CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH : COURT NO. I

Customs Appeal No. 85726 of 2024

(Arising out of Order-in-Original No. 40/2023-24 dated 11.01.2024 passed by Principal Commissioner of Customs (General), New Custom House, Mumbai.)

AMC Logistics (India) Private Limited **.....Appellants**
(CB License No. 11/196)
5thFloor, 239 Rupam Building,
Opposite GPO, P. D'Mello Road
Fort, Mumbai-400 001.

VERSUS

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

APPEARANCE:

Shri Anurag Mishra, Advocate a/w Sanya Bhatia, C.A. for the Appellant
Shri Krishna Murari Azad, 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/86674/2024

Date of Hearing: 04.07.2024
Date of Decision: 04.11.2024

PER : M.M. PARTHIBAN

This appeal has been filed by M/s AMC Logistics (India) Private Limited (herein after, referred to as 'the appellants'), holders of Customs Broker License No. 11/196 assailing Order-in-Original No. 40/2023-24 dated 11.01.2024 (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 erstwhile Regulation 10 of Customs House Agents Licensing Regulations, 1984 (CHALR) and now Regulation 7(2) of Customs Brokers

Licensing Regulations (CBLR), 2018. Central Intelligence unit (CIU), New Custom House (NCH), Mumbai Customs Zone-I had put on hold imported goods stuffed in a 40 feet container No. KOCU4976569, for which Bill of Entry (B/E) No. 8766607 dated 14.11.2023 was filed by the appellants CB on behalf of the importer M/s Good Luck Enterprises. It was alleged by CIU, NCH, Mumbai Customs that the appellants had taken back the impugned container, when it was about to be taken out of the MOD Container Freight Station (CFS), back to the examination area, opened and de-stuffed with about 150 packages, which were left lying outside the container. The said incident was recorded under panchanama proceedings drawn by CIU on 18.11.2023. it was also alleged that the appellants had tried to mislead the CIU officer that examination was being conducted and that out of charge was given erroneously for the said container. During detailed examination of 100% of the cargo conducted by CIU subsequently on 21.11.2023, it was found that there were gross mis-declaration of the quantity of the imported goods; Further, it was also found that there was under-valuation of tempered glass, and nonavailability of certificates for adherence to BIS standards, Equipment Type Approval (ETA) certificates and mandatory declaration under DGFT Notification No.44 (RE-2000)/1997-2002 dated 24.11.2000. Therefore, the Department prima facie concluded that the appellants have violated the provisions of Regulations 10(d), 10(e), 10(m) and 10(n) of CBLR, 2018.

2.2. On the basis of offence report received from CIU, NCH, Mumbai Customs Zone-I, 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), 10(e), 10(m) and 10(n) of CBLR, 2018. Accordingly, he had immediately suspended the CB license of the appellants under Regulation 16(1) of *ibid*, vide Order No. 38/2023-24 dated 20.12.2023; and after giving post-decisional hearing on 28.12.2023 such suspension was continued vide impugned Order No. 40/2023-24 dated 11.01.2024; further the department had initiated inquiry proceedings under Regulation 17 *ibid*, against violations of CBLR as above. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

3.1. Learned Advocate for the appellants contends that appellants have acted on a *bonafide* belief, and have filed the B/E on the basis of invoice, packing list and other details provided by the importer. The impugned order has been passed in violation of the principles of natural justice and in total disregard to the instructions issued by the Central Board of Indirect Taxes and Customs (CBIC) vide No.24/2023-Customs dated 18.07.2023. Further, he stated that the specific violations alleged by the Department in terms of Regulations 10(d), 10(e), 10(m) and 10(n) of CBLR, 2018, have not been discussed by the learned Principal Commissioner of Customs. He further stated that the appellants do not have any role, either in providing Out Of Charge (OOC) by the customs officer, or in examination of the goods to be conducted by the customs authorities. Therefore, he submitted that the allegation that the appellants have attempted to clear the mis-declared goods, which have been put on hold by CIU, NCH, Mumbai Customs is incorrect. Thus, he submitted that the impugned order is not legally sustainable and the appeal may be allowed.

3.2 In support of their stand, they relied upon the following case laws:

(i) *Poonam Cargo Services Vs. Collector of Customs, Delhi* - 1999 (110) E.L.T. 696 (Tribunal);

(ii) *East West Freight Carriers P. Ltd. Vs. Collector of Customs, Madras* - 2015 (326) E.L.T. 178 (Tri. Mum.)

(iii) *Devshi Bhanji Khona Vs. Commissioner of Customs, Cochin* - 2009 (237) E.L.T. 509 (Tri. - Bang.)

(iv) *N.C. Singha & Sons Vs. Union of Inda* - 1998 (104) E.L.T. 11 (Cal.)

4. Learned Authorised Representative (AR) reiterated the findings made by the Principal Commissioner of Customs (General) in the impugned order and submitted that as there is violation under sub-regulations (d), (e), (m) and (n) of Regulation 10 *ibid*, separate inquiry proceedings have been initiated by the Principal Commissioner. The appellants CB unauthorizedly moved back the container to the examination area and opened the same; as they attempted to take delivery of the goods illegally, which was stopped by the Preventive Officer of Customs posted at the gate of MOD CFS. Thus, learned AR justified the action of Principal Commissioner of Customs (General) in immediate suspension of the appellant’s CB license, and its continuation in the impugned order and stated that the same is sustainable in law.

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

6.1. The short issue for consideration before the Tribunal in this case is to decide whether immediate suspension of the appellant Customs Broker's license under Regulations 16(1) of CBLR, 2018 and the continuation of such suspension in the impugned order is legally sustainable or not? and whether the impugned order has correctly held that it is covered under the category of 'appropriate cases where immediate action is necessary' pending enquiry proceedings against alleged violations of Regulations 10(d), 10(e), 10(m) and 10(n) *ibid*.

6.2 In the impugned order, the Principal Commissioner of Customs (General) after taking into consideration the CIU's offence report dated 16.12.2023, records of the case, the written submissions made by the appellants and the record of oral submission made at the time of personal hearing on 28.12.2023, had arrived at the conclusion that the continuation of immediate suspension of CB license is justified, under Regulations 16(1) of CBLR, 2018 on the basis of following findings. The relevant paragraphs in the impugned order providing such findings are as follows:

> *"11. I observe that the interim report received from the CIU, NCH, Mumbai has alleged that the CB has attempted clearance of the mis-declared goods which were put on hold by the CIU. In this connection, it has been ascertained from the statements of the various persons recorded in the primary investigation that the goods in the container No. KOCU4976569 imported vide Bill of Entry No. 8766607 dated 14.11.2023 were moved by the charged CB for gate–out for home consumption. As per report received, the examination report was fed in the EDI without actual examination of the goods and out of charge was given by the Docks Examining Officer. This fact has not been disputed by the CB neither in the written submission nor in the personal hearing. However, despite the fact that the examination of the goods was not done as per the instructions, the CB obtained Gate pass from MbPT on the strength of the out of charged copy and attempted to take the consignment out of MbPT gate for home consumption.*
>
> *11.1 The goods in the container No. KOCU4976569 were examined under panchanama proceedings by the officers of CIU which revealed that the goods were found mis-declared and found in violation of Notification No.44 (RE-2000)/1997-2002 dated 24th November, 2000 and the Compulsory Registration Order (CRO) as prescribed under BIS.*

