(2021) 12 CESTAT CK 0037

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 50179 Of 2021

M/s. Grand Slam Express Pvt. Ltd. APPELLANT

Vs

Commissioner Of Customs RESPONDENT

Date of Decision : 13-12-2021

Acts Referred:

Customs Act, 1962 — Section 112, 146
Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 — Regulation 10(7), 12(1)(i), 12(1)(iii), 12(1)(iv), 12(1)(v), 12(1)(vii), 12(1)(x), 13(1), 14
Customs House Agents Licensing Regulations, 2004 — Regulation 8, 19

Citation : (2021) 12 CESTAT CK 0037

Hon'ble Judges : Rachna Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Relevant facts for adjudication of present appeal are as follows:

An information was received by the department that e-commerce operators in India are acting as dummy importers and importing consignments with

the declared value much less than the price actually paid by the ultimate consumer against the said purchase. Based thereupon it was noticed that the

importer M/s. Cart 2 India Online Retail Pvt Ltd. had imported goods under MAW No. 23538319665 consisting of 21 House Airway Bills. Three

House AWBs No. 35365, 35370 and 35371 covered under said MAWB pertaining to import consignments of M/s. Cart 2 India online Retail Pvt. Ltd.

through the authorized courier M/s. Grand Slam Express Pvt. Ltd. were examined for which the appellant had filed Courier Bill of Entry (BE) in form

CBE-XIII. The shipments were examined and seized by SIIB under Panchnama dated 4.9.2019 on the ground of mis-declaration and misclassification. The allegation of deliberate use of wrong form of CBE for avoiding detail scrutiny has been made. Hence goods were seized being

liable to confiscation and show cause notice No. 06/KRM/ADC/ACE/2020 dated 28.02.2020 was issued proposing confiscation, rejection and

redetermination of declared value, classification under CTH 9804 and proposing penalty under stated provisions of Customs Act, 1962.

The allegation against the applicant is that they knew about the alleged facts as above attributed to the importer which were suppressed by them by

way of filing BEs in form CBE XIII instead of form CBE XIV and have been named co noticee in notice dated 28.2.2020 proposing penalty under

Section 112 ibid as an abettor.

That the said show cause notice dated 28.02.2020 was received by the Commissioner on 17.3.2020 and treating the same as Offence Report,

Commissioner of Customs, has issued impugned order of suspension cum show cause notice dated 20.06.2020 under CIER, 2010 alleging breach of

Regulation 12(1)(i), 12(1)(iii), 12(1)(iv), 12(1)(vii) & 12(1)(x) of CIER, 2010. Courier activities permitted as per Form J under Regulation 10(7) has

been suspended with immediate effect, courier has been asked to show cause under Regulation 13(1) against revocation of registration and Inquiry

officer has been appointed for conducting inquiry for breach of alleged regulations.

Upon Representation against the Inquiry Report Commissioner of Customs passed the impugned order bearing No. 101.2020 dated 10.11.2020.

Allegation of breach of Regulation 12(1)(i), 12(1)(iii), 12(1)(iv) & 12(1)(vii) were dropped whereas breach of Regulation 121)(v) and 12(1)(x) were

confirmed. Suspension of transaction under Form J was revoked on censure of warning and penalty of Rs.50,000/- (imposed on on under Reg 14 of

CIER, 2010 on the ground that the Courier is supposed to thoroughly examine/ understand the business model of clients with whom they have regular

business to avoid any violation of law by them.

Impugned order has preceded the Order in Original No. 63/SKM/ADC/ACE/2020 dated 25.11.2020 passed by Additional Commissioner of Customs,

ACC Export, Delhi. Allegation against the importer has been confirmed. However, the proceedings against the appellant as Regd courier has been

dropped holding that the appellant or its Director (s) had not committed any violation consciously with awareness of the illegal act of the importer and

hence not liable to penalty proposed under show cause notice. Appellant is aggrieved by revocation of suspension under censure of warning and

imposition of penalty of Rs.50,000/-Accordingly, the same has been challenged vide present appeal.

