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

Customs Appeal No. 282/2011

(Arising out of Order-in-Original No. 2/2011 dated 12.8.2011 passed by the Commissioner of Customs, Coimbatore)

M/s. Sri Shipping Services **Appellant**
356, Kamarajar Road
Uppilipalayam
Coimbatore – 641 015.

Vs.

Commissioner of Customs, Coimbatore **Respondent**
No. 6/7,A.T.D. Street
Race Course Road
Coimbatore – 641 018.

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. Venkata Subba Rao, Member (Technical)

Date of Hearing : 26.08.2021
Date of Pronouncement: 15.09.2021

Final Order No. **42308 / 2021**

Per Ms. Sulekha Beevi C.S.

The above appeal was originally disposed by this Tribunal vide common Final Order No. 41676 and 41677/2018 dated 26.3.2013 by which the Tribunal disposed Appeal No. C/351/2010 and Appeal No. C/282/2011.

2. The appeal No. C/351/2010 was filed by the appellant challenging the prohibition order passed by Commissioner of Customs, Chennai dated 24.8.2010. The Tribunal held that the appeal is not

maintainable and therefore dismissed the appeal. The appellant has not filed any appeal against the Final Order and the same has attained finality.

3. Appeal No. C/282/2011 is filed against the order passed revoking the CHA license and for forfeiture of security deposit. In the earlier round of litigation before Tribunal, the said appeal was allowed by the Tribunal following the decision the case of M/s. Necko Freight Forwarders Ltd. reported in 2018 (1) TMI 1185 (Delhi). The department filed appeal before the Hon'ble High Court against the above decision passed by the Tribunal. The Hon'ble High Court vide judgment in CMA 2446/2019 dated 27.1.2020 remanded the matter to the Tribunal to decide the case afresh on merits in accordance with law. Thus, the appeal is once again before the Tribunal.

4. It needs to be mentioned that though in the judgment of the Hon'ble High Court the number of the Final Order is correctly stated as Final Order No. 41677/2018 dated 26.3.2018, it is seen stated as 'Arising out of F. No. 12-673/CHA Vol. II dated 24.8.2010'. In fact, the Final Order No. 41676 arises out F. No. 12-673/CHA Vol. II dated 24.8.2010 and the Final Order No. 41677/2018 in C/282/2011 arises out of Order in Original No.2/2011 dated 12.8.2011 passed by Commissioner of Customs, Chennai.

5. The above Appeal C/282/2011 is filed by the appellant aggrieved by the order passed by the Commissioner of Customs revoking the license and for forfeiture of security deposit.

6. Brief facts are that the Customs Intelligence Unit, Chennai while investigating into certain fraudulent export transaction that took place in the years 2003 – 2004, found that M/s. Sri Shipping Services, the

appellant herein, had acted as agent for customs clearance at ICD, Tiruppur on behalf of seven exporters namely (i) M/s. Akshaya Impex, (ii) M/s. Cadluck Export and Import, (iii) M/s. Vakkayil Impex, (iv) M/s. Jas Exports, (v) M/s. Kalamani Garments, (vi) M/s. Gomathi Garments and (vii) M/s. Kenz Exports who had resorted to fraudulent exports and claimed unauthorized, ineligible drawback of Rs.1.22 crores. The above transactions were found to have been executed in association with one Shri Ashokan of M/s. ASP Shipping Services. Statement of the managing partner of the appellant firm Shri P. Ilangovan was recorded on 29.12.2005 wherein inter alia he admitted that they had attended to the exports pertaining to the said exporters and did not obtain authorization. That they received export documents from M/s. K.S. Freight Forwarders. That the contact in respect of these seven exporters was through M/s. K.S. Freight Forwarders only. It appeared to the department that the appellant had transacted business in the customs station without verifying the bonafides of the exporters and they have caused huge loss to the exchequer by facilitating claim of ineligible drawback.