> *11.2 Reports received the CIU also suggest that when the CB failed in the attempt for clearance of the said mis-declared and non-complaint goods without following the necessary procedure of examination, they unauthorizedly moved back the said container to be examination area and opened the said container in spite of the CIU hold. The said act was done by the CB to hoodwink the CIU authorities so that they for may escape from the clutches of law.*
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> *11.3 As per the mandate of this CBLR, 2018, it was the responsibility of the CB to inform the respective Docks, DC/AC that the OOC has been granted erroneously, by the Department and he should not have gone ahead with the illegal removal. On the contrary they tried to take delivery of the said goods. Hence, the intent of the CB to clear the goods illegally is apparent. The claim that the goods were pending for examination at the time of interception is nothing but an afterthought to escape from the penal consequences of their act in this case…*
>
> *12.1…. Further, despite knowing that the goods were not examined the CB being attempted to gate out the goods from the MOD….*
>
> *12.5 Further, in respect of specific violation of regulation 10(d), 10(e), 10(m) and 10(n) of CBLR, 2018, I observe that the separate proceedings under regulation 17 of the CBLR, 2018 shall be initiated and therefore discussion on them at this stage is not required. Hence, I refrain from discussing CB's submission on specific violation of the said regulations…*
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> *15. In view of the discussion above, I hold that continuation of the suspension of CB license may be just and proper…"*

6.3 On careful perusal of the above findings by the learned Principal Commissioner in the impugned Order, it transpires that the specific allegations of violations of sub-regulations (d), (e), (m) and (n) of Regulation 10 *ibid* by the appellants CB, has not been discussed while arriving at the conclusion for continuing the immediate suspension under Regulation 16(1) ibid. Therefore, it is abundantly made clear that in this appeal, we are not dealing with the issues relating to determination of whether the appellants CB have violated the aforesaid sub-regulations for taking action on them under CBLR, 2018.

6.4 The facts recorded in the panchanama dated 18.11.2023 drawn by CIU, NCH, Mumbai Customs officers indicate that the impugned consignment of imported goods covered under B/E No. 8766607 dated 14.11.2023 and container No. KOCU4976569, was given out of charge at 07.02 PM on 18.11.2023 and said the container was put on hold by CIU/NCH vide Hold letter dated 18.11.2023, which was forwarded on *WhatsApp* to Preventive Officer (PO) of Customs on duty at the Gate of MOD CFS, Shri Sunil B Nandanwar at 07.07 PM on 18.11.2023, and he was also instructed over phone by CIU Superintendent that said the container should be kept on hold. The officers of CIU/NCH had arrived at the MOD CFS at 08.10 PM on 18.11.2023, and started the panchanama proceedings at 08.20 PM. CIU/NCH officers have found that around 150 packages were found lying outside the container and these are found cut. Thereafter, the packages were stuffed back in the container and the same was sealed with Indian Customs Mumbai Bottle Seal No.873438 in the presence of panchaas/witnesses at the time of closure of panchanama proceedings at 11.50 PM on 18.11.2023. As against this, during 100% examination of the goods kept in a sealed container No. KOCU4976569 on 21.11.2023, it was found to be having a total 964 packages, in which it has been detailed that 239 cartons were found to be having cut already. Thus, we find that there is major variation in the reporting of the facts about cut carton boxes, in both the panchanama proceedings dated 18.11.2023 and 21.11.2023 drawn by the CIU, NCH officers. Hence, such incorrect details cannot be taken as evidential facts to prove that the appellants CB had attempted to open the container and unload around 150 packages, within a gap of an hour and few minutes of the container being refused to be moved out, as reported in the impugned order. Moreover, the total number of 965 packages shown in the packing list and the Bill of Lading relevant to the B/E in this case also tally, even though there could be variation in the individual items of such cartons. The factual details have not been verified and brought on record by the learned Principal Commissioner to prove the allegations against the appellants CB, in ordering immediate suspension for such act by the appellants CB.

6.5 On careful perusal of the B/E No. 8766607 dated 14.11.2023, more particularly at column 'H' providing details of "*Processing Details*", it is mentioned that the said B/E was submitted by the appellants before the customs authorities on 14.11.2023 at 21.06 Hrs.; thereafter, the said B/E was assessed on 15.11.2023 at 11.13 Hrs.; and the goods were examined on 18.11.2023 for which the examination report was made at 18.58 Hrs. and the imported goods were given Out-Of-Charge (OOC) by the customs officers performing their duties at the MoD CFS at 19.01 Hrs. on 18.11.2023. Even though it may be a fact that the container was not allowed to be moved out from the MOD CFS by the Customs officer posted at the gate office of said MOD CFS, the facts as indicated above in the B/E, do not support the allegations against the appellants CB, that they had indulged in illegal activities of removing the Container and taking it back to the examination area. Further, examination of the imported goods and giving permission for moving out of the CFS, are part of the duties of the customs officers posted at the MOD CFS and the responsibilities of the custodian of MOD CFS. Therefore, any illegality therein cannot be blamed against the appellants CB.

