

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench
Court - I

Application Nos. C/STAY/30832/2018 & C/EH/30831/2018

**in
Appeal No. C/31278/2018**

(Arising out of Order-in-Original No.HYD-CUS-05-COM-18-19 dt.15.10.2018 passed by Pr.
Commissioner of Customs, Hyderabad)

Syed Jameel Uddin

..... **Appellant(s)**

Vs.

CC, Hyderabad - Customs

..... **Respondent(s)**

Appearance

Shri A.K. Jairaj, Advocate for the Appellant.

Shri B. Guna Ranjan, Superintendent/AR for the Respondent.

Coram:

HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)

HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 07.02.2019

Date of Decision: 26.03.2019

FINAL ORDER No. A/30419/2019

[Order per: P.V. Subba Rao.]

1. The appellant herein is a customs broker originally registered as Customs House Agent under Custom House Agents Licensing Regulations, 2004 whose license is renewed up to 22.04.2008. The officers of the Directorate of Revenue Intelligence, Bangalore investigated a case pertaining to M/s Logo Trading and M/s Azomatrix Impex based in Coimbatore who misdeclared 'rejected/torn/damaged items of leather like material with negligible value' as '100% pure leather items' with a mala fide intention to claim drawback. After investigating the matter, the officers seized the goods and a show cause notice was issued by the Asst. Commissioner of Customs, Bangalore proposing action against the concerned persons. Following up this case, they investigated another case in which Shri Syed Mohamed Zubril, Shri Ravindranath Tagore Subramania

Bharathi, Smt Amritha Priya Rammohan and Shri Jayaraman P Paneerselvam floated several proprietary/ partnership firms using fake addresses and obtained Import-Export Certificate (IEC) from DGFT, Bangalore to fraudulently avail drawback and other benefits. Through these fraudulent exports, these companies received drawback amount of Rs.1.29 Crores. DRI also investigated the customs brokers who processed these exports and it was found that the appellant herein had filed 8 shipping bills in respect of M/s Trendy Knitz, 14 shipping bills with misdeclaration of quantity and value in respect of M/s Shakthishka Exports. Therefore, it appeared that the appellant had attended to customs clearance work on behalf of the alleged fraudulent exporter viz., M/s Shakthishka Exports. When the person who actually handled export, Shri S. Uma Mahesh, a G-Card holder, was investigated by DRI, in his statement under Sec.108 of Customs Act, 1962, he said that he was the Managing Partner of M/s V.D. Logistics which has 20 staff. He was using the customs broker license of the appellant from January, 2010 to process exports. For this, he was paying the appellant Rs.25,000/- per month through NEFT to the account of the appellant. They have no written agreement and the appellant does not refer any business with him. He develops his own market and only used the license of the appellant to process the bills of entry and shipping bills. Accordingly, he processed the shipping bills of M/s Shaktishka Exports which are in dispute.

2. In view of the above, it was felt that the appellant has failed to discharge the following obligations of a customs broker under CBLR, 2013:

1. As per Regulation 10 of CBLR, 2013 he cannot sell or otherwise transfer the license and in this case the appellant was collecting

Rs.25,000/- per month from Shri S. Uma Mahesh who in turn has been filing shipping bills using the license of the appellant.

2. As per Regulation 11(a) of CBLR, 2013, the customs broker is required to obtain authorization from each of the companies or firms by whom he is employed as a Customs Broker and the appellant has failed to obtain any such authorisation.
 3. As per Regulation 11(b) of CBLR, 2013 the customs broker shall transact business of the customs station either personally or through an employee approved by the Dy. Commissioner or Asst. Commissioner of Customs. In this case the appellant has sublet his license to Shri S. Uma Mahesh for processing exports.
 4. As per Regulation 11(n) of CBLR, 2013 the customs broker is required to verify the antecedent, correctness of IEC number, identity of his client at the declared address etc. by using reliable, independent, authentic documents, data or information. The appellant has not verified any of these factors with respect to the shipping bills in dispute.
 5. As per Regulation 17(9) of CBLR, 2013 the customs broker has to exercise such supervision as may be necessary to ensure that proper conduct of his employees in transaction of his business and he shall be held responsible for all acts or omissions of his employees during their employment.
3. The Commissioner of Customs, Bangalore prohibited the appellant from operating in Bangalore Customs House. A show cause notice was issued to the appellant by the Commissionerate of Customs, Hyderabad under Regulation 18 of CBLR proposing
- (a) Revocation of license of the appellant and

- (b) Forfeiture of part or whole of the security and
- (c) Imposition of penalty not exceeding fifty thousand rupees on the customs broker.

4. Inquiry was conducted by the Inquiry Officer (IO) who gave a report against the appellant. The appellant contested the show cause notice as well as IO's report. He contended that they themselves filed the shipping bills on two importers after verifying IEC with the JDGFT, the addresses of the parties and the CST number. He further contended that no drawback was received by M/s Shatishka Exports since the goods were seized by the Customs and subsequently adjudicated. During personal hearing before the adjudicating authority the appellant cross examined Shri S. Uma Mahesh who said that he is using the license of the appellant. During the cross examination Shri S. Uma Mahesh retracted his statement regarding paying Rs.25,000/- per month to the appellant for using the license. He said that he had signed the statement before the DRI under threat.

5. After considering the arguments, the learned adjudicating authority came to the conclusion that the appellant had, indeed, sublet the customs broker license to Shri S. Uma Mahesh for Rs.25,000/- per month and revoked the license of the appellant under Regulation 18 read with Regulation 20 of CBLR, 2013. He also ordered forfeiture of entire security deposit collected at the time of issue of license. Further, he also imposed penalty of Rs.50,000/- under Regulation 22 of CBLR, 2013 for contravention of regulations of CBLR, 2013.

6. Learned counsel for the appellant submits that they have not sublet their license to any person and the statement from Shri S. Uma Mahesh was obtained under duress. They have, in fact, filed the shipping bills in respect of the two exporters by themselves with the help of Shri S. Uma Mahesh, a

G-Card holder working with his firm. Therefore, they have not violated any conditions of the license as far as the verification of the antecedent and existence of the firms are concerned, they have verified IEC codes from the websites of DGFT and came to a conclusion that they are genuine exporters and accordingly filed the shipping bills. He also submits that prohibition of the operation of the appellant in Bangalore Customs House has already been revoked by the Commissioner of Customs, Bangalore and therefore, these proceedings may also be dropped and the Order-in-Original may be set aside. He also relies on the order of this bench in Final Order No. A/31425-31426/2018 dated 29.10.2018 in appeal C/27769/2013 & C/20613/2014 and prayed that the proceedings against them may be set aside.

7. Learned departmental representative reiterates the findings of the lower authority and submits that appellant has indeed sublet his license to Shri S. Uma Mahesh who has filed the bills of entry in question using the license of the appellant. In his statement Shri S. Uma Mahesh explained that he is paying Rs.25,000/- per month to the appellant for this subletting through NEFT into his bank account. This activity is reflected in the accounts. If Shri S. Uma Mahesh had signed the statement before the DRI under duress, he should have immediately retracted it or done so at the earliest opportunity. In fact, he has not retracted the statement at all until the time he was cross examined before the IO. During this cross examination also, apart from stating that he has not rented the license, he was not able to explain as to why he was transferring Rs.25,000/- per month to the appellant if he was indeed the employee of the appellant. He further submits that the CBLR, 2013 expects the appellant to conduct due diligence including verification of antecedent through independent and not just by verifying IEC code on the net which can be done by any person.

These cases have been specifically included in the CBLR because, as a matter of routine, DGFT does not verify the address etc., of the applicant before issuing the IEC. Assuming the appellant himself has filed the shipping bills in this case, he has definitely failed in completing this obligation. Therefore, the revocation of licence, forfeiture of the security deposit and imposition of penalty in the impugned order are sustainable and need to be upheld.

8. We have considered the argument on both sides and perused the records. The first question to be decided is whether the appellant has indeed sublet his license to Shri Uma Mahesh who has filed the shipping bills in question in respect of their exporters without verifying the antecedents. This fact was revealed when Shri Uma Mahesh was questioned by the officers of DRI. He recorded this in his statement. Any person who makes a statement under duress will, at the earliest opportunity, retract the same. Shri Uma Mahesh had at no point of time retracted the statement until he was cross-examined during the adjudication proceedings. This statement of Shri Uma Mahesh is corroborated by the fact that he was transferring Rs.25,000/- per month to the appellant. If Shri Uma Mahesh was indeed an employee of the appellant and not one who sublet his license, then the appellant should have been paying Shri Uma Mahesh and not the other way around. The amount which is transferred to the appellant every month matches with the amount which he said was the fee he pays for subletting the license of the appellant. If the appellant had, himself, filed the shipping bills for the parties in question, he would have had to verify the antecedents of the exporters or at least their existence. If the exporters did not exist at the address indicated therein he should not have filed the shipping bills. We, therefore, find that there is strong force in the contention of the revenue that appellant had

indeed sublet his license for the shipping bills in question to be filed. Shri S. Uma Mahesh had in fact indicated that he runs a separate company by name M/s VD Logistics which runs the business on its own using the license of the appellant.

9. However, when Shri S. Uma Mahesh had retracted the statement during the cross examination, it would have been proper for departmental officers to have further questioned him about the amounts being transferred at the rate of Rs.25,000/- per month. When he said that he had not paid any amount to the appellant he should have been confronted with the bank transfers to establish that the license was, indeed, sublet to him by the appellant. For this reason, we give the benefit of doubt to the appellant that he had, himself, got the shipping bills filed using the services of Shri S. Uma Mahesh. If that be so, the appellant has failed in discharging his obligation under Regulation 11(a) of CBLR, 2013 in not verifying the antecedents of the exporters and Regulation 17(a) in not supervising the work of his employees. For these violations, the penalty of Rs.50,000/- imposed upon the appellant under Regulation 22 of CBLR, 2013 appears sufficient. On payment of this penalty, the appellant's license will stand restored and the forfeiture of the security deposit also stands set aside.

10. In view of the above, the appeal is partly allowed by confirming the penalty of Rs.50,000/- upon the appellant under Regulation 22 of CBLR, 2013. Upon payment of this penalty, the license of the appellant shall stand restored forthwith and the forfeiture of security deposit will stand set aside.

(Pronounced in the Open Court on 26.03.2019)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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