(2021) 04 CESTAT CK 0022

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 40526 Of 2020

M/s.Senghi Shipping Services (Custom Broker) APPELLANT

Vs

Principal Commissioner Of Customs RESPONDENT

Date of Decision : 09-04-2021

Acts Referred:
Customs Brokers Licensing Regulations (CBLR), 2018 — Regulation 10(n), 17(1), 17(5)

Citation : (2021) 04 CESTAT CK 0022

Hon'ble Judges : Sulekha Beevi C.S, J

Bench : Single Bench

Advocate : P.K. Ethirajan, T. Usha Devi

Final Decision : Allowed

Judgement

1. Appellant is the customs broker having branch operations in Chennai and Mumbai also. Special Investigations and Intelligence Branch investigated a case in respect of importer M/s.Angel Impex. The Bill of Entry dt. 1.6.2018 for clearance of goods imported by M/s.Angel Impex was found to be filed by the appellant at Mumbai Branch. The Proprietor of M/s.Angel Impex was summoned as the goods imported contained some undeclared goods also. The proprietor of M/s.Angel Impex denied having made any import or exports and expressed complete ignorance about the transactions. The IEC address and other documents were accepted to be his. During investigation, the statement of Ms. Sulakshana Tukaram Pawar, Branch Manager of the appellant at Mumbai was also recorded on 28.10.2019 and she stated that necessary documents were handed over to her by Mr. Rakesh Bhanushali whom she knows for the last two years. Based on the above investigations, it appeared to department, that appellant as customs broker had not verified KYC and has violated Regulation 10(n) of Customs Brokers Licensing Regulations (CBLR), 2018. Inquiry report was submitted and, SCN under CBLR dt. 26.11.2019 was issued to the appellant. After adjudication, the original authority imposed penalty of Rs.50,000/- holding that the appellant has failed to fulfill obligations under Regulation 10 (n) of CBLR

2018. Aggrieved by such order, the appellant is now before the Tribunal.

2.1 On behalf of the appellant Ld. Counsel Shri P.K. Ethirajan appeared and argued the matter. On merits, Ld. Counsel submitted that appellant had obtained all the KYC documents with regard to the import of the goods. Regulation 10 (n) of CBLR 2018 does not cast any obligation on the customs broker to visit the importer's premises, and to meet the importer in person. It is not practically possible and commercially feasible for the customs broker to meet the importer in person for all transactions. The appellant was satisfied with the scrutiny of KYC documents and bonafides of the importer at the place of his business as reflected from the documents and the bank details given to him; that the finding that appellant violated provisions of 10(n) of CBLR 2018 is baseless.

2.2 He referred to Regulation 17 (1) of CBLR 2018 and submitted that a show cause notice has to be issued within 90 days from the date of an offence report. In the present case, the show cause notice in respect of the offence investigated at Mumbai was adjudicated by Mumbai Customs and copy of the order bearing No.15/2019-20 dated 29.5.2019 was sent to the adjudicating authority at Chennai Customs. The same has to be considered as the offence report. Thus, 90 days expired on 28.8.2019 for issuing the show cause notice under CBLR, 2018. In the present case, the SCN has been issued only on 26.11.2019 with delay of 87 days. For these reasons, the proceedings initiated upon such SCN cannot be sustained. He also referred to Regulation 17 (5) of CBLR 2018 and submitted that it is stipulated that inquiry report has to be submitted within 90 days of the issuance of the SCN by the officer nominated for conducting inquiry. In the present case, the appellant has received the inquiry report only on 9/10.03.2020. There is delay of 12 days in filing the inquiry report which is violation of Regulation 17 (1) of CBLR 2018. The Order-in-Original which upholds the inquiry report is therefore not sustainable. He prayed that appeal may be allowed.

