

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

Date of hearing: 24.04.2018

Pronounced on: 15.05.2018

Custom Appeal No. 50830 of 2018
(Arising out of Order-in-Original No. 04/2018-Commissioner of Customs dated 15.01.2018 passed by the Commissioner of Customs (Preventive), Jaipur).

M/s Global Marine Agencies Appellant

Vs.

CC (Prev.), Jaipur Respondent

Appearance:

Dr. Prabhat Kumar, Advocate for the appellant

Sh. Rakesh Kumar, AR for the Respondent

Coram:

Hon'ble Mr. S. K. Mohanty, Member (Judicial)

Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 51835/2018

Per: **V. Padmanabhan:**

The present appeal filed against the Order-in-Original No. 04/2018 dated 15.01.2018.

2. The appellant has a Custom Broker Licence. The Commissioner of Customs, Jodhpur by issue of the impugned order, rejected the application dated 26.02.2015 filed for renewal of their Customs Broker Licence. Aggrieved by the decision, present appeal has been filed.

3. With the above background, we heard Dr. Prabhat Kumar, Id. Advocate for the appellant and Sh. Rakesh Kumar, Id. AR for the Revenue.

4. Ld. Advocate submitted that the Id. Commissioner has refused to renew the licence under Regulation 9(2). The wording of Regulation 9(2) is as under:

“The Commissioner of Customs may, on an application made by the licensee before the expiry of the validity of the license under sub-regulation (1), renew the license for a further period of ten years from the date of expiration, if the performance of the licensee is found to be satisfactory with reference, inter alia, to the obligations specified in this regulation, including the absence of instances of any complaints of misconduct”.

4.1 He submitted that the Commissioner is empowered not to renew the Custom Broker Licence only in the case of instances of misconduct. He further submitted that misconduct should be as defined under Regulation 18(c) of the CBLR, 2013. As on date, he submitted that there is no proceedings pending against the appellant which has been initiated under CBLR, 2013. The last such proceedings initiated against them stands set aside in their favour vide CESTAT Final Order No. 51295/2016 dated 13.04.2016.

4.2 He further submitted that only instances cited by the Revenue about the alleged misconduct on the part of the Customs Broker is penalty imposed on him under Section 114(1) of the Customs Act, 1962. In respect of two instances of alleged fraudulent export was restricted item like Potash for which the adjudicating authority has imposed a penalty of Rs. 25 lakh on the appellant and Rs. 5 lakhs. The appeals against such imposition of penalties are pending before the Tribunal. Finally, he submitted that the Customs Broker Licence may be renewed in the absence of any proceedings under CBLR, 2013.

5. Ld. AR appearing for the Revenue justified the impugned order. It is his submission that penalties stand imposed against the appellant under Section

114 in two different cases and such penalties have been imposed for acts of omission and commission in the case of certain fraudulent exports. Such penalties imposed are to be considered as instances of misconduct and in terms of Regulation 9(2), the Commissioner was within his right not to renew the licence.

6. Heard both sides and perused record.

7. The Customs Broker Licence issued to the appellant came up for renewal after completing the ten years validity, on 03.04.2015. The said Customs Broker Licence was already revoked by the licensing authority under Regulation 18 of the CBLR, 2013, but such revocation was set aside in appeal by CESTAT vide final order dated 13.04.2016. Id. Advocate for the appellant, to a query from the Bench asserted that no other proceedings stand initiated against the appellant under CBLR, 2013. The adjudicating authority has refused to renew the licence by taking recourse to Regulation 9(2). He has cited two instances in which penalties stand imposed against the appellant in cases of alleged attempt to fraudulently export. Such penalties were imposed under Section 114 of the Customs Act. These instances have been viewed by the adjudicating authority as acts of misconduct on the part of the appellant and hence the renewal of Customs Broker licence has been refused.

8. The CBLR, 2013 is a self contained code regulating the issue of Customs Broker Licence. The procedure for issue of such licence as well as the obligations of Customs Broker are outlined therein. CBLR also specifies the action which may be taken against such customs brokers and prescribes the procedure for such action. In the above background, when we read Regulation

9(2) which refers to the “absence of instances of any complaints of misconduct”, it is to be taken as referring to misconduct with reference to the applications outlined in Regulation 11. No doubt the appellant has been penalised under Section 114 but this fact by itself cannot be construed as a misconduct for the purpose of Regulation 9(2). Before such an action can be considered as misconduct, the licencing authority is required to examine whether any regulations have been contravened, through a process of formal enquiry. Unless such procedure has been completed, it will not be proper to view such penalties as misconduct for purposes of Regulation 9(2).

9. In view of the above discussions, we are of the view that the renewal of the Custom Broker Licence cannot be refused only for the reason that the appellant has been penalised under Section 114. Regulation 18 (proviso) makes it abundantly clear that the actions taken under the CBLR, 2013 will be without prejudice to the action that may be taken under Customs Act, 1962, thereby making it explicit that the proceedings under the Act as well as the Regulation are distinct and separate.

10. In view of the above discussions, the impugned order is set aside and appeal is allowed. The licencing authority is directed to consider the renewal of the customs broker licence subject to fulfilment of the necessary formalities.

(Pronounced on 15.05.2018).

(V. Padmanabhan)
Member (Technical)

(S. K. Mohanty)
Member (Judicial)

Pant

