

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

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85939 of 2019

(Arising out of Order-in-Original CAO No. 40/CAC/CC(G)/RC/CBS (Adj.) dated 24.01.2019 passed by Commissioner of Customs (General), New Custom House, Mumbai.)

SSS Sai Shipping Services Private Limited

.....Appellants

(CB License No. 11/999)

A-304 Classique Centre, Plot No.26,
Mahal Industrial Estate, Off. Mahakali Cross Road
Andheri (East), Mumbai-400 093.

VERSUS

Commissioner of Customs (General), Mumbai

.....Respondent

New Custom House, Ballard Estate,
Mumbai-400 001.

Appearance:

Shri N.D. George, Advocate for the Appellants

Shri Manoj Kumar, 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/87470/2023

Date of Hearing: 21.06.2023

Date of Decision: 21.06.2023

PER : M.M. PARTHIBAN

This appeal has been filed by M/s SSS Sai Shipping Services Private Limited (herein after, referred to for short, as 'the appellants'), holders of Customs Broker License No. 11/999 assailing Order-in-Original CAO No. CAO No. 40/CAC/CC(G)/RC/CBS (Adj.) dated 24.01.2019 (herein after, referred to as 'the impugned order') passed by the learned 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 7(2) of Customs Brokers Licensing Regulations (CBLR), 2013. The CB is also transacting business at Jamnagar Customs

Commissionerate under Regulation 7(3) of CBLR, 2018 (earlier, Regulation 10(2) of CHALR, 1984). A specific intelligence was received by Headquarters Preventive Unit of Jamnagar Customs Commissionerate (HPU) regarding an importer viz., M/s Fourcee Infrastructure Equipments Pvt. Ltd. Mumbai who is engaged in the import of containers on re-export basis through Pipava port was availing the customs duty exemption vide Notification No.104/94-Cus. dated 16.03.1994; however, the said importer failed to follow the procedure laid down in the notification and they did not re-export the empty containers after the prescribed period of 6 months. Accordingly, the Department initiated investigation and found that the importer had filed Bill of Entry No. F-022/13-14 dated 12.06.2013 for clearance of 100 SWAP body (fluid) containers through the appellants CB by availing customs duty exemption under Notification No.104/94-Cus. dated 16.03.1994, did not either re-export those containers after prescribed period of 6 months or obtain permission from the appropriate authority for extension of the prescribed period for its re-export. Accordingly, the Department sought to recover the duty of Rs. 4,14,07,451/- involved in respect of 100 containers imported duty free under Notification No. 104/94-Customs which were failed to be re-exported and seized 100 empty containers lying in CWC, Kalamboli CFS at Nhava Sheva port vide seizure memo dated 05.09.2014. The importer did not respond to various summons issued by Customs investigation authorities. Thus, the department issued show cause notice dated 29.01.2015 under various provisions of the Customs Act for recovery of duty and for imposition of penalty on the importer and for imposition of penalty on appellant CB under Section 114A of the Customs Act, 1962. Further, the Jamnagar Customs authorities had informed the jurisdictional customs authorities at Mumbai for taking necessary action on the CB, as they failed to advise the importers, failed to impress upon them to discharge customs duty liability.

2.2. On the basis of such offence report/letter received from Jamnagar Customs authorities, the jurisdictional Commissioner of Customs (General), Mumbai-I had concluded that there is a prima facie case against the appellants for having contravened Regulations 11(d), 11(e) and 11(m) of CBLR, 2013 (presently Regulations 10(d), 10(e) and 10(m) of CBLR, 2018). Accordingly, he had inquiry proceedings under Regulation 20 *ibid* was initiated by issue of show cause notice dated 05.11.2015 against violations of CBLR as above.

