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

Customs Appeal No.40362 of 2021

(Arising out of Order-in-Original No. TUT-CUSTM-PRV-COM-03/2021 dated 11.6.2021 passed by the Commissioner of Customs, Tuticorin)

M/s.Indian Shipping and Logistics Facility Pvt. Ltd. **Appellant**
No. 3/188/5A, MSP Towers, Palayamkottai Main Road
Perianayagapuram, Opp. Collector Office
Tuticorin – 628 010.

Vs.

Commissioner of Customs **Respondent**
Custom House
New Harbour Estate
Tuticorin.

APPEARANCE:

Shri P. Saravanan, Advocate for the Appellant
Shri Vikas Jhajharia, AC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri P. Anjani Kumar, Member (Technical)

Final Order No. **42404 / 2021**

Date of Hearing : 01.10.2021
Date of Pronouncement: 20.10.2021

Per Ms. Sulekha Beevi C.S.

Brief facts are that the appellant who is a Customs Broker filed bills of entry on behalf of the importer M/s. Black Gold Technologies, Delhi for the import of "used rubber tyres cut in two pieces (with one cut in the bead wire) with HS code (4004) which is freely importable. Other used tyres are restricted as per Foreign Trade Policy (FTP) 2015 – 2020. After examining of the goods, the department was of the view that the goods imported are "used rubber tyres without a cut in bead wire and are restricted goods". Proceedings were initiated against the importer alleging misdeclaration of goods. Simultaneously, Show Cause Notice was issued to the Customs Broker, the appellant herein, alleging violation of Regulation 10(d), 10(e) and 10(n) of CBLR, 2018. An inquiry was conducted and report was filed by the Inquiry Officer as contemplated in the Regulation. The charges under Regulation 10(d) and 10(e) were dropped by the inquiry officer. After adjudication, the original authority confirmed that the appellant has violated Regulation 10(n) of the CBLR, 2018 and ordered for revocation of the Customs Broker license and also imposed penalty of Rs.50,000/-. Aggrieved by such order, the appellant is now before the Tribunal.

2. On behalf of the appellant, learned counsel Shri P. Saravanan appeared and argued. He referred to Regulation 10(n) which reads as under:-

> *"(n) verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN),identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information"*

3. He submitted that the appellant had verified the existence / functioning of the Delhi address of the importer by personally visiting the address. This fact has been noted by the Commissioner in para 16.4 of the Order in Original. It is alleged by the adjudicating authority that the appellant did not visit the address of the importer at Rajasthan and therefore has violated Regulation 10(n). He referred to the bill of lading as well as bills of entry and submitted that in all these documents, the importer has furnished the Delhi address which has been verified by the appellant herein. Therefore, the allegation raised that the appellant did not verify the address of the importer pertaining to factory at Rajasthan is without any basis. The IEC, Aadhaar, GSTIN

showed the factory address at Rajasthan of the importer. The department alleges that this address is fake and there is no factory at Rajasthan. The documents in the nature of Aadhar, GSTIN, IEC when issued by the concerned authorities, the appellant was under the impression that the address given in these documents are correct and therefore had only verified the address mentioned in the bill of lading and bills of entry. Further, that there is no duty cast on the Customs Broker to travel to the destination of the importer and verify the address. He relied upon the decision in the case of Kunal Travels (Cargo) Vs. CC, IGI Airport, New Delhi – 2017 (354) ELT 447 (Del.) to argue that it is not required for the Customs Broker to physically verify the premises of the importer. The decision in the case of APS Freight & Travels Ltd. Vs. Commissioner of Customs (General), New Delhi – 2016 (344) ELT 602 (Tri. Del.) was also relied.

3. Another contention raised by the learned counsel for the appellant is that the infraction noted by the department is mis-declaration of the goods. The mis-declaration is with regard to whether the used rubber is with or without cut in bead wire. This misdeclaration can be brought out only by expert opinion. The appellant who is a Customs Broker cannot be expected to verify the correctness of the goods imported except for verifying the nature of the goods from the documents furnished by the importer. He prayed that the order may be set aside.

4. The learned AR Shri Vikas Jhajharia supported the findings in the impugned order.

5. Heard both sides.

6. The appellant is aggrieved by the revocation of license and the imposition of penalty of Rs.50,000/-. The said order has been passed for violation of Regulation 10(n) of CBLR, 2018. In para 17 and 18, the Inquiry Officer has noted as under:-

> *"17. It is not a disputed fact that the Customs Broker has visited the Delhi address of the importer. This was recorded in his statement also. However, he has not visited his factory at Jaipur. They further submitted that CB is no way concerned about the post-import clearance activities of the importer.*
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> *18. It is pertinent to note that the Ruel 10(n) of CBLR, 2018, specified that the Customs Broker has to verify correctness of Importer Exporter Code (IEC) number, Goods and Services 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. However, the jurisdictional Joint Commissioner of Customs, in his letter F. No VIII(48)/27/INV/Prev./ 2020/1004 dated 3.3.2020 stated that there is no factory of M/s. Black Gold Technologies functioning at the declared address and another firm named M/s. Anju Plastics was working there. The rule specifically says to verify the functioning of his client at the declared address by using reliable, independent, authentic documents, data or information without any condition of post-import clearance activities. Here the Customs Broker has miserably failed to verify the "functioning" of his client in the declared address by documentary or otherwise."*

7. From the above, it can be seen that the appellant (Customs Broker) had visited the Delhi address of the importer. Merely because he did not visit the factory at Jaipur, Rajasthan, it is held by the Commissioner that there is violation of Regulation 10(n) of CBLR, 2018. In fact, the address declared in the bills of entry and bill of lading is that of the Delhi address and the said address is a proper one and not fake one. On verification, the department has come to understand that there is no factory at Rajasthan address as declared in the IEC, Aadhar and GSTIN. When these are documents issued by the Governmental authorities, the Customs Broker cannot be burdened with responsibility of verifying the correctness of such address. Be that as it may, we do not find that there is any violation which is so grave

for imposing such a harsh punishment of revocation of license. Taking note of the fact that the appellant has visited the Delhi address of the importer and such address being not fake, we are of the considered opinion that the imposition of penalty is not justified. The decision in the case of APS Freight & Travels Ltd. (supra) is relevant. The relevant portion of the decision of the Tribunal in APS Freight & Travels Ltd. (supra) is reproduced as under:-

> *"4. We have heard both the sides and examined appeal records. The license of the appellant stands revoked only on the ground that they have failed in their obligation of verifying the identity of his client and their existence in the given address. The admitted facts of the case are that the importer's details as available in IEC, PAN Cards, Bank Account and electricity have been checked by the appellant. No physical verification of importer's premises is mandated in the regulations nor it is a general requirement as per business practice. No violations have been noticed in respect of transactions with Customs with reference to consignment cleared through the appellants. As such the order of revocation of license, only on the ground that on later verification the importer was not found in the indicated premises, is not justifiable."*

8. From the foregoing, we hold that the department has failed to establish that appellant has violated Regulation 10(n) of CBLR, 2018. The impugned order is set aside. The appeal is allowed with consequential relief, if any.

(Pronounced in open court on 20.10.2021)

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

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

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