IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 76006 of 2015

(Arising out of Order-in-Original No. KOL/CUS/AIRPORT/ADMN/30/2015 dated: 29.07.2015 passed by Commissioner of Customs (Airport & Admn.), Kolkata.)

M/s. Maxim Clearing & Shipping Forwarding Pvt. Ltd.
(26/1, Strand Road, Room No. 12, Kolkata – 700 001.)

...Appellant

VERSUS

Commissioner of Customs (Airport & Admn.), Kolkata
(Customs House, 15/1, Strand Road, Kolkata-700 001)

...Respondent

APPERANCE :
Present for the Appellant: Mr. R. N. Bandopadhyay, Advocate
Present for the Respondent: Mr. Tariq Suleman, Authorized Representative

CORAM:
HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON MEMBER (TECHNICAL)

FINAL ORDER No. 75317/2024

DATE OF HEARING : 20.02.2024

DATE OF DECISION : 20.02.2024

PER: RAJEEV TANDON

The appellant are in appeal against the order in original passed by the learned Commissioner of Customs (Airport & Administration), vide Order No. KOL/CUS/AIRPORT/ADMN/30/2015 dated 29.07.2015, whereby the learned Commissioner has imposed a penalty of Rs. 50,000/- on the appellant. The issue involved in the matter is that appellant being a Customs Broker handled clearance of a consignment of household goods sent by Shri. Khalid Ansari from Qatar. The said Customs Broker job for the aforesaid import was received by the appellant through a freight forwarded Shakeel Ahmed. It is stated, that during the course of an investigation of complaint received from one Mohd Khadim Ansari regarding arbitrary over- charging of customs duty and deviation of Customs Brokers Licencing Regulation, 2013, it came to light that the appellant in the present matter had not obtained any authorization from the importer/exporter for clearance of goods nor was the verification of the credentials of the client undertaken by the appellant.

2. The appellant submits that all requisite formalities including seeking of IEC number, filing of Bill of Entry, payment of duty etc. were undertaken by them at the behest of the above named Mohd Khalid Ansari who had sent the goods from abroad, however during the enquiry proceedings the appellants' G Card holder in his testimony before the department had admitted that they had received no written order either from Mohd Khadim Ansari or Mohd Zainul Abedin to whom the cargo (household goods) was consigned to, that there being no written agreement with the above named two person the job was undertaken in good faith for a consideration of Rs. 3000/- and appropriate permission from AC, Air Cargo Complex taken to reflect IEC Code No. 0100000053 as required under the Customs Laws in respect of importers not having a IEC Code.

3. The department has invoked violation of Regulation 11(a) and Regulation 11(n) of the CBLR, 2013. For sake of records the two regulations allegedly infringed by the appellant are reproduced here in below:

"Regulation 11. Obligations of Customs Broker.- *A Customs Broker shall-*

> *(a) obtain an authorization from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorization whenever required by the*

Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

(b)……………………………………………………….

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(n) verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information; and ”

4. We have heard the learned Advocate Shri R. N. Bandopadhyay as well as the learned Authorized Representative for the department and Shri Tariq Suleman, in the matter and perused the case records. We note that the entire case of the department is built on the basis of the said voluntary statement tendered by the Shri Bibekananda Saha, the employee of the Customs Broker. The department therefore claims violation of Regulation 11(a) as no authorization from individual importer Mohd Zainul Abedin was said to be obtained by the appellant and clearance job said to be accepted in good faith and violation of Regulation 11(n) as verification of antecedent and identity of the client and functioning at the declared address as required under law was not undertaken. The department therefore claimed that the entire job of Customs Broker was taken up by the appellant in a very careless manner and further the appellant also violated Regulation 17 as he failed to exercise necessary supervision to ensure proper conduct of his employees in the transaction of business. Following due process of law and conduct of an enquiry in terms of Regulation 20 of the CBLR, 2013, the department upheld the aforesaid charges against the appellant, whereby it imposed a penalty of Rs. 50,000/- under CBLR, 2013, as a pre-condition to restore the appellants license.

5. It is on record that the appellant had produced zerox copy of authorization letter dated 19.11.2013 signed by Shri Zainul Abedin, the recipient of the household goods alongwith copy of his passport No. L2031314. While the department does not dispute the authenticity of the passport, for no substantive reason they have disputed the aforesaid authorization and have mentioned that submission of such authorization post clearance would not meet the requirement of Regulation 11(a) of the rules ibid and upheld the charges as having procured authorization at a later date. The learned appellate authority however dropped the charge of violation of Regulation 11(n) for the reason that the importer/exporter were individuals, lacking IEC and therefore the passport of the importer was enough to establish the identity. He also dismisses the charge of violation of Regulation 17.

6. We have perused the case records at extenso and heard the two sides.

7. We are of the view that the department has sought to make a hyper technical case in the matter. The fact remains that a copy of the passport has been duly supplied at the time of clearance of the household goods. The fact that the passport of the individual was supplied by the Customs Broker for purpose of clearance of the household good is substantive acknowledgement of obtaining the purported authorization as prescribed. Since this was not a case of regular import by an IEC holder but supply of domestic household goods, we do not find any merit in the department’s plea in subjecting the appellant to severe penal action. The penalty imposed is certainly excessive and not proportionate to the nature of the said offence, if any. We do not find it a fit case for imposition of such harsh penal consequences and at best, if any violation- being hyper-technical, it ought to have been let off on a mere caution to the appellant. We therefore while setting aside the impugned order imposing penalty of Rs. 50,000/- however caution the appellant to be careful in future and ensure due compliance of the provisions pertaining to the obligation of a Customs Broker prescribed under the CBLR. We therefore set aside the impugned order and allow the appeal filed by the party with consequential relief if any as per law.

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

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-

(Rajeev Tandon)
Member (Technical)

K.M.