IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II

DATE OF HEARING : 23/10/2018.
DATE OF DECISION : 18/04/2019.

Customs Appeal No. 50906 of 2018

[Arising out of the Order-in-Original No. 70/KB/POLICY/2017 dated 15/11/2017 passed by The Commissioner of Customs (General), New Custom House, New Delhi.]

M/s Multi Wings Clearing]
and Forwarding Pvt. Ltd.] Appellant

Versus

CC (General), New Delhi Respondent

Appearance

Shri Prabhat Kumar, Advocate – for the appellant.

Shri Rakesh Kumar, Authorized Representative (DR) – for the Respondent.

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

Final Order No. 50542/2019 Dated : 18/04/2019

Per. C.L. Mahar :-

Briefly stated facts are that the appellant is holder of a Customs Broker Licence No. R-57/DEUCUS/2006 (PAN No. AAHCM8516H) valid upto 14/05/2022 issued by the Commissioner of Customs (I&G), New Delhi.

2. Officers of Directorate of Revenue Intelligence (Hqrs.), New Delhi vide Panchnama dated 28.02.2017/01.03.2017 drawn at the Air Cargo (Import-Shed), Delhi examined the Bill of Entry no. 8710782 dated 28/02/2017 and 8710323 dated 28/02/2017. One Shri Surender Kumar, Director of M/s K. R. Express Pvt. Ltd., claimed himself to be representative of the appellant. During examination, huge quantities of branded cosmetics; Kingston makes Pen Drives; Sandisk Flash drive; Panasonic High Definition Video Cameras; Phantom 4 pro DJI Drone; branded Wrist watches; Sony HDR CX405 Handy Cam/4K Handy Cam FDR; Samsung Galaxy S5/S6/Note 4/J-7; I-Phone 6/6S/ 6Plus/5s; 360 degree panoramic intelligent camera; branded 320 GB Internal Hard Disc; Branded Sports Shoes and Glass Chattons etc. were found, which were not declared before the Customs authorities at the time of clearance. Two more consignments covered under Bills of Entry No. 8709104 and 8707042, both dated 28/02/2017, imported by M/s Logitrade Impex Solutions Pvt. Ltd. and cleared by the appellants were presented by Shri Surender on 01/03/2017 on examination and on comparison of declared weight and the weight found during examination by DRI there was a difference of 268 Kgs. (in respect of 187 Pkts.) and 60 Kgs. (in respect of 115 Pkts.). In the case of 187 Pkts., comparison of marking present on said pkts., revealed non existence of certain packets which were not present in the Packing List. That the packing list for 115 Pkts. was not produced by the CB despite being

demanded by the officers. On the basis of an enquiry conducted against the CB his CB licence has been revoked and his security deposit of Rs. 75,000/- has been forfeited vide the impugned order against which the appellant has filed the present appeal. On the basis of an enquiry conduced against the CB it has been held that the CB has violated the provisions of Regulations 11(a), 11(b), 11(d), 11(n) & 11(j) of the Custom Broker Licensing Regulations, 2013. Though the enquiry officer has found violations of Regulations 11(a), 11(b) and 11(n) and not of Regulations 11(d) and 11(j) but the Competent Authority in a disagreement note to the findings of the enquiry officer found that the appellant had violated the provisions of Regulation 11(d) and 11(j) also. The adjudicating authority upheld the charge of violation of all these regulation i.e. Regulations 11(a), 11(b), 11(d), 11(n) & 11(j) of the Custom Broker Licensing Regulations, 2013. The relevant regulations reads as :

> ***Regulation 11(a)*** *- "A Custom Broker shall obtain an authorization from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorization whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;"*

> ***Regulation 11(b):*** *"A Customs Broker shall transact business in the Customs Station either personally or through an employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be."*

> ***Regulation 11(d):*** *"A Custom Broker shall 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 the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;"*

> ***Regulation 11(j):*** *"A Customs Broker shall not refuse access to, conceal, remove or destroy the whole or any part of any book, paper or other record, relating to his transactions as a Customs Broker which is sought or may be sought by the Commissioner of Customs."*

> ***Regulation 11(n):*** *"A Custom Broker shall verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information."*

