CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87930 OF 2019

[Arising out of Order-in-Original No: 38/CAC/CC (G)/RC/CBS (Adj) dated 12th July 2019 passed by the Commissioner of Customs (General), Mumbai.]

Sharada Impex
Room No. 14, Pashvir Chambers, 1st Floor,
Bhandari Street, Masjid Bunder (West), Mumbai 400003 … ***Appellant***

versus

Principal Commissioner of Customs (General)
New Custom House, Fort, Mumbai - 400001 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 87931 OF 2019

[Arising out of Order-in-Original No: 43/CAC/CC (G)/RC/CBS (Adj) dated 17th July 2019 passed by the Commissioner of Customs (General), Mumbai.]

Sharada Impex
Room No. 14, Pashvir Chambers, 1st Floor,
Bhandari Street, Masjid Bunder (West), Mumbai 400003 … ***Appellant***

versus

Principal Commissioner of Customs (General)
New Custom House, Fort, Mumbai - 400001 ***…Respondent***

APPEARANCE:

Shri Sanjay Singhal, Advocate for the appellant

Ms Trupti Chavan, Assistant Commissioner (AR) for the respondent

CORAM:

HON’BLEDR DM MISRA, MEMBER (JUDICIAL)
HON’BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A/85708-85709/2021

DATE OF HEARING:	22/02/2021
DATE OF DECISION:	22/02/2021

PER: C J MATHEW

We dispose off appeal no. C/87930/2019 and appeal no. C/87931/2019 of M/s Sharda Impex against two separate orders of the licensing authority under Customs Broker Licensing Regulations, 2018 that revoked license no. 11/1763 and, at the same time, forfeited the security deposit mandated under the regulation no. 8 of Customs Broker Licensing Regulations, 2018, while imposing penalty. In the impugned orders, no. 38/CAC/CC (G)/RC/CBS (Adj) dated 12th July 2019 and no. 43/CAC/CC (G)/RC/CBS (Adj) dated 17th July 2019, Commissioner of Customs (General), Mumbai, has invoked regulation no. 14 of Customs Broker Licensing Regulations, 2018 for revocation and forfeiture while the former has, in addition, resorted to regulation no. 18 of Customs Broker Licensing Regulations, 2018 for imposition of penalty of ₹ 50,000.

2. Both the impugned orders are culmination of separate proceedings that can be traced to investigations undertaken by Directorate of Revenue Intelligence (DRI) into imports of 'consumer goods' by several entities in which duty had been allegedly evaded by

undervaluation and misdeclaration of quantity; it would appear that the 220 bills of entry, filed through the appellant, were ostensibly for one Shri Amit Gala by deploying 21 'import export codes (IEC)' that belonged to other entities. According to these investigations, the alleged evasion of duty was facilitated by Shri Ali Hussain Ujjainwala, employee of M/s Sharda Impex who had been issued with 'H' card under Customs Broker Licensing Regulations, 2018, and who, in turn, shared proceeds of recompense with Shri Shivjor Yadav, proprietor of M/s Sharda Impex. The appellant has also been included in the proceedings initiated under section 124 of Customs Act, 1962 for participation in the alleged evasion of duty and, admittedly, those proceedings are, as yet, pending.

3. Learned Counsel for appellant contends that the detriment visited upon them is not in consonance with several decisions of the Tribunal (and some of which had been affirmed by the jurisdictional High Court) in which it has been held that involvement of employee does not warrant revocation of license except when the investigation has established active connivance on the part of the employer. It was also contended that there was no evidence of such participation by the appellant and that the proceedings had placed reliance upon certain statements that were not only retracted but also unsupported by any other credible evidence. According to him, mere admission in a statement preferred before an investigative agency does not suffice to

establish factum of such participation. Furthermore, he pleaded that the proceedings under Customs Broker Licensing Regulations, 2018 was premature inasmuch as the facts and circumstances surrounding the allegation of evasion of duty was yet to be adjudicated by the competent authority under Customs Act, 1962.

