IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT – I

Customs Appeal No. C/51898/2017 [DB]

[Arising out of Order-in-Original No. 72/KB/Revocation/ Policy/2017 dated 15/11/2017 passed by the Commissioner of Customs-Delhi – I]

SMS Logistics **...Appellant**

Vs.

C.C.-New Delhi **... Respondent**

Present for the Appellant : Mr. B.L. Garg, Advocate
Present for the Respondent: Mr. R.K. Majhi, D.R.

Coram: HON'BLE MR. ANIL CHAUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing : 29.06.2018
Pronounced on : 24.08.2018

FINAL ORDER NO. 52861/2018

PER: BIJAY KUMAR

The present Appeal is directed against the Order-in-Original No. 72/KB/Revocation/ Policy/2017 dated 15/11/2017 revoking CB License of the appellant under Regulation 20(7) of Customs Broker Licensing Regulation, 2013 hereinafter referred to as (CBLR 2013) for the contravention of the Regulation 11(d), 11(e) and 11(m) thereof. Also, a penalty of

Rs. 25,000/- was imposed upon the appellant under Regulation 22 read with Regulation 20 of CBLR, 2013.

2. The licence of the appellant was revoked and penalty was imposed for their alleged role in custom clearance of consignment imported vide bill of entry No. 8606801 dated 18.02.2017 for the import of 71 pieces of Samsung 65" LED monitor, at the accessible value of Rs. 1,50,59,110/- by one of their clients M/s Tim Delhi Airport Advertising (P) Ltd. (for short 'TDAAL'), who purchased the goods imported by M/s Infosoft Digital Designs & Services (Pvt.) Ltd., New Delhi (for short 'IDDSL') on High Sea Sale basis (HSS) from Singapore based exporter namely, M/s Beetel Teletech Pvt. Ltd. vide commercial invoice No. 5070101744 dated 16.02.2017. M/s TDAAL has purchased the imported consignment from M/s IDDSL vide commercial invoice No. 114 dated 16.02.2017. The bill of entry was filed for the clearance of goods by the applicant on behalf of M/s TDAAL, who admitted to make appropriate customs duty using SIF (served from India) scrip No. 0510397433 issued to them by debiting the same. The aforesaid import subsequently became the subject matter of adjudication and accordingly Order No. VIII/12/ACE/Gr.-7/TDAA/ADJ/91/2017 dated 15.03.2017.

3. Commissioner(G) passed the impugned order dated 15.11.2017 under the Regulation 20(7) of CBLR, 2013

revoking the CB license and imposing the penalty of Rs. 25,000/- under Regulation 22 upon the CB on the following grounds:-

(i) The HSS Agreement was invalid;

(ii) The CB filed B/E in the name of wrong person i.e. HSS buyer instead of actual importer;

(iii) Customs duty was paid wrongly by HSS buyer through debit in SFIS scrip instead of payment by actual importer/ HSS seller in cash.

(iv) The CB was negligent and did not exercise due diligence, and did not inform the customs about the discrepancy in HSS agreement–**violation of Regulations 11(d), 11(e) and 11(m) of CBLR, 2013.**

4. The Ld. Advocate on behalf of the appellant submitted as under:-

1. THE HIGH SEA SALE AGREEMENT WAS VALID:

The High Sea Sale Agreement in question is dated 16.02.2017. This agreement is signed by both the parties on 16.02.2017.

Even the concerned Master Airway Bill (MAWB) and House Airway Bill (HAWB) shows that both are dated 16.02.2017 which is also declared as such on the face of the Bill of entry in question.

M/s IDDSL have also clearly stated in their letters dated 11.03.2017 and 14.03.2017 that the impugned consignment had been handed over to the Airlines in Singapore for onward shipment to India on 16.02.2017; only after that they entered into the High Sea Sales Agreement with M/s TDAAL on 16.02.2017.

Thus, the impugned goods had already moved beyond the control of M/s IDDSL and the supplier when the High Sea Sale Agreement was inked. In addition, the impugned agreement had been signed much before the goods had landed in India. <u>There is no specific provision of the Customs Act, 1962 or FTP or any procedural law which renders such High Sea Sales agreements as invalid.</u>

2. THERE WAS NO ATTEMPT TO EVADE CUSTOMS DUTY AS DEBITING OF SFIS SCRIP DOES NOT AMOUNT TO DUTY EXEMPTION & IT IS ACTUAL DUTY PAYMENT THROUGH OTHER MEANS:

<u>Notification No. 91/2009 – Cus dated 11.09.2009</u>

Customs Authorities held that M/s TDAAL could not be treated as importer and M/s IDDSL were liable to file the bill of entry and pay customs duty. However, since M/s IDDSL were not in possession of SFIS scrip, they were directed to pay customs duty in cash.

The above referred liability of Ms/ IDDSL to pay customs duty in cash rather than by m/s TDAAL through SFIS scrip has been taken by Customs as evidence of attempt to evade customs duty on the part of M/s IDDSL.

However, the mode of payment of customs duty whether in cash or through SFIS scrip, by M/s IDDSL or M/s TDAAL cannot determine whether there is an attempt to evade customs duty. Even payment of customs duty through debiting of SFIS scrip is a valid mode of duty payment.

3. PROVISIONS OF REWGULATION 11(d) OF THE CUSTOMS BROKERS LICENSING REGULATIONS FOLLOWED –

Regulation 11(d) of the CBLR, 2013 prescribes that "A Customs Broker shall advice 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 Deputy Commissioner of Customs or Assistant Commissioner of Customs."

