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

Customs Appeal No.40596 of 2019

(Arising out of Order-in-Original No. 67018/2019 dated 7.1.2019 passed by the Commissioner of Customs, Chennai)

M/s. HSN Shipping Pvt. Ltd. **Appellant**
Room No. A, 2nd Floor, Old No. 15, New No. 35
New Street, Mannady, Chennai – 600 001.

Vs.

Commissioner of Customs **Respondent**
Seaport – Import, Chennai VIII
Custom House
No. 60, Rajaji Salai
Chennai – 600001.

APPEARANCE:

Shri N. Viswanathan, Advocate for the Appellant
Ms. T. Usha Devi, JC (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. **40738 / 2021**

Date of Hearing : 15.01.2021
Date of Pronouncement:26.02.2021

Per Ms. Sulekha Beevi C.S.

The appellant who is a Customs Broker is aggrieved by the impugned order passed by Commissioner of Customs, Chennai wherein the Customs Broker license was revoked and the security deposit of Rs. One lakh forfeited besides imposing penalty of Rs.50,000/- for violation of provision under CBLR, 2018.

2. Brief facts are that, letters were received by Customs, Chennai from SIIB, Custom House, on 21.2.2018 and 12.4.2018 narrating

certain events. That on 21.11.2016, goods imported by M/s. Sky and Sea Exports covered under Bill of Lading dated 3.11.2016 vide Container No. FCIU 9286908 was detained by SIIB on specific intelligence and was examined on 12.1.2017. It was found that the Bills of Entry was not filed by the importer and the container was detained and lying at Viking CFS. However, on 25.10.2017, it was noticed that the same container was removed illegally from Viking CFS by forging the import clearance documents. On investigation, it was found that M/s. Sky and Sea Exports had filed 25 bills of entry. Out of these 25 previous bills of entry, it was seen that 12 bills of entry were filed by Shri Shiva Ambica Clearing and Forwarding Pvt. Ltd. and 10 bills of entry were filed by HSN Shipping Pvt. Ltd., the appellant herein, and 2 bills of entry were field by Trade Wings Logistics India Pvt. Ltd. And one bill of entry by M/s. Insoorya Exports.

3. Statements were recorded from Shri A.C. Hari Babu, owner of HSN Shipping Pvt. Ltd. (appellant). In his statement dated 15.11.2017, Shri A.C. Hari Babu stated inter alia, that the bills of entry of M/s. Sky and Sea Exports were filed by one Shri Sathish Kumar in the name of his company; that in all those bills of entry Shri Sathish Kumar would attend to all the work in respect of customs clearance such as meeting the importer, collection of documents, filing bill of entry, assessment, examination, payment of duty and delivery; that Sathish Kumar told him that he had verified with the antecedents of the importer and possessed all KYC documents; that he did not know the owners of M/s. Sky and Sea Exports and that it would be known only to Sathish Kumar; that consideration of Rs.1,000/- was offered for each bill of

entry filed by Sathish Kumar. It was further stated on 17.1.2018 that Shri Sathish Kumar had come to his office and filed the bills of entry using his digital signature. From the above, it appeared to the department that the appellant contravened the provisions of CBLR, 2013 under Regulation 11(a), (b), (k) and (n).

4. Another case against the appellant revealed by SIIB is narrated as under:-

5. That M/s. Raj Enterprises had filed Bill of Entry dated 19.5.2017 covered under Bill of Lading dated 18.5.2017 for 40 feet Container No. WHLU5385462, the dealing Custos Broker was the appellant herein. The said container was moved to Shri Continental Warehousing Corporation CFS by M/s. Wan Hai Lines on 12.5.2017. During October 2017, it came to notice of SIIB that the goods covered under Bill of Lading dated 18.5.2017 imported by M/s. Raj Enterprises in the said container was moved illegally from M/s. Continental Warehousing Corporation CFS in the late hours of 29.8.2017 by producing forged import clearance documents. In the course of investigation, it was found that the goods were removed out of CFS by one Mr. Umesh on the instructions of Shri Hari Prabhu and Shri Thirumalai Thiagarajan of M/s. Raj Brothers Shipping Pvt. Ltd.

