CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No.II

Customs Appeal No.70821 of 2024

(Arising out of Order-in-Original No.01/COMMR./CUSTOMS/LKO/2024-25 dated 22/07/2024 passed by Commissioner of Customs (Preventive), Lucknow)

M/s RKV Logistics Pvt. Ltd., ...Appellant

(A-13, Nirbhay Nagar, Gailana Road, Agra-282007)

VERSUS

Commissioner of Customs (Pre.), Lucknow....Respondent

(7^{th} Floor, Vibhuti Khand, Gomti Nagar, Lucknow-226010)

APPEARANCE:

Ms Stuti Saggi, Advocate for the Appellant
Shri A.K. Choudhary, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70761/2025

DATE OF HEARING : 19 August, 2025
DATE OF DECISION : 19 August, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Original No.01/COMMR./CUSTOMS/LKO/2024-25 dated 22/07/2024 passed by Commissioner of Customs (Preventive), Lucknow. By the impugned order following has been held:-

"ORDER

13. I, Commissioner of Customs (Prev.) Commissionerate Lucknow, in exercise of the power conferred upon me under Regulation 14 read with 17 & 18 of the CBLR. 2018, pass the following order:

i. I refrain from revoking the licence No.02/CHALR/REGULAR/KNP/2006 dated 10.05.2006 (PAN: AADCR3146G) issued in the name of RKV Logistics Pvt. Ltd, Radhey Shyam Mishra, Director (F-Card holder) *ii. I hereby order for forfeiture of entire amount of Security deposit of Rs. 75,000/- in the form of National Savings Certificates furnished by the Customs Broker under regulation 14 of CBLR, 2018.*

iii. I hereby impose penalty of Rs. 50,000/-(Rupees Fifty thousand only) on M/s RKV Logistics Pvt. Ltd. 'the Customs Broker' holding a Customs Broker License No. 02/CHALR/REGULAR/KNP/2006 dated 10.05.2006 under Regulation 18 of the CBLR, 2018."

14. This order is passed without prejudice to any other action which may be taken against the Customs Broker and their employees under the Customs Act, 1962, or any other act for the time being in force in the Union of India."

2.1 Appellant is holding a Customs Broker License No. 02/CHALR/REGULAR/KNP/2006 dated 10.05.2006 (PAN: AADCR3146G) issued by the Commissioner of Customs & Central Excise, Kanpur. The Customs broker is registered under Regulation 7(3) ibid to work in Mumbai Customs.

2.2 Acting on some information that exotic animals are being smuggled in the guise of ornamental fish by M/s Zion, the DRI officers intercepted a vehicle bearing registration number MH01DR9552 which has taken import delivery from ACC, Mumbai and brought the said vehicle back to ACC, Mumbai for detailed examination. Upon examination, the said consignment was found to have 30 boxes. All the boxes were then cut opened in presence of the Proprietor of importer M/s Zion Aquatics and and Shri Chandrashekhar Yadav, representative from the Customs Broker. Upon opening all the 30 boxes, it was noticed that in some boxes, there were turtles and other reptiles like lizards and pythons that were purposely packed in bags and kept in plastic containers hidden under trays over which fishes were placed.

2.3 After the detailed examination of 30 boxes by officers of DRI, Mumbai in the presence of importer and Shri Chandrashekhar Yadav, in coordination with the Forest Officer, Wild life Inspector, WCCB, Western Region, Navi Mumbai, Honorary wildlife Warden and President of Rescue Association for wildlife Welfare (RAWW) and Rescue Co-coordinator, RAWW, 13 boxes which contained various exotic species, 665 cxotic animals including different varieties of animals such as Turtle, Tortoise, Python, Lizard, and Iguana etc. were found. Out of the above mentioned 665 animals, 548 animals were found alive and 117 animals were found dead. The reason of mortality, as per team of RAWW and officers of WCCB, was mainly due to condensed packing, starvation during long transit and suffocation due to lack of oxygen. Thereafter, to lessen and control further mortality Shri Narayan Mane & Shri Doki Adimallaiah suggested to handover the said 548 live animals alongwith 117 dead animals to Shri Pawan Satyapraksh Sharma, Honorary wildlife Warden and President of Rescue Association for wildlife Welfare (RAWW) for temporary rehabilitation and safe upkeep. The remaining 17 boxes (out of 30 boxes) including 16 boxes containing aquarium fishes and 1 empty box alongwith 2 boxes in which fishes used as cover cargo of 13 boxes containing live exotic animals were kept, were handed over to the Custodian M/s MIAL for safe upkeep of the same. All the said proceedings were recorded under Panchnama dated 06/07.10.2022. The identified exotic animals included Alligator Snapping Turtle, Common Snapping Turtle, Iguana, Pan Cake Tortoise, Burmese Albino Python, Albino Ball python, Ball Python, Burmese Python, and Leopard Tortoise.

2.4. The said goods (live exotic animals and ornamental fishes) were seized vide seizure memo dated 08.10.2022 under Section 110 (1) of the Customs Act, 1962. The President RESQ Charitable Trust, Pune, vide their letter dated 07.10.2022 confirmed that the market value of exotic animals found was Rs.2,98,71,550/-.

2.5. To ascertain the status of Aquarium Fishes, the 16 boxes containing Aquarium fishes that were handed over to the custodian of MIPL/CZ Cold Storage for safe Keeping, were again opened and were examined by DRI officer in presence of officer from WCCB on 08.10.2022. Upon examination, it was found that majority of fishes were in living condition. On the suggestion of Wildlife Inspector, WCCB, the fishes contained in all the 16 boxes were handed over to Taraporvala Aquarium, Mumbai.

2.6 Appellant in the present case is a customs broker agent who had filed Bill of Entry for the clearance of the consignment.

2.7 After completion of the investigations, show cause notice was issued to the importer and others including Shri Chandrashekhar Yadav, Employee of the appellant to show cause as to why:-

> *"i. The species of live exotic animals as mentioned in 'Annexure-A' of SCN dated 03.04.2023 (market value of whose was found to be Rs.2,98,71,550/-) of this Show Cause are prohibited/restricted for import under Customs Act, 1962 and Wildlife Protection Act, 1972 and are also covered under Convention on International Trade in Endangered Species (CITES) should not be confiscated under sections 111 (d), (D. (). (and (m) of Customs Act, 1962 read with Section 2(33) ibid.*
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> *ii. The live ornamental fishes as mentioned in "Annexure B' of SCN dated 03.04.2023 that were used for concealing smuggled goods (live exotic animals) should not be confiscated under sections 119 of Customs Act, 1962 read with Section 2(33) ibid.*
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> *iii. The penalty should not be imposed in terms of Section 112(a) of the Customs Act, 1962.*
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> *2.23. Shri Immanvel Raja. Proprietor of M/s Zion Aquatics, was called upon to show cause to Additional Commissioner of Customs, Group I, Import ACC having office at Air Cargo Complex, Sahar, Andheri East, Mumbai-400099, as to why penalty should not be imposed upon him in terms of Section 114A4 of the Customs Act, 1962.*
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> *2.24. Shri Victor Lobo, working at M/s Pet Planct, was called upon to show cause in writing to Additional Commissioner of Customs, Group I, Import, ACC having office at Air Cargo Complex, Sahar, Andheri East, Mumbai-400099, as to why penalty should not be imposed upon him in terms of Section 112(6) of the Customs Act, 1962.*
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> *2.25. Shri Clandrashekhar Yadav, employee of the Customs Broker called upon to show cause in writing to Additional Commissioner of Customs, Group 1, Import, ACC having office at Air Cargo Complex, Sahar, Andheri*

East. Mumbai- 400099, as to why penalty should not be imposed upon him in terms of Section 112(a) of the Customs Act, 1962."

2.8 This show cause notice was adjudicated by observing as follows:-

"3.1 The Adjudicating Authority observed that the customs Broker, Shri Chandrashekhar Yadav, was aware of the contents of goods imported vide Bill of Entry No. 2743725 dated 05.10.2022. He had colluded with ShriImmanvel Raja to import and deliver such prohibited goods into the country. He was well aware that out of 30 boxes imported by Zion Aquatics. some boxes would be having prohibited animals. He also took extra money from ShriImmanvel Raja to get the prohibited goods cleared. Shri Chandrashekhar was involved in smuggling of wild animals as was also aware that the said consignment contained live animals and took Rs 5 Lakhs from Shri Immanvel Raja to clear that consignment. Shri Chandrashekhar Yadav, on the directions of the importer ShriImmenvel Raja, cleared Bill of Entry No. 2743725 dated 05.10.2022. He was aware of the contents of goods imported vide Bill of Entry No. 2743725 dated 05.10.2022. He colluded with Shri Immanvel Raja to import and deliver such prohibited goods into the country for monetary considerations.

3.2. The Adjudicating authority has found that the trio hatched a conspiracy to smuggle the exotic animals which are prohibited. The conspirators i.e. Shi Immanuel Raja. Shri Victor Lobo and Shri Chandrasekhar Yadav, jointly, performed their individual roles to smuggle the contraband. The trio, in their respective depositions has admitted the hatched conspiracy and their role in the smuggling activities, in their respective depositions. It is a settled position that admitted facts need not be proved. Further, the chat procured during investigations; act as an incriminating documentary evidence, to reveal the planned conspiracy of smuggling. It is a settled position that Customs Act is a civil act and basically proceeds on preponderance of probability, so it is settled law that every *allegation is not required to be proved with mathematical precision. It is also noticed that evidences collected in the subject case as discussed in the show cause and here clearly highlight the forgery. Further it is well settled law that the department is not required to prove its ease with mathematical precision to a demonstrable degree. The law does not require the department to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Therefore, even if some of the facets remain undisclosed during investigation, it does not tantamount to the absence of such malicious act as all other evidences goes against the Noticees.*

3.2. The Adjudicating authority has imposed following penalties on the noticees:

i. Penalty of Rs.25,00,000/- (Rupees Twenty Five Lath only) on M/s Zion Aquatics through its proprietor under section 112(a) of the Customs Act, 1962.

ii. Penalty of Rs.6,00,00,000/- (Rupees Six Crore only) on Shri Immanvel Raja proprietor of M/s Zion Aquatics under section 114AA of the Customs Act, 1962.

iii. Penalty of Rs.25,00,000/- (Rupees Twenty Five Lakh only) on Shri Victor Lobo under section 112(b) of the Customs Act, 1962.

iv. Penalty of Rs.5,00,000/- (Rupees Five Lakh only) on Shri Chandrashekhar Yadav under section 112(a) of the Customs Act. 1962."

2.9 Thereafter, vide letter dated 19.07.2023 an offence report was forwarded to the Commissioner of Customs (Preventive), Lucknow (who have issued the Customs Broker Licence) to take action against the Customs Broker under the proviso of CBLR, 2018.

2.10 Acting upon the offence report, a show cause notice dated 17.10.2023 for the contravention of Regulations 10(d) and 10(e) of CBLR, 2018 was issued to the Customs Broker under regulation 17 of CBLR, 2018 asking them to why:-

i. The licence No.02/CHALR/REGULAR/KNP/2006 dated 10.05.2006 (PAN: AADCR3146G) issued in the name of RKV Logistics Pvt. Ltd, Radhey Shyam Mishra, Director (F-Card holder) should not be revoked under the provisions of Regulation 14 of Customs Brokers Licensing Regulations, 2018, and/ or:

ii. Security of Rs. 75,000/- in the form of National Savings Certificates should not be forfeited.

iii. Penalty should not be imposed upon him under provisions of Regulation 18 of Customs Brokers Licensing Regulations, 2018."

2.11 The said show cause notice was adjudicated as per the impugned Order-in-Original dated 22.07.2024 referred in para 1 above.

2.12 Aggrieved appellant have filed this appeal.

3.1 I have heard Ms Stuti Saggi learned Counsel appearing for the appellant and Shri A.K. Choudhary learned Authorised Representative appearing for the revenue.

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 Impugned order records as follows:-

"9.1 At the outset, I do not agree with the finding of inquiry officer. The inquiry did not observe any direct involvement of the Customs Broker, F-Card holder (Radhe Shyam Mishra). The Inquiry officer stated that a deliberate and wilful wrongdoing has been done by H-Card holder in this case for which he has already been penalized and F-Card holder (RKV Logistics. Radhe Shyam Mishra) need not be punished by revoking his license for deliberate and wilful mistake of H-Card holder.

In this regard, I want to reproduce the Regulation 13(12) of CBLR, 2018 which is as below:-

"The Customs Broker shall exercise such supervision, as may be necessary to ensure 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."

From the plain reading of the above, regulation, it is evident that mere denial of the role of the Customs Broker in any misconduct of his employee cannot refrain the Customs Broker from discharging his duties as stipulated in the regulations and therefore fully responsible for all acts or omissions his employees during their employment.

9.2 I now examine charges in the Notice No. 01/COMMR./CUSTOMS/LKO/ 2023-24 dated 17.10.2023 sequentially. It has been alleged that the customs broker did not exercise due diligence in discharging their obligations as required under Regulation 10 (d) and 10 (e) of CBLR, 2018. Therefore, I would like to discuss the provisions of Regulation 10 (d) and 10 (e) of CBLR, 2018.

9.2.1 Regulation 10 (d) of CBLR. 2018: "A customs broker shall 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;"

I find that in this statement dated 29.03.2023, Shri Chandrashekhar Yadav, employee of the customs. Broker, admitted that it was informed by Shri Immanvel Raja that the said upcoming consignment may contain some boxes with fishes of mixed sizes that might not be covered in his license for import of ornamental fishes. Shri Immanvel Raja offered him little extra for clearance of the same. He looked the offer as an opportunity to earn extra money and agreed to the said offer. He used the services of Shri Ashish Yadav to collect extra money promised by Shri Immanvel Raja.

I find that Shri Chandrashekhar Yadav was well aware of the facts that out of 30 boxes imported vide Bill of Entry No. 2743725 dated 05.10.2022 by M/s Zion Aquatics, some boxes would be having prohibited animals. He had colluded with Shri Immanvel Raja to import and deliver such prohibited goods into the country for monetary considerations. The said animals were imported in the *country in violation of the provisions of Customs Act, 1962, read with ITC (HS)/the Foreign Trade Development and Regulation Act, 1992 and violation of provision of Convention of International Trade in Endangered Species of wild Fauna and Flora. Under the said Regulations in place, any import in contravention of the said provision is prohibited.*

I find that the customs broker clearly failed to advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof. He further failed to bring the matter to the notice of the jurisdictional Deputy/Assistant Commissioner of Customs. Thus, the Customs Broker has not fulfilled the obligations as stipulated under Regulation 10 (d) of CBLR. 2018.

9.2.2 Regulation 10 (e) of CBLR, 2018:"A customs broker shall 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 find that the Customs Broker has failed to ascertain whether the declared goods were being imported into India as per prevailing law. He failed to advice his client as per prevailing Acts, Regulations and Orders issued in this regard from time to time. Despite knowing the fact the said consignment would be having prohibited animals the customs broker had completed all the customs clearance procedure for the said consignment which indicates that the customs broker was hand in glove with Shri Immanvel Raja and facilitated import of prohibited animals. Thus, the Customs Broker did not fulfill the obligations as stipulated under Regulation 10 (e) of CBLR, 2018.

10. Thus, I find that the role of Customs Broker is highly unsatisfactory as the Custom Broker failed to comply with the obligations imposed upon him under the provisions of Regulation 10 of the CBLR, 2018 and failed to discharge his duties as a Customs Broker. I am of considered view that Customs Broker has contravened the Regulations 10(d) & (e) of CBLR, 2018.

11. I rely on the Hon'ble Supreme Court's decision in the case of Commissioner of Customs V/s .K.M.Ganatra and Co. in civil appeal no 2940 of 2008 where in the Hon'ble Supreme Court has approved the observation of Hon'ble CESTAT Mumbai in M/s. Noble Agency V/s Commissioner of Customs, Mumbai that:

"A Custom Broker occupies a very important position in the customs House and was supposed to safeguard the interests of both the importers and the Customs department. A lot of trust is kept in CB by the Government Agencies and to ensure appropriate discharge of such trust. the relevant regulation is framed. Regulation 11 of CBLR,2013 (now Regulation 10 of CBLR,2018) lists out the obligation of the Customs Broker. Any contravention of such obligations even without intent is sufficient to invite upon CB the punishment listed in the Regulations"

12. In view of the foregoing paras, I hold that the Customs Broker has clearly failed to discharge duties cast on him under CBLR, 2018. However, I hold that the harsh action like revocation of license of the Customs Broker would be disproportionate and hence not warranted. However, I am of the considered view that a monetary penal action is to be taken against the Customs Broker under CBLR, 2018 for violations as discussed above and also as a caution to the Customs Broker to be more careful in future."

4.3 From the facts of the impugned order, I observe that the Commissioner himself have found that the appellant himself was not responsible for any act of misconduct in terms of CBLR, 2018. He has in any case refrain from invoking the licence of Customs Broker and have ordered for forfeiture of entire amount of security deposit of Rs.75,000/- in the form of National Savings Certificates furnished by the Customs Broker under regulation 15 of CBLR, 2018. He has also imposed penalty of Rs.50,000/- under Regulation 18 of the CBLR, 2018.

4.4 Counsel for the appellant ha only pleaded for reduction in penalty imposed upon the appellant.

4.5 In view of the specific findings of inquiry officer that the appellant was not directly involved in any act of omission or commission and whatsoever have been done in respect of this consignment was done by the employee (H-card Holder) of the appellant. I also take note of the fact that entire security deposit of Rs.75,000/- has been forfeited by the impugned order. I find that the penalty of Rs.50,000/- imposed under Regulation 18 of CBLR, 2018 is bit harsh. I reduce the same to Rs.25,000/-.

4.6 Apart from the above modification in the penalty, I uphold the impugned order.

5.1 Appeal is partially allowed.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Akp