CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85415 of 2020

(Arising out of Order-in-Original No. 77/CAC/PCC (G)/CBS (ADJ.) dated 09.01.2020 passed by the Principal Commissioner of Customs (General), Mumbai-I)

M/s N D Masrani **.... Appellant**
CB No. 11/303, 4th Floor, Rm. No. F-3, Pinncle Business Park, Mahakali Caves Road, Andheri East, Mumbai-400093.

Versus

Principal Commissioner of Customs-Mumbai-General **.... Respondent**
New Customs House, Ballard Estate, Mumbai-400001.

Appearance:

Shri Kuldeep Singh Nara, Advocate for the Appellant

Shri Manoj Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85514/2023

Date of Hearing: 31. 01.2023
Date of Decision: 31.03.2023

Per: Anil G. Shakkarwar

Present appeal is directed against order CAO No. 77/CAC/PCC (G)/CBS (Adj.) dated 09.01.2020 passed by the Principal Commissioner of Customs (General), New Custom House, Mumbai.

2. Brief facts of the case are that the appellants are holders of Customs Broker License Number 11/303 issued under regulation 9(1) of Custom House Agents Regulations, 2004. The Customs

Broker License was issued to the appellant by Mumbai Customs and was valid up to 31.12.2017. At Unaccompanied Baggage Centre, Air Cargo Complex, Sahar, Mumbai, one unaccompanied baggage was received from Sharja. The baggage was booked in the name of Ms. Usha Mudaliar. For clearance of the said baggage, a Baggage Declaration Form (BDF) bearing number 200892 was filed on 17.02.2017. The said baggage declaration form was signed by Shri Pinakin A. Sodha. Shri Pinakin A. Sodha was holder of CARDEX No. S-621 and he was working for the appellant i.e. M/s N D Masrani. Along with the baggage declaration form, list of items declared for Customs clearance was also filed and the said list was in the form of printed proforma having the name and logo of the appellant. The baggage declaration form, the printed proforma and an application addressed to Assistant Commissioner of Customs were signed by Ms. Usha Mudaliar and Shri Pinakin A. Sodha. When the above stated baggage was opened, 4.202 Kg of gold was found in the said baggage. Therefore, the statement of Shri Pinakin A. Sodha was recorded on 18.02.2017 and again on 11.05.2017 who stated *inter alia* that his job profile was related to complete the Customs formalities and documentations for clearance of unaccompanied baggage and that he reported to the appellant CHA firm. Investigations were further carried out and an inquiry was ordered against the appellant. It appeared to Revenue that the appellant had violated regulations 11(a), 11(b), 11(d), 11(e), 11(f), 11(m) and 11(o) of Custom Broker License Regulations, 2013. The inquiry officer conducted the inquiry and submitted inquiry report dated 08.07.2019. Subsequent to the same, by accepting the inquiry report, the impugned order was passed. The learned Commissioner through impugned order has found that the appellant had violated all the regulations which were stated earlier and imposed a penalty of Rs. 50,000/- on the appellant under regulation 18 of Custom Broker License Regulations, 2013, forfeited the entire amount of security deposit deposited by the appellant with Customs authorities and revoked Customs Broker License bearing No. 11/303 under regulation 18 of Custom Broker Licensing Regulations, 2013 (now regulations 14 of CBLR, 2018). Aggrieved by the said order the appellant is before this Tribunal.

3. Heard the learned Counsel for the appellant. The learned Counsel for the appellant has submitted that the inquiry officer has based his conclusions solely on the statements recorded by the investigation agency. He further submitted that the adjudicating authority without considering the defence has simply accepted the inquiry report and passed the order and the same therefore, is not sustainable in law. In respect the charge that the appellant has failed to advice his client to comply the provisions of Customs Act, he has submitted that the passenger herself has signed the declaration stating that she is not carrying any contraband goods in the baggage. He has further submitted that the original authority has passed the order without application of mind.

4. Heard the learned AR. Learned AR has submitted that Ms. Usha Mudaliar stated in her statement that she had handed over her passport to Ms. Durriya Soni as she has promised a job in Dubai and some money and that she also had stated that she had signed some documents given to her by Ms. Durriya Soni on 15.02.2017. He further submitted that Shri Pinakin A. Sodha has cleared 43 consignments through unaccompanied baggage centre

mainly for Shri Yusuf Lokhandwala and Ms. Durriya Soni in similar fashion. He further submitted that statements of importers in some of the said 43 consignments were recorded and it revealed that the consignments were not imported by the passport holders and they were not even aware of such import taking place in their name. He further submitted that Shri Pinakin A. Sodha in his statement recorded on 18.02.2017 and 11.05.2017 *inter alia* submitted that he was paid Rs. 25,000/- to 30,000/- per consignment which was inclusive of all expenses and the said payment was made to him in cash against delivery of goods by Shri Yusuf Lokhandwala and that his job profile relates to Customs formalities and documentations for clearance of unaccompanied baggage and that he reported to Shri Mehul K. Masrani, who was partner of the CHA firm M/s N D Masrani, who is appellant in this case. Learned AR has further submitted that original authorities order is elaborated, reasoned and with application of mind. He has further submitted that as per the daily order sheet during inquiry dated 09.04.2019 it was stated before inquiry officer by Shri Kantilal Dayabhai Masrani partner of the appellant firm that at the time of incidence Shri Pinakin A. Sodha was employee of their firm. He has submitted that the appellant is responsible for the use of Customs Broker License by its employees and presence of printed baggage declaration list of items containing unaccompanied baggage having the logo and the name of the appellant indicates involvement of the appellant in dealing with the goods which were found undeclared in the accompanied baggage.

