(2024) 12 CESTAT CK 1246

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Custom Appeal No. 51092 of 2020

M/s. R. K. Logistics @APPELLANT @Hash Commissioner of Customs @RESPONDENT

Date of Decision : 23-12-2024

Acts Referred:
Customs Act, 1962 — Section 132, 146(2)

Citation : (2024) 12 CESTAT CK 1246

Hon'ble Judges : Dilip Gupta, President (J);P. V. Subba Rao, Member (T)

Bench : Division Bench

Advocate : Mukesh Kumar, Rakesh Kumar

Final Decision : Dismissed

Judgement

Dilip Gupta, J

1. M/s. R. K. Logistics, the appellant has filed this appeal to assail the order dated 01.07.2020 passed by the Commissioner of Customs (Airport & General), the Commissioner, by which exercising powers conferred under regulations 14 and 17 of the Custom Brokers Licensing Regulations 2018, the 2018 Regulations, the Customs Broker License of the appellant has been revoked. The Commissioner has also forfeited the security deposit for Rs. 5,00,000/- submitted by the appellant and has also imposed penalty of Rs. 50,000/- on the appellant under regulation 18 of the 2018 Regulations.

2. Raj Kumar is the proprietor of the appellant. The appellant had submitted an application for grant of a Customs Broker License under the provisions of the Customs Broker Licensing Regulations 2013, the 2013 Regulations. It was granted a license on 28.10.2016 for the period upto 21.09.2026. On 08.08.2019, a complaint was received by the department that Raj Kumar, at the time of applying for grant of the license, had submitted a forged graduation degree. Raj Kumar was, accordingly, asked to submit attested copy of the graduation degree and Raj Kumar did submit a self-attested copy of the graduation degree. The department, thereafter, sent a letter dated 21.08.2019 to the Vice Chancellor of the Chaudhary Charan Singh University, Meerut, from which University the said

graduation degree is said to have been obtained, to verify the genuineness and authenticity of the degree and the mark sheets submitted by the Raj Kumar. The Registrar of the University, by a letter dated 05.10.2019, informed the department that the details given in the degree and the mark sheets were not as per the enrolment and confidential records of the University.

3. Accordingly, a show cause notice dated 27.12.2019 was issued to the appellant mentioning therein that as the graduate degree submitted by Raj Kumar was informed by the University to be forged, he is not eligible to hold the Customs Broker License and so he should explain why it should not be revoked. The relevant portions of the show cause notice are as follows:

"3. It is apparent from Regulation 5(h)(i) and Regulation 5(h)(ii) of CBLR 2018 {read with erstwhile regulation 5(f)(i) and 5(f)(ii) of CBLR 2013} an applicant shall be a graduate from a recognized university and possess a professional degree such as Masters or equivalent degree in Accounting, Finance or Management, CA/MBA/LLB or Diploma in Customs Clearance work from any Institutes or University recognized by the Government or is having at least two years experience in transacting Customs Broker work as G-Card holder. In the instant case, on verification of graduation degree and mark sheet submitted by Sh. Raj Kumar, it is found that details are not as per university enrolment and confidential records. It seems otherwise. Further, Sh. Raj Kumar has obtained MBA degree too on the basis of the above said forged graduation degree, hence, MBA degree of Sh. Raj Kumar is also a forged degree. As the graduation degree and MBA degree submitted by Sh. Raj Kumar, CB license holder in the name of M/s R.K. Logistics was forged one, he is not eligible to hold CB license as per Regulation 5(h)(i) and 5(h)(ii) of CBLR 2018.

4. Further, Sh. Raj Kumar while applying for CB license vide letter dated 26/09/2016 had submitted an notarized affidavit dated 16/09/2016 wherein he solemnly affirm and declared that he is a qualified person graduate from CCS University Meerut and possess a professional degree of MBA in Operations from SMU. The Registrar of Chaudhary Charan Singh University, Meerut vide its letter dated 05/10/2019 informed that details of the graduation degree of Sh. Raj Kumar, Roll No. A7854826, Enrol. No. M0427484, Year 2004 are not as per university enrolment and confidential records. It seems otherwise. Further, Sh. Raj Kumar has obtained MBA degree having registration number 581115418, UIAS Code: SMU. GTK.SK.MBADM.12120000107574 from Sikkim Manipal University on the basis of the above said forged graduation degree, thus MBA degree of Sh. Raj Kumar is also seems invalid. Thus, it appears that Sh. Raj Kumar has submitted a false affidavit to obtain CB License and he appears to be liable for punishment under Section 132 of Customs Act 1962.

xxxxxxxxx."

(emphasis supplied)

4. The appellant was, therefore, called upon to show cause as to why:

“9. Now, in view of the above, xxxxxxxxx, M/s R.K. Logistics, xxxxxxxxxxx, is hereby called upon to show cause to the Commissioner of Customs (Airport & General), New Custom House, New Delhi xxxxxxxxx:

a. He should not be held responsible for contravention of various provisions of Regulations Regulations 5(h)(i) and Regulation 5(h)(ii) of CBLR 2018 {read with erstwhile regulation 5(f)(i) and 5(f)(ii) of CBLR 2013) and violation of Section 132 of Customs Act 1962.

b. Their CB license should not be revoked and part or whole of the security submitted at the time of issue of their license, should not be forfeited from them in terms of Regulation 14 read with Regulation 17 of CBLR, 2018 (read with Regulation 18 and 20 of erstwhile CBLR 2013} for failure to comply with the provisions of Regulation Regulations 5(h)(i) and Regulation 5(h)(ii) of CBLR 2018 {read with erstwhile regulation 5(f)(i) and 5(f)(ii) of CBLR 2013}.

c. Penalty should not be imposed on them in terms of Regulation 18 read with Regulation 17 of CBLR, 2018{read with Regulation 18 and 20 of erstwhile CBLR 2013}.

d. Action should not be initiated and penalty should not be imposed under Section 132 of Customs Act 1962.”

(emphasis supplied)

5. The appellant submitted a reply and the enquiry officer provided an opportunity to the appellant to provide evidence to substantiate that the graduation degree was authentic. The enquiry officer, thereafter, submitted a report dated 27.03.2020 which was provided to the appellant by a letter dated 28.04.2020 for submission of his comments. The enquiry report mentions that the appellant could not provide documents from the University to substantiate that the graduation degree was authentic. The enquiry officer, therefore, concluded that the appellant contravened the relevant regulations contained in the 2013 Regulations and the 2018 Regulations. All that was stated by the appellant in response to the enquiry report was that the eligibility and qualification were verified by the competent authority before publishing the list of eligible candidates and, therefore, “fault lies with the competent authorities, which granted the license”. The appellant further stated that the appellant should not be “made to suffer for the alleged mistakes of the competent authorities”.

6. The Commissioner passed the impugned order after noticing that though the Registrar of the University, by letter dated 05.10.2019, had confirmed that the details of the graduation degree provided by the appellant were not in accordance with the University enrollment and confidential records, but in view of the request made by Raj Kumar to re-verify the degree a letter dated 26.11.2019 was also sent to the Vice Chancellor of the University. In response to the said letter, the Vigilance Officer of the University by e-mail dated 04.12.2019 informed that the University abides by the earlier letter dated 05.10.2019. The

Commissioner recorded a finding that the graduation degree provided by Raj Kumar while applying for the Customs Broker License was forged and, therefore, Raj Kumar did not possess the requisite essential qualification to hold the Customs Broker License. After referring to the provisions of regulation 5 of the 2013 Regulations, the Commissioner found that as Raj Kumar did not possess a graduate degree from a recognized University since the degree submitted by him was forged, he would not be eligible and so the Customs Broker License of the appellant was revoked. The security deposit of Rs. 5,00,000/- submitted by the appellant was forfeited and a penalty of Rs. 50,000/- was also imposed upon the appellant under regulation 18 of the 2018 Regulations.

7. It is this order dated 01.07.2020 of the Commissioner that has been assailed in this appeal.

8. Shri Mukesh Kumar, learned counsel for the appellant submitted that:

(i) The University never intimated the department that the graduation degree submitted by the appellant was forged since all that was intimated by the University was that the degree and the mark sheets were not as per the University enrollment and confidential record;

(ii) All the academic records of the appellant were verified by the department before granting the Customs Broker License to the appellant and so the department cannot now contend that the graduation degree submitted by the appellant was forged;

(iii) The burden of proof was on the department to prove that the graduation degree submitted by the appellant was forged but the department failed to discharge this burden;

(iv) Even if it is held that the graduation degree submitted by the appellant was forged, then too the appellant had submitted the Masters of Business Administration Degree, which degree has not been found to be forged;

(v) The department was not justified in acting on an anonymous e-mail and it appears that there was a conspiracy against the appellant to get his license revoked; and

(vi) The revocation of license under the 2018 Regulations was not justified as the license could be revoked only under the 2013 Regulations.

9. Shri Rakesh Kumar, learned authorized representative appearing for the department, however, supported the impugned order and made the following submissions:

(i) Regulation 5(f) of the 2013 Regulations clearly requires that a person who applies for appointment as a Customs Broker should be graduate from a recognized University and should also possess a Masters of Business Administration Degree. The graduate degree submitted by the appellant has been found to be forged on verification from the University. The appellant, therefore, did not possess the requisite qualification to be appointed as a Customs Broker. The Customs Broker License that had been issued to the appellant basis the aforesaid graduate degree was, therefore, correctly revoked by the department;

(ii) Though the Masters of Business Administration Degree was obtained on the basis of the graduation degree which has been found to be forged, but even otherwise the requirement contained under regulation 5(f) of the 2013 Regulations is that an applicant seeking appointment as a Customs Broker should have both a graduate degree from a recognized University and Masters of Business Administration Degree and, therefore, it is not open to the appellant to contend that even if the graduate degree has been found to be forged, the appellant would still be eligible for appointment as a Customs Broker since the appellant possess Masters of Business Administration Degree;

(iii) Though at the time when the appellant had submitted the application for appointment as a Customs Broker the 2013 Regulations were in force but at the time when it was found that the graduation degree was forged, the 2018 Regulations had come into force and, therefore, action was required to be taken against the appellant under the 2018 Regulations;

(iv) Merely because the appellant was appointed on the basis of the graduation degree submitted by the appellant does not mean that the department cannot take action against the appellant when later on it is found that the graduation degree submitted by the appellant was forged; and

(v) The appellant has not obtained any document from the University, which may substantiate that the graduation degree submitted by the appellant with the application form was a genuine degree.

10. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

11. To appreciate the contentions that have been advanced, it would be useful to reproduce the relevant portions of the 2013 Regulations and the 2018 Regulations:

2013 REGULATIONS

"3. Customs Brokers to be licensed. - No person shall carry on business as a Customs Broker relating to the entry or departure of a conveyance or the import or export of goods at any Customs Station unless such person holds a licence granted under these regulations:

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5. Conditions to be fulfilled by the applicants.-The applicant for a licence to act as a Customs Broker in a Customs Station, shall prove to the satisfaction of the Commissioner of Customs, that:

(a) xxxxxxxxx

(b) xxxxxxxxx

(c) xxxxxxxxx

(d) xxxxxxxxx

(e) xxxxxxxxx

(f) an individual applicant or in case the applicant is a firm or company its partner or director or an authorized employee who may handle the Customs work shall:

(i) be a graduate from a recognised University, and

(ii) possess a professional degree such as Masters or equivalent degree in Accounting, Finance or Management, CA/MBA/LLB or Diploma in Customs Clearance work from any Institutes or University recognised by the Government or is having at least two years experience in transacting Customs Broker work as G-Card holder;

(g) xxxxxxxxx

(h) xxxxxxxxx

Provided that for the purpose of his satisfaction, the Commissioner or Customs may make enquiries as may be deemed fit.

6. Examination of the applicant.-

(1) An applicant, who satisfies the requirements of regulation 5, shall be required to appear for a written as well as oral examination conducted by the DGICCE:

Provided that xxxxxxxxxx.

(2) to (7)xxxxxxxxx

(7) Grant of licence. –

(1) The Commissioner of Customs shall, on payment of fee of five thousand rupees grant licence in Form B to an applicant who has passed the oral examination within two months of the date of declaration of the said results.

(2) The applicant who has been granted licence under sub- regulation (1) shall be eligible to work as Customs Broker in all Customs Stations subject to intimation in Form C to the Commissioner of Customs of the Customs Station where he intends to transact business. A copy of this intimation shall also be sent to the Commissioner of Customs who has issued the licence in Form B.”

2018 REGULATIONS

In exercise of the powers conferred by the sub-section

(2) of section 146 of the Customs Act, 1962 (52 of 1962), and in supersession of the Customs Brokers Licensing Regulations, 2013, published vide number GSR 395(E), dated the 21st June, 2013, except as respect things done or omitted to be done before such supersession, the Central Board of Indirect Taxes and Customs hereby makes the following regulations, namely:-

1. Short title, commencement and application:

(1) These regulations may be called the Customs Brokers Licensing Regulations, 2018.

(2) They shall come into force on the date of publication in the Official Gazette.

(3) These regulations shall apply to, a Customs Broker who has been licensed and such other persons who have been employed or engaged by a licensed Customs Broker under these regulations or the Customs House Agents Licensing Regulations, 1984 or the Customs House Agents Licensing Regulations, 2004 or the Customs Brokers Licensing Regulations, 2013.

