CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH : MUMBAI

Customs Appeal No. 86523 of 2023

(Arising out of Order-in-Original CAO No. 11/CAC/PCC(G)/SJ/CBS Adj dated 22.05.2023 passed by Principal Commissioner of Customs (General), New Custom House, Mumbai.)

JZN Logistics **.....Appellants**
(CB License No. 11/1670)
47/A, Shakti House, Little Malabar Hill,
Sindhi Society, Chembur, Mumbai-400071.

VERSUS

Principal Commissioner of Customs (General), Mumbai **.....Respondent**
New Custom House, Ballard Estate,
Mumbai–400 001.

Appearance:

Shri N.D. George, Advocate for the Appellants
Shri S.K. Hatangadi, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85007/2024

Date of Hearing: 22.09.2023
Date of Decision: 05.01.2024

PER : M.M. PARTHIBAN

This appeal has been filed by M/s JZN Logistics (herein after, referred to as 'the appellants'), holders of Customs Broker License No. 11/1670 assailing Order-in-Original CAO No. 11/CAC/PCC(G)/SJ/CBS Adj. dated 22.05.2023 (herein after, referred to as 'the impugned order') passed by the learned Principal Commissioner of Customs (General), New Custom House, Ballard Estate, Mumbai-I.

2.1. Briefly stated, the facts of the case are that the appellants herein is a Customs Broker (CB) holding a regular CB license issued by the Mumbai Customs under Regulation 9(1) of Custom House Agents Licensing Regulations, 2004 [now 7(2) of Customs Brokers Licensing Regulations (CBLR), 2018]. An offence report dated 14.10.2022 was received from the Central Intelligence Unit (CIU) of New Custom House (NCH), Mumbai-I, informing that on reasonable suspicion they had kept on hold certain imported goods in container No. TEMU 8525264 imported by M/s Reton Engineering, for which Bill of Entry (B/E) No.2049316 dated 17.08.2022 has been filed by the appellants.

2.2. On the basis of such offence report received from CIU, NCH, Mumbai, the jurisdictional Principal Commissioner of Customs (General), Mumbai-I had concluded that there is a prima facie case against the appellants for having contravened Regulations 10(d) and 10(m) of CBLR, 2018. Accordingly, he had immediately suspended the CB license of the appellants under Regulation 16(1) *ibid*, vide Order No. 53/2022-23 dated 23.12.2022; and such suspension was continued vide Order No. 62/20221-23 dated 10.01.2023; further the department had initiated show cause proceedings by issue of notice No. 32/2022-23 dated 24.01.2023 for initiating inquiry proceedings under Regulation 17 *ibid*, against violations of CBLR as above.

2.3. Upon completion of the inquiry proceedings, an inquiry report dated 01.03.2023 was submitted concluding that both charges framed against the appellants CB have been proved. Accordingly, the Principal Commissioner of Customs (General), Mumbai, being the licensing authority had passed the impugned order dated 22.05.2023 under Regulations 17(7) and 18 *ibid,* for revoking CB License of the appellants and for forfeiture of entire amount of security deposit, besides imposition of penalty of Rs.50,000/- on the appellants. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

3.1. Learned Advocate for the appellants contends that both the allegations of violation of Regulations 10(d) and 10(m) of CBLR, 2018 have been countered by them. In respect of Regulation 10(d), he stated that all the declarations in the B/E were made on the basis of documents given by the importers, and the appellants were neither aware of the mis-declaration of imported goods in terms of its description, brand name etc.; they claimed that the appellants were in no manner connected with the violations of the Customs law in relation to non-production of BIS certification, compliance with mandatory declarations on the packages under Legal Meteorology Packaged Commodities. He also stated that the appellants had discharged their duties as CB diligently and there is no complaint of any delay or inefficiency in handling of customs clearance of imported goods in this case. Thus they claimed they did not contravene the Regulations 10 (d) and 10(m) *ibid*.

