CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

MUMBAI

WEST ZONAL BENCH

Customs Appeal No. 86041 of 2020

(Arising out of Order-in-Original No. 32-CAC-PCC-G-PS-CBS-ADJ dated passed by the Pr. Commissioner of Customs, Mumbai)

M/s. V. Arjoon **.....Appellant**
6, Hafizain Bldg. 3rd Floor
Kaji Syed Street
Masjid (W), Mumbai

Vs.

Pr. Commissioner of Customs, Mumbai **.....Respondent**
NCH, Ballard Estate,
Mumbai

APPEARANCE:
Shri N.D. George, Advocate for the appellant
Shri TruptiChavan, AC (AR) for the respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. P. Anjani Kumar, Member (Technical)

FINAL ORDER No: A/86971 / 2021

DATE OF HEARING: 22.07.2021
DATE OF DECISION: 08.10.2021

PER: P. ANJANI KUMAR

The appellants, M/s V. Arjun are engaged in the business of rendering services of Customs Broker (license No. 11/417); the Customs Broker license of the appellant was suspended vide Order No. 35/ 2019-20on 27.08.2019 and was withdrawn vide Order No. 44/2019-20on 26.09.2019; an inquiry was initiated vide SCN dated 16.10.2019 for alleged violation of Regulation 10(d) of CBLR,2018; enquiry report was submitted on 02.03.2020, holding that charges were 'Not Proved' for the reasons stated therein; a disagreement memo was issued on

13.07.2020, alleging that the Enquiry officer has not properly appreciated the statements and gave report based on assumptions and presumptions; the impugned order in Original was passed revoking the licence revoking the license; forfeiting the security deposit and imposing the penalty of Rs. 50,000 on the appellants.

2**.** Shri N.D. George, Advocate for the appellant submits that the appellant was penalized in a case of exports made by M/s. Bansal fine foods private limited alleging that 48 consignments of rice have been exported to Iran; however most of the consignments were off-loaded in Dubai instead of the destination mentioned in the documents; remittances for the same were received in Indian currency. He submits that with the revocation of license the livelihood of not only the appellant but also 25 employees working with them; their license was suspended on 27-08-2019 after 4 years of filing of shipping bills in question and the license was revoked within one month of suspension; enquiry against the appellant custom brokers, under regulation 18 of CBLR 2013, was initiated on 16-10-2019; the enquiry officer submitted his report discharging the appellant from the allegations; a disagreement memo dated 17-08-2020 was issued to the appellant which was replied by the appellants 17-08-2020.Learned Advocate submits that no notice in writing has been issued to the appellants within ninety days from the date of receipt of the offence report as per CBLR, 2018; further, CBLR, 2018 does not provide for the issue of disagreement memo in the case where charge is not proved; the respondent cannot act in excess of in violation of the their powers; they rely on the judgement of Hon'ble High Court of Bombay in the case of CC(General), Mumbai Vs. Rajan Virji & Co. 2012 (283) ELT 354 (Bom) and judgment of Tribunal in the case of Manilal Patel Clearing Forwarding P. Ltd Versus CC (Gen), Mumbai 2013 (294) ELT 472 (Tri – Mumbai).

3**.** Learned Counsel for the appellants submits that no specific instance has brought out by the department to show violation of the provisions of regulation 11(d) of CBLR 2013 (regulation 10(d) of CBLR 2018); the respondent has rejected the request for cross examination of witnesses whose statement have been referred and relied upon in the Show Cause Notice; no evidence whatsoever to prove that the custom broker failed to advise the appellants has been cited; the custom broker has exercised due diligence. He further submits that the adjudicating authority has denied cross examination; the letter from DRI pertains to the role of the exporter and therefore, not applicable to the appellant/Custom Broker and therefore, the order in original merits to be set aside/ withdrawn and the penalty/ forfeiture of security deposit be set aside. He relies upon the following cases.

(i). Andaman Timber Industries Vs CCE, Kolkata-II 2015 (324) ELT 641(SC)
(ii). Trivandrum Rubber Works Ltd 1999 (106) ELT 9 (SC)

(iii). United Safeway India Pvt. Ltd 2019 (369) ELT 1563 (Tri.-Bang)
(iv). Akshey Gupta 2017 (348) ELT 217 (Del.)
(v) Falcon Air Cargo & Travel (P) Ltd reported in 2002 (141) ELT 284 (Tri. - Del.)
(vi) SK Logistics vs. CCE Gen., New Delhi 2016 331 ELT 486 (Tri-Del)
(vii) Sai Datta Shipping Agency Pvt. Ltd. 2019 (369) ELT 954 (Tri-Mum)
(viii) KTR Logistics Solutions Pvt. Ltd. Vs. CCE Chennai 2020 (371) ELT 685
(ix) CCE Gen Mumbai vs. Rajan Veerji & Co. 2012 (283) ELT 354 (Bom-HC)
(x) Manilal Patel Clearing & Forwarding Pvt. Ltd. Vs. CCE Gen. Mumbai 2013 (294) ELT 472 (Tri-Mum)

4. Learned Authorized Representative, for the department, reiterates the findings of OIO and submits that the appellant Custom Broker had filed shipping bills on behalf of M/s Bansal Fine Foods Pvt. Ltd the Exporter) for export of goods i.e. Rice to port Bander Abbas (Iran); the goods however, were delivered at UAE (Jabel Ali Port) and the remittance was received in Indian Rupees from Iran instead of freely convertible foreign currency; it is a case of mis-declaration on part of the Exporter i.e. M/s Bansal Foods Pvt. Ltd. who had filed the shipping Bills/Export documents in which the appellants had not fulfilled their

obligations as laid down under Regulation 11(d), of CBLR, 2013 (Regulation 10(d) of CBLR 2018). Learned Authorized Representative submits that the Enquiry officers report, dated 02.03.2020, has not properly appreciated the statements made in the relied upon documents and has not substantiated with adequate justification.

5. Learned Authorized Representative submits that Shri Gordhan Bhavani (Manager of M/s V. Arjoon), in the statement dated 09.01.2017 has stated that it was known to him before the consigned left from the Indian shores that the goods are actually going to Dubai though port of discharge was mentioned to be Bander Abbas; they had no choice but to act as per the directions of the exporter; Shri Tushar H. Anam, partner with M/s V. Arjoon, stated on 22.10.2015 that Shri Gordhan Bhavnani, manager interacted with all the shipping lines and was knowing that the consignments of rice which were originally cleared from Customs for export to Iran were actually delivered to Jabel Ali port; this diversion of goods to Dubai after clearance for Iran was not brought to the notice of Customs authorities at the port of export. Shri Munish Bansal, Director of Bansal Fine Foods Pvt. Ltd stated on 10.02.2016 that they had not carried out any amendment in the respective shipping bill for change in the destination; the appellant had acted on the oral instructions of the exporter for the diversion of goods.

6. Learned Authorized Representative further submits that from the letter F. No. DRI/ H-CI/EN-226(INT-24)/2015/2654 dated t. 02.0.2019 submitted by CB ,it is evident from the letter that there is nothing to ascertain from the sea cargo Manifests(SCEMs) that the goods exported from Dubai to Iran had been imported from India as no Bills of Lading Numbers/ Import declarations regarding import of the said goods is mentioned; it is also seen from the SCEMs that the goods were exported from Dubai to Iran in bags and not in the containers in which they imported to Dubai from India; as the integrity of the

consignments is breached, it cannot be said that the goods exported Dubai were further sent to Iran; even the number of bags do not tally; names of the recipients mentioned in the SCEMs do not match with the names of the buyers who certified receipt of the goods in Iran; description of the goods mentioned in SCEMs, when loosely translated was 'Substance' and not 'Rice'.

7. Learned Authorized Representative further submits that Shri Tushar H. Anam, employee of the Customs Broker, Shri Gordhan Bhavnani, and the exporter Shri Munish Bansal have not mentioned the transshipment of goods to Bandar Abbas (Iran) from Jabel Ali (Dubai) in smaller boats;; hence, the submission that the goods finally destined for Iran is incorrect; there is no substance in the Customs Broker's submission that the change of route occurred on account of exigencies as no any evidence was produced; Customs Broker made false entries in the shipping bills with regard to actual destination of the export consignments and also mis-stated the facts in the export documents filed by them; thus Customs Broker failed to perform the duties as envisaged in Regulation 11(d) of CBLR 2013; from the corroborative statements and action taken in filling the shipping bills, it is clear the CB and exporter had the knowledge of the diversion of the consignment and thus, violated Regulation 11(d) of CBLR, 2013(Now Regulation 10(d) of CBLR,2018).

8. Learned Authorized Representative further submits that the enquiry report assumes that the it is quite possible that delivery of goods to Port Bander Abbas via Port Jebel Ali happened without evidence; similarly, it is assumed that the shipping bill being packed in 10 kg bags bearing markings in Iranian language and the brands/ trade names of the Iranian buyer and in these circumstances, it was plausible that such goods could not be sold into UAE as they were not bearing the markings in Arabic language; this assumption too is bereft of any supportive evidence in the Inquiry report; Inquiry Report did not consider

the facts and circumstances of the case and relied upon documents/corroborative evidences such as the shipping bills (where actual destination was declared as Iran instead of UAE), landing certificate, remittance received in INR, etc but merely based on the statements of Shri Tushar H. Anam, partner and Shri Gordhan Bhavani, Manager of M/s. V. Arjoon; he finds it difficult to remember the provisions of the Acts, Rules and Regulations related to Customs Clearance work and is not in a position to guide his clients; thus, the Inquiry officer has incorrectly concluded that the CB has not violated the Regulation 10(d) of CBLR 2018 as leveled by the Show Cause Notice dated 16.10 2019. He submits that the Customs Broker, in spite of having prior information of diversion of goods, did not bring it to the knowledge of the Customs Authorities which is a clear violation of Regulation 11(d) of CBLR,2013 (now Regulation 10(d) of CBLR 2018); the matter could not have seen the light but for investigation by DRI. He submits that there is no proof that it was an unintentional and bona fide error on their part.

9. Learned Authorized Representative submits that Hon'ble Supreme Court, in Civil Appeal No.2940 of 2008 (CC V/s K.M. Ganattra & Co) and CESTAT in Noble Agency Vs CC, Mumbai held that

> *'A Custom Broker occupies a very important position in the Customs House and was supposed to safeguard the interest of both the importers and the Customs department. A lot of trust is kept in CB by the Government Agencies and to ensure appropriate discharge of such trust, the relevant regulation is framed. Regulation 11 of CBLR, 2013 (now Regulation 10 of CBLR, 2018) lists out the obligation of the Customs Broker. Any contravention of such obligation of the Customs Broker. Any contravention of such obligation even without intent is sufficient to invite upon CB the punishment listed in the Regulations".*

10. Heard both sides. Perused the records of the case. Case of the department is that appellant filed 48 no. of shipping bills

during the period 2015 on behalf of exporter, M/s. Bansal Foods Pvt. Ltd. After conducting investigation, DRI came to the conclusion that the consignment though declared to be for Iran but was offloaded at Dubai only. Proceedings under the Customs Act were initiated against the exporter and proceedings under CBLR were initiated against the appellants. Appellants contend that they have requested for cross examination of witnesses, was rejected by the Adjudicating Authority. The custom broker licence was suspended on 27.08.2019 and was withdrawn on 26.09.2019. An enquiry was initiated on 16.10.2019 and enquiry report was submitted on 02.03.2020. The enquiry officer however held that the charges have not been proved. The Adjudicating Authority issued a disagreement memo on 13.07.2020 and a personal hearing on 17.08.2020. OIO dated 25.09.2020 was issued revoking the custom broker licence, forfeiting the security deposit and impose a penalty of Rs.50,000 for violation Regulation 10B of CBLR 2018.

