

(2023) 08 CESTAT CK 0003

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 54942 Of 2023

M/S Trinity International Appellant Forwarders

APPELLANT

Vs

Commissioner Of Customs (Preventive)

RESPONDENT

Date of Decision : 02-08-2023

Acts Referred:

Customs Valuation (Determination Of Value Of Imported Goods) Rules, 2007 — Rule 4, 5, 6, 7, 12
Customs Brokers Licensing Regulations, 2013 — Regulation 11(d), 11(e), 11(n), 18, 20, 22, 20(7)
Customs Act, 1962 — Section 2(2), 14
Evidence Act, 1872 — Section 79

Citation : (2023) 08 CESTAT CK 0003

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

Bench : Division Bench

Advocate : Priyanka Goel, Rakesh Kumar

Final Decision : Allowed

Judgement

P. V. Subba Rao, Member (T)

1. M/s. Trinity International Forwarders Appellant was issued a licence as a Customs Broker. The Directorate of Revenue Intelligence DRI , Mumbai, received intelligence that some exporters were over-invoicing exports so as to claim excessive drawback and investigated the matter. One of these exporters was M/s. Janman Lifestyles Pvt. Ltd. Exporter , who exported garments under 59 Shipping Bills filed in Mumbai and claimed drawback and the appellant filed some of these Shipping Bills as its Customs Broker. A Show Cause Notice SCN for the alleged violations was issued to the exporter and others including the appellant in the case. Learned counsel for the appellant submitted that a fine was imposed on the appellant in that matter by the Additional Commissioner and the appeal filed against that order is before the Commissioner (Appeals). Having received the information about this SCN, the Commissioner of Customs and central Excise, Jodhpur, who licenced the appellant as Customs Broker, initiated these

proceedings and an SCN dated 1.2.2023 was issued to the appellant proposing action under the Customs Brokers Licensing Regulations, 2013 CBLR, 2013.

2. In this appeal, the appellant is assailing the Order-in-Original Impugned order dated 2.5.2023 passed by the Commissioner of Customs (Preventive) Jodhpur wherein he held that the appellant had violated Regulations 11(d), 11(e) and 11(n) of CBLR, 2013 and cancelled the Customs Brokers licence issued to the appellant, forfeited its security deposit and imposed a penalty of Rs. 50,000 on it. The operative part of the impugned order is as follows:

In exercise of power conferred in terms of Regulation 20(7) of CBLR, 2013 read with Regulation 18 & 22 of CBLR, 2013, I revoke the CB license No. 01/CHLR/R/96(PAN NO. AAAFT0172C) valid up to life time, issued by this office and forfeit of security deposit of customs Broker. I impose a penalty of Rs. 50,000/- (Rupees Fifty Thousand only) under Regulation 22 read with Regulation 20 of CBLR, 2013 upon the CB M/s Trinity International Forwarders, 22, Lalpura Colony, Near Hotel Purohit, Vanasthali Marg, Jaipur 304001 issued by this office.

Issues

3. Two issues need to be decided in this appeal are:

a) Had the appellant violated Regulations 11(d), 11(e) and 11(n) of the CBLR, 2013?

b) If so, is the penalty of cancellation of its licence under Regulation 20(7) read with Regulation 18 and 22, and forfeiture of its security deposit and the imposition of fine of Rs. 50,000/- under Regulation 22 read with Regulation 20 just and fair?

Regulation 11(d)

4. Regulation 11(d) of CBLR, 2013 reads as follows.

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 noncompliance, shall bring the matter to the notice of the Deputy

Commissioner of Customs or Assistant

Commissioner of Customs, as the case may be?

5. The case of the Revenue and the finding in the impugned order and in the submissions by the learned authorised representative before us is that garments which were exported were highly overvalued by the exporter so as to claim ineligible drawback. This came to light only when the DRI, on the basis of intelligence, conducted an investigation into the matter. The appellant, as the Customs Broker, had an obligation to advise its client, the exporter, to comply with the provisions of the Act and Rules and also has a further obligation to inform the Assistant Commissioner or Deputy Commissioner if the client was not

following them. The appellant failed to fulfil this obligation and instead, filed the Shipping Bills and facilitated the over-valued exports which enabled the exporter to claim ineligible drawback. Learned authorised representative also stressed the fact that during investigation of the exporter the appellant was issued summons and the appellant did not appear in response to the summons or otherwise cooperate in the investigation. According to the Revenue, this is a serious violation and the revocation of license of the appellant, forfeiture of security deposit and imposition of penalty are therefore, fully justified.

6. Learned counsel for the appellant submits that the summons were issued to its old address and therefore, it never received them. Had it received any of the summons, it would have appeared and would have readily cooperated with the investigation. According to the learned counsel, even if the exporter had claimed ineligible drawback by inflating the value of the export goods, the appellant had no knowledge of it. It also has no mechanism or authority to verify if the export value is correct or otherwise. The appellant had to file the Shipping Bills as per the documents provided to it which it had no reason to doubt. Therefore, the charge that the appellant did not advise its client- the exporter to comply with the Act and Rules or that it did not report non-compliance is not established.

7. We have considered the submissions by both sides on this issue. The case of the Revenue is that the exporter over-invoiced exports to claim ineligible drawback. Drawback is a mechanism of reimbursing to the exporter, the taxes and duties which would have been paid or borne by the exporter on the finished goods as well as on the raw materials. Instead of calculating these taxes and duties each case, based on the average incidence of the taxes and duties on each type of goods, a drawback schedule is notified by the Government which indicates the drawback for each type of goods usually as a percentage of the Free on Board FOB value. For some goods, the rate could be on per piece basis and on some goods, the duty could be as a percentage of FOB with a value cap and in such cases even if the FOB value is higher, drawback will be paid only on that amount. The appellant had filed the Shipping Bills as per the documents provided to it by the exporter. According to the Revenue, by filing Shipping Bills with over-invoiced export values, the appellant violated Regulation 11(d). To consider this assertion of the Revenue, we examine the significance of the value in the export documents and who can determine it and if the appellant had any right to determine the value of the goods being exported.

8. A perusal of the Section 2(2) of the Customs Act shows that the determination of value in the Bill of Entry or Shipping Bill is a part of assessment. It reads as follows:

(2) "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to-

- (a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;
- (b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;
- (c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;
- (d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;
- (e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;
- (f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

9. The value of the imported goods in the Bill of Entry is determined as per Section 14 of the Act read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [Import valuation Rules] . The value of export goods in the Shipping Bill is determined as per Section 14 read with Customs Valuation (Determination of Value of Export Goods) Rules, 2007 [Export valuation Rules] . Section 14 states that for the purpose of Customs Tariff Act, 1975 (under which the rates of import and export duties are prescribed) or any other law for the time being in force, the value shall be the transaction value, i.e., the value actually paid or payable for import of the goods at the place of importation or export of the goods at the place of exportation subject to some conditions and Rules. In respect of imports, Rule 12 of the Import Valuation Rules authorizes the proper officer to reject the transaction value under certain circumstances and redetermine it based on the value of contemporaneous imports of identical goods (Rule 4), value of contemporaneous imports of similar goods (Rule 5), value arrived at through deductive method (Rule 7), etc. In cases of exports, the proper officer can, under certain circumstances, reject the transaction value under Rule 8 of the Export Valuation Rules and redetermine the value by comparison (Rule 4), through computation (Rule 5) or through a residual method (Rule 6).

10. It needs to be noted that when the officer rejects the transaction value and determines the value of the imported goods or export goods under the Rules, he re-determines the value to calculate duty under the Customs Act. He does not and he cannot change the transaction value (be it under FOB, CIF or C&F) which is the consideration paid or payable for the goods as between the importer and exporter. The officer is a stranger to the contract between the importer and

exporter and has no locus standi to change the transaction value.

11. Thus, while the transaction value is decided between the exporter and importer, value for determining the duty under the Customs Act is a part of assessment. The power to assess including determining the value lies with the importer/ exporter (self-assessment) or with the proper officer (re-assessment). The Customs Broker has neither any authority nor any responsibility to assess the value of the imported goods or export goods.

