CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No.

Customs Appeal No. 85680 of 2015

(Arising out of Order-in-Original No. 18/CAC/CC(G)/SRP/CBS (Admn) dated 16.03.2015 passed by Commissioner of Customs (General), Mumbai)

M/s. Mehul & Co. **Appellant**
C.B. No. 11/755, 6/12 Nazir Bldg.,
1st floor, Room No.12,
Calicut Street,
Ballard Estate,
Mumbai 400 001.

Vs.

Commissioner of Customs (General) Mumbai **Respondent**
New Custom House,
Ballard Estate,
Mumbai 400 001.

Appearance:

Shri J.C. Patel with Ms. Shamita Patel, Advocates for the Appellant
Shri Ramesh Kumar, Authorised Representative for the Respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

FINAL ORDER NO. **A/86335/2019**

Date of Hearing: 10.06.2019
Date of Decision: 10.06.2019

PER: SANJIV SRIVASTAVA

This appeal is directed against the Order in Original CAO No 18/CAC/CC(G)/SRP/CBS(Admn) dated 16.03.2015 of the Commissioner Customs (General) Mumbai. By the impugned order Commissioner has held as follows:

"I, Shyam Raj Prasad, Commissioner of Customs (General), Mumbai, therefore, in exercise of the powers conferred under the provisions of Regulation 20(7) and 18 of CBLR, 2013 (Regulation 22(7) and 20(1) of the then CHALR, 2004) hereby order the revocation of the CB License of M/s Mehul & Co, CB No 11/755 (PAN No AAAFM5945Q) with immediate effect and also order the for feature of entire amount of Security Deposit of M/s Mehul & Co. The CB is also directed to surrender all the custom passes forthwith, if lying in their possession."

2.1 Appellants herein are Custom Brokers having license No 11/755 and were operating in terms of Customs Broker Licensing Regulations, 2013 (erstwhile Custom House Licensing Regulations, 1984). They had filed a Bill of Entry No 8060973 dated 27th September 2012. After investigations undertaken in respect of the goods covered by the said Bill of Entry, it was found that the said goods have been grossly misdeclared in terms of value, quantity and description. Even the importer on record was found to be a college going student in whose name IEC had been obtained and was being used by the alleged operators in the import business.

2.2 Charges against the appellant for revoking their license is that-

- He allowed his license to be misused contrary to prohibitions imposed on sale or transfer of license;
- He did not obtain any authorization from the company, firm or individual employing them;
- He failed to advise the client to comply with the provisions of law;
- Failed to exercise due diligence in ascertaining the correctness of information imparted to the client;
- Failed to verify antecedent, correctness of the IEC, identity and veracity of the importer and the address of his premises.
- Failure to discharge duties with utmost speed, efficiency.

2.2 After completion of enquiry proceedings the as provided by the law, the matter against the appellants was adjudicated by the Commissioner after taking the findings of enquiry officer on record as per the order referred in para 1, supra. Against the order of Commissioner, revoking the license of the appellant to operate as Custom Broker, appellants preferred the appeal before this tribunal which was decided in favour of appellant vide order No A/93778/16/CB dated 10.11.2016. The operative portion of order read as follows:

"9. There is no justification for this delay that is so much at variance with the prescriptions in the Regulations. This compounds the casual manner in which the inquiry was conducted by placing reliance on statements that were recorded for purposes other than proceedings under the Regulations. The harsh penal consequence visited upon the appellant has compounded the disregard for deadlines prescribed in the Regulations. We, in accord with the decision in re Zen Cargo Movers Pvt Ltd, allow the appeal an set aside the impugned order."

2.3 Against this order revenue filed the appeal before the Hon'ble High Court of Bombay and High Court has vide its order dated 19th April, 2018 in Customs Appeal No 6 of 2017, remanded the matter back to tribunal stating as follows:

"15 In view of the aforesaid discussion, the time limit contained in Regulation 20, cannot be construed to be mandatory and is held to be directory. As it is already observed above that though the time line framed in the Regulation need to be rigidly applied, fairness would demand that when such time limit is crossed, the period subsequently consumed for completing the inquiry should be justified by giving reasons and the causes on account of which the timelimit was not adhered to. This would ensure that th

e inquiry proceedings which are initiated are completed expeditiously, are not prolonged and some checks and balances must be ensured. One step by which the unnecessary delays can be curbed is recording of reasons for the delay or non adherence to this time limit by the Officer conducting the inquiry and making him accountable for not adhering to the time schedule. These reasons can then be tested to derive a conclusion whether the deviation from the time line prescribed in the Regulation, is "reasonable". This is the only way by which the provisions contained in Regulation 20 can be effectively implemented in the interest of both parties, namely, the Revenue and the Customs House Agent.

16. In the light of the aforesaid discussion, the appeals filed by the Revenue succeed and the question of law framed in the appeals is answered by holding that the CESTAT was not justified in setting aside the order or suspension of Customs Broker License on the ground of delay between suspension and the notice of deviation or omission and it cannot e laid down as an absolute preposition of law that delay in taking immediate action of suspension or initiation of inquiry within a period of 90 days would vitiate the action of *the Commissioner. The matters are remanded to CESTAT for fresh adjudication in light of the question of law answered in the present appeals."*

2.4 In view of the above referred order of The Hon'ble High Court matter has been listed for consideration and disposal.

3.1 We have heard Shri J C Patel along with Ms. Shamita Patel, Advocates for the Appellant and Shri Ramesh Kumar Assistant Commissioner, Authorized Representative for the Revenue.

3.2 Arguing for the appellants, learned Counsel submitted that-

- In light of the decision of High Court it needs to be examined whether the reasons, for delay and non adherence to the limit in the present case are justifiable or not. In the present case the offence report was received by the Commissioner on 01.07.2013, and the Notice for revoking the license was issued on 09.10.2013. Inquiry Officer was appointed on 09.12.2013. It was only on 15.12.2014 that enquiry report was submitted by the Inquiry Officer to the Commissioner I.e. instead of 90 days from the date of notice, as per the time limit prescribed by regulations, it was submitted with delay of eleven months without any justifiable reason.

- Referring to the records of enquiry on 11.02.2014, it can be stated that enquiry proceedings were concluded on 11.02.2014, and only to cover up the delay in submission of report, after nearly Six Months, Inquiry officer called Shri Mehul Sanghvi for examination on 14.08.2014, without any justifiable reason. They had explained this to the Inquiry Officer vide their letters dated 12.08.2014, 18.08.2014, 25.08.2014 & 04.09.2014. However after giving one more date for examination on 08.09.2014, the enquiry proceedings were concluded. Even after 08.09.2014, the report was submitted after lapse of more than three months.
- The main case against the importer, for misdeclaration has been settled by the settlement commission. As per the decision of Madras High Court in the case of A H Ahmed and Co [2014 (309) ELT 413 (Mad)], it would be unfair to impose extreme penalty of revocation of license.
- Shri Sanjay Mishra was their employee and it is unfair to hold that appellants have sub-letted the license to him/ person bringing the clearance work [K S Sawant & Co [2012 (284) ELT 363 (T)], L M S Transport Co [2014 (299) ELT 368 (T)]

- From the record of examination and cross examination of Shri Vishnu Kushwaha Proprietor of importing firm I Jack Globe Co, Shri Sanjay Mishra employee of the appellant and Shri Mohammed Sibtain Abdul Bashir Power of Attorney holder of importer that the import documents were signed by Shri Vishnu Kushwaha who had also signed the authorization in their favour. Shri Kusheaha had provided the Appellant KYC documents etc.
- No evidence has been placed on record that they or their employee were aware of the misdeclaration.
- The punishment of revocation of license is an extremely harsh measure and not justified in the facts of the present case. Suspension of license since 12.07.2013 itself is sufficient punishment. [Ashiana Cargo Services [2014 (302) ELT 161 (Del)]
- The impugned order revoking the license should be set aside.

