CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86114 of 2020

(Arising out of Order-in-Original No. CAO No. 19/CAC/CC(G)/PS/ CBS(ADJ) dated 24.08.2020 passed by the Commissioner of Customs (General), Mumbai)

M/s Ramarao Cargo Lines Pvt. Ltd. .... Appellant
505, Boomi Landmark, Plot No. 34 & 34A,
Sector – 7,Near Excise Office, Khanda Colony,
New Panvel (W), Mumbai - 410206

Versus

Commissioner of Customs (Gen), Mumbai .... Respondent
New Custom House, Ballard Estate, Mumbai - 400001

Appearance:

Shri P.K. Ethirajan, Advocate for the Appellant

Shri K.K. Srivastava, ADC, Auth. Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86350/2021

Date of Hearing: 02.02.2021
Date of Decision: 02.02.2021

Per: Dr. D.M. Misra

This is an appeal filed against Order-in-Original No. CAO No. 19/CAC/CC(G)/PS/CBS(ADJ) dated 24.08.2020 passed by the Commissioner of Customs (General), Mumbai.

2. Briefly stated the facts of the case the appellants are licensed as customs broker bearing license number CB 11/509 issued by Mumbai customs operating at Mumbai as well as at

their branch office at Chennai. They have filed shipping bill No. 756001 dated 02.02.2015 at Air Cargo, Meenambkkum Airport, Chennai for export a shipment of perishable cargo 'Chow Chow' (fresh vegetables) destined to Malaysia on behalf of the exporter M/s Pure Food Products, Chennai. The said consignment on X-Ray screening by Air India Staff was found to contain some powdered material and later it was investigated by ACIU, Meenambukum Airport, Chennai resulting into seizure of 40.370 kgs of white crystalline powder, suspected to be "Pseudo Ephedrine" valued at Rs.32,29,600/- concealed in the declared cargo, namely 'Chow Chow'. Consequently, statements of various persons were recorded including Shri M. Amrithalingam, Branch Manager of appellant at Chennai, Shri V. Ganesan S Variava Nadar, Power of Attorney Holder (PoAH in short) of the appellant and Shri Sudalaikannu P Nadar, Director of the appellant and on conclusion of the investigation Show Cause Notice was issued to the Exporter and other proposing actions under various provision of the Customs Act,1962. The CB was also prohibited to operate at any of the Customs Commissionerate under Chennai Customs zone by an order dt.23.6.2015 under Regulation 23 of CBLR,2013 with immediate effect, which later on adjudication, was confirmed by Commissioner of Customs, Chennai-VIII vide Order dt. 29.7.2015. Taking cognizance of the said Order of the Commissioner of Customs, Chennai proceeding was initiated against the appellant at Mumbai by issuing a Notice on 02.5.2016 under Regulation 20 of CBLR, 2013 alleging violation of Regulations 11(a), (d) and (n) of the CBLR, 2013 and an

Inquiry Officer was appointed to investigate charges framed against the Appellant. The inquiry office after undertaking necessary inquiry, hearing both sides, has submitted his report confirming violation of Regulations 11(a), 11(d) and 11(n) of CBLR, 2013 by the Appellant. Taking note of the inquiry report, and after hearing the appellants, analysing the evidence on record the adjudicating authority came to the conclusion that there has been violation of Regulations 11(a), 11(d) and 11(n) of CBLR, 2013 and directed revocation of the license under Regulation 18 of CBLR, 2013, imposed penalty of Rs.50,000/- and also directed forfeiture of the entire amount of security deposit. Hence, the present appeal.

3. The Learned Advocate for the Appellant has submitted that the Appellant are Licensed as Customs Broker at Mumbai Customs Commissionerate and also having a branch office at Chennai. He has submitted that their Chennai office filed the Shipping Bill No.756001 dt.02.02.2015 at Air Cargo Customs, Meenambkkum Air Port, Chennai pertaining to the export Shipment belonging to the exporter M/s Pure Food Products, Chennai stated it as "chow Chow"(fresh vegetables) bound for Malaysia. The said export consignment was intercepted by ACIU officers and found to contain 40.370 kgs of white crystalline powder, suspected to be 'Pseudo Ephedrine' concealed along with declared cargo. The entire cargo was seized and a case of attempted smuggling of export of the white crystalline powder, suspected to be 'Pseudo Ephedrine' was booked. It is his contention that the Commissioner Customs, Mumbai issued a

Notice alleging violation of Regulations 11(a), (d) & of (n) of CBLR, 2013.