12. In all the Shipping Bills, exports were allowed by the Customs in the normal course. It is only the subsequent intelligence and investigations by the DRI which revealed the alleged over valuation of exports. The Customs Broker is neither authorized under the Act nor is obligated under the CBLR to re-determine the value of any goods. Transaction value (be it FOB, CIF or C&F) is a matter of negotiation between the overseas buyer and the Indian exporter. It is the consideration which is paid or payable to the Indian exporter by the overseas buyer. The Customs Broker is a stranger to this contract and has no locus standi with respect to the transaction value. Any value determined under the Customs Act is a part of assessment which is the prerogative of the importer/exporter (self-assessment) or the proper officer (re-assessment). The Customs Broker has neither any authority nor any power to determine or re-determine the value for customs purposes either. The Customs Broker also has no authority to inspect or examine the goods and so the possibility of the Customs Broker suspecting that the goods may have been over valued also does not arise.

13. Nothing in the facts of the case show that the appellant failed to fulfil its obligations under Regulation 11(d). Hence, we find that the appellant has not violated Regulation 11(d).

Regulation 11(e)

14. Regulation 11(e) of CBLR, 2013 reads as follows.

11. Obligations of Customs Broker. A Customs Broker shall

(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.

15. This Regulation requires the Customs Broker to NOT impart any incorrect information to the exporter. After perusing the records and the appeal we find no allegation that the appellant, as the Customs Broker, has imparted incorrect information. The case of the Revenue is that the exporter had over-valued export goods and the appellant did not report it.

Therefore, evidently, the appellant did not violate Regulation

11(e).

Regulation 11(n)

16. Regulation 11(n) of CBLR, 2013 reads as follows.

11. Obligations of Customs Broker. A Customs Broker shall

(n) verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information?

We now proceed to examine the scope of the obligations of the Customs Broker under Regulation 11(n). It requires the Customs Broker to verify correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information.

This obligation can be broken down as follows:

a) Verify the correctness of IEC number

b) Verify the identity of the client using reliable, independent, authentic documents, data or information

c) Verify the functioning of the client at the declared address using reliable, independent, authentic documents, data or information

17. Of the above, (a) and (b) require verification of the documents which are issued by the Government departments. The IEC number is issued by the DGFT, the GSTIN issued by the GST officers qualify as reliable, independent, authentic documents. A certificate or registration issued by an officer is purported to be issued by an officer is correctly issued. Section 79 of the Evidence Act, 1872 requires even Courts to presume that every certificate which is purported to be issued by the Government officer to be genuine. It reads as follows:

79. Presumption as to genuineness of certified copies. The Court shall presume to be genuine every document purporting to be a certificate, certified copy or other document, which is by Law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer of the Central Government or of a State Government, or by any officer in the State of Jammu and Kashmir who is duly authorized thereto by the Central Government.

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

18. During the proceedings before us, learned counsel for the appellant produced copies of the Aadhar card and PAN Card of Shri Uday Desai and the IEC certificate of M/s. Janman Lifestyles Pvt. Ltd. which it had obtained as a part of Know Your Clients KYC verification. Copies of these were served on the learned authorized representative for the Revenue who got them verified. The Additional

Commissioner of Customs SIIB(X) ACC, Mumbai sent a letter dated 18.02.2023, inter alia, stating as follows:

"8. Further, it is submitted that the KYC documents received under your aforesaid letter viz., the copy of the Aadhaar Card and PAN card of Shri Uday Desai as well as the IEC certificate of M/s. Janman Lifestyles Pvt. Ltd. (IEC 0314034366) have been verified with the documents available on file records of this office. The same have been found in order."

19. The above KYC documents submitted by the appellant and verified and confirmed by the Commissionerate, leave no manner of doubt that the appellant had fully met its obligations under regulation 11(n) and had not violated it.

20. In view of the above, we answer the two issues which we framed in this appeal in paragraph 3 above as follows:

a) The appellant had not violated Regulations 11(d), 11(e) or 11(n) of CBLR, 2013.

b) Consequently, the cancellation of the licence of the appellant, forfeiture of the security deposit and imposition of penalty on the appellant are not sustainable and need to be set aside.

21. The appeal is allowed and the impugned order is set aside with consequential relief to the appellant.