CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI

PRINCIPAL BENCH,
COURT NO. IV

Customs Appeal No. 51282 of 2018

[Arising out of the Order-in-Original No. 12/KB/POLICY/2018 dated 12/02/2018 passed by The Commissioner of Customs (General), New Customs House, New Delhi.]

M/s Alok Mehra, **Appellant**
Flat No. 232, Bhagya Laxmi Apartments,
Sector – 9, Rohini,
New Delhi – 100 085.

VERSUS

The Commissioner of Customs (General) **Respondent**
New Customs House,
Near I.G.I. Airport,
New Delhi.

Appearance

Shri B.L. Garg, Advocate – for the appellant.

Shri Sunil Kumar, Authorized Representative (DR) – for the Respondent.

CORAM: **HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)**
HON'BLE SHRI C.L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 51280/2019

DATE OF HEARING : 10/04/2019.
DATE OF DECISION: 01/10/2019.

C.L. MAHAR :-

The present appeal has been against the order dated 12/02/2018 passed by the learned Commissioner of Customs (General), New Custom House, Near IGI Airport, New Delhi (hereinafter referred to as the impugned order) ordering revocation of the CHA license No. R-35/2010 of the appellant herein and forfeiture of the whole amount of security deposit of Rs. 75,000/- furnished by the appellant under Regulation 18 readwith Regulation 20 (7) of the Customs Brokers Licensing Regulations, 2013 (hereinafter referred to as CBLR, 2013).

2. The appellant is holder of the aforesaid Customs Broker License issued by the Commissioner of Customs (I&G), New Delhi. The show cause notice dated 30/08/2017 was issued upon the appellant consequent upon an investigation report submitted by the Directorate of Revenue Intelligence, New Delhi vide their letter 23/05/2017. It was reported by the DRI that while investigating a case of fraudulent registration of transferable duty credit scrips in EDI system which were not issued by DGFT and consequent utilization by debiting customs duty, the Custom House Agent M/s Alok Mehra (the appellant) was found to be involved in such fraudulent activity among other persons. It had been gathered that certain persons including the appellant had created credit amount in the EDI system on the basis of exhausted licenses which were originally issued by the DGFT, by fraudulent methods; that intelligence revealed that these duty credit scrips/license/Authorizations issued by the DGFT were initially registered at different port like Kochi port, Tuticorin port etc. and had already been utilized to their full value; that these very duty credit scrips were then re-registered in the EDI system at ICD Tughlakabad, New Delhi under the same scheme with same IEC particulars, for the same value or for the inflated value by fraudulent means; that twelve such duty credit scrips/license as detailed in the impugned order were deliberately got re-registered at ICD, Tughlakabad, New Delhi by forging the value with an intention to re-utilize the same for payment of customs duty. That out of the aforesaid total 12 such licenses, the appellant had used 11 licenses for debit of customs duties and thus evaded the applicable customs duties to the tune of Rs. 1,11,98,374/- during the period November 2012 to November 2013. That scrutiny revealed that M/s HLPL Global Logistic Pvt.

Ltd., M/s Alok Mehra (the appellant) and M/s A.P. Enterprises, all customs brokers, had been engaged in trading of forged duty credit scrips/licenses. The fact of trading of licenses was admitted by the appellant before DRI and it appeared that the CB had sold licenses which were not existing; that the CB had failed to verify the details of the license and also did not produce the hard copy of the said licenses; that the aforementioned duty credit scrips/licenses, were utilized by various firms (importers) for debiting a total customs duty amount of Rs. 14,15,43,911/- against a total number of 1331 bills of entry filed by various customs brokers and out of which the appellant had used such fraudulent scrips for effecting clearances of 37 bills of entry involving a customs duty of Rs. 1,11,98,374/-; that these duty credit scrips were purchased by the appellant and the same were used by them by debiting customs duties on behalf of various importers who were their clients and that the appellant made payments to some Kolkata based firms namely, Raj Impex, Rakesh Industries, Sunshine Global Importers, Reva Trading, Shadow Corporation, Modak Impex and Maruthi Enterprises for purchase of the said forged duty credit scrips/licenses, but the money was transferred to their Hyderabad, Chennai, Surat and Mumbai accounts; that an amount of Rs. 63,26,304/- was transferred from the account of the appellant for purchase of forged licenses to M/s Rakesh Industries, M/s Raj Impex and M/s Reva Trading which were found to be non-existent at the given addresses. In some cases payments were directly made by the importers against the purchase of these scrips. Shri Alok Mehra, the proprietor of the appellant firm in his statement admitted that he was not in possession of the hard copy of the licenses/ duty credit scrips as Shri Lalit Jain of M/s Ribs Exim through whom he purchased the licenses never used to provide the hard copy of the license to him or to the importers and that Shri Lalit Jain used to make excuses; that he never met with or verified the identity of the sellers of the scrips personally; that he transferred the amounts for purchase of the scrips through RTGS in the accounts of sellers as per details provide to him by Shri Lalit Jain or his employee Mr. Prabhu; that he did not have any document to confirm that he purchased the licenses from Shri Lalit Jain M/s Ribs Exim and made payment as per the direction of Shri Lalit Jain or his staff that he was not aware as to who had got these licenses registered at ICD, Tughlakabad and that he never got registered any of these licenses.

3. On the basis of investigations, it has been alleged that the appellants have traded and dealt with forged duty credit scrips. The onus was on part of the appellant to ensure that the duty credit scrips were original and amount mentioned in the EDI system was actually for payment of customs duty. The appellant was required to have physical/hard copy such duty credit scrips alongwith debit sheet, which he failed to produce. The appellant also failed to produce any documents suggesting procurement of the forged licenses from Shri Lalit Jain of M/s Ribs Exim Consultants Pvt. Ltd., as the transferors of scrips were found unavailable at the given address which gave rise to suspicion that the firms mentioned in Table 4 of the impugned order were only paper firms and hence were fictitious firms and further as the invoices issued by the aforesaid trading firms reveal same pattern and signatory, it emerged to the investigating agency that all the customs brokers involved have actively/passively entered into same conspiracy for use of forged scrips for payment of customs duty. The custom brokers did not obtain authorization from their clients for use of the duty credit scrips; custom brokers failed to verify the genuineness of the duty credit scrips with the ulterior motive to cause unlawful gains to themselves by dishonest means; the CB was fully aware that the condition of producing the original scrip to the custom officer at the time of duty debit is the most important condition under Notification No. 95/2009-CUS dated 11/09/2009 and that in spite of being aware that Shri Lalit Jain did not possess the original copies of the scrips and in spite of not having seen the copy of

the said licenses himself, he did not advise the importers properly before making duty debit nor did he inform the custom officers about the non-availability of original scrips and, therefore, the CB (appellant) failed to perform the duties as prescribed under Regulation 11 (d) of the CBLR, it was the duty of the CB (appellant) to ensure that the duty credit scrips provided by Shri Lalit Jain were genuine before purchasing the same for their importers and that the duty credit scrips purchased were original and amount mentioned in the EDI system is available as seen in the hard copy of the license from the debit sheet and he ought to have informed the client accordingly which the appellant failed to do. Therefore, the CB (appellant) had failed to exercise due diligence in performing his duties and had contravened the provisions of Regulation 11 (e) of the CBLR.

4. Though the show cause notice was already issued on 30/08/2017 on the basis of DRI final investigation, an enquiry report was submitted on 24/11/2017 as per the provisions of CBLR. In the findings of the enquiry report it has been stated that it is the duty of the custom officer to register the duty scrips after verification, which the appellant has failed to do thus, this is a case of utilization of forged scrips. The registration number is generated after verification and once the license registration number is endorsed on the license, license holder is eligible to use the scrip for the purpose of debiting the duties on the imports against the said scrip. However, at the time of assessment, the importer has to produce the original copy of license as per the requirement of relevant notifications and it is the responsibility of the CB to guide his clients that user shall possess the original copy of scrip. In the present case, the CB has procured these scrips himself but did not have the original copy of the scrip which shows lack of due diligence to ascertain the correctness of information; that the DRI report is also not on the basis that the CB has registered the duty scrips but

allegations are of using the fraud scrips without verifying/holding the original copy of scrips. He cannot escape from this obligation. In the era of EDI it is not necessary that the assessing officer mandatorily ask for these documents used for clearance of goods, but he should possess the original ones which should be produced when asked for. That this allegation in the show cause notice has not been challenged by the CB. It further stated that as per investigation of DRI, Shri Alok Mehra, the CB, used these forged scrips to payment of customs duty on the import consignments without taking consent of the importers in violation of the CBLR, 2013. That the CB was having knowledge of the forged scrips. He had utilized these scrips to take undue benefits as he used to recover the duty forgone from the importers. The CB has neither challenged this aspect and nor submitted any clarification in his submissions. On the basis of these facts it was found that the CB had violated provisions of Regulation 11 (d) and 11 (e) of the CBLR.

5. It is a matter of record that the appellant's license was suspended vide suspension order dated 19/05/2016 but the suspension was revoked by order dated 30/01/2017 passed by the Commissioner in under directions vide order dated 04/12/2016 of this CESTAT Delhi to take a final decision within one month if the suspension was not already revoked. The Commissioner revoked the suspension on the ground that nine months had already been passed but the final investigation report or show cause notice in the matter had not been received from the investigating agency. And moreover, since almost three years had already been passed when the imports took place in this case, there was no ground for immediate action against the CB. Further, as the investigation in the matter is still pending, the detailed role of the CB is yet to be ascertained.

6. In the present proceedings, the appellants submitted before the adjudicating authority that the present show cause was nothing but repetition of earlier suspension proceedings as

the same had been issued to them on the basis of the same set of investigations by the DRI which had earlier been conducted by the SIIB, ICD, TKD, New Delhi and which had later been transferred to the DRI for further investigation. The appellant has only traded in part values of the scrips which already stood registered. So far as trading of the fully transferable scrips by the appellant is concerned, it is reiterated that no law, including the customs law and the CBLR, prohibits trading by a custom broker or any other person which already stood registered in the custom EDI system and the same was fully verifiable by the custom officers and the fraud, if any, has been committed at the stage of registration of the scrips. Therefore, initiation of proceedings against the appellant amounts to double jeopardy which is not permissible. That the orders passed in respect of the similarly situated CBs by the then learned Commissioner may also be taken into consideration. That the first offence report in the case had been received in the office of the Hon'ble Commissioner of Customs (General), NCH, New Delhi vide letter dated 28/03/2016 and thus, the mandatory 90 days' time limit for issue of a show cause notice under Regulation 20 (1) commenced in this case on 28/03/2016. As such, the show cause notice issued on 30/08/2017 is time barred and, therefore, not sustainable for this reason.

7. The learned Commissioner vide impugned order-in-original had confirmed the revocation of the license in terms of Regulation 18 readwith Regulation 20 (7) of the CBLR, 2013 issued under Regulation 9 (1) of CHALR, 2004 (now Regulation 7 (1) of CBLR, 2013) and imposed a penalty of Rs. 75,000/- by forfeiting the security deposit under the CHALR/CBLR holding that the appellant had violated the provisions of Regulation 11 (d) and 11 (e) of CBLR, 2013. He has held that the appellants had violated these provisions in as much as it is a case of fraudulent use of non-existent/fake duty credit scrips for payment of customs duty for clearance of import goods without the

expressive consent of importers by the customs broker. The CB had procured 11 licenses mentioned in the show cause notice from the non-existent/fake firms and had never ascertained the existence of the license trading firms; that he had never met the owner/proprietor/concerned person of the license trading firm and had also never seen the hard copy of the said duty credit scrips before purchase and its utilization for payment of customs duty; that it was accepted by the CB (appellant) that mandatory condition prescribed in the relevant custom notification for debit of license before clearance of goods could not be fulfilled in absence of hard copies of the said licenses/duty credit scrips; that the CB (appellant) failed to produce any document to confirm that he had purchased the license from M/s Ribs Exim Consultants Pvt. Ltd. and made payment as per the direction of Shri Lalit Jain of M/s Ribs Exim Consultants Pvt. Ltd. or his staff; that the CB could have verified the genuineness of the licenses/duty credit scrips from the DGFT website which they failed to do and, therefore, the CB has knowingly, willfully and deliberately suppressed the fact from the custom officer that the said duty credit scrips were fake/forged and also not advised their clients accordingly; that therefore, the CB (appellant) failed to perform the duties as prescribed under Regulation 11 (d) of the CBLR; that the CB could have easily accessed the DGFT site and checked the status of the scrip/license and in case of licenses/duty credit scrips which were not issued by the DGFT at all and were fraudulently registered in the EDI system and which were later utilized for payment of duty, the CB could have asked the seller to produce the original scrip/license to cause necessary verification from the DGFT website; that as the CB failed to do so, they have failed to exercise due diligence in performing his duties and has thus contravened the provisions of Regulation 11 (e) of the CBLR. The learned Commissioner has further observed that the earlier suspension order dated 19/05/2016 was issued against the offence report received vide letter dated 28/03/2016 and another offence report dated 06/04/2016, both received from SIIB, ICD, TKD, New Delhi and that said offence report consist of fraudulent utilization of three duty credit scrips i.e. 0410143428, 0410144516 and 3510035217 but the DRI investigation report consists of fraudulent utilization of eleven (11) duty credit scrips including the said three scrips; that the proceedings in respect of the three duty credit scrips mentioned in the SIIB, TKD, New Delhi letter dated 28/03/2016 and 06/04/2016 is hit by time limitation prescribed under Regulation 20 of the CBLR, 2013 and therefore, the learned Commissioner held that the proceedings initiated under the instant show cause notice in respect of fraudulent utilization of all the three duty credit scrips were time barred; that, however, the proceedings initiated against the investigation done by the DRI, who unearthed the fraudulent utilization of eight more duty credit scrips which had not come into the notice of SIIB, TKD, New Delhi, is well within the prescribed time limit and thus, the offence report dated 28/03/2016 and 06/04/2016 cannot be said as offence report in respect of the remaining said eight duty credit scrips.