2.3. Subsequently, the Commissioner of Customs (General), Mumbai-I had replaced the Inquiry Officer with a new officer on 27.12.2017, so as to complete the inquiry proceedings at the earliest. Upon completion of the inquiry, a report was submitted on 20.07.2018 concluding that all charges framed against the appellants have been proved. Accordingly, the Commissioner of Customs (General), Mumbai, being the licensing authority had passed the impugned order dated 24.01.2019 under Regulations 20(7) and 18 *ibid*, for imposition of penalty of Rs.50,000/- on the appellants, but refrained from revoking the CB License issued to the appellants and for not forfeiting security deposit, as the appellants CB had already suffered in terms of business and reputation. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

3.1. Learned Advocate for the appellants contends that each of the allegations of violation Regulations 11(d), 11(e) and 11(m) of CBLR, 2013 have been countered by them. In respect of Regulation 11(d), *ibid*, they claimed that all their clients are regularly advised to comply with the customs laws and regulations, and the department had not adduced any evidence to claim that the appellants CB had failed to advise the importer. As the importer is a shipping line and importer, the department could have investigated them and recorded their statements. In respect of the allegation against violation of Regulation 11(e) *ibid*, the Advocate claimed that there was no mis-declaration in the import or non-compliance with the notification conditions at the time of import as there is no ground to invoke the claim that the CB appellant had failed to exercise due diligence in ascertaining the correctness of information in imparting the same to their client. In respect of allegation against the CB for violation of Regulation 11(m) *ibid* that he did not discharge his duties with utmost speed and efficiency, he stated that the appellant CB had taken permission of the Commissioner for filing manual Bill of Entry (B/E) on 10.06.2013 and cleared the imported empty containers on 12.06.2013 duly discharging the conditions of the notification No. 104/94-Customs. In view of the above, he claimed that they did not contravene the Regulations 11(d), 11(e) and 11(m) of CBLR, 2013.

3.2. In respect of non-compliance to the time lines laid down in the regulations for various actions under inquiry proceedings, they claimed that there was gross delay in the conclusion of inquiry proceedings for which there is no explanation, without prejudice their submission on merits, they

stated that on the ground of non-adherence with the time limits, the impugned order is liable to be set aside. In view of the above, they requested that impugned order imposing penalty on the appellants CB be set aside and consequential relief be granted to them.

4. Learned Authorised Representative (AR) reiterated the findings made by the Commissioner of Customs (General) in the impugned order and submitted that each of the violation under sub-regulations (d), (e) and (m) of Regulation 11 *ibid*, has been examined in detail by the Commissioner. Thus, learned AR justified the action of Commissioner of Customs (General) in imposition of penalty 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.

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 violated by the appellants are Regulations 11(d), 11(e) and 11(m) *ibid*, and hence there are three distinct charges framed against the appellants. We also find that the impugned order dated 24.01.2019 has been passed by the 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 18.01.2019, 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 and there is no infirmity of the impugned order in not following the principles of natural justice in this regard.

6.2 We find that the Regulation 11 of CBLR, 2013, provide for the obligations that a Customs Broker is expected to be fulfilled during their transaction with Customs in connection with import and export of goods. These are as follows:

"Regulation 11. 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;

...

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

...

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

6.3. We find that the Commissioner of Customs had come to the conclusion that the appellants CB had contravened Regulations 11(d), 11(e) and 11(m) *ibid*, as he has not produced any evidence to suggest that they had taken efforts to advise their client to pay duty, in respect of non-fulfillment of the conditions of notification No. 104/94-Customs by the importer; appellants CB did not exercise due diligence to ascertain as to whether the importer has imparted correct information as to whether the imported containers are for home consumption or for re-export purpose; CB was not aware who among his employees attended the clearance work for the importer. Further, the Commissioner had observed that appellant CB had shown carelessness while conducting his business and in a prejudicial to the interest of the department and did not bother to report non-compliance to the concerned Assistant/ Deputy Commissioner of Customs. Thus, he had imposed penalty on the appellants CB under Regulation 22 of CBLR, 2013.

