

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86874 OF 2022

[Arising out of Order-in-Original No: 13/CAC/PCC(G)/SJ/CBS Adj dated 23rd May 2022 passed by the Principal Commissioner of Customs (General), Mumbai.]

D P Logistics Pvt Ltd

601/602 Raikar Chambers, K D Marg,
Govandi (East), Mumbai 400088

... Appellant

versus

Principal Commissioner of Customs (General)

New Customs House, Ballard Estate, Mumbai - 400001

... Respondent

APPEARANCE:

Shri Prashant Patankar, Consultant for the appellant

Shri Ram Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

**HON'BLE MR S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)**

FINAL ORDER NO: A / 86015/2023

DATE OF HEARING:

03/01/2023

DATE OF DECISION:

28/06/2023

PER: C J MATHEW

The limited issue for determination in this appeal of M/s DP

Logistics Pvt Ltd, against order¹ revoking their ‘customs broker’ licence (no.11/348) and forfeiting security deposit under regulation 14 of Customs Broker Licencing Regulations, 2018, besides imposing penalty of ₹ 50,000 under regulation 17 of Customs Broker Licencing Regulations, 2018, by Commissioner of Customs (General), New Custom House, Mumbai, is their claim of injustice having been done to them on the ground that the impropriety of their Director, Bhavin Vijay Pujari, operating for his personal benefit in dealing with M/s Dhariya International, an exporter, has been unfairly laid at their door. Their primary contention that it is not they but the said individual, also the ‘G’ card holder of the licensee, had been proceeded against for imposition of penalties under Customs Act, 1962 in notice dated 31st May 2019. It was further contended by them that he had since resigned his directorship and that the appellant had also terminated his employment.

2. Briefly, M/s Dhariya International had filed twelve shipping bills on 27th November 2018 for export of 3,55,374 pieces of ‘readymade garments’ under incentive scheme which, upon examination of the two containers, was found to be comprising of 1,49,148 pieces of ‘girls shorts and T-shirts’ and liable to seized for misdeclaration of value and quantity. In the course of investigations, it was admitted by the exporter, as well as the said individual, that the

¹[order no. 13/CAC/PCC(G)/SJ/CBS Adj dated 23rd May 2022]

full extent of illegality in export was within their knowledge and both admitted to financial transactions in cash for each such clearance. Offence report dated 3rd January 2019 led to suspension of licence and, thereafter, show cause notice was issued to the appellant on 17th July 2019 charging them with breach of regulation 10(a), 10(d), 10(e) and 10(n) and also of regulation 13(12) of Customs Broker Licencing Regulations, 2018. The inquiry report of 31st January 2022 held all the charges as proved and, thereafter, the detriments *supra* were ordered by the licencing authority.

3. It is the claim of Learned Consultant for the appellant that their employee had not, at any stage, suggested that the appellant-company was ever involved in the attempt at export or had received any payment from the exporter. He pointed out that the exporter too had not brought the licensee into any of his statements. He also drew attention to the failure in adhering to the timelines prescribed in the Customs Broker Licencing Regulations, 2018 and that the inquiry had been undertaken in the absence of the appellant after refusal of the inquiry authority to allow cross-examination of the two individuals whose statements were proposed to be used against them.

4. Learned Authorized Representative argued that the resignation of the employee was nothing but an afterthought and that the appellant clearly stood to benefit from the conspiracy to secure incentives that

the exporter was not entitled to.

