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

Date of Hearing: 23.07.2018
Date of Decision: 25.01.2019

Appeal No. C/50502/2018-DB
[Arising out of Order-in-Original No. OIO-11/KB/POLICY/2018 dated 09/02/2018 passed by Commissioner of CUSTOMS-DELHI - I]

DEX LOGISTICS P LTD Appellants

Vs.

C.C.-NEW DELHI Respondent

Appearance:
Shri Prabat Kumar, Advocate for the Appellants
Shri Rakesh Kumar, AR for the Respondent

CORAM:
Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri C.L. Mahar, Member (Technical)

FINAL ORDER NO.50084/2019

Per Anil Choudhary:

1. The appeal has been filed against the impugned order dated 9.2.2018, wherein the Ld. Commissioner has revoked the CHA license of the appellant and forfeited the security deposit of Rs. 75,000/-.

2. The brief facts of the case are that the appellant is a holder of CHA license No. R-50/DEL/CUS/2012, issued by the Ld. Commissioner of Customs (I&G), New Delhi. An Order-in-Original No. DLI/CUSTOM/PRE/MKV/PR.COMMR/10/2017 dated 28/04/2017 passed by the Ld. Principal Commissioner by the Ld. Commissioner

of Customs [General], New Customs House, Near 161 Airport, New Delhi. As per said OIO dated 28/04/2017, a specific information was received by Directorate General of Investigation (hereinafter referred to as 'DRI'), Delhi Zonal Unit that illegally imported/smuggled "Sony Bravia" LED TVS were being stored secretly at Karol Bagh, Delhi, Managed and controlled by on Shri Bhimendra Kumar Goyal. Search was conducted at the premises on 15/10/2014, wherein 120 pieces of LED TVs were found & seized. In another search at different godown of Sh. B.K. Goyal, 185 pieces of LED TVs & other goods were found & seized. The officers of DRI, had also searched the third godown of Sh. B.K. Goyal, wherein they found 7357.090 Kgs of Red Sanders Wood along with velvet fabrics, which were also seized. In furtherance of the investigation, the officers of DRI recorded various statements including the Director of the appellant, who is alleged to be one of the smugglers in illegal import of the said goods. Based on the investigation, a show cause notice dated 14/10/2015, which culminated into the Order-in-Original dated 28.4.17, wherein Red Sanders Wood & 32" LEDs were absolutely confiscated, as they were prohibited goods and the goods which were not prohibited goods were ordered for confiscation, However, they were allowed redemption on payment of Customs duty along with Redemption fine. As far as present appellant is concerned and director of the appellant (i.e. Sh. Daulat Ram), a penalty of Rs. 10,00,000/-[Rupees Ten Lacs] each has been imposed under Section 114AA of the Customs Act, 1962 for their act of omission, commission & for facilitating the clearances of imported goods in the name of non-existing firms & thus conniving with Sh. Bhimendra Kumar Goyal, for smuggling of goods.

3. Based on the findings of the Ld. Commissioner vide Order dated 28/04/2017, it appeared to the Department that the appellant has contravened the provisions of Regulation 11(a), 11(d), 11(e) and 11(n) of the Custom Broker licensing Regulations, 2013. Therefore, a show cause notice dated 23/08/2017 was issued to appellant asking him as to why the Custom Broker license No. R-50/DEL/CUS/2012 be not revoked & security submitted should not be forfeited & further penalty should not be imposed. The appellant submitted the reply, denying all allegations levelled in the show cause notice and prayed to drop the proceedings. The Ld. Inquiry officers submitted the inquiry report dated 16/11/2017 and held that charges levelled in the show cause notice has been proved. The appellant filed written submissions to the Ld. Commissioner pointing out various infirmities in the inquiry report. The Ld. Commissioner, after considering the written submissions of the appellant vide impugned order dated 09/12/2018, revoked the CB license of the appellant & forfeited the security deposit of Rs. 75,000/-. However, he did not impose penalty on Sh. Daulat Ram, Director of the appellant.

4. Aggrieved by the said order, the appellant filed the present appeal before this Hon'ble Tribunal. The Tribunal vide its Final Order No. 51333/2018 dated 06/04/2018 allowed the appeal of appellant on the ground of the time limit, as prescribed under Regulation 20 of CBLR, 2013, without going into the merits of the case. Thereafter, the respondent-Revenue filed an application for rectification of mistake on the ground that the Department has followed the time-limit as prescribed under Regulation 20 of CBLR, 2013 & therefore the F.O. has to be recalled & appeal decided on merits of the case. This Tribunal, after considering the said application, re-called the Final order dated 06/04/2018 vide its Misc Order No. 50413 dated 12/07/2018 & fixed the re-hearing, in order to decide the case on merits.

