

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20332 of 2022

(Arising out of Order-in-Original No.BLR-CUSTOM-CTY-COM-03-21-22 dated 22.6.2021 passed by the Commissioner of Customs, Bangalore City Customs, Bengaluru.)

**M/s. Access World Wide
Cargo**

No.1, Shamanna Complex,
13th Cross, Kaggadasapura,
C.V. Raman Nagar Post,
Bengaluru – 560 093.

Appellant(s)

Versus

The Commissioner of Customs

Bangalore City Customs Commissionerate
C.R. Building, Queen's Road,
Bengaluru – 560 001.

Respondent(s)

Appearance:

Mr. Pradyumna G.H, Advocate

For the Appellant

Mr. K. A. Jathin, AR

For the Respondent

CORAM:

HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21278 /2023

Date of Hearing: 01/09/2023

Date of Decision: 21/11/2023

Per : R. BHAGYA DEVI

M/s. Access World Wide Cargo of the holder of Customs Broker License No. R-15/99 dated 03.05.99 in terms of the provisions of Regulation 9 (2) of Customs Brokers Licensing Regulations, 2013/2018. An offence case was booked against the exporter Aakash Distributors (P) Ltd. (ADPL) for an alleged

offence of ineligible drawback and the same was subsequently confirmed vide Order-in-Original No. 628/2019 dated 29.10.2019. During these proceedings it was found that M/s. Access World Wide Cargo knowing very well that the exporter was not eligible for drawback had filed the shipping bills under the claim of drawback, thus, failed to discharge their obligations of the Customs Broker in terms of the Customs Broker Licensing Regulations 2018. Therefore, the Commissioner in the impugned order imposed penalty of ₹ 50,000/- on the customs broker under Regulation 14 read with Regulation 18 of the Customs Broker Licensing Regulations 2013/2018. Aggrieved by this order, the appellant is in appeal before me.

2. Today, when the matter came up for hearing, the learned counsel on behalf of the appellant submitted that the Order-in-Original No. 628/2009 dated 29.10.2019 was issued confirming the demand of Rs.50,48,749/- being the ineligible drawback to be recovered from the exporter ADPL. This order also imposed penalty on the appellant under Section 114AA of the Customs Act, 1962. This order was appealed before this Tribunal and this Tribunal vide Final Order No. 20666/2021 dated 10.08.2021 held that the ineligible drawback claimed by ADPL was challenged before the revisionary authority and Section 114AA was not applicable to the Customs Broker and further, the Tribunal observed that there is no proof that there was a *mala fide* and wilful misrepresentation by the customs broker. The Tribunal also noted that the that the Commissioner had totally misunderstood

the facts and had wrongly observed that the customs broker and the exporter have been operating from the same premises and have an identical ICE code which suspected the *bona fides* of the customs broker and it was found that this finding was factually incorrect and without any basis and accordingly, the penalty was set aside. Later on, a show-cause notice was issued to the appellant on 22.12.2020 invoking the provisions of Customs Broker Licensing Regulations, 2013/2018. This show cause notice culminated into the present impugned order imposing penalty of ₹ 50,000/- for violation of the conditions laid down by the Customs Broker Licensing Regulations, 2013/2018. The learned counsel submits that the earlier order was not only set aside because of the wrong provisions of Section 114AA of the Customs Act, 1962 but also on merits. He also submits that Regulation 14 has various conditions laid down for revoking the license. After consideration relevant facts and circumstances, the Commissioner had dropped the proposal to revoke the license since none of the ingredients of Regulation 14 were attracted, penalty also should have been dropped. He also submits that under Regulation 18, penalty is imposed for contravention of any of the provisions of the Customs Broker Licensing Regulations. It is submitted by the appellant that he had in his statement clearly stated that the exporter was entitled to drawback under section 75 of the Customs Act and as claimed by the Commissioner, nowhere they had stated that the exporter had directed them to file the shipping bills even though they brought to the notice of the exporter that they were not eligible for drawback. They also

relied on the following case laws in defence of their argument that the penalty cannot be imposed when there are no cogent findings and in absence of any evidence for having violated the provisions of Customs Broker License Regulations.

- ***Kamal Sehgal Solutions Pvt. Ltd. vs. CC, Chennai: 2020 (371) ELT 685 (Mad.)***
- ***KTR Logistics Solutions Pvt. Ltd. vs. CC, Chennai: 2020 (372) ELT 689 (Mad.)***
- ***HSN Shipping Pvt. Ltd. vs. CC, Chennai: 2020 (372) ELT 689 (Mad.)***
- ***M.M. Logistics vs. CC (Airport & General), New Delhi: 2020 (373) ELT 677 (Tri.-Del.)***
- ***Manjunatha Cargo Pvt. Ltd. vs. CC, Bangalore: 2021 (375) ELT 245 (Tri.-Bang.)***

3. The Authorised Representative on behalf of the revenue reiterating the findings of the Commissioner submits that the appellant is liable to be penalised in as much as they have violated the conditions of the Customs Broker License Regulations, 2018.

4. Heard both sides. The facts of the case are not under dispute. Initially vide Order-in-Original No. 628/2009 dated 29.10.2019 passed by the Commissioner imposing penalty on the appellant under section 114AA of the Customs Act 1962, was set aside by this Tribunal vide Final Order No. 20666/2021 dated 10.08.2021 wherein it was clearly observed that the Commissioner had misled himself with the wrong facts in concluding that the appellant was involved in the illegal export. The impugned order though is an independent order issued in terms of the Customs House Licensing Regulations 2013/2018,

the offence remains the same that ineligible drawback claimed by the exporter ADPL. In the impugned order, the enquiry officer in his report found that *"It is seen from the facts of the case that the customs broker has informed the exporter about the non-availability of drawback and exporters have on their own violation opted to go for drawback under Section 75. As such, there is nothing forthcoming in the show-cause notice or the Order-in-Original that the customs broker has imparted any wrong information to the exporter. In fact, the allegation was that while they have given right caution to the exporter, they have not intimated the Department when the exporter chose to do the other way. Hence, I do not find any specific case of failure to exercise due diligence in imparting information to their client. Hence, the charge of failure to comply with Regulation 10(e) cannot be held against the Customs Broker"*. The Commissioner in the impugned order based on the findings of the inquiry officer held that *"I concur with the enquiry officer that the allegation of violations of Regulation 10(e) as unsustainable since the said provision requires due diligence in imparting to the customer. In this case, the exporter was aware of the provisions and carried out the claim of drawback on their own violation and it is not coming out that the customs broker has advised wrongly."* The Commissioner also observed that the customs broker has been functioning without any other blemish and considering that part of the drawback was dropped by the adjudicating authority he did not consider the case of grave violation inviting drastic action like revocation and accordingly drops revocation of license.

5. The Tribunal vide its Final Order had clearly held that since the exporter had challenged the eligible claim of drawback before the revisionary authority the matter was sub-judice and it also observed that the department had failed to prove that there is a *mala fide* and wilful misrepresentation by the customs broker and accordingly penalty was set aside on the set of facts of ineligible drawback claimed by the exporter. Considering all these facts and taking into account the unblemished record of the customs broker as held by the Commissioner, the penalty imposed upon the appellant is set aside. The appeal is allowed.

(Order pronounced in Open Court on 21/11/2023.)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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