11. It is pertinent to see that the suspension was ordered and enquiry was initiated after four years of filing of shipping bills. Ld. Counsel for appellants submits that the enquiry report was submitted after four months of initiating the enquiry in violation of Regulation 17(5) of CBLR 2018. OIO was issued on 25.09.2020 after 6 months in violation of Regulation 17(7) of CBLR 2018. We find that the Adjudicating Authority has concluded the appellants have violated Regulation 10D of Custom Broker Licence Regulation concluding that it is evident from the facts of the case the custom broker was working in a negligent manner violating the obligation cast upon them in terms of Regulation 11D of CBLR (currently Regulation 10D of CBLR 2018). A perusal of the said Regulation would be beneficial to decide whether or not the appellants have violated the same. Regulation 10(d) of CBLR,2018. The said Regulation reads as follows:

> **Regulation 10.** Obligations of Customs Broker. — A Customs Broker shall —

> (d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, 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;

12. We find that the enquiry officer found that the custom broker mentioned port Jebel Ali as port of discharge in the shipping bills as informed by the exporter. He also found that there is no iota of evidence that the fact of discharge of the goods at Bandar Abbas (UAE) was known to the custom broker. He relies upon the statement dated 10.03.2017 of Director of exporter that the destination was changed after finalization of the shipping bills and they have never informed the CHA about the change of destination before filing of the documents and that they themselves know of the same when the buyer directed them to change the destination after filing the shipping bills. However, the director stated on 22.05.2018 that the custom broker were aware of the actual port of discharge while filing the shipping bills. It is seen that there is a long gap, more than a year, between the two statements of the exporter. We find that the enquiry officer has based his finding on the above. It is not made clear in the facts of the case that the appellants were aware of the actual port of discharge. The only argument of the adjudicating authority that the appellant was aware of the actual port of discharge was based on the contradictory statement of the exporter and the investigation conducted against the exporter. We are of the considered opinion that while the investigation conducted may or may not lead to the confirmation of the offenses by the exporter (which is any way beyond the purview of the present appeal), it would not be a conclusive evidence to establish gross negligence or misconduct on the part of the appellants. No documents whatsoever have been produced by the Adjudicating Authority or the respondents to substantiate the allegation that the appellants were in the knowledge of actual port of discharge. Under the circumstances,

negligence or lack of due diligence is not established in our considered opinion. It can also be seen that in the instant case the timeline prescribed in the Regulations have not been adhered by the enquiry officer and the adjudicating authority notwithstanding the discussion as to whether the timelines prescribed in the said regulation are mandatory or advisory. We however, are not going into the above issue looking into facts and merits of the case.

13. In the instant case, the alleged offence took place in 2015 and the custom broker licence was suspended in 2019 after a period of four years. Normally, a punitive action like suspension is to be taken immediately, if the same is taken after four years, the sanctity of the same is vitiated. We also find that the custom broker has already suffered a lot. The livelihood of the custom broker and the employees dependent upon is at stake. Even if one concludes only on the basis of contradictory statement of the director of exporter, that the custom broker had initial knowledge of the actual port of discharge to be different from the port of discharge declared in the shipping bills, the punishment suffered by him for two years is enough to mitigate his violation or contravention of Regulation 11D of CBLR 2013 (now Regulation 10D of 2018). We have also gone through the various case laws cited by the appellants, we find that this Tribunal was consistently holding though the custom broker is cast upon the responsibility, the mitigation of the same would lie in imposition of penalty and forfeiture of the security deposit and revocation of licence which is agreeably a very harsh punishment, which is not warranted in such circumstances. Therefore, we are of the considered opinion the interest of justice will be met if the revocation of custom broker licence is set aside while upholding the order inasmuch as forfeiture of security deposit and imposition of penalty are concerned.

14. The appeal no. C/86041/ is accordingly partly allowed by setting aside the impugned order as far as the revocation of custom broker licence is concerned.

(Pronounced in Court on 08.10.2021)

(S.K. Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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