However, no specific instance of non compliance with CBLR brought on record in para 12(a)/17.1/25.1. Further, the appellant in his HSS agreement was incorrect. Also, the Customs Manual on Self Assessment, 2011 does not expressly state that such agreements are invalid.

4. PROVISIONS OF REGULATION 11(e) OF THE CUSTOMS BROKERS LICENSING REGULATIONS FOLLOWED –

Regulation 11(e) of the CBLR, 2013 prescribes that "A Customs Broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage."

In the instant matter, the noticee had filed the bill of entry on the basis of documents supplied to them by M/s TDAAL, including the HSS Agreement. As regards allegation of invalidity of HSS Agreement, the issue has been determined by Customs authorities after detailed scrutiny of import documents. Therefore, it was not within the capacity of the appellant to undertake the same level of scrutiny.

There is no specific instance regarding violation of Regulation 11(e) in paragraph 12(c).

5. PROVISIONS OF REGULATION 11(m) OF THE CUSTOMS BROKERS LICENSING REGULATIONS FOLLOWED –

Regulation 11(m) of CBLR, 2013 prescribes that "A customs broker shall discharge his duties as a customs broker with utmost speed and efficiency and without any delay."

There is no specific instance regarding providing of slow or inefficient service to the clients, in violation of Regulation 11(m). The findings recorded by the Ld. Commissioner are based on the same facts and situation as stated above.

5. On the other hand, Ld. DR has stated that the appellant in this case has himself accepted that there was an error on their part in not telling the Department about the misuse of SFIS scrip which was in his knowledge.

6. The appellant has relied upon various case laws which are as under:

(a) **Voltamp Transformers Ltd. Vs. Commissioner of C. Ex., Vadodara 2012(276) ELT 238 (Tri. – Ahmd.)**

(b) **Universal Power Transformer Pvt. Ltd. Vs. CCE, Bangalore 2010 (256) ELT 244 (Tri. – Bang.)**

(c) **Tanfac Industries Ltd. Vs. Assistant Commissioner of Customs, Cuddalore 2009 (240) ELT 341 (Mad.)**

In all of these cases, the issue was regarding the availability of cenvat credit under the Cenvat Credit Rules. In the cases where the appellants have used their SFIS scrip or SIF scrip. These cases are not relevant on the ground that in this case the SFIS scrip or SIF scrip has been genuinely used by the importer and the only issue is as to whether this will be treated as exempted from payment of duty and therefore the non availability of cenvat credit under the Cenvat Credit Rules. This is not the case here but the case is regarding the misuse of SFIS scrip by the importer who is not entitled to do the same utilising the route of High Sea Sale, therefore, we do not consider it to be a fit case in the facts and circumstances of the present case.

7. The Ld. Advocate has also relied upon the decision in case of **M/s Amiable Logistics (India) Pvt. Ltd. Vs. Commissioner of Customs (General) Mumbai 2013(296) ELT 477(Tri. Mum)**. In this case, issue was that whether the CHA is responsible for the goods which after clearance from the customs have been diverted to market without being actually used in the process of manufacture under the DEECS scheme. In that case, the CHA was not held to be liable for

any action on account of the fact that the clearance of goods have been effected after the assignment there cleared by the CHA. This case also is not having any application in the present case in view of the fact that CHA themselves has accepted the fact that they have admitted the error while submitting the licence SFIS scrip licence which was not applicable in the case of import made by M/s IDDSL therefore we feel that this case law is not at all relevant in the case of appellant. From the perusal of the Appeal record, it is quite clear that CHA on behalf of importer has facilitated to use the SFIS scrip which was not applicable to M/s IDDSL which was subject to actual user condition. The CHA has attempted to get the consignment cleared on behalf of importer producing the wrong SFIS scrip. It is on record that Customs Broker vide his letter dated 08.03.2017 has accepted that High Sea Sale was not correct and in order as per the provisions of Customs Manual but the appellant (CB) has failed to advice his client about the non application of SFIS scrip in the case of M/s IDDSL for consignment import by IDDSL.

8. I find from the submissions of the appellant before the Customs Authority that they have accepted their fault and wrongdoing. Once that is so, "what is admitted need not to be probed" as held in the case of **Commissioner of Central Excise Vs. System Component Pvt. Ltd. 2004 (165) ELT 136 (S.C.)** which is subsequently followed in the decision of

Hon'ble Punjab and Haryana High Court in the case of **M/s Shivshakti Steel Tubes Vs. Commission of Central Excise, Ludhiana 2007-TOIL-552-HC(P&H)**.

9. The appellant also failed to inform the concerned Customs Officer Incharge of assessment of the goods about the fact of non-availability of SIFS scrip in this case. It was the duty of the CHA to guide and advise for the payment of Customs duty to the importer that the impugned SFIS scrip is not applicable in their case of the import made by the importer. Further also, the High Sea Sale was itself in a doubt because the same has been affected prior to the loading of consignment in the aircraft which is conceptually wrong for affecting such High Sea Sale. This is also evident from the Masters Airway Bill and House Airway Bill by the representative of the airline which carried the import consignment. Under the circumstances, we dismiss the Appeal filed by the appellant and uphold the Order passed by the Adjudicating Authority.

[Pronounced in the open Court on 24.08.2018]

(ANIL CHAUDHARY)	**(BIJAY KUMAR)**
MEMBER (JUDICIAL)	**MEMBER (TECHNICAL)**

D.J.