3. The learned Commissioner while upholding the charge of failure by the appellant to comply with the above requirements of law has observed that the appellant had filed Bills of Entry for imports made by M/s Excel Enterprises, M/s S.G. International, M/s Logitrade Impex Solutions Pvt. Ltd and Other importers through Delhi Air Cargo (Import). From various statements of IEC holders, it appeared that they (M/s Excel Enterprises, M/s S.G. international, M/s Logitrade Impex Solutions Pvt. Ltd and other importers) did not engage the appellant for Customs clearance related work and the appellant and their representatives failed to produce such authorization at

the time of examination. The IEC holder of the other two import firms M/s Excel Enterprises and M/s S. G. International had even denied to be aware of these imports and admitted that their IECs were being misused by some other person i.e. Shri Amardeep by paying some monetary consideration to them. Further, during the search of the declared office premises i.e. L-74/284, Street No. 7, Pandit Jagannath Complex, Mahipalpur, Delhi-37, on 28/02/2017 (the office premises declared by Shri Surender Kumar claiming to authorized representative of the appellant), no relevant documents like KYC documents and file of earlier imports clearance made by the appellant were found. The adjudicating authority has further observed that the KYC documents of the importers not produced before the investigating agencies till 09/03/2017 despite having undertaken by Shri Surender Kumar to do so but same were produced belatedly before the Licence Issuing Authority only. Further, no authorized representative or `G' or 'H' card holder of the appellant firms were found present at the time of examination of the seized consignments. Only Shri Surender Kumar and Shri Narender said to be representatives of Multi-Wings were present at the time of examination, but both failed to produce any document in support of their claim of being authorized representatives of the appellant. It was also observed that Shri Surender Singh and Shri Narender were neither any F card not ‘G’ card not ‘H’ card holders of the appellant firm. Although the appellant has a G card holder Sh.

Ajesh Kumar on its rolls, but he was not present at the time of verification and examination of the cargo. That it was Shri Surender only, who was using the appellant's licence for clearing of the import consignments and was dealing with the importers for said imports. That the high value goods suspected to be concealed/mis-declared had been removed from the original consignments and the same had been replaced by Shri Surender which is evident from the fact that description of goods declared at the time of import and goods found during panchnama proceedings were different and there is also mis-matching of markings on the packets versus markings present in Packing list presented before the Customs. That the necessary documents such as KYC, Authorizations and even packing list was not produced promptly to aid the DRI investigation. Submission of the requisite documents at later stage will not serve any purpose and that too to License Issuing Authority who has nothing to do with this packing list. Accordingly, the adjudicating authority in exercise of his powers under Regulation 18 and Regulation 20(7) of CBLR, 2013 passed the impugned order revoking the appellants Customs Broker Licence and also forfeited security deposit of Rs. 75,000/- furnished by the CB which is present matter of appeal before us.

4. The learned advocate appearing on behalf of the appellant has vehemently opposed the charges made in the impugned

order. Refuting the charge of violation under Regulation 11(a) that the Appellant undertook the work relating to clearance of the impugned consignments without obtaining any authorization from the importers and that the director of the Appellant did not present himself before the investigation agency as well as did not submit the required authorization and KYC documents of the importers he argued that no authorization and KYC were demanded by DRI from Appellant at the time of investigation of the case. That as and when the appellant was asked to join investigation proceedings, he dutifully appeared before Investigating Team and tendered his true statement. That That on 08/03/2017, DRI informed the authorized person Shri Surinder Singh to remain 'present in his office at Mahipalpur with authorizations and KYC of importers concerned but DRI Officers neither visited the office premises of the authorized person nor ordered to submit the authorization and KYC documents to the respective office of DRI. They also did not visit the office of Appellant. That the allegation that the Appellant had not obtained any authorization from importers is not sustainable in the eyes of law as the authorizations and KYC documents were with the Appellant. Refuting the charge of violation under Regulation 11(d), argued that the goods covered under Bill of Entry Nos. 8710782 dated and 8710323, both dated 28/02/2017 were examined in the presence of one Sh. Surender, Director of M/s K.R. Express Pvt. Ltd.(itself a CB) who claimed himself to be a representative of the Appellant without having any G-Card / F-Card and without having any authority to do so in terms of regulation 11(b) of CBLR is not sustainable because the appellant filed the above mentioned bills of entry on the basis of documents supplied by the respective importer. That after filing the bills of entry, the representative of appellant Sh. Ajesh Kumar (G-Card holder) was present in Air Cargo Complex (Import) for examination and assessment of imported goods but he was ordered by the Shed Officer to move to the group in New Custom House regarding some paper work and when he came back, the Officers of DRI closed the main gate and did not allow anyone to enter in the complex including Sh. Ajesh Kumar (G-Card holder). That when the Officers of Customs started examination of the goods, under the aforesaid bills of entry, no representative of the appellant was present in Cargo Complex except Shri Surender, Director of M/s K.R. Express Pvt. Ltd. (a Customs Broker) who was known to the appellant and was allowed to represent him in cargo complex. Further, refuting the charge of violation of Regulation 11(d), he argued that the goods were declared as per import documents furnished by the importers and there is no way to ascertain the veracity or correctness of contents of these consignments without examination. That there is no evidence or allegation that the Appellant CB had any prior knowledge about the actual contents of the consignments. Hence, no mis-declaration is imputable to the Appellant CB. With regard to consignments imported through Bill of Entry Nos. 8700104 and