8. The appellant is presently before us against the impugned order. In the grounds of appeal as well as the learned Counsel appearing on behalf of the appellant has challenged the impugned order on different grounds. It has been argued that the present proceedings are hit by time limitation, as under Regulation 20 (1) the show cause notice was required to be issued within 90 days of receipt of first offence report dated 28/03/2016, therefore, the show cause notice dated 30/08/2017 was clearly time barred. In this regard they have relied upon the decision in the case of **Saro International Freight System – 2016 (334) E.L.T. 289 (Mad.)** and **Overseas Air Cargo Services – 2016 (340) E.L.T. 119 (Del.)**. He has also assailed the impugned order for reopening of the case for same offence as it amounted to double jeopardy. He has further argued that there was no violation of Regulation 11 (d) as the Licenses were

already registered in EDI by the Custom Officers and as the debiting of duty in the licenses were done by the ACES/EDI system and there was no requirement ot produce physical copy of the License. That the appellant had purchased the license after paying the money at an intermediate stage after these were duly registered in the EDI system by the custom authorities and were being used regularly. Therefore fraud in this case if had happened, it has happened at the time of registration and not at the time of utilization for duty payment. The license holders M/s Rajkumar Impex Pvt. Ltd., and others had fraudulently got registered the licenses at ICD, TKD which were sold to unsuspecting importers and custom brokers for utilization. That the appellant has not furnished any incorrect information to its clients. As far as the duty payment on the import consignment was concerned, the same had to be paid by the importer himself or through the appellants either in cash or debit to the license. Since the importer informed the appellants that they had purchased the subject VKGUY license and duty had to be paid by debiting of these licenses which the customs authorities verified in the EDI system. The verification of scrips from the DGFT site was as reliable as the verification from the physical/hard copies of the scrips and balance against the license in the EDI system should have given the actual value available for debit and it is least expected that any fraudulent attempt by the original license holder or subsequent transferee would escape scrutiny by the custom officers. The appellant had placed reliance upon order-in-original No. 38/SM/Policy/ 2016 dated 25/05/2016 where the adjudicating authority held "genuineness of scrip can be ascertained while it is registered in EDI system. Once it has been registered in EDI system and duty has been debited with the said scrip, CHA/Custom broker has prima facie no reason to doubt upon the genuineness of the scrip……" That the appellant was a victim of fraud and could not be penalized. That once the importers had reimbursed the payments for payment against the scrips it clearly amounted to importer's implicit permission. He also stated that in similar proceedings, against another custom broker M/s HLPL Global Logistics Pvt. Ltd. arising out of the same DRI investigation report in the same twelve forged scrips. The CESTAT, Delhi had dropped proceedings against the custom broker vide final order No. 50145/2019 dated 01/02/2019.