4. He has submitted that the charge of not obtaining necessary authorization from the exporter namely, M/s Pure Food Products in respect of the export consignment resulting into violation of Regulation 11(a) of CBLR, 2013 is devoid of merit. It is his contention merely because the appellant could not submit the authorization letter during the course of investigation and the admission in the respective statements of Shri M. Amritlingam, Branch Manager of Chennai Branch, Shri V. Ganeshan S. Vairava Nadar and Shri Sudalkanu P. Nadar, Director of the Appellant, to the effect that authorization of exporter was not obtained, cannot lead to the conclusion that the appellant did not possess the required authority letter from the exporter as it was submitted subsequently during the course of adjudication proceedings before the adjudicating authority as well as appellate authority, hence the same cannot be the basis to confirm allegation of violation of Regulation 11(a) of the CBLR, 2013. In support, he referred to the authorization letter dated 05.10.2014.

5. The learned Advocate Shri P.K. Ethirajan for the appellant further disputing the charge of violation of Regulation 11(d) has submitted that the offending goods namely, "Pseudo Ephedrine" had been concealed inside the export cargo namely, 'Chow Chow' (fresh vegetables); it was attempted to have been exported by the exporter illegally; until it was detected by the

Air India Security Staff and later on investigation by the ACIU, Chennai, the said fact was not known to the Appellant. It is his contention that out of 150 cartons, only in 53 cartons of the consignment contained the offended goods, which was concealed and the concealment was detected by the Air India Security Staff when it passed through the Security Scanner Device. Thus, the appellant in no way was aware of the said concealment and existence of offending goods, therefore, alleging the violation of Regulation 11(d) of CBLR, 2013 is also unsustainable in law and devoid of merit. He has contended that there was no avenue available to the Customs Broker to know about concealment of the content of "Pseudo Ephedrine" in the declared cargo. The appellant custom broker is not required to examine the content of the cargo, the papers are filed for clearance of the export cargo as declared by the exporter. The Commissioner (Appeals) has dropped the penal proceedings initiated against all the three employees Shri M. Amritlingam, Branch Manager of Chennai Branch, Shri V. Ganeshan S. Vairava Nadar and Shri Sudalkanu P. Nadar, Director under the Customs Act, 1962 observing that the employees of the appellant had no knowledge about the hidden content of the offending goods inside the declared export cargo.

6. Further, he has submitted that charge of violation of Regulation 11(n) of CBLR, 2013 is also incorrect and unsustainable in law. The appellant had verified the declared address and other particulars of the exporter by using reliable independent and authentic documents, which was stated by Shri

V. Ganesan, POAH of the appellant in his statement dated 25.03.2015. It is his contention that the said statement was not accepted by the enquiry officer as well as the adjudicating authority even though other statements of the employees have been accepted against the appellant. The said explanation/reply furnished on behalf of the appellant by Shri V. Ganesan, PoAH was not accepted solely on the ground that the appellant has not provided any corroborative documentary evidence to prove that they have verified the IEC, antecedent etc. of the exporter. It is his contention that, therefore, all the allegations of violation of Regulations 11(a), 11(d) and 11(n) of the CBLR, 2013 against the appellant are not established, hence, the revocation of license, forfeiture of security deposit and imposition of penalty as directed in the impugned order are unsustainable in law and liable to be set aside. In support he has referred to the following judgments of this Tribunal viz. *Poonia Brothers Vs. Commissioner of Customs - 2019 (370) ELT 1074 (Tri.-Del.), Mahindra Shipping Agency Vs. CC, Nhava sheva - 2019 (370) ELT 608(Tri.-Mum.), Merico Logistics Pvt. Ltd Vs. CC, Kolkata-2020 (372) ELT 580(Tri.-Kolkata), Jaiswal Import Cargo Services Ltd. Vs. CC, New Delhi - 2019 (370) ELT 1366 (Tri.-Del.), Exim Cargo Services Vs. Commissioner of Customs,2019 (368) ELT 1024(Del.), N.T.Rama Rao & Co. CC, Chennai -2020 (371) ELT 789(Tri.-Chennai).* Further, distinguishing the judgment of Hon'ble Supreme Court in K.M. Ganatra & Company's case referred by the Revenue, he has submitted that in the said case the CHA was a regular offender, accordingly, the punishment/penalty imposed against the CHA was upheld.

However, in the present case, there was no allegation of breach of any of the Regulations as a Customs Broker in the past against the appellant. Hence, the said judgment is not applicable to the facts of the present case.

