IN THE CUSTOMS, EXISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing: 18.04.2018
Date of Pronouncement: 08.05.2018

Appeal No. C/50754/2018
(C/MISC/50318/2018 & C/STAY/50317/2018)

[Arising out of Order-in-Original No. CC (A) 08/KB/Policy/2018 dated 06.02.2018 passed by the Commissioner of Customs, New Delhi]

Exim Cargo Services …Appellant

Vs.

CC, New Delhi …Respondent

Appearance:
Represented by Ms. Prabjyot K. Chadha, Advocates for the appellant.
Represented by Shri Rakesh Kumar, DR for the respondent.

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

Final Order No. 51744/2018

Per V. Padmanabhan:

The present appeal is against the Order-in-Original No. 8/2018 dated 06.02.2018. The appellant is a customs broker licensed by the Commissioner, Customs, New Delhi. It was noticed by the Customs Department that the appellant had filed several bills of entry for the importer M/s Pax Technology Private Limited. M/s Pax Technnology Private Limited had been importing Point of Sale Devices and Mobile Point of Sale Devices (MPOS). For clearance of such import goods, the importer was obligated to produce the Equipment Type Approval (ETA) from Wireless Planning and Coordination (WPC) cell and import licences from respective licensing officers. The investigation undertaken by the Special Intelligence and Investigation Branch at Air Cargo Complex, New Delhi indicated that M/s Pax Technology, in their bills of entry filed through the appellant, were found to have misdeclared goods in terms of description as well as undervaluation. Further, investigation into such import consignments revealed that the appellant had played a significant role in engineering the misdeclaration and undervaluation. Accordingly, after carrying out an enquiry against the appellant and issuance of show cause notice, the adjudicating authority has upheld the contravention of several Regulations of the Customs Broking Licensing Regulations, 2013. Finally, she has revoked the C.B. licence issued to the appellant. Further, the forfeiture of the whole amount of security deposit of Rs. 10,000 has been ordered along with blacklisting Shri Rajendra Prasad who was an employee of the appellant holding ‘G-card’. Aggrieved by the impugned order, the present appeal has been filed.

2. With the above background, we heard Ms. Prabjyot K. Chadha and Shri Rakesh Kumar, DR.

3. Arguments advanced by the learned counsel for the appellant is summarized below:

(i) On behalf of M/s Pax Technology, the bills of entry for 12 disputed consignments were filed by five different CHAS, but only 4 bills of entry were filed by the employee of the appellant.

(ii) The bills of entry have been filed by Shri Rajendra Singh ('G-card' holder) in the name of the appellant but there is no evidence on record regarding the involvement of the appellant in the import of the goods in question.

(iii) The appellant cannot be held responsible for the misdeclaration and undervaluation since the employee of the appellant had filed the bills of entry on the basis of the import documents given to them. There is no evidence available on record to prove the forgery against Shri Rajendra, alias Raju.

4. The learned DR justified the impugned order. He submitted that Shri Rajendra, alias Raju, who was a 'G-card' holder, had filed the bills of entry in the name of the appellant on the basis of invoices which were forged by him using his own computer. Such forgery stands admitted by him in his statement. Further such forgery has resulted in misdeclaration of value and the nature of the import goods. The goods imported by M/s Pax Technology required clearance from Wireless Planning and Coordination Wing, which they did not possess. But the appellant has facilitated such

imports by forging the import documents with a view of getting the goods cleared without customs examination under RMS.

5. We have heard both sides at length and gone through the appeal.

6. The appellant had filed several bills of entry on behalf of the importer M/s Pax Technology. The investigation undertaken by SIIB into such imports has revealed that the goods in many cases were misdeclared and undervalued. The bills of entry have been filed by Shri Rajendra Prasad, alias Raju ('G-card' holder) by collecting documents from one Shri Randheer Singh. During the interrogation of Shri Rajendra, alias Raju, it stands admitted in the statements that he had carried out forgery of the import invoices using his computer and using such forged invoices, misdeclared the import goods in the bills of entry filed in terms of both valuation as well as description. It further stands admitted that such forgery was done to hoodwink the requirement of import licence from the Wireless Planning and Coordination Wing, and also to escape from the rigors of customs examination, so as to get the goods cleared under the Risk Management Scheme (RMS).

7. It stands established on record that neither Rajendra Prasad, alias Raju ('G-card' holder), nor Shri Kishan Singh ('F-card' holder) proprietor of the appellant, have bothered to properly guide the importer about the statutory obligations regarding import license. For monetary benefits, Shri

Rajendra has acted to secure clearance of the goods without scrutiny by customs by resorting to preparation forged copies of the invoices, thereby declaring lesser value and changing the description of the goods to “Paper-Rolls”. All the above acts clearly establish the contravention of various Regulations under CBLR, 2013.

8. It has been submitted on behalf of the appellant that the appellant cannot be held liable for the errant behavior of one of their employees. In this connection, we are of the view that it was imperative for the Customs Broker to keep control and supervision over the conduct of their employees. The appellant cannot escape the vicarious liability for the action of their employees.

9. The detailed investigation undertaken by the SIIB into the affairs of the appellant leading to misdeclaration and undervaluation of customs duty has established beyond doubt the contravention of various requirements under the CBLR, 2013. The customs broker is expected to function as an extended arm of the Customs Department and is required to act in such a manner that the provisions of Customs Act and enacted rules and regulations are implemented efficiently. For the acts of omission and commission which stand established against the appellant, we are of the view that the appellant is liable for penal consequences under the CBLR, 2013.

10. In the facts and circumstances of the present case, we find that the impugned order passed by the adjudicating authority is fully justified and is upheld. Consequently, the appeal filed is rejected.

[Pronounced in open court on 08.05.2018]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

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