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

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20556 of 2019

[Arising out of Order-in-Original No. BLR-CUSTM-000-COM-007-18-19 dated 04/03/2019 passed by the Commissioner of Customs, Bangalore-I]

Jetwing Freight Forwarders
No. 1, Shrisha Complex, 2nd Floor,
3rd Cross, Lalbagh Road
Bangalore – 560 027
Karnataka

Appellant(s)

VERSUS

C.C-Bangalore
C.R. Building, Queens Road,
P.B. No. 5400,
Bangalore – 560 001
Karnataka

Respondent(s)

<u>Appearance:</u>

Mr. Rajath, Advocate

For the Appellant

Mrs. C.V. Savitha, Supdt. (AR)

For the Respondent

Date of Hearing: 26/02/2020
Date of Decision: 12/06/2020

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

<u>Final Order No. 20366 /2020</u>

Per : S.S GARG

The present appeal is directed against the impugned order dated 04/03/2019 passed by the Commissioner of Customs whereby the

Commissioner has held that the appellant's license is liable for revocation under Regulation 14 read with Regulation 17 of the Customs Broker Licensing Regulations, 2018 and also forfeited the security deposit of the appellant and imposed a penalty of Rs. 50,000/- (Rupees Fifty Thousand only) under Regulation 14 read with Regulation 17 & 18 of the Customs Broker Licensing Regulations, 2018.

2. Briefly the facts of the present case are that the appellant is the holder of Customs Broker License No. R-14/2000 dated 22/08/2000 issued under Regulation 10(1) of Customs House Agents Licensing Regulations, 1984 and it was renewed from time to time and is valid up to 24/05/2024 and they are operating under Form C procedure vide Regulation 7(2) of the Customs Broker Licensing Regulations in the jurisdiction of Chennai Customs Zone. Appellant handled clearance of export consignment and filed 6 shipping bills all dated 24/10/2014 for exporter M/s. V.S. International which claimed drawback on the exports. Based on the enquiry and investigation, a show-cause notice was issued to the exporter proposing to recover the drawback granted since the exporter failed to realize the export consideration. Based on the show-cause notice to exporter, a show-cause notice was issued to the appellant alleging that the appellant failed to comply with the obligation under Regulation 10(d)(e)(n) of Customs Broker Licensing Regulations, 2018. Appellant filed detailed reply to the notices denying the allegation. In terms of Regulation 17 of the Customs Broker Licensing Regulations, 2018 enquiry report was sought from the Assistant Commissioner and the appellant filed a detailed reply before the enquiry officer in his report dated 20/12/2018 observed that there is no failure to follow Regulation 10(d) and 10(e). However, he observed that the appellant failed to verify the antecedents correctness and identity of the exporter and has violated Regulation

10(n). Appellant filed reply to the said enquiry report vide his letter dated 20/12/2018 and thereafter the Commissioner vide the impugned order upheld the revocation of license and forfeited the security deposit and also imposed penalty of Rs. 50,000/- (Rupees Fifty Thousand only) under Regulations 14, 17 and 18 of the Customs Broker License Regulations, 2018. Hence, the present appeal.

3. Heard both the parties and perused the records.

4. 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 facts and the law. He further submitted that the appellant has taken all due care in exporting goods and the export is proper and there is no dispute on exports, hence the question of imposing penalties and revoking license does not arise. He also submitted that the enquiry report of the Assistant Commissioner clearly states that there is no contravention of the Regulation 10(d) and 10(e). He further submitted that other exports by the same exporter are not in question and therefore it cannot be alleged that the antecedents of the exporter has not been verified. He further submitted that the bank account of the exporter is known to the Department and the same has been blocked also and further the exporter has appeared for enquiry once and show-cause notice has been issued to the exporter. Therefore, it is crystal clear that the existence of the exporter, background and whereabouts are not in doubt. He further submitted that there is no evidence/allegation of illegal export or involvement in illegal export. He further submitted that CHAs are processing agents for documents for the purpose of export/import and cannot be expected to act as inspectors to verify the genuineness of the IE Code. For this submission, he relied upon the following submissions:

(a) *Kunal Travels (Cargo) Vs. CC, 2017 (354) E.L.T. 447 (Del.)*

(b) *KVS Cargo Vs. Commissioner of Cus. (General), NCH New Delhi – 2019 (365) E.L.T. 392 (Del.)*

4.1. He also submitted that non receipt of export proceeds cannot be attributed to the fault or failure of CHA to impose penalty on him and revoke license. For this submission, he relied upon the following decisions:

(a) *P.V. Cargo Carriers P. Ltd. Vs. CC – 2016 (337) E.L.T. 586 (Tri.-Del.)*

(b) *M/s. Falcon Air Cargo & Travel (P) Ltd. – 2002 (141) E.L.T. 284 (Tri.-Del.)*

(c) *Lohia Travel and Cargo V. CC, New Delhi – 2001 (129) E.L.T. 668 (Tri.-Del.)*

(d) *Commissioner of Customs (General) Vs. Sainath Clearing Agency - 2015 (326) E.L.T. 548 (Bom)*

(e) *Global Linkerz United Agencies Vs. Commr. of Cus., New Delhi – 2009 (238) E.L.T. 76 (Tri.-Del.)*

(f) *DEX Logistics Vs. CC, 2019 (369) E.L.T. 1168 (Tri.-Del.)*

(g) *Apson Enterprises Vs. CC, 2017 (358) E.L.T. 817 (Tri.-Mum.)*

4.2. He further submitted that the persons whose statement were relied upon in the show-cause notice as well as the adjudication order were not examined in chief as prescribed in Section 138B of the Customs Act and hence the Order-in-Original passed relying on the statements of the said persons is erroneous and legally untenable. For this, he relied upon the following decisions:

(a) *G-Tech Industries Vs. Union of India – 2016 (339) E.L.T. 209 (P&H)*

(b) *CCE Vs. Parmarth Iron Pvt. Ltd. – 2010 (260) E.L.T. 514*

(All.)

(c) Jindal Drugs Pvt. Ltd. – 2016 (340) E.L.T. 67 (P&H)

5. On the other hand the learned AR reiterated the findings in the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, we find that in the show-cause notice issued to the appellant alleging that the appellants have failed to comply with the obligation under Regulation 10(d), (e) and (n) of the Customs Broker Licensing Regulations, 2018 and the enquiry officer after detailed enquiry held that there is no failure on the part of the appellant to follow Regulation 10(d) and (e) and he has found that the appellant has only violated Regulation 10(n) regarding non verification of antecedents and identity of the exporter. Further, we find from the evidence on record that in the present case there is no dispute with regard to the exports and the appellants have taken due care to verify the antecedents and identity of the exporter and the exporter also joined enquiry and his bank account is also known to the Department. Therefore, the allegation that the appellant has not verified the antecedents and identity of the exporter is not sustainable in law. Further, we find that in the case of **Kunal Travels** cited supra Delhi High Court held that CHAs are processing agents for documents for the purpose of export/import and cannot be expected to act as inspectors to verify the genuineness of the IE Code. Further we find that in the show-cause notice issued to the exporter, there is no allegation that the exports were not proper. Further we find that in the show-cause notice, the sole allegation is for recovery of draw back on the ground that the export proceedings were not received by the exporter. Apart from those allegation there is no allegation that exports were illegal or undue benefits of exports is obtained. Further we note that non receipt

of export proceeds cannot be attributed to the fault or failure of the CHA to impose penalty on him and revoke their license. Further, in the case of **P.V. Cargo Carriers P. Ltd.** cited supra, it was observed that CHA cannot be put to extreme action like revocation of license in the absence of evidence of misdemeanor on their part. Further in the case of **Falcon Air Cargo** cited supra, it was held that there is no case for revocation of CHA license if the CHA was not aware of the fraud committed by their employees.

7. In view of our discussion above, we are of the considered view that the impugned order revoking the license which already stand revoked vide Order-in-Original dated 03/01/2019 and forfeiting the security deposit and imposing the penalty of Rs. 50,000/- (Rupees Fifty Thousand only) is not sustainable. Therefore, we set aside the same by allowing the appeal of the appellant.

(Order was pronounced in Open Court on **12/06/2020**)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

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