

**IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI**

APPEAL NO: C/516/2012

Arising out of: Order-in-Original No. 14/2012/CAC/CC
(G)/SLM dated 21/03/2012

Passed by: Commissioner of Customs (General), Mumbai.

East West Freight Carriers Ltd	<i>Appellants – Represented by:</i> Mrs. Pooja Reddy, Advocate
<i>versus</i>	

C.C (General), Mumbai	<i>Respondent – Represented by:</i> Shri Manoj Kumar, Assistant Commissioner (AR)
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Date of hearing	30/10/2018
Date of pronouncement	08/01/2019

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**Hon’ble ShriAjay Sharma, Member (Judicial)
Hon’ble Shri Sanjiv Srivastava, Member (Technical)**

ORDER NO: A/85026 / 2019

Per: Ajay Sharma

The instant Appeal has been filed from the Order-in-Original No. 14/2012/CAC/CC (G)/SLM dated 21/03/2012 passed by Commissioner of Customs (General), Mumbai.

2. At the relevant time the Appellants herein i.e. M/s. East West Freight Carriers Ltd are transacting business in the Custom House as Custom House Agents (hereinafter referred to as “the CHA”) under the Custom House Agents Licensing Regulations, 2004. As a CHA

the job of the Appellant was to file declarations and the necessary documents as are required to be filed with the department for the purpose of check-list and generation of Shipping Bill through their employees.

3. On 10.1.2008 one exporter i.e. M/s. Accord Impex had approached the Appellants for filing declarations for export and provided copies of shipping bills, invoices and packing lists etc. for the export of (3) three consignments of Leather goods. At about 5 PM on 10.01.2008 the goods were received in fully packed condition at the Air Cargo Complex (ACC) and at about 5.45 PM i.e. within few minutes of receipt of the consignments the documents were filed with the department and the employee of the Appellant presented the goods/ consignments for examination by the proper officer. The total FOB declared therein was Rs.26,19,045/- and drawback amount claimed was Rs. 2,22,618/-. The goods were being exported to M/s Darwish Ibrahim Traders, Dubai. But since upon examination the goods appeared to be of substandard quality therefore the said consignments were held up.

4. The said consignments were taken up for examination on 11.01.2008 and it was prima facie found that the goods were overvalued with an intention to avail higher duty drawback, than what the exporters were eligible to. Investigations were carried out and the

statements of the concerned exporters were recorded. During investigation it has come out that the exporter had overvalued the goods with the intention of claiming excess amount of drawback and that total FOB value of the export goods was Rs.14,53,737/- and the amount of duty drawback admissible to the exporters on the value so determined was Rs.1,45,374/- while the exporters had declared the total FOB value of Rs. 26,19,045/- and had claimed duty drawback amounting to Rs. 2,61,905/-, thus leading to the conclusion that the exporters had resorted to overvaluation of the goods with an intention to defraud the department and to avail excess duty drawback amounting to Rs.1,16,531/-. During the course of investigation, statement of the employees of the Appellants were also recorded wherein they had categorically given the details as to how and in what manner the consignments came to be received by them from the exporter and the way the export of the said consignments was attended to by the employees of the Appellants. The investigations also revealed that in the past also the exporter had exported in the same manner and claimed drawback.

5. At that time, a show-cause notice dated 09.07.2008 was issued only to the exporter and the Appellants were neither named therein nor called upon for any purpose. The said show cause notice was adjudicated by the Commissioner of Customs (Export), Air Cargo Complex, vide Order-in-Original dated 29.10.2008 wherein the goods

under export under the said three (3) shipping bills were held liable for confiscation and penalty was also imposed on the exporter. There was no discussion or adverse remark about the Appellants in the said order.

6. Thereafter, after almost more than a year from date of the incident, a show cause notice dated 29.4.2009 was issued to the Appellants under Regulation 22 of the Custom House Agents Licensing Regulation, 2004 (hereinafter referred to as "CHALR, 2004), wherein charges were framed against the Appellants and inquiry was proposed to be conducted. Thereafter inquiry was conducted by the Deputy Commissioner of Customs. Two charges were framed against the Appellant *inter alia* (i) for alleged contravention of Regulation 13(n) of the CHALR, 2004 and it was alleged that the CHA i.e. Appellants failed to discharge their duties as Custom House Agent with utmost speed, efficiency and without avoidable delay, and (ii) for failure on the part of the CHA i.e. Appellants to ensure the conduct of his own employees which rendered him liable to action under Regulation 19(8) of the CHALR, 2004. The Appellants contested the charge before the said Inquiry Officer.

