CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 60431 Of 2020

[Arising out of OIO No.CUS/ASR/2020 dated June 2020 passed by the Commissioner of Customs (Preventive), Amritsar]

M/s Karan Logistics **: Appellant**
Flat No.19, 1st Floor, A8C,
White House, Viswakarma Colony,
Mehrauli Badarpur Road
New Delhi-110044

Versus

The Commissioner of Customs,
Amritsar **: Respondent**
Preventive Custom House, C.R. Building,
The Mall, Amritsar, Punjab-143001

APPEARANCE:
Shri Naveen Malhotra, Advocate for the Appellant
Shri Anurag Kumar and Shri Harish Kapoor, Authorised Representatives for the Respondent

CORAM:
HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.60411/2024

Date of Hearing: 04.07.2024
Date of Decision: 09.07.2024

Per: P. ANJANI KUMAR

On the basis of specific intelligence as regards mis-declaration of description value and quantity of the goods, declared to be back-cover for mobile (unbranded) and tempered glass for mobile (unbranded), imported by M/s Bisht International, vide Bill of Entry No.2465504 dated 15.07.2017, imported goods were examined by the officers of Preventive Commissionerate, New Customs House, New Delhi; it was found that the declared items were sought by 42,200
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Nos. and undeclared items like Holograms, Hands Free Packing materials for hands free, Speaker attachment i.e. Jali (Bose), LCD and touch screen, LCD for 4s and 5s I-Phone, Touch LCD 6", Glamcomm matte lipstick, Nike Running/ Zoom shoes, shoes of Adidas Equipment (made in Vietnam and wrist watch of Rolex, Michael Kors, Police, Ulysee Nardin, Hublot, Rado, Tissot, Fossil, Emporio, Armani, Cartier, Tag, Heuher, DIOR-VIII were found; total value was found to be Rs.73,74,526/-; the goods were seized; on culmination of the proceedings, the said goods were confiscated and a penalty of Rs.1,00,000/- was imposed, *inter alia,* on Smt. Savinder Sharma, F-Card holder of M/s Karan Logistics (the appellant); on the basis of the information received from New Delhi Customs House, Commissioner of Customs (Preventive), Amritsar issued a Show Cause Notice to the appellant Customs Broker and vide impugned order revoked the license of the appellant Customs Broker and imposed a penalty of Rs.50,000/- on them. Hence, this appeal.

2. Shri Naveen Malhotra, learned Counsel for the appellant, submits that the impugned license was earlier revoked by Commissioner vide Order-in-Original dated 05.09.2018; on an appeal filed by the Custom Broker, CESTAT vide Order dated 21.05.2019 set aside the impugned order; the order of the CESTAT was not implemented and taking the plea of mis-declared consignment for which Bill of Entry No.2465504 dated 15.07.2017 was filed by the appellant on behalf of M/s Bisht International; a show cause notice was issued to the proprietor of the appellant imposing penalty under

Section 117 of the Customs Act, 1962; the same was set aside by the Commissioner (Appeals); it was alleged that the Custom Broker have contravened the provisions of Regulations No. 11(d), (e) & (d) without any evidence; moreover in the impugned case, Shri Rajinder Singh Bisht of M/s Bisht International did not in any way implicate the Custom Broker. He relies on the judgment of Hon'ble High Court of Delhi in Writ Petition No.15808/2022 filed by Shri Naman Gupta; in Appeal No. CUSAA/2022 filed by M/s D.S. Cargo Agency and in Appeal No. CUSAA 01/2016 filed by M/s Kunal Travels (Cargo).

3. Shri Anurag Kumar, assisted by Shri Harish Kapoor, learned Authorized Representatives for the Department, submits that the appellant was earlier involved in cases of mis-declaration by Shri Surender Kumar Jain vide Bill of Entry No.2466446 dated 15.07.2017 by M/s Roop Singh Enterprises vide Bill of Entry No.2447706 dated 14.07.2017; though CESTAT set aside the order of revocation, vide Order-in-Original dated 05.09.2018, vide Order dated 21.05.2019, the same has been challenged before the Hon'ble High Court by the Department. He takes us through the different Regulations and submits that the appellant has contravened the provisions of Regulations No.11(d) (e) (n) as he has failed to:

(d) Advise his client to comply with the provisions of the Act and in case of non-compliance and to bring up the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

(n) verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information.

4. Heard both sides and perused the records of the case. We find that one of the allegations is that the appellant has not verified the antecedents of the importer; the appellants claim that they have verified the IEC No. etc. on the Government website and they had no reasons to disbelieve the documents. We find that to this extent the contentions of the Custom Broker are acceptable as in terms of Regulation No.11(n) of CHLR 2018, the Custom Broker is required to verify through independent and authentic sources and he is neither required nor has any wherewithal to conduct an investigation into the importer’s business. Regarding other allegations, we find that though it is alleged that the Custom Broker did not exercise due diligence and did not apprise the importer of various Rules, Procedures and Prohibitions thereof. We find that except for bald allegation no evidence has been adduced to allege that the Custom Broker had the previous knowledge of mis-declaration of the value and contents of the consignment. Department merely mentions that the value declared was three and odd lakhs of rupees whereas the actual value was more than Rs.75 Lakhs and the fact in itself shows the culpability of the Custom Broker. We do not accept this contention as it is not

alleged with any evidence. The previous knowledge of the Custom Broker, in the acts of omission and commission of the importer, i.e. *Mens Rea* is not established. It is not even alleged that the Custom Broker had obtained any extra financial gain in helping the misdeeds of the importer. We find that in such circumstances, the allegations cannot be sustained. The act of the Custom Broker cannot be said to be in violation of the CHLR 2018 and therefore, we are of the considered opinion that no case has been made to revoke the license of the Custom Broker, jeopardizing the livelihood of the Custom Broker and their employees thereof. However, looking into the fact that the appellant has been filing Bills of Entry on behalf of a series of mis-declared imports, we find that the appellants need to be suitably penalized so as to act as a deterrent for any future misdemeanor.

5. Accordingly, we allow the appeal partly and set aside the impugned order as far as the revocation of the license of Custom Broker is concerned; the penalty imposed is, however, upheld.

(Order pronounced in the open Court on 09/07/2024)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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