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

REGIONAL BENCH - COURT NO.2

Customs Appeal No.70645 of 2013

(Arising out of Order-in-Original No.KOL/CUS/AIRPORT/ADMINISTRATION/03/2013 dated 21.03.2013 passed by Commissioner of Customs (Airport & Administration), Kolkata.)

M/s. Rubee Air Freight Limited
(3, Chowringhee Approach, 2nd Floor, Kolkata-700072.)

...Appellant

VERSUS

Commissioner of Customs (Airport & Administration), Kolkata

.....Respondent

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

APPEARANCE

Shri Arijit Chakraborty, Advocate for the Appellant (s)
Shri F. Ahmed, Authorized Representative for the Revenue

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

FINAL ORDER NO. 76500/2024

DATE OF HEARING : 15.07.2024
DATE OF DECISION : 31.07.2024

Per : RAJEEV TANDON :

The present appeal has been filed by the appellant assailing the Order-in-Original No.KOL/CUS/AIRPORT/ADMINISTRATION/03/2013 dated 21.03.2013, whereby the Custom House Agent licence of the appellant was revoked, besides forfeiting the amount of security deposit in terms of regulation 20(1) of the CHALR 2004.

2. The appellant in discharge of his functions as a custom house agent carried out customs clearance work in respect of two import consignment imported vide Bill of Entry No. 465477 dated 17/04/2009

& No. 467701 dated 28.04.2009, for and on behalf of Three Eye Infotech. While the appellant urges that they carried out and executed the said customs clearance activity, based on related documents as provided to them by their clients, the department has brought into play misdemeanour on the part of the appellant and non-adherence to the prescriptions of the Custom House Agents' responsibilities in law. The facts of the case are that the appellant had filed customs clearance documents for import of 15 inch colour monitors of 500 pieces of Korean origin along with requisite invoice, packing list, bill of lading, etc. vide Bill of Entry No. 467701 dated 28.04.2009. Likewise, they also filed import documents for M/S EASE for 15 inch colour monitors of 500 pieces. This consignment is said to have been sold to M/s.EASE, by M/s. THREE Eye INFOTECH on high seas sale basis. Examination of the goods undertaken vide Bill of Entry No. 467701 dated 28 April 2009 was undertaken and on the basis of valuation done by the chartered engineer, the import value of the goods was enhanced to Rs.5,39,774/- from the declared value of Rs.1,81,325/-. The goods were found to be old and used, and therefore restricted for import. Before the said goods were taken for delivery, the said consignment was interdicted by DRI and the goods subjected to re-examination. Upon re-examination, certain undeclared goods were also detected. The said shipment was detained by DRI. In so far as the second Bill of Entry No. 465477 dated 17.04.2009 is concerned, the imported goods were subjected to hundred percent examination in the presence of a Chartered Engineer who determined the CIF value of the said goods as Rs.59,503.00.

3. In view of the foregoing, the license of the appellant was suspended vide order dated 14.08.2009. This order was subsequently stayed by the Hon'ble Kolkata High Court by way of an interim order. During the pendency of the matter, before the Hon'ble High Court, two show cause notices were issued by the DRI in connection with the said importation as referred above where the appellant was also made a co-noticee. In respect of proceedings initiated under the provisions of

CHALR 2004, requisite enquiries were undertaken by the department under Regulation 22 and upon conduct of the same, the present order with which the appellant is aggrieved with.

4. The appellant have essentially assailed the present order as being a misdirected case and non-examination of law points, while taking note of irrelevant considerations besides overlooking such material evidence as relevant to the proceedings.

5. We have heard the appellant as well as the departmental representative in the matter.

6. While it is the case of the appellant, that in so far as they are concerned, they were innocent and had no role in the mis-declaration of quantity, description, valuation, non-declaration that has come to light in the matter, the Ld.Authorized Representative for the department on the other hand submits that the appellant have failed in discharge of their obligations under the CHALR 2004, and therefore, the impugned order is legal and proper calling for no further action.

7. To recapitulate the facts and for sake of records, proceedings under Regulation 22 of CHALR, 2004 were initiated alleging violation of the provisions of Regulation 13 (b) and 13 (j) of CHALR, 2004 for aiding and abetting in smuggling of old and used computer, peripheral laptops etc. Regulation 13 (b) and 13(j) are reproduced hereunder for ready reference:

> *REGULATION 13. Obligations of Customs House Agent. – A Customs House Agent shall –*
>
> *……..*
>
> *(b) transact business in the Customs Station either personally or through an employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs;*
>
> *…….*
>
> *(j) not refuse access to, conceal, remove or destroy the whole or any part of any book, paper or other record, relating to his transactions as a Customs House Agent which is sought or may be sought by the Commissioner of Customs;*

8. The departmental enquiry conducted arrived at the conclusion that the appellant was in violation of provisions of Regulation 13(b). The basis for such a conclusion is the statement dated 27.05.2009 of Shri Sanjeev Kumar Biswal, Managing Director of the appellant firm wherein he has stated that they used to sign and stamp the documents brought by Shri Pappu, and it was only later that they claimed that the work was conducted through authorized personnel only. The other charge regarding violation of Regulation 13 (j) stems from the fact that the appellant failed to submit the vital documents like invoice, packing list and delivery challan that were called for during the process of enquiry.

