

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL WEST ZONAL BENCH :MUMBAI**

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87935 of 2019

(Arising out of Order-in-Original CAC No.39/CAC/CC(G)/RC/CBS(Adj) dated 12.07.2019 passed by the Commissioner of Customs (General, Mumbai)

M/s. Sky Sea Services.

Oswal Apartment B/04, Pushpa Building,
Near Mental Hospital Road, Thane(w)-4000604.

Versus

.... Appellant

**Commissioner of Customs (General),
Mumbai**

New Custom House, Ballard Estate,
Mumbai-400001.

..Respondent

Appearance:

Shri Anil Balani, Advocate for the Appellant

Shri Manoj Das, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85489 / 2022

Date of Hearing: 22.02.2022

Date of Decision: 20.05.2022

Per: P. Anjani Kumar

The appellants, M/s. Sky Sea Services, a Custom Broker, are in appeal against the order dated 12.07.2019 passed by Commissioner of Customs (General), Mumbai vide which the security deposit was forfeited and penalty was imposed on the appellant in terms of Custom Broker CBLR, 2013/CBLR, 2018.

2. Briefly stated the facts of the case are that SIIB (import) Air Cargo Complex, have conducted an investigation into imports

made by M/s. Akash Corporation and M/s. Sugam Auto India, who have engaged the appellant as a custom broker. Revenue was of the opinion that the appellant did not follow the procedure for examination of Cargo for Clearance and they did not verify the credentials of the importers. Shri Peter Pereira in his statement accepted that he was the only G category card holder and all other staffs work on the basis of daily passes and that he allowed daily pass holder to handle import documents before the Customs. Proprietor of M/s Sugam Auto India stated that he did not make any imports though 23 bills of entry were filed in the name of his company; he lodged a complaint with Sahar Police Station. The license of the appellant was suspended vide order dated 01.01.2016; enquiry officer was appointed on 23.10.2018. Enquiry officer submitted reports on 23.04.2019. The enquiry report was served on the appellant and a personal hearing was granted on 04.07.2019. The appellant representative submitted a written submission and attended the personal hearing on 04.07.2019. The impugned order dated 15.07.2019 was passed.

3. Learned Counsel for the appellant Custom Broker submits that Learned Commissioner while admitting that the case was not dealt by the Department in the spirit of CBLR, 2013; license was suspended in 2016; enquiry report was received on 09.04.2019 after two and half years; the appellant had adequate and proportionate punishment, goes on to hold that the Custom Broker had rendered himself liable for penalty; however the Learned Commissioner also forfeited the security deposit. He submits that the enquiry report is barred and casual; the enquiry

officer holds that the appellant-Custom Broker did not bother to identify the rules and that he did not bother to visit the premises of the importer.

3.1 Learned Counsel further submit that Learned Commissioner has traveled beyond the enquiry report; while admitting that the proprietor of the importers have given the appellant-Custom Broker KYC documents in the form of blank authorization or power of attorney, does not bother to finalize them. Commissioner fails to appreciate the fact that the premises were indeed let out to Aksh Corporation and after 3 months the firm left the premises; that the Police investigation on the complain filed by M/s. Sugam Auto has stopped. He relies on the Final Order No. 50002/2022 dated 03.01.2022.

4. Learned authorize representative for the Revenue reiterates the findings of the impugned order and submits that the appellant-Custom Broker is a habitual offender; the enquiry report substantiates all the charges; the proprietor of the appellant confessed that none of his staff who handled the import documents has customs pass; he has failed to verify the functioning of Ms. Akash Corporation from the declared address; the CB was not aware who the actual importer was. He submits that the statements were not retracted. The appellants relied more on rhetoric and not on any evidence in their favour. The enquiry report categorically holds that the appellant-Custom Broker had violated regulations 11(a), (b) and (d) of CBLR 2013. He submits that in respect of M/s Akash Corporation, it is established by SIIB that the address given in the IEC were

existing but the importer was not functioning from the address; they have filed import documents without verifying KYC documents; they have allowed Shri Kushal Mehta without a valid pass. In the case of imports in the name of Sugam Auto, the appellant-Custom Broker received the documents from one Shri Kamat without verifying the importer or the details of cargo. The appellant-Customs Broker has clearly violated regulations 11(e)/14(e) of CBLR, 2013/2018. Therefore, the impugned order has correctly appreciated the facts of the case and the imposition of penalty and forfeiture of security deposit is legal and proper. He relies upon the following:-

- i) *Supreme Court in the case of Commissioner of Customs Vs M/s. Ganatra and Co.*
- ii) *Jasjeet Singh Marwah - 2009 (239) ELT 407 (Del.)*
- iii) *Noble Agency vs Commissioner of Customs, Mumbai - 2002 (142) ELT 84*

5. Heard both sides and perused the records of the case. We find that the Department has alleged that the appellant-Custom Broker has violated various provisions of the CBLR inasmuch as they did not verify the credentials of their client importers; they allow unauthorized members to attend the document relating to customs clearance. The appellants claim that one importer has given a blank authorization while the other has given a power of attorney. We find that the appellants submit that the premises of M/s. Akash Corporation were used by them and that the complaint filed by M/s. Sugam Auto is not enquired into. We find that the appellant have not based their argument on as to how they have conformed to the KYC norms while interacting with their customers. They have not submitted any independent reliable documents to prove the genuineness of the where about

of the clients. It is not their claim that they have produce so and so documents to defend their position. We find that the appellants have also not submitted any cogent reasons as to how they permitted persons without "G" or "H" cards to handle the documents on their behalf. We find that the proprietor of the appellant has accepted there lapses in the statement recorded before the customs officers. We find that such statement has not been retracted. Though we are in agreement with the submissions of the appellant that they need not physically go to the customer premises to verify the genuineness, they cannot be careless about the customers and deal with persons like Shri Kamat who claim to be representative of their customers. It was incumbent on the appellant-Custom Broker that they conduct all possible enquiries through independent reliable sources/ documents to verify the credentials of the clients. No such effort made by the appellant and no such document relied upon have been placed on record. Thus, they have failed to observe due diligence in this regard and thus ended up facilitating fake importers. Therefore, we are of the considered opinion that the appellant-Custom Broker has violated the provision of Regulation 11(a), (b), (d) and (e) of CBLR 2013 as held by the Learned Commissioner.

6. Learned authorized representative submitted that the appellant-Customs Broker is a habitual offender. It was also found that in the past the appellant-Customs Broker indulged in sub-letting; his license was revoked and CESTAT vide final order in C/4621/05 upheld the charges but restricted the revocation till 30/09/2007. In another case the custom broker was found to

have filed documents in the name of another IEC holder without his knowledge in an unauthorized manner; the security deposit of the appellant was forfeited. Though, it is not fair to judge the appellant-Customs Broker on the basis of their previous records, it certainly gives an insight about the nature of the activities indulged in by the appellant-Customs Broker. As per our discussion above, we find that even in the impugned case, appellant-Customs Broker did not prove his *bona fides*. We find that Learned Commissioner while passing the impugned order has considered all the facts including the punishment suffered by the appellant and let them off with penalty and forfeiture of security deposit. We find that Learned Commissioner was not harsh to revoke the license. We find that to that extent, the impugned order is reasoned, cogent and legally maintainable.

7. We find that in the process of liberalization of import export trade, the government has relaxed many procedures and regulations. The institution of customs brokers was created to facilitate the import export trade and at the same time to take care of the interest of Revenue. Thus, a great responsibility has been cast upon the Customs Brokers to exercise due diligence while conducting their business. We find that Tribunal in the case of *Noble Agency v. C.C.2002 (142) ELT 84* held as follows :-

“The CHA occupies a very important position in the Customs House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the

importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations....”

8. In view of the above, we do not find any merit in the appeal and we hold that the same is liable to be dismissed and we do so.

(Pronounced in open court on 20.05.2022)

(S.K. Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

Sinha/ys