4. According to Learned Authorised Representative, the appellant, through its employee, had connived with the importers in misdeclaring the value and quantity of imported goods. He pointed out that a large number of bills of entry had been processed under the aegis of the license issued to the appellant and who, unmindful of its obligations under Customs Broker Licensing Regulations, 2018, undertook tasks that demonstrated active participation for substantial compensation. Affirming that the licensing authority was well within its competence to order revocation of the license, as well as to order forfeiture of the security deposit, and to impose penalties in view of the gravity of breach of obligations established adequately by the report of the enquiry authority constituted for the purpose in accordance with the Regulations, he drew our attention to the specific findings in the impugned order.

5. Having attended to the rival submissions and having perused the records, we cannot but take notice of revocation, as well as forfeiture of deposit, having been ordered in two, chronologically distinct and sequential, orders of the licensing authority. It behoves

comprehension beyond the capability of human imagination to conceive of revoking a license that has already ceased to exist by an earlier order. This demonstrated non-application of mind in order no.43/CAC/CC (G)/RC/CBS (Adj) dated 17th July 2019 appears to have been compounded with the finding that

> *'10.4 Having perused the findings of the Inquiry Officer mentioned in his report dated 25,03,2019 that the allegations against the CB were established during the inquiry, I am of the considered opinion that the inquiry report is based on the correct application of mind and appreciation of the facts and circumstances of the case. Therefore, I accept the inquiry report in respect of the charges proved under Regulations 11(a). 11(d), 11(e) &11l(n) of CBLR, 2013 (Now Regulations 10 (a), 10 (d), 10 (e) & 10 (n) of CBLR, 2018j. Further, Board's Circular No. 09/2010-Cus dated 08.04.2010 has specified that a Customs Broker should follow the KYC guidelines for identifications of their client which were not followed by the CB in this case as established in the inquiry.*
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> *10.5 From the above, it is seen that the CB failed to comply with the Regulations 11(a), 11(d), 11(e) & 11(n) of CBLR, 2013 (Now Regulations 10 (a), 10 (d), 10 {el & 10 (n) of CBLR, 2018], In the era of facilitation, lot of trust is place on the Customs Broker who directly deals with the importers as the department does not interface with the importer Failure to comply with Regulations by the CB mandated in the Regulations gives room for unscrupulous people to escape after committing import export violations and revenue crimes. In this case there :is ail round failure of the CB and failure to supervise activities of his employee. Hence the infraction would have resulted into the revenue loss to the department.'*

in order no. 38/CAC/CC (G)/RC/CBS (Adj) dated 12th July 2019.

6. We find that show cause notice no. 31/18-19 dated 13th December 2018, leading up to the first of the impugned orders,

proposed revocation of license, and other detriments, on the basis of

> *'15. From the above facts, prima facie it appears that Customs Broker, M/s Sharada Impex holder of CB licence No. 11/1763 (PAN No. ABLPY2494C) did not exercise due diligence in discharging their obligation as required Regulations 11(a), 11(d), 11(e) & 11(n) of CBLR, 2013 (now Regulations 10(a), 10(d), 10(e) & 10(n) of CBLR, 2018) and for the willful/intentional violation, the licence of M/s Sharada Impex was liable for revocation under Regulation 18 of CBLR 2013 (now Regulation 14 of CBLR 2018). Therefore, action was taken and the Customs Broker Licence held by M/s Sharada Impex holder of CB Licence No.1l/1763 (PAN No.ABLPY2494C) was suspended vide Order No. 66/2018-19 dated 13.12.18.'*

elaborated in the enquiry report by reference to communication dated 13th December 2018 of CB, NCH, Mumbai intimating that

> *'3. CB Section, NCH, Mumbai issued SCN dated 13.12.2018 vide F. No. S/8-105/2017-18 CBS leveled following charges against the Charged CB firm M/s Sharada Impex (CB - 11/1763).*
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> *3.1. Article of Charge - I: As per Regulation 10(a) of CBLR, 2018, A Customs Broker shall 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;*
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> *3.2. Article of Charge - II : As per Regulation 10(d) of CBLR 2018, A Customs Broker shall advise his client to*

comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

3.3. Article of Charge - III : As per Regulation 10(e) of CBLR, 2018, A Customs Broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage.

3.4. Article of Charge - IV : As per Regulation 10(n) of CBLR, 2018, A Customs Broker shall verify correctness of Importer Exporter Code (IEC) number, Goods & Service Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information.'

and, thereby, indicating that there are four distinct articles of charge.

7. Nonetheless, the report of the enquiry officer dated 25th March 2019 did not hesitate to summarily dispose of the contention of the customs broker that

'(iii) I find that the Charged CB firm vide their written as well as oral submissions during the course of inquiry proceedings submitted that these Article of Charges are not applicable to them and required to be set aside as they were not aware of mis-deeds of their employee Shri Ujjainwala, who looked after import clearance and interaction with the respective importers, therefore, the question of obtaining authorization, advising their client to comply with the rules &

regulations, exercise due diligence in imparting information to the clients, and verify antecedents of the client, does not arise.'

with conclusion that

'(iv) In this regard, as per Regulation 13(12) of CBLR, 2018 (erstwhile Regulation 17(9) of CBLR, 2013) which specifically stipulated that 'The Customs Broker shall exercise such supervision as may be necessary to ensure the proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or emissions of his employees during their employment'. The provisions of said Regulation itself clarify that the acts of the employee are binding on the CB firm and they should not relinquish their responsibilities and shrink their accountability in this regard.

(v) In the instant case, Shri Ujjainwala gained the entry in Customs premises and handled the impugned import consignments only on the strength of the Customs Pass issued to him on behalf of M/s. Sharada Impex. In this regard, it appears that the CB firm has failed to sensitize their employees about the way to handle the work in the Customs premises and the CB firm should have directed their employees to handle the documents in legitimate manner and should not entertain illegal entities in the course of employment as CB. At the first place, Shri Ujjainwala, though obtained Authorizations and KYC documents on behalf of the importers, but the same was obtained only from Shri Amit Gala and Shri Ujjainwala was fully aware that these are dummy IECs, still he went on with accepting the work and filing import documents and clearance of such illegal import consignments. Further, though the proprietor of CB firm

contended that all the actions has been done by Shri Ujjainwala in his personal capacity he could not relinquish his responsibilities as employer of CB firm and is responsible for the acts of his employees during the course of handling import clearance work as CB. Therefore, I find that not only Shri Ujjainwala but also his employer Shri Shivjor Yadav has failed on these counts.

(vi) Accordingly, as per the above stated facts and acceptance and admissions of all the charges by Shri Shivjor Yadav, Proprietor of M/s. Sharada Impex (CB - 11/1763) during the course of final hearing, I agree with the findings of the CB Sections and find that these Article of Charges - I to IV are conclusively proved against M/s. Sharada Impex (CB No. 11/1763).'

8. Thus, instead of rendering a finding on each of the four articles of charge, on the basis of evidence furnished and response of the customs broker, the enquiry authority has rendered a finding on a charge that was, apparently, not levelled against the appellant. The licensing authority, while sustaining the proposal in the show cause notice on the basis of the report of the enquiry officer, failed to take note of this aberration. That colourable exercise of jurisdiction, thereby, stands transferred to the impugned order. That the enquiry officer, and the licensing authority, appear to be impervious to such departure from the pre-requisites is surprising considering that the procedure prescribed for employees being visited upon with detriments by employers is not dissimilar from prescriptions mandated by the Regulations notified under authority of section 146 of Customs

Act, 1962.

9. The license of the appellant having been revoked by the first of the impugned orders, the subsequent revocation, and forfeiture of security deposit, should, in normal circumstances, be held as infructuous. However, as the procedure laid down in law, under Customs Broker Licensing Regulations, 2018, have been departed from in the stages leading to the first order of revocation rendering the original revocation to be lacking in legality and propriety, it would be appropriate to set aside both the impugned orders and remand them to the original authority for deciding afresh after instituting a fresh enquiry, as prescribed under Customs Broker Licensing Regulations, 2018, for ascertaining the correctness, or otherwise, of each of the articles of charge appended to the two show cause notices.

10. The appeals are, consequently, allowed by way of remand for compliance with the directions *supra*. We also direct that, to the extent possible, the inquiry should be completed within a period of ninety days and the order of the licensing authority issued within thirty days therefrom.

(Operative Part of the Order Pronounced in Open Court on 22nd February 2021)

(Dr. D M Misra)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*