

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I**

Date of Hearing /decision: 27.09.2018

Appeal No. C/52123/2018-CU (DB)

[Arising out of Order-in-Appeal No. OIO-30/MK/POLICY/2018 dated 26/06/2018 passed by COMMISSIONER OF CGST & CENTRAL EXCISE-DELHI - I]

BALAJI MARILINE PVT LTD

Appellants

Vs.

C.C.-NEW DELHI

Respondent

Appearance:

Shri Piyush Kumar, Advocate for the Appellant
Shri Rakesh Kumar, DR for the Respondent

CORAM:

Hon'ble Shri Anil Choudhary, Member (Judicial)

Hon'ble Shri Bijay Kumar, Member (Technical)

FINAL ORDER No. 53295/2018

Per Anil Choudhary:

This is an appeal against the order of Commissioner of Customs (Import & General), New Custom House, New Delhi, revoking the Customs Broker Licence of Appellant- M/s Balaji Mariline Pvt. Ltd., New Delhi and also forfeiting the whole of security deposit for alleged violation of Regulation 11(d), (l), (j), read with Regulation 17 (9) of Customs Broker License Regulations, 2013.

2. Appellant is a Customs Broker holding Customs Broker Licence No. R-17/90 issued by Commissioner of Customs (General), New Delhi in 1998 (renewed upto 2027). The licence is also registered in Kanpur Customs & CGST Commissionerate for customs clearance at ICDs at Kanpur. In the present case, Commissioner (I&G) Delhi has revoked Appellant's Licence on

the ground that Appellant allegedly tampered the name and address of importer in 2 B/E pertaining to ICD, Panki, Kanpur and thus knowingly aided and abetted fraudulent availment of CENVAT Credit by importer.

2.1 The brief facts in this case- a team of the officers of Central Excise Division, Raebareli visited the factory of M/s Quality Packaging, A-6, Sector 20, Industrial Area, Jagdishpur on 10.10.2014 and during the visit checked the records maintained by them. During checking the officers noticed that the unit had availed and utilized CENVAT credit on the strength of 2 B/E No. 296544 dated 12.08.2013 and 5689777 dated 03.06.2014 which were actually issued in favour of M/s Shree Packagings (A unit of Ganga Bag Udyog Pvt Ltd.), A-8, Sector-20, Industrial Area, Jagdishpur. Later on, the party manually tampered with the name reflecting on the body of B/E and changed it in the name and style of M/s Quality Packagings (A unit of Ganga Bag Udyog Pvt. Ltd.), A-6, Sector-20, Industrial Area, Jagdishpur.

2.2 The changes in the B/E were made manually under seal and signature of Superintendent, ICD, Panki and as the representative of M/s Quality Packaging, present on the spot could not furnish any information in respect of cutting / changes in the Bs/E suspecting the bona fides, Central Excise Officers resumed both the Bs/E under Panchnama dated 10.10.2014. Deputy Commissioner of Central Excise and Service Tax Raebareli thereafter forwarded copies of resumed Bs/E to Assistant Commissioner, ICD, Panki for verification and in reply thereto, Assistant Commissioner ICD, Panki vide his letter dated 28.10.2014 informed that the subject Bs/E were never amended by their office neither on EDI system nor manually and as per available

record at ICD Panki both the Bs/E were filed and goods were cleared in the name of Shree Packaging (a unit of Ganga Bag Udyog Pvt. Ltd.). Thereafter, suspecting fabrication in Bs/E, Assistant Commissioner, Central Excise, Raebareli issued a Show Cause Notice for recovery of CENVAT Credit availed on the basis of manipulated Bs/E and vide Order-in-Original dated 21.09.2017, confirmed the demand and imposed penalty on the assessee / importer.

2.3 On conclusion of proceedings against the assessee / importer, Assistant Commissioner, Raebareli reported the fabrication in the Bs/E to Commissioner Allahabad vide letter dated 21.09.2017, who, in turn, intimated the matter to Commissioner, Kanpur (jurisdictional Commissioner in respect of ICD, Panki), who in turn, forwarded all the documents received from Central Excise Raebareli / Allahabad and ICD Panki to Commissioner of Customs (Import & General) New Delhi for appropriate action under Customs Brokers Licensing Regulations, 2013.

2.4 Accordingly, Commissioner of Customs (Import & General) New Delhi issued a Show Cause Notice dated 25.01.2018 followed by Corrigendum dated 11.04.2018 to Appellant, alleging that Appellant failed to comply with provisions of Regulations 11(d), 11(e), 11(j) and 17(9) of Customs Brokers Licensing Regulations, 2013 and thus rendered themselves liable to action under Regulation 18 and 22 read with Regulation 20 of the CBLR, read with the condition of Bond.

