CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Customs Appeal No. 42213 of 2017

(Arising out of Order-in-Original No. 57765/2017 dated 17.08.2017 passed by the Commissioner of Customs (VIII), Custom House, No. 60, Rajaji Salai, Chennai - 600 001)

Commissioner of Customs **...Appellant**
Chennai VIII Commissionerate,
No. 60, Custom House,
Rajaji Salai,
Chennai – 600 001.

Versus

M/s. Allwin Cargo Services **...Respondent**
Sea View Tower, Phase-II,
2nd Floor, New No. 12, Old No. 9,
Krishnan Koil Street,
Chennai – 600 001.

APPEARANCE:

For the Appellant : Mr. Anoop Singh, Authorised Representative
Mr. N. Satyanarayana, Authorised Representative
For the Respondent : Mr. S. Krishnanand, Advocate

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40849 / 2025

DATE OF HEARING : 02.04.2025
DATE OF DECISION : 22.08.2025

Per Mr. VASA SESHAGIRI RAO

This Customs Appeal has been filed by the Revenue challenging the Order-in-Original No. 57765/2017 dated 17.08.2017 (hereinafter referred to as "impugned order") passed by the Commissioner of Customs, Commissionerate VIII, Chennai under Regulation 20 (7) of

Customs Brokers Licensing Regulations, 2013 (CBLR, 2013) for imposition of penalty of Rs.50,000/- under Regulation 18 of CBLR, 2013, instead of revoking the licence and forfeiture of security deposit.

2.1 Brief facts of the case are as follows: -

On specific intelligence, DRI, Chennai examined a consignment for which a Bill-of-Entry No. 4393017 dated 26.02.2016 was filed on behalf of M/s. Jeppiar Furnace and Steels Pvt. Ltd., Chennai, (namesake importer), by another CHA Sameer Logistics Pvt. Ltd. Vs. Commissioner of Customs, Chennai for clearance of goods described as "Low Melting Steel (LMS) Bundle Scrap" which arrived in five 20 feet containers. The import documents were in the name of M/s. Lakshmi Impex, Madurai and the goods were reportedly sold to M/s. Jeppiar Furnace and Steels Pvt. Ltd., Chennai on High Sea Sale (HSS) agreement basis.

2.2 Apart from the declared goods, smuggled cigarettes valued at Rs.4.13 crore were found and seized. Jeppiaar Furnace and Steels Pvt. Ltd., Chennai stated that, they had not imported the said consignment and categorically ruled out their involvement in the smuggling of Cigarettes and also denied that they entered into any HSS agreement with Sri Lakshmi Impex, for the Bill of Entry

No.4393017 dated 26.02.2016. However, they stated that they have entered into HSS agreement during the previous occasions in January 2016 with Sri Lakshmi Impex and Mahalakshmi Impex represented by one Shri Murugan, but they have discontinued the business with Shri Murugan because of the difference in weight of the goods supplied by them.

2.3 The Customs clearance of the impugned live consignment imported in the name of Jeppiaar Furnace and Steels Pvt. Ltd, Chennai was handled by Customs Broker (CB) Sameer Logistics Pvt. Ltd., Chennai and action against this CB was initiated separately and decided by this Tribunal in 2023.

2.4 The Customs clearance of the past consignments imported in the name of various IEC holders was handled by Customs Broker (CB) M/s. Allwin Cargo Services, Chennai (hereinafter referred to as 'Respondent').

2.5 It has emerged from the investigation that Shri S. Murugan and his sons had cleared 11 consignments in the past between 15.08.2014 and 12.11.2015 using various IEC's of different persons and firms.

2.6 Consequently, the Show Cause Notice dated 04.03.2017 was issued by DRI, Chennai, to M/s. Allwin Cargo Services for their role in facilitating clearance of past Consignments allegedly adopting the similar modus operandi of smuggling of cigarettes.

2.7 The enquiry officer in this case gave a report that the charges in the SCN are not proved and the CB may be given relief from CBLR, 2013.

2.8 The Adjudicating Authority has not agreed with the report of the Enquiry Officer as it had not touched all the facts of the case and another opportunity of personal hearing was granted to the CB keeping in view of the principles of natural justice.