6.6 From the above discussion and analysis, we are of the considered view, that there is no sufficient and reasonable grounds made out in the impugned order, in respect of charges framed against the appellants CB, and therefore, the impugned order for continuing suspension of the CB license of the appellants cannot be sustained on merits.

7. We further find that the CBIC had issued certain instructions to the field formations, in respect of the grounds on which immediate suspension action against CB could be taken. These are as follows:

"Instruction No. 24/2023

F. No. 520/01/2023-Cus.VI

Government of India
Ministry of Finance, Department of Revenue
Central Board of Indirect Taxes and Customs

*****

Room No. 252A, North Block, New Delhi
Dated: 18.07.2023

To,
All Principal Chief Commissioner/Chief Commissioner of Customs/Custom (Preventive),
All Principal Chief Commissioner/Chief Commissioner of Central Tax and Customs,
All Principal Commissioner/Commissioner of Customs /Custom (Preventive),
All Principal Commissioner/Commissioner of Central Tax and Customs.

Subject: Suspension of Licence of Customs Broker – regarding

Madam/Sir,

The undersigned is directed to say that references have been received in the Board that often the suspension of Customs Broker licence is resorted even in the cases which do not merit immediate suspension of licence. It is represented that this may be disruptive, especially in the case of small enterprises of Custom Brokers.

2.*The matter has been examined. The Regulation 16 of CBLR, 2018 provides that notwithstanding anything contained in Regulation 14, the Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the licence of a customs broker, where the enquiry against such customs broker is pending or contemplated.*

3.*Since the power is specified to be exercised in specified circumstances, that is, the appropriate cases where immediate action is necessary, it indicates that suspension is not visualized for application in a manner routine or mechanical or in every case. This aspect is to be kept in view by the Commissioner of Customs in the course of considering a proposal to suspend the licence of a customs broker. Before doing so, the Commissioner should*

> *also take the care also of recording his/her reasons as to why it is considered an appropriate case where immediate action of suspension is necessary."*

We do not find that in terms of above instructions of CBEC, any clearcut findings, reasons were given by the learned Principal Commissioner in the impugned order for immediate suspension and/or its continuation, and therefore we have no hesitation to hold that the instructions laid down by CBIC had not been followed in this case.

8. In this regard, we find that in the case of *N.C. Singha* (Supra), the Hon'ble High Court of Kolkata had decided on the issue of immediate suspension specified in the CBLR, 2018 by holding that the basic requirements having not been fulfilled, as it did not spell out that such immediate suspension was required. The relevant paragraph of the said judgement is given below:

> ***"6.*** *We stop short of saying any further or any more because the matter may again come up for consideration by the respondents. Our only concern, rather sole concern in this appeal is about the legality and validity of the suspension order in purported exercise of the power under Regulation 21(2). That order, in our opinion, is not sustainable because it does not spell out that any immediate action is required to be taken in the matter nor does the order on its face indicate that such action was indeed warranted."*

9. In one another case, we find that Co-ordinate Bench of the Tribunal have held in the case of *M.K. Saha* (Supra), that on the issue of immediate suspension under CBLR, 2018, the learned Commissioner had not applied his mind and the same is not sustainable. The relevant paragraphs of the said order is given below:

