

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

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40152 of 2021

(Arising out of Order-in-Original No. 79090/2021 dated 22.01.2021 passed by the Principal Commissioner of Customs, Chennai-VIII, No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. OPMS Clearing and Forwarding Agencies (P) Ltd. : Appellant

No. 51, Chevalier Shivaji Ganesan Salai (South Boag Road),
Prem Nagar Colony, Flat No. 24, 1st Floor, "P" Block,
T. Nagar, Chennai – 600 017

VERSUS

The Commissioner of Customs

: Respondent

Chennai-VIII Commissionerate,
No. 60, Rajaji Salai, Custom House, Chennai – 600 001

APPEARANCE:

Ms. K. Nancy, Advocate for the Appellant

Ms. K. Komathi, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 42303 / 2021

DATE OF HEARING: 01.09.2021

DATE OF DECISION: **07.09.2021**

Order :

The appellant is a Customs Broker, clearing and forwarding agent and holding Regular Licence issued by the Commissioner of Customs, Chennai. A Show Cause Notice dated 17.02.2020 was issued alleging that the appellant had contravened various provisions under the Customs Brokers Licensing Regulations, 2018 ('CBLR' for short) and thereby proposing to revoke the CB Licence issued to them, forfeit the security deposited by them and also to impose penalty upon them under Regulation 18 of

the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018. Thereafter, the appellant filed its detailed reply before the Inquiry Officer, as directed in the Show Cause Notice.

1.2 The Inquiry Officer, namely, the Assistant Commissioner of Customs, however, vide Inquiry Report dated 07.10.2020 gave a categorical finding *inter alia* in the following words:

" DISCUSSIONS AND FINDINGS

26. ...

27. ...

28. ...

...29. On careful perusal of the Department's allegations and the submissions made by the Customs Broker through their Counsel to counter the same and the supporting documents on record, it is evident that the CB had obtained all relevant documents and KYC documents from Shri Jayesh Shah of M/s. Shah Shipping Agency prior to filing of the Bill of Entry. All the documents, though procured improperly by the importer and others, are genuine and issued by other govt. agencies. Therefore, there is no ground for M/s. OPMS to doubt its genuineness.

30. Para 14 (viii) of the SCN issued at Mumbai clearly states that M/s. OPMS was unaware of the concealment of silver jewellery articles in the seized consignment which goes to prove that there was no collusion between the importers, Shri Jayesh Shah of M/s. Shah Shipping Agency and the CB. Therefore, reporting any non-compliance to the customs authorities also will not be relevant as the CB was aware of concealment and customs authorities at Mumbai too found out the smuggling attempt only during examination of the goods.

31. The only lapse on part of the CB is that the address of the importer was not physically verified, which by their submissions in reply to the SCN and at the time of PH, was not deliberate as the address was available in all KYC documents issued by various government agencies and the CBLR rules does not mandate that the same needs to be physically verified before taking on any work. Hence, it is very clear that the Customs Broker has effectively defended the allegations made against them.

32. Accordingly, the charges levelled against the Customs Broker do not hold water based on the proper and explicit explanations and counter offered by them in this regard.”

The conclusion of the Inquiry Officer was that the violation of the provisions contained in the Show Cause Notice was not sustainable.

2. Thereafter, the Commissioner who had issued the Show Cause Notice took up the matter for adjudication and has, vide impugned order, concluded that the appellant has not acted with due diligence and in turn, has violated Regulations 10(d) and 10(n) of the CBLR, 2018 and thereafter, imposed a penalty of Rs.25,000/- on the appellant. Against this, the present appeal has been filed before this forum.

3. Heard Ms. K. Nancy, Learned Advocate appearing for the appellant and Ms. K. Komathi, Learned Additional Commissioner (Authorized Representative) appearing for the Revenue.

4.1 During the course of arguments, Learned Advocate for the appellant relied on the decision of the Hon'ble High Court of Delhi in the case of *M/s. Kunal Travels (Cargo) v. Commissioner of Customs (Import & General)*,

IGI Airport, New Delhi reported in 2017 (354) E.L.T. 447 (Del.) wherein the Hon'ble High Court has analysed the similar provision under the Customs House Agents Licensing Regulations (CHALR), 2004 and further held as under:

"11. The obligations of the CHA are stipulated in Regulation 13 of the CHALR-04 :

"... Obligations of Customs House Agent. 13.- A Customs House Agent shall -

(a) obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as Customs House Agent and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs;

(b) transact business in the Customs Station either personally or through an employee duly approved by The Deputy Commissioner of Customs or Assistant Commissioner of Customs;

(c) not represent a client before an officer of Customs in any matter to which he, as an officer of the Department of Customs gave personal consideration, or as to the facts of which he gained knowledge, while in Government service;

(d) advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs;

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

(f) not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Commissioner of Customs, from a client who is entitled to such information;

(g) promptly pay over to the Government, when due, sums received for payment of any duty, tax or other debt or obligations owing to the Government and promptly account to his client for funds received for him from the Government or received from him in excess of Governmental or other charges payable in respect of the clearance of cargo or baggage on behalf of the

client;

(h) not procure or attempt to procure directly or indirectly, information from the Government records or other Government sources of any kind to which access is not granted by the proper officer;

(i) not attempt to influence the conduct of any official of the Customs Station in any matter pending before such official or his subordinates by the use of threat, false accusation, duress or the offer of any special inducement or promise of advantage or by the bestowing of any gift or favour or other thing of value;

(j) not refuse access to, conceal, remove or destroy the whole or any part of any book, paper or other record, relating to his transactions as a Customs House Agent which is sought or may be sought by the Commissioner of Customs;

(k) maintain records and accounts in such form and manner as may be directed from time to time by a Deputy Commissioner of Customs or Assistant Commissioner of Customs and submit them for inspection to the said Deputy Commissioner of Customs or Assistant Commissioner of Customs or an officer authorised by him whenever required;

(l) ensure that all documents, such as bills of entry and shipping bills delivered in the Customs Station by him show the name of the importer or exporter, as the case may be, and the name of the Customs House Agent, prominently at the top of such documents;

(m) in the event of the licence granted to him being lost, immediately report the fact to the Commissioner of Customs;

(n) ensure that he discharges his duties as Customs House Agent with utmost speed and efficiency and without avoidable delay....”

12. Clause (e) of the aforesaid Regulation requires exercise of due diligence by the CHA regarding such information which he may give to his client with reference to any work related to clearance of cargo. Clause (l) requires that all documents submitted, such as bills of entry and shipping bills delivered etc. reflect the name of the importer/exporter and the name of the CHA prominently at the top of such documents. The aforesaid clauses do not obligate the CHA to look into such information which may be made available to it from the exporter/importer. **The CHA is not an inspector to**

weigh the genuineness of the transaction. It is a processing agent of documents with respect to clearance of goods through customs house and in that process only such authorized personnel of the CHA can enter the customs house area. What is noteworthy is that the IE Code of the exporter M/s. H.M. Impex was mentioned in the shipping bills, this itself reflects that before the grant of said IE Code, the background check of the said importer/exporter had been undertaken by the customs authorities, therefore, there was no doubt about the identity of the said exporter. It would be far too onerous to expect the CHA to inquire into and verify the genuineness of the IE Code given to it by a client for each import/export transaction. When such code is mentioned, there is a presumption that an appropriate background check in this regard i.e. KYC etc. would have been done by the customs authorities. There is nothing on record to show that the appellant had knowledge that the goods mentioned in the shipping bills did not reflect the truth of the consignment sought to be exported. In the absence of such knowledge, there cannot be any mens rea attributed to the appellant or its proprietor. Whatever may be the value of the goods, in the present case, simply because upon inspection of the goods they did not corroborate with what was declared in the shipping bills, cannot be deemed as misdeclaration by the CHA because the said document was filed on the basis of information provided to it by M/s. H.M. Impex, which had already been granted an IE Code by the DGFT. The grant of the IE Code presupposes a verification of facts etc. made in such application with respect to the concern or entity. If the grant of such IE Code to a non-existent entity at the address WZ-156, Madipur, New Delhi - 63 is in doubt, then for such erroneous grant of the IE Code, the appellant cannot be faulted. The IE Code is the proof of locus standi of the exporter. The CHA is not expected to do a background check of the exporter/client who approaches it for facilitation services in export and imports. Regulation 13(e) of the CHALR, 2004 requires the CHA to : "exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage" (emphasis supplied). The CHAs due diligence is for information that he may give to its client and not necessarily to do a background check of either the client or of the consignment. Documents prepared or filed by a CHA are on the basis of instructions/documents received from its client/importer/exporter. Furnishing of wrong or incorrect information cannot be attributed to the CHA if it was innocently filed in the belief and faith that its

client has furnished correct information and veritable documents. The misdeclaration would be attributable to the client if wrong information were deliberately supplied to the CHA. Hence there could be no guilt, wrong, fault or penalty on the appellant apropos the contents of the shipping bills. Apropos any doubt about the issuance of the IE Code to M/s. H.S. Impex, it was for the respondents to take appropriate action. Furthermore, the inquiry report revealed that there was no delay in processing the documents by the appellant under Regulation 13(n)."

(Emphasized in bold, for clarity)

4.2 In view of the above, the role and responsibilities of the Customs Broker are limited, more so when the IE code has already been issued by the concerned authority and hence, the Customs Broker cannot be found fault with.

5. Moreover, the Inquiry Officer has, after going through the relevant documents, concluded that the appellant had no role to justify invoking irregularity under the provisions of the CBLR, 2018.

6. Hence, I am of the view that the penalty is imposed without any justifiable reasons by the Commissioner and therefore the same cannot be sustained in view of the decision of the Hon'ble Delhi High Court (*supra*). Accordingly, the impugned order is set aside.

7. The appeal is allowed and the penalty levied is deleted.

(Order pronounced in the open court on **07.09.2021**)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)