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

Customs Appeal No. 53039 of 2016

[Arising out of Order-In-Original No. 66/SM/POLICY/ 2016 dated 12.09.2016 passed by Commissioner of Customs (General), New Delhi]

Mr. G.N.D. Cargo Movers **Appellant**

Vs.

Commissioner of Customs (General) New Delhi **Respondent**

Appearance:

Shri S K Pahwa, Advocate for the Appellants
Ms. Suchitra Sharma, DR for the Respondent

CORAM:

Hon'ble Ms Archana Wadhwa, Member (Judicial)
Hon'ble Mr. V Padmanabhan, Member (Technical)

Date of Hearing : 07.03.2017
Date of Decision : 20.03.2017

FINAL ORDER NO . 52441 /2017

Per Archana Wadhwa:

The present appeal stand filed against the order of Commissioner of Customs (General), New Delhi vide which he has revoked the appellants Customs Broker License along with forfeiture of security deposit of Rs. 75,000/- on alleged contravention of Regulation 11(d), 11(e) and 11(n) of Customs Broker Licensing Regulation 2013.

2. As per facts on record, the appellant filed 4 Bill of Entry dated 23.2.2015 for and on behalf of four importers, by declaring the goods as mobile phones. It is seen that the said importers adopted a modus operandi to import more number of mobile phones than the one declared in the invoices etc. by double strapping the cardboard boxes which when unstrapped became the double number of packages and three pallets or skids. It is recorded in the impugned order of the Commissioner that after out of charge order was passed, the goods were intercepted at delivery gate number 3 of import shed of IGI Airport Cargo New Delhi and delivery was stopped for 100% examination of the said consignment. The discrepancy and the modus operandi adopted by the importer were detected on examination of the goods.

3. In this background, proceedings were initiated against the Customs Broker for the alleged violation of Regulation 11 (d) of CBLR, 2013, which requires broker to advise his client with the provisions of Act. The adjudicating authority has relied upon the finding of the Inquiry officer. As per the observations made by the Inquiry officer, it stand recorded that inasmuch as 4 importers have adopted identical / similar practice of mis declaration and inasmuch as

the appellants happens to be a common Customs Broker for all of them, it cannot be said to be a case of co-incidence. It further stand observed by the adjudicating authority that Customs Broker had taken delivery of the excess skid/ pallets . The said observation stand assailed by the learned advocate by drawing our attention to the initial paragraph of the order which are to the effect that the consignment was intercepted by the Customs and the delivery was stopped and 100% examination was undertaken. As such, submits the learned advocate that the finding of the adjudicating authority that Customs Broker G-card holder has taken the delivery is factually incorrect.

4. We find that the adjudicating authority has primarily gone by the fact of mis-declaration in the Bill of Entry as regards the number of mobile phones . However, there is virtually no evidence on record to show that such mis-declaration was in the knowledge of present appellant or he was aware of the actual quantity of the goods or the modus operandi adopted by the importer. In his statement Shri Narender Narula, the present Customs Broker has deposed that they had filed Bill of Entry on the basis of documents supplied to them and they were totally unaware of the excess quantity and mis-declaration of the brand etc. We also note that neither of the concerned persons i.e. either the importer or their representatives have in their statements implicated the present appellant.

5. We further note that Regulation 11 (e) requires the Customs House Agent to exercise due diligence to ascertain the correctness of any information which he imparts to clients with reference to work relating to clearance of cargo / baggage. Merely because the importer have accepted their mistake of mis-declaration of brand and quantity and have shown their willingness to pay differential duty, fine and penalty, it cannot be concluded that Customs Broker did not exercise due diligence to ascertain correctness of the information. If the said fact only is relevant for holding against the Customer Broker, then in each and every case of mis-declaration by the importer, it can be concluded that Customs Broker did not suitably informed his clients. There has to be some evidence on record to show that either the Customs Broker was aware of such mis-declaration and suppressed the same with a malafide mind or he has taken efforts to get the goods cleared from the Customs on the basis of wrong declaration made by him or has connived with the importer so as to aid and abet the wrong declaration.

6. Similarly, for the violation of Regulation 11(n), the adjudicating authority has observed that the Customs broker did not verify the antecedents, correctness of the IEC number, identity of his client and the declared address etc. We again find no merit in the charge of the Revenue inasmuch as that IEC number has been found to

be correct as also the address of the importer. Further, all the importers have joined in the investigations and have given their statements. In such a scenario, it cannot be said that the Customs Broker has not adhered to KYC norms.

7. In view of the foregoing, we find no justifiable reason to revoke the appellants license or to forefeit the security amount. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief.

(Pronounced in the open court on 20.3.17)

(Archana Wadhwa)
Member(Judicial)

(V Padmanabhan)
Member(Technical)

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