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14. Revocation of Licence or Impositions of penalty

The Principal Commissioner or Commissioner of Customs may, subject to the provisions of regulation 17, revoke the license of a Customs Broker and order for forfeiture of part or whole of security, on any of the following, namely:-

(a) xxxxxxxxxx;

(b) failure to comply with any of the provisions of these regulations, within his jurisdiction or anywhere else;

(C–f) xxxxxxxx”

12. The appellant had submitted an application for grant of a Customs Broker License in 2016 when the 2013 Regulations were in force. Regulation 3 of the 2013 Regulations provides that no person shall carry on business as a Customs Broker at any Customs Station unless such a person holds a license granted under the 2013 Regulations. Regulation 4 requires inviting of applications and for conducting of examinations for grant of a license to act as a Customs Broker. Regulation 5 deals with the conditions to be fulfilled by the applicants. Sub-clause (f) of regulation 5 of requires that an individual shall be a graduate from a recognized University and possesses, amongst others, a Masters of Business Administration Degree. It is, therefore, clear that the two essential requisites for an applicant to be considered for appointment as a Customs Broker are that he must be a graduate from a recognized University and must also possess a Master of Business Administration Degree.

13. The applicant had submitted a graduate degree from the Chaudhary Charan Singh University, Meerut with the application form and also a Masters of Business Administration Degree from the Sikkim Manipal University. The applicant also

appeared at the written examination conducted by the department and was ultimately granted a Customs Broker License. On a complaint received by the department, a query was made by the department from the Chaudhary Charan Singh University, Meerut regarding the genuineness of the graduate degree which the appellant had submitted to the department at the time of seeking appointment as a Customs Broker. The University, in no uncertain terms, informed the department that the details given in the graduate degree were not as per the University enrollment records or the confidential records. At the instance of the appellant the University again sought confirmation of the earlier report sent by the University and the University again informed the department that the earlier information given by the University was correct. The appellant has not produced any document from the University to substantiate that the graduate degrees submitted by the appellant is a genuine degree and only a bald assertion has been made by the appellant that the graduate degree submitted by the appellant is not forged. The finding recorded by the Commissioner that the graduate degree submitted by the appellant is a forged degree, therefore, does not suffer from any infirmity.

14. The effect of such a forged graduate degree on the Customs Broker License issued to the appellant would now have to be examined.

15. Once it is found that the graduation degree obtained by the appellant is a forged degree, the appellant clearly did not satisfy the essential requirement contained in clause 5(f) of the 2013 Regulations for appointment as a Customs Broker.

16. Regulation 18 of the 2013 Regulations provides for revocation of the license. Under regulation 18(b) a license can be revoked on the ground that the appellant failed to comply with any of the provisions of the Regulations. Regulations 20 deals with the procedure for revoking the license or imposing penalty.

17. The 2018 Regulations came into effect from 14.05.2018. When the complaint was received by the department against the appellant regarding the graduation degree, the 2018 Regulations had come into force. These Regulations supersede the 2013 Regulations, except as respect things done or omitted to be done before such supersession. Under regulation 1(3) of the 2018 Regulations, the 2018 Regulations shall apply to a Customs Broker who had been licensed either under the 2018 Regulations or under the earlier 2013 Regulations. Regulation 14 of the 2018 Regulations deals with revocation of license. It is in accordance with regulation 17 of the 2018 Regulations that a show cause notice was issued to the appellant and action was taken after the appellant was provided adequate opportunity by the enquiry officer and after the appellant was provided an opportunity to submit comments to the report submitted by the enquiry officer.

18. The issue that arises for consideration in this appeal is whether an applicant who had submitted a forged graduation degree, which degree is an essential requirement for appointment as a Customs Broker, can be permitted to continue

as a Customs Broker.

19. In the first instance, under the 2013 Regulations or the 2018 Regulations a heavy responsibility is cast upon a Customs Broker, as is clear from regulation 11 of the 2013 Regulations and regulation 10 of the 2018 Regulations. This is what has been observed by the Tribunal in Noble Agency vs. Commissioner of Customs, Mumbai, 2002 (142) E.L.T. 84 (Tri. - Mumbai) and the relevant observations are as follows:

"The CHA occupies a very important position in the Customs House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations...."

(emphasis supplied)

20. The Supreme Court in Commissioner of Customs vs. M/s. K.M. Ganatra & Co., 2016 (2) TMI 478 - Supreme Court approved the aforesaid observations made by the Tribunal.

21. In M/s Indian Oil Corporation Ltd. vs. Shri Rajendra D. Harmalkar, Civil Appeal No. 2911 of 2022 decided on 21.04.2022 the Supreme Court observed that an employee who has produced a fake and forged mark sheet at the initial stage of appointment cannot be trusted by the employer and the relevant observation are as follows:

"7.1 In the present case, the original writ petitioner was dismissed from service by the Disciplinary Authority for producing the fabricated/fake/forged SSLC. Producing the false/fake certificate is a grave misconduct. The question is one of a TRUST. How can an employee who has produced a fake and forged marksheet/ certificate, that too, at the initial stage of appointment be trusted by the employer? Whether such a certificate was material or not and/or had any bearing on the employment or not is immaterial. The question is not of having an intention or mens rea. The question is producing the face/forged certificate. Therefore, in our view, the Disciplinary Authority was justified in imposing the punishment of dismissal from service."

(emphasis supplied)

22. A person who has a submitted a forged graduation degree to seek appointment as a Customs Broker, therefore, should not be permitted to work as a Customs Broker.

23. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression “fraud” involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage. Dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances Courts should not perpetuate the fraud.

24. In this connection, it needs to be remembered what was observed by the Supreme Court in Shrisht Dhawan vs. Shaw Bros, (1992) 1 SCC 534 that “fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct.”

25. In United India Insurance Co. Ltd. vs. Rajendra Singh, (2000) 3 SCC 581, the Supreme Court again observed that “fraud and justice never dwell together” (fraus et jus nunquam cohabitant) and it is a pristine maxim which has never lost its temper over all these centuries.”

26. It is for this reason that the Supreme Court in R. Vishwanatha Pillai vs. State of Kerala & Others, (2004) 2 SCC 105 observed in paragraph 19 that:

“A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud.”

(emphasis supplied)

27. In State of Bihar & Others vs. Kirti Narayan Prasad, (2019) 13 SCC, the Supreme Court again observed as follows:

“16. In the instant cases, the writ petitioners have filed the petitions before the High Court with a specific prayer to regularise their service and to set aside the order of termination of their services. They have also challenged the report submitted by the State Committee. The real controversy is whether the writ petitioners were legally and validly appointed. The finding of the State Committee is that many writ petitioners had secured appointment by producing fake or forged appointment letter or had been inducted in government service surreptitiously by the Civil Surgeon-cum-Chief Medical Officer concerned by issuing a posting order. The writ petitioners are the beneficiaries of illegal orders made by the Civil Surgeon- cum-Chief Medical Officer. They were given notice to establish the genuineness of their appointment and to show-cause. None of them could establish the genuineness or legality of their appointment before the State Committee. The State Committee on appreciation of the materials on record has opined that their appointment was illegal and void ab initio. We do not find any ground to disagree with the finding of the State Committee."

(emphasis supplied)

28. In State of U.P. vs. Neeraj Awasthi & others, JT, 2006 (1) SC 19, the Supreme Court held that discontinuation of services of a person who lacked the basic qualifications and, therefore, could not have been appointed nor continued would not be a punitive measure because they were discontinued for the reason that they were not qualified and did not possess the requisite qualifications for appointment.

29. The inevitable conclusion, therefore, that follows from the aforesaid discussion and the decisions is that the appellant who had been granted a Customs Broker License on the basis of a forged graduation degree cannot be permitted to continue to work as a Customs Broker.

30. The contention of the learned counsel for the appellant that the University had not informed the department that the graduation degree submitted to the department was forged cannot be accepted. All that the University was required to examine was whether the contents of the degree and the mark sheet were in conformity with the University enrollment and confidential records and the University categorically stated that they were not. This clearly implies that the graduate degree submitted by the appellant was a forged degree. The appellant cannot be permitted to contend that before grant of the Customs Broker License the University should have verified the documents and it is not permissible to the University to ascertain the authenticity of the graduate degree after he had been granted the Customs Broker License. As noticed above, the appellant had to satisfy the two essential requirements namely a graduate degree from a recognized University and a Master of Business Administration Degree and in the absence of any of these two degrees, the Customs Broker License could not have been granted to the appellant. The submission of the learned counsel for the appellant that action could have been taken only under the 2013 Regulations and not under the 2018 Regulations cannot also be accepted for the reason stated above.

31. There is, therefore, no infirmity in the order dated 01.07.2020 passed by the Commissioner revoking the Customs Broker License of the appellant and forfeiture of the security deposit and also imposing penalty of Rs. 50,000/- on the appellant.

32. The appeal would, therefore, have to be dismissed and is dismissed.

(Order pronounced on 23.12.2024)

