

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

Regional Bench Court -2

Customs Appeal No.20767 of 2023

[Arising out of the Order-in-Original No.293/2023-24 AP & ACC dated 27.09.2023 passed by the Commissioner of Customs, Bengaluru]

**M/s. Orbit Trans Express & Freight
Pvt. Ltd.,**
No.6/1, 11th Cross, 4th Main,
S.R. Nagar
Bengaluru – 560 027

...Appellant

VERSUS

Commissioner of Customs,
Airport and Air Cargo Commissionerate,
Devanahalli,
Bengaluru – 560 300

....Respondent

Appearance:

Mr. G.B.Eshwarappa Advocate for the Appellant
Mr. Rajesh Shastry, Authorised Representative for Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No. 20319 of 2024

Date Of Hearing: 07.02.2024

Date Of Decision: 30.04.2024

Per: P.A. Augustian:

M/s. Orbit Trans Express & Freight Pvt. Ltd.,
appellant is an authorized courier agent holding Courier License issued by Airport and Air Cargo Commissionerate, Bengaluru. Alleging that the appellant had abetted M/s. KT Technologies, New Delhi to import goods through Bengaluru Airport by mis-

declaring the value, proceedings were initiated and adjudication authority as per impugned order revoked the license, enforced the Bond and Bank guarantee. In addition to a of penalty Rs.50,000/- each was imposed on appellant under Regulation 14 of the Courier Import and Export (Electronic Declaration and processing) Regulation, 2010 and under section 117 of the Customs Act, 1962. Aggrieved by the impugned order present appeal is filed.

2. When the appeal came up for hearing, Learned Counsel for the appellant submits that the appellant has not committed any illegality as alleged. The entire allegation regarding non-bonafide import is made based on the statement recorded from the importer at the initial stage of investigations and later, the importer admitted that the goods are brought by her by taking assistance from others. Learned Counsel also drew our attention to finding in impugned order related to release of goods by importer Ms. Kajal Thakur, proprietress of M/s.K.T. Technologies. Respondent, released the goods, which were found illegally imported through co-notice on payment of duty and penalty on 11.01.2022 and proceedings against the importer Ms. Kajal Thakur, proprietress of M/s. K.T. Technologies and others are settled as per section 28(6)(i) of the Customs Act,1962. The Learned Counsel further submits that though the appellant had facilitated clearance of 6(six) consignments of M/s. K.T. Technologies and they was subject to open examination before clearance. Thereafter, alleging under valuation in the said

imports, the investigation was commenced. However, after Adjudication, as per the impugned order the Adjudication Authority, held that unfortunately, the investigation could not find out any under valuation or misdeclaration related to the 6(six) CBEs. The Learned Counsel further reiterated in the grounds of appeal and submits that the proceedings against the appellant is illegal and unsustainable. Learned counsel also relied on the following decisions in support of their submission.

- 1) Fle Fast Line Express Pvt. Ltd. Vs. CC
2021(378) E.L.T. 361 (Tri.-Del.)
- 2) Fastline India Vs. CC, New Delhi
-2018 (363) E.L.T. 1011 (Tri.-Del.)
- 3) H.B. Cargo Services Vs. CC, Hyderabad
-2010(261) E.L.T. 540 (Tri.- Bang.)
- 4) Manjunatha Cargo Pvt. Ltd. Vs. CC, Bangalore.
-2021(375) E.L.T.245 (Tri.-Bang.)

3. The Learned Authorised Representative (AR) for Revenue reiterated the finding and drew our attention to the findings in the impugned order and submits that there was a gross mis-declaration in the classification, description, quantity, duty etc., in the bills of entries filed for the said consignments which were intercepted. The shipments were not only filed without proper KYC verifications and authorization of the importer, but were delivered to Mr. Elias, which is in total violation of the extant legal provisions and the KYC norms. Learned AR further submits that appellant has contravened the provisions of

Regulation 12(i) of Courier Import and Export (Electronic Declaration and processing) Regulation, 2010. Learned AR further submits that the appellant had filed the CBEs and had facilitated the import of the shipments of M/s K. T. Technologies in contravention of the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010, which they are duty bound to comply. Further, appellant has not fulfilled the obligations under Regulation 12 of the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 and have also not fulfilled the commitments that they undertook in the bonds executed by them when they were issued license to operate as an Authorized Courier. They failed to adhere to the Regulations and the terms and conditions of the bond. Learned AR further submits that the bills of entry are filed by a person not entitled to file electronic declarations, for clearance of imported or export goods, as is required under Regulation 8 or Regulation 19 of the Customs brokers Licensing Regulations, 2013 and not duly authorized under Section 146 of Customs Act, 1962. Thus, appellant has contravened the provisions of Regulation 12(ii) of Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010.

4. Heard both sides and perused the records.

5. We find that as regards penalty on the appellant under Section 117 of the Customs Act, 1962, it can be invoked only where no express penalty is elsewhere provided for such

contravention or failure. However, in the present proceedings penalty is proposed by invoking penal provisions under Regulation 14 of the Courier Import and Export (Electronic Declaration and processing) Regulation, 2010. Thus, invoking the penal provision under Section 117 of the Customs Act, 1962 is unsustainable. With regard to imposition of penalty on appellant, omission/commission of the importer will not attract penalty as they act in the capacity of a facilitator of the customs transactions and they are duty bound to facilitate the authorized clearance work of importer/exporter. Therefore, as the appellant is only facilitating the customs transaction on behalf of principal, (importer/exporter), the absence of mens-rea, penalty is not imposable, otherwise all the customs transaction will come to halt, if penalty is imposed on the customs broker the omission /commission of exporter/importer. Moreover, in the impugned order Adjudication Authority itself held that there is no illegality revealed related to goods cleared through the appellant.

6. Regarding violation of the provisions of Courier Imports and Exports (Electronic Declaration and processing) Regulations, 2010, as per the evidence available on the record, proceedings initiated against the appellant is based on the initial statement recorded from the importer Ms. Kajal Thakur, proprietress of M/s. K.T. Technologies that she was not aware about the import; that there existed no GSTIN or IEC in her name..etc. Also, she denied any knowledge of clearing goods in the name of M/s K T Technologies, which were subsequently seized by CIU. However,

as evident from the Paragraph 22 of the impugned order, same Ms. Kajal Thakur, proprietress M/s K T Technologies vide her letter dated 02.12.2021 claimed the ownership of the goods seized and requested to release the shipment. It may be noted that inspite of giving such finding, adjudication authority accepted the request of Ms. Kajal Thakur made vide letter dated 02.12.2021 and 03.01.2022 and released the goods on payment of duty and penalty on 11.01.2022. Thus, the allegation regarding fraud on the Government using a dummy and bogus importer is unsustainable. Regarding violation of the Regulation 12(i) of the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010, said allegation is made on the ground that the appellant has not received any authorization for filing the courier bills of entry. However, while submitting reply to show cause notice, appellant submits that the importer is identified and appellant had carried out KYC verification such as IEC and GST registration as per information provided by Mr. Ajit. Moreover, the appellant produced Email communication as proof of authorization and thereby complied with the KYC verification. The absence of any provision which mandate receipt of KYC directly by courier agency under section 146 of Customs Act, 1962, finding of violation of the Regulation 12(i) is unsustainable.

7. Regarding violation of the Regulation 12(ii) of the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010, Shri I.S. Patil is a 'H' card holder of the

appellant and he is only carrying out co-ordination activities. The bills of entry were filed by G Card holder Shri. V.V.Suresh, who is an authorized person to file bill of entry as per section 146 of Customs Act,1962. Thus, in the absence of any evidence regarding filing of bill of entry by Shri. I. S. Patil and not 'G' Card holder Shri. V. V. Suresh, violation of the Regulation 12(ii) is unsustainable as held by the adjudicating authority.

8. As regards violation of the Regulation 12 (iv) & (vi) of the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010, the adjudicating authority held that the delivery address of the importer is in Delhi and appellant has not verified the identity of the client by using reliable, independent document. Considering the finding in ibid paras, customs authority, who had initially made allegation that the appellant assisted Shri M. Elias to commit fraud on the Government using a dummy and bogus importer accepted the letter of the importer and released the goods after adjudication to the very same importer, cannot later turn around and conclude that the import is made in the name of a bogus importer. Moreover, even as per the allegation in the SCN, there is no import of prohibited/restricted goods and there is no allegation related to goods cleared by appellant.

9. Considering the above facts and circumstances of the case, appeal is allowed by setting aside revocation of courier license and enforcement of Bond and Bank guaranty executed in

connection with registration/license. Penalty imposed on the appellant under Section 117 of the Customs Act, 1962 is set aside. Penalty imposed on the appellant under Regulation 14 of the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 is also set aside.

(Order Pronounced in Open court on 30.04.2024)

(P.A.Augustian)

Member (Judicial)

(Pullela Nageswara Rao)

Member (Technical)

Sasidhar...