9. Shri Arijit Chakraborty, Ld.Advocate for the appellant has drawn our attention to the following findings of the adjudicating authority recorded in para 26, which is reproduced below:

> *"26. ……. In this case I find that the declartin in Annexure-I had been made by M/s. Rubee Air Freight Ltd., Custom House Agents holding a valid licence but the declaration had been made through a person named a Papu, who was not the employee of CHA firm, M/s. Rubee Air Freight Ltd. and it is also established by the statement of Shri Sanjib Kumar Biswas recorded under the provisions of Section 108 of Customs Act' 1962 before DRI, Kolkata. I find that the impugned consignments were examined in original (first check basis) and the original examination was not attended by the CHA firm either personally or through their employee duly approved by the Deputy/Assistant Commissioner of Customs but as per the statement of Shri Sanjib Kumar Biswal Shri Papu who was not the employee of their CHA firm, attended the said examination of impugned consignments. The CHA firm in their written submission dated 11.03.2013 submitted "Papu had gone to the dock at his own accord and at the time of examination our authorized employee Sri Suman Chakladar was present." But I find that before Hon'ble High Court, Calcutta in the matter of M/s. Rubee Air Freight Ltd. –vs- Commissioner of Customs (Airport & Administration (Writ Petition No.891 of 2009) they had submitted that the consignment was cleared by them through their authorized employee and Papu only remained*

present as the representative of the CHA firm and it is also submitted that the consignment was cleared by Shri Tapan Kr. Mukherjee, an employee of CHA firm who had duly cleared the G-pass examination and valid Custom licence pass and these submissions of CHA firm also reflected in the interim order dated 01.09.2009 passed by Hon'ble Justice Indira Banerjee in the Writ Petition No.891 of 2009."

10. As regards the charge of violation of the provisions of Regulation 13 (j), the following observation of the adjudicating authority are material for appreciation of the issue :

"In this regard I find that the Inquiry Officer had called for the Job Register and Job files, with complete set of documents on the related two Bills of Entry maintained by M/s. Rubee Air Freight Ltd. as quoted by DRI for violation of Regulation 13(j) of CHALR 2004. The Counsel of the Party appeared for personal hearing, but failed to submit the same. Instead, he submitted copies of two letters dated May 12, 2009 and May 21, 2009 addressed to DRI, Kolkata which only included mentioning of job Nos., Name of the Importer, invoice No., B/L No. and not with any of the supportive documents."

11. However in order to be fair and just to the cause of the appeal, it needs to be noted that the adjudicating authority himself in para 30 of the order has recorded submissions of three job files with certain incomplete set of documents. For better understanding of the facts of the case, para 30 is reproduced here under :

"30. Further, I find that in course of investigation Shri Sanjib Kumar Biswal produced their job register on 11-05-2009 and undertook to submit job files in respect of eight (i) import consignments by next day. After a lapse of ten days he submitted five job files and undertook to submit the remaining three (3) files with all documents by 27-05-2009. Finally, Shri Biswal tendered three (3) job files on 27-05-2009 with incomplete set of documents. In job File No.SI-137/08-09, the bill of entry and delivery challan were not available. In job File No.SI-59/08-09, the bill of entry and invoice were not found and in job File No.SI-98/08-09, invoice and packing list were not available. Shri Biswal in his statement dated 27-05-2009 recorded

under Section108 of the Customs Act, 1962 stated that they were not maintaining records properly and would try to trade the missing documents. Against a specific question regarding non-fulfillment of obligations as per the provisions of Customs House Agents Licensing Regulations, 2004, he stated that he had failed to fulfill the required obligations as per the said Regulations and did not know its consequences."

12. In view of the aforesaid factual matrix of the case, we are not convinced of the department's stand in the matter. While it is an admitted position that certain documents could not be made available by the appellant to the authorities during the course of enquiry/adjudication process. However, the time interlude between the conduct of the said proceedings and the clearance of the imported goods need to be noted. In any case the primary documents like invoice was made available to the authorities. It is however nobody's case that any time lag in sourcing for document was sufficient enough to provide amnesty from the breach of the regulatory provisions. However, the admitted lapse need to be considered with rational implications. It is borne from records that Shri Tapan Kumar, the G card holder and Shri Chakradhar, the H Card holder of the firm were regularly associated with clearance of subject imports. Shri Sanjeev Kumar has reiterated the fact of examination of the imported goods in the presence of his own officers. The fact of any outsider named Sri Pappu however remaining present during the course of such examination cannot be considered an irregularity, illegality on the part of the appellant. If the department was so awry of an outsider's presence at the time of examination, it was for them to have directed such unauthorised outsider to be dispersed.

13. In view of the aforesaid discussions, we find from records that the question of livelihood of the appellant has been in jeopardy for well over a decade. We are of the view that the length of time having remained out of business, is more than sufficient punishment for lapses to which they have been pronounced guilty by the lower authority. Under the circumstances, we direct immediate restoration of

the appellant's CHA license at the earliest. Also, having remained out of employment for a significant length of time, we annul the direction, ordering forfeiture of the full amount of security deposit made by the appellant .

14. The appeal filed by the appellant is therefore allowed in the aforesaid terms and the order of the lower authority is set aside.

(Order pronounced in the open court on 31.07.2024.)

Sd/

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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