2. We have heard Shri V S Negi, learned Counsel appearing for the Appellant and Shri Mahesh Bhardwaj, learned Authorised Representative

appearing for the Department.

3. It is submitted on behalf of the appellant that show cause notice No. 06/KRM/ADC/ACE/2020 dated 28.02.2020 has been adjudicated vide Order

in Original No. 63/SKM/ADC/ACE/2020 dated 25.11.2020 in an appeal filed by the importer wherein the proceedings against the importer as well as

against the Registered courier have been dropped. When the base show cause notice itself has been decided in favour of the appellant, collateral

proceeding under CIER, 2010 against the appellant are not sustainable. Findings in impugned order are alleged to be beyond the allegations in the show

cause notice. Appellant had filed CBE in form CBE-XIV wherever the value of the goods under HAWB was larger than Rs.One lakh. Allegation that

appellant knew the business model existing between M/s. Cart 2 India Online Retails Pvt Ltd. and M/s. Cart 2 USA LLC but suppressed the same

and did not inform the department is mentioned as incorrect. Absence of such knowledge affirmed in the Order in Original No. 63/2020 dated

25.11.2020 passed by the Additional Commissioner of Customs. Is impressed upon. It is further mentioned that obligation of courier is far less rigorous

compared to customs broker and restricted to procedural compliance only. Complex issue of valuation and classification are not contemplated

compliance by the G Card. Reliance by Commissioner on Ganatra & Co. [2016(332) ELT 15 (SC)] is mentioned to be misplaced reliance firstly,

because in that case CHA License was sub let on numerous occasions that was considered as serious violation of Regulation which is not the fact

situation in the case in hand, and secondly obligations of CHA having F card are not comparable to the Obligations of the Courier having only a G

Card.

4. To rebut these submissions learned Departmental Representative mentioned that the courier has resorted to taking causal approach while filing

multiple Bills of Entry for consignments of M/s. Cart2 India Online Retails Pvt. received in single day instead of filing a single bill of entry i.e. CBK

XIV. In view of this , M/s. Grand Slam Express Pvt Ltd. has contravened the provisions of Regulation 12(i)(v) of Courier Imports and Exports

(Electronic Declaration and Processing) Regulations, 2010. The authorized courier M/s. Grand Slam Express Pvt Ltd. had filed the import documents

of the consignments covered under MAWB No. 23538319665. On examination of House Airway Bills No. 35365, 35370 and 35371 covered under

MAWB No. 23538319665, the goods were found to be mis declared in terms of value/ description. The package of goods were also found bearing

price tags/ stickers which were of much higher than the value declared in invoices and other import documents. It was observed that the subject goods

were not classified under CTSH (Customs Tariff Sub Heading 9804. The authorized courier had no interference with the individual customers and

M/s. Grand Slam had filed CBE on behalf of the importer M/s. Cart2 India Online Retails Pvt Ltd., in this case, after taking proper authorization from

the importer.

5. After hearing the rival contentions, I observe and hold as follows:

Foremost it is necessary to look into the relevant provisions which reads as follows:

â??12. Obligations of Authorised Courier.

(1) An Authorised Courier shall -

(i) obtain an authorisation, from each of the consignees or consignors of the imported goods for whom or from whom such Courier has

imported such goods; or consignees or consignors of such export goods which such Courier proposes to export, to the effect that the

Authorised Courier may act as agent of such consignee or consignor, as the case may be, for clearance of such imported or export goods

by the proper officer;

Provided that for import of documents, gifts and samples, and low value dutiable consignments for which declaration have been filed in,

Form-B or the Courier Bill of Entry-XI (CBE-XI), Form C or the Courier Bill of Entry-XII (CBE-XII) or Form-D or Courier Bill of Entry- XIII

(CBE-XIII) respectively, the authorization may be obtained at the time of delivery of the consignment to consignee subject to the production of consignors authorisation at pre-clearance stage and retention of authorisation obtained from the consignee for a period of one year or

date of Audit by Customs, whichever is earlier.