> ***"9.*** *We find that the power of suspension under Regulation 16 of CBLR, 2018 is to be exercised in appropriate cases where immediate action is necessary. It is well settled principle of law that only in appropriate cases where immediate action is necessary, suspension is required to be adhered to. In other words, suspension of CB licence cannot be exercised by the authority in a routine and mechanical manner. For invocation of Regulation 16 ibid, it is necessary for the authority to disclose the immediate necessity of exercising such power. In the present case, the alleged export consignments were procured during July, 2018 and the Shipping Bills were dated 8-8-2018 and 9-8-2018 respectively. The DRI Authority had intercepted and conducted 100% examination of goods on 21-8-2018. Thereafter, the investigation went on and apparently, the CB had duly participated in the investigation before the DRI Authority. After substantial period of time, on 18-2-2019, there was no 'immediate necessity' of suspension of the licence of the CB under Regulation 16 of CBLR, 2018. The Commissioner has also failed to adduce any reason of 'immediate necessity' of exercising power under Regulation 16 of CBLR, 2018 in the impugned*

order. The Hon'ble High Court of Calcutta in the case of Rubee Air Freight Ltd. v. CC (Airport & Administration), Kolkata [2010 (257) E.L.T. 20 (Cal.)] at Para 3 held that, "The power to suspend a licence is, however, drastic and entails irreversible civil consequences for the licencee. The power to suspend thus, ought to be exercised cautiously."

10. *In the case of N.C. Singha & Sons v. UOI [1998 (104) E.L.T. 11 (Cal.)], the Hon'ble High Court, Calcutta has held that, "That order, in our opinion, is not sustainable because it does not spell out that any immediate action is required to be taken in the matter nor does the order on its face indicate that such action was indeed warranted." [Para 6]*

11. *Also, in the case of East West Freight Carriers (P) Ltd. v. Collector of Customs, Madras [1995 (77) E.L.T. 79 (Mad.)] the Hon'ble High Court, Madras has held that, "In the absence of any indication that there was application of mind by the Collector on the aspect as to whether immediate action was necessary, in my opinion, the impugned order cannot be sustained. The Collector gets jurisdiction to suspend that licence in cases where immediate action is necessary." [Para 9]*

12. *Though Customs House Agents Licensing Regulations, 1984 has been subsequently superseded by the Customs House Agents Licensing Regulations, 2004 and further vide Customs Brokers Licensing Regulations, 2013 and now Customs Brokers Licensing Regulations, 2018 is in effect, the power of suspension of licence of CHA/CB remains the same with additional provision of post-decisional hearing and confirmation by the Commissioner. In other words, the prior ingredient of 'immediate necessity' of suspension of a CB licence remained in the provision at the wisdom of the legislation and hence, the ratio of the judgments referred supra are squarely applicable to the facts of the present case.*

13. *We find that in the present order also, the Commissioner has not applied his mind on the aspect as to whether immediate action was necessary and thus, on this ground alone the order of continuation of suspension of the CB licence of the appellant fails.*

xxx xxx xxx xxx

16. *In the above circumstance, we are of the considered opinion that there is no necessity to continue with the suspension of the CB licence any further. Justice may subserve and balance of convenience may be maintained by withdrawing suspension of the CB licence of the appellant and directing them to cooperate in the inquiry proceeding under Regulation 17 of CBLR, 2018. Hence, the proceeding of inquiry under Regulation 17 ibid shall continue in the case of the present appellant in accordance with law, but the authorities should not continue with the suspension of their licence."*

10. On the basis of the above discussion and analysis of the decisions in the judicial forum, we are of the considered view that the impugned order providing for continuation of the suspension of the appellants' CB license does not survive the legal scrutiny. We accordingly modify the impugned Order dated 11.01.2024, by setting aside the suspension of the CB license of the appellants only, as indicated in paragraph 15.1 of the impugned order. The

other part of the impugned order at paragraph 16, relating to proceeding to be initiated under Regulation 17 of CBLR, 2018 shall continue in accordance with law. The Principal Commissioner of Customs (General), NCH, Mumbai Zone-I shall issue necessary order immediately allowing operation of the CB license of the appellants.

11. With the above observation and direction, the appeal filed by the appellants is allowed, by modifying the impugned order as stated above.

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

(Order pronounced in open court on 04.11.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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