7.1. We find from the factual matrix of the case, that M/s Fourcee Infrastructure Equipments Pvt. Ltd., Mumbai had imported 100 numbers of SWAP body (fluid) containers, for which Bill of Entry No. F-022/13-14 dated 12.06.2013 was filed by the appellants as Customs Broker. The investigation conducted by HPU of Jamnagar Commissionerate indicated that the importer by holding dual status of shipping line as well as importer had adopted a modus operandi of clearing the imported containers for re-export by availing the benefit of duty exemption under Notification No. 104/1994-Customs dated 16.03.1994, but put to use the said containers for home consumption and did not re-export the same within the prescribed time of 6 months or obtain necessary extension of time for re-export.

7.2 We find that the role of appellants in the above import transaction is to file necessary Bill of Entry properly in compliance with the legal provisions of the Customs statute. Accordingly, we find that the appellants

CB had taken necessary permission of the Customs authorities for filing the manual B/E on 10.06.2013 and filed the Bill of Entry No. F-022/13-14 on 12.06.2013 for clearance of imported containers by availing customs duty exemption under Notification No. 104/94-Customs dated 16.03.1994. In this regard, we find that the said notification provides for exemption from whole of the duties of Customs to containers which are of durable nature, by execution of a bond in such form and for such sum as may be specified binds importer/himself to re-export the said containers within six months from the date of their importation and to furnish documentary evidence thereof to the satisfaction of the said Assistant Commissioner and to pay the duty leviable thereon in the event of the importer's failure to do so. Further, the said notification also provide that the period of six months may, on sufficient cause being shown, be extended by the said Assistant Commissioner for such further period, as he may deem fit. The procedure prescribed for import of containers of durable nature provided under Customs Manual state the following:

"3. Duty free import of containers:

*As the containers themselves are liable to duty, Customs duty exemption is provided vide Notification No.104/94-Cus, dated 16-3-1994 which, inter-alia, facilitates them being taken out of the port without duty payment subject to execution of bond. The **shipping agents are required to file this bond with the container cell of the Custom House, binding themselves to re-export containers** within six months of their import into India. The **period of six months may be extended** by the Deputy/Assistant Commissioner of Customs for a **further period of three months and thereafter by the Commissioner of periods not exceeding six months at one time**, in terms of the said Notification.*

3.2 The procedure for clearance of containers imported temporarily is as follows: (a) The nature of bond should be "continuity bond". (b) No Bank Guarantee / Security is required is furnished along with the bond. (c) Bond should be executed by shipping line, Non Vessel Owning Common Carrier (NVOCC), Steamer agents or their authorised representatives. (d) The bond amount should cover only the duty element of the imported containers and not the cargo it is carrying (e) The validity period of the bond should be for a year, extendable till further such period as requested by the person executing the bond. (f) Till module for automatic matching of imported and export containers within permissible time is rolled out at all Customs ports, the process of monitoring of period of temporary importation would be done manually. [Authority CBEC Circulars No.83/1998-Cus, dated 5-11-1998 and No.31/2005-Cus, dated 25-7-2007]"

7.3 From plain reading of the above procedure prescribed for import of durable containers duty free under Notification No. 104/94-Customs, it is very clear that the shipping lines who import the durable containers for temporary importation in transportation of the goods in international trade

has been provided with such duty exemption. It is not the case of Revenue, that the necessary bond has not been executed while filing the B/E and processing the same for clearance of the containers duty free. The issue arising in the case made out by HPU of Jamnagar Customs authorities that the shipping lines/importer did not either re-export the containers within 6 months' time or sought for extension of time for re-export. There is no proof or any evidence that the appellants CB is involved in such non-compliance. Hence, we find that there is no evidence or justification to claim that the appellants have violated Regulation 11(d) *ibid* in this regard.

7.4 Further, as the process of monitoring of re-export of containers for temporary importation are proposed to be monitored by an automatic module and till such time it is to be done through manual monitoring by Customs authorities, there is no ground for the appellants, to bring the non-compliance by the importer in not re-exporting the said imported containers to the notice of the Deputy Commissioner of Customs (DC) or Assistant Commissioner of Customs (AC). Thus, we are of the considered view that the violation of Regulation 11(d) *ibid*, as concluded in the impugned order is not sustainable.

