**(2015) 09 CESTAT CK 0016**

**In the Customs, Excise And Service Tax Appellate Tribunal**

**Case No :** Customs Appeal No. 51044 Of 2015

M/s Uniyal Cargo Movers Pvt. Ltd. APPELLANT

Vs

CC (General), New Delhi RESPONDENT

**Date of Decision :** 16-09-2015

**Acts Referred:**

Customs House Agent Licensing Regulations, 2004 — Regulation 13(a), 13(d), 19(8), 20, 22
Customs Brokers Licensing Regulations, 2013 — Regulations 11(a), 11(d), 17(9), 18, 20(7)

**Citation :** (2015) 09 CESTAT CK 0016

**Hon'ble Judges :** G. Raghuram, J;R. K. Singh, Technical Member

**Bench :** Division Bench

**Advocate :** Anuj Kumar Garg, Ranjan Khanna

**Final Decision :** Allowed

## Judgement

1. Appeal has been filed against order of Commissioner of Customs dated 17.02.2014 in terms of which Customs broker license of the appellant was

revoked for violation of Regulation 13(a) and (d) and 19(8) of Customs House Agent Licensing Regulations, 2004 (corresponding to Regulations 11(a),

(d) and 17(9) of the Customs Brokers Licensing Regulations, 2013) The license was revoked in exercise of the powers conferred on the

Commissioner of Customs in terms of Regulation 20 read with Regulation 22 of the CHALR, 2004 (corresponding Regulation 18 read with Regulation

20(7) of CBLR, 2013.

2. Facts of the case, in brief, are as under:

The appellant filed five shipping bills declaring goods as ""Indian Hand Tufted Woolen Floor Covering Carpet"" and ""Indian Floor Covering Carpet

 

(Saggy Pol.)"" in the name of M/s A.S. Exports, Bombay. On examination the area of the carpets was found to be misdeclared and less than what was

declared.

3. The appellant has contended that it was not aware of the misdeclaration of the area of the carpet as the goods were in the form of rolls. There was

no mis-declaration of the description of the goods and there is nothing to show that the mis-declaration of area was in its knowledge and in these

circumstances the revocation of license was totally unjustified. It added that vide order No. A/256 - 1257/15/SMB dated 11.05.2015 in respect of the

same shipping bills the CESTAT did find the appellant guilty of any abatement with regard to mis-declaration of area and did not impose any penalty.

3. We have considered the contentions of the appellant. We find that as per Regulation 13(a) of the CHALR, 2004 (corresponding Regulation 11(a) of

CBLR, 2013) the Customs broker is required to obtain an authorisation from the exporter. It is seen that the copy of the authority letter from the

exporter was produced by the appellant before the enquiry Officer and the proprietor of the exporter, Shri Ashish Shah also stated in his statement

dated 22.12.2009 that the shipping bills were filed by the appellant on the exporter behalf. Thus, violation of Regulation 13(a) of CHALR/ 11(a) of

CBLR, 2013 is not really sustainable. A per Regulation 13(d) of CHALR / 11(d) of CBLR, 2013 Customs broker is required to advise his client to

comply with the provisions of the act and in case of non-compliance, he is required to bring the matter to the notice of the Deputy Commissioner of

Customs. There is nothing on record to show as to how this provision was violated. It is not that the exporter was not in existence or the appellant in

any way encouraged the exporter to mis-declare the total area of the carpets. It has also not been brought out in the impugned order that the CHA

was in any way aware of the said mis-declaration or even had reasons to suspect such mis-declaration. In these circumstances, violation of Regulation

13(d) of the CHALR/ 11(d) CBLR 13 is on totally shaky ground. Similarly, Regulation 19(8) of the CHALR, 2004 (Regulation 17(9) of the CBLR,

2013) stipulates that the customs broker exercise proper supervision to ensure proper conduct of his employees in the transaction of business and he

shall be held responsible for acts of omission and commission of his employees. As has been stated earlier, no improper act of omission or commission on the part of the appellants' employees has been pointed out nor any lack supervision of its employees by the appellant brought out in the impugned

order in relation to the said mis-declaration. Indeed in the Customs offence case booked for the said mis-declaration in respect of the same shipping

bills filed by the appellant CESTAT vide order dated 11.05.2015 exonerated the appellant in the following words:

8. Having heard the parties and gone through the records, I find that under the facts and circumstances that is no lapse on the part of the

CHA. The CHA acted on the instructions of the exporter and documents given. He had identified exporter before the Customs Authorities.

Further the said exporters have accepted the responsibility for the mis-declaration in the sq. ft. of the carpets under export. Further no

elements of aiding and abetting have come on record. Further in view of the goods subjected to examination and the L.E.O. issued, the CHA

cannot be held responsible for lack of duty in mis-declaration of sq. ft. area of the carpets under export, which cannot be made out by

visual examination and the same have come on record only at the stage of second examination where the consignment was opened and

100% measured. Thus, I hold that the CHA is not guilty of aiding and abetting. I further hold that the CHA had the authorisation which it

appears was not produced due to clerical error, but the fact has been stated and accepted by the exporter. That the penalty retained in the

impugned order is set aside"".

4. In the light of the foregoing, we are of the view that revocation of the appellant's license is not sustainable. Accordingly, we set aside the impugned

order and allow the appeal.

 