IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Customs Appeal No.C/51590/2017 -CU [DB]

[Arising out of Order-in-Original No.26/SM/POLICY/2017 dated 31.05.2017/01.06.2017 passed by the Commissioner (of Customs (General), New Delhi]

M/s. Falcon India …Appellant

Vs.

C.C., New Delhi … Respondent

Present for the Appellant : Mr.G.S. Arora, Advocate
Present for the Respondent: Mr. Sanjay Jain, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing / Decision : 09.01.2018

FINAL ORDER NO. 50267/2018

PER: B.RAVICHANDRAN

The appellant is a licensed customs broker engaged in processing of import/export goods through Customs. The appeal is against order dated 01.06.2017 of Commissioner of Customs (General), New Custom House, New Delhi. By the said impugned order, the original authority imposed a penalty of Rs.50,000/- on the appellant under the provisions of

Regulation 18 read with Regulation 20(7) and 22 of Customs Broker Licensing Regulations, 2013.

2. Brief facts of the case are that the appellants filed Bill of Entry on behalf of M/s.Sona Enterprises for clearance of SS vacuum bottles, flasks of different types and sizes. These imported goods are entered to be assessed based on the MRP affixed on them. The Officers conducted certain enquiry with reference to said import consignments and found that the MRP declared were not correct and there was short payment of customs duty due to this. After completion of enquiry, proceedings were initiated against importer as well as appellants under Customs Act, 1962. The present proceedings are in terms of CBLR, 2013 initiated by issue of show cause notice dated 29.12.2016. The show cause notice alleged contravention of Regulation 11 (d) against the appellant. An enquiry Officer was appointed, who submitted his report on 24.03.2017.

3. The Enquiry Officer recommended that the appellant failed to fulfill their obligation in terms of Regulation 11 (d) and accordingly, rendered themselves for penal consequences in terms of Regulation 20 read with Regulation 18 of CBLR, 2013. The Enquiry Authority recommended penal action including revocation of license, forfeitures of whole of security and imposition of penalty as proposed in the show cause notice.

The appellants presented their side of the case before the original authority. The matter was adjudicated resulting in the impugned order. The original authority after detailed examination of the enquiry report and the submissions made by the appellants held that the violations of CBLR by the appellants are not serious enough to lead to revocation of license. However, he found that the appellants did violate the provisions of CBLR and recorded as below:-

> *"36. In view of bove, I do not find sufficient evidence to conclude that the CB had the knowledge of subsequent chnge in MRP of goods and he has concealed the same from the department. However, I find that though the MRP was affixed on the imported goods, yet the CB has failed to obtain permission from the competent authority for affixing the stickers before clearance of said import consignments imported by M/s.Sona Enterprises, since 2012 and did not advise the importer properly in this regard to this extent. As such, I hold that to that extent the CB has failed to cmply with the provisions of the Customs Act, 1962. However, this act of omission by CB cannot be considered to be so grave to warrant revocation of their CB license."*

4. On the basis of above findings, he imposed a penalty of Rs.50,000/- on the appellant.

5. The ld. Counsel appearing for the appellant contested the impugned order on two main grounds.

6. First he submitted that the time limit prescribed under CBLR have not been adhered to. The proceedings happened much beyond the period of 90 days from the date of offence report. Secondly, he held that the impugned proceedings are beyond the scope of show cause notice as the allegations made in the show cause notice have been held to be not established by the original authority. However, he proceeded to impose penalty on a different ground. He submitted that the show cause notice alleged violation of Regulation 11 (d) on the ground that the appellant in connivance with the importer misdeclared the MRP of the imported goods. The Original Authority held that the said allegation is not established. However, he went beyond the said allegation to hold that the appellant did not obtain permission of the competent authority for affixing stickers before clearance of consignments imported by M/s.Sona Enterprises. He held that appellant did not advise the importer properly in this regard. This, the ld. Counsel submits, is beyond the scope of allegations made in the show cause notice. Relying on certain decided cases, the ld. Counsel submitted the whole impugned order is without jurisdiction and in violation of principles of natural justice.

