(2013) 08 BOM CK 0068

In the Bombay High Court

Case No : Customs Appeal No. 23 of 2013

The Commissioner of Customs	APPELLANT
Vs	
M.D. Shipping Agency	RESPONDENT

Date of Decision : 12-08-2013

Acts Referred:
Customs Act, 1962 — Section 130

Citation : (2014) 299 ELT 257

Hon'ble Judges : Mohit S. Shah, C.J;M.S. Sanklecha, J

Bench : Division Bench

Advocate : Pradeep S. Jetly, for the Appellant; H.R. Shetty, for the Respondent

Judgement

1. This appeal by the revenue u/s 130 of the Customs Act, 1962 ("the Act") challenges order dated 31 May 2012 passed by the Customs Excise and Service Tax Appellate Tribunal ("the Tribunal"). In this appeal the revenue has raised the following questions of law for the consideration of this Court.

a) Whether the order of the CESTAT setting aside the revocation of the CHA Licence is based on no evidence or partly relevant or partly irrelevant evidence and is otherwise perverse and arbitrary?

b) Whether the order of the CESTAT is sustainable in law when it was found that the goods imported have been delivered at a place other than the one shown in the scrip of Advance License and the CHA had not bothered to inform the Deputy Commissioner of Customs/Assistant Commissioner of Customs about the same, the CHA being obliged to do so under regulation made in this regard?

2. The brief facts leading to this appeal are as under:

a) The respondent is a Custom House Agent (CHA) governed by the Customs House Agency License Regulation 1984 (CHALR).

b) In 2001, the respondent was assigned the work of clearance of the Zinc ingots imported under an advance license scheme by one Ventura Alloys and Electrics

(India) (Importer). The respondent acted as CHA for importer and cleared the consignment of imported zinc ingots and delivered it to the importer as directed by him at M/s. South Goods Carriers, Chaturbhuj Building 15, Ground floor, 178, Sant Tukaram Road, Mumbai in 2001.

c) It appears that thereafter the Director of Revenue Intelligence (DRI) on an investigation found that the importer was a proprietary firm of one Anthony D''Souza who was allegedly involved in misuse of advance license scheme and had inter alia cleared import consignments through various CHAs, including respondent. Consequent to the above an enquiry was commenced against the respondent for having contravened the CHALR 1984 while acting for the importer in 2001 by notice dated 17 February 2005. The Enquiry Officer in his enquiry report dated 22 May 2008 concluded that respondent had failed to fulfill its obligation under Regulation 13(d) of CHALR inasmuch as Zinc ingots were delivered at a non existing address. The report dated 22 May 2008 of the Enquiry Officer was accepted by the Commissioner of Customs by order dated 10 December 2008 and revoked the CHA license granted to the respondent as well as forfeited the entire security deposit with the appellant for violation of CHALR.

e) Being aggrieved, the respondent assessee filed an appeal to the Tribunal. The Tribunal by impugned order allowed the respondent''s appeal on the ground that the importer had directed the respondent CHA to deliver the zinc ingots at the address of M/s. South Goods Carriers, Sant Tukaram Road, Mumbai. At that time the importer was present and took delivery of the imported zinc ingots cleared by the respondent CHA from the Customs department. The authorities under the Act held that on enquiry in 2004 they found that no transporter by name of M/s. South Goods Carrier existed at the address given by the respondent CHA and its employee. The Tribunal held that the import had taken place in 2001 and the enquiry of the DRI in regard to whether transporter has an office at the address as declared by the respondent CHA in 2004. No enquiry was made by the authorities to find out whether the transporter had an office at the address given in the year 2004. Moreover, it is not disputed that the importer is an existing person who had an Advance license in his name issued by the DGFT at the importer''s address at Surat. Further, the Tribunal held that once the goods have been cleared upon completion of Customs formalities and delivered by CHA to its client, no further obligation is cast upon the CHA to ensure that the goods cleared out of Customs charge are used by the importer for the stated purpose for which the import was made. In the aforesaid circumstances, the Tribunal set aside the order of the Commissioner of Customs and restored the license of the respondent CHA.

3. So far as question (a) is concerned, the grievance of the revenue to the impugned order is that the finding of the Tribunal is perverse and arbitrary as the Clerk working for the respondent CHA in his statement stated that he accompanied the consignment of zinc ingots when it was moved from the dock to the address of M/s. South Goods Carriers, Sant Tukaram Road, Mumbai as

directed by the importer. On enquiry, no such office of M/s. South Goods Carrier was found. Mr. Jetly placed reliance upon the statement of Clerk of the respondent CHA as recorded in the Enquiry Officer''s report as well as in the order of the Commissioner, which reads as under:-

He further stated that he had personally supervised the transport to the said address. Thus, it is very much in the knowledge of Girish Churi that no transporter by name M/s. South Goods Carrier existed there.

In view of the above, the finding recorded by the Commissioner of Customs, the Tribunal''s conclusion was perverse and needs to be set aside.

4. We find that the aforesaid observation on which reliance is being placed by Mr. Jetly is an inference drawn by the Enquiry Officer upon the statement made by Mr. Churi. The statement of Mr. Churi is that he personally supervised the transport to the said address. It is not the statement of Mr. Churi that no transporter by name M/s. South Goods Carrier existed at the address. Moreover, as rightly held by the Tribunal the goods were delivered at the stated address in the year 2001 while enquiry which has been made with regard to the existence of office of M/s. South Goods Carrier at the stated address was only in 2004. No attempt was made by the officers of the appellant to find out whether or not in 2004 the office of M/s. South Goods Carrier was in existence at the stated address. Moreover, the imported zinc ingots were handed over to the importer who was also present there.

5. In the above view of the matter, so far as question (a) is concerned, we see no reason to entertain the same as the finding of the Tribunal is a finding of fact based on the evidence before it.

6. So far as question (b) is concerned, the grievance of the revenue is that it was the duty of the respondent CHA to inform the Customs department that the goods had been delivered at a place other then the one shown in the Advance license. Failure to do so resulted in respondent committing breach of Regulation 13(d) of the CHALR 2004 which is similar to Regulation 14(d) of the CHALR 1984 which reads as under:

A Custom House Agent shall advise his client to comply with the provisions of the Act and in case of non compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs

7. We find that the impugned order has observed that once the goods have been cleared out of customs charge and handed over by the CHA to his client, obligation of the CHA to CHALR comes to an end. It is not the obligation of the CHA to assume that post the clearance of imported goods it would not be taken to the address given in the Advance license. Moreover, in this particular case, imported zinc ingots had on clearance from the Customs department taken to the office of the transporter. In these circumstances, there could be no occasion for the CHA to suspect that the imported Zinc ingots were not being taken to the

destination as declared in the Advance license namely the factory at Surat in Gujarat. Further under Regulation 13(d) of the CHALR the occasion to advice the importer would not arise because there was no occasion for the CHA to know or even suspect that the importer was not complying with the provisions of the Customs Act and/or advance license under which the goods were cleared. This is more so as delivery to a transporter for carriage of goods at the direction of the importer would not by itself resulted in non compliance of the Customs Act.

8. In this view of the matter, we do not see any reason to entertain Question (b) as it is self evident from the facts found by the Tribunal that there was no occasion to advice the importer as there was no reason to suspect that the importer would not comply with the Advance license issued to him. Accordingly, the appeal is dismissed. No order as to costs.