9. On the other hand the learned Departmental Representative has reiterated the findings of the adjudication order.

10. We have carefully examined the findings in the order-in-original and the arguments advanced by the learned Counsel of the appellant as well as the learned Departmental Representative. As far as the initiation of fresh proceedings are concerned, we are of the considered opinion that there is no bar to initiate present proceedings by issuing show cause notice on the basis of a fresh investigation report received from DRI which involved eight new forged scrips which were not part of the offence report in earlier suspension and revocation of proceedings of custom broker license. We have examined final order No. 50145 of 2019 dated 01/02/2019 produced by the learned Counsel of the appellant. We find that the facts in the present case is almost identical and charges against CB in this case are also same as in the case of HLPL Global Logistics Pvt. Ltd. and these proceedings also arise out of the investigation report received from the DRI on the same forged scrips which were part of the said final order dated 01/02/2019. The revocation of CB license and imposition of penalty against the customs broker M/s HLPL Global Logistics Pvt. Ltd. have been quashed with the following observations :-

> "23. We find that Ld. Commissioner has not dealt with the submissions made by the appellant and followed the enquiry report in this case. It is evident from the records of the case that the appellants have obtained the duty free licence from M/s Him Logistics Pvt. Ltd. or through a broker Mr. Lalit Jain and utilised the same towards the payment of Customs duty for the consignment imported by their client. It was held in the inquiry report the appellant was responsible for utilisation of forged duty scrips for the

payment of customs duty, and therefore, not observed due diligence in conducting their business as per the provisions of CBLR. In this regard, we find that free duty licences/ duty credit scrips have been registered at the various customs port other than ICD and available on EDI system. As per the procedure prescribed under EDI system, it is not possible for the appellant to temper with the data/ information contained in the EDI system which is foolproof and secured system is prescribed not by one or two but by five officers of the customs including the Joint and Additional Commissioner. In this regard, we place our reliance on the decision of Hon'ble High Court in Writ Petition No. CRL 1338/2018 which is reproduced as under;

> "31. In the order dated 9th June 2016 of the Commissioner of Customs (General), the modus operandi of the EDI System is noted as under:
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> > "55.2 In this regard, I observe that ICD TKD Export Commissionerate, New Delhi, the concerned Customs formation, is working under EDI system. As per procedure of registration of script/ license in EDI system, genuineness of scrip can be ascertained while it is registered in EDI system and once it has been registered in EDI system and duty has been debited with the said scrip, there may not be any reason to doubt about the genuineness of the said scrip. I, further find that ICD, TKD Export, New Delhi being an EDI Port, details of registered scripts are available in EDI system and debit of duty has to be made on the EDI system only, which appear to be verifiable on the system directly. As genuineness of scrip could have been ascertained at the time of registration of script in EDI system I, further, observe that in present case, as per preliminary investigation, done till now, the said CB has not been found involved in trading of CB license. I, therefore, observe that the omission/contravention, if any, on the part of CB in such a scenario does not prima facie appear to be grave enough to continue suspension of their CB license."

32. The said order further noted that the imports in question were made in the year 2012. Since the matter was more than 3 years old and also considering that the allegations of not producing original scripts by the CBs to Customs at the time of clearance of import consignment may not be prime-facie considered such a grave offence, it was concluded that the continuation of suspension was not warranted. The said order of the Commissioner of Customs (General) refers to the statement made by Mr Ramesh Chadha, proprietor of M/s Kirti Cargo where he spoke of utilization of the scripts for payment of customs duty in the Bills of Entry filed on behalf of M/s Shyama Corporation. He stated that "the details were provided by Mr Divakar Sharma, his G-Card holder". This aspect of the matter does not find mention in the grounds of detention in case of the Detenue.

33. In view of the above order of the Commissioner of Customs, it becomes clear that it is not a simple case where the Detenue could have just hacked into the EDI System of Customs and tampered with the details the licenses, as is alleged. Unless the

> officers of the Customs Department were themselves involved, which angle is still under investigation, it is difficult to accept that the Detenue was the one who was involved in the racket of tampering with the licenses. Further, co-accused Mr Vinod Kumar Pathror is still said to be a PO".

11. Since the facts of the case at hand are same as decided by the above-mentioned decision and therefore we follow the same and hold that the proceedings against the present appellant also cannot sustain in the present case and accordingly the impugned order is set aside with consequential benefits. The appeal is accordingly allowed.

(Order pronounced in open court on 01/10/2019.)

(Ashok Jindal)
Member (Judicial)

(C.L. Mahar)
Member (Technical)

PK