6. On 6.12.2017, statement of Shri A.C. Hari Babu of the appellant herein was recorded and he stated that he knew Mr. Syed Muyeen Ahmed for eight months and that the said Syed Muyeen Ahmed requested him to file this bill of entry since he did not have Customs Broker license and that he offered Rs.2,000/- for this bill of entry and the KYC document was received by them from Mr. Syed Muyeen Ahmed

and that the said person handled the other work of clearing the consignment.

7. In both the instances reported by SIIB, it appeared that the Custom Broker, the appellant herein, had allowed unauthorized persons Shri Sathish Kumar and Shri Syed Muyeen Ahmed to file bills of entry and do all customs related clearance work in the name of their company for a consideration which had resulted in the illicit clearance of the containers detained by SIIB for examination. The unauthorized persons had faked the customs out of charge documents and paid for the CFS operations running into lakhs in cash.

8. Show Cause Notice dated 17.5.2018 was issued to the appellant herein calling upon to show cause within 30 days as to why the license issued to them should not be revoked and security deposited by them should not be forfeited or penalty should not be imposed upon them. An inquiry officer was nominated to conduct inquiry and the report was submitted by the said officer on 8.10.2018. The inquiry officer recommended for revocation of license and forfeiture of security deposit and for imposing penalty. Thereafter adjudication proceedings were completed and the authority below ordered for revocation of license, forfeiture of security deposited and also imposed penalty. Against this order, the appellant is now before this Tribunal.

9. On behalf of the appellant ld. Counsel Shri N. Viswanathan appeared and argued the matter. It is submitted by him that the Commissioner ought to have seen that the Show Cause Notice itself states that in respect of Container No. FCIU 9286908 no bill of entry has been filed by the appellant herein. The appellant was not a Custom

broker in respect of the said consignment. There is no duty or obligation cast on the appellant in respect of the above container. Even though the appellant filed bill of entry in respect of goods imported in Container No. WHLU5385462 for bill of entry dated 19.5.2017 on behalf of M/s. Raj Enterprises, the appellant has nothing to do with the alleged illegal removal of the goods from the CFS area. The Show Cause Notice itself states that the goods in container was removed from the CFS area by one Shri Umesh at the instructions of Shri Hari Prabhu and Shri Thirumalai Thiagarajan of M/s. Raj Brothers Shipping Pvt. Ltd. They are themselves Custom Brokers. Therefore the said act of theft from the CFS is beyond the control of the appellant and the appellant cannot be implicated in this activity of removal of containers / goods from CFS area.

10. The mere fact of appellant having filed 10 bills of entry for M/s. Sky and Sea Exports on previous occasion cannot be a ground for holding the appellant guilty for the removal of container in respect of import of goods by M/s. Sky and Sea Exports. It is admitted in the Show Cause Notice itself that no bill of entry was filed by the appellant in respect of the import relating to this container.

11. The Show Cause Notice does not allege that the appellant had any role or knowledge in the illegal removal of the goods / containers from the CFS. The appellant had filed the bills of entry for M/s. Raj Enterprises with regard to Container No. WHLU5385462 and the same was filed after receiving KYC documents from Shri Syed Muyeen Ahmed. However, the department does not have a case that the said Syed Muyeen Ahmed is involved in the illegal removal of the container.

In the Show Cause Notice itself, it is stated that the investigations revealed that the container was removed by one Umesh on the instructions of Hari Prabhu and Thirumalai Thiyagarajan.

12. The allegations in the Show Cause Notice that the appellant had allowed Shri Sathish Kumar and Shri Syed Muyeen Ahmed to attend works on behalf of the appellant is false. The appellant had never obtained or applied for identity card either for Sathish Kumar or Syed Muyeen Ahmed. Hence the allegation that these persons had access to the customs office or CFS with the help of appellant is nothing but wild imagination. The customs office is a public office with free access to all. CFS is a guarded area and entry is for persons having identity cards issued by the customs.