3.3 Arguing for the revenue learned authorized representative submitted that-

- Appellant had subletted the license as has been held by the Commissioner while recording the finding as follows in his order-

"In the instant case, the relevant factor while deciding whether the charge of subletting is proved or not is the payment of money for use of the license by the user. Both Shri Mehul Sanghavi and Sanjay Mishra have admitted that CB firm was getting commission from (or was paid by) Durga Shipping Co. If Shri Sanjay Mishra was bringing the clients then he should have got extra payment from CB firm for bringing business. However, here what was actually going on was the opposite that the company (and the employee) who was bringing business was actually paying the CB firm.

I find that Shri Sanjay Mishra does not have his own license and has therefore hit upon this modus operandi of bringing business to a CB and then clearing it himself by using the license of CB and pretending to be a Customs pass holder employee of CHA, so as to camouflage the illegal sub-letting of CB License. Customs passes obtained fraudulently from Customs by not disclosing that the so called employee of the CB is the Owner of another company, cannot be accepted as proof of the individual being an employee of the said CHA and any clearance work performed by him while holding the fraudulently obtained Customs pass is unlawful."

- It was during the inquiry proceedings that the Shri Vishnu Kushwaha had turned hostile and had deposed contrary to what has been stated by him in his statement recorded to the effect that he has neither signed any documents or had given any authorization to CB for clearance of any consignment of M/s I Jack Globe Co. Appellant has in fact not obtained any authorization from him at the time of filing the Bill of entry.
- Appellants defence that they were not aware of the misdeclaration and they had filed documents as per the declarations and the documents provided by the importer, is not justified as bonafide belief should be established as held in the case of Interspace [2006 (198) ELT 275 (T)]. The facts of the aces clearly show that appellants had not acted in diligent manner.
- Appellant had never met the IEC holder and has not advised him to comply with all the rules and not bothered to inform Customs of the glaring discrepancies in the impugned imports and instead sought to get the goods cleared by evading the Customs duty.
- They had definitely failed to discharge the duties cast on them under CBLR 2013, efficiently and in the manner prescribed.

- Appellants have failed to identify the client and functioning of the client at the declared address by using reliable, independent, authentic documents, date or information and hence had violated provisions of Regulation 13(o) of CHALR, 2004 (now 11(n) of CBLR, 2013).
- Revocation of the license of CB is justified for their failure in performing their duties as mandated b CHALR, 2004 (now CBLR, 2013).

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 The first issue that needs to be considered is whether the delay in conducting the enquiry proceedings and revocation of license of Appellant has been explained/ justified by the adjudicating authority as has been mandated by the Hon'ble High Court of Bombay while remanding the matter back to the CESTAT. The date chart submitted by the appellants detailing the conduct of proceedings is detailed below:

Date	Activity
01.07.2013	Offence report received by the Commissioner
09.10.2013	Notice was issued by the Commissioner for revoking the license
30.10.2013	They filed the defence and sought personal hearing

09.12.2013	Letter of preliminary hearing issued by inquiry officer.
13.12.2013	There advocate appeared for preliminary hearing and denied all the charges. Next hearing date fixed on 16.01.2014
16.12.2013	They submitted the list of witnesses through their advocate
16.01.2014	Examination and cross examination of Shri Sanjay Mishra.
22.01.2014	Requested Commissioner to revoke suspension as period of 90 days for completion of enquiry from the date of notice had expired.
29.01.2014	They with their advocate appeared for hearing which for administrative reasons postponed to 31.01.2014
31.01.2014	Examination and cross examination of Shri Vishnu Kumar Kushwaha.
11.02.2014	Examination and cross examination of Shri Mohammad Sibtain Abdul Bashir. It was recorded that with this proceedings concluded..
19.02.2014 28.04.2014 11.06.2014 11.07.2014 02.07.2014 07.08.2014	Letters requesting Commissioner to revoke suspension as period of 90 days for completion of enquiry from the date of notice had expired.
07.08.2014	Letter issued by inquiry officer for appearance of Shri Mehul Sanghawi for appearance on 14.08.2014

12.08.2014 18.08.2014 25.08.2014 04.09.2014	They submitted that since proceedings concluded on 11.02.2014, no justification for calling Shri Mehul Sanghawi for examination as the proceedings had concluded.
15.12.2014	Inquiry report submitted by the Inquiry Officer

From the date sheet as submitted there appears to be considerable unexplained delay in various steps of proceedings. It is fact that the no explanation has come forth for the delay in issuance of the notice which was issued beyond 90 days of the receipt of offence report. Also the delay in start of inquiry proceedings after the issuance of notice also is not explained. Finally what was the reason for not calling Shri Mehul Sanghawi immediately after 11.02.2014, is also not coming forth. Why he was called for examination after lapse of nearly six months too is not explained and thereafter without any actual examination of Shri Mehul Sanghawi, the proceedings were concluded and report submitted on 15.12.2014 i.e. after lapse of more than 90 days from the date when last date of proceedings was fixed. In our view the delay at every stage of proceedings is not a justifiable delay in conduct of proceedings which effect the lively hoods of a person. Order of Bombay High Court has authoritatively laid down the law that delay needs to be explained by the authority. Except for a bald statement that Shri Mehul Sanghawi had made himself non traceable no other justification has been put forth. What were the steps taken by the inquiry officer during the period intervening 11.02.2014 to 07.08.2014 for tracing and calling the Shri Sanghawi for examination is not coming forth? Commissioner has himself in para 27 of the order recorded that *"department has time and again pursued the matter with the inquiry officer to complete the inquiry proceedings in a time bound manner vide letters dated 27.11.2013, 26.12.2013, 03.02.2014, 24.02.2014, 21.05.2014, 27.06.2014, 09.07.2014, 23.07.2014, 25.08.2014, 13.10.2014 and 28.11.2014. …"* In our view the justification as referred by the Bombay High Court while remanding the matter back is not coming forth in the case.

4.3 On the merits of the case also we do not find any justifiable reason being put forth to hold that Shri Sanjay Mishra was not the employee of the appellant. In the examination done before the enquiry officer, Shri Sanjay Mishra has specifically deposed that he is G Card holder given to him by Customs after conducting CHA examination as a permanent employee of a Custom Broker. He is thus authorized to meet the client and customs authorities and for signing the documents for clearance of goods. Commissioner has not even rebutted the claim made but has observed in para 29, *"In this regards, I find that Shri Mehul H Sanghavi, partner of CB in his statements recorded on 2.11.2012 and 5.11.2012 has admitted that Shri Sanjay Mishra is his employee who is getting the clearance work for his company through his own (i.e. Shri Sanjay Mishra's0 company Durga Shipping Co., that M/s Mehul and Co is paid by M/s Durga Shipping Co, for their services. They do not charge importers directly. Shri Sanjay Mishra, CB firms G card holder employee and owner of M/s Durga Shippping Co has also corroborated the above facts in his statement recorded on 06.11.2012 and 07.12.2012 that he forwards the clearance work to M/s Mehul and Co and pay them commission for the clearance work. In all such cases he meets the client, obtain documents from them and after scrutiny forward the same to M/s Mehul Co; he attends to the clearance work as an employee of CHA firm, Mehul and Co. He has also accepted that he forwarded the documents related to B/E No 8060973 dated 27.09.2012 to M/s Mehul and Co and he attended to the clearance of goods imported vide B/E No 8060973 dated 27.09.2012. I find that the CB has not denied that his employee Shri Sanjay Mishra used to meet clients, bring them business jobs, attend to clearance work, pay them commission, their contention is only that Sanjay Mishra was a authorized employee* *a G Card holder and hence there was no sub letting."* In our view Commissioner has not rebutted the claims of the Custom Broker and Shri Sanjay Mishra to the effect that there was employer employee relationship between the two. Once the fact of Shri Sanjay Mishra being the employee of Custom Broker is accepted all other charges will fall.

5.1. In view of discussions as above appeals is allowed in above terms.

(Order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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