2.9 After due process of Law, Commissioner of Customs *vide* his Order-in-Original No. 57765/2017 dated 17.08.2017 imposed a penalty of Rs.50,000/- (Rupees Fifty Thousand only) on the Respondent under Regulation 18 of CBLR 2013 and was also directed to be cautious in future to follow the CBLR 2013 scrupulously.

3. Based on the order of the Review Committee of Chief Commissioner's No. 13/2017-18 dated 27.09.2017,

Revenue has questioned the above Order-in-Original and filed this present Appeal before this forum on the grounds that the decision of the AA to impose a penalty of Rs 50,000/- is not commensurate with the gravity of offence committed and hence it is not Legal and proper.

4. We have heard Shri Anoop Singh and Shri N. Satyanarayanan, Ld. Authorized Representatives for the Appellant/ Revenue and Ld. Advocate, Dr. S. Krishnanand for the Respondent.

5. The Ld. Authorized Representative Mr. Anoop Singh submitted that it was a clear case, where an offence case was made out against the Respondent drawing our attention to the factual findings, that the CHA had cleared approximately 11 consignments in the past without verifying IECs issued in the name of different persons. All this leads to the conclusion that the CB had miserably failed to discharge the obligations as envisaged under CBLR 2013. He aided and abetted the act of smuggling of cigarettes by misdeclaration due to non-observance of Customs Brokers Licensing Regulations and he obtained the import related documents from/made correspondence/ and coordinated with unauthorized persons like Mr. Murugan. Also, he handed

over the goods to the transporters not as directed by IEC holders but Mr. Murugan.

6.1 *Per contra*, the Ld. Advocate supported the findings of the lower authority but however, reiterated his primary objection as to the maintainability of the appeal. The summary of his submissions are as follows:

6.2 That Shri Suresh Kumar Partner of M/s. Allwin Cargo Services in his statement dated 01.06.2016 before the SIO, DRI had already deposed that all the documents for the clearances were submitted to him in all these cases by one Mr. Murugan. And also, that several times they asked to give the details of all the IEC holders from Mr. Murugan but he always dodged the request of CB. And that CB did not insist on KYC to avoid delays which will lead to unnecessary detention charges and also transportation charges. He had accepted that he knew that Mr. Murugan's name was not there in any of the IEC certificates as director/ proprietor/ partner and there was no authorization with him from any of the IEC holders. He further submitted that they asked for these KYC documents several times but always Mr. Murugan dodged the question and never provided the same. In the course of investigation, various incriminating documents were recovered to substantiate that Mr. Murugan was fabricating the documents before submitting to Customs.

6.3 The Adjudicating Authority on the basis of the crucial facts found that the CB has violated the provisions 11 (a), 11 (e) and 11 (n) of the CBLR, 2013 regulations and they are liable for penalty under CBLR, 2013. Further, the AA did not find this case as a fit one for the revocation of the license and forfeiture of the security.

6.4 The Adjudicating Authority in exercise of powers conferred upon under the provisions of Regulation 20(7) of the CBLR, 2013 imposed a penalty of Rs.50,000/- on the Customs Broker M/s. Allwin Cargo Services and further directed the Customs Broker to be cautious in future and to follow the CBLR, 2013 scrupulously.

6.5 It was the Respondent's case before the Adjudicating Authority that they had scrupulously followed the dictates of the Customs Brokers Licensing Regulations, 2013 and also submitted that there was no wrong action on the part of the Customs Broker and also that all requirements under the Customs Broker Licensing Regulations, 2013 were adhered to and that they are not responsible for the contents of the Import or Export cargo as declared by the Importers / Exporters.

6.6 The Respondents are made scapegoats for the maleficence on the part of the Custom officers who are responsible for proper examinations of the goods sought to be imported and the Respondents wish to submit that they do not have x-ray eyes to know the contents of the cargo that arrived in the container and certainly it was the responsibility of the Custom officers, who had examined the said cargo. He has further submitted that all the part scrap consignments were examined by the officers and the Customs Broker should not be singled out for any action.

6.7 For the purported violation of the Customs Brokers Licensing Regulations, 2013, the Adjudicating Authority has already imposed a penalty of Rs.50,000/-, which would suffice for the purported maleficence / misfeasance, attributable to them, and the Customs Broker License, is the only source for livelihood, not only of theirs but also those of their employees, employed directly and indirectly.

6.8 Under the above circumstance, the Respondents submit that the appeal filed by the Department is on vexatious and irrelevant grounds and deserves to be dismissed, as the same is without merits.