7. The ld. AR contesting the appeal, submitted that Regulation 11 (d) clearly mentions that the Customs Broker shall advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Dy. Commissioner of Customs. It is submitted

that the appellant has categorically stated during investigation that the imported goods were without MRP labels and other statutory declarations and the same were affixed in the Customs examination area as per the labels supplied by the importer. The ld. AR submitted that the importation of goods without MRP details which is a mandatory requirement is not proper. Though, the importer can affix such MRP labels before the goods were cleared out of Customs the same should be done with the prior intimation and due supervision. The appellant is in-charge of such activities. His failure to follow the proper procedure and not brining to the notice of the Dy. Commissioner about the non-availability of statutory labels in the imported goods will constitute a violation of Regulation 11 (d). The ld. AR submitted that though the enquiry report recommended for revocation, forfeiture as well as penalty, considering that the seriousness of the offence being not grave the original authority has taken a commensurate lenient action of imposing only a penalty. Ld. AR supported the offence of the original authority.

8. On the question of limitation in proceeding against the appellant, he submitted that there is no offence report prior to the issue of show cause notice for customs proceeding by DRI, which is on 09.09.2016 (received by the Office of the Original Authority on 05.10.2016). All the proceedings thereafter were the time limit prescribed under CBLR. He submitted that the statutory time limit mentioned in CBLR has been followed in

the present proceedings and on this ground, there could be no grievance on the part of the appellant.

9. We have heard both sides and perused the appeal records.

10. Regarding the limitation of time periods for CBLR proceedings applicable to the present appeal, we note, there is no offence report received by the licensing authority prior to the issue of show cause notice by the DRI, which is received on 05.10.2016. The appellant relied on the date of detection of offence by the DRI. We note that the same will not constitute an offence report as per CBLR, which mentions "receipt of an offence report". This will constitute an intimation in writing to the licensing authority containing at least some gist of possible offence committed by the appellant. No such report has been received or placed on record prior to the issue of show cause notice by the DRI. As such, we find no breach of limitation of time limit.

11. On the second issue regarding the proceeding resulting in imposition of penalty being beyond the scope of show cause notice, we note that the show cause notice invoked violations under Regulation 11 (d). We have perused the enquiry report also. The enquiry report categorically brings out the violations on the part of the appellant. It is clearly recorded that the MRP labelling on the goods were done in the Customs area as

admitted by the appellant and no permission has been obtained from the concerned authorities for the same. This is also recorded in the show cause notice regarding violation of 11 (d). The ld. Counsel strongly contested that the non-obtaining of permission from the Customs authorities for labelling the imported goods inside the Customs area is not a violation alleged in the show cause notice.

12. We find that such plea will not be in line with the overall allegations made in the show cause notice and detailed enquiry made by the Enquiry Officer. In fact, the allegation made against the appellant with reference to connivance with the importer regarding non-adherence of MRP labeling is not established. Similarly, the other serious offences alleged has also found to be not established. However, as recorded in para 36 of the impugned order, which actually on merit cannot be contested, resulted in the imposition of penalty. The violation as recorded in para 36 will fall in the overall ambit of the obligations on the part of customs broker in terms of Regulation 11 (d). Allegation of violation of such Regulation has been made in the show cause notice and due opportunity has been given to defend in the enquiry proceedings, which resulted in the enquiry report also. A further opportunity has been given during the proceedings before the original authority. Shri Vikas Gupta, the partner of the appellant categorically stated regarding MRP labels being affixed in the examination area. This has been relied upon by the original

authority to hold that such non-fulfillment of obligation will be a violation. The original authority restricted the action against the appellant to only imposition of an amount of Rs.50,000/- as penalty. The recommendations made in the enquiry report for revocation, forfeiture etc. have not been accepted. Regarding the original authority going beyond the scope of the allegation as contented by appellant, we note that the provisions of Regulation 11 (d) are very generic and a portion of the acts of the appellant was found to be violating such obligation. We find no infirmity in the findings recorded in the original order to the effect that such infringement will attract penal action. We also note that the original authority has competence to decide on all the violations under Regulation 11(d). Examining the allegations made in the show cause notice alongwith the background of investigation, which is also narrated in the notice and enquiry report as well as in the original order, we find no infirmity in the original order warranting interference by us. Accordingly, the appeal is dismissed.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita