CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH, COURT NO. 1

CUSTOMS APPEAL NO. 51712 OF 2021

[Arising out of Order-in-Original No. 80/ZR/Policy/2021 dated 02.08.2021 passed by the Commissioner of Customs (Airport & General) New Delhi]

M/S PARDEEP KUMAR PRASHAR **......Appellant**

WZ-79-D, Gali No. 8, Virender Nagar,
New Delhi-110058

Vs.

COMMISSIONER OF CUSTOMS(AIRPORT & GENERAL)-NEW DELHI **.......Respondent**

New Customs House,
Near IGI Airport,
New Delhi-110037

Appearance:

Present for the Appellant : Shri Vaibhav Singh, Advocate
Present for the Respondent: Shri M K Shukla, Authorised Representative

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

FINAL ORDER NO. 58517 /2024

Date of Hearing/Decision: 27/08/2024

P. V. SUBBA RAO:

1. This appeal is filed by M/s Pradeep Kumar Prashar,[1] to assail the Order in Original[2] dated 02.08.2021 passed by the Commissioner whereby he revoked the Customs Broker’s licence issued to the appellant, forfeited of the whole amount of security deposit of Rs. 75,000/- furnished by the appellant and imposed a penalty of Rs.

---

1 **the appellant**

2 **OIO**

50,000/- under Regulation 14 and 18 of Customs Broker Licensing Regulations 2018[3].

2. We have heard learned counsel for the appellant and the learned authorized representative appearing for the department and perused the records.

3. The facts of the case which led to the issue to the impugned order are as follows.

4. The office of the Commissioner received a copy of the show cause notice dated 09.12.2020 issued by the Additional Commissioner of Customs (Air Cargo Export) passed in pursuance of the investigation by the Special Intelligence and Investigation Branch[4] into a shipping bill filed in the name of M/s Deepnidhi International (IEC No. AALFD4113A). Investigation revealed that prohibited goods were attempted to be exported by the shipping bill dated 12.12.2019 filed in the name of M/s Deepnidhi declaring the export of goods as decorative iron materials. The consignment was put on hold, examined and the matter was investigated. It was found that a lot of Red Sanders (Pterocarpus santalinus) in various shapes and sizes were attempted to be exported mis-declaring them as decorative iron materials. Red sanders is an endangered species and is available in the world only in the forests of some parts of India. It is listed in the Convention of International Trade in endangered species fauna and flora (CITES). Export of red sanders requires permission of CITES Management authorities and there was no such permission in the attempted export. Further investigation showed that shipping bill was filed by the

---

3 **CBLR**

4 **SIIB**

appellant in the name of M/s Deepnidhi International without any authorization from them and also without their knowledge.

5. The undisputed facts of the case are that the documents related to export of these goods were provided by one by Shri Mohit Taneja one of the Directors of M/s Soleado Impex. Shri Mohit Taneja requested the appellant to file the shipping bill not in the name of his firm but to file it in the name of M/s Deepnidhi and the appellant filed the Shipping Bill accordingly. Proceedings related to confiscation to the goods attempted to be exported and imposition of penalties continued by the Additional Commissioner against several persons including the appellant.

6. Based on the offence report in the form of the show cause notice dated 09.12.2020 issued by the Additional Commissioner, Air Cargo Exports, action under CBLR was initiated by the Commissioner of Customs (Airport & General). The appellant's Customs Broker[5] licence was suspended by order dated 15.12.2020 and a post decisional hearing was given on 22.12.2020 and the suspension was confirmed. Thereafter, a show cause notice dated 08.02.2021 was issued to the appellant and an inquiry officer was appointed. It was alleged in this SCN that the appellant had contravened Regulations 10(a), 10(b), 10(e) and 10(n) of the CBLR and it was proposed to revoke the appellant's licence, forfeit the whole of the security deposit and impose penalty. After considering the report of the inquiry officer and hearing the appellant, the Commissioner passed the impugned order. He held that the appellant had violated the CBLR by failing to fulfil its

5 CB

obligation under Regulation 10(a), 10(d), 10(e) and 10(n) which reads as follows:

> **10. Obligation of Customs Broker-A Customs Broker shall-**
>
> (a) Obtain an authorization from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorization 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 Act 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 clearnance of cargo or baggage;
>
> (n)verify correctness of importer Exporter (IEC) number, goods and service 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.

7. The questions which needs to be answered by us in this appeal are if the appellant had violated these regulations and if so if the punishment is proportionate to the gravity of the offence.

REGULATION 10(a)

8. Regulation 10(a) requires the Customs Broker to obtain the authorization from each of the companies, firms or individuals which employed him as a CB and to produce such authorization if required by the Deputy Commissioner or Assistant Commissioner of Customs. The undisputed facts of this case are that the appellant never even contacted M/s Deepnidhi in whose name he filed the shipping bill, let alone, obtain an authorization. In other words, at the behest of Ms. Mohit Tanjea the appellant filed *benami* shipping bill in the name of M/s Deepnidhi and through the shipping bill an attempt was made to

smuggle out prohibited goods. These facts are not disputed by the learned counsel before us. We, therefore, have no hesitation in holding that the appellant had violated Regulation 10(a).

REGULATION 10(d)

9. This regulation requires the Customs Broker to advise his client to comply with the provisions of the Act, other allied acts, Rules and Regulations and in case non-compliance bring such matter to the notice of the Deputy Commissioner or the Assistant Commissioner of Customs. In this case the appellant had not even contacted the exporter in whose name he filed the shipping bill. The shipping bill was filed behind the back of the alleged exporter. The appellant was in touch with Mr. Mohit Taneja and when he requested the appellant to file a benami shipping bill in the name of another exporter instead of advising Mr. Mohit Taneja about the correct position of the law that such a shipping bill could not be filed, the appellant colluded with him and filed a benami shipping bill. Through this *benami* shipping bill the attempt was made to smuggled out red sanders. There cannot be any manner of doubt that the appellant had violated regulation 10(d).

REGULATION 10(n)

10. This regulation requires the CB to verify the correctness of the IEC, GSTN, identity of his client and function of the client at the declared address by using reliable, independent, authentic documents, data or information. In this case the appellant had not only not verified the identity of M/s Deepnidhi in whose name it filed the shipping bill but had filed the shipping bill behind its back to facilitate smuggling of red sanders by Mr. Mohti Taneja. We have no doubt whatsoever that the appellant had violated regulation 10(n).

11. When summoned by the officers, Shri Pradeep Kumar Prashar, F-card holder gave a statement on 16.12.2019 in which he explained that he used to charge Rs. 10,000/- per month from his G-card holder Shri Devender Kumar and that he had learnt that Shri Devender Kumar used the licence and the dongle which he had lent to him for a price to file the shipping bill in which red sanders was attempted to be exported. The Commissioner has, in the impugned order, correctly observed that Regulation 1(4) by CBLR explicitly prohibits sale or transfer of licence. On a query from the Bench, learned counsel for the appellant agreed that the appellant used to charge Rs. 10,000/- per month from Shri Devender kumar, his employee.

12. When a CB employes any individual and gets a G-card issued in his name, the G-card holder acts on behalf of the CB and the CB is naturally expected to pay him a salary. No employee would pay his employer an amount for the privilege of working for him. Evidently, the arrangement between the appellant and Shri Devender Kumar in this case was that the appellant gave his credentials and dongle to Shri Devender Kumar so that he can file shipping bills and bills of entry as he pleases and collect fees for his services. In turn, Shri Devender Kumar pay the appellant Rs. 10,000/- per month. This is nothing but a case of sub-letting one’s license.

13. To sum up, we find that the appellant had clearly violated regulations 10(a), 10(d), 10(e), 10(n). These violations are not an innocent error or a careless mistake but a deliberate scheme in which the appellant sub-let his license to Shri Devender Kumar. Shri Devender Kumar, in turn, colluded with Shri Mohit Tanjea and filed

shipping bill in the name of M/s Deepnidhi without their knowledge and used that shipping bill and attempted to smuggle out red sanders.

14. If any consideration is given to such a CB, it will be a mockery of the entire system of controls by Customs. Any prohibited goods including drugs, arms, annuation etc., can be smuggled in and smuggled out very easily if the Customs Broker starts filing benami shipping bills without even the knowledge of the importer or exporter. It will be far worse, as in this case, if the CB lets out its credentials to another for a monthly fee and that person, in turn, files benami shipping bills or Bills of Entry to smuggle prohibited goods.

15. In view of above, we find that the impugned order needs to be sustained. The impugned order is upheld and the appeal is dismissed.

(Order pronounced in open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

Tejo