(2023) 09 CESTAT CK 0047

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 85042 Of 2022

O V Shipping Agencies APPELLANT

Vs

Principal Commissioner Of Customs (General) RESPONDENT

Date of Decision : 28-09-2023

Acts Referred:
Customs Act, 1962 — Section 47, 146

Citation : (2023) 09 CESTAT CK 0047

Hon'ble Judges : C J Mathew, Member (T), Ajay Sharma, Member (J)

Bench : Division Bench

Advocate : Durgesh Nadkarni, Manoj Kumar

Final Decision : Allowed

Judgement

C J Mathew, Member (T)

1 . This appeal of M/s OV Shipping Agencies lies against order [[order no. 114/CAC/PCC(G)/SJ/CBS Adj. dated 15th December, 2021] of Principal Commissioner of Customs (General), Mumbai that, for alleged breach of obligation in regulation 10(d) and 10(m) of Customs Broker Licencing Regulations, 2018 in relation to bills of entry filed on behalf of M/s Ramniklal & Sons between 1st April 2016 and 31st January 2018 for clearance of 16973 metric tons of ‘plastic granules’ against ‘advance authorizations’ foregoing customs duties of ☐ 37,44,26,421 that was liable to be recovered under Customs Act, 1962, revoked ‘custom broker’ licence no. 11/1847 and forfeited security deposit under regulation 14 of Customs Broker Licencing Regulations, 2018 while imposing penalty of ☐ 50,000 under regulation 18 of Customs Broker Licencing Regulations, 2018.

2. Proceedings under regulation 17 of Customs Broker Licencing Regulations, 2018 was initiated by notice dated 19th May 2021 on charge of breach of regulation 10 (d), 10 (e) and 10 (m) of Customs Broker Licencing Regulations, 2018 as the imported goods, instead of being delivered at the premises of importer or of the declared ‘supporting manufacturer’, had been diverted and

thus caused huge loss to the exchequer. The inquiry report, furnished by the designated official on 20th August 2021, held the first and last of the charges to be proved and the licencing authority, thereafter and upon compliance with prescribed procedure, ordered the detriments supra against which appellant is before us.

3. Learned Counsel for the appellant submits that the finding in the inquiry report, and accepted in the impugned order, is without any basis as the requirements had been complied with. It was pointed out that the deposition of the transporters leaves no room for doubt that no instructions had been issued by them to the transporters. Furthermore, it is contended that the Customs Broker Licencing Regulations, 2018 purport to govern and administer operations of licenced customs brokers which is circumscribed to customs procedure in a customs area and any violation beyond lies only under the penal jurisdiction of Customs Act, 1962.

4. He placed reliance on the decisions of the Tribunal in Perfect Cargo Logistics v. Commissioner of Customs (Airport & General), New Delhi [2012 (376) ELT 649 (Tri-Del)], in Setwin Shipping Agency v. Commissioner of Customs (General), Mumbai [2010 (25) ELT 141 (Tri-Mumbai)] and in Commissioner of Customs v. Shiva Khurana [2019 (367) ELT 550 (Del)] in support of his contention that there no requirement of physically verifying the importer/exporter.

5. We have heard Learned Authorized Representative who narrated the background to the proceedings and urged us to consider the magnitude of loss to the exchequer in disposing off this appeal.

6. It is on the finding of breach of obligation to advise client to comply with statutory provisions and for reporting any non- compliance thereof and to discharge duties as customs broker with utmost speed and efficiency that the extreme detriment has been visited on the appellant. This has been rendered on the finding that no activity was undertaken at the premises of the importer or their supporting manufacturers, M/s Crocus Enterprises or M/s Maks Technologies, which, ostensibly, would have come to light had the appellant undertaken necessary inquiries before taking on their assignment.

7. We find no evidence in the records that the appellant had not undertaken a preliminary ascertainment of the existence and identity of the importer; indeed, it is on record that the importer was an undertaking of standing. There is also no allegation about any misdeclaration in the bills of entry filed for clearance of 'plastic granules' imported under the scheme. It has been held in the impugned order that

'27. ….

iv. The CB has directed the various transporters, i.e. M/s Amey Transport & Co., M/s Shree vindhyavasini Roadlines and M/s Best Roadways for the transportation/ diversion/ delivery of the duty-free imported goods at different places/godowns in Mumbai. However, during cross-examination dated 14.07.2021 and 27.07.202i, Shri Manohar Anandrao Kakade of M/s Amey Transport and Shri Ashwini Jachak of M/s Best Roadways respectively denied the above fact that they were directed by Mr Sanjay (Partner of M/s OV Shipping Agencies) for the transport of the imported goods.

v. Vide statement dated 02.05.2018 of Shri Sanjiv Ramniklal Dhanak, one of the Partners of M/s. Ramniklal & Sons, wherein he has stated that selection of the transporters and the buyers were done by Sh. Viral Mehta. After the selection of the same, he used to give instructions to the transporters to deliver the goods at Bhiwandi/Delhi/Mumbai /Ahmedabad, other than the premises registered under DEEC Licenses or IEC. Further, 1 also find from statement dated 03.05.2018 of Shri Sanjiv Ramniklal Dhanak that all transactions with buyers, sellers and transporters of the duty-free imported goods were done on the instructions given by his brother in law Shri Viral Mehta.

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ix. Further, it is evident that the importer firm indulged in diversion of LDPE/ LLDPE/HDPE/PVC Resins of different grades and copper rods imported duty free under Advance Authorization Scheme into local market. The clearance of the goods happened as per the direction of Sh. Sanjiv Dhanak, Sh. Veer Dhanak and Sh. Viral Kanubhai Mehta, Proprietor of M/s. Nirantar. These people used to give instructions to CB for the import consignments of M/s. Ramniklal & Sons wherein he used to be instructed that he had to do Customs Clearances of the imported goods of M/s. Ramniklal & Sons. It is evident that Sh. Veer Dhanak and Sh. Viral Kanubhai Mehta were not the actual importers, even then they used to give instructions to CB and the CB was not efficient enough as CB acted as per the direction of the persons who were not the actual importers. If the CB would have been efficient enough, CB would not have acted as per their directions and could have managed to stop the diversion of the goods to the local markets. 1 find that CB has violated the Regulation 11 (m) of CBLR, 2013 [Now Regulation 10(m) of CBLR, 2018]. Thus, I conclude that the CB has contravened Regulation 11(m) of CBLR, 2013[Now Regulation 10(m) of CBLR, 2018].'

8. The findings against the appellant, thus, rest upon diversion of imported goods even before it had arrived at legitimate destinations. Imported goods come under the control of importers only after clearance of goods from 'out of customs' charge under section 47 of Customs Act, 1962. The entire scheme of 'customs brokers' is a special class of professionals licenced to support importers/ exporters who, for reasons of scale, familiarity and physical remoteness, are unable to get the cargo cleared by themselves. The entity undertaking such assistance/service operate, for the purposes of customs clearance, under the authority of section 146 of Customs Act, 1962 that has been codified in Regulations framed under that provision with the scope restricted therein.

9. Doubtlessly, 'customs broking' does fall within the logistic sector and it is not

inconceivable that such ‘brokers’ do undertake activities that precede as well as follow from such licenced functions which is not legal ground to bring such too within the ambit of Regulations intended for a specific purpose. Therefore, any activity that occurs after clearance of goods is clearly beyond the jurisdiction of Customs Broker Licencing Regulations, 2018. We also find that, on factual ascertainment, there is no evidence to even suggest that any instruction, other that issued by the authorized person in the importing entity or that of his delegate, had been communicated by the appellant to transporters.

10. Accordingly, we find that the inquiry report, as concurred with by the licencing authority, is bereft of any foundation that could lead to a conclusion that obligations in regulation 10 of Customs Broker Licencing Regulations, 2018 had been breached by the appellant. Consequently, we set aside the impugned order to allow the appeal.

