

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

REGIONAL BENCH - COURT NO. - III

Customs Appeal No. 42682 of 2018

(Arising out of Order-in-Original No.62666/2018 dt. 22.11.2018 passed by the
Commissioner of Customs, Chennai-VIII)

M/s. Setwin Shipping Agency,
New No.164, Old No.250, 1st Floor
Thambu Chetty Street,
Chennai 600 001

Appellant

Vs.

Commissioner of Customs (Chennai-VIII)
Custom House,
No.60, Rajaji Salai,
Chennai 600 001

Respondent

APPEARANCE:

Shri S. Murugappan, Advocate for the Appellant
Shri S. Balakumar, AC (AR) for the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri P. Anjani Kumar, Member (Technical)

Final Order No. 40003 / 2021

Date of Hearing: 11.01.2021

Date of Pronouncement: 13.01.2021

PER : P. Anjani Kumar

This appeal is filed by, M/s.Setwin Shipping Agency, Chennai,
the appellant, a Customs Broker against the impugned order
No.66266/2018 dated 22.11.2018 passed by the Commissioner of
Customs, Chennai wherein the license of the Customs Broker was

revoked and a security deposit was forfeited and penalty of Rs.50,000/- was imposed.

2. It is the case of the department that the customs broker have involved themselves in the work of a syndicate who used to obtain IEC from different parties; prepare invoices declaring the export of instant sticks, coriander seeds, tea, coffee etc. having a high drawback value; prepare check list for filing the shipping bill; on filing of the shipping bill access customs officers' ID and pass word in ICEGATE to issue let export order. Revenue alleges that the appellants have failed to discharge their obligation as customs broker as required under Regulation 11(a) 11(b) 11(d) 11(e), 11(k) and 11(n) of CBLR, 2013 read with Regulation 10(a), 10(b), 10(d), 10(e), 10(k) & 10(n) of CBLR, 2018. A show cause notice dated 25.6.2018 was issued. Enquiry reported dt.24.8.2018 was submitted to the Commissioner and the same was forwarded to the customs broker. A personal hearing was granted on 9.11.2018. The proceedings culminated in the issue of above impugned order.

3.1 Ld. Counsel for the appellant submits that they have obtained KYC documents and only after the same the check lists were filed; there is no mandatory requirement that the customs broker should meet the exporters directly or that they should investigate the veracity of the documents. He relies upon *Kunal Travels Vs CC (I&G), IGI Airport, New Delhi 2017 (354) ELT 447 (Del.)*.

3.2 Ld. Counsel further submits that the customs broker was not in station during the relevant time and check list was not further processed by his office. Export orders were made without cargo in connivance with Customs officials and an attempt to avail drawback was made; the impugned order is totally silent as to what happened to the investigations with regard to the process of documents without cargo.

3.3 Ld. Counsel for the appellant further submits that they have informed the Asst. Commissioner (Drawback) on 9.10.2017 and lodged a police complaint after his return to Mumbai when he got suspicion about the genuineness of the exporters. Statement of customs broker was recorded on 11.10.2017. He submits that the license was under revocation for more than two years; the livelihood of the proprietor and the employees of the firm are seriously affected; revocation of license leading to closure of business is a serious punishment and in the facts and circumstances of the case, the same is not warranted. He relies upon *Falcon Air Cargo And Travels (P) Ltd. Vs UOI* - 2002 (140) ELT 8 (Del.).

4. Ld. A.R appearing for the Revenue submits that the customs broker has failed to observe due diligence in filing the documents on behalf of his clients; he did not verify the credentials of the exporters; he depended on the middlemen and also received money for the clearance and that the customs broker in his statement

recorded by D.R.I has accepted the commissions and omissions on his part.

5. Heard both sides and perused the records of the case.

6. Brief issue to be decided in the instant case is as to whether the customs broker has failed to follow the Regulations CBLR, 2013 & CBLR, 2018 and whether the same should entail in the revocation of the license and forfeiture of security deposit in addition to imposition of penalty. We find that in the instant case the employees of the appellant's firm have accepted the documents on behalf of the seven importers and filed a number of check lists in a short span; the customs broker in his statement before D.R.I has accepted the documents from Shri Santhosh Pandey even when he told them that bank related documents and authority letter could be given before carting the goods; they did not receive any documents in original; they have not cross-verified the documents submitted with any reasonable means; they never spoke to or interacted with any of the IEC holders.

7. We find that the customs broker was taking the plea that he has submitted a letter to the Assistant Commissioner and lodged a police complaint on getting suspicion about the exporters before his statement was recorded. However, it is not clear whether the same was done before initiating an enquiry or investigation by DRI; Expectedly, preemptive action by the customs broker was after the

investigation has started though personally he was questioned at a later date. The customs broker was also relying on the argument that the fraudulent exporters have connived with the Customs officers in obtaining let export orders even when no goods were exported in connivance with the officials of Customs. We find that the issue before the Bench is limited to the role played by the customs broker in the alleged violation. Admittedly, the customs broker had filed the check lists. If everything had gone well, they would have filed the documents also to complete the process of export. Therefore, the plea that they have only filed check list cannot be a defence to cover up lack of diligence on their part in the instant case. The appellants were expected to obtain an authorization from the exporters and the same was not done in the instant case. The original documents were not seen and the copies of the documents submitted were not verified. This being the case, we find that to this extent, there is complicity on the part of the customs broker. However, Ld. Counsel for the appellants has submitted that the punishment by way of revocation is too harsh on them and is not commensurate with the lapse, if any, on their part.

8. Looking into the circumstances of the case where the custom Broker *prima facie* has some documents; the person who handed over the documents to the Broker is available; it is not alleged that the exporters were fictitious and the fraudulent persons used the high security IDs and passwords of departmental officers, the omission on

the part of the Customs Broker becomes a bit less serious. Under the circumstances, we hold that though there was lapse on the part of the Customs Broker, the same is not at the root of the occurrence of the fraud. We find that the Customs Broker erred inasmuch as non-verifying the antecedents of the exporters and has not obtained authorization. However, we find that the punishment meted out to the Custom Broker should be commensurate with such omission. It is a settled law that penalty should be proportionate to the offence committed. It would be too harsh to revoke the license of the Customs Broker and to leave the right to livelihood of the Customs Broker as well as his employees to the wind. We find that the fact that the Customs Broker's license was suspended/revoked for a considerable period also needs to be taken on to account.

9. We find that Tribunal in the case of *Him Logistics Pvt. Ltd Vs CC, New Delhi* - 2016 (338) E.L.T. 725 (Tri. – Del), held that -

"9. We find that the impugned order did not make out a sustainable case for revocation of license. In the case of *Setwin Shipping Agency v. CC (General)*, Mumbai - [2010 \(250\) E.L.T. 141](#) (Tri.-Mumbai), the Tribunal held that there is no requirement for the CHA to verify physically the premises of importer/exporter. The Tribunal also observed that it is a settled law that the punishment has to be commensurate and proportionate to the offence committed. In the present case, we notice that the punishment of revocation is not justifiable even if it is to be admitted that physical verification of the importer's premises could have avoided the filing of the bill of entry by the appellant. Even in such a situation, the violation in respect of the cargo viz. the non-declaration of the RSP on the auto parts, a debatable point of interpretation, cannot be held against the appellant to result in the revocation of their licence. Here, it is to be noted that the bill of entry was filed after the detention of the goods for inquiry by

the DRI Officers and request for physical verification of the cargo before assessment has been made in the form of first check bill of entry. We find that the impugned order passed on dis-agreement with the inquiry report has not brought out clear sustainable ground for such extreme action of revocation of license. Violation of CBLR, 2013 has not been brought out as all the points have been elaborately discussed in the inquiry report and no sustainable ground for differing with the same could be made out."

10. In the case of *R.S.R. FORWARDERS* - 2018 (364) E.L.T. 541

(Tri. – Del), it was held that -

"10. *The role of the CHA in the Customs procedures is significant. The CHA is expected to safeguard the interest of exporter of the goods as well as the Customs. The adjudicating authority, in his detailed findings, has concluded that the appellant is guilty of violation of various regulations of CBLR, 2013. But, in the facts and circumstances of the case, we are of the view that even though the appellant is guilty, the violations are not so grave as to justify the revocation of the customs license. We are of the view that ends of justice will be met with the forfeiture of security deposit of Rs. 75,000/- and in addition imposition of penalty of Rs. 50,000/-."*

We find that the license has been under the orders of revocation / suspension for more than two years. Under the circumstances, we find that the customs broker has been sufficiently penalized. For the commission of an offence on the part of the customs broker, the livelihood of many other employees of the firm cannot be put to jeopardy. Therefore as held by this Tribunal in the case of *N.T. Rama Rao & Co. Vs CC, CHENNAI-VIII* - 2020 (371) ELT 789 (Tri.-Chennai), we find that ends of justice would be met if the security deposited is forfeited and penalty imposed is upheld, while setting aside the order as far as the revocation of the license is concerned.

11. In view of the above, the appeal is partly allowed to the extent of setting aside the revocation of customs broker license of the appellant. However, the forfeiture of security deposit and imposition of penalty are upheld.

(Order pronounced in court on 13.01.2021)

(SULEKHA BEEVI C.S.)
Member (Judicial)

(P. ANJANI KUMAR)
Member (Technical)