5. This Bench has carefully gone through the records of the case and the submissions made. This Bench has gone through the

grounds of appeal as well as submissions made. This Bench has not found that the impugned order was passed without application of mind nor this Bench has found that the impugned order is unreasoned and arbitrary. This Bench, therefore, upholds the impugned order, does not interfere with the same and reject this appeal.

6. This appeal is rejected.

(Order pronounced in court on…………………………………..)

(Anil G. Shakkarwar)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Sinha

Per: Dr. Suvendu Kumar Pati

7. I have gone through the draft order prepared by my Learned Brother and I fully agree with the findings at which he has arrived at. To further substantiate my agreement with his finding, I consider it appropriate to add few lines on the merit of this appeal, which can be summarised as under

8. The appellant has all along contested the appeal on the ground that CB firm cannot be held responsible in the event of any illegal work, if any, committed by his employee in his personal capacity while carrying out the civil legal works. Appellant has taken divergent stand concerning the standing of Mr. Pinakin A. Sodha, alleged employee of its firms by stating that the said Mr.

Pinakin A. Sodha was an employee of CB firm only up to 2005 and while seeking renewal of the CB licence his name was included in the list of employees that was annexed to the licence application form but ultimately admitted that he was provided with a G-category card issued by the appellant firm, he was looking after the day today work of the CB firm, as an active partner of the said firm. Mr. Kantilal D. Masrani aged about 86 years then was not keeping good health. Strangely in citing judgment of this Tribunal passed in the case of *Smita International vs. Commissioner of Customs (G), Mumbai 2008 (225) ELT 439 (Tri-Mumbai).* Appellant seeks indulgence of this Tribunal in not accepting the finding of the Commissioner that was passed on the statement recorded under 108 of the Customs Act, 1962 but relied upon in proceedings under CBLR, 2013, which according to the relied upon judgment, is not to be taken as admissible evidence in CBLR proceedings. However, as we have observed from the Daily Order sheet copy of the enquiry proceedings conducted by the Asst. Commissioner, CGST Audit II, Mumbai annexed to appeal memo at page 203 and 204, it is an undisputed fact that Mr. Pinakin A. Sodha was an employee of CHA firm and was in possession of customs pass that got renewed for the entire period of subsistence of licence. Therefore, such evidence recorded by the Assistant Commissioner during the enquiry proceedings is admissible evidence since the same cannot stand in the footing of statement recorded under 108 of Customs Act, 1962 and the same is in compliance with Regulation 17 of CBLR 2018.

9. Appellant has also challenged the legality of revocation of its licence on the basis of the enquiry report findings on the ground of unreasonable delay of one year and three months, while CBLR,

2013 Regulation 21 dictates that the said enquiry has to be completed within 90 days. We are not in agreement with the appellant's submission for the reason that Learned Commissioner had dealt with this aspect and attributed the delay to the non-cooperation of the appellant who did not facilitate for early completion of the enquiry and sought accommodation/ adjournments at intervals and in citing the recent judicial decision of this Tribunal passed in the case of *Unison Clearing P. Ltd.* reported in 2018 (361) ELT 321 (Bom), she observed that such delay is not fatal to the outcome of enquiry and would not defeat its purpose. This being the factual and legal scenario, and while accepting the involved person named Mr. Pinakin A. Sodha to be an employee of the appellant firm, despite the fact that payment of fixed remuneration to him was denied, we are of the considered opinion that custom broker is to be held responsible for acts and omissions of his employees during their employment in view of the operation of section 17(9) of the CBLR, 2013 for which we also confirm the order of revocation of CB licence of the appellant along with imposition of penalty of ₹50,000/- and forfeiture of its security deposit amount made under Regulation 18 of CBRL, 2013. Section 17(9) of the Customs Brokers Licensing Regulations, 2013 reads –

> *"(9) 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 <u>he shall be held responsible for all acts or omissions of his employees during their employment</u>.*"(underlined to emphasise)

10. At this juncture, it is also required to be mentioned here that cause of action in seeking relief through this appeal has already expired since 31.12.2017 even before the order of Commissioner

Customs was passed, as appellant was granted licence to operate as customs broker up to that date and thereafter nothing is available on record to indicate that appellant had sought for renewal or obtained for a new licence to operate as customs broker after expiry of its existing licence under revocation, for which outcome of this appeal would have no resultant effect on the appellant's future entitlement.

11. With these observations, I concur with the findings of Hon'ble Member (Technical) that appeal is not maintainable and same is liable to be dismissed.

(Dr. Suvendu Kumar Pati)
Member (Judicial)

The Order

The appeal is dismissed and the order passed by the Principal Commissioner of Customs (General), Mumbai dated 09.01.2020 is hereby confirmed.

(Order pronounced in Court on 31.03.2023)

(Anil G. Sakkarwar)	**(Dr. Suvendu Kumar Pati)**
Member (Technical)	**Member (Judicial)**

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