

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

BENCH-DB

COURT -IV

Customs Appeal No. C/51429/2018-EX [DB]

[Arising out of Order-in-Original No.80/KB/REVOCAATION/POLICY/
2017 dated 04.12.2017 passed by the Commissioner (Appeals),
Customs]

M/s. Sriaanshu Logistics

...Appellant

Vs.

C.C., New Delhi

... Respondent

Present for the Appellant : Mr.G.S. Arora, Advocate
Present for the Respondent: Mr. Sunil Kumar., D.R.

**Coram: HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)**

Date of Hearing: 24.10.2018

Pronounced on : 17.12.2018

FINAL ORDER NO. 53398 /2018

PER: RACHNA GUPTA

The appellant herein is a holder of CB License valid upto 30.04.2020 issued by Commissioner of Customs (I & G), New Delhi. Directorate of Revenue Intelligence received information about silver jewellery being smuggled into India in the guise of Mobile Phones and accessories in the consignments landed at Air Cargo, Delhi from Hongkong on

18th& 19th September, 2016. Accordingly, an alert dated 19.09.2016 was issued by DRI to stop clearances of the consignments declared to contain mobile phones and accessories. Resultantly, two consignments were examined by DRI Officers. One is with respect to bill of entry No.6767709 dated 19.09.2016 pertaining to M/s. Yogi Enterprises, New Delhi and another under Bill of Entry No. 6768517 dated 19.09.2016 pertaining to M/s. DSK Enterprises, New Delhi declared to contain Mobile phones and accessories. The consignments pertaining to M/s. Yogi Enterprises was filed through CB M/s. **Sriaanshu Logistic** New Delhi that is the appellant and was cleared on 21.09.2016. However, M/s. Yogi Enterprises vide their letter dated 3rd February, 2017 submitted the revised commercial invoice dated 16.09.2016 declaring assessable value of undeclared goods of Rs.1,92,93,300/-. Similarly on physical examination of consignment covered under the later bill pertaining to M/s. DSK Enterprises, it was found to contain silver jewellery alongwith **PCB for DTH** Mobile phones and accessories etc.

2. The CB i.e. the appellant on being examined, accepted that he was not in touch with the importer and had allowed Shri Narender, Narula and Shri Rupan Baruna to use his CB license for clearance of consignment of the said importers. It was accordingly alleged by the Department that present case is related to mis-declaration of imported goods with intent to

evade duty and appellant has failed to advise his clients to comply with the provisions of the Act and has failed to bring the matter to the notice of the Department. Thus, has contravened his duties under regulation 10,11 (a) (b) (d) (e) & 11 (m) of CBLR, 2013. Resultantly, an offence report was received in the office of DRI based whereupon the appellant was called to explain as to why his CB License may not be revoked and whole of security amount of Rs.75,000 may not be forfeited, in terms of regulation 18 read with regulation 20 of CBLR 2013 with the imposition of penalty. The said proposal has been confirmed vide the impugned order No. 80 dated 4th December, 2017. Being aggrieved the appeal is before this Tribunal.

3. It is submitted on behalf of appellant that all the allegations of Department are based on presumptions and surmises. There is sufficient evidence and also the statement of the proprietor of appellant to the effect that all the KYC documents of importers were duly E-mailed to the Custom Broker Shri Sanjeev Saxena thereby evidencing that the CB only who was exercising control over the operation of verifying/ facilitating the import documents of the intended importers. These evidences are sufficient to falsifying the allegations of the Department that appellant was not ensuring compliance of the customs law. The adjudicating authority below has out-rightly ignored the said evidence. It is also

impressed upon that appellant was rather coerced by DRI to admit that he has lent his license to Shri Narula and Shri Baruna. No evidence at all could be produced by the Department to prove the said allegation of transfer of CB license of appellant or sale thereof by him to Mr. Narender Narula or Mr. Rupen Burua. The order under challenge is alleged as against the evidence. The appellant has relied upon **Dakor Clearing and Shipping Pvt. Ltd. - 2015 (326) ELT 178 (Tri. -Mumbai)**. Accordingly the order is prayed to be set aside. Appeal is prayed to be allowed.

4. Ld. DR while rebutting these arguments has submitted that the adjudicating authority below has meticulously examined the entire evidence available on record including the statements recorded during the investigation and the documents recovered during the search of the premises of the appellant. The order is reasonably a speaking order and hence is liable to sustain. Appeal is accordingly prayed to be dismissed.

5. After hearing both the parties, we are of the opinion as follows:-

The customs broker license of the appellant has been revoked conforming the contravention on his part of regulations 10, 11 (a) (b) (d) (e) & 11 (m) of CBLR, 2013. In

accordance of these regulations customs broker is duty bound to;

- (1) Ensure that his license shall not be sold or otherwise transferred (Regularion 10)
- (2) Obtain an authorization from each of the companies, firm or individuals by whom he is for the time being employed as custom broker (Regulation 11 (a))
- (3) Transact business in customs station either personally or through an employee duly approved (regulation 11 b)
- (4) Advise his client to comply with the provisions of the act and in case of non-compliance shall bring the matter to the notice of competent authority (regularion 11 (d))
- (5) Exercise due diligence to ascertain the correctness of any information being imparted to a client (Regulation 11 (e))
6. Verify antecedence, correctness of importer exporter code No., identity of its client and functioning of its client at the declared address by using reliable independent authentic documents, data or information (regulation 11 (n) of CBLR 2013)

6. It is apparent that statement of proprietor of appellant i.e. Shri Sanjeev Saxena has been recorded on several dates. Perusal of all those statements shows that there is an apparent

admission that he filed the bill of entry in respect of both the impugned consignments but had never met the IEC Holder/ proprietor / Director/ owner of these importing firms. In his statement dated 26.09.2016 he has admitted that both these firms were the clients of Shri Narula and Shri Rupan Baruna. It is also the acknowledgement on part of Shri Sanjeev Saxena that he had sublet the work of clearance of import consignment to both of them. This acknowledgement is very much against the regulation 10 of CBLR, 2013. He has gone to the extent of admitting that the import documents for clearance of the impugned goods were received by said Shri Narula and all the documents provided to the appellant were digitally signed by his employee and holder of G Card Shri Rajveer Singh Patel for the clearance of the imported goods. He had not obtained any authorization in respect of these companies, they being the clients of Mr. Narula and Mr. Barua to whom the appellant had sublet his license against the commission charges. Resultantly, they both only were concerned with the actual clearance work of the said companies. This acknowledgement on behalf of appellant is sufficient evidence to hold violation of regulation 11 (b).

7. Mr. Saxena has admitted that because of him being not in touch with both these importers, he had no knowledge of the consignment declaring mobile phones and accessories to also contain silver jewellery. Once he had no such knowledge

and he was not actually processing the papers, but had just received the KYC on E-mail, the possibility of said E-mail to be a mere formality cannot be ruled out and it become apparent on record that there was no connection between the appellant and both the impugned importing firms to be advised by the appellant thereby resulting into violation of regulation 11 (d). Nor there arises any occasion for the appellant in the given circumstances to exercises due diligence for ascertaining the correctness of any information. Thereby confirming the violation of regulation 11 (e) on part of the appellant.

8. Mr. Sanjeev Saxena has specifically stated that Shri Narula or Shri Burua used to login into ICEGTA Website using login ID and Password given by him and it were they who fed the particulars on the basis of invoice available with them and they only used the digital signature of Shri Ranveer Singh Patel, his 'G' Card holder to upload the data and that they presented themselves on behalf of the appellant/CB. The question of any verification by the appellant as required under regulation 11 (n) does not at all arise.

9. Though it is the appellant's case that his entire statement is the result of coercive exercises upon him by DRI officials at the stage of investigation but apparently and admittedly there is no retraction to the said statement. There is nothing on record that the appellant ever expressed his

grievance before the senior authorities of the alleged coercion. In absence thereof and in absence of any evidence proving the statement to be incorrect, it stands established that the appellant had failed to observe his duties as custom broker as he was burdened with statutorily. The appellant has relied upon Décor Clearing and Shipping Pvt. Ltd. (supra), but to our opinion that decision is not applicable to the facts and circumstances of the present case. In that case there was an enquiry report holding that the charges against the CHA are not proved. It is not the fact for the present case. Also there was no evidence of any illegal sale or transfer of CHA license for monetary benefit.

10. Per-contra, in the present case, it is appellant's own admission that he had allowed Mr. Narula and Mr. Baruna to use his license for their own clients against monthly commission to be paid to the appellant. As already mentioned above, the appellant has not produced any evidence contrary to the said statement. The only emphasis about KYC documents being mailed to him by Mr. Narula is not sufficient to satisfy that appellant was otherwise observing his statutory duties. The Hon'ble Apex Court in the case of **Commissioner of Customs vs. K.M. Ganatra and Co. – 2016 – TIOL – 13 – SC** has held that CHA occupies a very important position in custom house. The customs procedures are complicated. The importers have to deal with a multiplicity of agencies i.e.

carriers, custodians like BPT as well as the customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is therefore, supported to safeguard the interest of both the importers and the customs. A lot of trust is pose in CHA by the importers/ exporters as well as by the Govt. Agencies. To ensure appropriate discharge of such trust the relevant regulations are found. The Hon'ble Apex Court has clarified that any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the regulation. Delegation of its function by CHA has been held as a ground for CHA to be responsible for fraudulent activity of the third parties as was also clarified by the High Court of Madras in the case of **Kamakshy Agency vs. Commissioner of Customs, Madras - 2001 (129) ELT 29 (Mad.)**.

11. In view of the entire above discussion, we find no infirmity in the order under challenge. The same is hereby upheld. Appeal stands dismissed.

[Pronounced in the open Court on 17.12.2018]

(C.L. MAHAR)
MEMBER (TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita