CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85412 OF 2024

[Arising out of Order-in-Original No: 67/CAC/PCC(G)/SJ/CBS-Adj dated 19th January 2024 passed by Principal Commissioner of Customs (General), Mumbai – I.]

Maa Om Business Enterprises Pvt Ltd
Unit No. 107, Plot No. 1A, Siddhivinayak Complex,
Sector 19-C, Vashi, Navi Mumbai – 400 705 … ***Appellant***

versus

Commissioner of Customs (General)
New Custom House, Ballard Estate, Mumbai-400 001 ***…Respondent***

APPEARANCE:

Shri Manoj Lakhani, Consultant for the appellant

Dr Badhey Piyush Barasu, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86235/2024

DATE OF HEARING:	25/06/2024
DATE OF DECISION:	23/10/2024

PER: C J MATHEW

M/s Maa Om Business Enterprises Pvt Ltd was proceeded against, and in connection with exports effected by one Suhel Parvez

Ansari through several fronts, including M/s Vedant Trade Impex Pvt Ltd concerned in the present appeal, in which undue drawback had been claimed and obtained against goods supported by fake bills and invoices procured for the purposes, for alleged breach of obligations in regulation 10(d), 10(e), 10(f), 10(n) and 10(q) of Customs Brokers Licensing Regulations, 2018. Undisputedly, the shipping bills pertained to the period when the appellant-company had not yet come into existence and it is, thus, that several grounds of appeal pleaded by the appellant, to challenge revocation of the customs broker licence, forfeiture of security deposit under regulation 14 of Customs Brokers Licensing Regulations, 2018 while imposing penalty of ₹ 50,000 under regulation 18 of Customs Brokers Licensing Regulations, 2018, turn on this chronological in exactitude.

2. Proceedings were apparently initiated under Customs Brokers Licensing Regulations, 2018 following issue of show cause notice to M/s Vedant Trade Impex Pvt Ltd whose documents had been handled by the present appellant and drawback of almost ₹ 50,00,000 claimed thereon. It is contended by Learned Consultant for the appellant that export proceeds have been received in full on all but six shipping bills with implication of wrongful payment of drawback of ₹ 48,093 leaving the penalties and detriments under Customs Brokers Licensing Regulations, 2018 to be hugely disproportionate.

3. The enquiry officer reported that none of the charges were proved but Principal Commissioner of Customs (General), Mumbai – *vide* order[1] rendered findings of breach of regulation 10(d), 10(e), 10(f), 10(n) and 10(q) of Customs Brokers Licensing Regulations, 2018 to be proved consequent upon issue of disagreement memo.

4. Learned Consultant for the appellant submitted that the enquiry report itself was fetched beyond the prescribed 90 days from the initiation of proceedings and sufficed to merit setting aside of the impugned order. It was further submitted that the present form of 'customs broker', against whom proceedings were initiated, had nothing to do with that stretch of time when the impugned shipping bills were filed. It was pointed out that on the demise of the then proprietor Shri Harish G Kuppikar on 18th January 2015, the licence itself was transferred to his legal heir, Ms Mansi Kuppikar, on 16th January 2016 by the licensing authority. Thereafter, the very same licence had been re-issued in the name of the present appellant consequent upon formation of a private limited company in which Ms Mansi Kuppikar was a Director with effect from 13th June 2018.

5. It was further submitted by the Learned Consultant that several charges which have been framed against them and, that too, on the

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[1] [order-in-original no. 67/CAC/PCC(G)/SJ/CBS-Adj dated 19th January 2024]

basis of a show cause notice without any evidence of involvement of the customs broker is not valid in law.

6. We have heard Learned Authorised Representative.

7. We find that the issue of delay in conclusion of enquiry had been placed before the licensing authority during the course of proceedings; the licensing authority had noted that the enquiry authority had himself reported the reasons for the delay. Nonetheless, the licensing authority opted to rely upon certain observations of the Hon'ble High Court of Bombay in *Principal Commissioner of Customs (General), Mumbai v. Unison Clearing Pvt Ltd [2018 (361) ELT 321 (Bom)]* without a holistic reading of the entirety.

8. It is on record that the enquiry was not completed within the stipulated time and, therefore, not in conformity with the prescription for time-limit laid down in Customs Brokers Licensing Regulations, 2018. Though the licensing authority did take note of this delay, he preferred to rely upon the decision of the Hon'ble High Court of Bombay in *re Unison Clearing Pvt Ltd* on such timelines being directory which spelt out distinction between directory and mandatory for the purpose of the Regulations according to contingencies.

9. On a perusal of the that portion of the said judgment relied

upon, and cited, in the impugned order

> *'15. In view of the aforesaid discussion, the timelimit 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 timelimit 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 timelimit 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.'*

it would appear that the licensing authority had failed to appreciate the totality of the decision, *viz.*, that timelines are directory only to the extent that delay has justification. The enquiry authority himself had noted that the delay was on account of failure to furnish the appellant with 'relied upon' documents and other administrative reasons. In these circumstances, the mandatory aspect referred to in the decision of the Hon'ble High Court of Bombay comes into play to repudiate the findings and final disposal in the impugned order.

10. Moreover, it is on record that the nature of the goods exported against the relevant shipping bills had not been the subject of the examination but the basis for initiation of proceedings. Repatriation of proceeds in 85 of the 91 shipping bills suffices to discard the findings against the customs broker; the drawback claim pertaining to the six shipping bills on which proceeds had not been realized is far too miniscule to justify the detriment and penalties imposed on the customs broker besides there being no evidence of the involvement of appellant in procurement of shipped goods.

11. The alleged contraventions of the Regulations are said to have occurred at the time when the present appellant was not in existence; being an incorporated company, and artificial person unimpaired by the manner in which the licence came to be in possession of the present appellant, the alleged acts of an individual cannot be visited upon an entity created since then. Transmission of such licence through legal heir to the present appellant – with the approval of the licensing authority – does not carry forward of liabilities and accountability let alone alleged culpability in any misdemeanor either under the Customs Brokers Licensing Regulations, 2018 or the prescriptions in Customs Act, 1962. The Tribunal in *Commissioner of Central Excise, Chandigarh v. Shree Ambica Steel Industries [2013*

(288) ELT 420 (Tri.-Del.)] had held that

> *'7. We have considered the rival contentions and perused the records. Undisputedly, late Smt. Bimla Rani was the proprietor of the respondent-firm M/s. Shree Ambica Steel Industries. She died on 17-9-2006 and after her death the legal heir applied for cancellation of Excise registration in the name of the firm and the registration was admittedly cancelled by the Department in October, 2006. It is well settled that a sole proprietorship concern has no legal entity independent of its proprietor. Thus it is obvious that the death of late Smt. Bimla Rani of the respondent-company ceased to exist. That being the case, the relevant show cause notice dated 2-4-2009 issued to M/s. Shree Ambica Steel Industries, Mandi Gobindgarh is bad in law as it was issued against any non-existent firm. This circumstance in itself is sufficient to dismiss the appeal filed by the Department.'*

and, in *ASA Enterprises v. Commissioner of Customs, New Delhi [2017 (358) ELT 788 (Tri.-Del.)],* the Tribunal has held similarly.

12. In view of the reasons above, we find that the revocation of licence along with forfeiture of security deposit and imposition of penalty is not justifiable in law. Accordingly, the impugned order is set aside to allow the appeal.

(Order pronounced in the open court on 23/10/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*