3.2. In support of their stand, the learned Advocate relied upon the judgements of the Hon'ble Supreme Court in the case of *Andaman Timber Industries Vs. Commissioner of Central Excise, Kolkata-II* reported in 2015 (324) E.L.T. 641 (S.C.). and the judgement of High Court of Telangana in the case of *Shasta Freight Services Private Limited Vs. Principal Commissioner of Customs* reported in 2019 (368) E.L.T. 41 (Telangana) which was also affirmed by the Hon'ble Apex Court reported in 2022 (381) ELT 436 (SC).

4. Learned Authorised Representative (AR) reiterated the findings made by the Principal Commissioner of Customs (General) in the impugned order and submitted that both the violation under sub-regulations (d) and (m) of Regulation 10 *ibid*, has been examined in detail by the Principal Commissioner. The appellants CB did not declare the complete details of the imported goods and the mandatory declarations required under BIS, WPC certification, Legal Meteorology Packaged Commodities Rules. Thus, learned AR justified the action of Principal Commissioner of Customs (General) in revocation of the appellant's CB license, imposition of penalty and forfeiture of security deposit in the impugned order and stated that the same is sustainable in law. It is further stated by him that the impugned order viewed that the timelines specified in CBLR are directory in nature and not a mandatory factor.

5. Heard both sides and perused the case records. We have also considered the additional written submissions given in the form of paper book by learned Advocate for the appellants as well as Authorised Representative for the Revenue.

6.1. The issue involved herein is to decide whether the appellant Customs Broker has fulfilled all his obligations as required under CBLR, 2013 or not.

The specific sub-regulations which were alleged to have beenviolated by the appellants are Regulations 10 (d) and 10(m) *ibid*, and hence there are two distinct charges framed against the appellants. We also find that the impugned order dated 23.05.2023 has been passed by the Principal Commissioner of Customs (General) after taking into consideration the written submissions made by the appellants and the record of oral submission made at the time of personal hearing on 27.04.2023, for considering the charges of violations against them, before passing the impugned order. Thus, we are of the considered view that sufficient and reasonable opportunity was given to the appellants before passing an order, in respect of charges framed against them.

6.2. We find that the Regulation 10 of CBLR, 2018, provide for the obligations that a Customs Broker is expected to fulfill during their transaction with Customs in connection with import and export of goods. The specific sub-regulation (d0 and (m) relevant to this case are extracted and given below:

"Regulation 10. Obligations of Customs Broker: -

A Customs Broker shall -

...

(d) 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;

...

(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;"

6.3. We find that the Principal Commissioner of Customs had come to the conclusion that the failure to declare the complete particulars in respect of imported goods by uploading of incomplete invoice in e-sanchit, wherein details such as model no., were not mentioned; importers were not properly advised to submit ETA/WPC certificates for wireless earphone/ear buds/smart watches; labelling/mandatory declaration of details on retail package not advised to the importer as the omissions and commissions on their part for contravention of Regulations 10(d) and 10(m) *ibid*. Thus, he had taken the view that the appellants are liable for the violations of non-compliance with aforesaid Regulation 10 (d) and 10(m) of CBLR, 2018.

7.1. We find from the factual matrix of the case, that the imports for which the appellants CB have filed the B/E relate to two 26 items in 898 cartons mainly consisting of adhesive cello tapes, earphones, mobile back cover, lithium battery, smart watch, caliper for two wheeler, neck band wireless ear phone etc. These goods have been described in detail in Table-I and Table-II of the impugned order. From the above factual details, we find that the appellants CB had declared the description of the imported goods and other details in the B/E for aforesaid imports as given in the invoices and packing list provided by the importer. Further, the appellants were not aware of the package of the imported goods as there was no evidence to whether it was in individual packing or in bulk packing. It is not the case of the Revenue that the mandatory declarations in respect of the imported goods was deliberately not mentioned by the appellants CB, despite the details having been made available by the importer. In fact the plea made by the appellants is that the importer had promised to submit the required documents in respect of WPC certificates, declarations required under BIS/Legal Meteorology and Packaged Commodity Rules. However, in respect of imported goods vide B/E No.2049316 dated 17.08.2022, even before the submission of the complete details, the Central Intelligence Unit (CIU) investigation, as per the directions of the Principal Commissioner of Customs had already put on hold the container No. TEMU 8525264, and examined the goods under Panchanama proceedings on 26.08.2022. Thus, the appellants could not submit the complete details in respect of the imported goods. The facts also revealed that during an investigation by CIU, the appellants CB had submitted the BIS certificates and ETA (self-declaration) one time import permission in respect of few imported goods, which the customs authorities have found to be proper. This has also been recorded in paragraph 2.2 of the impugned order. In the absence of any document to prove that the appellants CB had purposefully mis-declared the description or other details of imported goods, it is difficult to fasten liability for the violation of Regulation 10(d) ibid on the appellants for not advising their clients or informing the Customs Authorities in respect of the details that was not furnished at the time of filing of bill of entry.

