

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

CUSTOMS APPEAL NO. 40567 OF 2020

[Arising out of Order-in-Original No. TUT-CUSTM-PRV-COM-004/2020-21 dated September 25, 2020 passed by the Commissioner of Customs, Tuticorin, Thoothukudi]

M/s. PRABHU SHIPPING SYSTEMS ... APPELLANT

Rep by its partner Shri A Prabhu
Customs Broker No. AARFP7552PCH001,
No.2/5A, 1 Street, Sivanthakulam,
Thoothukudi 628 003.

Versus

COMMISSIONER OF CUSTOMS, ... RESPONDENT

Thoothukudi
Customs House, New Harbour Estate
Thoothukudi -628 004.

APPEARANCE:

P. Raja and P. Kumanan, Counsel for the Appellant
Smt. T. Ushadevi, Joint Commissioner Authorised Representative
for the Respondent

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: July 22, 2021

DATE OF DECISION: November 15, 2021

FINAL ORDER NO. 42435/2021

PER P. V. SUBBA RAO

The appellant, a licensed Customs Broker, is aggrieved by the Order-in-Original dated September 25, 2020¹ passed by the

¹ Impugned order

Commissioner of Customs, Chennai holding that the appellant had contravened Regulations 10(b), 10(d), 10(k), 10(n) and 13(12) of the Customs Brokers Licensing Regulations, 2018² and revoking the appellant's licence under Regulation 14 read with Regulation 17. The security deposit furnished by the appellant was also forfeited and a penalty of Rs.50,000/- was also imposed upon the appellant under Regulation 18 of CBLR, 2018.

2. The factual matrix which leads up to the issue of impugned order are as follows:-

- a) The appellant was licensed as Customs Broker by the Commissioner of Customs, Tuticorin but it also operated in Chennai and Mumbai Commissionerates under Form C procedure. Customs Brokers licensed by one Customs House can operate in other Customs Houses under this procedure. The appellant filed 33 shipping bills in the name of "M/s. Sunrise Enterprises, Ghaziabad" to export "Ratching spanner set and water saving aerator foam flow" declaring abnormally high price allegedly to claim excessive IGST refund. The CIU of Mumbai Customs detained the goods, recorded the statements of Shri Harichandra Pandurang Kadam, G-card holder of the appellant on June 4, 2019, June 13, 2019 and December 23, 2019. They also recorded the statement of Shri A. Prabhu, partner of appellant on December 23, 2019.
- b) The G-card holder, Shri Kadam, also held the power of attorney to act on behalf of the appellant in Mumbai. In his statement, he admitted that they had not obtained Know Your Customer³ documents from the exporter. Instead, one Shri Inder Prakash Kohli of M/s. Prakash International who

² CBLR, 2018

³ KYC

approached them had provided PAN, Aadhar, GSTIN and bank details of the exporter M/s. Sunrise Enterprises, Ghaziabad. After the data pertaining to the shipping bills was fed into the system, the checklist was provided to Shri Kohli to verify and not to the exporter. Shri Kohli confirmed the checklists and the shipping bills were filed.

- c) The carting of goods i.e., bringing the goods to the Customs export shed, which is usually done by the staff of Customs Broker and for which Shri Chandu More was specifically appointed by the appellant had not done the carting in this case. Instead, the carting was also done in this case by Shri Inder Prakash Kohli who was not even authorized by the appellant to do such work.
- d) A market survey was conducted by the CIU, Mumbai Zone along with Shri Kohli on June 8, 2019 and it was found that the market price of "Ratching spanner set" was Rs.250/- whereas in the shipping bills the declared price was Rs.5,125/-. Similarly, the price per piece of 'water saving aerator foam flow' was Rs.40/- only in market whereas the declared price was Rs.337/- per piece. Thus, the appellant filed of shipping bills in the name of an exporter without even contacting the exporter and without verifying their KYC documents but by simply accepting the documents provided by Mr. Kohli who was neither the exporter nor an employee of Customs Broker nor the Customs Broker himself. The prices of the export goods were grossly overvalued with the intention to claim excessive IGST refund.
- e) When questioned, Shri A Prabhu, partner of the appellant firm said that the KYC requirements in respect of importers and exporters from Mumbai was dealt with only by their employee Shri More, and he had no idea about M/s. Sunrise Enterprises, the exporter in this case. He further

stated that on knowing about the malpractices in Mumbai, they have terminated all the operations in Mumbai and asked the staff to resign immediately.

