

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

Division Bench
Court – I

Customs Appeal No. 2564 of 2011

(Arising out of Order-in-Original No. 01/2011-CUS-ADJN dt.22.04.2011 passed by CC,
Hyderabad-II)

Tass Clearing Services Pvt Ltd

Raghavaratna Towers, Chirag Ali Lane,
Abids, Hyderabad – 500 001

.....Appellant

VERSUS

**Commissioner of Central Excise,
Customs & Service Tax, Hyderabad-II**

LB Stadium Road, Basheerbagh,
Hyderabad – 500 004

.....Respondent

Appearance

Shri Ashwani Pahwa, Advocate for the Appellant.

Shri P. Amaresh, AR for the Respondent.

Coram:

HON'BLE MR. R. MURALIDHAR (JUDICIAL)

HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30054/2023

Date of Hearing: 17.04.2023

Date of Decision: 17.04.2023

[Order per: R. MURALIDHAR]

Learned Counsel appearing on behalf of the Appellant submits that they have come before the Tribunal being agitated by the OIO passed by the Adjudicating Authority wherein he has enforced the security of Rs.10,000/- furnished by the Appellant as Bank Guarantee No.2/2007 dt.12.03.2007. Vide this OIO, the CHA License bearing No. 4/89 of M/s Tass Clearing Services Pvt Ltd has been revoked. He submits that for the earlier OIO passed on the same issue, the Appellant had approached the Tribunal vide their Appeal No. C/86/2007. The Tribunal, after going through the factual details, remanded the matter to the Adjudicating Authority with the following directions.

"4. We have carefully considered the submissions and have gone through the entire judgments cited before us. As can be seen from the show cause notice, the appellants been charged with an offence of allowing unauthorized person to operate on their behalf and have signed blank customs documents. There is no grave charge against them. In case the charge was grave they should have been put to "immediate suspension" as held by all the judgments noted supra. If there is a delay in issuing the suspension order, then it does not satisfy the term "immediate action" as stipulated in the regulations. Therefore, all the

cited judgments have set aside the belated action on the part of the department in suspending the license. They are bound by these judgments and we are not in a position to distinguish these judgments as pleaded by the learned Commissioner. The Commissioner is at liberty to proceed with the enquiry, however, the order of suspension has to be set aside as there is a delay in issuing the same and as the action was not taken immediately. The Commissioner is at liberty to proceed against the appellants in terms of the show cause notice but however, he shall permit the appellants to carry on the operation of CHA license in terms of law. The appeal is allowed." [emphasis supplied]

2. The Adjudicating Authority as per the directions of the Tribunal provided a copy of the Inquiry Report to the CHA and granted Personal Hearing. From the OIO it gets clarified that after the Inquiry Report was made available to the CHA, the Appellant vide their written reply dt. 24.12.2010 made the following submissions.

"10. Consequently, the attested copy of the Inquiry Report was made available to the CHA vide letter C.No.S/03/CHA/03/2007-CUS(T) dt.13.09.2010. M/s Tass Clearing Services (P) Ltd., vide their written reply dt.24.12.2010 with respect to the Inquiry Report, have submitted that the finding of the Inquiry Officer that the authorization letter not obtained by the appellant is not a contravention of Regulation 13(1); that if there is no verification of person filing the Shipping Bills at the EDI Centre, the finding of the Inquiry Officer with regard to violation of Regulation 13(d) is not sustainable; that the finding of the Inquiry Officer that possible knowledge of the designs of the exporter to defraud the Government is not based on any evidence except the suspicion of the Inquiry Officer; that the finding of the Inquiry Officer that CHA has signed blank Customs documents is contrary to his own findings that there is no verification of person filing Shipping Bills at the EDI Service Centre and that the finding with regard to violation of Regulation 13(d) is not correct and tenable; that there is not even a semblance of evidence on record to prove culpability of the CHA in the alleged act of negligence in signing the documents knowing that the goods to be exported on the said documents are liable for confiscation and as such the revocation of license of the CHA is incorrect and unlawful." [emphasis supplied]

3. The Adjudicating Authority in his discussions and findings has held as under:

"11. I have gone through the records of the case, the observations of the Hon'ble CESTAT in their Final Order No. 1243/2010 dt.19.08.2010 and the submissions made by the CHA after having received the attested copy of the Inquiry Report. The issue before me for decision is whether the CHA has violated the provisions of CHALR 2004 and misused the license granted to them. I observe that the CHA has prima facie failed to comply with the requirements under CHALR 2004 in as much as they have not obtained any authorization from the exporter, signed blank Customs documents, allowed unauthorized persons to handle the export documents and have been negligent in following the statutory procedures required to be followed in filing the export documents. The CHA has acted consciously and deliberately in defiance of law. I also find that Shri M.Y.H. Siddiqui, Executive Director of M/s Tass Clearing Services (P) Ltd., has admitted the above facts in his voluntary statement given before the

Superintendent, SIIB, on 05.10.2006. The Hon'ble CESTAT has remanded the case on the ground that the OIO No.19/2009 dt.17.07.2009 was passed without making available the Inquiry Report to the CHA, which is mandatory under Regulations 22(6) and (7) of CHALR 2004. The allegation that the CHA has violated the provisions of Law and the Regulations made thereunder, has not been disagreed by the Hon'ble CESTAT. In deference to the Final Order No. 1243/2010 dt.19.08.2010 passed by the Hon'ble CESTAT and the directions issued therein, an attested copy of the Inquiry Report was made available to the CHA. The CHA was also given another opportunity of personal hearing. The CHA's contentions in their reply and during the personal hearing, do not merit consideration, since it is established beyond doubt that the CHA has shown gross negligence in discharging their duties, which has resulted in an attempted export of Readymade garments by fraudulent means, which could have put the exchequer to undue loss but for the timely intervention of the Departmental Officers. Inquiry Officer's report has proved beyond doubt that the CHA have contravened the provisions of Regulation 13(1), (b) & (d) of CHALR 2004, failed to comply with the conditions of the bond executed by them under Regulation 10 of CHALR 2004 and render themselves unfit to operate as CHA in the Customs station. The CHA could not substantiate in their defense while disagreeing with the Inquiry Officer's report. The CHALR, 2004 is clear about the obligations of the CHA in the course of Customs clearance at any Customs station and if any CHA operates with gross disregard to his obligations as in the present case, it is the duty of the Commissioner of Customs to take appropriate action against the CHA to make sure that such errors, with potential to cause huge losses to the exchequer are not repeated. The Jurisdictional Commissioner of the Customs station, is responsible to ensure that Customs House Agents operating in the Customs Station complies with the provisions of CHALR, 2004." [emphasis supplied]

4. The Learned Counsel submits that the Adjudicating Authority has not rebutted any of the submissions made in their reply and has not given any finding as to why the submissions made by the Appellant are not acceptable to him. Therefore, the OIO is to be termed as Non-Speaking Order. He also submits that on the related issue, a Show Cause Notice was issued to M/s Seema Enterprises, Mumbai and other noticees including the present noticee and their Director seeking to know as to why penalty should not be imposed on them under Section 114 and 114AA of the Customs Act, 1962. After following due process, the Adjudicating Authority in that case imposed penalty of Rs.5 Lakhs on the present Appellant and Rs.3 Lakhs on their Director. Being agitated by this OIO, the Appellants had filed Appeal Nos. C/77 & 78/2009 before the Tribunal. This Tribunal vide their Final Order No. A/30459-30460/2018 dt.21.02.2018, after going through the facts of the case and statutory provisions, has held as under:

"4. The Adjudicating Authority in the impugned order has come to a conclusion that the appellant herein i.e. Tass Clearing Services Pvt. Ltd., had through their wilful acts of omission and commission had abetted the offence of attempted fraudulent export of Cotton and polyester garments,

wherein the value was inflated in order to get higher drawback from the Government of India. We find appellant M/s Tass Clearing Services Pvt. Ltd., is CHA has filed the Bills of Entry for export of goods as has been handed over by Seema Enterprises. It is seen from the impugned order that the Adjudicating Authority has not recorded any explicit findings as to how Tass Clearing Service Pvt. Ltd., and its Executive Director had is abetted wilful acts of omission and commission of misdeclaration of the value. xxxxxxxx

From the above findings it can be noticed that the Adjudicating Authority has not been able to pinpoint specifically the role attributable to appellants herein to hold them on charge of abetment of misdeclaration. Similar issue had come up before the Tribunal in the case of Somaiya Shipping Clearing Pvt. Ltd., [2006 (197) ELT (552)], wherein the Tribunal held that penalty under Customs Act cannot be imposed on CHA and its directors in case of misdeclaration of value and description if no role is found in such contravention. The ratio is in paragraph No. 11 which we reproduced.

"11. As regards the CHA and its Director, there is no ground for imposition of penalty, as CHA has filed Bill of Entry (sic) showing the description and value on the basis of the records made available by the exporter and there is no evidence of knowledge on the part of the CHA that there was misdeclaration of description and value of the goods. Although the Ld. SDR seeks to justify the penalty on the CHA on the ground that they did not produce authorization letter from the exporter to clear the goods and therefore, penal action on CHA is required to be sustained, I find that the penalty has been imposed on CHA only for the failure in their obligation to file the documents with correct description and value of the goods. Further, penalty under Section 114 cannot be imposed on the ground that CHA failed to file authorization letter. I therefore, concur with view expressed by the Ld. Member (Judicial) that penal action against the CHA and its Director is not sustainable."

5. In view of the foregoing, the ratio of the decision of the Tribunal, we hold that the impugned order imposing penalties on these two appellants is unsustainable and liable to be set aside and we do so, the penalties are set aside and the appeals are allowed." [emphasis supplied]

5. Therefore, the Learned Counsel submits that the present OIO is required to be set aside.

6. Learned AR submits that the Appellant had contravened the provisions knowingly and the Adjudicating Authority has correctly revoked the License and also appropriated the Bank Guarantee of Rs.10,000/-. He submits that they rely on the case of CCEx, Hyderabad-II vs HB Cargo Services presided by the Hon'ble High Court of Andhra Pradesh as reported in 2011 (3) TMI 816. Therefore, the Learned AR submits that the Appeal is liable to be dismissed.

7. Heard both sides. We find that even at the first stage the Tribunal did not find the contravention to be grave in nature as can be seen from the extract of the Tribunal's Order reproduced above.

8. Further from the findings given by the Adjudicating Authority in the present OIO, it is seen that none of the submissions relied by the Appellant have been addressed. The Adjudicating Authority has simply reiterated that detailed inquiry conducted by the Officer and that the contraventions are clearly coming out in the Inquiry Officer's Report and after this he has proceeded to go ahead with confirming the demand. Further, we see that while deciding the issue as to whether the present Appellant is liable to be penalised under Section 114, this Tribunal has come to a conclusion that no explicit findings have been given by the other Adjudicating Authority to the effect that the present Appellant has abetted in contravening any provisions of Customs Act. The Tribunal has set aside the penalties imposed under Section 114 on the present Appellant and their Director. Coming to the case law cited by Learned AR, it is distinguishable on the ground that in that case the Hon'ble High Court was dealing with the situation where the Respondent (CHA) was found guilty under Section 114 of Customs Act and a penalty of Rs.25,000/- was also imposed on him. In the present case, Tribunal has absolved the present Appellant of all penalties vide Final Order No. A/30459-30460/2018 dt.21.02.2018.

9. In view of the above factual and statutory provisions, we find that the revocation of license is a very harsh measure and is liable to be set aside and we do so. However as admittedly some minor contraventions have taken place, we find that CHA is required to be penalised with Rs.10,000/- which has already been done by encashing Bank Guarantee No.2/2007.

10. Appeal is disposed of as thus.

(Dictated and pronounced in the Open Court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)