CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. IV

Customs Appeal No.40236 of 2021 – SM

[arising out of Order-in-original No.78945/2021, dated 07.01.2021 passed by Commissioner of Customs, Chennai]

M/s.CBN Impex Pvt. Ltd. **Appellant**
S2, Maheshwar's Niruthi,
No.65A, Kaliamman Koil Street,
Virugambakkam, Chennai – 600 092.

VERSUS

Commissioner of Customs [General],
Chennai VIII Commissionerate,
Customs House,
No.60, Rajaji Salai,
Chennai – 600 001.

Appearance:

Shri G. Derrick Sam, Advocate, *for the appellants*
Shri M. Jagan Babu, Authorised Representative, *for the respondents*

CORAM : HON'BLE Ms. Sulekha Beevi C.S, MEMBER (JUDICIAL)

Date of Hearing : 20.07.2021
Date of Pronouncement : .08.2021

FINAL ORDER No.

The appellant is a Customs broker having Customs broker license issued by Mumbai Customs for transacting the business at Mumbai Customs Zone and also license for doing business under Chennai Customs. On the basis of specific information received by the Marine and Preventive Wing, Mumbai that M/s. U.V. Infotech, Mumbai is importing consignment of "old and used parts" by misdeclaring the same as "Hard Disk Drive Seagate 500 GB", the goods were examined on 08.03.2019 in the presence of two independent witnesses, namely, Shri Dhurv Bhavsar, representative of the importer, and Shri R. Kannan Pillai, representative of the Customs broker (appellant herein). The following misdeclarations were found:-

> (a) 07 excess Hard Disk Drivers were found as compared to the 4800 nos. Hard Disk Drives declared in the bill of entry filed'
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> (b) Some cartons with Hard Disk Drives were found wherein inspection report was mentioned as "This hard drive was erased according to NIST SP – 8000 – 88 Standard";
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> (c) No permission has been obtained by the importer from any brand holders prior to import of the said brand; and
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> (d) Import of old and used/refurbished Hard Disk Drivers falls under the restricted category. However, no licence/permission to this effect was obtained from the competent authority in violation of regulations of the Foreign Trade Policies and various provisions of Customs Rules.

Statements were recorded and after investigation, it was revealed that M/s. U.V. Infotech, who had imported goods using their IEC was not the owner of the imported goods. The KYC and other relevant documents of M/s. U.V. Infotech required for import was handed over to Shri Dhurv Bhavsar, who in turn had handed the same to appellant and arranged the appellant for clearing the imported goods. Thus, M/s. UV Infotech though was the IEC holder for import of goods, was not the actual owner of the imported goods. Shri Tanzeem Tanvir Shaikh had used the IEC of M/s. U.V. Infotech for import of this consignment as well as two to three consignment of hard disk earlier through other CHA. Show-cause notice dated 10.01.2020 under Regulations 17(1) of CBLR, 2018 was issued to the appellant proposing to revoke the license, forfeit the security deposit and also proposing to impose penalty under Regulations 18 of CBLR, 2018. After adjudication, the Commissioner of Customs vide order impugned herein imposed penalty of Rs.50,000/- on the appellant. Aggrieved by such order, the appellant is now before the Tribunal.

2. On behalf of the appellant, the learned counsel Shri G. Derrick Sam appeared and argued the matter. He submitted that according to department, the appellant did not exercise diligence in discharging their obligations as required under Regulations 10(a), 10(n) and 10(o) of CBLR, 2018. The said provisions read as under:-

> ***Regulation 10(a):*** *Obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be.*
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> ***Regulation 10(n****): Verify correctness of Importer Exporter Code [IEC] number, Goods and Service Tax Identification Number [GSTIN], identify of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information.*
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> ***Regulation 10(o):*** *Inform any change of postal address, telephone number, e-mail etc., to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, of all Customs Stations including the concerned Deputy Commissioner or Assistant Commissioner of the Commissionerate, who has granted the license immediately within two days.*

3. The appellant is a licensed Customs broker holding Customs broker license issued by the Commissioner of Customs, Chennai, which is valid till 10.08.2020-25. The said license has been extended to Mumbai Customs as per Regulations 7(2) of CBLR, 2018. In the course of business, the appellant filed bill of entry dated 05.03.2019 on behalf of M/s.U.V. Infotech for import of "Hard Disk Drive Seagate 500 GB". After investigation, conducted by department, it was found and alleged that the goods are old and used Hard Disk Drives. Old and used Hard Disk Drives fall under restricted category and license is required for import, which the importer had not obtained.