13. The Commissioner ought to have appreciated that in respect of the bill of entry filed by them for M/s. Sky and Sea Exports and for M/s. Raj Enterprises on earlier occasions, there was no allegation of any wrong doing. Further, there is no evidence to suggest that the appellant allowed these persons to access to the appellant's system or password thereby causing any revenue loss to the Government. The bills of entry for these earlier occasions were duly examined, assessed and cleared as per law. Therefore, such bills of entry cannot be a ground for alleging or holding that the appellant has contravened the provisions of CBLR. There is nothing on record to show that the appellant's activities were handled by Sathish Kumar and Syed Muyeen Ahmed as alleged in the Show Cause Notice. The entire Show Cause Notice is based on presumptions and assumption. The findings recorded by the Commissioner is erroneous and he prayed that the

same may be set aside. The ld. Counsel relied on the following judgments:-

a. CCE, Bangalore Vs. Brindavan *Beverages P. Ltd. – 2007 (213) ELT 487 (SC)*

b. Commissioner of Customs, Chennai Vs. CESTAT, Chennai – 2014 (310) ELT 673 (Mad.) which was upheld by the Hon'ble Supreme Court as reported in 2015 (325) ELT A48 (SC).

c. A.M. Ahmed & Co. Vs. Commissioner of Customs, Chennai – 2014 (309) ELT 433 (Mad.)

d. Sowparnika Shipping Services Vs. Commissioner of Customs, Chennai – 2017 (352) ELT 286 (Mad.)

e. Necko Freight Forwarders Ltd. Vs. Commissioner of Customs – 2018 (360) ELT 879 (Del.)

14. The ld. AR Ms. T. Usha Devi appeared and argued for the respondent. She supported the findings in the impugned order. She mostly stressed upon the 108 statement given by Shri A.C. Hari Babu, owner of M/s. HSN Shipping Pvt. Ltd. the appellant herein. In his statement dated 15.11.2017 and 17.1.2018, he has categorically deposed that he has allowed Sathish Kumar to file bills of entry and do other related works as Custom Broker. In his statement dated 6.12.2017, it is seen that he has allowed Shri Syed Muyeen Ahmed to handle all customs related work with regard to the consignment of Container No. WHLU5385462. From the facts brought out in paragraph 34 and 35 of the impugned order, it can be seen that the Custom Broker license of the appellant was suspended in earlier occasions also. She relied upon the decision in the case of Principal Commissioner of Customs, Mumbai Vs. Unison Clearing P. Ltd. – 2018 (361) ELT 321 (Bom.) and also the judgment of the Hon'ble High Court of Madras in

the case of KTR Logistics Solutions Pvt. Ltd. Vs. Commissioner of Customs in W.P. No. 3366 of 2019 dated 28.11.2019.

15. Heard both sides and perused the records. As per paragraph 28 of the impugned order, cases made out against the appellant herein is reproduced as under:-

> *"(a) The Customs Broker M/s. HSN Shipping Pvt. Ltd. had allowed unauthorized persons Sathish Kumar and Syed Muyeen Ahmed to file several bills of entry by using their own ID and do all customs related clearance work in the name of their company.*
>
> *(b) These unauthorized persons whom they brought and they allowed a above, had faked the customs out of charge documents and paid for the CFS operating running into lakhs in cash and with connivance of the CFS staff got the detained containers removed out of the CFS."*

16. From the allegations narrated in the Show Cause Notice as well as the Order in Original, it is seen that the investigations were initiated mainly due to the illegal removal of container / goods.

17. The first case is with regard to the goods imported by M/s. Sky and Sea Exports in regard to Container No. FCIU9286908. With regard to this case in respect of M/s. Sky and Sea Exports, it is seen that the appellant has been implicated for the reason that 10 earlier bills of entry were filed by the appellant herein as Custom Broker for M/s. Sky and Sea Exports. It is the case of the department that the appellant had allowed one Sathish Kumar to file bill of entry and do customs clearance related activities for M/s. Sky and Sea Exports using appellants identity as Custom Broker. That the appellant collected Rs.1,000/- per bill of entry from Sathish Kumar. Apart from 108 statement of the Shri A.C. Hari Babu, the department has not been able to adduce any evidence to support such allegation that instead of

the appellant herein, Sathish Kumar had done the filing of bill of entry and the clearance activities. So also there is no evidence to show the passing of consideration of Rs.1,000/- per bill of entry from Sathish Kumar to the appellant herein. Although it is alleged that earlier the 10 bills of entry for M/s. Sky and Sea Exports were filed by Shri Sathish Kumar and that appellant did not collect KYC documents etc., all the goods as per these previous 10 bills of entry which have been for M/s. Sky and Sea Exports have been cleared and there are no complaints. There is no case for the department that the bill of lading with regard to Container No. FCIU9286908 for M/s. Sky and Sea Exports detained by SIIB was filed by the appellant or Sathish Kumar. The appellant had nothing to do with such import of goods by M/s. Sky and Sea Exports. For the mere reason that the appellant had filed earlier bills of entry for M/s. Sky and Sea Exports cannot be a ground to hold that the appellant has violated provisions of CBLR when the goods relating to the 10 bills of entry have been cleared and without any compliants.

18. The second case is with regard to the bill of entry filed for M/s. Raj Enterprises dated 19.5.2017 in regard to Container No. WHLU5385462. It is pertinent to note that in this case, the dealing Custom Broker was the appellant herein. Due to non-conformity to BIS standard, the container with goods was held up for three months in CFS area. The goods in the container was illegally removed from the CFS using forged documents on the late hours of 29.8.2017. The statement of Shri A.C. Hari Babu of M/s. HSN Shipping Pvt. Ltd., (the appellant herein) recorded on 6.12.2017 shows that the appellant knew Syed Muyeen Ahmed and the said person had requested the

appellant to file this bill of entry and offered Rs.2,000/- for the same. It is seen stated that the KYC documents of the importer was received by them from Syed Muyeen Ahmed. Be that as it may, it is needs to be noted that in para 9 of the impugned order, it is categorically stated that during the course of investigation, it was found that the goods were removed out of CFS illegally by one Shri Umesh on the instructions of Shri Hari Prabhu and Shri Thirumalai Thiagarajan. Department has not been able to bring out any evidence how the appellant or Shri Syed Muyeen Ahmed is connected to Shri Umesh or Shri Hari Prabhu or Shri Thirumalai Thiagarajan. Without proving the entire link between these persons the appellant cannot be implicated only for the mere reason that they have filed the bill of entry. So also there is no evidence to prove that appellant allowed other persons to work customs clearance activities or that to file forged documents. We do not find any evidence to show that the appellant engaged unauthorized persons who faked customs out of charge documents and also paid for the CFS operations running into lakhs in cash. There is no evidence before us to show any payment made for CFS operations or the faking of customs out of charge documents by the appellant herein. However, unlike the first case of M/s. Sky and Sea Exports, in this case, the appellant has acted as Custom Broker and has filed the bill of entry for M/s. Raj Enterprises. The container got detained and appellant ought to have been careful till the goods are cleared. However, the omission would not call for a harsh punishment of revocation of licence. We therefore are of the considered opinion that mere forfeiture of security deposit as well as penalty would suffice.

19. From the discussions made above, we hold that the impugned order is to be modified to the extent of setting aside the revocation of licence of the appellant. We make it clear that we do not disturb the forfeiture of security deposit or the penalty of Rs.50,000/- (Rupees fifty thousand only) imposed. Appeal partly allowed in above terms.

(Pronounced in open court on 26.02.2021)

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

(**P. ANJANI KUMAR**)
Member (Technical)

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