CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing: 29.01.2018
Date of pronouncement: 26.02.2018

Custom Appeal No. 51762 of 2017
(Arising out of order-in-original No. 53/KB/Policy/2017 dated 23.08.2017 passed by the Commissioner of Customs (General), New Delhi).

M/s R.S.R. Forwarders Appellant

Vs.

CC, New Delhi Respondent

Appearance:

Sh. Mohan Lal, Advocate for the appellant
Sh. R. K. Manjhi, AR for the Respondent

Coram:

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

Final Order No. 50791/2018

Per: **V. Padmanabhan**:

The present appeal is filed against the Order-in-Original No. 53/KB/Policy/2017 dated 23.08.2017 passed by the Commissioner of Customs (General), New Delhi.

2. The appellant is a holder of CHA licence which was valid upto 19.06.2025. They filed shipping bill No. 2849017 dated 21.05.2014 on behalf of the exporter M/s R. P. Basmati Rice Limited for export of basmati rice. The consignment was cleared from ICD, Gautam Budh Nagar and moved to Jawahar Lal Nehru Custom, Nhava Sheva. The Directorate

of Revenue Intelligence received information that the containers were filled with contraband in the form of Sanders and hence the container was examined by SIIB (Export), JNCH, Nava Sheva and it was found to contain Red Sander logs of 9840 kg. which was concealed in the container alongwith the non basmati rice of 5820 kg. The case was investigated by DRI and show cause notice was issued on 17.02.2015 for confiscation of the contraband and imposition of penalties on various persons including the appellant. This show cause notice was adjudicated by Commissioner of Custom, Noida vide his Order-in-Original No. 1/2017 dated 06.01.2017 in which the contraband was confiscated and penalty was imposed on the appellant.

3. An offence report dated 07.12.2016 (which was received by the licensing authority on 15.12.2016) detailing the role played by the appellant –CHA was sent by DRI to the Commissioner of Customs (General), IGI Airport, New Delhi who was the licensing authority of the appellant. Show Cause Notice under CBLR was issued to the appellant on 28.02.2017 proposing the revocation of the licence. After the due process of adjudication, the appellant’s licence was revoked vide the impugned order in which the Customs Broker Licence was revoked alongwith forfeiture of security deposit of Rs. 75,000/-. Aggrieved by the said decision, the present appeal has been filed.

4. With the above background, we heard Sh. Mohan Lal, Advocate for the appellant and Sh. R. K. Manjhi, ld. AR representing for the Revenue.

5. Ld. Counsel submitted that the entire proceedings resulting in the revoking of CHA licence was time barred. He contended that the DRI detected the contraband in the container (which was cleared for export as early as 20.08.2014) when the container was examined at JNCH, Nhava Sheva. However, the show cause notice was issued to the appellant only on 20.08.2017 which is well beyond the time limit of 90 days specified in the CBLR

6. On merits, he submitted that this Tribunal vide its final Order No. 71840/2017 dated 01.12.2017 has set aside the penalty imposed on the appellant in respect of the show cause notice issued for the custom offence. He further submitted that the fault of the appellant was minor which does not merit the revoking of the licence. Accordingly, he prayed that the impugned order may be set aside.

7. Ld. AR justified the impugned order. He submitted that the time limit under the CBLR runs only from the date of offence report. Even though the contraband was noticed at the time of examination of the goods on 20.08.2014, the licensing authority can initiate action only after receipt of the offence report from the detecting agency. In this case, the DRI has sent the offence report through their letter enclosing the draft show cause notice dated 07.12.2016 which was received by the licensing authority only

on 15.12.2016. The show cause notice under CBLR was issued on 20.08.2017 which is well within the time limit specified under the CBLR.

On merits, he submitted that the appellant has filed the shipping bill without verifying the antecedent of the exporter. Since they have failed to carry out the responsibilities cast on them under the CBLR, 2013, he justified the punishment of revoking of the licence.

8. We have heard both sides and perused appeal record. The main argument advanced on behalf of the appellant is that the show cause notice issued by the Commissioner of Customs proposing to revoke the CHA licence is time barred. We note that the time limit of 90 days for issue of show cause notice under the CBLR commences with receipt of the offence report. Even though, the detecting agency noticed the contraband in the export container as early as 20.08.2014, the licensing authority was in a position to initiate proceeding under the CBLR, 2013 only after receipt of the offence report from DRI. It is pertinent to record that the offence took place in a different place from that of the Licensing Authority who is in Delhi. Inasmuch as the offence report contained in the alleged violation of CBLR was received by the Commissioner of Custom, IGI Airport, New Delhi only on 15.12.2016, we are of the view that the show cause notice which was issued on 20.08.2017 within time and cannot be held to be time barred. Hence, it is required to examine the merit of the case.

9. The CHA filed the shipping bill for clearance of basmati rice on behalf of the exporter M/s R.P. Basmati Rice Limited. The shipping bill was filed on the basis of documents e-mailed to Ranbir Bhola, CHA through a middleman. The investigation has established that the export of contraband was master minded by one Sh. Sumit who has impersonated as Sh. Sudhir and Sh. Chanderbhan, Proprietor of M/s Dwarika Logistics. From the facts of the case, we note that Sh. Ranbir Bhola, CHA was in possession of an authorisation from M/s R.P. Basmati Rice Limited for the clearance work. However, Ranbir Bhola, CHA filed the shipping bill on the basis of the invoice, packing list and other document which was sent to him by Sh. Chanderbhan by e-mail through Sh. Hitesh Bhatt. After the shipping bill was filed, Sh. Ranbir Bhola did not receive any intimation for export of goods and their examination at ICD, Loni. Later, during investigation, it was brought out that this was reportedly done by Sh. Sumit and after filing the shipping bill Sh. Ranbir Bhola had no more role to play in the clearance of export consignment. Consequently, it appears that Sh. Ranbir Bhola was not directly involved in carrying the prohibited red sanders wood, alongwith non basmati rice used for concealing goods. However, Sh. Ranbir Bhola, CHA had the responsibility to verify the antecedents of the exporter and the genuineness of the export documents before filing the same. The investigation has established that they have failed in verifying the antecedent of the actual exporter. They have simply relied on the documents forwarded by Sh. Ranbir Bhola. This has, in fact,

paved the way for substitution of cargo and attempt to export the contraband.

10. The role of the CHA in the Customs procedures is significant. The CHA is expected to safeguard the interest of exporter of the goods as well as the Customs. The adjudicating authority, in his detailed findings, have concluded that the appellant is guilty of violation of various regulations of CBLR, 2013. But, in the facts and circumstances of the case, we are of the view that even though the appellant is guilty, the violations are not so grave as to justify the revocation of the custom licence. We are of the view that ends of justice will be met with the forfeiture of security deposit of Rs. 75,000/- and in addition imposition of penalty of Rs.50,000/-.

11. In the result, the impugned order is modified, as above. Appeal is partially allowed.

(Pronounced on 26.02.2018).

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant