**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,**
**EAST REGIONAL BENCH : KOLKATA**

## Customs Appeal No.75678 of 2017

(Arising out of Order-in-Original No.Kol/Cus/Airport/Admn./03/2017 dated 30.01.2017 passed by Commr. of Customs (Airport & Administration), Kolkata

**M/s J.D.Impex**
63/N, Mahanirban Road, Kolkata-700029

**Applicant**

*VERSUS*

**CC (Admn. & Airport), Kolkata**
15/1 Strand Road, Kolkata-700001

**Respondent**

Appearance:
Shri Arijit Chakraborty, Advocate for the Appellant
Shri K.K.Maity, Spl.Counsel for the Respondent

**CORAM:**
**HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER**
**HON'BLE SHRI BIJAY KUMAR, TECHNICAL MEMBER**

**FINAL ORDER NO…76923/2019**

DATE OF HEARING : 25.10.2019

DATE OF DECISION/PRONOUNCEMENT : 18 December 2019

**PER P.K.CHOUDHARY :**

The appellants have preferred the instant appeal against an Order-in-Original dated 30.01.17 passed by the Commissioner of Customs (A&A), Customs House, Kolkata whereby the Customs House Agent Licence No. J-36(PAN No. AAJFJ2496C) of the appellants have been revoked under Regulation 20(1) of CHALR, 2004 [now Regulation 18 of CBLR, 2013] and the full amount of security deposit of the appellants CHA has been ordered to be forfeited under Regulation 20(1) of CHALR, 2004 [now regulation 18 of CBLR, 2013].The appeal was initially decided vide Final Order No. FO/75441/2018 dated 19.03.18 by this Tribunal whereby the order of revocation of licence was set aside upon the finding that the time limit provided under Regulation 20 of CBLR, 2013 was not followed by the authority below. However, the order of confiscation of security amount was upheld. Against such Final Order dated 19.03.18 of this Tribunal, the Revenue preferred an appeal being CUSTA No. 3 of 2019 [Commissioner of Customs(Airport & Administration) – Vs - M/s. J.D. Impex] before the Hon'ble High Court of Calcutta. Vide Order dated 2nd September, 2019, the Hon'ble Court has set aside the Order dated 19.03.18 passed by this Tribunal and directed the Tribunal to re-hear the appeal on merit. It was clarified by the Hon'ble High Court that the part of the order of the Tribunal upholding the confiscation of the security amount furnished by the CB is also set aside. Accordingly, we take up the hearing of the present appeal on merit.

2. Mr. Chakraborty, the Ld. Advocate appearing on behalf of appellant CHA submitted that the entire allegation of violation of Regulation 11(a), 11(d), 11(e), 11(m), 11(n) & 17(9) of CBLR, 2013 against the appellant is on the basis of the fact that the entire work of import clearance was undertaken by one Sri Dattatray S. Weling and it is alleged that said Sri Weling is a third party to whom the CHA had lent out their licence against commission. He had referred to paragraph 16, 17, 18, 19, 20, 21, 22 & 23 of the impugned order to show that every alleged violation is based upon the said fact that Sri Weling was an unauthorized person and the CHA had allowed him to work on their licence. It is submitted that such an allegation is based upon complete erroneous fact. He referred to the outcome of cross-examination of said Sri Dattatray S. Weling before the Inquiry Officer in the present proceeding wherein on 03.08.16, before the Inquiry Officer/Asstt. Commissioner it was submitted in reply to question no. 5 by said Sri Dattatray S. Weling that he was an employee at M/s. JD Impex and on the basis of such employment only he had undertaken the job of M/s. Jude's International INC. In reply to question no. 11 & 12, he confirmed receipt of all required documents from the importer and in reply to question no. 20 in the said cross-examination, he had provided his 'G' Card No. as "W-16". On the basis of such fact, the Ld. Advocate submitted finally that when Sri Dattatray S. Weling was a 'G' Card holder of the appellants CHA, there cannot be any violation of the said provisions of CBLR,2013 and hence, the impugned order should not sustain on merit.

3. Mr. Maiti, Ld. Spl. Counsel appearing for the respondent Customs authority submitted, *per contra*, that the entire act of clearance was undertaken by Sri Dattatray S. Weling by using the licence of appellant CHA against commission and the CHA had no knowledge w.r.t. the actual importer or its documents. Hence, the CHA was also not in a position to comply with the provisions of CBLR, 2013 during such import which was ultimately detected to be attempted smuggling of cigarette in guise of trolley bags by the importer. As such, there is serious violation of provisions of CBLR, 2013 as correctly held by the Adjudicating authority and he reiterated the findings of the Commissioner of Customs to support the impugned Order.

4. On a query from this Bench under Interim Order No. 94/2009 dated 26.09.19 in the present case, the Ld. Advocate for the appellants produced a verification letter under F. No. S/6-48/2010-Admin signed on 18.10.19 by the Deputy Commissioner of Customs, Customs Broker Section, New Customs House, Ballard Estate, Mumbai-I and one letter dated 16.10.19 issued by the said Sri Dattatray S. Weling for the appellants to the Deputy Director, DRI, 'C' Cell, Churchgate requesting return of his 'G' category pass which was submitted by him during the course of investigation in the present case.

5. We have heard both side at length and considered all the records and documents produced before us.

6. We find that undoubtedly the first question for consideration is whether Sri Dattatray S. Weling was a 'G' card holder of the appellant CHA M/s. JD Impex at Mumbai at the relevant point of time when the import consignment of M/s. Jude's International INC was handled by the appellant CHA. It is observed that during the course of cross-examination before the Inquiry Officer and Asstt. Commissioner of Customs in the course of inquiry proceeding, said Sri Dattatray S. Weling had categorically stated that he was holding 'G' card No. W-16 for M/s. JD Impex. However, since no such document was in record, this Bench under Interim Order dated 26.09.19 adjourned the matter upon the prayer of the appellant for time to produce such documents.

During subsequent date of hearing, the letter under F. No. S/6-48/2010-Admn signed on 18.10.19 by the Deputy Commissioner of Customs, Customs Broker Section, Mumbai-I, has been produced on behalf of the appellant wherefrom it is evident that as per Customs record also Sri Dattatray S. Weling was holding 'G' category pass with Cardex No. W-16 for the Customs Broker M/s. JD Impex. The respondent Customs authority could not dispute such verification letter dated 18.10.19 produced by the appellant. No copy of the original 'G' card of Sri Dattatray S. Weling could be produced by the appellant before this Bench on the pretext that DRI, Mumbai had taken away the original 'G' card of said Sri Dattatray S. Weling during the course of investigation and till date the same had not been returned. To substantiate such fact/argument, a letter dated 16.10.19 has been produced before this Bench wherein it appears that said Sri Dattatray S. Weling on behalf of the appellant M/s. JD Impex had stated before the DRI authority of Mumbai about the fact of submission of original 'G' card by him before them and he had also prayed for return of the same. We find that such letter has also been duly received by one Vikas Yadav, IO/DRI/MZU ON 16.10.19. During the course of hearing on 25.10.19 before this Bench, there is no averment on the part of the respondent authority that contents and facts of the said representation dated 16.10.19 of the appellant before DRI, Mumbai are not correct. It is also not argued by the respondent authority that the original 'G' card of Sri Dattatray S. Weling is not with the DRI, Mumbai. However, we find no reason to disbelieve the Customs record verifying the fact that Sri Dattatray S. Weling was holding 'G' card for CB, M/s. JD Impex. Moreover, the number of the card being W-16 has also been correctly provided by Sri Dattatray S. Weling during his cross-examination before the Inquiry Officer and Asstt. Commissioner of Customs in the present proceeding. Hence, there is no doubt that said Dattatray S. Weling was employee and 'G' Card holder of the appellant CB at the relevant point of time.

6. We find that admittedly, the import consignment of M/s. Jude's International INC was handled by Sri Dattatray S. Weling and

admittedly all the communications and correspondences were made with the importer by said Sri Dattatray S. Weling. As we have already held that Sri Dattatray S. Weling was 'G' card holder of CB, M/s. JD Impex, the second question for consideration is, whether act of said 'G' card holder amounts to due discharge of obligations by the CB/CHA. We find that under Regulation 17 of CBLR, 2013, the Customs Broker is entitled to appoint /employ any number of person to assist him in the business transacted by him after obtaining approval of the Deputy Commissioner of Customs or Asstt. Commissioner of Customs. Any such employed person who passes the examination under sub-regulation(3) of Regulation 17 of CBLR, 2013 is issued with a photo identity card in Form 'G' under Regulation 17(7) ibid by the Dy. Commissioner or Asstt. Commissioner of Customs. Regulation 17(9) of CBLR, 2013 specifically provides that the Customs Broker shall be held responsible for all acts or omissions of his employees during their employment.

7. We find that employment of 'G' card holder by a CB, as such, is not only upon approval of the Deputy Commissioner or Asstt. Commissioner of Customs but also subject to passing of examination conducted by the said Dy. Commissioner or Asstt. Commissioner of Customs to ascertain the adequacy of knowledge of such employee regarding the provisions of the Act subject to which goods and baggages are cleared through Customs. Further, when the Customs Broker is held responsible for all acts and omission of such employee during the employment, all acts or omission during the course of transaction of business of CB by such employee is deemed to be acts or omissions of the CB. In other words, any compliance of any responsibilities/obligations, as envisaged under Regulation 11 of CBLR, 2013, by such employee of the CB is deemed to discharge of obligation by the CB.

8. In the present case, from paragraph 17 to 23 of the impugned order dated 30.01.17, it is evident that Sri Dattatray S. Weling had discharged all the obligations under Regulation 11 of CBLR, 2013, but the respondent Commissioner arrived at a conclusion that there was violation of different obligations under different sub-regulations of

Regulation 11 of CBLR, 2013 by the appellant CB, M/s. JD Impex upon the erroneous finding of fact that Sri Dattatray S. Weling was an unauthorized person. Since Sri Dattatray S. Weling was 'G' card holder of appellant M/s. JD Impex, as discussed *supra*, and since his fulfilment of obligations under Regulation 11 of CBLR, 2013 deemed to discharge of obligation by CB, M/s. JD Impex, there cannot be any violation of any of the sub-regulations of Regulation 11 of CBLR, 2013 on the part of the CB/ appellant in the present case.

9. Accordingly, we find that there was no violation of Regulation 11 of CBLR, 2013 on the part of the appellant/ CB in the present case and hence, the impugned order revoking their CB Licence No. J-36(PAN No. AAJFJ2496C) under Regulation 20(1) of CHALR, 2004 [now Regulation 18 of CBLR, 2013] and forfeiture of their security deposit, is liable to be quashed with consequential relief in favour of the appellant CB. We therefore order accordingly.

10. We, accordingly, set aside the impugned Order-in-Original No. KOL/CUS /Airport /Admn. /03 /2017 dated 30.01.17 passed by the Commissioner of Customs (A&A), Customs House, Kolkata with consequential relief in favour of the appellant M/s. JD Impex.

(Pronounced in the open court on 18.12.2019)

Sd/

**(P. K. Choudhary)**
**Member (Judicial)**

**Sd/**

**(Bijay Kumar)**
**Member (Technical)**

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