(ii) file electronic declarations, for clearance of imported or export goods, through a person who has passed the examination referred to in

regulation 8 or regulation 19 of the Customs House Agents Licensing Regulations, 2004 and who are duly authorisedunder section 146 of

the Act;

Provided that a transition period upto 31st December, 2011 shall be allowed to the Authorised Courier for fulfillment of the obligation in so

far as it relates to examination referred to in regulation 8 of the Customs House Agents Licensing Regulations, 2004.

(iii) advise his consignor or consignee to comply with the provisions of the Act, rules and regulations made thereunder and in case of non-

compliance thereof, he shall bring the matter to the notice of the Assistant Commissioner of Customs or Deputy Commissioner of Customs;

(iv) verify the antecedent, correctness of Importer Exporter Code (IEC) Number, identity of his client and the functioning of his client in the

declared address by using reliable, independent, authentic documents, data or information;

(v) exercise due diligence to ascertain the correctness and completeness of any information which he submits to the proper officer with

reference to any work related to the clearance of imported goods or of export goods;

(vi) not withhold information communicated to him by an officer of customs, relating to assessment and clearance of imported goods as well

as inspection, examination and Clearance of export goods, from a consignor or consignee who is entitled to such information;

(vii) not withhold any information relating to assessment and clearance of imported goods or of export goods, from the Assessing Officer;

(viii) not attempt to influence the conduct of any officer of Customs in any matter pending before such officer or his subordinates by the use

of threat, false accusation, duress or offer of any special inducement or promise of advantage or by the bestowing of any gift or favour or

other thing or value;

(ix) maintain records and accounts in such form and manner as may be directed from time to time by an Assistant Commissioner of Customs

or Deputy Commissioner or Customs for a period of five years and submit them for inspection to the Assistant Commissioner of Customs or

an officer authorised by him, wherever required; and

(x) abide by all the provisions of the Act and the rules, regulations, notifications and orders issued thereunder.â??

To appreciate the above provision, the relevant facts of the present, as observed are as follows:

As a matter of fact proceedings against the appellant under Customs Act, 1962 have been dropped holding that no violation had been made. Breach

alleged is on the basis of hyper and self serving interpretation leveled against the appellant and is contrary to establish practice followed all over the

ports by all the courier which was in full knowledge of the department at all the time. It is also relevant that necessity of G Card Holder being

employed as courier against as courier to F card for Customs Broker, the level of compliance by courier is brought down to the extent of procedural

compliance only and not substantive compliance expected from F Card. There is no mention in the finding as to which of the information had been

withheld from the department by the appellant.

I further observe that all 21 BEs for respective HAWBs were filed simultaneously and back to back in close time proximity. There is no allegation that

the Bill of Entries were filed in staggered manner to avoid spotting of multiple Bill of Entries in the system. All these multiple Bill of Entries

simultaneously residing in the system and were open to Assessing Officer for satisfying himself. Earlier four BEs in form CBE XIV had been filed

pertaining to exporter M/s Cart 2 USA LLC where the invoice value of the goods was exceeding one lakhs. These 4 BEs in CBE XIV were filed

simultaneously with CBE XIII from the same exporter where the invoice was not exceeding one lakh. These Bill of Entries in CBE XIV and CBE

XIII were before the Customs Officers which were allowed clearance without any objection.

6. Above all the adjudicating authority in para 31.0.3 of the order under challenge has itself recorded that there is no evidence that appellant has

withheld any information from the department.

7. All the above observations are sufficient for me to hold that appellant has exercised reasonable and requisite due diligence while ascertaining and

even while furnishing the information with the proper officer in reference to filing the impugned three courier EWBs and thus has abide by all the

provisions of the Act and the rules regulations and orders issued thereunder. The compliance of 12(1)(x) CIER by appellant has already been held by

Commissioner Customs in an order dated 25.11.2020. Hence, I hold that even Regulation 12(i)(v) and 12(i) (x) have not be violated by the appellant.

The findings against the appellant in the order under challenge are therefore incorrect accordingly are hereby set aside. As a result, the appeal stands

allowed.