7. The short point for determination before us in the Appeal is whether the penalty imposed in the impugned order is commensurate with the offence committed and if not, whether revocation of the CB licence and forfeiture of security can be imposed in this case?

8. We have considered the rival contentions, gone through relevant provisions of CBLR 2013, and the stand of the Review Committee, who, in their Review Order has opined as under: -

> *".......21. the decision of the AA imposing penalty of Rs 50,000/_ under the provisions of Regulation 20(7) of CBLR 2013 on the Customs Broker is not commensurate with the gravity of offence committed, and hence is not legal and proper "*

9. We find that Regulation 20(7) authorizes the Commissioner to pass such orders as he deems fit, after considering the enquiry report, either revoking suspension or of the Licence or imposing penalty not exceeding the amount mentioned in Regulation 22. Regulation 22 mandates the penalty to be imposed to a maximum extent of Rs. 50,000/- only. Therefore, it's very clear from a conjoint reading of the above Regulation with the impugned order that the

adjudicating authority has imposed the maximum penalty and the Regulation do not permit anything beyond this and there is no question of any leniency being shown. The authorities cannot go beyond the mandate of the provision and therefore, the Review Committee requiring intervention of this forum to the above is definitely beyond the scope of the very Regulations.

10. The Commissioner - Original authority has exercised his option as provided in terms of Regulation 20 of the CBLR whereby, he is authorized to either revoke or impose penalty to the extent provided under Regulation 22 of the CBLR. The relevant portion of the same reads as under:

> *"**20. Procedure for revoking licence or imposing penalty. -** (1) The Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the licence or impose penalty requiring the said Customs Broker to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Customs Broker desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.*
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(7) The Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs Broker, pass such orders as he deems fit either revoking the suspension of the licence or revoking the licence of the Customs Broker or imposing penalty not exceeding the amount mentioned in regulation 22 within ninety days from the date of submission of the report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, under sub-regulation (5)

Provided that no order for revoking the licence shall be passed unless an opportunity is given to the Customs Broker to be heard in person by the Commissioner of Customs."

11. Thus, what the statute requires is clear either revocation or penalty up to Rs. 50,000/-, but never both. The review authorities therefore cannot insist for adopting their views since that is undisputedly the domain of the Commissioner in stricto sensu. When the legislation in its wisdom has clearly pegged the upper limit of penalty at Rs. 50,000/-, it could not have been called as meagre. This is the amount of penalty that is prescribed for violation of CBLR, 2013. The alleged offence against the Customs Broker in the case was non-verification of the importers' details and allowing Mr. Murugan to represent many IEC Holders.

12. Further in the case of *Sameer Logistics Pvt. Limited Vs. Commissioner of Customs [2023 (8) TMI 264 - CESTAT CHENNAI]* it was held by this Tribunal in Para 20 of the order that: -

> *"20. However, we uphold the forfeiture of security deposit as well as the penalty of Rs.50,000/- imposed by the adjudicating authority on the appellant. Accordingly, we set aside the order of revocation and direct the Commissioner of Customs to restore the Customs Broker Licence, as indicated above."*

For the sake of brevity it is explained here that M/s. Sameer Logistics, Chennai is the Customs Broker linked to the Live consignment in which cigarettes illicitly imported were seized by DRI, whereas the conduct of CB Allwin Logistics, is related to past consignments and that their complicity in the role of smuggling of cigarettes is not established. Further, the enquiry officer in this case gave a report that the charges in SCN are not proved and recommended that the CB may be given relief from CBLR, 2013. Under these circumstances, we are unable to understand why the Appellant is seeking for revocation of license and forfeiture of security.

13. In view of the above discussions, keeping in view the Principle of Proportionality, in the peculiar facts and circumstances of this case, we are of the view that revocation of CB licence and/or forfeiture of security deposit is too harsh a penalty to be imposed on the CB in the instant case. It is not the case of the Revenue that the original authority has unreasonably reduced the penalty; or the law required more than what was imposed or that his order is

not as per law. In view of the above, no interference is called for and the impugned Order-in-Original No. 57765/2017 dated 17.08.2017 passed by the Commissioner of Customs, Chennai VIII is sustained.

14. The Appeal of the Revenue is dismissed.

(Order pronounced in open court on 22.08.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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