CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL KOLKATA

REGIONAL BENCH

CUSTOMS APPEAL NO. 75620 of 2021

[Arising out of Order-in-Original No. CCP/WB/Tech/2021 dated 27/07/2021 passed by the Principal Commissioner of Customs (Prev.), Custom House, Kolkata.]

M/s Behag Overseas,
48, Ezra Street, 5th Floor, Room No. 505,
Kolkata – 700 001. **...Appellant**

Versus

Principal Commissioner of Customs (Prev.)
Custom House, 15/1, Strand Road,
Kolkata – 700 001. **...Respondent**

APPEARANCE:

Shri Arijit Chakraborty, Advocate for the appellants.
Shri A.K. Biswas, Authorised Representative for the Department

CORAM:
HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 75676/2021

DATE OF HEARING: 17.09.2021
DATE OF DECISION: 17.09.2021

P.V. SUBBA RAO

This appeal is filed by the appellant assailing order-in-original dated 27.07.2021[1] passed by the Principal Commissioner of Customs (Preventive), West Bengal, Kolkata, whereby he ordered continuation of the suspension of the Customs Broker's licence of the appellant.

[1] Impugned order

2. The appellant is a licensed customs broker. They filed shipping bills numbering 360 for their client M/s Ronita Enterprises for export of human hair. The SIB of the Principal Commissioner of Customs (ACC), Kolkata received information regarding mis-declaration of human hairs in two shipping bills bearing No. 7929528 and 7936127 both dated 15.01.2021. On examination, it was found that the goods were declared in both the shipping bills as unprocessed and un-worked (GUTI) Grade – D human hair but were processed human hair. The declared price in the two shipping bills was also found to be much lower than the market price of the processed human hair. Following up, the officers found that 360 shipping bills were already filed by the same exporter under which goods were similarly declared and exported. A prohibition order No. CB Circular 4/2021 dated 10.05.2021 was issued against the appellant under Regulation 15 of CBLR, 2018 for the alleged failure in discharging their obligations under Regulations 10 (d), 10 (m), 10 (n) of CBLR, 2018; as follows :-

> "Provisions of Regulation of Customs Broker Licensing Regulations, 2018 that appears to be violated by the Customs Broker, M/s Behag Overseas :
>
> 3.1 As per Regulation 10 (d) of CBLR, 2018, a Customs Broker shall advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, 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 ;
>
> 3.1.1 M/s Behag Overseas handled 360 nos. of consignments of Raw Human Hair classifiable under CTH 05010010 filed by the exporter between the periods 23.07.2018 to 15.01.2021.
>
> 3.1.2 In spite of being regularly involved in the clearance of such large volume of Human Hair, the CB, M/s Behag Overseas has no idea of the valuation of consignment. It appears that the **CB never tried to know the real value of the Raw Human Hair. Thus, he was never in position to advise his client to comply with the relevant provisions of Customs Act and not to mis-declare the**

consignments in terms of value. In view of the foregoing facts, it appears that CB has failed to comply with the provisions of the Regulation 10 (d) of Customs Broker Licensing Regulations, 2018.

3.2 As per Regulation 10 (m) of CBLR, 2018, a Customs Broker shall discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;

3.2.1 The parameter to gauge the efficiency of a Customs Broker is his ability to protect the Government revenue without jeopardizing the interest of a bona fide exporter or importer. **In the subject case, it is found that though the CB has cleared huge number of undervalued Shipping Bills of Raw Human Hair (total 360), but he never tried to verify the valuation of the goods, which resulted in realization of lesser amount of foreign currency and the loss to exchequer in form of income tax & other taxes. The verification of value declared by the exporter was more warranted in view of fact that the unit price of goods exported by the same exporter with identical description and classification was varying from Rs. 48/- per Kg. to Rs. 1000/- per Kg. which is huge. It clearly indicates that the CB has not performed his duties efficiently and failed to comply with the provisions of Regulation 10 (m) of Customs Broker Licencing Regulations, 2018.**

3.3 As per Regulation 10 (n) of CBLR, 2018, a Customs Broker shall verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;

3.3.1 In the instant cases, it has been communicated to the Department by the **GST officials that Registered Tax Payer (RTP), M/s Ronita Enterprise does not exist at their declared place of business, which clearly established that Customs Broker, M/s Behag Overseas, has failed to verify functioning of their clients at the declared place of business, thereby violating the provisions of Regulation 10 (n) of CBLR, 2018".**

3. Accordingly, appellant's licence was suspended under Regulation 16(1) by Circular dated 01.06.2021 and the suspension has been ordered to be continued by the impugned order.

4. Learned Counsel of the appellant submits as follows :-

(a) the impugned order was passed by the Principal Commissioner without application of mind and cryptic findings ;

(b) the order was passed confirming the suspension with the delay of 7 days arbitrarily ;

(c) the objective satisfaction of the Principal Commissioner to propose immediate action as required under Regulation 16 was not recorded ;

(d) the impugned order nowhere has given any definite finding in respect of Regulation 10(d). The basis for this allegation as the appellant was handling consignments during the past and its classification and valuation were incorrect resulting in loss of foreign exchange. The provisions of CBLR nowhere cast any responsibility on the appellant to interfere with the valuation which is the sole domain of the exporter and/or the proper officer of customs. The proper officer of customs had issued Let Export Orders (LEO) based on the valuation given by the exporter and therefore there is no reason to allege negligence on the part of the appellant ;

(e) In paragraph 6.11 of the impugned order, the learned Principal Commissioner has wrongly mentioned that the appellant had failed to verify the functioning of the exporter at the declared place of business and thereby violated the provision of Regulation 10(n). In fact, the exporter had made a representation before the learned Adjudicating

Authority from that very address. He, therefore, prays that the impugned order may be set aside and the suspension of their licence may be revoked.

5. Learned Departmental Representative vehemently support the impugned order.

6. We have considered the arguments on both sides and perused the records.

7. The sole point to be decided at this stage as whether there is a justification for continuation of suspension of the licence of the appellant under Regulation 16 of the CBLR, 2018 given the facts and circumstances of the case pending further investigation and a decision on revocation of licence or imposition of penalty under the CBLR, 2018. Three grounds have been given in the impugned order for continuing suspension of the licence of the appellant :

(1) the appellant failed in fulfilling its obligation under Regulation 10 (d) because it had handled 360 consignments of declared raw human hair exported by M/s Ronita Enterprises but had no idea of valuation of the consignments and it never tried to know the real value of raw human hair and was never in a position to advise its clients to comply with the relevant provisions of the Customs Act and not to mis-declare the consignments;

(2) the appellant violated Regulation 10 (m) inasmuch as it failed to discharge its duties as of Customs Broker with utmost speed and efficiency and without delay. It is the

assertion that the Customs Broker has a responsibility to protect Government revenue which it failed to do in the present case; although no export duty is payable, the allegation is that the under valuation of exports resulting lower realisation of foreign exchange and consequently lower payment of income tax and other taxes.

(3) the appellant violated Regulation 10(n) inasmuch as M/s Ronita Enterprises was found to not exist at their declared place of business and the appellant was required to verify the correctness of IEC, GSTIN number, identity of its client and functioning of its client at the declared address through reliable independent, authentic documents, data and information.

8. We proceed to examined these. As far as the first allegation regarding not verifying the value of the export goods is concerned, we find that the appellant is correct in stating that the CBLR do not require or authorize the Customs Broker to determine the value of the imported or export goods. The power of valuation of the goods under Section 4 and the Customs Valuation Rules rests with (a) the exporter/importer itself in the case of self-assessment; and (b) the proper officer who can re-assess the bill of entry or shipping bill so self-assessed by the exporter under Section 17. There is nothing on record to show that the appellant had colluded with the exporter to undervalue the goods. It is also on record that the goods were cleared by the proper officers who had the duty and the power to determine/re-determine the value of the export goods. It is also not un-

reasonable to expect the "proper officers" to be more competent in the matter of understanding valuation than the appellant Customs Broker. When the proper officers have themselves allowed clearance of shipping bills, no blame whatsoever can be placed at the door of the appellant on the ground that it had no idea of the price of the export goods. Of course, if further investigations show that the appellant had colluded to undervalue the goods, it would a different matter but the impugned order only mentions that the Customs Broker never tried to know the real value of human hair. The appellant is not required to do so. Therefore, the allegation under Rule 10 (d) does not, *prima facie*, sustain.

9. As far as the regulation 10 (m) is concerned, the allegation is that the appellant had processed the shipping bill with under-valued goods resulting in loss of foreign exchange and loss to the exchequer in terms of income tax and other taxes. This is a very serious allegation not substantiated by any facts in the impugned order. The shipping bills once assessed are final unless they are appealed against before the Commissioner (Appeals). Therefore, to allege that the value is wrong, the shipping bills must be appealed against to the Commissioner (Appeals) and the assessment modified. Nothing in the records shows that this has happened. The powers of the proper officer under Section 28 also do not extend to modifying assessments where no duty was short paid and the only option is for an appeal to be filed against the assessment of the Shipping Bills. If indeed, the goods were heavily undervalued in the shipping bills and cleared, the blame

should rest on the officer who cleared them. The Customs Broker has no right or responsibility to modify the value in a Shipping Bill under the law.

10. As far as the Regulation 10 (n) is concerned, the allegation in the show cause notice is that the Department had sent a letter to the GST officers who confirmed that M/s Ronita Enterprises does not exist at their place of business and the appellant should have verified this. Firstly, we do not think that the regulation requires the appellant to physically go to the premises each of its clients and verify whether they are functioning from that place. Secondly, if the GSTIN number is issued by the Departmental officers it is for them to verify whether they exist at that address or otherwise. Thirdly, during the course of hearing, learned Counsel for the appellant submitted a copy of the letter supposed to have been received from the GST officers regarding the non-existence of M/s Ronita Enterprises from the place of business. This letter mentions that they had conducted verification for "Ronita Impex" and not "Ronita Enterprises". Therefore even for this reason cannot be held against the appellant.

11. We also find that the learned Principal Commissioner has not recorded in the impugned order that he is satisfied that there was an immediate need to stop the operation by the appellant as required under Regulation 16 of the CBLR, 2018.

12. For these reasons, we find that the impugned order confirming the suspension of the licence of the appellant cannot be sustained and it needs to be set aside. We make it clear that

we have not drawn any conclusions regarding the final liability of the appellant which depends upon the evidence that may be revealed during further enquiry and investigations.

13. The impugned order is set aside and the appellant's appeal is allowed with consequential relief, if any.

(Operative part of the order pronounced in open court.)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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