7. Show Cause Notice dated 7.8.2006 was issued to the appellant under Regulation 22 of CHALR, 2004 alleging violation of provisions of Regulation 13 and 19(8) of the CHALR, 2004, proposing to revoke the CHA license dated 8.1.2001 issued to the appellant and for forfeiture of security deposit. Inquiry proceedings as envisaged under Regulation 22 of CHALR 2004 was conducted. The Inquiry Officer submitted the report dated 16.1.2007 wherein it was concluded that the CHA had not obtained necessary authorization from any of the seven exporters and had failed to comply with Regulation 13(a), (d) and (e) as well as

Regulation 19(8) of CHALR, 2004. After due process of law, the adjudicating authority held that the appellant has contravened the obligations cast upon them under Regulation 13(a), (d) and (e) and 19(8) of CHALR, 2004 and ordered for revocation of the license and forfeiture of security deposit of Rs.75,000/-.

8. The learned counsel Shri S. Murugappan appeared for the appellant. He adverted to the Annexure to the Show Cause Notice and submitted that all the exports were made in 2003. The applicable statutory provisions then would be CHALR, 1984 and not CHALR 2004. The Show Cause Notice is not maintainable as it is issued under Regulation 22 of CHALR 2004 for the exports made during the period 2003. The said Regulation had come into force only on 23.2.2004. Further, that the Show Cause Notice has been issued only on 7.8.2006. There is a huge time lag of two years between the occurrence of the alleged activity and the issuance of the Show Cause Notice.

9. Controverting the allegations in Show Cause Notice he submitted that the officers of the department have not acted swiftly and with required diligence which has resulted in availment of illegal and ineligible drawback by the exporters. If the officers had acted in appropriate time, the wrong availment of drawback would not have occurred at all.

10. In the Show Cause Notice at para 2, it has been mentioned that Shri K. Ashokan and R. Selvaraj were the two persons who are primarily responsible for the fraudulent exports. In fact, they have admitted that they have indulged in such nefarious activities to get undue benefit. The appellant had no knowledge of such activity of these

two persons and therefore cannot be penalized for the misdeeds done by these persons.

11. It is submitted by him that the allegation that the appellant failed to exercise due diligence is wrong. During the relevant period, there was no proper proforma for obtaining the authorization. Filing of the shipping bills itself was considered as authorization given by the exporter. Only after Regulation 2004 came into force, it is obligatory for the CHA to obtain authorization in a particular form from the customers.

12. The allegation is that the exporter had availed ineligible drawback. The drawback is sanctioned to the exporter by the department and the CHA has no connection with the drawback. The role of the appellant is limited to filing of shipping bills and to attend to other connected activities relating to clearance of the goods. Further, there is no evidence to conclude that the appellant has any role in the fraudulent acts committed by the exporters. He prayed to set aside the impugned order.

13. He relied on the decision in the case of Joveens Expotex Vs. Commissioner of Customs, Central Excise and Service Tax, Coimbatore reported in 2018 (363) ELT 414 (Tri. Chennai) to argue that the said case arises out of very same investigations wherein ineligible drawback was availed by the exporters.

14. The learned AR Shri S. Balakumar supported the findings in the impugned order.

15. Heard both sides.

16. The foremost objection raised by the learned counsel for appellant is that though the exports have taken place in 2003, Show

Cause Notice proposing to revoke the license has been issued in 2006 under Regulation 22 of CHALR, 2004. On a perusal of the Annexure to the Show Cause Notice, it is seen that all the shipping bills are of 2003. The details of the shipping bills as per the Annexure are reproduced as under:-

S. No.	Exporter	S/B No. & Date	Amt. of Dbk (Rs.)
1.	M/s. Akshaya Impex 54, II Street, Gandhi Nagar, Tiruppur – 641 603	1151/11.03.03	342806
		17399/05.05.03	416721
2.	M/s. Vakkayil Impex, Pericandoor, Trichur, Kerala – 680 581	17389/05.05.03	406669
		17393/05.05.03	406669
		17397/05.05.03	406669
		21964/05.06.03	468486
		21965/05.06.03	468486
		25129/23.06.03	468486
		25134/23.06.03	468486
		4920/31.01.03	410323
		4921/31.01.03	410323
		8927/21.02.03	409037
		8928/21.02.03	409037
3.	M/s. Gomathi Garments 11-A, Pichampalayam Puthur Tiruppur – 641 603.	17398/05.05.03	416271
		11579/11.03.03	342806
4.	M/s. Jass Exporters Padur Post, Trichur Kerala – 689524.	8926/21.02.03	390848
		8929/21.02.03	390848
5.	M/s. Kalaimani Garments 12-B(3) Gandhi Road Anuparpalayam Post Tiruppur – 641 652.	17388/05.05.03	406669
		17392/05.05.03	406669
		17396/05.05.03	406669
		21970/05.06.03	477855
		21971/05.06.03	477855
		25132/23.06.03	477855
		4926/31.01.03	394217
		25133/23.06.03	477855
6.	M/s. Kenz Exporter Thatha Building Kottapuram, M.G. Road Trichur, Kerala – 680 524.	4924/31.01.03	396646
7.	M/s. Cadlluck Exports & Imports, 12-B/TC, 114, Friends Trading Center, MG Road, Trichur, Kerala	4925/31.03.03	400065
		4922/31.01.03	401452
		4923/31.01.03	401452
	Total		**12157780**

17. CHALR, 2004 came into force only on 23.4.2004. The Preamble of the said Regulation reads as under:-

> *"In exercise of the powers conferred by sub-section (2) of section 146 of the Customs Act, 1962, (52 of 1962), and in supersession of the Customs House Agents Licensing Regulations, 1984**, except as respect things done or omitted to be done before such supersession**, the Central Board of Excise and Customs hereby makes the following Regulations:-" [Emphasis supplied]*

18. It is clear that for the acts or omissions which are done before the CHALR, 2004 came into force [vide Notification No. 21/2004-Cus. (NT) dated 23.2.2004], the erstwhile CHALR, 1984 would apply. The shipping bills in these transactions are of the year 2003. So also in the Show Cause Notice, the department has mentioned the number of two shipping bills for which there was no IE Code mentioned in the shipping bills in respect of M/s. Gomathy Garments and M/s. Akshaya Impex. Both these shipping bills are also dated 11.3.2003. When the transactions are of the year 2003, the provisions in Regulation 2004 cannot bind the appellant. In the Show Cause Notice, though in para 4, there is a mention that it is to be read with relevant provisions of the erstwhile Regulation 1984, interestingly all the provisions invoked are that of 2004 Regulations. The allegations raised in para 5 of the Show Cause Notice is that the appellant has violated provisions of Regulation 13(a), (d) and (e) as well as Regulation 19(8) of the CHALR, 2004. The said para reads as under:-

> "From the foregoing, it appears that M/s. Sri Shipping have failed to comply with the provisions of
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> (i) Regulation 13(a) of CHALR, 2004 inasmuch as they have failed to advise their clients to comply with the provisions of the Act and on non-compliance failed to bring the matter to the notice of the Deputy / Assistant Commissioner of customs.
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> (ii) Regulation 13(e) of CHALR, 2004 inasmuch as they have failed to exercise due diligence to ascertain the correctness of any information which they impart to a client with reference to any work related to clearance of cargo.

> (iii) Regulation 19(8) of CHALR, 2004 inasmuch as the CHA has failed to exercise such supervision as may be necessary to ensure the proper conduct of persons who transacted business."

19. This plea was raised by the appellant before the adjudicating authority also. But the same has not been considered. We have no hesitation to hold that the charges levelled against the appellant under CHALR, 2004 cannot sustain when the acts / omissions / cause of action has happened prior to the introduction of the Regulations. The Show Cause Notice itself is not sustainable in law and the entire proceedings are vitiated. The impugned order revoking the license or directing to forfeit the security cannot sustain in law.

20. This apart, the ld. Counsel has also pointed out that there is much delay in adjudication and that for the export in 2003, the order of revocation has been passed in 2011. The Show Cause Notice was issued on 7.8.2006. Personal hearing was conducted before the adjudicating authority on 13.6.2007 and later on 7.2.2008. The impugned order has been passed after concluding the personal hearing with a delay of more than four-and-half years.

21. From the foregoing, we set aside the impugned order. The appeal is allowed with consequential reliefs, if any.

(Pronounced in open court on 15.9.2021)

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

(**P. VENKATA SUBBA RAO**)
Member (Technical)

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