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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10863 of 2020 - DB

(Arising out of OIO-KND-CUSTM-000-COM-07-2020-21 dated 17/09/2020 passed by Commissioner of CUSTOMS-KANDLA)

AB LOGISTICS **........Appellant**
208 Nirav Chambers 2nd Floor Plot No 13
Gandhidham, Gujart

VERSUS

Commissioner of Customs-Kandla **......Respondent**
Custom House,
Near Balaji Temple,
Kandla, Gujarat

APPEARANCE:
Shri Vikas Mehta, Consultant for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

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

Final Order No. 12624/2024

DATE OF HEARING: 08.10.2024
DATE OF DECISION: 08.11.2024

RAMESH NAIR

The brief facts of the case are that the appellant is a Custom Broker. He filed bills of entry on behalf of importers, namely, M/s. ABS International, M/s. Sure Water Technologies LLP and M/s. Aquacare Incorporation, for clearance of water treatment membranes with Custom House, Mundra. Alleging mis-declaration and undervaluation of goods, proceedings were initiated against the appellant under CBLR,2018 by way of Show Cause Notice alleging breach of Regulation 10 (a) & 10 (n) of CBLR, 2018 The Inquiry Officer, in his report dated 23.07.2020 concluded that breach of Regulation 10 (a) is not proved. For Regulation 10 (n), he has concluded that a KYC document in respect of importers is duly available with CB. However, by citing CBIC Circular No. 09/2010- Cus dated 08.04.2010, he has observed that the appellant had not obtained photographs of the importer and hence, there was a partial breach of regulation 10 (n). Ld. Commissioner of Customs, Kandla, being the licensing authority, has agreed with the inquiry report and has imposed a penalty of Rs. 20,000/- on the appellant under Regulation 18 of CBLR, 2018 on the ground that photograph of importer required to be obtained in terms of CBIC Circular No. 09/2010-Cus dated 08.04.2010 was not obtained.

2. Shri Vikas Mehta Learned Consultant appearing on behalf of the appellant submits that the appellant represented before the Ld. Commissioner that no Officer/ Authority had asked for the photograph of the importer which they had already collected along with KYC. Further Regulation 10 (n) nowhere specified any such requirement. Learned Commissioner has observed that the appellant had collected the required documents from the importer but silent on the photograph to be obtained from the importer. He submits that the requirement of photograph is nowhere specified in Regulation 10(n) of CBLR, 2018. He relied upon Hon'ble the Supreme Court judgment in the case of **Sandur** Micro Circuits Ltd.- 2008 (229) ELT 641 (SC) and Inter Continental (India) 2008 (226) ELT 16 (SC) to submit that a new condition cannot be inserted in the statute by way of circular. He submits that the failure to produce photograph is alleged without asking for the photographs at any stage. Therefore, on all these grounds, it is submitted that the impugned order imposing penalty of Rs. 20,000/- under Regulation 18 of CBLR, 2018 is not tenable.

3. Shri Sanjay Kumar, Learned Superintendent (AR) appearing for the Revenue reiterates the findings of the impugned order.

4. On Careful consideration of the submission made by both the sides and perusal of record, we find that the penalty of Rs. 20,000/- under Regulation 18 of CBLR, 2018 was imposed on the alleged violation of Regulation 10(n), in as much as the appellant have not obtained the photograph of the importer. We find that there is no dispute, moreover, it is admitted by the Adjudicating Authority that the appellant have obtained all the documents such as KYC of the importer. Merely, because the Photograph was not taken there is no violation of any Regulation of CBLR, 2018. Firstly, there is no instruction from the Custom department to obtain the Photograph. And

on face of it when the appellant have taken the KYC documents properly, no mala fide intention can be attributed to the appellant. It is also found that regarding the Photograph, regulation does not stipulate such condition. it is only by way of circular. It was provided that the Photograph of importer has to be taken. Therefore, there is no statutory requirement under the Regulation and if at all there is any lapse, it's a procedural lapse of board circular. Accordingly, we are of the view that the department could not make out a case whereby any penalty can be imposed. The judgment relied upon by the Learned Counsel of Hon'ble Supreme Court which held that at a new condition which is not provided under the statute cannot be imposed by of way of circular, this clearly supports the case of the appellant.

5. Accordingly, we set aside the penalty and allow the appeal.

(Pronounced in the open court on 08.11.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha