In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066

Customs Stay Application No.50971/2017
In Appeal No.C/51832/2017

(Arising out of Order-in-Original No.37/KB/Policy/2017 dated 04.07.2017 passed by The Commissioner of Customs (General), New Delhi)

M/s Service Bureau …Appellant

Vs

CC New Delhi …Respondent

Appearance:
Present for the Appellant : Shri Sanjeev Kumar Singh, Advocate
Present for the Respondent : Shri R.K. Manjhi, DR

Coram: HON'BLE JUSTICE (DR) SATISH CHANDRA, PRESIDENT
HON'BLE MR V.PADMANABHAN, MEMBER (TECHNICAL)

Date of hearing: 02.04.2018
Date of decision: 12.04.2018

Final Order No.51329/2018

Per V. Padmanabhan,

The present appeal is against the Order-in-Original No.37/2017 dated 04.07.2017. The appellant is a Custom Broker and licensed by the Commissioner Customs, Delhi. They were also granted permission to transact Customs related work in Bombay. The appellant filed Bill of Entry in Bombay for clearance of goods imported by M/s Chirag Corporation, Bhiwandi under the Duty Fee Imported Authorization Scheme (DFIA). The Bombay Customs Authorities booked a case of under invoicing of goods against the said importer. The SCN for such customs offence was issued on 01.12.2014 and upon receipt of a copy thereof, Delhi Customs initiated disciplinary proceedings against the appellant by issuing SCN dated 03.03.2015. The Custom Broker Licence was revoked by the Commissioner Customs vide his order dated 25.08.2015. But when the said order was challenged before this Tribunal, the matter was remanded for *de novo* decision after furnishing copies of relevant documents based on which the case has been made against the appellant. The present impugned order has been passed by Commissioner Customs in the *de novo* proceedings in which he revoked the Customs Broker Licence again and ordered for forfeiture of the whole amount of security deposit of Rs.75,000/-. Aggrieved by the impugned order, the present appeal has been filed.

2. With the above background, we heard Shri Sanjay Kumar, Ld Advocate for the appellant as well as Shri R.K. Manjhi, ld DR. The arguments advanced on behalf of the appellant are summarized below:

i) The proceedings initiated vide SCN dated 03.03.2015 are hit by time bar in as much as the same has not been issued within 90 days from the date of the Offence Report i.e. 01.11.2014. He further alleged that the date of the Offence Report has been wrongly stated as received on 09.12.2014. The SCN was received by the appellant only on 14.03.2015 whereas the date of the letter issued by the Commissioner Customs is 01.11.2014.

ii) On merit, he submitted that the allegations made against the appellant are mainly on three grounds:

a. The CHA has acted without proper authorisation from the importer;

b. CHA has failed to verify the KYC documents properly;

c. CHA did not advice the importer regarding the proper compliance of the Customs Act and Rules.

iii) He submitted that the appellant has taken all reasonable steps to fulfill their obligation under the Customs Broker Regulations. CHA is not required to physically verify the details of the importer but it is sufficient to satisfy themselves of KYC on the basis of documents submitted by the importer.

iv) Finally, he submitted that on merit a lenient view may be taken since their Custom Broker Licence has remained revoked for a period of more than 3 years.

3. The ld DR justified the impugned order. He submitted that the question of time bar has already been considered by the Tribunal in the first round of litigation resulting in issue of Final Order darted 10.05.2017. He strongly refuted the allegation that the Commissioner Customs has manipulated the dates of the Offence Report. He produced a copy of the record for verification of the Bench in which he highlighted the fact that the Offence Report was received by the office of Commissioner (Customs), Delhi as evidenced by the seal on such correspondence indicating the date of 09.12.2014 and hence there is no violation of the time limit prescribed under Regulation 20 of CBLR. 2013.

4. Ld DR further justified the order of revocation on merits

5. We have heard both the sides and perused record.

6. In the first round of litigation vide Final Order No.53325/2017, the ground of time bar under Regulation 20 has been considered and decided in favour of Revenue by the Tribunal. Consequently, we decline to reopen the same ground during these proceedings.

7. We have also considered the submissions made by both sides on merits. We discuss below the various charges alleged against the appellant for which the CB licence was ordered for revocation:

a) Violation of Regulation 11(a)

The CB is required to obtain authorisation from the importer on whose behalf the documents are being filed with Custom Department. The appellant's operations in Bombay were handled by Ashok Bharsiwal Tiwari, employee of the appellant and "G."card holder. He also held the Power of Attorney on behalf of the appellant. The Bills of Entry have been filed in Bombay on behalf of M/s Chirag Corporation. Customs authorities have found serious offences against the importer. During the investigation by the Customs Authorities, various statements were recorded under Section 108 of the Customs Act, from which it stands established that the appellant had failed to obtain proper authorization from the importer M/s Chirag Corporation. Shri Ashok Tiwari, has acted only on the bidding of Shri Vinod Chaudhary who did not hold any position in the importer firm, hence, we are of the view that the charge of violation of Regulation 11(a) stands established. The claim of the appellant that Shri Ashok Tiwari has acted as per the authorisation given by Shri Vinod Chaudhary merits to be discarded.

b) Violation of Regulation 11(d)

In terms of Regulation 11(d), CB shall advice his client to comply with the provisions of the Customs Act and in case of non-compliance, shall bring the matter to the notice of the Customs Authorities. From the record of the case, we find that the CB has not only failed to advice his client to comply with the provisions of the Customs Act, but has worked hands-in-glow with the importer and facilitated highly under-valued importation of goods. In his statement, Shri A.K.Tiwari has admitted to be aware of the contemporaneous import value of goods imported but has failed to advise his client to comply with provisions of the Act. He has also failed to bring such non-compliance to the notice of the Customs Authorities. Consequently, violation of Regulation 11(d) is proved against the appellant .

(c)Violation of Regulation 11(e) and 11(n)

Regulation 11(e) requires the CB to exercise due diligence to ascertain the correctness of information which he imparts to a client. Further, 11(n) requires the CB to verify the antecedents, correctness of IEC No. and identity of the client as well as his address. The investigation has established that the appellant had failed to comply with both the above regulations. It is seen from record that the CB has facilitated the importer to misdeclare the goods so as to fraudulently avail the benefit of DFIA licence. Further, it is found that CB did not verify the antecedents, correctness of IEC, identity of the client as well his functioning at the declared address. The investigation found that the importer M/s Chirag Corporation was not functioning from the address declared. We hold that violation of Regulation 11(e) and (n) stand established.

(d) Regulation 17(9)

This regulation requires the CB to exercise proper supervision over the conduct of his employees and shall be held responsible for all acts of omission of his employees. From the record, it is seen that the operation of the appellant at Bombay Customs was handled by Shri Ashok Tiwari, who was the ”G.”card holder as well as Power of Attorney Holder-cum-Manager of the CB firm. The investigation at Bombay has established that Shri Ashok Tiwari has abused his position in facilitating the import by M/s Chirag Corporation. The failure on the part of the CB to discharge their legal and statutory responsibilities have enabled and facilitated fraudulent import under DFIA. The appellant is to be held responsible for all the acts of omissions and commission by their employee Shri Ashok Tiwari at Bombay. In accordance with the Principle of Vicarious Liability, the principal, i.e., the appellant, is to be held liable for all the acts of his agent at Bombay. Thus, the appellant cannot absolve himself from the responsibilities and hence is liable to be penalized under various regulations.

8. As discussed above, the contravention of Regulation 11(a), (d), (e), (n) as well as Regulation 17(9) stands established against the above. Consequently, the appellant is liable for penal consequences.

9. Keeping in view the Principle of Proportionality, in the peculiar facts and circumstances of this case, we are of the view that revocation of CB licence is to harsh a penalty to be imposed on the appellant. In our view, the ends of justice will be met by ordering forfeiture of the whole amount of security deposit of Rs.75,000/- furnished by them. In addition, we also imposed a penalty of Rs.50,000/- on the appellant.

10. In the light of above, the impugned order is modified as above. Appeal is partly allowed.

(Pronounced in the court on 12.04.2018).

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

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