4. The first allegation raised by department is that the appellant has violated Regulations 10(a) of CBLR, 2018 on the ground

that the appellant had not obtained the authorisation from the importer before filing the documents and bill of entry. This allegation is factually erroneous. That as per the statement of Shri R. Kannan Pillai, the Power of Attorney of the Customs Broker, it is clearly stated by him that he had obtained the KYC of the importer. The copy of the letter dated 01.03.2019 of the importer, M/s. UV Infotech authorising the appellant, M/s. CBN Impex Pvt. Ltd., as their Customs broker to clear their consignment was also given to the Inquiry Officer to establish that the appellant had not violated any of the Regulations. Inspite of this, the Commissioner held that as M/s. U.V. Infotech is only the IEC holder and not the actual importer, and that the authorizations obtained is not sufficient. It is submitted that the bill of entry is always filed in the name of the IEC holder and the authorisation has to be given only by the IEC holder. Even as per the show-cause notice, the IEC holder is very much aware of the imports and it is not a case of misuse of IEC without knowledge of the holder. The appellant has correctly obtained the authorisation from the IEC holder. It is submitted by him that though Shri Tanzeem Tanvir Shaikh is the owner of the imported goods, the firm M/s. U.V. Infotech, is a family business run by brothers, who are cousins. Shri Mohammad Anas and Shri Mohammad Shanawaj are partners. Shri Mohammad Anas, Partner of M/s. U.V. Infotech has stated in his statement recorded on 11.03.2019 that the business is run by Shri Tanzeem Tanvir Shaikh, who is his cousin from his father's side. It is stated that though the IEC was in their name [name of their firm] they work along with Shri Tanzeem Tanvir Shaikh, their cousin, who imported goods. That he is the financier and the goods belong to him. Shri Tanzeem Tanvir Shaikh had handed over the KYC related documents to Shri Dhurv Bhavsar, who had handed over the same to the appellant/Customs broker. Though, Shri Dhurv Bhavsar knew that Shri Tanzeem Tanvir Shaikh is the actual owner of the goods, this fact was not disclosed to the appellant/Customs broker. That appellant had not arranged for filing bill of entry for the previous consignments of Shri Tanzeem Tanvir Shaikh. This is the first time, appellant had arranged for clearing the imported goods of these parties. The appellants had correctly obtained authorisation from the IEC holder and, therefore, the allegation that appellant violated Regulations 10(a), is incorrect. Further that, appellant had no knowledge that the actual owner of the goods was not M/s. U.V. Infotech.

4.1 The learned counsel adverted to the statements of Shri Dinesh Pratap Rai Mehta, Manager of the appellant-CHA firm which is recorded on 13.03.2019. It is stated by him that the client, namely, M/s. U.V. Infotech was brought by Shri Dhurv Bhavsar, who he knew for the past five years. He went to the office belonging to Shri Dhurv Bhavsar in Sakinaka from where he received all papers and took the KYC. From the details, the appellant came to know that the party had done previous imports. He verified the clearance of earlier four pallets said to contain Hard Disk Drives and after verification of the documents found that such consignments were cleared. The learned counsel alleged that it is clear from this that the appellant had verified all necessary documents and also obtained authorisation from the IEC holder for filing the bill of entry. Merely because the goods belong to another person, who is part of the family business, it cannot be said that there is misuse of IEC by lending the same to another person.

4.2 The learned counsel relied on the decision rendered by the Tribunal in the case of *M/s. Manjunatha Cargo Pvt. Ltd., Vs Commissioner of Customs, Bangalore* reported in *2021 (375) E.L.T.245 (Tri.-Bang.)* to argue that when there is no evidence on record to show that the Customs broker had knowledge regarding the lending of IEC to another, the Customs broker cannot be held guilty of violation of regulations. Further that Customs broker is only required to verify the correctness of IEC No., identify of client and whether such client is at the declared address. Physical inspection of premises of the importer/exporter by the Customs broker is not required. The learned counsel relied on the following decisions also:-

(i) *Hamid Fahim Ansari Vs Commissioner of Customs (Import), Nhava Sheva* reported in *2009 (241) E.L.T.168 (Bom.)*;

(ii) *Proprietor, M/s. Carmel Exports & Imports Vs Commissioner of Customs, Cochin* reported in *2012 (276) E.L.T. 505 (Ker.)*;

(iii) *M/s. Hindustan Steel Ltd., Vs State of Orissa reported* in *1978 (2) E.L.T.(J 159) (S.C.)*; and

(iv) *M/s. G.N.D. Cargo Movers Vs Commissioner of Customs (General), New Delhi* reported in *2017 (357) E.L.T.1184 (Tri.-Del.).*

4.3 Countering the allegations that there is violation under Regulations 10(n), the learned counsel submitted that from the statement of Shri R. Kannan Pillai as well as the statement of Shri Dinesh Pratap Rai Mehta, it is very much clear that the KYC documents were collected by appellant from Shri Dhurv Bhavsar, who represented himself as the employee of the importer. The appellant had gone to the office of the said person and collected the documents. It is also admitted by Shri Dhurv Bhavsar that he did not disclose to the appellant that the goods did not belong to M/s. U.V. Infotech. This proves that the appellant did not have any knowledge of the alleged misuse of IEC. Even if it is assumed that the IEC has been misused, the appellant had acted bonafidely and in their normal course of business. There is no allegation that the appellant had any ulterior motive. There is no evidence that the appellant received any extra consideration over and above the normal charges. The appellant collected from the importer documents in the nature of Aadhar Card of the Partner of the importer firm, GST Registration Certificate of the importer, bank verification letter, PAN cards of the importer, IEC code, Udyog Aadhar Registration Certificate of the importer, Electricity Bill of the importer. This would show that appellant has acted with due diligence. These documents were submitted along with reply to the show-cause notice before the authority below.

4.4 The learned counsel adverted to Circular No.9/2010-Cus., dated 08.04.2010 to argue that the appellant has complied with the obligation of collecting and verifying the necessary documents as mandated by this circular. This being so, the allegation of violation of

Regulation 10(a) and 10(n) is without any basis. The decision of the Hon'ble High Court in the case of *M/s. Kunal Travels (Cargo) Vs. Commissioner of Customs, IGI Airport, New Delhi* reported in *2017 (354) E.l.T.447 (Tri.-Del.)* was relied by the appellant to argue that when IEC code is mentioned, there is a presumption that appropriate background check has been done by the Customs authorities.

4.5 With regard to the allegation that appellant has violated Regulations 10(o) of CBLR, 2018 on the ground that the appellant had given their Nerul address while extending their license to Mumbai, it is submitted that this allegation is factually wrong. This address is the address of their Power of Attorney Shri R. Kannan Pillai. No benefit is gained by the appellant by not disclosing the Ghatkopar address of Shri Dinesh Pratap Rai Mehta and that no prejudice is caused to Revenue on this ground. Shri R. Kannan Pillai is the G-card holder and the power of Attorney of the appellant, which is allowed by Customs law. His address is Nerul address and is not fictitious or fake address. The said G-card holder is very much available in the address, which is not disputed by the department. Thus, there is no violation of Regulations 10(a), 10(n) and 10(o) of CBLR, 2018. He prayed that the penalty imposed may be set aside.

5. The learned Authorised Representative Shri M. Jagan Babu appeared and argued for the department. He supported the findings in the impugned order. After investigation conducted by department, it is brought to light that M/s. U.V. Infotech, who is the importer/IEC holder, is not the owner of the goods. He has lend the IEC to another for import of goods, which is clear misuse of IEC. As per section 7 of the Foreign Trade [Development and Regulation] Act, 1982 read with Rule 12 of Foreign Trade [Development and Regulation] Act, 1982, the goods can be imported only by a person, who has been issued import license/IEC code. The goods belonging to Shri Tanzeem Tanvir Shaikh has been imported using the IEC code of M/s. U.V. Infotech. The appellant ought to have verified this fact. Further, the appellant has received the documents from Shri Dhurv Bhavsar and not directly from

the IEC holder. As reflected from the IEC the importers are Shri Mohammad Anas and Shri Mohammad Shawnawaj. Without meeting these IEC holders, the appellant has accepted the import documents from Shri Dhurv Bhavsar to file the bill of entry for clearing the consignments, and has thus violated the Regulations, 2018.

5.1 The learned Authorised Representative submitted that the goods were declared as Hard Disk Drives. On examination, it was found that these are old goods. Such old Hard Disk Drives are hazardous wastes in terms of Rule 3(3) of the Hazardous Waste [Management, Handling and Transboundary] Rules, 2008. Such goods can be imported only with license/permission. There is clear misdeclaration of the quantity and value of goods.

5.2 The appellant contends that Shri R. Kannan Pillai, who is the Power of Attorney of the appellant received the documents through Shri Dhurv Bhavsar. This establishes the fact that appellant did not meet the actual owners of the imported goods for filing the bill of entry. Violations of various provisions of law have been proved by the department, for which, the penalty has been rightly imposed.

5.3 The learned Authorised Representative adverted to para 28 of the impugned order and argued that another case with regard to the clearance of export consignment declared as Ceramic Wall Tiles/Vetrified Tiles was taken up for SIIB investigation, in which it was revealed that the goods and had been highly over-valued to get undue benefits of IGST and drawback. In this connection, license of the appellant was suspended from 27.02.2020 to 10.08.2020 vide Order-in-Original No.76526/2020, dated 16.10.2020 and penalty of Rs.25,000/- was imposed apart from forfeiture of part of security deposit. The appellant has been continuously indulging in such violations. He prayed to dismiss the appeal.

6. Heard both sides.

7. The regulations, which are alleged to be violated under 10(a), 10(n) and 10(o) of the CBLR, 2018 have already been reproduced in para 2 above.

7.1 The foremost allegation of the department is that the appellant did not collect the KYC directly from the IEC holder but had collected it only from Shri Dhurv Bhavsar and that if appellant had collected it directly from the IEC holder, appellant would have come to know that M/s. U.V. Infotech is not the actual owner of the goods. The goods imported are Hard Disk Drives. The old and used Hard Disk Drives after import are refurbished and sold in the market. Import of such such used goods fall under restricted category and requires license/permission for import. From the statement of Shri Dhurv Bhavsar, it is seen that he had not disclosed to the appellant that the actual owner of the goods is Shri Tanzeem Tanvir Shaikh. From the statement of Shri R. Kannan Pillai, it is seen that they were not aware that goods were used goods and filed the documents based on the declaration made under invoices. In para 10, it is stated that the appellant after receiving the KYC through Shri Dhurv Bhavsar had checked and verified previous imports made by the appellant. So also, it is seen that the appellants had collected all the documents from the party as stipulated in Circular No.9/2010, dated 08.04.2010. It also needs to be mentioned that though department alleges that the IEC of M/s. U.V. Infotech were allowed to be used by another, viz., Shri Tanzeem Tanvir Shaikh, I am not able to persuade myself to find serious violation of the Regulation from the fact presented by this case. The discussions by the Hon'ble High Court of Kerala in the case of *Proprietor, M/s. Carmel Exports & Imports* (supra) in para 15 is noteworthy:-

> *"Coming to the submission that the appellant is only a "name lender" for the import of goods by one Anwar, we shall presume for the time being that the appellant is only a name lender, but the actual beneficiary of the import is one Anwar. We called upon learned counsel for the respondents to place the relevant provisions which prohibits such an activity on the part of an Import Export Code Number holder. Learned counsel for the respondents categorically made*

a statement that he is not able to place any such prohibition in law except section 7 of the Foreign Trade [Development and Regulation] Act, 1992, which reads as follows:-

*"**7. Importer-exporter Code Number.-** No person shall make any import or export except under an importer-exporter Code Number granted by the Director-General or the officer authorised by the Director-General in this behalf, in accordance with the procedure specified in this behalf by the Director-General".*

The Hon'ble High Court of Bombay in *M/s. Hamid Fahirm Ansari Vs Commissioner of Customs [Import], Nhava Seva* reported in *2009 (24) E.L.T.168 (Bom.)* observed as under:

"**5.** In other words, imports have been done in the name of the petitioner but for some other person. In so far as respondents/Customs Authorities is concerned, they have not pointed out to us any provision under the Customs Act or any Rule or Regulation framed thereunder by which the person having valid IEC Number and having paid the custom duty is prevented from importing goods. At the highest, if the petitioner has obtained IEC number by misrepresenting the Ministry of Commerce and Industry and Director General of Foreign Trade, it is for that body to take action.

6. In these circumstances, in our opinion, petitioner having paid the custom duty is entitled to release of the goods. We, therefore, direct respondents to release the goods within 48 hours from today."

In the case of *M/s. Proprietor, Carmel Exports & Imports Vs. Commissioner of Customs, Cochin* reported in *2012 (276) E.L.T. 505 (Ker.,),* the Hon'ble High Court held as follows:-

"5. Notwithstanding the fact that the appellant gave Exhibit P3 letter dated 18-5-2011 referred to earlier, the respondents did neither release the goods as requested by him in the abovementioned letter, nor assess the goods for customs and clear the goods for home consumption. Therefore, the respondents approached this Court by way of a Writ Petition, from out of which the instant appeal arises. The prayers in the Writ Petition read as follows :

"(i) Issue a writ of mandamus directing respondents 1 and 2 to release the goods which are covered through Bill of Entry No. 3302152 dated 25-4-2011 excluding the items mentioned in Ext. P2.

(ii) Issue a writ declaring that there is no justification in delaying the processing of the papers after the examination and completing the assessment to enable the petitioner to release the goods which are not covered in Ext. P2.

> (iii) Issue a writ order or direction commanding the 2nd respondent to furnish copy of the bill of entry, inspection report, search list, statement, etc. to the petitioner without delay."
>
> (iv) Pass such other order or direction as this court may deem fit and proper in the interest of justice."

7.2 M/s. U.V. Infotech is a Partnership Firm, which is run by brothers [cousins], namely, Shri Mohammad Anas and Shri Mohammad Shahnawaj. Shri Tanzeem Tanvir Shaikh, who is the actual owner of the goods, is their cousin. It cannot be said that the IEC was used by a total stranger or a fake importer.

7.3 The decision of the Hon'ble High Court in the case of *M/s. Kunal Travels [Cargo]* (supra) has held that it would be too onerous to expect the CHA to inquire into and verify the genuiness of the IEC given to it for each import/export transactions. When such code is mentioned, there is a presumption that an appropriate background check has already been done by the Customs authorities. In the present case, appellant has done verification of the previous imports of the importer and also obtained necessary KYC documents. Then the allegation that they did not exercise due diligence for complying with Regulations 10(a) and 10(n) cannot sustain. Apart from the judgments cited above, I also draw sustenance from the discussions made in the decisions rendered by the Tribunal in the case of *M/s. Manjunatha Cargo Pvt. Ltd.,* (supra) and *M/s. G.N.D. Cargo Movers* (supra).

7.4 The department has also alleged that appellant violated Regulations 10(o) of CBLR, 2018. The ground for raising such allegation is that address given to Customs department during registration of appellant's branch at Mumbai was Nerul and that appellant did not disclose their Ghatkopar address. From the documents, it is seen that Nerul address is the address of Power of Attorney holder of the appellant Shri R. Kannan Pillai. The Ghatkopar address belongs to Shri Dinesh Pratap Rai Mehta, Manager of the appellant-Company. The Nerul address is not false or fake address. For this reason, I cannot agree with the view taken by the Commissioner that there is violation of Regulations 10(o) of CBLR, 2018.

7.5 After inquiry report, the adjudicating authority has held that there is no requirement to revoke/suspend the findings or to order for forfeiture of security deposit. However, the adjudicating authority imposed penalty of Rs.50,000/- [Rupees Fifty Thousands only] for the alleged violations under the Regulations. In my view, the penalty cannot sustain unless the department establishes the violations committed by the appellant.

7.6 From the discussions made above and applying the judgments cited above, I am of the view that the department has not been able to establish the allegations raised in the show-cause notice. The impugned order is set aside. The appeal is allowed with consequential reliefs, if any.

(Pronounced in open court on)

(Sulekha Beevi C.S.)
Member (Judicial)

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