

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE**

Appeal(s) Involved:

C/23262/2014-DB; C/21534/2015

[Arising out of Order-in-Original BLR-CUTM-000-COM-027-14-15 dated 10/09/2014 & OIO No.BLR-CUSTOM-000-COM-006-14-15 dt. 13/04/2015 passed by Commissioner of CUSTOMS, BANGALORE]

Shri Manjunatha Shipping Pvt Ltd

No.342, 2nd Floor, Above Sbi Bank, Hal Air
Port Exit Road
BANGALORE
KARNATAKA
560017

Appellant(s)

Versus

C.C-Bangalore-cus

C.R. BUILDING,QUEENS ROAD,
P.B.NO. 5400,
BANGALORE
KARNATAKA
560001

Respondent(s)

Appearance:

Shri A.K. JAYARAJ, Advocate
NEW NO 234, OLD NO 217,
THAMBU CHETTY STREET, I&II FLOOR,
CHENNAI
TAMILNADU
600001

For the Appellant

Shri Pakshirajan, Asst. Commissioner(AR)

For the Respondent

Date of Hearing: 05/09/2018

Date of Decision:11/12/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21867-21868 / 2018

Per : S.S. GARG

The present appeals are directed against the impugned order

dt. 10/09/2014 and dt. 13/04/2015 passed by the Commissioner of Customs whereby the Commissioner has held that the Customs House Agent (CHA) License which was valid up to 16/10/2014 is liable for revocation under Regulation 18 of Customs Broker Licence Regulations, 2013 but since the licence had already expired in the interim, the revocation is not ordered. Further the Commissioner has forfeited the security deposit of the appellant and also imposed a penalty of Rs.50,000/- under Regulation 18 of the CBLR.

2. Briefly the facts of the present case are that the appellants are holders of CHA Licence valid up to 16/10/2014. They filed a bill of Entry No.6405665 dt. 11/08/2014 in respect of Nitenpyrum, weighing 500 kgs., packed in 20 paper drums, valued at Rs.10,38,539/- and Bill of Entry No.6439810 dt. 14/08/2014, in respect of Amitraz, weighing 1000 kgs., packed in 40 paper drums, valued at Rs.7,34,005/- on behalf of the importer M/s. Aashutosh Pharmalabs, Bangalore. The allegation against the appellant is that he has only declared the chemical name of the goods and not the trade name of the imported goods and that he has misclassified the goods under CTH 2804 / CTH 2921 instead of correct classification under CTH 3808 and further allegation against the appellant is that the modus operandi was adopted to evade payment of duty and to circumvent restriction on import of insecticides in terms of the Foreign Trade Policy read with the Insecticides Act, 1968. Another allegation against the appellant is that he has not disclosed the correct address of the importer.

In view of these allegations, the Jt. Commissioner, ICD, Bangalore suspended the licence under the provisions of Regulation 19(1) of the CBLR, 2013 vide Order of Suspension dt. 25/08/2014 and the Commissioner of Customs, vide Order-in-Original dt. 10/09/2014 further ordered the continued suspension till further orders. The said order of the Commissioner dt. 10/09/2014 was challenged by the appellant in appeal No.C/23262/2014 which is tagged with another appeal No.C/21534/2015. Thereafter the Commissioner of Customs granted hearing to the appellant on 08/04/2015 and the appellant sought adjournment by one week. Thereafter the second personal hearing was fixed on 13/04/2015 and the appellant sent a letter requesting for adjournment of the personal hearing fixed on 13/04/2015 after 24/04/2015 but the Commissioner of Customs, Bangalore without granting any adjournment had passed the impugned order dt. 13/04/2015 itself and aggrieved by that order forfeiting the security furnished by the appellant in full and imposition of penalty of Rs.50,000/-, the appellant has filed the appeal No.C/21534/2015.

3. Heard both sides and perused records.

4. The learned counsel for the appellant submitted that the impugned order passed by the Commissioner is not sustainable in law as as the same has been passed without affording an opportunity of hearing to the appellant. He further submitted that on the second date of hearing itself, the Commissioner has passed the order whereas the appellant had

sought adjournment for the day. He further submitted that the allegation of the Department that the appellant has failed to inform his client regarding the requirements of Circular No.35/2011-Cus dt. 09/08/2011 is misplaced. He further submitted that it is the duty of the Department to classify the goods and if the assessee has wrongly classified it, it does not amount of misclassification. He further submitted that the appellant has classified the goods on the basis of the instructions given by the importer and it is the importer who is solely responsible for all the acts. He further submitted that the charge on the appellant that he failed to advise his clients to declare correct description and correct classification of the imported goods in compliance of the provisions of the Customs Act, 1962 and failed to bring the non-compliance to the notice of the Deputy / Assistant Commissioner of Customs is not tenable in law. He further submitted that in this case, the importer knew the description and classification and the appellant bona fide believed that there is no non-compliance of any act or circulars. Therefore the appellant has not committed any default. The learned counsel further submitted that the other allegation against the appellant is that he has failed to exercise due diligence and efficiency inasmuch as they have declared the CTH relevant for Gas despite knowing that goods imported are 'light Yellow powder' which is packed in paper drums. In reply to this allegation, the learned counsel submitted that the invoice and other documents have shown the description of the goods and accordingly the appellant has filed the classification on the basis of the invoice and other documents. He further submitted that the importer had obtained the No