8.1. Learned Commissioner of Customs (General) had come to the conclusion that the CB had violated the provision of Regulation 11(e) *ibid*, as the appellants did not impart the importer correct information in respect of the requirement for re-exporting the containers within the prescribed time. As discussed in the paragraphs 7.2 to 7.4 above, it is clearly laid down in the Customs Manual that the shipping lines who import the durable containers for temporary use are responsible for re-export of the same within the prescribed time and such re-export is to be monitored by the Customs authorities.

8.2. In the absence of any specific evidential document or factual record to state that the appellants CB had any role in the importer's/shipping lines failure to re-export the containers, it is not feasible to fasten such responsibility on the appellants CB. Thus, it is not feasible to sustain such a charge on the appellants that they did not exercise due diligence to impart correct information to their clients and thus the conclusion arrived at by the Commissioner of Customs (General) is without any basis of documents or facts, in the impugned order with respect to Regulation 11(e) *ibid*, and the same is not sustainable.

9.1. In the inquiry proceedings, no evidence was shown to allege violation of Regulation 11(m) *ibid*. Further, the Commissioner of Customs (General) had concluded that the appellants have violated Regulation 11(m) on the basis of his observation that the appellants had shown carelessness while conducting their business, without any reference to any fact or evidence.

9.2. From the plain reading of the requirements under Regulation 11(m) *ibid*, it is clear that there should be some grounds of inefficiency or unavoidable delay in clearance of the imported goods. We find neither there is any such claim of undue delay nor any demonstration of delay in clearance of goods by the appellants. Thus, we do not find any merits on the grounds and the conclusion arrived on this point by the Commissioner of Customs (General) in the impugned order. Thus, the conclusion that the appellants have violated Regulation 11(m) *ibid* is not possible to be sustained.

10.1. We also find that as regards the timelines to be followed in the entire process of adjudication of the suspension/revocation of CB license under CBLR, 2013/CBLR, 2018 by Customs authorities, the Hon'ble High Court of Bombay has laid down certain guidelines for its interpretation in the case of *Principal Commissioner of Customs (General), Mumbai Vs. Unison Clearing P Ltd.*, 2018 (361) E.L.T. 321. The relevant portion of the judgement in the above case is extracted below:

"The whole purpose of the CBLR-2013 being to frame a time line so that undue delay in the proceedings can be avoided, and the balance will have to be struck between the strict adherence to the said time schedule to such an extent that even a day's delay would prove to be fatal and render the entire action invalid and on the other hand, to grant such a discretion to the revenue to continue the said action of suspension of licence for an indefinite period depriving the Customs brokers of their right to carry on business on the basis of the licence, on a spacious ground that the charges levelled against him are being enquired into. Neither of these two extreme situations are ideal and balance will have to be struck by construing that the time limit for completion of inquiry for revoking the licence or imposing the penalty and keeping the licence under suspension should be "Reasonable period", depending on the facts and circumstances of each case. There cannot be any absolute principle, which can be laid down to determine as what would be reasonable period but it would be dependent on the facts and circumstances of each case since on one hand, the purpose of prescription of the time limit by the Regulation is to cast a duty on the Revenue Authorities to act within the time frame since it adversely affects the interest of the licensee and on the other hand the licensee should not be permitted to take an advantage of some delay at the instance of the Revenue, which is beyond its control since the revenue administration needs to be granted certain concessions which may be on account of administrative exigencies, and the department working at different levels through different persons. The principles of fairness and equity demands that when there is deviation from the time schedule prescribed in the Regulation, the Revenue enumerates the reasons and

attributes them to an officer dealing with it and also accounts for every stage at which the delay occurs. Every endeavour should be made to adhere to the time schedule but in exceptional circumstances, which are beyond the control of the revenue if the time schedule is not adhered to, an accountability be fastened on the Revenue, to cite reasons why the time schedule was not adhered to, and then leave the decision to the adjudicating authority to examine whether the explanation offered is reasonable or reflects casual attitude on behalf of the Revenue. This is the only way how the Regulation can be made effective and worthy of its existence so as to safeguard the interest of the Customs house agent, who is in a position of the delinquent and faces an inquiry somehow similar to an inquiry in disciplinary proceedings on one hand and the revenue in the capacity of the administration on the other hand.

15. In view of the aforesaid discussion, the time limit contained in Regulation 20 cannot be construed to be mandatory and is held to be directory. As it is already observed above that though the time line framed in the Regulation need to be rigidly applied, fairness would demand that when such time limit is crossed, the period subsequently consumed for completing the inquiry should be justified by giving reasons and the causes on account of which the time limit was not adhered to. This would ensure that the inquiry proceedings which are initiated are completed expeditiously, are not prolonged and some checks and balances must be ensured. One step by which the unnecessary delays can be curbed is recording of reasons for the delay or non-adherence to this time limit by the Officer conducting the inquiry and making him accountable for not adhering to the time schedule. These reasons can then be tested to derive a conclusion whether the deviation from the time line prescribed in the Regulation, is "reasonable". This is the only way by which the provisions contained in Regulation 20 can be effectively implemented in the interest of both parties, namely, the Revenue and the Customs House Agent."

10.2. In the instant case, the alleged offence in importation of goods took place in June, 2013 which was reported by an offence report dated 29.04.2014 of HPU, Jamnagar Customs and on that basis the jurisdictional Commissioner had initiated the inquiry proceedings against the appellants for violations of CBLR, 2013 due to failure of the appellants to comply with Regulations 11(d), 11(e) and 11(m) *ibid*. The first Inquiry Officer (IO) was appointed on 05.11.2015 and as the inquiry proceedings did not progress, subsequent IO was appointed later on 27.12.2017. Upon completion of the inquiry, an Inquiry report was submitted on 20.07.2018, and the Commissioner of Customs (General), Mumbai, being the licensing authority under Regulations 20 of CBLR, 2013 had passed the impugned order dated 24.01.2019. The above timelines indicate that the inquiry proceedings itself had taken more than five and half years for coming to a conclusion of the punishment of imposition of penalty on the appellants CB. But during these period the appellants business had suffered and therefore the Commissioner of Customs (General) was considerate in not invoking the CB license on account of the reasons that the appellants CB had already suffered in terms loss of business and reputation.

10.3 From the records of the case, we find that there is definitely delay in adjudication and that for the import transactions for which the offence was detected in 2013, the order of the Commissioner had been passed on 24.01.2019. Revenue is unable to explain why there was such a long delay in taking action against appellants, when all the information about the alleged non-compliance in import of containers was received vide offence report dated 29.04.2015. The prescribed time under CBLR for timely completion of inquiry proceedings right from the beginning i.e., issue of SCN within a period of 90 days from the date of receipt of offence report, submission of inquiry report within 90 days of issue of SCN, passing of order by the Principal Commissioner of Customs within 90 days of receipt of inquiry report was neither followed nor given credence to. It appears that the specific reasons for inordinate delay thereof having not been explained, it cannot be accepted that there exists any reasonable ground in terms of the test laid down by the Hon'ble High Court of Bombay in the case of *Unison Clearing Pvt. Ltd.* (supra). Thus, on account of the above ground alone the impugned order is liable to be set aside, as the inquiry proceedings are not being in conformity with the requirement of CBLR, 2013.

11. In view of the foregoing discussions, we do not find any merits in the impugned order passed by the learned Commissioner of Customs (General), Mumbai in imposing penalty on the appellants, inasmuch as there is no violation of regulations 11(d) or 11(e) or 11(m) *ibid*, and the findings in the impugned order is contrary to the facts on record.

12. Therefore, in the result by setting aside the impugned order dated 24.01.2019, we allow the appeal in favour of the appellants.

(Operative portion of the Order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)