7.2 Learned Principal Commissioner of Customs (General) had come to the conclusion that the appellants CB had violated the provision of Regulation 10(m) *ibid,* on the basis that the appellants have not uploaded the correct documents and by not seeking necessary clarification from the importer, which led to the inefficiency in handling transactions with the Customs. Therefore, the learned Principal Commissioner of Customs had concluded that the appellants have failed to discharge their obligations cast on him under Regulation 10(m) ibid.

7.3 We find from the records, that the appellants CB had filed the bill of entry on the basis of invoice and packing list, providing the details of brand-name, model number, battery ratings/capacity, nature of goods such as neckband or wireless type earphone etc. Thus, we find that the appellants CB has been careful and diligent in submitting the complete details inasmuch as the same are available in the invoice, packing list while submitting the bill of entry before the customs authorities. There is no evidence or any document to prove that the appellants CB contributed to the delay or inefficiency, in handling the import transaction. Thus, we do not find any merits or any evidence to prove that the appellants are violated the requirements or obligations under Regulations 10(m) ibid.

8.1 We also find that the appellants CB had specifically requested for cross examination of the importer and the persons whose statements were recorded by the Inquiry Officer on 07.02.2023. However, no reasons were given for declining the cross examination to the appellants; further the learned Principal Commissioner of Customs had upheld the denial of cross-examination by the Inquiry officer, as there is no reliance on any statements of the importer and such evidence is not relevant. In this regard, we find that in both the charges against the appellants, they have taken the plea that the importers are supposed to provide additional documents in respect of WPC license etc., and there was no complaint of any delay or inefficiency on their part from the importer. Thus it is very clear that unless the opportunity is given to prove or disprove the above stand taken by the appellants, the basis on which the charges were framed by the Department for violation of Regulations under 10(d) and 10(m) cannot be proved with evidence. Thus we find that there is a failure in the Inquiry proceedings to comply with the requirement of providing natural justice under Regulation 17(4) ibid.

8.2. We find that in the case of *M/s Shastha Freight Services Pvt. Ltd.* (supra), the Hon'ble High Court of Telangana had clearly held the non-compliance with providing of opportunity of cross examination to a Customs broker in the inquiry proceedings as violation of principles of natural justice under 17(4) of the CBLR, 2018. The relevant paragraphs of the above said order is extracted below:

