CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH, COURT NO. 1

CUSTOMS APPEAL NO. 52773 OF 2019

[Arising out of Order-in-Original No. 104/MK/Policy/2019 dated 04.10.2019 passed by the Commissioner of Customs (Airport & General) New Delhi]

M/S ANANYA EXIM **Appellant**

RZG-266/11, Rajnagar-2,
Palam Colony, Bagdola, Raj Nagar-II,
South West Delhi, Delhi-110077

And also at:

Plot No. 444-A, Kh No. 289,
Shyam Vihar, Phase-I
E-Block, Near Max Garden
Najafgarh, New Delhi-110043

VERSUS

COMMISSIONER OF CUSTOMS (AIRPORT & GENERAL),
Office of the Commissioner of Customs, **Respondent**
New Customs House, Near IGI Airport
New Delhi-110037

Appearance:
Present for the Appellant : Shri Priyadarshi Manish and Shri Anmol Arya, Advocates

Present for the Respondent: Shri Rakesh Kumar, Authorised Representative

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

Final Order No. 50224 /2024

Date of Hearing : 03/01/2024
Date of Decision : 09/02/2024

P V SUBBA RAO:

M/s. Ananya Exim[1] filed this appeal to assail the Order-in-Original[2]dated 04.10.2019 passed by the Commissioner of Customs (General), New Delhi whereby he revoked the Customs Brokers licence of the appellant, forfeited its security deposit and imposed a penalty of Rs. 50,000/- under the Customs Broker Licensing Regulations, 2018[3].

2. The facts of the case, in brief, are that the appellant was a licensed Customs Broker and had filed two Bills of Entry dated 25.1.2019 and 28.1.2019 with M/s. Angel Incorporation as the importer and describing the imported goods as 'Green Tea'. Receiving intelligence that there was an attempt to import 'Dry Khat' leaves, a psychotropic substance listed at S.No. 110xof the 'List of Psychotropic Substances' in the Schedule to the Narcotic Drugs and Psychotropic Substances Act, 1985 through these Bills of Entry, the imported goods were examined and tested and it was, indeed, found to be 'dry khat' and not 'green tea'. The goods were accordingly seized and samples were tested by the Central Revenue Control Laboratory[4]and investigations were carried out which established that imported goods were dry khat and not green tea.

3. Further investigations revealed that the appellant had previously filed four bills of entry in the name of the same importer

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1 Appellant
2 Impugned order
3 CBLR, 2018
4 CRCL

describing the goods as 'green tea' or 'dried green leaf' which were cleared through the Risk Management System[5] of the Customs based on self-assessment, i.e., without assessment or examination by the officers and they were also investigated.

4. To fully comprehend the facts of this case and examine this appeal, it would be necessary to discuss, the standard method of documentation in imports by air.

5. When goods are imported by air, the airline receives the goods from the exporter and issues an Airway Bill which is the counterpart of the Bill of Lading issued by Shipping lines (if goods are imported by sea) and is the document of title. The exporter sends the Airway Bill issued by the airline to the importer. The airline transports the goods into India and gives their custody to the custodian of the air cargo complex (which is the counterpart of the port/inland container depot/container freight station). The importer (or on his behalf, his Customs Broker) files the Bill of Entry with the Customs giving details of the goods imported, duty payable, etc. and after Customs clears the goods for home consumption, the importer receives the goods from the custodian of the air cargo complex showing the Bill of Entry (evidencing that the consignment was cleared by the Customs) and the Airway bill (evidencing his title to the goods). A gate pass is also issued so that the security guard at the exit gate of the air cargo complex knows that the consignment can be taken out.

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5 RMS

6. If the individual consignments are small, usually an aggregator collects them and packs them onto a larger pallet and gives them to the airline. In such a case, the airline issues the Master Airway Bill in the name of the aggregator who, in turn, issues house airway bills for each of the consignments indicating the names of the exporter and importer in each case. These are similar to the Master Bill of Lading and House Bills of Lading issued when several small consignments (less than container load or LCL) are exported and imported by sea.

7. In this case, although the term 'Master Airway Bill' was used (somewhat inaccurately) in the impugned order, a perusal of the air way bill in question shows that there was only an airway bill which was issued by the airline and there were no separate 'master airway bill' and 'house airway bill'.