3. An inquiry officer was appointed by the Commissioner in the matter under Regulation 17(1) of CBLR, 2018 who, after conducting the inquiry found as follows:

- (i) The appellant contravened Regulation 10(b) of CBLR, 2018 inasmuch as the appellant had not transacted the business in the Customs station either personally or through its authorized employee duly approved by the Deputy Commissioner or Assistant Commissioner of Customs. Instead, carting of the cargo was done by Shri Kohli as admitted by Shri Kadam and not by Customs Broker themselves. The explanation given by the Customs Broker that Shri Kadam, their G Card holder, employee had acted against their instructions was not accepted, and it was found that the appellant violated Regulation 10(d).
- (ii) Regulation 10(d) mandates the Customs Broker to advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. In this case, "Ratchering spanner set" was overvalued 20 times and the "water saving aerator foam flow" was overvalued 8 times. The appellant had never seen the goods and accepted whatever was indicated in the export invoice. It was held that Customs Broker has failed to suitably advise the exporter against such gross over invoicing.
- (iii) Regulation 10(k) requires the Customs Broker to maintain up to date records such as bill of entry, shipping bill, transshipment application and correspondence, other papers

relating to his business as Customs Broker and accounts including financial transactions in an orderly and itemized manner as may be specified by the Principal Commissioner of Customs or Commissioner of Customs or the Deputy Commissioner of Customs or Assistant Commissioner of Customs as the case may be. The G Card holder employee Shri Kadam claimed to have received the KYC documents through Shri Kohli even though he had not verified them. In his statement dated 4.6.2019, he assured that he would produce KYC documents which he claimed to have received through e-mail. However, he never produced them. In terms of Regulation 10(k), all correspondence and papers relating to the business have to be maintained up to date which is not done by the Customs Broker.

- (iv) Regulation 10 (n) requires Customs Broker to verify the correctness of the Importer Exporter Code number, Goods and service tax identification number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. In this case, admittedly the appellant had done nothing except simply accepting whatever documents were produced by Mr. Kohli and thereafter leaving the verification/ correctness of the goods to Mr. Kohli who is neither exporter nor Customs Broker or employee of the appellant.
- (v) Regulation 13 (12) mandates the Customs Broker shall exercise such supervision as may be necessary to ensure proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment.

4. The inquiry report found that the appellant is responsible for the acts of its employee Mr. Kadam who filed the shipping bills, grossly overvaluing the goods between 8 to 20 times of the

market value in the name of an exporter without even contacting the exporter and without verifying the KYC details merely based on a assertion by Mr. Kohli who was neither the exporter nor the licensed Customs Broker nor the employee of the exporter.

5. The Commissioner passed the impugned order holding that the appellant had violated Regulations 10(b), 10 (d), 10(k) and 10(n). Since these violations were committed by the appellant's employee, the responsibility for violations was held to rest on the Customs Broker in terms of Regulation 13(12) of CBLR, 2018. The Commissioner relied upon the judgment of High Court of Madras in **Shri Kamakashi Agencies vs. Commissioner of Customs Madras**⁴ in which High Court held that great confidence is reposed in a Customs House Agent and any misuse of such position by the CHA will have far-reaching consequences. He also relied upon the order of the Tribunal in **M/s. Thakkar Shipping Agency vs. Collector**⁵ in which it was held that CHA is under obligation to comply with certain requirements and if it does not comply with that, he could as well be alleged to have mis-conducted himself. He further held that in this case G Card holder Shri Harichandra Pandurang Kadam is an authorized signatory of the appellant. As per Regulation 13(12) of CBLR, 2018, the appellant has to exercise such supervision as may be necessary to ensure proper conduct of its employees in transaction of business and is responsible for all of their acts or omissions. Hence, M/s. Prabhu Shipping Systems is vicariously liable for the acts of its employees.

6. In view of the above, it is held in the impugned order that the allegations and charges leveled against M/s. Prabhu Shipping

⁴ **2001 (129) ELT 29 (Mad)**

⁵ **1994 (69) ELT 90 (Tri)**

Systems in the show cause notice dated March 13, 2020 for the contravention of provisions of Regulations 10(b), 10(d), 10(k), 10(n) and 13(12) of CBLR, 2018 stand proved. Aggrieved, this appeal is filed before this Tribunal.

7. On behalf of the appellants the following submissions were made in their appeal and during the hearing:

- (i) There is no evidence that the appellant had involved in any malpractice which was committed by the exporter and therefore, as Customs Broker, they should not be punished. The market inquiry was conducted by CIU revealed over-invoicing by M/s. Sunrise Enterprises, the exporter and not by the appellant.
- (ii) The value declared in the shipping bills is the prerogative of the exporter, who alone is answerable for the over-invoicing.
- (iii) Their employee, Shri Kadam, the G Card holder of the appellant firm had no knowledge about the overbilling and there is no documentary evidence that he had committed any fraud.
- (iv) Actual over-invoicing was revealed only after conducting market inquiry by the CIU and G card holder cannot have such knowledge.
- (v) No connivance of the G Card holder of the appellant was revealed in the inquiry therefore, there is no violation of any obligation under regulation of CBLR, 2018.
- (vi) Absence of G- card holder during carting and clearance of goods was not connected to the appellant. Due to mutual trust between Mrs. Kohli and Mr. Kadam, G card holder, they allowed Shri

Kohli to do the work and this lapse cannot be held against the appellant.

- (vii) The appellant cannot be penalized for the acts of its employee committed without its knowledge. The appellant was not at all aware of this misuse of G Card and therefore, it cannot be held against them.
- (viii) The appellant has immediately stopped its business in Mumbai on coming to know of this fraud which shows its bonafide which has not been considered by the Commissioner.
- (ix) There is no non-compliance of any of the obligation by the appellant.
- (x) It was very much evident from the statement of G Card holder that Shri Kohli was entrusted with the clearing work as G Card holder was busy in some other activity and such entrustment was not an offence under the provisions of the Regulations and the G Card holder had no personal knowledge about the over-invoicing alleged to have been done by the exporter.

8. It was therefore, prayed that the impugned order may be set aside and their license may be restored. Learned Counsel placed reliance on the following decisions in support of the appeal:

- 1. M/s. Ashiana Cargo Services vs Commissioner of Customs⁶**
- 2. M/s. Jai Ambe Logistics vs Commissioner of Customs⁷**

⁶ (I&G) CDJ 2014 DHC 807 High Court of Delhi dated 14.3.2014

⁷ CESTAT Mumbai dated 19.11.2014

9. Learned Authorized Representative for the department supported the impugned order and submitted that it calls for no interference. She relies on the following decisions:

1. **N T Rama Rao & Co. vs Commissioner of Customs, Chennai VIII**⁸ in which revocation of the licence of the Customs Broker was upheld on the ground that it had not conducted the due diligence of the exporters as required.
2. **Sriaanshu Logistics vs Commissioner of Customs**⁹ in which the appellant sub-let its licence to some other person and had not obtained any authorization from the client and fraud was committed. Relying on the judgment of the Supreme Court in **Commissioner of Customs vs KM Ganatra and Co.**¹⁰, the revocation of the licence of the Customs Broker was upheld.
3. **Dhakane & Co. vs Commissioner of Customs (General), NCH, Mumbai**¹¹ of the Tribunal upheld by the High Court of Bombay¹². In this case, revocation of licence of CHA was upheld as it had transacted business through another person who was neither its employee nor authorised to represent the CHA.

10. We have considered the arguments of both the sides and perused the records.

11. The CBLR, 2018 places several responsibilities upon the Customs Broker. The Customs Broker assumes a very important role in the processing of imports and exports of goods and related documentation under the Customs Act and acts as a pivot in the operation of Customs House in supervision of imports and exports. For this reason, the license is not given to anyone and

⁸ 2020 (371) ELT 789(Tri-Chennai)

⁹ 2019 (369) ELT 1431 (Tr-Del)

¹⁰ 2016 (332) ELT 15 (SC)

¹¹ 2015(317) ELT 56 (Tri- Mumbai)

¹² 2018 (361) ELT A 67 (Bom.)

everyone but is given only after conducting an examination to verify its knowledge of the customs procedures and checking its credentials. Thereafter, the Customs Broker is expected to act responsibly. It is true that the Customs Broker may not have the knowledge of any mis-declaration of the quantity, nature and value of the goods by the importer/exporter. However, the Customs Broker has to fulfill its obligations laid down in Regulation 10.

12. The Customs Broker licensed in one Customs House is also permitted to operate in other Customs Houses. However, all such operations must be directly done by Customs Broker himself or by its employees. For the acts and omissions of its employees, the customs broker is liable and this vicarious liability is explicitly indicated in Regulation 13. In this case, the appellant chose to operate from Chennai and Mumbai and has appointed Mr. Kadam, G Card holder giving him the Power of attorney. Therefore, for any act or omission of Shri Kadam, the appellant is responsible. The mere act of removing its employee after an incident does not extinguish this vicarious liability.

13. Regulation 10(b) mandates that the Customs Broker shall "transact business in the Customs Station either personally or through an authorised employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be". The goods in this case were carted by Shri Kohli and not by the Customs Broker or its employee Shri Kadam which is a violation of this Regulation. Evidently, if anyone can be allowed to transact business in the Custom House on behalf of anybody else, there is no need for Customs Brokers and it opens the Pandora's Box and floodgates for frauds. A Customs Broker cannot outsource his job to anyone else. In **K.M. Ganatra**, Supreme Court held as follows:

15. In this regard, Ms. Mohana, learned senior counsel for the appellant, has placed reliance on the decision in *Noble Agency v. Commissioner of Customs, Mumbai* [[2002 \(142\) E.L.T. 84](#) (Tri. - Mumbai)] wherein a Division Bench of the CEGAT, West Zonal Bench, Mumbai has observed :-

"The CHA occupies a very important position in the Customs House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations...."

We approve the aforesaid observations of the CEGAT, West Zonal Bench, Mumbai and unhesitatingly hold that this misconduct has to be seriously viewed.

16. Resultantly, we allow the appeal and set aside the orders of the High Court and the Tribunal and restore that of the Commissioner. There shall be no order as to costs.

14. In this case, the carting was done by a person who is neither a licensed customs broker nor is an employee of the appellant nor is the exporter nor the employee of the Customs Broker. We have no doubt that this is a violation of Regulation 10(b).

15. Regulation 10(d) mandates the Customs Broker to advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, to bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. The finding in the impugned order is that the appellant has not even seen the goods which were being

exported and was not aware of the price of the goods being exported. We do not find anything in the CBLR, 2018 which requires the Customs Broker to assess or know the correct value of the goods being exported. There is nothing to show that the appellant was aware of the violations by the exporter and has not brought them to the notice of the Assistant Commissioner/ Deputy Commissioner. Thus, we do not find any ground to hold that the appellant has violated the Regulation 10(d).

16. Regulation 10(k) requires the Customs Broker to maintain up to date records of documents such as bill of entry, shipping bill, transshipment application and correspondence, other papers relating to his business as Customs Broker and accounts including financial transactions in an orderly and itemized manner as may be specified by the Principal Commissioner of Customs or Commissioner of Customs or the Deputy Commissioner of Customs or Assistant Commissioner of Customs as the case may be. Shri Kadam claimed to have obtained the KYC documents by email and in his statement dated 4.6.2019 undertook to produce them. However, no KYC documents which are claimed to have been received by the appellant were produced before the lower authorities or even before us. The inevitable conclusion would be that the appellant has either no such documents or has chosen not to produce them. Shri Prabhu, the partner of the appellant firm stated that he did not know about the exporter as its Mumbai office handles the matters pertaining to its operations there. Therefore, neither Shri Prabhu, the partner of the appellant, nor Shri Kadam, the employee and power of attorney holder of the appellant, knew the exporter in whose name the Shipping Bills were filed. The least a Customs Broker is expected to do is to know the importer/exporter on whose behalf he was filing the Bills of Entry or Shipping Bill. As the appellant has not till date produced any documents to show that it had obtained

the KYC documents, we have no hesitation in this factual matrix to hold that the appellant has not maintained its records and thereby violated Regulation 10(k). In **Shri Kamakshy Agencies**, the High Court has held as follows:

"The grant of licence to a person to act as Custom House Agent is to some extent to assist the Department with the various procedures such as scrutinising the various documents to be presented in the course of transaction of business for entry and exit of conveyance or the import or export of the goods. In such circumstances, great confidence is reposed in a Custom House Agent. Any misuse of such position by the Custom House Agent will have far reaching consequences in the transaction of business by the Custom House officials. Therefore when the Applicant who had thirty years of experience as Custom House Agent, when he paved the way for his Power of Attorney to indulge in serious malpractices which ultimately resulted in loss of revenue to the Custom House to the extent of more than 80 lakhs, there is every justification in the respondents in treating the action of the applicant as detrimental to the interest of the nation and pass the final order of revoking his licence. As far as the allegations levelled against the Applicant are concerned, it has been found established that the Proprietor of the Applicant Thiru Natarajan had signed on certain blank documents such as Bs/F and S/Bs without knowing the importers/exporters and the nature of goods imported/exported in spite of being in the clearing line over thirty years. It is also admitted that Sri D. Sukumaran, Manager-cum-Power of Attorney of the Custom House Agent concerned, had actively involved in the fraudulent act in connivance with the importers and others and that as per the Power of Attorney Bond executed by Sri K. Natarajan all acts, deeds and things done by Sri D. Sukumaran were to be construed as if they were done by himself. Therefore virtually all the fraudulent activities carried out by the Power of Attorney of Thiru Natarajan were to be treated as having been carried out by Thiru K. Natarajan himself. Even assuming that the role played by Thiru D. Sukumaran is to be construe as that of an employee of the Applicant, the same would

not in any way alter the situation since that had resulted in a serious loss to the respondent. The fact remains that the respondent sustained a loss of duty by the reckless and irresponsible behavior of the Applicant in the course of discharge of his functions as Custom House Agent licensee. The respondent therefore rightly revoked the Custom House Agent licence of the Applicant. In the circumstances, while answering the questions now referred by the Tribunal in C/Ref/13/97 in favour of the respondent holding that the order of the Tribunal to the effect that on further deposit of Rs. 25,000/-, the licence of the Applicant should stand renewed with effect from 1-1-1997 is wholly illegal and improper, the various questions referred in C/Ref/13/97 are answered against the Applicant. The Reference Case is disposed of accordingly.”

(emphasis supplied)

17. Regulation 10 (n) requires a Customs Broker to verify the correctness of the Importer Exporter Code number, Goods and service tax identification number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. In this case, admittedly the appellant had done nothing except simply accepting whatever documents were produced by Mr. Kohli and thereafter leaving the verification/ correctness of the goods to Mr. Kohli who is neither exporter nor Customs Broker or employee of the appellant. Neither the appellant nor its employee Shri Kadam knew about the exporter. Even the KYC documents said to have been received through Mr. Kohli were not produced either before the lower authorities or before us. While it is not expected that Customs Broker should personally go and verify the location and address of each importer/exporter, it is expected to at least obtain KYC documents and conduct the necessary due diligence to check the exporter is at least genuine. Undisputedly, in this case, Shri Kadam representing the Customs Broker did not even contact the exporter, let alone conduct any enquiry or obtain any KYC documents or verify the exporters' credentials.

While it is not expected that Customs Broker should personally go and verify the location and address of the exporter wherever they are located, what is expected is at least the Customs Broker obtains KYC documents and takes necessary due diligence measures to check the exporter is at least genuine. This resulted in filing of documents wherein goods were overvalued 8 to 20 times the market price to gain excessive IGST refund.

18. Regulation 13 mandates the Customs Broker shall exercise such supervision as may be necessary to ensure proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment. Therefore, for the acts and omissions of Shri Kadam, the appellant is responsible.

19. Learned counsel for the appellant placed reliance on **Ashiana Cargo**. This case was in a different factual matrix. Under consideration was whether the suspension of the licence of the Custom House Agent was warranted or otherwise. It was not a case of final decision on the licence after inquiry. The G-Card holders of Ashiana were involved in a different business of smuggling narcotics abroad on their own account. This was not the activity of Ashiana. If any serious crime is committed by one of the employees (say, theft, assault, murder, etc.) of a Customs Broker, the Customs Broker cannot be held responsible. The vicarious liability of the Customs Broker extends only to such activities as are done by the employees as such employees. In the case on hand, the export documents were filed by Shri Kadam on behalf of the appellant and therefore, vicarious liability applies. This case does not advance the case of the appellant any further.

20. Learned Counsel also relies on **Jai Ambe**. In this case, the Tribunal found in the factual matrix of that case, that the charge

of the CHA not maintaining records does not survive. It was also found that Revenue's action against the CHA was only on the ground that it had not met the exporter personally. In this case, we find that the appellant had no idea who the exporter was. Its employee, Shri Kadam, also had no contact with the exporter. The appellant or its employee has not conducted any due diligence measures. They claimed to have obtained KYC documents through email but have failed to produce them either before the Inquiry officer or at any stage including before us. The irresistible conclusion can only be that they have no such documents and also no idea of who the exporter was and simply filed a Shipping Bill heavily over-invoicing the goods. In this factual matrix, **Jai Ambe** does not advance the case of the appellant.

21. In the factual matrix of this case, we find no reason to interfere with the impugned order except to the extent it records that the appellant has violated Regulation 10(d),

22. Accordingly, the impugned order is upheld to the extent indicated above and the appeal is rejected.

(Pronounced in open Court on November 15, 2021)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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