> ***"20.*** *The second contention of the Learned Counsel for the petitioner is that no opportunity to cross-examine the witnesses was granted, despite the petitioner making a request. We have already seen that under Regulation 20(4) a Customs Broker is entitled to cross-examine the witnesses. But Regulation 20(4) is carefully worded. The entitlement of the Customs Broker to cross-examine, is confined only to "persons examined in support of the grounds forming a basis of the proceedings". The Inquiry Officer viz., the Deputy Commissioner or Assistant Commissioner is entitled under Regulation 20(4) to decline to examine any person on the ground that his evidence is not relevant or material. But he shall record his reasons in writing for so doing. Keeping this in mind, we shall now see the enquiry report to find out whether there was violation of Regulation 20(4).*
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> ***23.*** *But unfortunately, the request for cross-examination was rejected by the Enquiry Officer for the reasons stated in paragraph 27 of his report. Paragraph-27 of the enquiry report reads as follows :*
>
> > *"27. As the request for cross-examination of witnesses was made to the Assistant Commissioner (Inquiry Officer) during the 4th PH, necessary correspondence to facilitate the same on 8-1-2018 were made as detailed in para 17 above. While the noticee has further requested for a fresh date and time for cross-examination with at least one week notice; but since the inquiry report has to be submitted within a period of 90 days from the date of issue of Notice as per Regulation 20(5) of the CBLR, 2013, the same is not possible for consideration. Further it needs to be stated that neither of the witnesses has turned up for cross-examination on the scheduled date, despite even an oral communication about the same to Shri Pramod Bhor. … … … Given that the request for cross-examination of persons (whose statements been recorded) was put forth to the Assistant Commissioner on 18-12-2017 only, efforts to enable the same within the time-constraints of inquiry proceedings as per the Regulation 20(5) of CBLR, 2013 were made. Moreover, the primary submission, dated 6-11-2017, was neither directed to the Inquiry Officer nor was the CB forthcoming to either attend the PH or submit supporting documents, until withdrawal of the notice by the Principal Commissioner of Customs. In the event of no such withdrawal and given the limitations of time, but keeping in view of the requirements of providing opportunity of being heard (which were not attended by the CB) and given the non-presentation of witnesses for cross-examination, it is to state that the findings are based on the available documents at hand i.e. the offence report, statements of Arjun Pilane and Pramod Bhor, the Prohibition order and the submissions of the CB, read with CBLR, 2013."*
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> ***24.*** *Therefore, it is clear that there was a gross violation of the principles of natural justice. Unfortunately for the Department, the principles of natural justice have also been in-built into Regulation 20(4). Therefore, the Enquiry Officer could not have violated the mandate of law. It would have been a different matter if the Enquiry Officer had chosen not to rely upon the statements of those two witnesses, but to proceed only on the basis of*

other available documents. But in more than one place, the Enquiry Officer affirmed his reliance upon the statements of witnesses, among other things. Therefore, the impugned order based upon such an enquiry report is contrary to the procedure prescribed by Regulation 20(4) and clearly in violation of the principles of natural justice.”

We find the said order has also been affirmed by the Hon’ble Supreme Court by dismissing the Special Leave to Appeal filed by the Department in Appeal (C) No.18136 of 2019 by its judgement dated 21.07.2022.

2022 (381) E.L.T. 436 (S.C.)
Petition for Special Leave to Appeal (C) No. 18136 of 2019 with Diary No. 113 of 2020, decided on 21-7-2022

“SLP (C) No. 18136/2019 : *In the facts and circumstances of the case and in view of the specific finding recorded by the High Court to which we are also satisfied that there was a breach of Regulation 20(4) of the Customs Brokers Licensing Regulations, 2013, we see no reason to interfere with the same in exercise of powers under Article 136 of the Constitution of India.*

2.*The Special Leave Petition stands dismissed.”*

8.3. We also find that in the case of *M/s Andaman Timber Industries (Supra)*, the Hon’ble Supreme Court had held the need for providing cross examination opportunity and its’ denial without sufficient cause, as violations of principle of natural justice. The relevant portion of the said order is extracted below:

“6. *According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.*

7. *As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose* *of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17-3-2005 [2005 (187) E.L.T. A33 (S.C.)] was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.*

8. *In view the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the show cause notice.*

9. *We, thus, set aside the impugned order as passed by the Tribunal and allow this appeal."*

9. From the above facts of the case and the above orders of the Hon'ble Supreme Court in support of our considered views in this case in respect of the compliance with respect to Regulation 17(4) *ibid,* we find that there is no sufficient grounds to legally sustain the impugned order.

10. In view of the foregoing discussions, we do not find any merits in the impugned order passed by the learned Principal Commissioner of Customs (General), Mumbai in revoking the CB license of the appellants; and for forfeiture of entire security deposit, inasmuch as there is no violation of Regulation 10(d) and 10(m) of the CBLR, 2018, and the findings in the impugned order is contrary to the facts on record.

11. In the result, we set aside the impugned order and allow the appeal in favour of the appellants.

(Order pronounced in open court on 05.01.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha