

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Customs Appeal No.76632 of 2019

(Arising out of Order-in-Original No.CCP/WB/Tech/03/2019 dated 17.06.2019 passed by Commissioner of Customs(Preventive), West Bengal, Kolkata.)

M/s. Maa Kamakhya Enterprise

(Panitaki, P.O.-Dulajote,
Dist.-Darjeeling, Pin-734429.)

...Appellant

VERSUS

Principal Commissioner of Customs (Preventive), Kolkata

.....Respondent

(15/1, Strand Road, Kolkata-700001.)

APPEARANCE

Shri Sukhendu Bhattacharjee, Advocate & Ms.Devi Parbat, Advocate for the Appellant (s)

Shri A.K.Singh, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

HON'BLE SHRI BIJAY KUMAR, MEMBER(TECHNICAL)

FINAL ORDER NO. 76917/2019

DATE OF HEARING : 24 October 2019

DATE OF DECISION : 24 October 2019

P.K.CHOUDHARY :

In the instant case, the appellant's licence has been suspended for their transacting export business from Petropole Land Customs Station (LCS) during 2014-15 against which the exporter had not filed BRCs against their draw back claim.

2. The appellant is a Customs Broker (erstwhile Customs House Agent) bearing licence No.CA/LC/02/2012 valid upto 15.11.2022.

3. The facts of the case in brief are that the appellant M/s.Maa Kamakhya Enterprise is a Customs Broker and is a partnership firm. A case of fraudulent export under claim for draw back by M/s.S.K.

Traders (Proprietor-Mr.Shamim Khan) through Petropole Land Customs Station was being investigated by the department. In the course of the investigation it was observed that 15 (fifteen) export consignments of the aforesaid exporter were handled by the appellant. The exporter had availed draw back from the Government, but had not submitted Bank Realization Certificates (BRS) against the said exports. It was also noted that there was no entries of the trucks carrying the export consignments in respect of the three shipping bills. Based on the above allegation it was apprehended that the exports under these three shipping bills had not been taken place physically and only effected on paper. Subsequently the Customs Broker's licence was suspended under Regulation 16(1) of CBLR' 2018 w.e.f. 24.05.2019.

4. The factual aspects of the case as per the evidences on record is that drawback was sanctioned on exports against fifteen Shipping Bills of M/s.S.K.Traders for purported exports to Bangladesh through Petrapole Land Customs Station. However, the exporter had not furnished the Bank Realisation Certificates (BRCs) being the export proceed within the stipulated period of the Drawback Rules. Since furnishing of BRCs is the responsibility of the exporter, letters were issued to him in this regard but there was no response. The issue was investigated and it was seen that out of the fifteen shipping bills, details of the export in respect of the consignment against three shipping bills were not available in the departmental and Custodian (CWC) records. In other words the goods covered by these three shipping bills had obviously not been exported.

5. It has also been alleged that there was an aberration of the prescribed procedure and the Customs Broker had manipulated the system to facilitate the exporter by giving him the documents to claim the export benefits without ensuring that the exports had actually taken place. The Customs Broker is responsible for handling all the documents on behalf of the exporter till the goods are actually exported and the 'Cross Border Certificate' is given by the proper officer based on which the EGM is generated.

6. Pursuant to the opportunity of hearing, the appellant's licence was ordered to remain suspended under 16(2) of CBLR, 2018. Being aggrieved, the appellant is in appeal against the impugned order.

7. Learned Advocate appearing on behalf of the appellant argues that the provisions of Regulation 16(1) of the CBLR 2018 is not at all applicable in the appellant's case. He further contends that there is no violation of provisions of Regulation 10(d) and Regulation 10(e) of the CBLR, 2018. Learned Advocate strongly contended that they have always complied with the provisions by keeping liaison with the local exporter. Moreover before undertaking the job from the exporter, they have verified his address and citizenship from his Ration Card and PAN Card. His antecedents were also verified from the Character Certificate issued by jurisdictional Pradhan, Duttapukur-I Gram Panchayat and the 'Credit Information Report' issued by the Standard Chartered Bank, 19, N.S.Road, Kolkata-700001 Branch. Thereafter he obtained his letter of authorization dated 01.12.2014 alongwith photocopy of his IEC issued by the DGFT, Kolkata on 13.01.2014. There is no evidence to establish any violation of any provision of Regulation 10 of CBLR, 2018 by the appellant in the course of handling export consignment of M/s.S.K.Traders in the year 2015. The entire allegations are based on assumption and presumptions.

8. Learned Advocate further contends that it is not possible for the Customs Broker to keep a track with the post export events such as submission of Bank Realisation Certificate in time by the exporter. The job of the Customs Broker concludes with the successful clearance of the export cargo under proper documentation and supervision of the customs officers. He vehemently argued that it is a pertinent question that how the department has paid the duty draw back to the exporters if the BRCs are not submitted in time. So, this case is not an appropriate case where immediate action is necessary under Regulation 16(1) of CBLR, 2018.

9. Learned Advocate further contended that at the time of personal hearing on 03.06.2019, they have submitted photocopies of the three

shipping bills under Investigation viz. (1) 1607615 dtd. 05.07.2015, (2) 4113068 dtd. 15.11.2015 & (3) 4378465 dtd.25.11.2015 along with the related Invoice and packing list. East set of such documents where the Exporter was M/s.S.K.Traders, clearly shows that the Customs Officers of Petrapole LCS have properly assessed them and given the 'Let Export Order'. And then the export goods have crossed the border under direct supervision of the Petrapole P.U. Officers. So, they cannot be held responsible for the fact that the old documents are missing in the department after a lapse of almost four years and subjected to punishment by ceasing their livelihood on immediate suspension of their CB license, under Regulation 16(1) of the Customs Brokers Licensing Regulations, 2018.

10. Learned Authorized Representative appearing on behalf of the respondent Revenue relies on the impugned order.

11. Heard both sides and perused the appeal records.

12. We find that the suspension have been made by way of interim measure for alleged misgivings and/or or inaction on the part of the appellant for imports in the year 2015, almost after four years and as such interim suspension, pending enquiry is not warranted. We find that the ruling of the Hon'ble Bombay High Court in the case of CC v. National Shipping Agency [2008 (226) ELT 46 (Bom.)], wherein the Hon'ble High Court have noted that the power to suspend as an interim measure is to be used in those cases, where it is required that the Customs Broker Licence be immediately suspended. In the instant case, the alleged violation was of the year 2015 and the order of suspension has been issued in 2019, itself indicates that there is no emergency which requires that the licence be suspended. It is therefore ordered that the continuation of the suspension of the appellant's CHA firm vide the impugned order is set aside. The Principal Commissioner of Customs (Preventive) is directed to complete the enquiry proceedings expeditiously preferably within a period of six months from the date of receipt of a copy of this order. The appellant CHA/CB firm is entitled to

carry on its business as Customs House Agents/Customs Broker with immediate effect. The appeal is allowed in the afore-mentioned terms.

(Operative part of the order was pronounced in the open Court.)

SD/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

SD/
(BIJAY KUMAR)
MEMBER (TECHNICAL)

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