IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Appeal No. C/52253/2015-CU(SM)
[Arising out of Order-in-Appeal No. DLI-CUSTM-GEN-COM-037-14-15 dated 18.03.2015, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), New Delhi].

M/s. Schenker India Pvt. Ltd. ....Applicants

Vs.

C.C. New Delhi ....Respondent

Appearance:

Ms. Tapasya Agarwal, Advocate for the Appellants
Shri R.K. Mishra, DR for the Respondent

CORAM:
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 04.01.2017

FINAL ORDER NO.50321/2017-CU(SM)

Per V. Padmanabhan:

The appeal is filed against the order in original dated 18.03.2015 passed by the Commissioner of Customs Delhi. The appellant is engaged in providing logistics services worldwide and commenced operations in India as a freight forwarder in 1996. The appellant commenced its activities as a Customs House Agent (hereinafter referred to as CHA) in 2006.

2. With the above background I have heard Ms. Tapasya Agarwal, Advocate for the Appellants and Shri R.K. Mishra, DR for the Respondent.

3. Ld. Counsel submitted that their conduct, in relation to the imports, was looked into by the enquiry authority who, vide its report dated 26.12.2014, had exonerated the appellant against

violation of Regulation 13 (d), (f) and (b) of the CHALR 2014. The Ld. Commissioner in the impugned, however order held that the appellant has contravened Regulation 13(d) which puts the onus on the CHA to advice the importer regarding the compliance of the provisions of the Customs Act. He has referred to the statement of Shri Shihabuddeen, Manager of the appellant, dated 11.06.2012 in which he has admitted over sight on their part in not noticing the discrepancy in the invoice which has resulted in under valuation of the imported consignment.

The Ld. Counsel submits that they have filed the documents with Customs on the basis of what was handed over to them by the importer and accordingly it is not fair to say that they have colluded with the importer in undervaluing the consignment. She relied upon the decision in the case of ***Dominic & Co. Vs. CCE Mumbai 2013 (296) ELT 494 (Tri-Mumbai) and in the case of CCE Vs. MD Shipping Agency 2014 (299) ELT 257 (Bom.).***

4. Ld. DR on the other hand, supported the order of the Commissioner. He submitted that the CHA is expected to function as the eyes and ears of the Department but have failed in this duty as held by the Commissioner.

5. The present appeal seeks to set aside the forfeiture of the security deposit of Rs. 25,000/- ordered by the Commissioner in the impugned order. The only reason cited by the Commissioner to disregard the enquiry report of the Assistant Commissioner is that the appellant’s manager in his statement has admitted that they

have failed to notice the discrepancy in the invoice and could did ntimate the importer to file the correct documents.

6. From the records, I find that no case of abetment can be made out against the appellant for the undervaluation indulged by the importer. Any customs broker normally files the documents on the basis of what has been given to them by the importer. He cannot be expected to get them verified at the foreign exporter's end. In the case laws relied upon by t he appellant the Hon'ble High Court of Bombay in the case of M.D. Shipping Agency, (Supra) in similar circumstances, has held as follows:

> *"We find that the impugned order has observed that once the goods have been cleared out of customs charge and handed over by the CHA to his client, obligation of the CHA to CHALR comes to an end. It is not the obligation of the CHA to assume that post the clearance of imported goods it would not be taken to the address given in the advance license. Moreover, in this particular case, imported zinc ingot had on clearance from the customs department taken to the office of the transporter. In these circumstances, there could be no occasion for the CHA to suspect that the imported zinc ingots were not being taken to the destination as declared in the advance license namely the factory at Surat in Gujarat. Further, under Regulation 13(d) of CHALR the occasion to advice the importer would not arise because there was no occasion for the CHA to know or even suspect that the importer was not complying with the provisions of the Customs Act and / or advance license under which the goods were cleared. This is more so as delivery to a transporter for carriage of goods at the direction of the importer would not by itself resulted in non-compliance of the Customs Act ."*

6. Similar view has been taken by the Tribunal in the case of ***Dominic & Co. (Supra)*** wherein it has been held as follows:

6. In this case M/s. Raju Doshi (HUF) is a IEC holder who let the IEC to Shri Abdul Rahim, importer for importation of the goods. But in the invoice as well as import documents, M/s. Raju Doshi (HUF) is shown as the importer and from the importer M/s. Raju Doshi (HUF) the appellant has obtained proper authorisation as required under Regulation 13(a) of the CHALR 2004. As held by the Tribunal in P.P. Dutta (supra) that at the time of clearance if the authorisation is not asked by the customs officer and bills of entry has been duly signed by the appellant same is implied that the appellant has obtained authorisation from the importer. Therefore we hold that the charge levelled against the appellant under Regulation 13(a) stands not proved. With regard to charge under Regulation 13(d), we find that no discrepancy was found by the authorities in the documents filed by the appellant therefore question of advice does not arise and description shown in the bill of entry matches with the documents like invoice, packing list, when there is no discrepancy then it is not required for the appellant to bring it to the customs authorities. Further, in this case, only at the time of examination it was found that some fire works apart from the goods in the bill of entry which is not proved by the authorities was in the knowledge of the appellant. Therefore, in the absence of any evidence on record that appellant was having knowledge of misdeclaration, charge under Regulation 13(d) also stands not provedas held by the Tribunal in K.S. Sawant & Co. (supra). With regard to the remaining charges levelled against the appellant under Regulation 12 and 13(n) as held by the Tribunal in H.P. Joshi & Co. 2012 (284) ELT 358 that while giving personal hearing to the appellant, the Commissioner has not given notice to the appellant that he is not agreeing with the Inquiry Officer's report and that no reason for disagreement *were also given. Therefore, relying on the decision of Delta Logistics (supra) these charges are also stands not proved."*

7. In view of the above there is no justification for forfeiting the security deposit as has been ordered in the impugned order. The impugned order is set aside and the appeal is allowed.

[Dictated and Pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

Bhanu