5. We have heard the counsel, representing the appellant & respondent.

6. The Ld. Counsel for the appellant has submitted as follows:-

a. Allegations made by Revenue as to receipt of documents of fake importer firms or name lender (having IEC code) through Mr. B.K. Goyal is vague, as not a single bill of entry has been pointed out supporting the allegation of Revenue. The appellant have given cogent reply at the time of investigation and enquiry in the proceedings, that they have obtained proper documents to satisfy the credibility of the client/importer as required under the CBLR and instructions/ notifications issued there under. Even in the case of Mr. Goyal, who is alleged to be the kingpin behind several importers, under alleged misdeclaration, Revenue has not pointed out the particulars of any bills of entry involved. Further in fact there is no offence report against the appellant and the proceedings/SCN is only based on the Order-in-Original dated 28th April, 2017, passed by the Principal Commissioner of Customs, Preventive, New Delhi on several persons including the said Mr. B.K. Goyal, the alleged kingpin, and Penalty was also imposed on the appellant CHA firm and it's Director Shri Daulat Ram. This Tribunal in the appeal filed by the appellant and its Director being Appeal No. C/51350 and 51235/2017 allowed their appeals vide the Final Order No. C/A/51601-51610/2018 dated 24th April, 2018 and set aside the penalty under Section 112/114 AA of the Act holding that Revenue have not been able to substantiate its allegations which are vague and no specific bill of entry have been identified against the appellants. In absence of specific allegations, the charge of facilitation of illegal or misdeclared import, cannot be sustained against the appellants. It is further urged that the findings of the Ld. Commissioner General in the impugned order are more or less repetition of the allegations in the SCN. Further the Ld. Commissioner General have failed to call for the documents in support of the allegations against the appellant and as such findings are vague and perverse. Further the proceedings are wholly without jurisdiction as the Investigation Agency DRI have not submitted any offence report against the appellant. Although Regulation 22 was invoked in the SCN issued by DRI in October, 2015 on Shri B.K. Goyal and others impleading appellant as co-noticee, but no 'offence report' was issued as regards this appeal.

b. It is further alleged that the appellant have not violated any of the provisions of the CBLR, and as such the impugned order is fit to be set aside with consequential relief.

7. The Ld. AR appearing for Department has reiterated the findings of the impugned order & submitted as follows:-

a. Further urges that Shri Daulat Ram, Director of the appellant, admitted to have cleared the goods for some of the firms namely TEL Communication, Star Enterprises, M/s EDIOS International and M/s Shaligun International and submitted photocopies of IEC, etc. However, he did not submit any documents in respect of Star Enterprises which was later found to be fictitious during the investigation. Further the said Director stated in his statement that he was aware that the goods have been imported on behalf of firms/ name lender, by Shri B.K. Goyal only. That Regulation 11(n) of the CBLR, requires a CHA to verify genuiness as per the KYC norms of importer/exporter, like identity of the client and functioning of the said client at the declared address, by using reliable, independent and authentic documents, data or information. Accordingly, prays for dismissal of the appeals.

8. After hearing both sides & on perusal of the records, we find that entire case of the Revenue is based on the Order-in-Original dated 28/04/2017 passed by the Ld. Commissioner. We find that the findings recorded by the Ld. Commissioner General are more or less the reiteration of the allegations, without any specific bills of entry handled by the appellants-CHA. We further find that appellant have obtained and maintained sufficient documents as regards the importers who approached them for clearance of their goods. The allegations of the Revenue are based on investigation and the statements of Mr. B.K. Goyal. Although Director of the appellant have also stated that the said importer were introduced to him through Shri B.K. Goyal, but it is not established that appellant handled the work of clearance with any malafide motive, or any motive to abnormal gain. We also find that there is no allegation of the appellant having made any abnormal profits in connivance with the said Mr. B.K. Goyal. We further find that the impugned order is bad in the absence of any offence report. The proceedings have been initiated much later in the day after passing of Order-in-Original dated 28/04/2017, which have already set aside by this Tribunal as regards this appellant and its Director.

9. In this view of the matter we find that the charges levelled against the appellant CHA are not maintainable. Accordingly, we set aside the impugned order and allow the appeal. The Ld. Commissioner General is directed to restore the licence of the

appellant CHA within the period of three weeks of the receipt of the copy of this order.

(Order pronounced in the open court on 25.01.2019)

(C. L. Mahar)	**(Anil Choudhary)**
Member (Technical)	**Member (Judicial)**

Rekha