CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>BANGALORE</u>

REGIONAL BENCH - COURT NO. 1

<u>Appeal(s) Involved:</u>

Customs Appeal No. 21036 of 2019

[Arising out of No. CUSTM-CTY-COM-08-09-20 dated 29/10/2019 passed by Commissioner of CUSTOMS , BANGALORE-I(Appeal)]

Sri Manjunatha Cargo Pvt Ltd.
No 416 Pai Layout 14c Cross 1st Main Road
Old Madras Road
BENGALURU
KARNATAKA
560016

Appellant(s)

VERSUS

Commissioner Of Customs, Bangalore
C.R. BUILDING,QUEENS ROAD,
P.B.NO. 5400,
Bangalore
Karnataka
560001

Respondent(s)

<u>Appearance:</u>

Shri G. Derrick Sam, Advocate
AGOL ASSOCIATES
NO 17 I ST CROSS STREET 4TH AVENUE
BESANT NAGAR
CHENNAI
TAMILNADU
600090

For the Appellant

Shri K.B. Nanaiah, Asst. Commissioner(AR) — For the Respondent

CORAM:
HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER

Date of Hearing: 10/02/2020
Date of Decision:05/06/2020

<u>Final Order No. 20356/2020</u>

Per : S.S GARG

The present appeal is directed against the impugned order dt. 29/10/2019 passed by the Commissioner of Customs whereby the appellant's Customs Broker license is revoked under Regulation 14 read with Regulation 17 of Customs Broker License Regulations, 2018 (CBLR, 2018, for short) and also forfeited the security deposit furnished by the appellant. Further the Commissioner has imposed penalty of Rs.50,000/- on the appellant under Regulation 14 read with Regulation 17 and 18 of CBLR 2018.

2. Briefly the facts of the present case are that the appellant is a Customs Broker operating in Mumbai and Nhava Sheva also. The Commissioner of Customs (General), Mumbai issued three prohibition orders dt. 03/01/2019, 16/01/2019 and 20/02/2018. These prohibition orders were issued on the ground that the appellant had filed certain shipping bills on behalf of M/s. A.R.K. Enterprises, M/s. YK Trends and M/s. Otex Overseas and that the appellant had colluded with the said exporters to over value the goods for obtaining excess duty drawback. The principal allegation against the appellant was that they had not fulfilled the obligations cast upon them under Regulations 11(b), 11(d), 11(e) and 11(n) of CBLR 2013. Based on these prohibitions, the Commissioner of Customs, Bangalore suspended the licence of the appellant vide Order dt. 06/02/2019 and granted post-decisional hearing on 19/02/2019 and after hearing the appellant, the order of suspension was continued. Thereafter on 16/04/2019, a show-cause notice was issued to the appellant proposing to revoke the licence and forfeit the security deposit and impose penalty in terms of Regulation 14 of CBLR 2018. After taking the reply of the appellant, the Commissioner appointed the Inquiry Officer who submitted the Inquiry Report on 15/07/2019. The Inquiry Officer dropped the charge of violation of Regulation 11(b) and 11(e) of CBLR 2013. However, the Inquiry Officer sustained the charge of violation of Regulations 11(d) and 11(n) of CBLR 2013. thereafter, the Commissioner after considering the submissions of the appellant vide the impugned order revoked the licence of the appellant and forfeited the security and also imposed penalty of Rs.50,000/-.

3. Heard both the sides and perused the records.

4.1. The learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the provisions of the CBLR 2013 / 2018 and without considering the decisions rendered by the Tribunal and High Court. He further submitted that in para 13.1 of the impugned order, the Commissioner has held that the Customs Broker has not directly interacted with the IEC holder, hence is guilty of violating Regulation 11(d) of CBLR 2013. The learned counsel submitted that this finding of the Commissioner that the appellant had not directly interacted with the IEC holder is also factually incorrect. Further he argued that in the statements dt. 25/05/2017, referred in paras 3.4.1, 3.4.2 and 3.4.3 of the impugned order, the G card holder and Power of Attorney of the appellant at Mumbai, Shri Mohammed Yusuf Siddique has clearly stated that he had interacted with the IEC holders. He further submitted that as per the Commissioner, the IEC holders have lent their IEC to other persons and that the appellant has not brought the same to the knowledge of the Department. This finding according to the learned counsel, is without any evidence because the Commissioner has not recorded any evidence in the impugned order that the appellant knew about lending of IEC so as to bring the same to the knowledge of the Department. He also submitted that even assuming without accepting that the appellant knew about lending of IEC, the same is not an offence under the Customs Act, 1962 as held by the following judgments:-

a. Hamid Fahim Ansari Vs. CC(Imports), Nhava Sheva [2009(241) ELT 168 (Bom.)]
b. Gopal Agarwal Vs. CC, New Delhi [2015(326) ELT 593 (Tri. Del.)]
c. Proprietor, Carmel Exports & Imports Vs. CC, Cochin [2012(276) ELT 505 (Ker.)]

4.2. The learned counsel further submitted that the next allegation against the appellant is that they have not verified the antecedents of IEC holders and hence violated the provisions of Regulations 11(n)/10(n) of CBLR 2013/2018. As per the said Regulation, the Customs Broker is required to verify the correctness of the IEC number, identity of the client and functioning of the client at the declared address using reliable, independent, authentic documents data or information. As per the counsel, what is contemplated is a verification of the premises of the importer or exporter on the basis of documents /information but not the physical verification of the premises. Further the Customs Broker had followed the KYC norms as prescribed in Board's Circular No.9/2010-Cus dt. 08/04/2010. Further the Customs Broker has obtained the copies of the PAN card, Aadhar card, GST Registration Certificate, IEC certificate from all three exporters concerned. This fact is recorded in the impugned order by the Commissioner recorded in the statements of Shri Mohammad Yusuf Siddique reproduced in paras 3.4.1., 3.4.2. and 3.4.3. The learned counsel submitted that it is a settled law that physical verification of the premises of the IEC holder is not required. For this, he relied upon the following judgments:-

a. G.N.D. Cargo Movers Vs. CC, New Delhi [2017(357) ELT 1184 (Tri. Del.)]
b. Kunal Travels (Cargo) Vs. CC (I&G), IGI Airport, New Delhi [2017(354) ELT 447 (Del.)]
c. APS Freight & Travels Pvt. Ltd. Vs. CC, New Delhi [2016(344) ELT 602 (Tri. Del.)]
d. HIM Logistics Pvt. Ltd. Vs. CC, New Delhi [2016(338) ELT 725 (Tri. Del.)] - this decision has been upheld by the Hon'ble High Court of Delhi as reported in 2017(348) ELT 625 (Del.)]

4.3. He further submitted that the only allegation against the exporter is overvaluation and there is no evidence brought in the impugned order that the appellant had colluded with the exporter in overvaluing the goods. The learned counsel also submitted that the time limit as prescribed in the CBLR 2018 has not been complied with. In the present case, show-cause notice was issued on 16/04/2019 and the Inquiry Report dt. 15/07/2019 has been received by the appellant only on 07/08/2019 and hence the time limit prescribed under Regulation 17(5) of the CBLR 2018 has been violated. He further submitted that the impugned order has been passed on 29/10/2019 which is beyond the time limit prescribed as per Regulation 17(7) of the CBLR 2018. The learned counsel submitted that it has been consistently held that the time limit prescribed under the Regulation is mandatory in view of the following decisions:-

a. KTR Logistics Solutions Pvt. Ltd. Vs. CC, Chennai [Order dt. 28/11/2019 in WP No.3366 of 2019 passed by the Hon'ble High Court of Madras]
b. Santon Shipping Services Vs. CC, Tuticorin [Order dt. 13/10/2017 in CMA No.730 of 2016 passed by the Hon'ble High Court of Madras]
c. Impexnet Logists Vs. CC(General) [2016(338) ELT 347 (Del.)]
d. R.M. Purushotham Vs. CC, Chennai [Final Order No.40609/2019 dt. 26/03/2019 passed by CESTAT, Chennai]

5.1. On the other hand, the learned AR reiterated the findings of the impugned order and submitted that the time limit of 90 days prescribed under Regulation 17(5) is for submission of report and in the present case, the Inquiry Report has been submitted within the time prescribed under Regulation 17(5). he also submitted that the time limit prescribed under the CBLR regulations are only directory and not mandatory as held in the following decisions:-

a. Leo Cargo Services Pvt. Ltd. Vs. CC, New Delhi [2019(370) ELT 1750 (Tri. Del.)]
b. CC(General) Vs. Razvi Shipping Agency [2019(368) ELT 850 (Bom.)]
c. Shasta Freight Services Pvt. Ltd. Vs. Pr. Commissioner of Customs, Hyderabad [2019(368) ELT 41 (Telangana)]
d. Principal Commissioner of Customs (General), Mumbai Vs. Unison Clearing Pvt. Ltd. [2018(361) ELT 321 (Bom.)]

5.2. He further submitted that the appellant did not cooperate with the Inquiry Officer and kept taking adjournments and caused delay. He further submitted that the appellant was aware of the fact that the IEC holders are not the actual exporters and the same were being used by other persons. But the same was not brought to the notice of the Department. He also submitted that the appellant had violated of the Regulation and hence the licence has rightly been revoked.

6.1. After considering the submissions of both the sides and perusal of the material on record, we find that the allegation against the appellant is that they have violated the Regulations 11(d) and 11(n) of CBLR 2013. It is pertinent to reproduce the said Regulations which is as under:-

> *11(d) - advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;*
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> *11(n) - verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN),identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;*

6.2. Further we find that in the impugned order, the Commissioner has held that the appellant has not directly interacted with the IEC holders and is guilty of violation of Regulation 17(d) of CBLR 2013. This finding is factually incorrect because in the statements of Mr. Mohammad Yusuf Siddique, G Card holder and Power of Attorney of the appellant at Mumbai, he has stated in his statement dt. 25/05/2017 that he had interacted with the IEC holders. Further we find that as per the Commissioner, the appellant has not brought to the knowledge of the Department that IEC holders have lent their IECs to other persons. We find that there is no evidence on record brought by the Department to show that the appellant had knowledge regarding the lending of IEC. Further we find that the lending of IEC is not an offence under the Customs Act, 1962 as held in various decisions cited supra. As far as allegation against the appellant that he had not verified the antecedents of IEC holders, we find that as per Regulation, the Customs Broker is to verify the correctness of IEC number, identity of client and functioning of them at the declared address using reliable, independent, authentic documents data or information. Further physical inspection of the premises of the importer or exporter is not required under the law as well as under the Board's Circular No.9/2010-Cus dt. 08/04/2010. In the present case, the appellant had obtained copies of PAN card, Aadhaar Card, GST registration certificate, IEC certificate from all the three exporters concerned. Further we find that in the case of G.N.D. Cargo Movers cited supra, the Division Bench of the Tribunal had held in para 5 & 6 as under:-

> 5. We further note that Regulation 11 (e) requires the Customs House Agent to exercise due diligence to ascertain the correctness of any information which he imparts to clients with reference to work relating to clearance of cargo / baggage. Merely because the importer have accepted their mistake of mis-declaration of brand and quantity and have shown their willingness to pay differential duty, fine and penalty, it cannot be concluded that Customs Broker did not exercise due diligence to ascertain correctness of the information. If the said fact only is relevant for holding against the Customer Broker, then in each and every case of mis-declaration by the importer, it can be concluded that Customs Broker did not suitably informed his clients. There has to be some evidence on record to show that either the Customs Broker was aware of such mis-declaration and suppressed the same with a malafide mind or he has taken efforts to get the goods cleared from the Customs on the basis of wrong declaration made by him or has connived with the importer so as to aid and abet the wrong declaration.
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> 6. Similarly, for the violation of Regulation 11(n), the

adjudicating authority has observed that the Customs broker did not verify the antecedents, correctness of the IEC number, identity of his client and the declared address etc. We again find no merit in the charge of the Revenue inasmuch as that IEC number has been found to be correct as also the address of the importer. Further, all the importers have joined in the investigations and have given their statements. In such a scenario, it cannot be said that the Customs Broker has not adhered to KYC norms.

6.3. As far as time limit prescribed under Regulation 17(7) is concerned, we find that the Inquiry Report is dated 15/07/2019 and if we accept that the said report was submitted on the same date, even then, as per Registration 17(7) of CBLR 2018, the Commissioner is supposed to pass the order within 90 days but the Commissioner in this case has passed the order on 20/09/2019 which is beyond the time limit prescribed under Regulation 17(7) of the CBLR 2018 and as per the ratio of the various decisions cited supra by the appellant, the time limit prescribed under CBLR is mandatory and not directory. We therefore hold that the impugned order is liable to be set aside for violation of Regulation 17(7) of CBLR 2018.

7. In view of our discussion above, we set aside the impugned order on merits as well as on limitation. Consequently, the appeal of the appellant is allowed.

(Order was pronounced
in Open Court on **05/06/2020**)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

Raja...