7. Ld. A.R. for the Revenue Shri K.K. Srivastava, Additional Commissioner, reiterates the findings of the learned Commissioner. Referring to the findings of the learned Commissioner, he has submitted that in their statements Shri M. Amrithalingam, Branch Manager, Shri V. Ganesan, PoAH, have categorically admitted that the exporter has not authorized the appellant to file the shipping bills and handle customs documents. The said statements were never challenged nor retracted during the entire proceeding. He has submitted that producing subsequently the authority letter dt.05.10.2014 from the exporter by the appellant was not considered by the authorities below as sufficient compliance with the requirement of the Regulation 11(a). It was concluded as afterthought and hence not accepted. Further he has submitted that it is admitted in the statements that the relevant papers were collected/ received by Shri M. Arbu Kumar, the elder brother of Shri M. Amrithalingam , who is neither the employee of the exporter nor that of the Appellant and were handed over back to him after signing the papers by their POAH Shri V. Ganesan. It is stated that after signature of the papers by their authorized POAH Shri V. Ganesan the same were handed over in good faith to Shri M. Arbu Kumar for submission to the customs Department. He has submitted that the said statements had not been retracted,

hence, binding on the appellant. Therefore, there is sufficient proof indicating violation of Regulation 11(a) of CBLR, 2013 by the Appellant.

8. Learned AR has further submitted that since the appellant has neither interacted with the exporter nor the Appellant was authorised by him to submit the papers for the export consignment, therefore, there was no question or occasion advise to the client, hence confirmation of violation of Regulation 11(d) of CBLR, 2013 is justified. Similarly, the appellant had also contravened the Regulation 11(n) CBLR, 2013 as they failed to substantiate their claim by producing independent evidence to the effect that verification of IEC, antecedents were made by them even though it has been claimed to have been done. The learned AR for the Revenue referred to the judgment of Hon'ble Supreme Court in the case of *Commissioner of Customs Vs. K.M. Ganatra & Co. – 2016 (332) ELT 15 (SC)* in support of the claim that the customs broker failed in its responsibility as was expected under the CBLR, 2013. Therefore, revocation of the license, imposition of penalty, and directing forfeiture of security deposit ordered in the impugned order are justified.

9. Heard both sides and perused the records.

10. The limited issue needs to be addressed is: whether the appellant Customs Broker violated Regulations 11(a), 11(d) and 11(n) of CBLR, 2013 warranting revocation of license, forfeiture of security deposit and imposition of penalty under various

provisions of CBLR, 2013 as directed in the Order impugned. The undisputed facts are that the appellant filed shipping bill for export of 'Chow Chow' (fresh vegetables) for the exporter M/s Pure Food Products. During the course of X-ray screening of the consignment initially by the Air India authority noticed concealment of white crystalline powder and intimated the Customs Department accordingly, who later initiated investigation, by opening all the 150 cartoons, and after necessary test in presence of the exporter and others, seized the entire quantity of 40.370kgs. white crystalline powder suspected to be Pseudo Ephedrine found in 53 cartons only. The goods were seized and adjudicated by the Customs authorities at Chennai directing confiscation and imposition of penalty on various persons involved in the said act of unauthorized attempt to export of 40.370 kgs. of Pseudo Ephedrine. Alleging violation on the part of the Appellant Customs Broker, the Commissioner Customs at Mumbai initiated proceeding under CBLR, 2013 by issuing a notice to the Appellant; Inquiry Officer was appointed at Mumbai and on the basis of the said Inquiry report, in the impugned order the adjudicating authority directed revocation of license, forfeiture of security deposit and imposition of penalty of Rs.50,000/- on the appellant. The contention of the learned Advocate appearing for the appellant is that allegation of violation of Regulation 11(a) of CBLR, 2013 is bad in law even though initially they failed to submit the necessary authorization letter from the exporter M/s Pure Food products, but later the same was placed on record. Rebutting the said argument, the Revenue's contention is that no proper authorization was obtained from the exporter when the goods were seized by the ACIU Chennai nor the same was stated during the course of recording statement of the Branch Manager Shri M. Amrithalingam and PoAH Shri V. Ganesan S. Variava Nadar. On the contrary, the evidence brought on record indicates that the export documents were handed over by the elder brother of Shri M. Amrithalingam, and the documents were signed by Shri V. Ganesan .S. Variava Nadar PoAH and given back to him in good faith for filing with Customs. The Inquiry Officer as well as the adjudicating authority accordingly concluded that the appellant had contravened the Regulation 11(a) of CBLR, 2013 by not obtaining proper authorization for handling the export documents from the exporter M/s Pure Food Products; and without valid authorization they caused the export documents to be filed with the customs Department.

