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

Appeal(s) Involved:

C/20212/2019-DB

[Arising out of Order-in-Original No. BLR-CUSTM-000-COM-006-18-19 dated 31/01/2019 passed by Commissioner of CUSTOMS , BANGALORE-I]

United Safeway India Pvt Ltd
New No 7 Old No 82 Ground Floor 5th Cross
Waym Nanjareddy Colony Murugesh Palya
BENGALURU
KARNATAKA
560017

Appellant(s)

Versus

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

Respondent(s)

Appearance:

N. Viswanathan, Advocate
FLAT 8 A, RMS, DOOR NO 26, SOUTH MADA STREET,
SRI NAGAR COLONY SAIDPAET,
CHENNAI,
TAMIL NADU
600015

For the Appellant

Smt. Kavita Podwal,
Superintendent, AR

For the Respondent

Date of Hearing: 14/05/2019

Date of Decision:31/05/2019

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20446/2019

Per : S.S GARG

The present appeal is directed against the impugned order dated 31.01.2019 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has revoked the Customs Broker License of the appellant under Regulation 14 read with Regulation 17 of the Customs Broker Licensing Regulation, 2018 and also forfeit the security deposit of the appellant under Regulation 14 and also imposed a penalty of Rs.50,000/- on the appellant under Regulation 14 read with Regulation 17 and 20 of Customs Broker Licensing Regulation, 2018.

2. Briefly the facts of the present case are that the appellant is a customs broker carrying its operation at Bangalore Customs Station as well as Kandla Customs Station. On the basis of intelligence gathered by SIIB, Kandla regarding the mis-declaration and overvaluation in respect of the export consignments comprising of Readymade Garments in order to claim undue drawback, Rebate of State Levies, covered by Shipping Bill Nos. 6293292 and 6293441f both dated 25.05.2017 filed by the exporter, M/s. Haresh Fashion, Surat, the Said consignment was taken up for investigation by the officers and examination of the said consignments revealed that the shipping bills were processed through RMS without going to Export Appraising Section and it was noticed that there was overvaluation. On the directions of the Additional Commissioner, 100% examination of goods was undertaken and representative samples were drawn under Panchanama dated 07.06.2017 and the goods were seized vide Seizure Memo dated 07.06.2017 on the reasonable belief that the goods were liable for confiscation under Section 113 (i) of the Customs Act and the said goods were handed over to custodians M/s. A.V. Joshi & Co., CFS. Thereafter, investigation and searches were also conducted at the residence of the exporter. During the course of investigation, statements of various persons, including exporter and the customs broker and his employee were recorded and after the completion of investigation, a SCN dated 28.11.2017 was issued to the exporter on the allegation of overvaluation and wrong classification along with proposal to impose penalty on the appellant customs broker under Section 114 (iii) and 114 AA. On the basis of SCN, the

Commissioner of Customs, Kandla prima facie came to the conclusion that the appellant has violated Regulation 11 (a) (d) (e) (f) & (n) of CBLR, 2013 (now Regulation 11 (a) (d) (e) (f) & (n) of CBLR, 2018) and issued an order prohibiting them to operate at Kandla Port as customs broker. The said Order of Prohibition was challenged by the appellant before the Ahmedabad Tribunal and the Tribunal vide its order No. A/12130/2018 dated 08.10.2018 has set aside the Order of Prohibition and remanded the matter to the Adjudicating Authority to decide the case afresh after giving them sufficient opportunity of personal hearing. In the meantime, when the appeal of the appellant was pending before CESTAT, Commissioner of Customs, Bangalore, based on the Prohibition Order issued by the Commissioner of Customs, Kandla dated 01.05.2018, issued a SCN dated 02.08.2018 proposing to revoke the license granted to them under Regulation 14 of CBLR, 2018 along with proposal to forfeit the security deposit and imposition of penalty for contravention of various Regulations and also appointed Assistant Commissioner of Customs as an Inquiry Officer. Pursuant to the Order of the Tribunal, the appellant appeared before the Commissioner and the Commissioner of Customs, Kandla vide Order-in-Original dated 01.01.2019 lifted the Prohibition Order dated 01.05.2018 earlier passed and allowed the appellants to operate their business at Customs House, Kandla and other Ports in the jurisdiction of the said Commissionerate with immediate effect subject to further outcome of proceedings initiated by the Commissioner of Customs, Bangalore. Further, the Inquiry Officer appointed by the Commissioner of Customs, Bangalore conducted the in-depth inquiry and on the basis of the statements of defence and the additional submissions filed by the appellant and the other documents and affidavit filed by the exporter and by relying upon various judicial decisions submitted in his Inquiry Report dated 29.10.2018 to the Licensing Authority and a copy of which was also received by the appellant. The Inquiry Officer, after careful consideration, did not held them guilty of any of the charges of violation under Regulation 11 (a) (d) (e) (f) & (n) of CBLR, 2013 by giving sufficient and adequate reasons for such discharge. On the question of supervision, it was reported by him that customs broker lacked supervision towards the work carried out by the person employed by him who was working as a trainee with the appellant. On the basis of the said inquiry though given in favour of the appellant, the Commissioner passed the impugned order dated 31.01.2019 revoking the Customs Broker License and also forfeiting of security and imposing penalty of Rs.50,000/- on the appellant. Aggrieved by the said order, the appellant filed the present appeal.

3. Heard both the parties and perused the records.

4. Learned Counsel for the appellants submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and the various binding judicial decisions. He further submitted that the Learned Commissioner has totally ignored the findings of the Inquiry Officer even without putting the appellant to notice the reasons for his dis-agreement with any of the findings recorded in the Inquiry Report, which is the basic requirement of law as has been held in plethora of judgments resulting in gross violations of the principles of natural justice requiring his order to be set aside. He further submitted that the Commissioner has failed to appreciate that the Inquiry Report recorded sufficient reasons for arriving at the findings recorded therein after properly appreciating all the facts and law involved and by due consideration of the evidence available on record to conclude that there was no substantial evidence to prove the collusion between the appellant and the exporter in the alleged attempt to mis-declare and overvalue the export goods. He further submitted that the Adjudicating Authority in the absence of any offence report being received by him ought not to have proceeded against the appellant on the basis of Prohibition Order passed against them by the Learned Commissioner of Customs belatedly on 01.05.2018 even when the said authority had issued the SCN to the exporter and others, including the appellant herein as early as on 28.11.2017. He further submitted that the Prohibition Order passed by the Commissioner of Customs, Kandla cannot be treated as an offence report and further the said Prohibition Order was finally lifted vide Order dated 01.01.2019 and the appellant was permitted to operate at the Kandla Customs Port and other Ports. He further submitted that after lifting of the Prohibition Order, there was no need for the Commissioner of Customs, Bangalore to initiate any proceedings by issue of SCN. He further submitted that the Inquiry Officer has exonerated the

appellant against all alleged contraventions of Regulation and after the report of Inquiry Officer the Commissioner without any material on record has come to the conclusion that the appellant has contravened the various provisions of the CBLR and imposed the extreme penalty of revocation of their license. He also submitted that the extreme penalty of revocation of their license is dis-proportionate to their contravention, if any. He further submitted that the appellant at the time of filing the shipping bills verified all the documents regarding the existence of exporter, including the export documents which was counterchecked by the authorized signatories, while I.E. code of the exporter at the time of filing shipping bills was very much in existence, a fact not disputed by the Kandla Customs Authorities and which the Inquiry Officer has also righty taken into account and the same had recorded in his report that the customs broker in terms of the Circular No. 9/2010 had produced all the documents as required and the appellant has not violated the CBLR. He further submitted that the Tribunal and the High Courts have consistently considered the duties/obligations of the customs broker while filing the various documents for the imported goods and export goods. In support of his submissions, he placed reliance on the judgment of the Division Bench of Delhi High Court in the case of *Kunal Travels (cargo) v. CC, reported in 2017 (354) ELT 447 (Del.),* wherein the Hon'ble Court observed that *"if the goods do not corroborate with declaration, it cannot be deemed to be mis-declaration by CHA and hence there could be no guilt, wrong, fault or penalty on the appellant and if any doubt about the issuance of the IE code is concern, it is upto the department to take appropriate action, while the IE code is the locus standi of importer/exporter and the CHA is not expected to do a background check of the importer/exporter who approached them for facilitation services in exports and imports and the documents prepared by the CHA is based on the instructions/documents received from the importer/exporter and therefore any wrong information provided by the importer/exporter cannot be attributable as against the CHA."*

4.1. He also relied upon the recent decision of the Hon'ble Delhi High Court in the case of *KVS Cargo v. Commissioner of Customs (General), NCH, New Delhi reported in 2019 (365) ELT 392 (Del.)* wherein the Hon'ble Court observed that "a customs broker cannot be expected to carry out further investigations and independent inquiry not only about the existence of importing firm but also about its real owner which is beyond the mandate of law and the role ascribed and found against broker cannot lead to any inference of violation of the regulations failure of which had resulted in his passing the most unreasonable and unjustified order not maintainable in law." He also relied upon the decision in the case of *APS Freight & Travels Pvt. Ltd. v. CC [2016 (344) ELT 602 (Tri. Del.)* which has held that *"when the importer's details as available in IEC, PAN Cards, Bank Account and electricity have been checked by the appellant, no physical verification of importer's premises is mandated in the regulations nor it is a general requirement as per business practice and the order of revocation of license, only on the ground that on later verification the importer was not found in the indicated premises, is not justifiable., more so, when the SIIB officials during the course of investigation had found that the appellant/Customs Broker had not acted in hand in glove with the exporter and their beneficiaries, so as to benefit any pecuniary advantage."*

4.2. He further submitted that the appellant is not vicariously liable for the acts and omissions of his employee as provided under Regulation 13 (12) of CBLR, 2018, more so when the appellant immediately upon coming to know of the fact of the SIIB registering the case against the exporter, dismissed the trainee employee who had handled the work of the exporter. More so, the appellant was not having any knowledge regarding the act done by his employee. The appellant relied upon the judgment of the Hon'ble Delhi High Court in the case of *Akshey Gupta v. CC reported in 2017 (348) ELT 217 (Del.)* which has held in Para 8 as under:

> *"Furthermore, the Court is also of the opinion that the nature of the misconduct or omission alleged against the appellant and the final penalty imposed upon it have no oral imposition of proportionality. Even if the respondents were able to establish that there was omission or failure on the part of the appellant to comply with due diligence requirement, for some reason at least in the circumstances of this case, the revocation of the license which has almost a permanent effect, was not warranted at all."*

4.3. He also relied upon the following decisions in support of his submission that the extreme penalty of revocation of license was not warranted in the facts and circumstances of the present case:

- *Ashiana Cargo Services v. Commissioner of Customs reported in 2014 (302) ELT 161 (Del.) approved by the Hon'ble Apex Court in the case of Commissioner v. Ashiana Cargo Services – 2015 (320) ELT A175 (SC).*
- *Falcon Air Cargo & Travel (P) Ltd. v. CC, New Delhi reported in 2002 (141) ELT 284 (Tri. Del.).*

5. On the other hand, the Learned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, we find that initially a SCN was issued to the appellant by the Additional Commissioner, Kandla proposing to impose the penalty under Section 114 (iii) and 114 AA of the Customs Act and thereafter the Commissioner of Customs, Kandla on prime facie conclusion issued order prohibiting the appellant to operate at the Kandla Port as a customs broker. The Prohibition Order was challenged before the CESTAT at Ahmedabad and the Tribunal vide its Order dated 08.10.2018 set aside the prohibition order and remanded the matter back to the Adjudicating Authority to decide the case afresh after giving them sufficient opportunity of personal hearing. Further, we find that the Commissioner of Customs, Kandla on remand passed the Order-in-Original dated 01.01.2019 and lifted the Prohibition Order dated 01.05.2018 earlier passed and allowed the appellants to operate their business at Customs House, Kandla. While lifting the Prohibition Order, the Commissioner observed that the lifting of the Prohibition Order is subject to further outcome of proceedings initiated by the Commissioner of Customs, Bangalore. Further, we find that, in the meantime, the Commissioner of Customs, Bangalore on the basis of said Prohibition Order issued the SCN to the appellant alleging violation of various Regulations as prescribed in CBLR, 2018 and appointed the Inquiry Officer. We also find that the said Inquiry Officer after conducting of detailed inquiry and examining the documents produced by the appellant as well as the exporter has exonerated the appellant by holding that they have not violated any of the Regulations 11 (a)

(d) (e) (f) & (n) of CBLR, 2013. The only fault found by the Inquiry Officer against the appellant was lack of supervision towards the work carried out by the person employed by him who was a trainee officer. Further, we find that there is no finding of the Inquiry Officer against the involvement of the appellant in the offence committed by the exporter regarding the overvaluation of the export goods. In view of the finding of the Inquiry Officer, it was not required to pass the impugned order by the Commissioner of Customs. Further, the Commissioner has also violated the principles of natural justice without putting the appellant to notice the reasons for his dis-agreement with the findings of the Inquiry Officer which according to us is the basic requirement of law. Further, we find that various decisions relied upon by the appellant cited supra, Courts have consistently held that the extreme penalty of revocation should be invoked only when there is a clear involvement of the appellant in mis-declaring the value of the goods in order to avail pecuniary benefits. Therefore by relying upon the ratio of the various decisions cited supra, we are of the considered opinion that the impugned order is not sustainable in law and therefore, we set aside the same by allowing the appeal of the appellant.

(Order was pronounced
in Open Court on **31/05/2019**)

S.S GARG
JUDICIAL MEMBER

P. ANJANI KUMAR
TECHNICAL MEMBER

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