CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 13.09.2017
Date of Pronouncement: 21.09.2017

Application No. C/COD/50742/2017
Appeal No. C/50755/2017-CU[DB]

[Arising out of the Order-in-Original No. 09/SM/POLICY/2017 dated 17.02.2017, passed by the Commissioner of Central Excise, New Delhi]

M/s. KVS Cargo … Appellant

Vs.

C.C. New Delhi ... Respondent

Appearance:

Present Shri Priyadarshi Manish, Advocate for the appellant
Present Shri Govind Dixit, DR for the respondent

Coram: **Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. V. Padmanabhan, Technical Member

FINAL ORDER No. 56660/2017

Per V. Padmanabhan:

The appeal is against the OIO no. 9/2017 dated 17.02.2017.

2. The appellant is a custom broker (CB) licensed to operate in Delhi Customs. The Directorate of Revenue Intelligence received certain intelligence and undertook investigations into the import of certain nutritional supplements in violation of FSSAI Act 2006. The bills of entry for such import consignments were filed by the appellant as Customs Broker. The

investigations undertaken by DRI led to the conclusion that the food supplements were imported in violation of the norms fixed in FSSAI Act. Proceedings were initiated for confiscation of such imported goods and show cause notice was issued. On the basis of the SCN issued by DRI, proceedings were initiated against the appellant - Customs Broker for revocation of the CB License. The enquiry officer in his report exonerated the appellant. However, the licensing authority i.e. the Commissioner, issued a dissenting note and after obtaining the comments of the appellant, passed the impugned order in which the CB license was revoked and the security deposit was forfeited. Aggrieved by the impugned order present appeal has been filed.

3. With the above background we have heard Shri Priyadarshi Manish, Advocate for the appellant and Shri Govind Dixit, DR for the respondent.

4. It is the submission of the Counsel for the appellant that the enquiry officer appointed by the Commissioner to look into the violations of the CBLR 2013, had exonerated the appellant. In spite of the same, the disciplinary authority has gone ahead and revoked the license. He submitted that the case of alleged irregular import of food supplements was adjudicated by the Department and the penalty imposed on the appellant has been set aside ruling that there was no involvement of the appellant in such fraudulent import.

5. The Ld. Counsel further submitted that the documents based on which the dissenting note was issued by the

Commissioner has not been made available to the appellant for making his rebuttal. Lastly he submitted that the punishment of revocation of license was too grave and hence may be set aside.

6. The Ld. DR justified the impugned order. He pointed out that six containers loaded with food supplements were imported in which several irregularities were noticed by the DRI at the time of the investigation. It was found that there was mis-declaration in weight, no MRP was affixed on the goods and also there were no NOCs to import the said goods. The DR further submitted that this was a case of misuse of Import Export Code number in which certain dubious persons imported the said goods making use of the IEC Code number of M/s. Unisys Enterprises. The Commissioner has recorded that Shri Aman Vachhar, kingpin in the case has been in constant touch with Shri Sameer Jha, proprietor of the appellant firm. Finally he submitted that if the appellant / Custom Broker has performed his duty diligently, such evasion would not have taken place.

7. The Directorate of Revenue Intelligence investigated the case of fraudulent import of food supplements, by certain unscrupulous elements, in contravention of FSSAI Act 2006. The appellant had filed the relevant bills of entry. After enquiring into the activity undertaken by the appellant, the Enquiry Officer in his report exonerated the appellant against the charge of violation of regulation 11 (a), (d), (e), (n) of the CBLR 2013. The main charges made against the appellant are regarding violation of the following regulations:

i) Regulation 11(a) for failure to obtain proper authorization before filing the Bill of entry.

ii) Regulation 11(d) for failure to advice the importer to comply with custom provisions.

iii) Regulation 11(e) for failure to exercise due diligence to ascertain the correctness of information he imparts to his client.

iv) Regulation 11(n) for failure to verify antecedent, correctness of IEC no. and identity of the client.

8. The investigations undertaken by DRI has established that the imports have been made making use of the IEC Code number of M/s. Unisys Enterprises. The partners of M/s. Unisys Enterprise have admitted that they were not the actual importers but the import was organized by Shri Amar Vachhar. For monitory considerations the IEC code number was allowed to be utilised by M/s. Unisys Enterprise. It is further on record that Shri Amar Vachhar has been in touch with Shri Sameer Jha, proprietor of appellant firm.

9. Violation of regulation 11(a) has been alleged against the appellant. The argument of the appellant is that there is no need for a personal meeting of the CB with the importer. However, we find that this is a case where IEC of the importer firm was being misused by a third person, Shri Amar Vachhar who was neither partner nor held any other official position in that firm. Both the partners of M/s. Unisys Enterprises have disclosed in their statements to DRI that they were not aware of the details of the

imports and had never met Shri Sameer Jha, proprietor of CB. From this, it emerges that the appellant has failed to obtain the authorization from the actual importer and violation of regulation 11(a) stands established.

10. Regarding regulation 11 (d), requiring the CB to advice their client to comply with the provisions of customs act, it stands established that the appellant has not even met the actual importer and as such requesting of advising the client for compliance of various legal positions does not arise. In view of the above failure to observe regulation 11(d) stands established.

11. Regulation 11(e) requires due diligence to ascertain the correctness of information which he imparts to client. In the facts of the present case, both the partners of M/s. Unisys Enterprise, have admitted that they were unaware of the actual imports made in their name. Further, the appellant also has admitted that they never met the owner of the firm. From this it appears that the appellant failed to exercise due diligence to ascertain the correctness of information which he imparted to the client with reference to work related to clearance of cargo.

12. Regulation 11(n) requires the CB to verify the antecedents, correctness of IEC code no., identity of the client and its functioning at the declared address. In the present case, we find that the appellant has simply accepted the address appearing in the driving license of Shri Sachin Gulati, partner of M/s. Unisys Enterprise. The appellant failed to notice that the address in the IEC document is different. Had the appellant made any serious

verification, he would have known that the IEC of the firm was being used by a third person, Shri Aman Vachhar. Consequently, we are of the view that violation of Regulation 11(n) stands established for failure to verify antecedents, correctness of IEC details.

12. As discussed above, we conclude that the appellant is guilty of violations of CBLR 2013. However, considering all the facts and circumstances, of the case, we are of the view that revoking the CB license is too grave a penalty to be imposed for the above violations. The ends of justice will be met by imposing a penalty of Rs.50,000/- on the appellant, in addition to the forfeiture of the whole amount of security deposit.

13. In view of the above, appeal is partially allowed and revoking of CB license is set aside and penalty of Rs. 50,000 is imposed, in addition to forfeiture of the security deposit. COD also disposed off.

[Order Pronounced in the open court on 21.09.2017]

(Justice Dr. Satish Chandra) (V. Padmanabhan)
President Technical Member

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