11. We find that the employees of the appellant Customs Broker at the time of investigation of attempt to export illegally white crystalline powder suspected to be Pseudo Ephedrine by the ACIU, in their respective statements voluntarily disclosed that they had not obtained proper authorization from the exporter and the export documents were handed over by the elder brother of Shri M. Amrithalingam. The said statements were not retracted nor assailed by requesting cross-examination particularly when charge of contravention of Regulation 11(a) of non-receipt of authorization from the exporter was framed against the appellant. The authorities below have also observed that not only in connection with the present consignment but

also in the past five export consignments the appellant had not obtained proper authorization from the exporter. The authorization letter dated 05.10.2014 addressed by the exporter M/s Pure Food Products to the Commissioner of Customs, Chennai enclosed with the appeal paper book does not bear any acknowledgement from the Department; also since not produced during the course of investigation by the appellant, its authenticity could not be verified. Hence, much importance cannot be placed on the said authorization letter at this stage when the statements furnished remained unchallenged. In these circumstances, it is to be accepted that the appellant contravened the provisions of Regulation 11(a) of CBLR, 2013.

12. As far as contravention of Regulation 11(d) is concerned, the learned Commissioner reasoned that since the appellant could not produce the valid authorization for whom they were transacting the business or whom he has represented, the question of advising the said client to comply with the provisions of the CBLR, 2013 is out of question, therefore, the violation of Regulation 11(d) on the part of the Customs Broker has been established. Also, in support of the said finding, the learned Commissioner observed that the appellant had not only filed the shipping bill in question without obtaining authorization but also had filed five such shipping bills in the past of the said exporter without any authorization or verification of the antecedents of the exporter. The clearance documents were authenticated by Shri V. Ganesan, PoAH of the appellant as brought by Shri M. Arbu kumar, elder brother of the Branch Manager of the

appellant's Chennai office. In this background, he has concluded that thus, none of the employees met the exporter and informed them to follow all the provisions of Customs Act, 1962 thereby contravened Regulation 11(d) of CBLR, 2013. Needless to emphasize as per Regulation 11(d), the Customs Broker is required to advise his client to comply with the provisions of the Customs Act, whereas in the present case, since Customs Broker has not interacted with the exporter advising him to comply with the provisions of Customs Act, 1962 does not arise. Consequently, the learned Commissioner has correctly concluded that there is violation of Regulation 11(d) of CBLR, 2013 also.

13. The next Article of Charge is violation of Regulation 11(n) by the appellant has been disputed by the learned Advocate inasmuch as that before filing the documents, the appellant had verified the antecedents and correctness of the IEC code, identity of the exporter by using reliable independent authentic documents etc. It is his contention that this fact has been stated by Shri M. Amrithalingam and Shri V. Ganeshan S. Variava Nadar in their respective statements but was accepted by the authorities. The learned Commissioner had not accepted the contention that the appellant had carried out necessary verification of the exporter as required under the said Regulation since no corroborative documentary evidence, data have been produced to substantiate the said claim. We find merit in the observation of the learned Commissioner as verification of antecedents, identity etc. be required to be done using the reliable independent authentic documents, data or information

by the CB. Mere claim in this regard cannot suffice the requirement of production of authentic documents, data, information etc. in support of their claim of verification as required under the said Regulation particularly when the export documents were not directly handed over to the appellant and the same was received through a third party i.e. the elder brother of Shri M. Amrithalingam. Therefore, violation of Regulation 11(n) of the CBLR, 2013 as concluded by the learned Commissioner also does not call for interference.

14. Even though we have agreed with the findings in the impugned that there are contravention of the Regulations discussed as above by the appellant Customs Broker, but no evidence is brought on record establishing the involvement of or in the knowledge of the Appellant Custom Broker the attempt to export the crystalline white powder suspected to be 'Pseudo Ephedrine' by the exporter concealing the same in the declared export cargo namely, Chow-Chow (vegetables). In these circumstances imposition of harsh penalty by revoking the license of the appellant is not warranted and hence deserves to be set aside. The common principle laid down in the afore cited judgments is unless there is a positive involvement of the Customs Broker or the acts or omissions leading to defrauding the Revenue is within his knowledge, imposition of harsh penalty by revoking the license is uncalled for and cannot be sustained and justified. This Tribunal recently in *N.T. Ramarao and Co. Vs. Commissioner of Customs, Chennai*(supra) expressed a some what similar view. Simultaneously, we are of the opinion that the

procedure laid down under various Regulations of CBLR,2013 cannot be considered as mere technical one and its breach be taken lightly without punishment/penalty. Therefore, considering overall circumstances of the case, we are of the view that to meet the ends of justice, imposition of penalty of Rs.50,000/- and forfeiture of security deposit directed in the Order be upheld and the same is accordingly confirmed.

15. In the result, the impugned order is modified to the extent of setting aside the direction of revocation of license under Regulation 18 of the CBLR, 2013; the imposition of penalty and forfeiture of security deposit and imposition of penalty of Rs.50,000/-as directed is upheld.

16. Appeal is partly allowed to the said extent.

(Operative portion of the order pronounced in open court)

(C.J. Mathew)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

Sinha