CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20445 of 2020

[Arising out of Order-in-Original No. 01/2020 CusTech.CCP, Kochi dated 16/11/2020 passed by Commissioner of Customs(Preventive), COCHIN]

Cochin Air Cargo Clearing House
Door No 30/369a Opposite Naval Air Port
Matsyapuri
COCHIN
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: 19/01/2021
Date of Decision: 18/02/2021

Final Order No. 20036 /2021

Per : S.S GARG

The present appeal is directed against the impugned order dt. 16/11/2020 passed by the Commissioner of Customs(Preventive), Cochin whereby the learned Commissioner has revoked the licence of the appellant under Regulation 17 read with Regulation 14 of the

Customs Broker Licensing Regulations 2018 (CBLR, for short) and also forfeited the security deposit under Regulation 14 of CBLR and further imposed penalty of Rs.50,000/- under Regulation 18 of CBLR, 2018.

2. Briefly the facts of the present case are that the appellant was 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 was 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 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. Thereafter the Inquiry Officer after following the due process conducted the inquiry and submitted its report vide letter dt. 04/09/2020 and thereafter, after considering the report of the Inquiry officer and after providing an opportunity of hearing to the appellant, the learned Commissioner accepted the Inquiry Report and passed the impugned order.

3. Heard both sides and perused the records.

4. The learned counsel for the appellant submitted that the impugned order passed by the learned Commissioner is not sustainable in law as the same has been passed without appreciating the facts and law. He further submitted that this Tribunal vide its Final Order dt. 14/07/2020 found that the allegations regarding the violation of CBLR were unsustainable in law. He further submitted that while passing the Final order dt. 14/07/2020, the Tribunal set aside the order of the Commissioner dt. 19/05/2020 as unsustainable in law and directed the learned Commissioner to allow the appellant to carry on his business of CHA during the pendency of inquiry except at Trichy Commissionerate where the alleged violations took place. He further submitted that the Tribunal directed the Inquiry Officer to conclude the inquiry expeditiously and while concluding the inquiry to take into account various decisions rendered by the Tribunal and the High Court which were relied upon by the appellant. The learned counsel further submitted that both these directions of the Tribunal have not been considered by both the authorities below. He further submitted that no fresh evidence was brought by the Revenue before the Inquiry Officer as well as before the Commissioner to prove that the appellant had information, knowledge or have connived in the overvaluation of the goods or misdeclaration etc. He further submitted that both the authorities have ignored the decisions rendered by the Tribunal and the High Court which were relied upon by the Tribunal while passing the Final Order dt. 14/07/2020.

5. On the other hand, the learned AR reiterated the findings of the impugned order and submitted that the Inquiry Officer also upheld the violations of Regulations 10(d), 10(n) and 13(7) of CBLR by the appellant. He further submitted that the appellant is a habitual offender and had been punished for earlier violations of CBLR. He also admitted to the pendency of the appeal before the Tribunal wherein penalty was imposed on the appellant. He also submitted that the

impugned order was issued after inquiry duly completed under the provisions of CBLR, 2018.

6. After considering the submissions of both the parties and perusal of the Inquiry Report and the impugned order, we find that the Tribunal vide its order dt. 14/07/2020 has considered the alleged violation of Regulations 10(d), 10(n) and 13(7) of CBLR 2018 in respect of the export made by M/s. Swiss Global, New Delhi by various shipping bills filed by the appellant as CHA. After considering the material on record, we, by our detailed order, held that the order dt. 19/05/2020 passed by the Commissioner of Customs upholding the denial of renewal as well as continued suspension of licence was not sustainable in law and we set aside the same. We also noted in our order that when the inquiry was pending, the Commissioner should not have denied the renewal of licence of the appellant for the alleged violation of the CBLR, 2018. Further we find that in the present case, the Department has failed to bring any corroborative evidence or statement of anybody on record to prove that the appellant had information, knowledge or have connived in the overvaluation of the goods or mis-declaration etc. We also note that the law is well settled that an element of *mens-rea* or direct or indirect involvement attributable to the appellant through active knowledge or connivance is required to prove in a proceedings under CBLR, 2018. We noted a series of judgments in our order dt. 14/07/2020 but both the authorities have not considered the same at all. Both the authorities have not even distinguished the authorities relied upon by the appellant and have been noted in the order dt. 14/07/2020. From the perusal of the impugned order, it appears to us that the learned Commissioner was bent upon revoking the licence of the appellant in spite of the fact that the appellant were not responsible for violating the regulations as alleged against them. The impugned order is passed on the same lines as was passed by the learned Commissioner on 19/05/2020. In view of this, we are of the considered view that the

impugned order is not sustainable in law and therefore we set aside the same. Since the appellant's CHA licence has already expired on 13/04/2020, we direct the appellant to apply afresh for their CHA licence and thereafter the learned Commissioner will decide afresh the renewal of the licence of the appellant in accordance with law. With these directions, we dispose of the present appeal.

(Order was pronounced
in Open Court on 18/02/2021)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

Raja...