the proceedings in

respect of revocation of licence and forfeiture of security. However, a penalty of Rs. 25,000/- was imposed for negligence on their for failing to part advise their client to fulfil the export obligation. He pointed out that the impugned order in para 4.7 and 8 reached a conclusion that there was no *mens-rea* on the part of the appellant. He further points out that in para 4.6.2 of the impugned order, the Commissioner himself has raised the issue regarding the effect of any advise that Customs Broker can give to their client, post the clearance of goods and, if, the said advise would have any effect.

3. Learned AR relies on impugned order.

4. We have considered the rival submissions. Para 4.6.2, para 4.7, para 7 and para 8 of the order read as under:-

> *"4.6.2 Now, therefore, I proceed to examine as to whether the CB had any role in fulfilment of the export obligation by way of export of the goods in respect of the imports done under EPCG Authorizations by the importer. As above such Authorizations are only issued on application by the applicant before DGFT and the same are granted after due verification and deliberations, therefore, it implies that the applicant must have been well aware of the provisions of the Notification No. 97/2004-Cus., dated 17.09.2004 and the obligations prescribed therein. Now the question arises, was the importer at all required to be advised by the CB for fulfilment of their export obligation under the said EPCG authorizations? Further, was there any impact of the CB's advice on M/s Sky if they decided to default their obligation. Moreover, post clearance advices of CB to any importer or exporter don't have much significance. Also it appears that there no such mechanism vide which the CB could ensure fulfilment of the importer's obligations that too after 8 to 12 years.*
>
> *4.7 In view of the above discussion, I find that, it would be improper and unjust to accuse the Customs Broker for non-compliance of the statutory obligations as prescribed in the Customs Broker Licensing Regulation, 2018. Moreover, the Inquiry Officer has also held that there is absence of mens-rea in the present case and there is no supportive evidence about collusion of connivance on the part of the said Customs Broker with the act omission and commission on the part of the importer.*
>
> *7. In the present case, there is no observation of the inquiry officer of any mala fide on the part of the CB, such that the trust operating between a CB and the Customs Authorities can be said to have been violated, or be irretrievably lost for the future operation of the license. There is no evidence of active facilitation of clearance of the consignment for import through customs by the CB, hence, no mens-rea can be inferred upon the CB to defraud the government. Thus, in this case, in view of the absence of any mens-rea, the violation concerns, a penalty of*

revocation of license forfeiture and of security deposit for this contravention of the CB Regulations would unjustly restricts the CB's ability to engage in the business of the Custom Broker. Therefore, the stern action like revocation of the Customs Broker licence and forfeiture of security deposit is unwarranted.

8. However, the CB cannot escape from their responsibility casted upon them under CBLR as well as affirmed under security bond executed by them. In light of the facts and circumstances, narrated hereinabove, there is negligence on the part of Customs Broker in complying the obligations specified under sub clause (d) of the Regulation 10 of CBLR, 2018 (readwith erstwhile corresponding CBLRs) therefore the CB rendered themselves liable for penalty under regulation 18 of the CBLR, 2018 (readwith erstwhile corresponding CBLRs)."

4.1 From the above narration, in the impugned order itself, it is clear that there was no *mens-rea* on the part of the appellant. There was no requirement for the appellant to advise post the clearance of goods. In that background, no case can be made out for the failure on the part of the appellant. No penalty could have been imposed for that reason.

5. The appeal is therefore allowed, impugned order is set aside.

(Dictated and pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi