CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20179 of 2020

[Arising out of Review of Order of Suspension No.VII/48/11/2020-CCP Tech dt. 19/05/2020 passed by Commissioner of Customs(Preventive), Cochin

Cochin Air Cargo Clearing House
Door No 30/369a Opposite Naval Air Port
Matsya Puri
MATSYAPURI
KERALA
682029

Appellant(s)

VERSUS

Commissioner of Customs(Preventive)
CUSTOM HOUSE, WILLINGDON ISLAND
COCHIN
KERALA
682009

Respondent(s)

Appearance:

Shri P.A.AUGUSTIAN, ADVOCATE
FAIZEL CHAMERS, PULLEPADY CROSS ROAD,
COCHIN-682018

For the Appellant

Shri P. Gopakumar, Jt. 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: 07/07/2020
Date of Decision: 14/07/2020

Final Order No. 20377 /2020

Per : S.S GARG

The present appeal is directed against the impugned order dt. 19/05/2020 passed by the Commissioner of Customs whereby the suspension and denial of renewal of licence passed vide order dt. 21/04/2020 was continued and Inquiry Officer was appointed to conduct inquiry against the appellant for violation of various regulations.

2. Briefly, the facts of the present case are that the appellant is a customs broker and holds Customs Broker Licence bearing No.01/2010 dt. 12/02/2012 valid upto 13/04/2020 issued by the erstwhile Commissioner of Central Excise and Customs, Thiruvananthapuram. Appellant is also operating under various other Customs stations including Mumbai, Tiruchirappalli, Tuticorin and Chennai. In June, 2019, M/s. Swiss Global, New Delhi approached the Branch Manager of the appellant for undertaking export activities through Trichy port. As instructed by the Branch Manager Shri Saber Ahamed Sayeed, exporter M/s. Swiss Global signed KYC form and also handed over entire documents including Importer-Exporter code (IE code) issued by Ministry of Commerce and Industry, bank account details, GST Registration certificate, PAN card and Aadhar card of the proprietor and after verifying the documents from concerned official websites, Branch Manager of the appellant accepted the documents and filed Shipping Bills Nos.4755077, 4755125, 4755148, 4755121 and 4755102 dt. 09/06/2019 through E-system duly signed by G Card holder through digital signature. There after alleging overvaluation, the goods were detained by Trichy Customs and investigation was conducted and the Branch Manager of the appellant Shri Sabeer Ahamed Sayeed appeared before the investigating officer and his statement was recorded. Thereafter, the Trichy Commissionerate issued show-cause notice No.3/2020 dt. 25/02/2020 directing the appellant to show-cause as to why penalty under Customs Act, 1962 should not be imposed. As the appellant has no role in the alleged mis-declaration of value by exporter which was the sole reason for issuing the show-cause notice, the appellant challenged the said show-cause notice before the Hon'ble High Court of Madras (Madurai Bench) by filing Writ Petition (C) 5975/2020. But due to lock down, Hon'ble High Court has not yet considered the matter. But during the

pendency of the Writ Petition, a prohibition order dt. 16/03/2020 was issued by Trichy Commissionerate against the appellant withdrawing the permission to work in Trichy Commissionerate for a month. As the appellant's licence was expiring in April 2020, to avoid any delay in getting timely extension, appellant submitted application for renewal of licence under Section 146 of Customs Act, 1962 in October 2019. While processing his application for renewal, the Commissioner of Customs in the mean time has received Order-in-Original dt. 16/03/2020 issued by the Commissioner of Customs (Preventive) Trichy prohibiting the customs broker to transact business under their jurisdiction. The said order was issued to the customs broker for contravening the Regulations 10(d), 10(n) and 13(7) of the CBLR 2018 in respect of the export made by M/s. Swiss Global, Vikaspuri, Delhi by various shipping bills cited supra. The Commissioner of Customs vide order dt. 21/04/2020 passed the order by denying the renewal of the Customs Broker licence of the appellant as well as an order for suspension of the Customs Broker licence with immediate effect until further order and there after the appellant filed reply to the order of suspension of the Customs Broker licence vide letter dt. 02/05/2020 and thereafter the impugned order dt. 19/05/2020 was passed by the Commissioner of Customs upholding the denial of renewal as well as continued suspension of CHA licence of the appellant and appointed Shri Sunny K Joseph, Asst. Commissioner, Customs Technical Section, Customs Preventive Commissionerate, Cochin as Inquiry Officer to conduct the inquiry under Rule 17 of CBLR 2018.

3. Heard both the parties and perused the records.

4.1. 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's licence was valid up to 13/04/2020 and he has also applied for renewal of the same in October 2019 but the same was not processed. He further submitted that when the appellant submitted Bills of Entry and Shipping Bills after 13/04/2020, it was not processed and thereafter they made representation on 20/04/2020 but without considering the said representation, the respondent issued the suspension order dt. 21/04/2020 without affording an opportunity of personal hearing and also denied the renewal of the licence. He further submitted that the appellant have not violated the provisions of the regulations of CBLR 2018 and has made proper inquiries on the basis of documents furnished by the exporter and has also produced the copy of the website where the exporter M/s. Swiss Global have been issued GST and Import & Export Code (IEC). He further submitted that the alleged illegality is carried out on 14/06/2019 and there is no reason or justification to invoke the provision under Rule 16 of CBLR 2018 for immediate suspension of the licence. He also submitted that once the licence has already expired on 13/04/2020, there was no need to pass an order of suspension of the licence and the order of suspension and denial of renewal of licence simultaneously is, prima facie, illegal and against the law. He further submitted that the alleged violation committed by the appellant wherein penalty was imposed on the appellant earlier were wrongly relied upon by the Commissioner for denial of the renewal of the licence because he has challenged all those decisions by filing the appeals before the CESTAT and which are pending. He further submitted that the learned Commissioner has relied upon the statement of the Branch Manager working in Cochin whereas the fact of the matter is that Mr. Sabeer Ahamed Sayeed who was the Branch Manager at Trichy was handling the export activities and he made the statement before the investigating officer during the course of investigation and has submitted that exporter has submitted all the documents which were verified by them and thereafter only the shipping bills were filed. He further submitted that the Commissioner has wrongly relied upon the statement of previous G Card holder who was placed under suspension for cheating the company and a police report was lodged against him and the copy of the letter written by the appellant to Assistant Commissioner of Customs, Trichy as well as police report was also placed on record. The learned counsel relied upon various decisions of the High Court and the Tribunal to buttress his argument that whatever responsibility and obligations which a CHA is under obligation to fulfil have been fullfilled in the present case and the allegation of violation of the regulation by the respondent is bad in law. Learned counsel relied upon the decision of the Division Bench of the High Court of Delhi in the case of Kunal Travels (Cargo) Vs. CC [2017(354) ELT 447 (Delhi)] wherein the High Court while dealing with the application of the CHA had held that "if the goods do not corroborate with the declaration, it cannot be deemed to be misdeclaration by the CHA and hence there could be no guilt, wrong, fault or penalty on the appellant and if any doubt about the issuance of IEC is concerned, it is up to the Department to take appropriate action, while the IEC is the locus standi of the importer/exporter and the CHA is not expected to do a background check of the importer/exporter who approaches them for facilitation services in exports and imports and the document 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 attributed as against the CHA". He also relied upon the judgement of the Delhi High Court in the case of KVS Cargo Vs. CC(General), NCH, New Delhi [2019(365) ELT 392 (Del.)] wherein the Hon'ble High Court observed that "a Customs Broker cannot be expected to carry out further investigations and independent enquiry 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 the broker cannot lead to any inference of violation of regulations failure of which had resulted in his passing the most unreasonable and unjustified order not maintainable in law”. Further the CESTAT, Delhi in the case of APS Freight & Travels Pvt. Ltd. Vs. CC [2016(344) ELT 602] held that "when the importer’s details are available in IEC, PAN card, 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 licence, 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 officers during the course of investigation had found that the appellants/customs broker had not acted in hand-in-glove with the exporter and their beneficiaries, so as to benefit any pecuniary advantage". Besides the above said decisions, the appellant also relied upon the following decisions:-

i. Ashiana Cargo Services Vs. CC(I&G) [2014(302) ELT 161 (Del.)]
ii. Exim Cargo Services Vs. CC(General) [2019(368) ELT 1024 (Del.)]
iii.Amritlakshmi Machine Works Vs. CC(Import) [2016(335) ELT 225 (Bom.)]
iv. East West Freight Carriers P. Ltd. [1995(77) ELT 79 (Mad.)]

4.2. He further submitted that denial of renewal vide order dt. 21/04/2020 is violation of the principles of natural justice as no opportunity was given to the appellant.

5. On the other hand, the learned AR filed his written submissions wherein he has reiterated the findings of the impugned order. He further submitted that the impugned order was passed duly under the authority of law vested with the respondent under the CBLR 2018. He further submitted that the suspension of licence was ordered by the Commissioner of Customs on 21/04/2020 based on the Order-in-Original dt. 16/03/2020 issued by the Commissioner of Customs (Preventive), Trichy prohibiting the appellant to transact business under their jurisdiction. He further submitted that the said order of prohibition was issued for contravening the Regulations 10(d),

10(n) and 13(7) of CBLR 2018 in respect of export violation unearthed by Trichy commissionerate. The learned AR also admitted that the appellant's licence was valid up to 13/04/2020 and his renewal application was pending at the time when prohibition order was issued. He further justified the denial of renewal as well as suspension order alleging violation of Regulations 10(d), 10(n) and 13(7) of CBLR. He further submitted that the appellant is a habitual offender and has been punished earlier for violation of regulation. He also admitted the pendency of appeal before the CESTAT wherein penalty was imposed on the appellant. He also admitted that the inquiry proceedings were going on and till the inquiry is completed, his licence should not be renewed. He relied upon the decision of the Karnataka High Court in the case of Capricon Logistics Pvt. Ltd. Vs. CC, Bangalore [2018(360) ELT 497 (Kar.)] and the decision of the Tribunal in the case of Poonia & Brothers Vs. CC(Preventive), Jodhpur [2018(363) ELT 134 (Tri. Del.)].

6. After considering the submissions of both the parties and after going through the various judgments relied upon by both the parties, we find that the Commissioner of Customs vide his order dt. 21/04/2020 rejected the renewal of the customs broker licence of the appellant which had already expired on 13/04/2020 and also ordered for suspension of the licence on the basis of Order-in-Original(Prohibition) order dt. 16/03/2020 issued by the Commissioner of Customs, Trichy prohibiting the appellant to transact the business under their jurisdiction. Further, we find that in the said order of the Commissioner of Customs, Trichy, the allegation against the appellant is that they have contravened the Regulations 10(d), 10(n) and 13(7) of CBLR 2018 in respect of the export made by M/s. Swiss Global by filing various shipping bills dt. 09/06/2019. Further we find that the appellant had already applied for renewal of his licence by moving an application in the month of October 2019. Further we find that the order dt. 21/04/2020 whereby the renewal of Customs Broker licence

has been denied by the Commissioner was passed without following the principles of natural justice and without affording an opportunity of hearing to the appellant which is clear violation of principles of natural justice especially when his application for renewal of licence is already pending. Further we find that once the Customs Broker licence of the appellant has already expired on 13/04/2020, there was no need to pass an order of suspension because after 13/04/2020, the Bills of Entry filed by the appellant were not processed by the Customs. Therefore in our considered view, the suspension order dt. 21/04/2020 is premature. Further, we find that while passing the impugned order, the Commissioner has not considered the various judgments relied upon by the appellant cited supra wherein the High Court as well as the Tribunal from time to time has held that the Customs Broker is not supposed to physically visit the premises of the importer/exporter and if he verifies the documents on the basis of the official records, then he cannot be alleged to have violated the regulations of CBLR. Further we find that after the impugned order dt. 19/05/2020 was passed upholding the denial of renewal as well as suspension of licence, an inquiry was ordered by the Commissioner, under Regulation 17 of CBLR 2018, which is still pending and has not been completed. Since the enquiry is pending, the finding of the Commissioner in the impugned order that the appellant has violated Regulations 10(d), 10(n) and 13(7) of CBLR 2018 is without any basis because the appellant has submitted that he has not violated the regulations on the basis of the decisions rendered by the Tribunal and the High Court. The decisions relied upon by the learned AR are not applicable to the facts of the instant case and are distinguishable. Further we find that the show-cause notice issued to the appellant by Trichy commissionerate is pending before the High Court of Madras (Madurai Bench). In view of the above, we are of the considered view that during the pendency of the enquiry ordered by the Commissioner of Customs, the Commissioner should not have denied the renewal, more so, when there are extra ordinary circumstances prevailing in the country on account of spread of pandemic Covid19 during which the appellant is supposed to pay the wages to its employees as per the instruction issued by the Government of India. Further, keeping in view the livelihood of the appellant and the fact that enquiry is still pending regarding the violation of regulations against the appellant, we are of the view that the impugned order is not sustainable in law and therefore we set aside the same and direct the Commissioner of Customs to allow the appellant to carry on his business of CHA during the pendency of enquiry except at Trichy Commissionerate where the alleged violation took place. We further expect that the Inquiry Officer will conclude the inquiry expeditiously and will take into account the decisions rendered by the Tribunal and High Court cited supra while concluding the inquiry. In view of this, the present appeal is disposed of on above terms.

(Order was pronounced
in Open Court on 14/07/2020)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

Raja...