8. Since the airline is responsible to deliver the goods to the custodian who, in turn, is responsible to deliver them to the importer, the nature of the goods received, quantity, marks and numbers, etc. are clearly mentioned in the Airway Bill. Of course, if a packet is delivered which is said to contain X and it actually contains Y, the airway bill will indicate that it received a packet said to contain X (because the airlines cannot open and check the contents of each packet).

9. The importer has to file the Bill of Entry indicating the nature of the goods, quantity, etc. in the Bill of Entry, which, has to match the goods actually imported. Since the Airway bill (or Bill of Lading

in case of imports by sea) also contains these details, the airway bill has to match with the Bill of Entry.

10. In all these imports, the Airway Bills issued by the airlines clearly indicated 'Dry Khat' as the goods imported while in the Bills of Entry, the goods were described as 'green tea' or 'dried green leaves.

11. If articles of food are imported, a No Objection Certificate[6] is required from the Foods Safety Standards Authority of India[7] for which an online system is available in which also the goods were described in all these Bills of Entry as 'green tea' and NOT as 'dry khat' and the NOC was obtained in these imports. **Thus, there was a clear mis-declaration of the nature of the goods in the Bills of Entry as well as in the documentation provided to obtain an NOC from the FSSAI for import.**

12. The Joint Commissioner of the Air Cargo Complex Import, New Delhi through which the import was made, and which discovered the mis-declaration of dry khat and its import in violation of the NDPS Act, sent a letter dated 12.2.2019 to the Commissioner of Customs (General), New Delhi (who had issued the licence to the Customs Broker) intimating about the import of dry khat. The Commissioner of Customs (General) issued a Show Cause Notice[8] dated 9.5.2019 to the appellant and appointed an Inquiry officer under the CBLR, 2018 who submitted his report stating that the appellant had violated Regulations 10(a), 10(d),

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6 **NOC**
7 **FSSAI**
8 **SCN**

10(e), 10(m) and 10(n) but found that the appellant had not violated Regulation 10 (j). The appellant submitted its reply to the findings of the Inquiry Report. After following due process, the Commissioner passed the impugned order holding that the appellant had violated regulations 10(a), 10(d), 10(e), 10(m) and 10(n) of CBLR 2018 and revoked its licence, forfeited security deposit of Rs. 5,00,000/- and imposed penalty amount of Rs. 50,000 under Regulation 17 of CBLR 2018.

Submissions on behalf of the appellant

13. Learned counsel for the appellant made the following submissions.

13.1 The Commissioner has, in the impugned order at paragraph 21.1, recorded that the appellant had admitted that he did not have the KYC documents in possession which is factually incorrect because when the appellant was summoned on 4.2.2018, he had submitted all the KYC documents which, were, however, not acknowledged by the department;

13.2 The statements of the appellant recorded on 2.2.2018 and 4.2.2018 were not in his handwriting but were typed and the appellant was simply asked to sign and he did so. **Therefore, the allegation that the appellant had violated Regulation 10(a) is not correct**;

13.3 In paragraph 21.2 of the impugned order, the Commissioner recorded that the appellant did not know about the whereabouts of Shri Samir kumar @ Rajaji, the importer and despite knowing that the IEC being used is a dummy, he continued to file the Bill of Entry. This finding is not correct because the appellant had clearly filed the Bill of Entry in discharge of his obligations. The whereabouts of the importer and his authorised representative were found on verification. **Therefore, the allegations that the appellant had violated Regulations 10(d) and 10(e) are not correct;**

13.4 In paragraph 21.4 of the impugned order, the Commissioner observed that the importer was not existing at the declared address and the appellant was also not aware of the post clearance destination of the goods. Therefore, he held that the appellant had violated Regulation 10(m). This finding is not correct as the appellant had discharged its responsibilities and even obtained a No Objection Certificate from the FSSAI and cleared the goods with utmost efficiency. **Therefore, there was no violation of Regulation 10(m);**

13.5 In paragraph 21.5 of the impugned order, the Commissioner observed that since the importer was non-existing at the declared address and the appellant had no knowledge about his whereabouts, it was concluded that the appellant had not verified the identity of the clients as well as functioning of the client at that address. Regulation 10(n) requires the Customs Broker to verify the identity of the client and its functioning at the declared address by using reliable, independent, authentic documents, data or information. The appellant had submitted two documents to prove the identity of the importer and its functioning at the given address. **Thus, the appellant had not violated Regulation 10(n).**

Submissions on behalf of the Revenue

14. Learned authorised representative for the Revenue supported the impugned order and asserted that it calls for no interference. He submitted that the appellant, as a Customs Broker, was required to file the Bills of Entry correctly after obtaining an authorization from the importer. The appellant had not even contacted M/s Angel Corporation but had filed Bills of Entry in its name based on the documents provided to it by one Shri Tarakeshwar Dubey who supplied Airway Bills after charging the description of the goods. The appellant filed these benami Bills of Entry through which the psychotropic substance was imported. In doing so, the appellant violated CBLR 2018 held in the impugned order.

Findings

15. The questions before us are whether the appellant had violated Regulations 10(a), 10(d), 10(e), 10(m) and 10 (n) and if so, whether revocation of licence, forfeiture of security deposit and imposition of penalty under Regulation 17 in the impugned order can be sustained. These Regulations read as follows:

> **1. Short title, commencement and application. —**
> (1) These regulations may be called the Customs Brokers Licensing Regulations, 2018.
> (2) They shall come into force on the date of publication in the Official Gazette.

(3) These regulations shall apply to, a Customs Broker who has been licensed and such other persons who have been employed or engaged by a licensed Customs Broker under these regulations or the Customs House Agents Licensing Regulations, 1984 or the Customs House Agents Licensing Regulations, 2004 or the Customs Brokers Licensing Regulations, 2013.
(4) Every license granted or renewed under these regulations shall be deemed to have been granted or renewed in favour of the licensee, and no license shall be sold or otherwise transferred.
………

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

(a) obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required 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;
……………
(m) A Custom Broker shall discharge his duties with utmost speed and efficiency and without any delay;

(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;

16. We now proceed to examine the alleged violations of each of these clauses:

Regulation 10(a)

17. It requires the Customs Broker to obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such

authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be.

18. In the impugned order, the Commissioner held that Regulation 10(a) was violated as the appellant had not obtained any authorization for the consignments from the importer M/s. Angel Corporation at all. When the goods were examined in the presence of the G card holder of the appellant, he said that the documents for this import were obtained by Shri Ashutosh Shukla, the 'F' card holder of the appellant from one Shri Tarkeshwar Dubey alias Deepak. Shri Shukla also admitted that the authorization to clear the consignment was not obtained from the importer M/s. Angel Corporation and that he had received the documents from Shri Tarkeshwar Dubey and the credentials of the importer firm M/s. Angel Corporation were not verified at all.

19. The submission of the learned counsel for the appellant is that since the documents of the importer have been obtained by it, there is no violation of Regulation 10(a) at all.

20. However, we find that in this case, investigations revealed that M/s. Angel corporation had nothing to do with the imports and Shri Tarkeshwar Dubey was the master mind of the operation which he undertook for some Somalians. The Airway Bill issued by the airline showed the goods as 'Dry Khat' but Shri Dubey changed the description of the goods in the Airway Bill and sent them to the appellant who filed the Bills of Entry with wrong description of the goods. There is nothing on record to show that the appellant was

involved in the smuggling of Dry Khat or profited from it. However, the question in this appeal is simply whether the appellant had obtained the authorization from the importer firm, as was required as per Regulation 10(a) or not.

21. Had the appellant approached M/s. Angel Corporation, the importer and obtained the documents from them, or at least, checked with M/s. Angel Corporation even through a phone call or email, it would have known in no time that the consignment was not imported at all by M/s. Angel Corporation and the entire racket of smuggling of the psychotropic substance would have come to light. **In this factual matrix, we have no hesitation in holding that the appellant had failed to obtain authorization from M/s. Angel Corporation, the importer and thereby violated its obligation under Regulation 10(a).**

Regulation 10(d)

22. Regulation 10(d) requires that 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, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. Learned counsel for the appellant denies that there was any violation of Regulation 10(d) at all.

23. In this case, the client of the appellant on paper is M/s. Angel Corporation. Not only did the appellant not advise Angel Corporation to comply with the provisions of the Act and allied Acts,

but it has not even contacted the client. In fact, it filed the Bill of Entry in the name of M/s. Angel Corporation without even contacting them and thus the import of the psychotropic substance 'dry khat' took place. **We, therefore, have no hesitation in holding that the appellant had violated Regulation 10(d).**

Regulation 10(e)

24. This Regulation requires the Customs Broker to 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.

25. The entire facts of the case are not that the appellant had provided wrong or incorrect information to its clients but that it had filed Bills of Entry on the basis of the wrong information provided by a person who was not the importer but some other person.

26. **We, therefore, do not find on the facts of this case that the appellant had provided any wrong or incorrect information. Therefore, the appellant did not violate Regulation 10(e).**

Regulation 10(m)

27. This Regulation requires the Custom Broker to discharge his duties with utmost speed and efficiency and without any delay. From the facts of this case, it does not appear that the appellant had delayed any processing. In fact, the problem is that it had

processed them carelessly without taking due care. **We, therefore, do not find that the appellant had violated regulation 10(m).**

Regulation 10(n)

28. This Regulation requires the Customs Broker to 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.

29. The submission of the learned counsel for the appellant is that the appellant had no obligation to physically verify the identity of the importer and whether it was operating at the declared address. It would suffice if it obtains at least two KYC documents which it did. Therefore, according to him, there was no violation of Regulation 10(n) at all.

30. **The appellant would have been correct if it had obtained the documents from the importer M/s. Angel Corporation. Obtaining the documents from some other person and filing benami Bills of Entry to clear mis-declared cargo, which in this case, happens to be a psychotropic substance banned under NDPS Act cannot, in our view, constitute fulfilment of Regulation 10(n).**

31. **To sum up, we find that the Commissioner was correct in holding in the impugned order that the appellant had violated Regulations 10(a), 10(d) and 10(n).**

32. The next question is if in the factual matrix of this case, if the revocation of the Customs Brokers licence of the appellant, forfeiture of its security deposit and imposition of a penalty of Rs. 50,000/- is warranted and if it is proportionate to the violations.

33. The appellant had, in this case, effectively filed *benami* (pseudonymous) Bills of Entry in the name of an IEC holder who had nothing to do with the imports at all. If Shri Tarkeshwar Dubey had provided the documents to the appellant (howsoever he may have obtained them), the appellant was at least required to obtain the authorisation from the importer or check with the importer if it had imported the goods. Simply by obtaining photocopies of two documents of any importer from anyone else and filing the Bill of Entry is to say the least, will have disastrous consequences. This is like an advocate filing a Writ Petition or an appeal in the name of a person without his knowledge by obtaining the documents through someone else. When an agent represents someone, the least that is expected is that he is authorised to represent the principal. Once this obligation is fulfilled, if the principal commits any illegality without the knowledge of the agent, the agent cannot be held responsible. However, in this case, the Angel Corporation in whose name the Bills of Entry were filed had nothing to do with the imports at all. On the other hand, the appellant obtained documents from Tarakeshwar Dubey who is neither the importer on the Bills of Entry nor were any of his KYC documents used to file the Bill of Entry. This resulted in the psychotropic substance being imported through these benami imports.

34. A Customs Broker is expected to behave and operate responsibly and he cannot simply file *benami* Bills of Entry which, in this case, resulted in import of a psychotropic substance. Filing of *Benami* Bills of Entry, if condoned, can have severe consequences. Customs procedures are based on trust and selective controls based on risk assessment. If Customs Brokers start filing *Benami Bills of Entry,* in the name of any importer, it can open the floodgates for free import of any contraband including, drugs, arms and explosives. Since examination is on selective basis, chances are that the contraband may not be detected (especially if mis-declared as a low risk import good). If caught, the importer will have nothing to do with it because the Bill of Entry is *benami* and the Customs Broker cannot wash off his hands saying that he had obtained copies of KYC documents through someone and not the importer which is sufficient.

35. In our considered view, filing *Benami Bills of Entry* is a serious violation and calls for toughest action.

36. **We, therefore, find no reason to interfere with the impugned order and uphold it. The appeal is, accordingly, rejected.**

[Order pronounced on **09.02.2024]**

(JUSTICE DILIP GUPTA)
PRESIDENT

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

Tejo