8707042, both dated 28/02/2017, he stated that no discrepancy was found with respect to number of packets and there was only difference in declared weight. He argued that the declared weight was on estimates only as the goods were assessable with respect to number only. He vehemently opposed the finding that there was any replacement of goods and argued that there was no evidence of any replacement Further refuting the charge of violation under Regulation 11(j) he again re-iterated his argument that no KYC was demanded by the DRI and not even a single packet was found short when examined by the DRI with respect to goods covered Bill of Entry Nos. 8700104 and 8707042 and that the Customs Duty assessed is on the basis of numbers and not weight. Further refuting the charge of violation of Regulation 11(n) that the Appellant failed to present KYC documents to the investigating agency; and that the Appellant has not verified that antecedents, correctness of IEC Number, identity of his client and functioning' of his client at the declared address by using reliable, independent, authentic documents, data or information he argued that the findings are against facts as before filing respective bill of entry, the Appellant verified the documents supplied by the importers such as IEC, Pan Card, Voter Card, Vat Registration and obtained the authority letter from importers and being completely satisfied with the documents filed the bills of entry in question, that the Appellant verified the documents from the website of DGFT and other Departments and then only filed the concerned bills of entry and that it is also wrong to say that the companies were existing on paper only because Officers of DRI had investigated the office premises of the importers for whom the Appellant filed the Bills of Entry and no such companies were found existing on the given address, contrary to such claim, the fact is that all the three importers presented themselves before DRI as and when called upon to do so and have tendered their statements under section 108 of the Customs Act. They have also deposited certain amounts as desired by DRI. He relied upon the case law in **G.N.D. Cargo Movers vs. CC (General), New Delhi [2017 (357) E.L.T. 1184 (Tri-Del)]** wherein it has been held that charge of violation of Regulation 11(n) regarding failure to verify the antecedents, correctness of the IEC number, and identity of the client does not sustain when IEC number is found to be correct as also the address of the importer. Further all the importers have joined the investigations He further argued that there is no allegation of any pecuniary benefit to the Appellant nor there is any evidence that the Appellant had wrongly advised the importers. He cited certain case laws which suggested that the CHA cannot be penalized for the wrong declarations made by the importers. He lastly argued that the revocation of Licence is likely to affect the livelihood of many persons and hence the impugned order should not be allowed to sustain. On the other hand the Learned DR has reiterated the findings in the impugned order and has argued that the revocation and forfeiture of security deposit be sustained.

5. We have carefully gone through the facts of the case and arguments made by the Learned Advocate of the Appellant and the Learned DR. We find that the required KYC were produced by the Appellant to the Department at a later stage to the Licence Issuing Authority and not to the investigating Agency. This suggests that the necessary KYC documents were actually not present with the appellant when the investigating agency visited and asked them to produce the KYC documents of the importer firm. This very facts prove that the appellant had indeed not negotiated the clearance of the impugned consignments and have allowed his licence to be misused by other persons and have thus violated the provisions of Regulation 11 (a) of CBLR, 2013. We further find that the charge of replacement of goods against Bills of Entry no. 8700104 and 8707042 is also got substantiated as the investigation has proved that the high value goods suspected to be concealed/misdeclared were removed clandestinely from the import consignments however the complicity or direct involvement of the CB or his representative does not get substantiated. We also find that there is nothing on record to suggest that any mis-declaration with respect to the consignments examined under Bill of Entry no. 8710782 dated 28/02/2017 and 8710323 dated 28/02/2017 was in the

knowledge of the CB or his authorized representative Mr. Ajesh Kumar, the G Card Holder or even Mr. Surender Kumar who represented before the Investigating Authorities on behalf of the CB. Thus the charge of failure to advise the client to comply with Regulation 11(d) or the charge of concealment of any document etc. as per regulation 11(j) does not hold good as these charges are not substantiated by any positive evidence with respect to knowledge of the CB or circumstantial evidence like extra pecuniary gain etc. However, we find that the learned advocate has failed to give any plausible explanation with respect to authorizing of Shri Surender Kumar who was not his employee and neither a G Card Holder or H card Holder to represent on him on his behalf or conduct a business through him. This facts establishes that the appellant has allowed some other persons to use his CB licence in violation of CBLR 2013.

6. There is nothing on record to also show that appellant was too prevented from being present personally or through his authorized G Card or H Card representative when called by the investigating agency for participating in the examination of impugned import consignments, the arguments adduced by them in their support are without valid evidences and thus we find that the appellant has violated the provisions of Regulation 11(b).

7. In view of above, we hold that the appellant has not complied with the provisions to regulations CBLR 2013 as

discussed in the preceding paragraphs. Thus, we feel no need to interfere with the order-in-original dated 15/11/2017 and accordingly the appeal is dismissed.

(Order pronounced in open court on 18/04/2019.)

(Anil Choudhary)
Member (Judicial)

(C.L. Mahar)
Member (Technical)

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