CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70648 of 2021
In
Customs Miscellaneous Application No.70211 of 2021

(Arising out of Order-in-Original No.VIII(48)09-Cust./Chhitij/15/7042 dated 10.08.2021 passed by Commissioner of Customs (Preventive), Lucknow)

Shri Chhitij Sengar, **.....Appellant**
(R/o 2A/144, Azad Nagar, Nawabganj, Kanpur Nagar U.P.)

VERSUS

Commissioner of Customs (Preventive),
Lucknow **....Respondent**
(5^{TH} Floor, Kendriya Bhawan, Sector-H, Aliganj, Lucknow)

APPEARANCE:

Shri Devendra Gupta, Proxy Counsel for the Appellant
Shri A. K. Choudhary, Authorized Representative for the Respondent

CORAM: **HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

MISCELLANEOUS ORDER NO.- 70170/2024
FINAL ORDER NO.- 70260/2024

DATE OF HEARING : 07 February, 2024
DATE OF DECISION : 07 February, 2024

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant against the following order passed by the learned Commissioner of Customs (Preventive), Lucknow. The order is as under :-

ORDER

I, Commissioner of Customs, Customs (P) Commissionerate, Lucknow, in exercise of powers conferred upon me, under the provisions of Regulation 16(2) of Customs Broker Licensing Regulations, 2018, hereby order for continuing the suspension of the Customs Broker License Registration No.03/CB/REGULAR/KNP/2015 dated 10.04.2015, issued to M/s Chhitij Sengar, address: 2A/144, Azad Nagar, Nawabganj, Kanpur, as made vide Suspension Order dated 14.07.2021 issued vide File No.

> *GEN/CB/SUS/1/2021-Technical Section, until further orders. I also order for intimation of proceedings under the provisions of Customs Broker Licensing Regulations, 2018."*

2. The facts of the case in brief are that the Appellant is a Customs Broker holding Customs Broker License No.03/CB/REGULAR/KNP/2015 dated 10.04.2015 (PAN: ESAPS9317E) issued by the then Commissioner of Central Excise, Kanpur. The office of the Commissioner of Customs (Preventive) was informed that the involvement of Customs Broker M/s Chhitij Sengar had been noticed in various cases such as (i) bogus export of RMG overvalued by M/s AWDH Enterprises, (ii) a case of concealment of black pepper with dry dates in import consignment of M/s DC International, (iii) case of concealment of areca-nut with dry dates in import consignment of M/s Nikate Global Trade LLP and (iv) investigation by DRI Noida in export consignment returned in Startrack CFS, where further investigations are under progress.

3. It is was also informed that Noida Customs has cancelled the permission given to the Customs Broker, under Regulation 7(3) of Customs Broker Licensing Regulations, 2018[1] to work at any ports of Noida Customs Commissionerate.

4. The investigation report submitted by Assistant Commissioner ICD Dadri/Rori vides C. No. VIII(30)Cus/ICD-DD/DRI Surat/DCI/13/2021/918 dated 21.06.2021 is as under:-

> *"(a) On specific intelligence, consignment of Dry Dates imported by M/s D C International vide Bill of Entry No.4035044 dated 22.05.2021 was detained and examined under panchanama dated 08.06.2021. The said Bill of Entry was filed by Customs Broker M/s Chhitij Sengar (ESAPS9317ECHOO1) as an authorized representative of the importer. The description of the goods was declared as Dry Dates and quantity was declared as 28 MT. The said consignment was lying at ICD Rori for clearance. The said Customs Broker was informed vide letter F. N.*

[1] CBLR, 2018

VIII(30)CUS/ICD-RORI/DRI-SURAT/DCI/13/2021 dated 04.06.2021 and subsequent reminder dated 05.06.2021 to make arrangements for examination of the said consignment. But he did not turn up till 08.06.2021. Therefore, said goods were examined under panchanama dated 08.06.2021 in presence of panchas and custodian's representative. It was found that said Customs Broker took seal cutting permission for drawl of sample for FSSAI NOC. However, he never turned up for examination. During examination, 17.876 MT of black pepper found concealed with 10 MT dry dates. The importer did not declare the goods black pepper in the said Bill of Entry. Non appearance of the said Customs Broker for examination of goods and not presenting goods for examination after taking seal cutting permission, shows that he was aware of concealment of the undeclared goods. It appears that he did not advice his client to comply with the provisions of Act, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner or Assistant Commissioner, as the case may be. It was his duty to exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to the clearance of goods. His acts proved that he has concealed the information about the goods as he opened the container.

(b) On specific intelligence, consignment of Dry Dates imported by M/s. Nikate Global Trade LLP vide Bill of Entry No.4025572 dated 21.05.2021 was detained and examined under panchanama dated 10.06.2021. The said Bill of Entry was filed by Customs Broker M/s. Chhitij Sengar (ESAPS9317ECH001) as an authorized representative of the importer. The description of the goods was declared as Dry Dates and quantity was declared as 55 MT. The said consignment was lying at ICD Rori for clearance. The said Customs Broker was informed vide letter F. N.

VIII(30)CUS/ICD-RORI/NGT/14/2021 dated 09.06.2021 to make arrangements for examination of the said consignment. However, he did not turn up again. Therefore, said goods were examined under panchanama dated 10.06.2021 in presence of panchas and custodian's representative. It was found that said Customs Broker took seal cutting permission for drawl of sample for FSSAI NOC. However, he never turned up for examination. During examination, 27.303 MT arecanuts found concealed with 28.311MT dry dates. The importer did not declare the goods arecanuts in the said Bill of Entry. The said Customs Broker did not present the consignment for examination after taking seal cutting permission, this give rise to reasonable belief that he was aware of about concealment.

(c) The Directorate of Revenue Intelligence, Noida Regional Unit had detained a container No.CCSU1633135 at INSTT6 vide IGM No.3451389 dated 29.05.2021. The said container was containing the goods earlier exported vide Shipping Bill Nos.7838098, 7837757, 7837817, 7837768, 7837818 & 7838057 all dated 11.01.2021. It was found that said Shipping Bills were filed by the said Customs Broker. It has been gathered that goods exported were sub standard quality/old/used. The involvement of said Customs Broker cannot be ruled out."

5. In cases mentioned in the preceding paras, the role of Customs Broker is alleged to be dubious as the Custom Broker failed to comply with the obligations imposed upon him under the provisions of Regulation 10 of the CBLR, 2018. It also appeared to the authorities that Customs Broker has played a key role in attempting to clear the impugned goods and mis-declaring of description of Goods deliberately and wilfully by suppressing its true and correct declaration with an intend to evade Customs Duty and therefore has deliberately violated the provisions of the Customs and other Allied Acts and also appeared to have contravened the provisions of CBLR, 2018.

6. In view of the investigation report dated 21.06.2021 of Assistant Commissioner ICD Dadri/Rori forwarded by the Joint Commissioner (Policy), Noida Customs Commissionerate vide letter dated 29.06.2021, it appeared to the authorities that M/s Chhitij Sengar, holding a Customs Broker License Registration No.03/CB/REGULAR/KNP/2015 dated 10.04.2015 (PAN: ESAPS9317E) have failed to discharge his duties as a Customs Broker. Thus, the Customs Broker appeared to have contravened the following provisions of CBLR, 2018:-

> *"(a) Regulation 10(d) which stipulates that; advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;*
> *(b) Regulation 10(e) which stipulates that; 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;*
> *(c) Regulation 10(m) which stipulates that; discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;*
> *(d) Regulation 10(q) which stipulates that; co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees."*

7. In view of the foregoing reasons, the Commissioner, Customs (Prev.), Commissionerate, Lucknow by invoking the powers vested in Regulation 16 of the CBLR, 2018, ordered for immediate suspension of the Customs Broker License Registration No.03/CB/REGULAR/KNP/2015 dated 10.04.2015, issued to M/s Chhitij Sengar. Accordingly, vide Suspension order dated 14.07.2021 issued vide File No. GEN/CB/SUS/1/2021-Technical Section, the Customs Broker License Registration No.03/CB/REGULAR/KNP/2015 dated 10.04.2015 issued to M/s Chhitij Sengar was suspended under Regulation 16(1) of the CBLR, 2018.

8. M/s Chhitij Sengar, the Customs Broker, through his agent Sri Saket Sengar has submitted a written submission dated

30.07.2021. The main points of the submission made by Sri Saket Sengar are as under:-

"(a) M/s AWDH Enterprises Case

(Bogus Export of RMG by M/s AWDH Enterprises)

That my client submitted detailed reply dated 23.06.2021 with relying upon documents to the Investigating Officer through Post as well as E-mail, that the export activity in this case was carried out after KYC confirmation from Special Investigation Branch (SIB) of Noida Customs, that during the search of his office at Kanpur by the Departmental officers no suspicious substance was found, that the export was approved by all the authorities and it was subject to and based upon bank guarantee and verification of all the documents of exporter, wherein there is no role of my clients in any manner to give any kind of approval, therefore, no role of my client whatsoever is stand proved on record in entire transaction

(b) M/s DC International Case

(Concealment of Areca-nut with dry dates in import consignment)

My client fully cooperated in the investigation and provided all the documents as required by IO/agency and it is clear that the consignment was exported by exporter by giving all the details of goods, which were neither prepared by my client nor M/s DC International rather it was mistake on the part of exporter company M/s Green Flag Trading FZE LLC, UAE in this case and M/s DC International has already given its consent to pay all the charges and penalties for wrongful import by the exporter, as it never placed any order for Black-Pepper rather his order was specific and payment was to be made for Dry Dates only, so there is nothing on the part of my client which could establish that my client prepared any documents.

In this case my client submitted detailed reply dated 25.06.2021 to the investigating officer explaining that the *consignment of 560 Bags of Dry Dates was imported by customer of my client M/s DC International for which the documentation was done by export company M/s Green Flag Trading FZE LLC, UAE in this case and in the consignment when it was examined then the IO found 17.876 MT of Black Pepper with 10 MT of Dry Dates. That the entire documentation vide BOE No.4035044 and consignment was packed and checked by the customs department before dispatching from UAE, therefore my client has no role to play in this entire scenario. That the panchnama dated 08.06.2021 has recorded wrong facts regarding my client, wherein it is recorded that none of the representative of my client came forward and avoiding his presence and not presented themselves even informing several time.*

(c) M/s Nikate Global Trade LLP Case

(Concealment of Areca-nut with dry dates in import consignment)

That my client fully cooperated in the investigation and provided all the documents as required by IO/agency and it is clear that the consignment was exported by exporter by giving all the details of goods, which were neither prepared by my client nor M/s Nikate Global Trade LLP rather it was mistake on the part of exporter company M/s Realise Implex FZE LLC, Ajman UAE in this case and M/s Nikate Global Trade LLP has already given its consent to pay all the charges and penalties for wrongful import by the exporter, as it never placed any order for Areca Nuts rather his order was specific and payment was to be made for Dry Dates only, so there is nothing on the part of my client which could establish that my client prepared any documents, rather it was mistake committed on the part of exporter/shipper by sending the wrong products i.e. Areca-Nuts instead of Dry Dates. That it was the duty of exporter company M/s Realise Implex FZE LLC, Ajman UAE to *export the goods as per order, there is no role of my client to import any wrong consignment different than the documents as the documentation was done by exporter company and it was checked and loaded by customs department of UAE before exporting, it is further submitted that the import was approved by all the authorities and it was came to the knowledge of my client as well as importer when the consignment was opened in India by customs department authorties, therefore, no role of my client whatsoever is stand proved on record in entire transaction.*

(d) Star track CFS Case (Export consignment returned back)

(i) It is submitted that there are various reasons for return of consignments, and there is no role of my client in the return of goods in any manner, neither the order was placed nor was cancelled by my client, rather it is an internal issue of exporter and importer at the port of destination, as to why the consignment was returned, my client did its duty honestly as per all the rules & regulations.

(ii) It is further submitted that the export was approved by all the authorities and it was subject to and based upon bank guarantee and verification of all the documents of exporter, wherein there is no role of my clients in any manner."

From the facts available it emerges that the matter is currently under investigation and the role of Customs Broker is still not clear.

DISCUSSION AND FINDINGS

I have carefully gone through all the facts and record of the case, including the Investigation report submitted by Assistant Commissioner ICD Dadri/Rori vides C.No. VIII(30)Cus/ICD-DD/DRI Surat/DCI/13/2021/918 dated 21.06.2021, Suspension Order dated 14.07.21, written *submission dated 30.07.21 of the agent of Customs Broker. After going through the facts of the case and the numerous provisions of several regulations of the CBLR, 2018, we proceed to adjudicate the matter regarding the proceeding for suspension of the Customs Broker License Registration No.03/CB/REGULAR/KNP/2015 dated 10.04.2015, issued to M/s Chhitij Sengar, Kanpur. It has been alleged that the licensed Customs Broker, has contravened the provisions of Regulations 10(d), 10(e), 10(m), 10(q) of the CBLR, 2018. On the plain reading of the said Regulations it is quite obvious that a Customs Broker is required to adhere the provisions of the said Regulations of CBLR, 2018 which clearly stipulates as under:-*

> *"(a) Regulation 10(d) which stipulates that; advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;*
> *(b) Regulation 10(e) which stipulates that; 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;*
> *(c) Regulation 10(m) which stipulates that; discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;*
> *(d) Regulation 10(q) which stipulates that co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees. I also observe that in his defence reply dated 30.07.2021, Customs Broker through his agent has tried to explain his position by emphasizing on the following main points:-*
> *(1) Customs Broker fully cooperated and provided all the necessary information and documents which are in the custody and possession with*

Customs Broker in all the cases under investigation.

(2) In the case of bogus export of RMG by M/s AWDH Enterprises the export activity was carried out after KYC confirmation from Special Investigation Branch (SIB) of Noida Custom, that the export was approved by all the authorities and it was subject to and based upon bank guarantee and verification of all the documents of exporter, wherein there is no role of Customs Broker in any manner to give any kind of approval, therefore, no role of Customs Broker whatsoever is stand proved on record in entire transaction.

(3) In the case of M/s DC International, he has fully cooperated in the investigation and provided all the documents as required by IO/agency, that the consignment was exported by exporter by giving all the details of goods, which were neither prepared by my client nor by M/s DC International, rather it was mistake on the part of exporter company M/s Green Flag Trading FZE LLC, UAE M/s DC International has already given its consent to pay all the charges and penalties for wrongful import by the exporter, as it never placed any order for Black-Pepper rather his order was specific and payment was to be made for Dry Dates only, so there is nothing on the part of Customs Broker which could establish that his client prepared any documents, rather it was mistake committed on the part of exporter/shipper by sending the wrong products i.e. Black-Pepper instead of Dry Dates.

(4) *In the case of M/s Nikate Global Trade LLP, Customs Broker fully cooperated in the investigation and provided all the documents as required by 10/agency and it is clear that the consignment was exported by exporter by giving all the details of goods, which were neither prepared by Customs Broker nor M/s Nikate Global Trade LLP rather it was mistake on the part of exporter company M/s Realise Implex FZE LLC, Ajman UAE M/s Nikate Global Trade LLP, has already given its consent to pay all the charges and penalties for wrongful import by the exporter, as it never placed any order for Areca-Nuts rather his order was specific and payment was to be made for Dry Dates only, so there is nothing on the part of my client which could establish that my client prepared any documents, rather it was mistake committed on the part of exporter/shipper by sending the wrong products i.e. Areca-Nuts instead of Dry Dates.*

(5) *In the case of Star track CFS Case, Customs Broker has submitted that there are various reasons for return of consignments, and there is no role of Customs Broker in the return of goods in any manner rather it is an internal issue of exporter and importer at the port of destination. Customs Broker did its duty honestly as per all the rules & regulations. The export was approved by all the authorities and it was subject to and based upon bank guarantee and verification of all the documents of exporter, wherein there is no role of Customs Broker in any manner whatsoever.*

(6) *That regarding the issue of cancelling the permission granted to his client, under Regulation-7(3) of the CBLR, 2018, to work at any ports of Noida Customs Commissionerate, Customs Broker find it totally illegal and arbitrary, and they are in the process of challenging the same order before appropriate authority as per the remedies available to it under law. Also as per Regulation 7(3) of CBLR, 2018, it is not a valid and legal order. He prayed to withdraw the suspension order dated 14.07.2021 under Regulation 16(1) of CBLR, 2018.*

I have perused case records, applicable regulations and the investigation report submitted by Assistant Commissioner ICD Dadri/Rori vides C.No. VIII(30)Cus/ICD- DD/DRI Surat/DCI/13/2021/918 dated 21.06.2021, I also find that the defence reply submitted by the agent of the Customs Broker is not satisfactory and it appeared that the Customs Broker has violated several regulations of the CBLR, 2018 as enumerated in the earlier paragraphs M/s Chhitij Sengar appeared to be wholly delinquent in the performance of his duty as a licensed Customs Broker and appeared to have committed gross breach of trust of the Customs Department.

In the light of above, I conclude that there are ample evidences which require a thorough investigation under provisions of CBLR, 2018. The investigation is presently undergoing at Noida Customs Commissionerate and therefore the suspension of the Customs Broker License Registration No.03/CB/REGULAR/KNF/2015 dated 10.04.2015, issued to M/s Chhitij Sengar, Kanpur is liable to be continued until the outcome of the investigation, when a final decision on this aspect shall be taken by the undersigned, after completion of all formalities as *enumerated under the relevant Regulations under CBLR, 2018."*

9. The Ld. Authorized Representative for the Department vehemently supports the impugned order.

10. We have considered the arguments of both sides and have perused the appeal records.

11. The sole point to be decided at this stage is whether there is a justification for continuation of the licence of the Appellant under Regulation 16 of CBLR 2018 given the facts and circumstances of the case pending further investigation and decision on revocation of licence or imposition of penalty under CBLR, 2018.

12. As far as the first allegation regarding not verifying the value of the export goods is concerned we find that the Appellant is correct in stating that the CBLR do not require or authorize the Customs Broker to determine the value of the imported or export goods. The power of valuation of the goods under Section 4 of the Customs Valuation Rules rests on (a) the exporter/importer itself in the case of self-assessment; and (b) the proper officer who can reassess the Bill of Entry or Shipping Bill so self-assessed by the exporter under Section 17. There is nothing on record to show that the Appellant had colluded with the exporter to over-value the goods. It is also on record that the goods were cleared by the proper officers who had the duty and the power to determine/re-determine the value of the export goods. It is also not unreasonable to say that 'proper officers' are more competent in the matter of understanding valuation than the Appellant Customs Broker. When the proper officers have themselves allowed the clearance of Shipping Bills, no blame whatsoever can be placed at the door of the Appellant on the ground that it had no idea of the price of the export goods. Of course, if further investigations show that the Appellant had colluded to over-value the goods, it would be different matter, but the impugned order only mentions that the Customs Broker never tried to know the real value of the Bill Bearings. Appellant

is not required to do so, therefore no allegation under Rule 10(d) *prima facie* sustain.

13. We also find that the learned Commissioner has not recorded in the impugned order that he is satisfied that there was an immediate need to stop the operation by the Appellant as required under Regulation 16 of the CBLR, 2018.

14. In view of the above, we find that the findings in the impugned order that the Appellant Customs Broker has violated Regulations 10(d), 10(e), 10(m) and 10(q) cannot be sustained and need to be set aside and we do so.

15. For these reasons, we find that the impugned order confirming the suspension of the licence of the Appellant cannot be sustained and it needs to be set aside. We make it clear that we have not drawn any conclusions regarding the final liability of the Appellant which depends upon the evidence that may be revealed during further enquiry and investigations.

16. The impugned order is set aside and the Appellant's appeal is allowed with consequential relief, if any. Miscellaneous Application also gets dismissed as infructuous.

(Operative part of the order pronounced in open court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

LKS