3. Ld. A.R Ms. T. Usha Devi appeared and argued the matter. She supported the findings in the impugned order.

4. Heard both sides.

5. Let me address the issue with regard to limitation. Regulation 17 (1) of CBLR 2018 reads as under :

"Regulation 17. Procedure for revoking license or imposing penalty. - (1) The Principal Commissioner or Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the license or impose penalty requiring the said Customs Broker to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Customs Broker desires to be heard in person by the said Deputy Commissioner of Customs or Assistant

Commissioner of Customs"

From the above, it can be seen that a show cause notice has to be issued within 90 days from the date of receipt of the offence report. In the present case, the copy of the order passed by the adjudicating authority at Mumbai Customs is dated 29.05.2019. The same was communicated to Chennai Customs. If the said order is considered as offence report, show cause notice ought to have been issued on or before 28.08.2019. In the present case the show cause notice is dated 26.11.2019. Thus there is delay in issuing the show cause notice which is clear violation of Regulation 17(1) of CBLR 2018. The jurisdictional High Court in the case of Bhuvan Shipping Services Vs CC Chennai and another - W.P.No.5119/2017 vide order dt. 18.03.2021 has held that when the SCN is issued beyond 90 days of the offence report, the consequential order passed cannot sustain. The Hon'ble High Court in Sabin Logistics Pvt. Ltd. Vs CC Chennai-VIII - 2019 (367) ELT 200 (Mad.) has held that where the regulation spells out specific period of limitation such period is mandatory and any exclusion therefrom should also be provided specifically. The Regulation provides for a seamless procedure commencing from the offence report and there is nothing in the regulation that indicates for distortion of this time frame. For these reasons, the violation of the prescribed time limit vitiates the proceedings and the order passed consequently cannot sustain. 6. The second violation argued by Ld. Counsel is with regard to Regulation 17 (5) of CBLR 2018. It is submitted by the Ld. Counsel that the inquiry report has been submitted with delay of 12 days. In page 31 covering letter for forwarding the inquiry report has been furnished. On perusal, it can be seen that though inquiry report is dt. 23.02.2020, the appellant has received it only on 09.03.2020. Regulation 17(5) reads as under :

"17 (5) At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall prepare a report of the inquiry and after recording his findings thereon submit the report within a period of ninety days from the date of issue of a notice under sub-regulation (1)."

7. Be that as it may, coming to the merits of the case, it is seen that penalty is imposed for not complying with the Regulation 10(n) of CBLR 2018. The said regulation reads as under :

"Regulation 10. Obligations of Customs Broker. - A Customs Broker shall -

....

(n) verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;"

From the records, it is seen that the appellant has received necessary documents from the importer for filing the Bill of Entry. The IEC of the importer is correct. As per the Regulation 10 (n), the customs broker has to verify correctness of IEC code of the importer, GSTIN, identity of his client using reliable information.

8. In Kunal Travels (Cargo) - 2017 (354) ELT 447 (Del.) the Hon'ble High Court observed as under :

"12. Clause (e) of the aforesaid Regulation requires exercise of due diligence by the CHA regarding such information which he may give to his client with reference to any work related to clearance of cargo. Clause (l) requires that all documents submitted, such as bills of entry and shipping bills delivered etc. reflect the name of the importer/exporter and the name of the CHA prominently at the top of such documents. The aforesaid clauses do not obligate the CHA to look into such information which may be made available to it from the exporter/ importer. The CHA is not an inspector to weigh the genuineness of the transaction. It is a processing agent of documents with respect to clearance of goods through customs house and in that process only such authorized personnel of the CHA can enter the customs house area. What is noteworthy is that the IE Code of the exporter M/s. H.M. Impex was mentioned in the shipping bills, this itself reflects that before the grant of said IE Code, the background check of the said importer/exporter had been undertaken by the customs authorities, therefore, there was no doubt about the identity of the said exporter. It would be far too onerous to expect the CHA to inquire into and verify the genuineness of the IE Code given to it by a client for each import/export transaction. When such code is mentioned, there is a presumption that an appropriate background check in this regard i.e. KYC etc. would have been done by the customs authorities. ...."

Thus when the appellant has collected necessary documents, it cannot be said that they have violated Regulation 10 (n) of CBLR 2018. On merits also, I do not find the allegation proved against the appellant. 9. From the above, I hold that the impugned order cannot sustain. The same is set aside. Appeal is allowed with consequential relief.

(Pronounced in open Court on 09.04.2021)

