

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

Customs Appeal No. 51923 of 2016

[Arising out of Order-In-Appeal No. 124/SM/Policy /2015 dated 06.11.2015 passed by Commissioner of Customs (General), New Delhi]

**M/s. Sunrise Freight Forwarders
Pvt. Ltd.**

Appellant

Vs.

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

Respondent

Appearance:

**Shri Prabhat Kumar, Advocate for the Appellants
Shri R K Manjhi, AR for the Respondent**

CORAM:

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

Date of Hearing / Decision: 03.04.2017

FINAL ORDER NO . 52910 /2017

Per Archana Wadhwa:

The challenge in the present appeal is to imposition of penalty of Rs. 50,000/- upon the appellants CHA in terms of Regulation 22 read with Regulation 20 of the CBLR, 2013.

2. For proper appreciation of the reasons adopted by Commissioner for imposition of penalties, relevant paragraphs from the impugned order are reproduced:

“86. From the investigations done and various statements recorded, it is proved beyond doubt that the impugned shipping bill was filed by Shri Dinesh Jangid ‘G’ card holder of the CB firm in connivance with the fraudulent exporters for personal monetary benefits.

The Inquiry officer in his report has held that the Company cannot be held responsible for acts of their employees done in individual capacity and the said act is outside the course of their employment. Further, the allegation, that the Company and Shri Vipin Bhardwaj were hand-in-glove in fraudulent export is not sustainable as nothing has been brought on record evidencing the involvement of the Company in the export of Red Sanders Wood Malas. The Company was all the while unaware of these consignments, handled by Shri Dinesh Jangid in his personal capacity without the company being aware of the consignments.

The defense submission of the CB that the CB would have been responsible for the act of its employee if they had been in knowledge of the said work is partly sustainable as the CB has put in place an efficient work system to ensure proper filing of shipping bills after submission and verification of ‘KYC’ norms. In the instant case, Shri Dinesh Jangid, ‘G’ card holder of the

CB firm deviated from the normal work procedure of the CB firm to commit the said act.

In view of the above, the investigation done, various statements recorded, defence submission of the CB and the report of the Inquiry officer, it is evident that the CB firm was not aware of the attempted fraud which was done in the personal capacity by Shri Dinesh Jangid. However, it is a fact on record that the impugned Shipping bill was filed by the employee of the CB, M/s. Sunrise Freight Forwarders Pvt. Ltd. and the CB failed to exercise proper supervision to ensure the proper conduct of his employee. Hence, I find that the CB has contravened the Regulation 17(9) of CBLR, 2013.

87. From the discussions in the preceding paras as also the report of the inquiry officer, it is proved beyond doubt that the M/s. Sunrise Freight Forwarders Pvt. Ltd. has followed the provisions of the various Regulations 13(a), 13(d), 13(e), 13(n) of CHALR, 2004 (corresponding Regulations 11(a), 11(d), 11(e), 11(n) of CBLR, 2004) but contravened the provisions of regulation 19(8) of CHALR 2004 read with 17(9) of CBLR, 2013. Thus the CB has violated the obligations on them under Regulations 17(9) of CBLR, 2013 inasmuch as they failed to supervise proper conduct on the part of their employee.

88. However, on account of above-said discussions, I hold that the offence of the CB cannot be considered so grave as to warrant revocation of their license. However, they are definitely liable for penalty.”

3. As is seen from the above, the entire mis-conduct was done by the G-card holder Shri Dinesh Jangid and there is clear finding in the impugned order of the Commissioner that the appellants firm was not involved at all. If that be so, we really fail to understand the reasons for imposition of penalties upon the CHA firm. In the absence of any evidence to show any malafide on the part of the CHA, we are of the view that penalty imposed upon him is required to be set aside . We order accordingly and allow the appeal to that extent.

(pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(V Padmanabhan)
Member(Technical)

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