CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, SZB, CHENNAI

REGIONAL BENCH - Division Bench B1

Customs Appeal No. C/42272 of 2018 (by Dept.)
And C/CROSS/42079/2018 (by party-respondent)

(Arising out of Order-in-Original No. 63941/2018 dated 08.06.2018 passed by the Commissioner of Customs, Chennai-VIII, Chennai).

The Commissioner of Customs, Chennai-VIII — Appellant
60, Rajaji Salai, Custom House, Chennai-600 001.

Vs.

M/s. Trishiv Logistics Pvt. Ltd., — Respondent
½, Jadhav Niwas Telli Galli,
Near Divya Sagar Restaurant,
NS Phadke Marg, Andheri East-400 069.

APPEARANCE:

Ms. T. Usha Devi, DC (AR) , Authorized Representative for the appellant

Shri B.R. Tripathi, Advocate, for the Respondent

CORAM :

HON'BLE MR MADHU MOHAN DAMODHAR, Technical Member
HON'BLE MR P.DINESHA, Judicial Member

FINAL ORDER No. 40670/2019

Date of Hearing: **07.03.2019**
Date of Pronouncement: **15.04.2019**

Per: P.Dinesha

The Revenue has challenged the order of the Commissioner of Customs who vide the impugned order issued under Regulation 20 (7) of Customs Brokers License Regulations, 2013 (CBLR, 2013) and the only dis-satisfaction of the Revenue is the simpliciter imposition of penalty of

Rs.50,000/- under Regulation 22 of CBLR, 2013, without revoking license.

2. Briefly stated, the respondent-Customs Broker (CB) was found to be actively involved in clearance of more than 100 shipments belonging to persons not having import/export IEC codes and thus the Revenue entertained a doubt that the CB had knowingly cleared those shipments in the name of different entities without verifying the antecedents of the importer IEC holders. The Revenue also was under the impression that the above act of the CB was in violation of the provisions of 11 (d) and 11 (n) of CBLR, 2013 and accordingly, the license of CB was suspended; the CB having approached this forum against the above action, the CESTAT vide Final Order No. 40682/2018 dated 13.03.2018 had directed the Commissioner to finalize the proceedings within two months. Consequently, the Commissioner of Customs after granting a personal hearing passed the impugned order thereby imposing a penalty of Rs.50,000/- under Regulation 22 with a warning but declining to revoke the CB license, but however, ordering forfeiture of Rs.50,000/- from the security deposit. Based on the order of the Review Committee of Chief Commissioners dated 04.09.2018, Revenue has questioned the above Order-in-Original.

3. Heard Ld. DR, Ms. T. Usha Devi, DC, for the Revenue and Ld. Advocate, Shri B.R. Tripathi for the respondent.

4. Ld. Advocate submitted at the threshold that the appeal of the Revenue is not maintainable as the same is hit by the National Litigation Policy since the amount involved is Rs.50,000/- only.

5. Ld. DR, submitted that it was a clear case where an offence case was made out against the CB and she further drew our attention to the factual findings with regard to conduct of

one of the Directors of the CB who had admitted that he had cleared approximately 40 to 50 containers during the last one year without verifying ICE issued in the name of different persons.

6. Per contra, Ld. Advocate supported the findings of the lower authority but however, reiterated his primary objection as to the maintainability of the appeal.

7.1 We have considered the rival contentions, gone through relevant provisions of CBLR 2013, we are rather surprised by the stand of the Review Committee, who, in their Review Order has opined as under:-

> "……….12.2. By taking a lenient view the penalty imposed by the adjudicating authority has be <u>minimal.</u> <u>There has to be a proportion between the blame worthy act and the penalty imposed</u>. The object should be to protect the society and to deter the wrong doer in achieving the object of his misdemeanor. A lenient view by <u>imposing meager penalties</u> or taking sympathetic a view will be counter-productive in the long run and against societal interest."
> (emphasis supplied by underlining)

7.2 Regulation 20(7) authorises the Commissioner to pass such orders as he deems fit, after considering the enquiry report, either revoking suspension or imposing penalty not exceeding the amount mentioned in Regulation 22. Regulation 22 mandates the penalty to be imposed to a maximum extent of Rs.50,000/- only. Therefore, it's very clear from a conjoint reading of the above Regulation with the impugned order that the adjudicating authority has imposed the maximum and the Regulation do not permit anything beyond this, there is no question of any lenient view and therefore the penalty can never be said to be meagre. The authorities cannot go beyond the mandate of the provision and therefore, the Review Committee requiring intervention of this forum to the above is definitely beyond the scope of the very Regulation and definitely ultra vires.

7.3 The Commissioner- Original authority has exercised his option as provided in terms of Regulation 20 of the CBLR whereby, he is authorized to either revoke or impose penalty to the extent provided under Regulation 22 of the CBLR. The relevant portion of the same reads as under:

> 20. Procedure for revoking licence or imposing penalty:-
>
> (1) The Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the licence or impose penalty requiring the said Customs Broker to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Customs Broker desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.
>
> -----
> -----
> -----
>
> (7) The Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs Broker, pass such orders as he deems fit either revoking the suspension of the license or revoking the licence of the Customs Broker or imposing penalty not exceeding the amount mentioned in regulation 22 within ninety days from the date of submission of the report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, under sub-regulation (5:
> Provided that no order for revoking the license shall be passed unless an opportunity is given to the Customs Broker to be heard in person by the Commissioner of Customs.

7.4 Thus, what the statute requires is clear: either revocation or penalty up to Rs. 50,000/-, but never both. The review authorities therefore cannot insist for adopting their views since that is undisputedly the domain of the Commissioner in *stricto sensu*. When the legislation in its wisdom has clearly pegged the upper limit of penalty at Rs. 50,000/-, the review authorities who are subordinate thereto can never question that limit, which is precisely done in the case on hand; they have termed the same as minimal, meagre, to quote. This is not permissible in the current set. It is not as though the word "OR" in between is invisible. We therefore do not find any fault with the original authority's decision in choosing one over the other, since, such a power is vested only with the original authority per Regulation 20(7). It is the settled position of law that the views of higher authorities are just a change of opinion which cannot influence/substitute the decision of another authority.

7.5 In view of the above discussions, we are unable to appreciate the filing of this appeal for two reasons: one, the amount disputed is Rs. 50,000/-; and secondly, the action of the original authority in exercising his discretion is as per the statute. It is not the case of the Revenue that the original authority has unreasonably reduced the penalty; or the law required more than what was imposed or that his order was not as per law. In such a situation, we have to observe that the present appeal is frivolous, misconceived and above all, wastage of time and money.

8. Appeal of the Revenue is dismissed.

9. Cross-objection of the respondent-assessee which is in support of the impugned order, is also disposed of.

(Order pronounced in the Open Court on 15.04.2019)

(MADHU MOHAN DAMODHAR)
TECHNICAL MEMBER

(P. DINESHA)
JUDICIAL MEMBER

BB