7. The Inquiry Officer (IO) after taking into consideration the submissions made on behalf of the Department as well as the

Appellants and also on the basis of the evidence that had been brought on record during the course of the inquiry proceedings, submitted his report dated 10.6.2010 wherein it has been held by him that the Articles of Charges framed against the Appellants are not proved.

8. But the ld. Commissioner of Customs (General), Mumbai vide impugned order dated 22.3.2012 differed with the report of the Inquiry Officer and held that there was failure on the part of the CHA i.e. Appellants to discharge their obligations under CHALR, 2004 and in exercise of the powers conferred under Regulation 22(7) of CHALR, 2004 ordered the forfeiture of an amount of Rs.25,000/- from the security deposit of the Appellants.

9. We have heard ld. counsel for the Appellants and ld. Authorised Representative for the Revenue and perused the records of the case. The ld. Counsel for the appellant submitted that without any evidence, the learned Commissioner (Appeals) has come to conclusion that the appellants have violated Regulations 13(n) and 19(8) of CHALR, 2004, despite the fact that during the course of inquiry proceedings, both the charges were held as “not proved”. She also submitted that no evidence had come on record to say that there was any delay or inefficiency on the part of the Appellants as CHA. She further submitted that when the cargo was received at Air Cargo Complex, the documents were also immediately received by the

employee of the Appellants, Shri Rex Alex Nunes from the officer of the Appellants and this itself shows their efficiency. She stated that soon after the cargo arrived, the documents of the cargo were received by Shri Rex Alex Nunes, formalities of registration were completed and the cargo was presented before the proper officer, nominated by the systems for the purpose of examination. According to her there was no allegation anywhere that the documents were not in accordance with the procedure relating to the clearance of export goods. Therefore there was no delay or inefficiency on the part of the employees of the CHA with reference to the three Shipping Bills in question and no violation of Regulation 13(n) CHALR, 2004. So far as violation of Regulation 19(8) of CHALR, 2004 is concerned, the Id. counsel submitted that there was no failure on the part of the Appellants to ensure the conduct of their own employees. She further submitted that there is no provision under CHALR, 2004, which imposes a responsibility or obligation on a CHA or his employee to check, verify the contents of the cargo or to verify the value to ascertain whether the declarations made by the exporter are correct or otherwise. She further submitted that during the course of proceedings, the witnesses examined by the department had stated plainly that they are not permitted to open the package, which normally comes in the sealed condition because there would be complaints and allegations of thefts or substitution. She also submitted that there is no allegations of aiding or abetting against the Appellants

and that the charge of misconduct on the part of the employees cannot sustain. The Id. Authorised Representative appearing on behalf of Revenue reiterated the findings recorded in the impugned order and prayed for dismissal of the Appeal.

10. According to Regulation 2(c) of CHALR, 2004, 'Customs House Agent' means a person licensed under these regulations to act as agent for the transaction of any business relating to the entry or departure of conveyances or the import or export of goods at any Customs Station. Regulation 13(n) *ibid* casts a duty on the CHA to discharge his duties as Customs House Agent with utmost speed and efficiency and without avoidable delay. Regulation 19(8) cast the liability on the Customs House Agent to exercise such supervision as may be necessary to ensure the proper conduct of any such employees in the transaction of business as agents and be held responsible for all acts or omissions of his employees in regard to their employment. It was strongly argued by the Id. Counsel that the Inquiry Officer had dropped all the charges, whereas the Commissioner established all charges to be true without any basis. In our view it is settled position that being the deciding authority under the Regulation, the Commissioner can differ with the Inquiry Officer. However we have to examine whether in the facts of the present case the Id. Commissioner is justified in differing with the findings recorded by the Inquiry Officer. We have carefully considered the rival submissions and also perused the records. There is no delay or

inefficiency on the part of the Appellants. Soon after the cargo and papers were received, the formalities of registration were completed and the cargo was presented before the proper officer. This is not the case of Revenue that the documents presented were not in accordance with the procedure relating to clearance of export goods. In our view the word '*efficiency*' as used in Regulation 13(n) indicates that the CHA is under an obligation to ensure that all the requisite details are given in the declarations which are prepared as per the details/declarations given by the exporter. It is not the case of the department that the details that are given by the exporter and mentioned by the CHA in the documents are different and therefore it can't be said that the CHA did not perform his duty with *efficiency*. We concur with the submission of Id. counsel for the Appellants that there is no obligation on a CHA or his employee to check, verify the contents of the cargo or to verify the value to ascertain whether the declarations made by the exporter are correct or otherwise. No CHA can empower its employee to open any package, which comes in sealed condition, to check the contents therein because then there would be complains and allegations of theft etc. No evidence has been brought on record to suggest that the employees of the Appellant have acted in collusion with the exporter or had behaved in any manner unbecoming of a CHA other than the allegation that the employees did not inspect the goods in question. It is nowhere alleged that the CHA was aware of any such mis-declaration. We are in complete

agreement with the finding of the Inquiry Officer that since the charge basically is of mis-declaration of the export charge, in terms of value and no allegations of aiding or abetting are made against the Appellant (CHA), the charge of misconduct on the part of its employees cannot be sustained. When the show cause notice was issued to the Exporter in the year 2008 itself, nothing adverse was mentioned about the Appellants therein nor was there any discussion or otherwise about the Appellants in the that Order-in-Original dated 29.10.2008. No valid reason has been given by the Id. Commissioner to differ with the findings of the Inquiry Officer. There is no evidence that any provisions of the CHALR, 2004 has been violated by CHA or that he had advised exporter to overvalue the goods. Bills of entry/shipping bills were filed by the appellant based on the document furnished by the exporter. There is no evidence on record that the appellant came to know about any irregularity before the same was detected by the department or that he misguided the concerned client. All that the CHA is required to do, is to discharge its function in accordance with CHALR, which in our considered view the Appellant did in the present case. Therefore there is no violation of Regulation 13(n) or Regulation 19(8) *ibid*.

11. In a matter on similar facts titled as Krishna Shipping Agency Vs. C.C. (Airport & Admin.), Kolkata reported in 2017 (348) E.L.T. 502 (Tri.-Kolkata), in which after differing with the inquiry report the

Adjudicating Authority held CHA ‘guilty’ and revoked its license, a coordinate Bench of the Tribunal at Kolkata allowed the Appeal filed by CHA and held as under:-

“As per the above regulation appellant is required to verify the antecedents of his clients and suitably advise them. It is observed that at no stage appellant had the knowledge that there is any irregularity in the export/import consignments. The goods imported were put to first check examination and the importer very well exists. Similarly the export consignment was received in a sealed container duly examined and certified by the jurisdictional Central Excise authorities. The exporter is also existing. Bills of entry and shipping bill were filed by the appellants based on the documents furnished by the importer/exporter. If there was any irregularity in the documents then the same was also available before the assessing officers and the Customs examining officer. If the same could not be detected by the appellant the same also could not be detected by departmental assessing/examining officers. There is no evidence on record that appellant came to know of any irregularity before the same were detected by the department or that he did not advise the concerned clients. Appellant was also exonerated by the departmental inquiry officer. It is also observed that the points of difference from the Inquiry report are not so glaring to justify revocation of CHA license as held by the adjudicating authority. The whole spirit of obligation of the CHA under the CHALR is to establish the indentify of the importer/exporter and appropriately advise his clients which in the present proceedings are existing and reasonable steps were taken by the appellant to comply with Regulations 13(a), (d) and (o) of CHALR. Accordingly appeal filed by the appellant is allowed by setting aside OIO dated 21-1-2015 passed by the adjudicating authority.”

12. In view of the above, the Appeal filed by the Appellant is allowed, with consequential relief, if any.

(Pronounced in Court on 08/01/2019)

(Sanjiv Srivastava)
Member (Technical)

(Ajay Sharma)
Member (Judicial)