5. On perusal of the inquiry report and the impugned order, we note lack of any finding on each of the charges levelled against them. Both these records merely note the facts leading to the suspension, the statements of the employee and exporters and justification for not permitting cross-examination. Thereafter, the whole of it has been concluded thus

'16.5. It is seen that the statements of the Exporter as well-as the Customs Broker's 'G card holder are in concordance with each other and the Customs Broker's role in this export fraud is crystal clear. Also it is noticed that the exporter has voluntarily paid an amount of Rs.75 Lakhs against the inadmissible export benefits availed by them during the past Further, as per available record, the DRI has inputs that the Customs Broker may be adopting similar Modus Operandi for other exporters as well. I find that the Custom Broker M/s D.P. Logistics Pvt Ltd and its G-Card holder, Shri Bhavin Vijay Pujara have failed to fulfil the obligations as required under Regulations of CBLR, 2018 and that the G card holder cum one Director of the Custom Broker firm has been found hand in glove with the guilty exporter, filed Shipping Bills mis-stating the excess quantity intentionally in order to enable the exporter to avail inadmissible export incentives, which were subsequently being shared by them.

16.6 In this case, the investigation clearly brought out the connivance of the CB firm M/s D.P. Logistics Pvt Ltd. Mumbai and the G Card holder, Shri Bhavin Vijay Pujara and mis-conduct on their part by facilitating export of goods which are overvalued and mis-declaration in their quantity.

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16.8 Thus is is on record that the CB acting through his Director cum G card holder has never obtained proper authorizations in the first place. Since they are hand in glove with the Exporter to cheat the Government, giving a proper advice or exercising due diligence does not arise at all. Neither the CB was carrying out his responsibility of verifying the KYC of the client through independent reliable sources. As per the Regulation 13(12) the CB shall be held responsible for the acts of his employees in conducting the customs broker business. By saying that their G card holder cum Director has acted in his personal capacity, the CB cannot escape his responsibilities.

16.9 Thus, From the above facts, I conclude that Customs Broker M/s D.P. Logistics Pvt. Ltd. CB No. 11/348 did not exercise due diligence in discharging their obligation as required under Regulation 10(a), 10(d), 10(e), 10(n) and 13(12) of CBLR, 2018 and therefore rendered themselves liable for penal action under CBLR, 2018.'

There is, thus, no finding on the charges that could justify the conclusion that these were correctly held to be proved.

6. It is not in dispute that the derelict individual was discharged from employment and relived of his directorship promptly. It is also not alleged anywhere that the other directors were parties to, or cognizant of, the scheme of deception to avail incentives undeservedly. Nor is there any evidence the appellant derived any financial compensation, small or large, from the exporter. Indeed, the

impugned order is categorical solely on the vicarious role of the appellant in the entire misdemeanour. Therefore, the finding of charges for breach of regulation 10 of Customs Broker Licencing Regulations, 2018 has no basis at all.

7. The appellant, nonetheless, has to answer for breach of regulation 13(12) of Customs Broker Licencing Regulations, 2018. Bhavin Pujar was an employee of the appellant at the relevant time. There is a clear finding on this score that is difficult to repudiate on the admitted facts of participation by the said individual in the failed attempt at export. That this provision exists is clear intent that misdemeanour of employee is separate ground for proceeding against licensee in pursuance of vicarious responsibility even if licensee is not an active participant in breach of Customs Act, 1962; such a separate provision is redundant if every breach by an employee were to be treated as breach by licensee. Therefore, while on the finding of the licencing authority *supra*, the appellant cannot be held to have been in breach of regulation 10 of Customs Broker Licencing Regulations, 2018, on failure to ensure responsible discharge of duties by an employee, which has not been repelled in their submissions, the charge of breach of regulation 13(12) of Customs Broker Licencing Regulations, 2018 must be held as proved.

8. Detriment must, invariably, be proportionate to the offence. In

the light of the truncated findings of ours, interests of justice would be adequately served by confirming the penalty of ₹ 50,000 under regulation 17 of Customs Broker Licencing Regulations, 2018. The revocation of licence and forfeiture of security deposit ordered under regulation 18 of Customs Broker Licencing Regulations, 2018 are set aside.

9. Appeal is allowed to the above extent and impugned order modified accordingly.

(Order pronounced in the open court on 28/06/2023)

(S.K. MOHANTY)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*