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

Customs Appeal No.40189 of 2020

(Arising out of Order-in-Original No. 72825/2019 dated 13.12.219 passed by the Principal Commissioner of Customs, Chennai – VIII)

M/s. Seasky Exim (P) Ltd. **Appellant**
SNSJ Harbour Tower No. 27
Marakaiyar Street
Chennai – 600 001.

Vs.

Commissioner of Customs **Respondent**
Chennai VIII Commissionerate
Custom House, 60, Rajaji Salai
Chennai – 600 001.

APPEARANCE:

Ms. A. Aruna, Advocate for the Appellant
Shri L. Nandakumar, AC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Final Order No. **41422 / 2021**

Date of Hearing : 22.03.2021
Date of Pronouncement: 25.03.2021

The appellant is a holder of Customs Broker license which is valid upto 11.9.2025. During the course of their business activity, M/s. A.K. Exports approached them for carrying out their customs clearance work for exporting the goods declared as 10mm clear glass to Dubai. The appellant filed shipping bill dated 21.8.2018 for export of the above goods. The goods were stuffed into the container in the presence of customs officers and was sealed. The same was transported to Chennai Harbour in trailer. Based on intelligence, the officers entered the godown where the container was kept and on search found to be stuffed with red sanders while replacing the declared quantity of the goods. After completion of investigation, the DRI issued Show Cause Notice dated 27.2.2019 under section 124 of Customs Act to various persons including the appellant calling upon the appellant to show cause why the license issued to them should not be revoked and the security deposited should not be forfeited and penalty should not be imposed. After due process of law, the original authority imposed a penalty of Rs.50,000/- on the appellant and ordered for forfeiture of part amount of the security deposit to the tune of Rs.25,000/-. Aggrieved by such order, the appellant is now before the Tribunal.

2. On behalf of the appellant, ld. Counsel Ms. A. Aruna appeared and argued the matter. She submitted that the proceedings are vitiated by not complying with the time limit prescribed under the CBLR, 2018. There is no offence report as such submitted by the department. Show Cause Notice under section 124 was issued to the appellant on 27.2.2019. The said Show Cause Notice has to be considered as the offence report and Show Cause Notice under CBLR had to be issued within 90 days from the date of the offence report. Though the department was fully aware with regard to the investigation initiated, the Show Cause Notice under CBLR was issued to the appellant only after 114 days. Thus, there is a delay of 24 days in issuing the Show Cause Notice under CBLR, 2018. Hence the Show Cause Notice under which the proceedings were conducted for imposing penalty and forfeiture of security deposit is not sustainable. To support her argument, she relied upon the decision of the Hon'ble jurisdictional High Court in the cases of M/s. A.M. Ahmed & Co. in W.P. No. 30884 of 2013 dated 19.8.2014 and M/s. Carewell Shipping Pvt. Ltd. in W.P.

No. 26923 and 26934 of 2018 dated 22.11.2018. The decision of the Tribunal in the case of M/s. S.B. Enterprises vide Final Order No. 40624/2019 dated 29.3.2019 was also relied by the appellant.

3. On merits, she submitted that the allegation against the appellant is that they did not verify the antecedents and the KYC details of the exporter M/s. A.K. Exports. In fact, the appellant had obtained authorization from M/s. A.K. Exports through one Shri Mahesh who introduced himself as authorized signatory of the IEC holder. The appellant had obtained the KYC, authorization, IEC, Aadhar, electrical consumption card, GST registration, PAN card and other documents from the exporter. Further, it had also the purchase invoice for the goods under export. Thus, the appellant had taken all precautions and had done what ordinarily be done by any prudent person in handling export of a client. They had also checked the official website of DGFT and GSTIN and verified the PAN and Aadhar details of the exporter. For these reasons, the findings of the adjudicating authority that the appellant had not complied with Regulation 10(a) of CBLR, 2018 is against the facts of the case. She prayed that the impugned order may be set aside.

4. The ld. AR Shri L. Nandakumar appeared and argued for the department. He supported the findings in the impugned order. He adverted to para 14.1 and argued that in the statement recorded during investigation, it is admitted by the appellant that in the address of the exporter, there was no name board of the IEC firm and that they were not functioning in the said address. On further verification, it was found that a new building was being constructed in the premises. The

appellant has admitted that they did not verify the identity of the client or the antecedents. For these reasons, the order passed by the adjudicating authority is legal and proper and does not require any interference.

5. Heard both sides.

6. The order passed by the adjudicating authority is as under:-

> *i. I impose a penalty of Rs.50,000/- (Rupees fifty thousand only) on the Customs Broker M/s. Seasky Exim (P) Ltd. (Licence No. CHN/R-353/2015/CBS (PAN No. AANCS3764P) under Regulation 18(1) of CBLR, 2018.*
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> *ii. I order for forfeiture of part amount of Rs.25,000/- (Rupees twenty five thousand only) of the Security Deposit of Rs.5,00,000/- (Rupees Five Lakh only) furnished by the licensee M/s. Seasky Exim P. Ltd. (License No. CHN/R-353/2015/CBS (PAN No. AANCS3764P) under Regulation 14 of CBLR, 2018.*
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> *iii. I warn the Customs Broker firm M/s. Seasky Exim (P) Ltd. (Licence No. CHN/R-353/2015/CBS (PAN No. AANCS3764P) to be more careful in future and strictly follow the managerial supervision and adhere to the regulation, provision of the Customs Act, 1962 so as to prevent recurrence of any illegal activities in their business transaction before the Customs Department.*

7. In para 14.1, the adjudicating authority has held that they have violated Regulation 10(a) of CBLR, 2018 for which the penalty as well as forfeiture of security deposit has been done. In para 14.4, the adjudicating authority has noted that the appellant verified the IEC and GST registration from the official website of DGFT and GSTIN and also the PAN and Aadhar details. From such facts, it is clear that the appellant has done the duty of verification as required by an ordinary prudent person while handling customs clearance work. Further on the issue of limitation, I find that the department has not complied with Regulation 17(1) of CBLR, 2018. As per this Regulation, the Show Cause Notice under CBLR 2018 should be issued within 90 days from

the date of receipt of the offence report. In the present case, there is no separate offence report. The Show Cause Notice under section 124 was issued to the appellant on 27.2.2019. The said Show Cause Notice can be considered as an offence report since the department was fully aware with the details of the offence on such date of issuance of Show Cause Notice. When computed from 27.2.2019, Show Cause Notice under CBLR 2018 ought to have been issued within 90 days whereas the department has issued the Show Cause Notice under CBLR only on 21.6.2019. This is well beyond the period prescribed under Regulation 17(1) of CBLR, 2018. The Hon'ble jurisdictional High Court in the cases of M/s. A.M. Ahmed and M/s. Carewell Shipping Pvt. Ltd. cited supra has held that the time limit prescribed in the Regulation is mandatory and the violation would vitiate the proceedings. Following the decisions, I am of the view that the proceedings are vitiated by non-compliance of time limit prescribed in the Regulation. Hence the impugned order cannot sustain. The same is set aside and the appeal is allowed with consequential relief, if any.

(Pronounced in open court on 25.03.2021)

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

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