CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI
WEST ZONAL BENCH

Service Tax Appeal No. 87802 of 2019

(Arising out of Order-in-Original No.28/CAC/CC(G)/RC/CBS(Adj) dated 21.06.2019 passed by the Commissioner of Customs (Gen), Mumbai)

M/s. Sharada Clearing & Forwarding Agency Pvt. Ltd. …..**Appellant**
174-180, Kusum Vijay House,
2nd Floor, Room no. 5, Modi Street,
Fort, Mumbai

Vs.

Commissioner of Central Excise, …..**Respondent**
Custom Borker Section, New Custom House,
Ballard Estate, Mumbai

APPEARANCE:
Shri Vinay Ansurkar, Advocate for the appellant
Shri Ramesh Kumar, Addl. Comm(Authorised Representative) for the Respondent

CORAM:
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER No: A/85643/2020

DATE OF HEARING : 19.02.2020
DATE OF DECISION : 23.07.2020

PER: C J MATHEW

M/s Sharda Clearing & Forwarding Agencies Pvt Ltd, holder of custom broker license no. 11/771, was proceeded against in accordance with regulation no. 20 of Customs Broker Licensing

Regulations, 2013 by issue of notice dated 25th January 2018 prescribed for invoking regulation no. 18 to revoke license, forfeit security or impose penalty for having failed to comply with regulation no. 11(n) of the Regulations (now regulation no. 10(n) of Customs Broker Licensing Regulations, 2018). Accepting the report of the inquiry officer, Commissioner of Customs (General), Mumbai, *vide* order no. 28/CAC/CC(G)/RC/CBS (Adj) dated 21st June 2019, ordered the revocation of the license. The present appeal lies against this detriment.

2. Pointing out that the entire proceedings from commencement to culmination were flawed, Learned Counsel for the appellant submits that the charge of having breached regulation no. 11 (n), as it then was under Customs Broker Licensing Regulations, 2013 and now regulation no. 10 (n) of Customs Broker Licensing Regulations, 2019, can be traced to the detection of 38 nos. of ‘gold bars’ valued at ₹11,71,54,000/- concealed in the soles of as many slippers entered for import by M/s Al Rehman Impex against bill of entry no. 3350653/22.09.2017 filed on their behalf by the appellant. He contends that it is apparent from the notice itself, restricting the allegation to not having verified the antecedents, the identity and location, as well as the correctness of the IEC, of the client before accepting the authorisation, that there is no evidence, direct or circumstantial, and no statement that enlarges upon the role of the appellant beyond that of having undertaken clearance of the declared

cargo. It is also pointed out that the inquiry authority had failed to consider the submissions made during the statutorily prescribed proceedings and that the Commissioner of Customs had not only not applied his mind to the several issues raised in relation to the findings of the inquiry but also appears to have been influenced by extraneous material, some superfluously included in the notice and others in addition, to come to an erroneous conclusion of culpability under the Regulations.

3. Learned Authorised Representative contested the submissions by pointing out that it was clearly enunciated in the enquiry report, as well as the impugned order, that the appellant could not establish that they were in possession of the 'KYC' documents of the importer at the time of filing of bill of entry.

4. In view of these submissions, we have perused the notice, the record of inquiry and the impugned order. Though the notice purports to be in pursuance of the consignment of 'slippers', handled for clearance by the appellant, in which concealed 'gold bars' was detected, there is reference to certain other notices, issued in connection with mis-declaration of description or quantity in imports effected by other entities for which bills were filed by the appellant, that are also reproduced in the impugned order. The appellant has submitted the adjudication orders, arising from those offences under the Customs Act, 1962, in which the proposal for imposition of

penalties on the appellant herein, as the customs broker therein, was dropped. We are unable to ascertain the influencing effect of these misplaced, and only partially truthful, narrations on the findings of the inquiry or the detriment imposed in the impugned order.

5. The enquiry report incorporates proceedings of hearing held on several days and we find that the reply to the notice, offered on 11th June 2018 after the relied upon documents were made available to the appellant *vide* letter dated 18th May 2016, had sought cross-examination of the investigating officer. It is also seen from the report that, acting upon this request, the inquiry authority summoned the officer, who had recorded the statement of the Managing Director of the 'customs broker', for deposition as part of the proceedings of the inquiry without the presence of, or notice to, 'customs broker' or authorised representative. Though, at the next hearing, the charged 'customs broker' denied the contents of the deposition and informed that the documents obtained by him to verify antecedents had been resumed by the investigation team, subsequent correspondence from him questioned the admissibility of the untested deposition of the investigating officer and, on further offer of cross-examination, insisted upon furnishing of the report of the presenting officer as a precondition for further participation in the proceedings. The inquiry authority proceeded to finalise the report and, as admitted by him, relied entirely on the brief of the presenting officer, which placed the weight of evidence against the 'customs broker' on the statement

recorded from the Managing Director of the 'customs broker', to conclude the charge as proved.

6. The Commissioner of Customs has, merely, concurred with the findings of the inquiry authority and, without narration, let alone consideration, of the several submissions relating to the inquiry, to the extent of repeating the assessment of threats posed to the nation by the lack of diligence on the part of the 'customs broker', proceeded to revoke the license.

7. The revocation appears to have sought legitimacy from the report of the inquiry authority. In the first response to the notice, by letter dated 18th June 2018, the 'customs broker' had denied the charge and sought to be heard in person. Thereafter, we find order sheet of hearing, held on 12th July 2018, solely for the purpose of recording the deposition of the investigating officer and which, while recording the presence of the Presenting Officer, establishes that the charged 'customs broker' was not. There is no indication of the 'customs broker' having been served with notice of this hearing. It appears from the record that, at the next hearing held on 7th August 2018, the charged 'customs broker' had participated in the proceedings and had sought certain documents including the order sheet of the previous hearing which were duly furnished by letter of 8th August 2018 and, in response, the appellant protested the recording of deposition in the absence of the charged 'customs broker' besides seeking the report of the Presenting

Officer and further personal hearing. In reply to the notice dated 13th August 2018, scheduling the hearing for 16th August 2018, the appellant reiterated the necessity of the report of the Presenting Officer to continue with the defence at the hearing. Thereafter, the inquiry authority furnished the report to the Commissioner of Customs who, upon receipt of detailed response including objections to the manner in which the inquiry was conducted, issued the impugned order.

8. It is settled law that, in the absence of a specific procedure, the principles of natural justice shall govern any action that leads to detriment. It would appear that the inquiry had not distinguished itself by conformity to the fundamental requirement of notice of intention to conduct hearings. The request for cross-examination off investigating officer emanated from the charged 'customs broker' and it was incumbent upon the inquiry authority to intimate, and carry on with the deposition of the summoned witness, in, and unfailingly so, the presence of the noticee. Any finding arrived at thereafter, based on such unchallenged testimony, is not acceptable and the failure to furnish the report of the Presenting Officer to enable participation in further proceedings has compounded the breach of principles of natural justice. Not unnaturally, the inquiry report is bereft of the sanctity accorded to it by the Commissioner of Customs. Thereby, the finding in the impugned order also stand vitiated.

9. In the absence of acceptability of the enquiry report and the consequent reliance placed upon it by the Commissioner of Customs, we are unable to take a view on the correctness, or otherwise, of the charge in the notice issued to the appellant. Consequently, we are unable to decide on the notice itself. Accordingly, we set aside the impugned order and direct the Commissioner of Customs to institute a fresh inquiry and, after detailed consideration of the report arising therefrom as well as the response of the noticee, if any, to pass a detailed order of finding.

10. We are concerned that the inquiry was undertaken in ignorance of the principles that govern such proceedings. Hence, we also direct that the Commissioner of Customs take steps to ensure that the designated official is well-versed in inquiry proceedings. The appellant is directed to cooperate with, and participate in, the fresh proceedings.

11. Appeal is accordingly disposed off.

(Order pronounced in open court on 23.07.2020)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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