

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH

Customs Appeal No. 50618 of 2019 [DB]

[Arising out of Order-in-Original No.06/MK/POLICY/2019 dated 04.02.2019 passed by the Commissioner of Customs (Airport & General), NCH, New Delhi]

M/s.D.S. Cargo Agency

B-29A, Shyam Vihar, Phase-I,
Najafgarh, New Delhi-110043.

... **Appellant**

VERSUS

Commissioner of Customs,

(Airport & General),
NCH, IGI Airport, New Delhi

... **Respondent**

APPEARANCE:

Shri Avaneet Singh, Advocate for the Appellant

Mr. Sunil Kumar, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. P V SUBBA RAO, MEMBER (TECHNICAL)

HON'BLE MS. RACHNA GUPTA, MEMBER (TECHNICAL)

DATE OF HEARING: MARCH 05, 2021

DATE OF DECISION : 26-03-, 2021

FINAL ORDER NO. 51174/2021

PER MS. RACHNA GUPTA

1. The Order in Original No. 06/2019 dated February 04, 2019 has been assailed in the impugned appeal vide which the appellant's Customs Broker licence was cancelled. The security deposit was forfeited and penalty was imposed upon him. Initially, this appeal was heard on 21 May, 2019 but learned Counsel for the appellant

made submissions only about technical aspect of limitation that the Commissioner (Appeals) has to issue notice within 90 days as per the Regulation 20 (1) of Customs Broker Licence Regulations(referred as CBLR hereinafter), as such the impugned Show Cause Notice is barred by time. Nothing was submitted on merits despite the opportunity given for the same. Order No. 42/2019 dated 1st October, 2019 was passed holding that the notice issued by the Commissioner is well within the statutory period of limitation as the event of 'issuance of notice' is mutually exclusive of the 'event of service of notice'. The requirement of Regulation 20(1) of CBLR, 2013 is that the notice by the Commissioner herein, should be issued within the period of 90 days to be followed by the event of service.

However, there already was a divergent view of the coordinate Division Bench, that vide aforesaid order of 01.10.2019, the matter was referred to Larger Bench for reference about the following issues involved:

- (i) Whether the word whether the word 'issue' in Regulation 20(1) CBLR, 2013 should include 'serve'
- (ii) Whether the time limit prescribed in Regulation 20(1) CBLR 2013 is mandatory or directory in nature.

The said reference stands decided vide Interim order No. 1/2021 dated 18th February, 2021 by Hon'ble President holding that word 'issue' would not include 'serve' and that the time limit prescribed in Regulation 20(1) of CBLR 2013 is mandatory in nature.

1.1 Based upon this decision, the appeal has been listed to be disposed off finally. An opportunity of hearing was given to the appellant as well as to the Department. The appellant made submissions on merits as follows:

It is submitted that allegation in Show Cause Notice itself makes it clear that alleged evasion of duty is the result of fraud committed by the importer for which Shri Sanjeev Maggu and Shri Ramesh Wadhera have been the master-mind. There is no apparent involvement of the appellant who is the Customs Broker (hereinafter referred as CHA) in the alleged diversion of goods into open market from the Customs Warehouse by the four importing firms i.e. .

(i) M/s Accturists Overseas (OPC) Pvt. Ltd.

(ii) M/s. Spark Exports

(iii) M/s. Shree Shyam Enterprises

(iv) M/s. Horrens Exim

Learned Counsel impressed upon that all the duties as Customs Broker have diligently been performed by the appellant in respect of impugned imports. He had duly collected all the KYC documents. Mr. Maggu represented himself as Authorised representative of the four of the said importer firms for whom the appellant had processed the impugned documents under bonafide belief about Mr. Maggu to be true representative of the importer. Due to this CHA was in contact with Mr. Sanjeev Maggu. Otherwise also there is no evidence produced by the Department to prove alleged negligence and any

other kind of fault on the part of the appellant. Hence, no violation either under Regulation 10 (b) or 10(d) or 10(e) and 10 (n) of CBLR, 2018 /11(b), 11(d) or 11(e) and 11(n) of erstwhile Customs Broker Licensing Regulation, 2013 (hereinafter referred as CBLR) is proved against the appellant. The entire fraud is committed by importer himself at the back of the appellant. The appellant cannot be penalised for the same. The order under challenge is, therefore, prayed to be set aside and appeal is prayed to be allowed.

