

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

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 21219 of 2018

*(Arising out of Order-in-Original No.01/2018 dated
27.07.2018 passed by the Commissioner of Customs
(Preventive), Cochin.)*

Global Agencies

1st Floor, Handicraft Building
Opp. Ernakulam Warf,
Willington Island,
Cochin – 682 003.

Appellant(s)

Versus

**The Commissioner of Customs
(Preventive)**

5th Floor, Catholic Centre,
Broadway,
Cochin – 682 031.

Respondent(s)

Appearance:

Mr. Baby M.A., Advocate

For the Appellant

Mr. K. A. Jathin, AR

For the Respondent

CORAM:

HON'BLE DR. D.M.MISRA, MEMBER (JUDICIAL)

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

Final Order No. 20073 /2024

Date of Hearing: 09/10/2023

Date of Decision: 09/02/2024

Per : R. BHAGYA DEVI

The appellant, M/s. Global Agencies, who holds a regular customs licence broker was also permitted to operate in Chennai Customs Commissionerate under Regulation 7(2) of Customs Brokers Licensing Regulation (CBLR) 2013. On specific intelligence, the officers of Customs Chennai on examination of a

consignment filed by the appellant on behalf of the importer M/s. J.J. Enterprises found that some undeclared items were found in the container. It was also found that the declared value was Rs.6,53,401/- and on market survey on the undeclared items, the value was arrived at Rs.37,77,700/-. Based on the offence report, the Customs Commissionerate at Chennai issued a prohibition order prohibiting the appellant from working in Chennai Customs Jurisdiction. Based on the notice issued by the Chennai Commissionerate which was adjudicated vide Order-in-Original 24.11.2017 ordered continuation of prohibition of the customs broker under Regulation 17 of CBLR 2013. Based on this, a show-cause notice was issued by the Commissioner of Customs, Cochin and based on the detailed enquiry, the Commissioner held that the appellant had violated the conditions laid down under Regulation 11(a), 11(d) and 11(n) and accordingly for gross non-compliance of the provisions of Regulations of CBLR 2013, the license was revoked along with forfeiture of security deposit.

2. The learned counsel on behalf of the appellant submits that for the offence committed at Chennai, the Order-in-Original dated 24.11.2017 was issued on which they had filed an appeal and the Tribunal vide Final Order No.4814/2018 dated 2.5.2018 set aside the impugned order. It is further submitted that simultaneously on the same offence as mentioned above, separate show-cause notice dated 23.1.2018 was issued and was adjudicated by the Commissioner vide impugned order dated 27.07.2018 revoking the licence and forfeiting the security

deposit. Though he had brought to the notice of the adjudicating authority the fact that the proceedings by the Chennai Commissionerate was dropped by the Tribunal vide Final Order No.4814/2018 dated 2.5.2018, the Commissioner revoked the license which is harsh and impacts a large number of people and their livelihood. Accordingly, a Writ Petition No.26330/2018 was filed before the Hon'ble High Court and the Hon'ble High Court vide order date 3.8.2018 ordered status quo for one month and directed the appellant to file an appeal before the Appellate Tribunal, hence this appeal.

2.1 The learned counsel submits that the impugned order is illegal and unsustainable and is against the final order of the CESTAT which was not challenged by the Revenue. He placed his reliance on the decision of the Principal Bench in the case of **Nitco Logistics Pvt. Ltd. vs. Commissioner of Customs (General), New Delhi: 2017 (352) ELT 218 (Tri.-Del.)**. He also claims that the entire proceedings is barred by limitation as per Regulation 20(1) of the CBLR 2013 as the notice should have been issued within 90 days from the date of the receipt of the offence report. In this case, there is no offence report. Presuming that the offence committed by them was reported on 26.7.2017 and the order of prohibition was issued on 15.9.2017, the notice period expired on 14.12.2017 and therefore, entire proceedings are barred by limitation and placed reliance on the following judgments.

- (i) Masterstroke Freight Forwarders P. Ltd. vs. CC(I), Chennai-I: 2016 (332) ELT 300 (Mad.)

- (ii) Sowparnika Shipping Services vs. Commissioner of Customs, Chennai-VIII: 2017 (352) ELT 286 (Mad.)
- (iii) Commissioner of Customs, Tuticorin vs. MKS Shipping Agencies Pvt. Ltd.: 2017 (348) ELT 640 (Mad.)

3. The learned Authorised Representative for the Revenue reiterated the findings of the learned Commissioner and relied upon the following decisions:

- (i) D.M. Mehta & Bros. vs. CC (General), Mumbai: 2017 (346) ELT 477 (Tri.-Mum.)
- (ii) Interport Impex Pvt. Ltd. vs. CC (General), Mumbai: 2015 (324) ELT 744
- (iii) Sri Kamakshi Agency vs. CC, Madras: 2001 (129) ELT 29 (Mad.)

4. Heard both sides. The Bill of Entry dated 31.01.2017 was filed by the appellant on behalf of M/s. J. J. Enterprises at Customs Chennai and statement dated 26.7.2017 was recorded from Shri B. Muthuramalingam, Assistant Manager of M/s. Global Agencies, Chennai. Based on the offence committed by the Customs Broker, the prohibition order was issued on 15.9.2017 and show-cause notice was issued on 27.10.2017 by the Commissioner Customs Chennai. Based on the alleged offence at Chennai and on the basis of documents, another show-cause notice dated 23.1.2018 was issued at Cochin Commissionerate which is parent Commissionerate of the Customs Broker. The appellant has now produced Final Order No.41814/2018 dated 2.5.2018 wherein the Tribunal has observed that:

“5. From the facts it is brought out that the prohibition order is issued for the reason that the importer has not declared a few items such as aquarium lamp, plastic light clips, fish tank cleaner and trolley bags. The consignment has been declared to contain fish tanks. The weight of the allegation is that one of the employees has given a statement that no authorization was obtained from the importer M/s. J.J. Enterprises. It is seen that the appellant has obtained the authorization and produced it before the authorities. Another

allegation is that the appellant failed to verify the identity of the importer at the declared address by using independent data or information. The Hon'ble High Court in the case of Kunal Travels (Cargo) (supra) had observed that CHALR, 2004 requires exercise of due diligence by the CHA. The Hon'ble Court observed that aforesaid clauses in the Regulations do not obligate the CHA to look into such information which may be made available to him from the exporter / importer. The CHA is not an inspector to weigh the genuineness of the transaction. It is a processing agent of documents with respect to clearance of goods through customs house. It was observed that it would be far too onerous to expect the CHA to inquire into and verify the genuineness of the IEC given to it by a client for each import / export transaction. 6 When such code is mentioned, there is a presumption that an appropriate background check in this regard i.e. KYC etc. would have been done by the customs authorities. Thus, in the present case, IEC was mentioned in the documents. Therefore, appellant cannot be saddled with the obligation that they have not verified the antecedents of the importer namely M/s. J.J. Enterprises. We do not find any material ground for issuance of the prohibition order or its continuance. Moreover, it is to be stated that such continuation of the probation order without prescribing a time-limit would be by passing Regulation 20 with regard to suspension / revocation of the licence. 6. From the above discussion, we find that the impugned order cannot sustain and requires to be set aside, which we hereby do. The appeal is allowed with consequential relief, if any."

5. In view of the above, we do not find any merit in upholding the impugned order since the basis appears to be the offence committed at Chennai which has been set aside by the Tribunal Chennai Bench. Consequently, the impugned order is set aside and the appeal is allowed.

*(Order pronounced in Open Court on **09.02.2024.**)*

(DR.D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)