

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Application(s) Involved:

C/Stay/20158/2020
in
Customs Appeal No. 20371 of 2020

Appeal involved:

Customs Appeal No. 20371 of 2020

[Arising out of No. BLR-CUSTOM-000-COM-005-20-21 dated 28/09/2020
passed by the Commissioner of Customs , Bengaluru-1]

**Delta Infralogistics (Worldwide)
Ltd.**

Unit No. 407, Barton Centre
No. 84, M.G Road
Bengaluru - 560 001
Karnataka

Appellant(s)

VERSUS

C.C-Bangalore

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

Respondent(s)

Appearance:

Shri G.B. Eswarappa, Advocate
#1711/1712
5th Main Road, Judicial Layout, Opp.Jakkur
Aerodrome, Adjacent: G.K.V.K (Uas)
Bengaluru - 560 065
Karnataka

For the Appellant

Shri Narendrababu Byhatti,
Superintendent (AR)

For the Respondent

CORAM:

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

Date of Hearing: 05/11/2020

Date of Decision: 18/11/2020

Final Order No. 20825 /2020

Per : S.S GARG

The present appeal is directed against the impugned order dt. 28/09/2020 passed by the Commissioner of Customs whereby the Customs Broker licence of the appellant is revoked under Regulation 14 read with Regulation 17 of the Customs Broker Licensing Regulation 2018(CBLR, 2018 for short) and also ordered for forfeiture of security deposit and further imposed a penalty of Rs.50,000/- under Regulation 14 read with Regulation 18 of the CBLR 2018.

2. Briefly the facts of the present case are that the appellant are holders of Customs Broker Licence dt. 12/05/1999 issued by the Commissioner of Customs, Bangalore which is valid up to 24/03/2024. The appellant filed a Bill of Entry for customs clearance of import cargo viz. Aluminium Tool Case and Packaging Material of M/s. Arihant Industries through Nava Sheva port vide Bill of Entry No.3616745 dt. 12/06/2019. On suspicion, the Customs put on scan hold necessitating open examination by the Customs. While the container was in the possession of the Customs, the allegation on the appellant is that their executive has broken the seal of the container without the permission of the proper officer and thereby violated various regulations of CBLR 2018. On this allegation, a show-cause notice was issued and enquiry was marked to the enquiring officer and the enquiry officer submitted his report and held the appellant is guilty of violation of Regulation 10(d) and Regulation 13(12) of CBLR 2018 and dropped the violation of Regulation 10(m). Thereafter on the basis of enquiry report, the impugned order was passed revoking the licence of the appellant along with forfeiture of security deposit and imposition of penalty.

3. Heard both sides 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 and the documents which were in favour of the appellant. He further submitted that the appellant's Executive filed the Bill of Entry of the imported goods stuffed in container and the container containing the imported goods was put on 'SCAN HOLD' which generally indicates physical examination of the goods by the Customs. For the said purpose, the Customs endorsed the Bill of Entry for examination. The Customs Broker Executive carried the Bill of Entry, showed it to the Customs Examiner and took the Bill of Entry to the Custodian for job order to move the container to the examination area and to enable seal cut to facilitate open examination by the Customs. Custodian issued the job order and the Customs Broker Executive saw the Customs examiner examining the goods on the adjacent lane and with a view to keep things ready for examination, he called one Shantaram, the designated seal cutter who on seeing the job order cut the seal. The Customs Broker Executive look for the Customs Examiner and he was not seen around, he immediately went to his chamber and informed that the seal was cut to facilitate examination and accordingly, requested him to examine the goods. The Customs Examiner informed him that he would examine the goods on the following day but directed the Customs Broker Executive to put a local seal and show the proof of it to him. The Customs Broker Executive did it accordingly and showed the proof of securing the container with local seal and this incident took place on 20/06/2019. He further submitted that the appellant pursued the matter repeatedly with the Customs Examiner for examination and after around a month at the initiation of Customs Examiner, the matter was referred to Customs SIIB for investigation etc. The Customs SIIB sought explanation from the Customs Broker Executive and accordingly the Customs Broker Executive submitted explanation vide letter dated 18/07/2019. The SIIB conducted physical examination of the goods, recorded the statement of the importer and

submitted its investigation report dated 07/08/2019 to the effect that the declared quantity is 2170 pieces while they found excess quantity of 115 pieces and accordingly recommended adjudication of the case and release of the goods on payment of differential duty. Further in line with the SIIB recommendation, the Assistant Commissioner of Customs, Nhava Sheva adjudicated the matter vide Order-in-Original No. 301/2019-20 dated 19/08/2019 demanding differential duty of Rs. 55,973/- (Rupees Fifty Five Thousand Nine Hundred and Seventy Three only), redemption fine of Rs. 22,000/- (Rupees Twenty Two Thousand only) and penalty of Rs. 15,000/- (Rupees Fifteen Thousand only) from the importer Arihant Industries and the same was paid by the importer Arihant Industries and the matter was closed. He also submitted that subsequently upon reference the Commissioner of Customs, Bengaluru issued show-cause notice dated 28/02/2020 to the Customs Broker-appellant under Regulation 17 of the Customs Broker (Licensing) Regulation, 2018 alleging to the effect that the Customs Broker has not advised his client, the Customs Broker has not discharged his duties with utmost speed and efficiency, the Customs Broker has cut the seal of the container without permission of the proper officer and also in the absence of proper officer, and the same was a case of misconduct by the employee of the Customs Broker. He further submitted that the show-cause notice was enquired into by the enquiry officer and he submitted his report to the Commissioner and the Commissioner after affording an opportunity to the appellant passed the impugned order revoking the licence of the appellant and forfeiting the security deposit and also imposing penalty of Rs. 50,000/- (Rupees Fifty Thousand only). He further submitted that the impugned order has been passed without properly understanding the truth in the matter as the custodian, the seal cutter, examiner did not participate in the proceedings which is a serious violation of the principles of natural justice. Further, the seal was cut by the seal cutter after seeing the job order. He further submitted that the punishment given to the appellant is harsh and disproportionate to the

alleged gravity of the offence. No allegation has been proved against the appellant and the entire impugned order is passed on assumptions and presumptions. He further submitted that there is no allegation against the appellant that the seal was cut with mala fide intention as the entire operation was done in the Customs area itself. In support of his submission that the punishment is disproportionate to the offence, the learned counsel relied upon the following decisions:-

- a. *Shri Ganesh Shipping Agency Vs. CC, Bengaluru* [2011 (271) E.L.T 236 (Tri. Bang.)]
- b. *ARK Logistics (P) Ltd. Vs. CCE, Hyderabad* [2010 (261) E.L.T 648 (Tri. Bang.)]
- c. *Transfreight Marine Services P. Ltd. Vs. CC (Seaport-Import), Chennai* [2016 (343) E.L.T 295 (Tri. Chennai)]
- d. *CC (Exports), Nhava Sheva Vs. Sohail Firoz Kazani* [2015 (329) E.L.T 481 (Tri. Mum.)]
- e. *Ashiana Cargo Services Vs. CC (I&G)* [2014 (302) E.L.T 161 (Del.)]
- f. *A.M. Ahamed & Co. Vs. CC (Imports), Chennai* [2014 (309) E.L.T 433 (Mad.)]

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

6. After considering the submissions of both the parties and perusal of the material on record and the decisions cited supra, we find that the only allegation against the appellants is that their Executive has broken the seal without proper authorization and thereby have violated the Regulation 10(d) and Regulation 13(12) of CBLR 2018. The defense of the appellant from the very beginning is that they have submitted the explanation to the Assistant Commissioner of Import, SIIB, Nhava Sheva and as per that the Customs endorsed the Bill of Entry and thereafter job order was issued by the Custodian and the seal was cut by the Seal Cutter Shri Shantaaram after informing the

Examining Officer. Further we find that the enquiry officer in spite of the fact that the appellant raised this objection, did not bother to examine the Seal Cutter Shri Shantaaram who allegedly cut the seal after seeing the job order issued by the Custodian. Further we find that the entire operation was done in the customs area and this is normal practice which is followed to facilitate physical examination by the Customs. Further, we find that there is no material on record to attribute any mala fide on the part of the Customs Broker executive and there is no evidence which has come on record suggesting he acted with mala fide in order to gain any advantage. We also find that had the enquiry officer conducted the full enquiry with the participation of Seal Cutter, Custodian and the Customs Examiner along with Bill of Entry, job order etc., the role played by the appellant could have been surfaced. Further, we find that the Madras High Court in the case of A.M. Ahmed & CO. in para 28 has held as under:-

28. But, what the first respondent has failed to take note of, is the fact that the revocation of licence now ordered by the first respondent, throws the petitioner out of business once and for all and deprives them of their very livelihood. Once the importer has escaped with a nominal fine on the ground that a true and full disclosure had been made, it would be unfair to impose the extreme penalty upon the petitioner. Therefore, the petitioner is entitled to succeed on both grounds. Hence, the writ petition is allowed and the impugned order is set aside. No costs. Consequently the M.P. is closed.

7. We also find that in the investigation conducted by the SIIB Branch, nothing adverse has been recorded against the appellant. In view of the facts and circumstances and the evidence on record, we

find that the impugned order revoking the licence and imposing fine and penalty on the appellant thereby depriving them of their livelihood, is not justified and hence we set aside the impugned order by allowing the appeal of the appellant. Stay petition also disposed of.

(Order was pronounced in Open Court on ...8/11/2020.)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

Raja...