Objection Certificate from the Deputy Drugs Controller (India), Chennai for the goods imported vide subject invoices. The other allegation is that the appellant was aware of the correct address of the importer yet declared the incorrect address on the relevant Bill of Entry. In reply to this allegation, the learned counsel submitted that the appellant filed the Bill of Entry based on the IEC number and the address shown in the IEC appeared in the Bill of Entry and the appellant cannot change the address shown in the IEC code and the same can be corrected by the DGFT only. Moreover, this is typographical error in the IEC code which is a curable technical error by the DGFT and the appellant has no role in the same. In reply to another allegation against the appellant that he allowed his employees to have instructions from Shri N.A. Jayaram and has failed to exercise supervision to ensure the proper conduct of the employees, the appellant submitted that Shri N.A. Jayaram is the authorized representative of M/s. Aashutosh Pharmalabs and is the son of Mr. N.S. Kumarasamy, the proprietor. Further even the Department has also taken the statement of Shri N.A. Jayaram and further the appellant is only a facilitator between the Department and the importer and he does not have power to prevent any person on behalf of the importer / exporter. He further submitted that from the very beginning, the Revenue was biased against the appellant and that is why they have not given him the hearing and the case was decided in violation of the principles of natural justice. Further No Objection Certificate and permission to import the above consignment 500 kgs. and 1000 kgs. from Deputy Drugs Controller (India), CDSCO, South Zone dt. 03/11/2014

fulfilling the requirement under the Act was submitted to the Commissioner of Customs along with the objection to the enquiry report. But in spite of that, the Commissioner has not considered the said report. The appellant has also relied upon the following decisions:-

- i. PP Dutta Vs. CC, New Delhi [2001(136) ELT 1042 (Tri. Del.)]
- ii. Falcon Air Cargo and Travels (P) Ltd. Vs. UOI [2002(140) ELT 8 (Del.)]
- iii. CC(Prev.), West Bengal Vs. Over Land Agency [2006(204) ELT 554 (Cal.)]
- iv. Thawerdas Wadhoomal Vs. CC(Gen.), Mumbai [2008(221) ELT 252 (Tri. Mum.)]

5. On the other hand, the learned AR defended the impugned order and submitted that the Commissioner of Customs has considered all the points raised by the appellant and has come to the conclusion that the appellant has not exercised the due diligence and he was aware of the material which was being imported and in spite of that he filed wrong classification of the imported goods. He further submitted that the first appeal challenging the suspension order has become infructuous in view of the fact that subsequently the revocation was proposed against him. He further submitted that the licence has already expired on 16/10/2014 and therefore the Commissioner has not revoked the licence but has only forfeited the security and imposed the penalty. He further submitted that the Commissioner has observed that the appellant has not applied for renewal of the said licence.

6. After considering the submissions of both sides and perusal of

the material on record, we find that the allegation against the appellant is that he has declared only the chemical name of the goods and not the trade name of the goods imported. In our opinion, this allegation does not have any force because the appellant has declared the classification as per the direction of the importer and if there is a wrong classification as per the Department, then they should take it against the importer because on the same classification earlier also, the importer has imported the goods. Further we find that there is no force in the allegation that the appellant has filed the wrong address of the importer because the Custom Broker has filed the address which appears in the IEC code. Further, we note that in the present case, there is a violation of principles of natural justice and the impugned order has been passed without giving proper opportunity of hearing to the appellant. Further we find that it is the importer who solely responsible for the classification and not the appellant who has limited role in filing the documents as per the advice of the importer. Further we find that the appellant has filed the No Objection Certificate and permission to import the impugned goods from the Deputy Drugs Controller, CDSCO, South Zone dt. 03/11/2014 which was filed before the Commissioner but the same was not considered. Further the decisions relied upon by the appellant clearly hold that in order to revoke the licence of the appellant, there has to be serious allegation against the Custom Broker which should be proved on record. Further we find that the Commissioner has observed that the appellant has not applied for renewal of the licence whereas the appellant has submitted that they have made application for renewal of

their licence on 09/102/104 itself by enclosing all the documents for renewal as per CBLR and has also got acknowledgment dt. 10/10/2014 and therefore finding of the Commissioner that the Custom Broker has not applied for renewal is factually incorrect.

7. In view of our discussion above, we are of the considered view that forfeiture of security and imposition of penalty on the appellant is not sustainable in view of the facts and circumstances discussed above. Therefore, we set aside the forfeiture of security and imposition of penalty. Since the licence has already expired and as per the appellant, he has already applied for renewal on 09/10/2014 itself, we direct the Commissioner to examine his application for renewal of licence and decide the same in accordance with law. The first appeal C/23262/2014 against the suspension of licence is dismissed as infructuous. Second appeal No.C/21534/2015 is partly allowed.

(Order pronounced on 11/12/2018)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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