2. While rebutting these arguments, learned Departmental Representative has submitted that impugned appeal is apparent case of fraud where four different firms got established based upon fake documents. Shri Sanjeev Maggu was the master mind behind four of the impugned importer firms. It is specifically pointed out that Mr. Sanjeev Maggu himself is a Customs Broker Licence holder. But instead of using his own licence he created fake firms and for diverting the impugned goods into open domestic market through these fake firms i.e. M/s Accturists Overseas (OPC) Pvt. Ltd., M/s. Spark Exports, M/s. Shree Shyam Enterprises and M/s. Horrens Exim. It is impressed upon that had CHA /appellant would have fulfilled all his obligations of Regulation 10 of CBLR, 2018 /11 of CBLR 2013, by verifying the antecedent for four of these importers, he could have been aware of the fact that four of them have been fake. It is further submitted that there seems no reason that the appellants had no knowledge about Sanjeev Maggu himself to be Customs Broker having licence in the name of his company M/s Leo Cargo Services Pvt. Ltd.

The licence of said M/s Leo Cargo Services Pvt. Ltd. has also been rejected. The appeal thereof has been dismissed vide the decision reported as **[2019 (370) ELT 1750 (Tri-Del)]**.

2.1 The learned Departmental Representative has also brought to our notice the deposition of the appellants in his statement as was recorded under section 108 of the Customs Act, 1962 on 14 July, 1917, where the appellant has acknowledged his mistake.

2.2 In view of these submissions, learned Departmental Representative has prayed that there is no illegality in the order under challenge while revoking the license of the appellant. The appeal, therefore, has no merits and is accordingly prayed to be dismissed. Learned Departmental Representative has relied upon **Noble Agency vs. Commissioner of Customs** reported as **[2002 (142) ELT 84 (Tri-Mumbai)]**.

3. After hearing the parties and perusing the record, we are of the considered opinion as follows:

The issue involved herein is as to whether the appellant being Customs broker has fulfilled all his obligations as required under sub-regulations 10 (b, d, e & n) of CBLR 2018/ sub-regulations of Regulation 11 of CBLR, 2013 or not. These read as follows:

10. Obligations of Customs Broker.—A Customs Broker shall —

(b) transact business in the Customs Station either personally or through an authorized employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

(d) 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, shall

bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

(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;

Sub-regulation b, d, e & n of Regulation 11 of CBLR 2013 are same as above.

4. To adjudicate the issue we first need to appreciate the intention of legislature while appointing CHA. Hon'ble Apex Court in case of **K M Ganatra & Co.** reported as **[2016) 332 ELT 15 (SC)]** has held that

"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."

Actually the intention for grant of licence to Customs Broker is that Customs House Agent or Customs Broker has a direct access to the

port and he may assist the importer while fulfilling all obligations necessary for import or export. Therefore, the sole aim of CBLR is to secure the interest of importer/exporter and also that of Revenue. Customs House Agents are known to the clients and Department simultaneously to facilitate the importers /exporters to have all the knowledge about the concerned import /export to get all the documents filed in process for the purpose of imports/exports with the simultaneous duty upon the said CHA to keep them aware about the Act and omissions they are not supposed to make while importing or exporting thereby aiding the department also in the verification and clearance process and the time taken therein.

5. In the present case, Department has impressed upon about the sufficient admission of the appellant for not complying with the CHA obligation under CBLR as is apparent from the statement of the appellant as was recorded under section 108 of Customs Act, 1962. We have perused the said statement and observe that CHA/ appellant has admitted his awareness about the fact that Shri Sanjeev Maggu is representative of four of the importers despite he has no capacity of either being the proprietor or partner or director thereof. However, he is the only one who performs all the functions of these firms. Appellant also acknowledged about his awareness of Shri Ramesh Wadhera to be financier of these firms and that owner of the impugned importing firms on papers, are the dummy owners. The appellant in the said deposition has acknowledged that he opted to keep mum and to not to bring these facts to the notice of Customs Authorities for the

sake of retaining the business he was getting from these firms. It is otherwise, clear from the statement that the appellant tendered apology for the said mistake. However, the same is mentioned to have been unintentional or inadvertent.

5.1 We also observe that Regulation 10 (b) specifically requires CHA to transact business in the Customs Station either personally or through an authorized employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. As apparent from the appellant's own statement dated July 14, 2017, as was recorded under Section 108 of Customs Act, 1962, the business of four impugned importers in Customs station was transacted by one Shri Sanjeev Maggu who apparently is admitted to not to be the authorised representative of any of these importers nor even of appellant CHA himself. This acknowledgement on part of the appellant is held to be sufficient admission for non-compliance of Regulation 10(b).

6. Regulation 10(d) of CBLR, 2018 requires the CHA 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, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be.

6.1 Again we revert to the aforesaid admission of the appellant and we observe that it was acknowledged by the CHA that four of the importer firms and the proprietors thereof are dummy proprietors.

Four of these firms are actually financed by Shri Ramesh Wadhera and are being operated by one Shri Sanjeev Maggu. We also observe that there is apparent and clear admission that despite acquiring this knowledge CHA/ appellant concealed the same from the Department. In answer to question number 8 as was put to CHA while recording the said statement under section 108 of Customs Act, 1962, he specifically acknowledged that he knew about the goods which were imported under warehouse consignments by these firms were actually meant for re-export to other foreign country, but were being diverted to the domestic market, he opted to not to ask for any clarification from the importer nor to bring such illegality to the notice of the Department only for sake of the payment CHA had to receive from these importers against his services to them. The appellant has admitted that despite the discrepancies in the documents of these importers, the CHA /appellant opted to not to bring the same to the notice of the competent Customs officers with the sole motive to safeguard his business with these importers. This admission of appellant is sufficient for us to hold the violation of regulation 10(d) & 10(e) on part of the appellant. The said violation has been pleaded as inadvertent and unintentional mistake but to our opinion this amounts to rather conspiring into commission of the offence of evasion of duty by illegally diverting goods from Customs warehouse to domestic market.

7.1 So far as due diligence on the part of CHA to be observed is concerned, it is also quite apparent that though while making

statement under section 108 of Customs Act, 1962, the appellant indicated to submit the KYC record of the importing firms i.e. M/s. Accturists Overseas (OPC) Pvt. Ltd. ; M/s. Spark Exports; and M/s. Shree Shyam Enterprises; but those documents were never been provided by the appellant. With respect to M/s. Horrens Exim, the appellant has admitted that except authority letter, no other document was submitted by the said importer. This admission is also sufficient to hold that the obligation 10(f) has not been fulfilled by the CHA/ appellant. It stands absolutely and clearly admitted by the appellant himself that he has failed to verify the 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, and thereby violation of Regulation 10(n). It stands clear that Customs Broker, despite knowing that some unscrupulous importers were clearing warehoused goods without payment of duty, preferred to not to bring the matter to the notice of department for the sake of not losing his client/importer.

No doubt, there is no document on record as provided by the Department, burden to prove otherwise rests upon the Department but it is settled principle of law that the appellants admission are the best proof which need no further proof. Hence, the burden need not to be discharged anymore by the Department in the cases of admissions by the concerned. It was observed by Hon'ble High Court of Delhi in the case of **Jasjeet Singh Marwaha vs. Union of India**

reported as **[MANU/DE/1201/2009]** that CHA's licence can be suspended based on confession made under Section 108 of Act, 1962 provided it is voluntary and statement is truthful and is not result of such inducement, threat or promise as mentioned in section 24 of Indian Evidence Act, 1872. In the present case, there is no retraction by the appellant of the said statement nor it is the submission before us. We have no reason to ignore the said admission.

8. Once there is acknowledged and admitted violation of CBLR Regulations, the Revenue has the option to follow the discipline governing the Customs House Agents and as such, the Commissioner of Customs is empowered to revoke the license of Customs House Agent and also to forfeit his security if such agent fails to comply with the provisions of Regulation or gets involved in the Act which would amount to mis-conduct/ offence under the Act. The concealment by the appellant about the act of commission of criminal offence as that of fraud from the Customs authorities is held to be an act as that of forfeiting the entire purpose of the licence which was given in favour of the appellant. It was held by the Hon'ble High Court of Andhra Pradesh in the case of **Commissioner of Customs and Central Excise vs. H B Cargo Services** reported as **[MANU/AP/0060/2011]** that in disciplinary matters, Commissioner is responsible for happenings in Customs area, and for discipline to be maintained, if he takes a decision necessary for that purpose, CESTAT would, ordinarily, not interfere on the basis of its own notions of the difficulties like to be faced by the CHA or their employees. Decision is

best left to the disciplinary authority save in exceptional cases where punishment imposed is shockingly disproportionate or is malafide. Interference with punishment imposed would be justified only when it shocks conscience of CESTAT. No indulgence can be shown to persons indulging in acts of corruption. Punishment imposed on Respondent, by Commissioner of Customs, of revocation of their license, when viewed in light of grave and serious acts of misconduct held established, was held justified.

9. In view of the entire above discussion and relying upon the above decision, we are of the opinion that there is no irregularity committed by the Adjudicating Authority below while revoking the license of appellant. We do not find any infirmity in the order under challenge. The same is accordingly, upheld. Consequent thereto the appeal in hand is hereby dismissed.

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

**(RACHNA GUPTA)
MEMBER (JUDICIAL)**

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