2.5 Appellant filed the reply to Show Cause Notice and appeared before the Inquiry Officer appointed by the Commissioner (I&G) New Delhi. In his submissions, Appellant though admitted that while filing

Bs/E, Appellant's operator by mistake entered the name of importer as M/s Shree Packaging (A unit of Ganga Bag Udyog Pvt. Ltd.) instead of M/s Quality Packaging, but categorically stated that Appellant never received any letter from the importer for amendment of the name in Bs/E or that the alteration in the subject Bs/E was made by them.

2.6 Refuting Appellant's contention, learned Inquiry Officer affirmed the charges against Appellant with following finding

"8.2.1 I find that CB admitted that there would have been a mistake on their side, the Bills of Entry were actually filed in the name of M/s. Shree Packaging instead of the other unit i.e. M/s. Quality Packaging the said mistake has occurred due to human error only wherein, while entering the name in the checklist instead of branch I the operator at their end would have entered branch 2 due to similarities in the name and address. The submission of importer / assessee is that Shree Packaging, Jagdishpur have communicated vide letter dated 09.12.2013 to the CB regarding amendment in the name & Address mentioned in the Bills of entry. Considering the sequence of events it is clear that initially the CB filed the Bills of Entry in the name of M/s. Shree Packaging instead of the other unit i.e. M/s Quality Packaging and when this mistake was noticed by virtue of letter dated 09.12.2013, they resorted to tempering the name and address of the importer."

2.7. Thereafter, learned Respondent Adjudicating Authority, Commissioner I&G) New Delhi confirmed the charges and revoked the licence holding that the manipulation in the Bs/E were carried out by appellant. Learned Commissioner's finding as appearing in para 14.2 of the order is as under:

"14.2 In the present case, it was alleged that the CB have tampered and forged the name of importer mentioned in the said Bills of Entry without the knowledge of concerned Custom Authorities with the intention to connive with his client in availing CENVAT Credit on the basis of invalid documents. The letter dated 09.12.2013 written by M/s Shree Packaging, Jagdishpur to M/s Balaji Mariline Pvt. Ltd., Kanpur regarding amendment in the name and address mentioned in the Bills of Entry suggests that the party M/s Shree Packaging has assigned the work of amendment / rectification in the said Bills of Entry to the CB. I find that CB himself in his defence vide letter dated 15.02.2018 has admitted that there have been a mistake on their side, the Bills of Entry were actually filed in the name of M/s Shree Packaging instead of the other unit i.e M/s Quality Packaging and the said mistake has occurred due to human error only, wherein, while entering the name in the checklist instead of branch 1 the operator at their end have entered branch 2 due to similarities in the name and address. Considering the sequence of events I find that initially the CB filed the Bills of Entry in the name of M/s Shree Packaging instead of the other unit i.e. M/s Quality Packaging and when this mistake was noticed by virtue of letter dated 09.12.2013 of the importer, they resorted to tampering the name and address of the importer. So, instead of adopting the legal course for amendment in the said Bills of Entry, he tampered the same without bringing the facts to the notice of concerned Custom Authorities. In view of aforesaid, it appears that they have knowingly attempted, aided and abetted the fraudulent availment of CENVAT Credit."

3. We have heard both the parties at length and perused the records with the assistance of Appellant's learned Counsel and learned DR.
4. Appellant has assailed the impugned Order mainly on the ground that the finding of learned Commissioner, that alteration in the Bs/E was carried

out by appellant is patently perverse and contrary to evidence available on record and hence the order cannot be sustained.

4.1 Per contra, learned DR reiterating the findings of the learned Commissioner stressed that it is a fact on record as admitted by Appellant that at the time of initial filing of B/E , Appellant's operator committed an error in entering importer's name and therefore on being intimated about the error, Appellant only must have made the corrections in the Bs/E and as Appellant made the correction unauthorizedly, there is no error of judgment on the part of Commissioner in holding Appellant guilty of violation of CBLR and revoking the licence.

4.2 On perusal of impugned order we find that learned Commissioner has confirmed the charge on the presumption that appellant resorted to tampering solely on the ground that initially appellant filed the Bs/E in the name of M/s Shree Packaging instead of other unit M/s Quality Packaging and when this mistake was brought to Appellant's notice by the importer vide letter dated 09.12.2013, Appellant resorted to tampering of the name and address of the importer in the Bs/E .

4.3 Therefore, the only issue to be decided in this appeal is whether the finding of learned Commissioner that appellant made the alternations in the Bs/E is legally sustainable and whether the documents on record support, the aforesaid finding of learned Commissioner.

5. Appellant's learned counsel while referring to the documents emphasized upon following dates and events to substantiate his argument that the alteration in the Bs/E were not made by Appellant and that Appellant had never received any letter from Importer for amendment in Bs/E and that letter dated 09.12.2013, is an afterthought on the part of the importer.

12.08.2013 Appellant filed B/E No. 2965644 in the name of M/s Shree Packaging (a unit of Ganga Bag Udyog Pvt. Ltd.) A-8, Sector 20, Industrial Area, Jagdishpur, Sultanpur.

29.08.2013 Importer received the material in the factory and entered the receipt in Books of Account pertaining to M/s Quality Packaging. Importer did not point out to Appellant that the name entered in the B/E was wrong.

21.12.2013 M/s. Quality Packaging availed CENVAT Credit in respect of said B/E

03.06.2014 Appellant filed B/E No. 5689777 in the name of M/s Shree Packaging (a unit of Ganga Bag Udyog Pvt. Ltd.)

07.08.2014 M/s. Quality Packaging availed CENVAT Credit of CVD paid under Bill of Entry No. 5689777.

10.10.2014 Central Excise Officers visited premises of M/s. Quality Packaging and finding alterations in aforesaid 2 Bs/E resumed the same under Panchnama.

None of the employees of M/s. Quality Packaging produced any letter relating to amendment of name in the Bs/E or stated that the alteration was carried out by the appellant-CB.

07.11.2014 Importer's representative tendered statement under Section 14 of Central Excise Act, 1944, however, did not furnish any letter relating to amendment and/or stated that alteration was carried out by appellant.

16.12.2014 Jurisdictional Superintendent, Central Excise wrote a letter for furnishing documents relating to subject Bs/E followed by a reminder dated 05.01.2015.

03.02.2015 M/s. Quality Packaging filed an application before Assistant Commissioner, Central Excise, Raebareli for accepting subject Bs/E and regularizing CENVAT Credit. In the said letter also importer did not say that alteration in the Bs/E were made by appellant.

- 26.02.2015 Assistant Commissioner ICD, Panki informed Assistant Commissioner Central Excise, that the Bs/E were filed in the name of M/s Shree Packaging a unit of Ganga Bag Udyog Pvt. Ltd., A-8, Sector 20 Industrial Area Jagdishpur and that no amendment either through EDI systems or manually has been done in respect of said Bs/E.
- 11.05.2017 Assistant Commissioner, Central Excise, Raeberali issued a Show Cause Notice to importer proposing recovery of CENVAT Credit availed against subject 2 Bs/E and imposition of penalty with no allegation that the alteration were made by Appellant.
- 20.07.2017 Importer filed a reply to Show Cause Notice wherein also importer did not state anywhere that alterations were made by appellant-CB or mentioned about any letter written to appellant for amendment.
- 21.09.2017 Assistant Commissioner, Raeberali passed Order-in-Original denying CENVAT Credit and imposing penalty. In the said order, Assistant Commissioner did not refer to any letter from importer to appellant in respect of amendment.

Vide separate letter, Assistant Commissioner, Raebareli forwarded a copy of the order along with his comments and documents to Additional Commissioner Allahabad wherein for the first time he referred to a letter dated 09.12.2013 written by M/s Shree Packaging addressed to appellant and enclosed a copy of the said letter dated 09.12.2013.

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| 26.09.2017 | Commissioner Allahabad forwarded Assistant Commissioner's report to Commissioner, Kanpur. |
| 25.10.2017 | Commissioner Kanpur forwarded the documents to Commissioner (I&G) for necessary action against appellant. |
| 25.01.2018 | Commissioner (I&G) New Delhi issued a Show Cause Notice under Customs Brokers Licensing Regulations, 2013 proposing revocation of licence, forfeiture of security deposit and imposition of penalty. |
| 15.02.2018 | Appellant filed a reply to Show Cause Notice wherein appellant though admitted that at the time of initial filing of Bs/E, appellant's office committed an error of entering name of the importer as 'Shree Packaging' instead of 'Quality Packaging' but categorically stated that he did |

not receive any letter from the importer for amendment of Bs/E and that he did not make any tampering in documents.

26.06.2018 Commissioner (I&G) passed the impugned order revoking Licence and forfeiting entire security deposit.

5.1. From perusal of documents and aforesaid chronology we find force in learned Counsel's submissions that (i) Appellant did not stand to derive any pecuniary gain by amending the Bs/E and there was no reason for Appellant to have carried out an unauthorized alteration in the Bs/E; (ii) importer did not inform Appellant that the name of importer was wrong in the B/E at the time of receiving the imported goods or taking the CENVAT Credit or any time thereafter; (iii) even on 10.10.2014 when the Central Excise Officers resumed the subject Bs/E for suspected manipulation, none of the employees of importer produced any letter relating to amendment of names in the Bs/E or stated that the alterations were carried out by appellant; (iv) in the course of investigation by Central Excise, though the importer's representative appeared before them and filed representations for allowing CENVAT Credit on the basis of subject Bs/E but did not state that the alteration was carried out by appellant or furnish a copy of the letter dated 09.12.2013; (v) even in the reply to the Central Excise Show Cause Notice, importer did not state anywhere that alterations were carried out by Appellant or enclosed a copy of said letter dated 09.12.2013 rather admitted that correction was carried out by them; (vi) letter dated 09.12.2013 does not contain any indication that the

same was ever served on Appellant as no acknowledgement or postal receipt or courier receipt was ever furnished by importer or is available on record to indicate that the said letter was ever issued by importer or ever served on Appellant at any point of time; (vii) said letter refers to only One B/E i.e 2965644 dated 12.08.2013, whereas the finding of the Commissioner is that the alterations were carried out in 2 Bs/E viz 2965644 dated 12.08.2013 and 5689777 dated 03.06.2014, there is no letter on record qua the other B/E.

5.2. We notice that by making such alteration Appellant did not stand to gain in any manner and the only person who stood to benefit from such alteration was the importer and at no point of time during investigation, despite opportunity being available, importer did not furnish or relies on the said letter dated 09.12.2013 or stated that cutting in the Bs/E was made by appellant. Moreover no evidence of any kind was ever furnished by importer to establish issuance or service of said letter on appellant, bald assertion that they wrote the letter dated 09.12.2013 to appellant cannot be accepted and clearly appears to be an afterthought on the part of importer.

5.3. Moreover, from para 6 of Central Excise Show Cause Notice dated 11.05.2017 issued for recovery of CENVAT Credit, we find that in the said Show Cause Notice it was categorical stand of Department that tampering was made by the party (importer) not only in the B/E but also in the invoices. The crucial part of the said para is extracted below:

"06. And whereas, during the process of investigation the party vide his letter No. QP/EX-Misc-04 dated 03.02.2015 (RUD-X) applied before the Assistant Commissioner of Central Excise & Service Tax Division Raebareli for accepting the Bill of Entry No.

2965644 dated 12.08.2013 and Entry No. 5689777 dated 03.06.2014 being technical lapse and permit them to use the same and to regularize the said CENVAT Credit taken by them on the strength of above said Bills of Entry as per the provisions as laid down under Rule 9(2) of Central Excise Rules, 2002. In the said Application, they have also submitted some documents in their support. On scrutiny of these documents, it has been noticed that the party has also tampered with the name of the party on the invoice No. KNP/SI/14-15/90 dated 12.06.2014 (RUD-X) which has been raised by the CHA in favour of M/s Shree Packagings a unit of Ganga Bag Udyog Pvt. Ltd., A-8, Sector-20, Industrial Area, Jagdishpur, Sultanpur. The change / tampering can easily be seen on face / back side of the said invoice. The act of such tampering shows that the party has prepared fake documents with intent to avail and utilize the CENVAT Credit for those Bills of Entry which actually do not pertain to them. The fact of tampering of bills is confirmed from the perusal of original copy of said invoice submitted by the party vide their letter No. QP/Ex-Misc-01/2015-16 dated 08.05.2014 (RUD-XII) in reply to letter C. No. II(8)Prev./Quality/ RBL/38/2014/363 dated 19.03.2015 (RUD-XIII) issued by the Assistant Commissioner, Central Excise & Service Tax Division, Raebareli to the party on this issue. "

6. In view of our observations as above, we are of considered opinion that the Department has failed in bringing on record any evidences to establish that the alterations in the Bs/E were carried by appellant and therefore the finding of Commissioner that appellant tampered the Bs/E is ex facie erroneous and perverse.

7. The appeal therefore succeeds and the impugned order revoking Appellant's licence and forfeiting security deposit is hereby set aside. As a

consequence the C.B. licence of appellant becomes operative with immediate effect.

Order to be issued Dasti.

(The operative part of the order was pronounced in the open court at the conclusion of hearing on 27.09.2018).

(Bijay Kumar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

Rekha