

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO.III

Customs Appeal No.50776 of 2019 (DB)

[(Arising out of Order-in-Original No.66/MK/POLICY/2018 dated 15.11.2018 passed by the Commissioner of Customs (Airport and General), New Customs House, New Delhi.)]

M/s.GND Cargo Movers

Flat No.217, Pocket-E,
Peepal Mahadev, Sector-17,
Dwarka,
New Delhi-110 078.

Appellant

VERSUS

Commissioner of Customs,

(Airport and General),
New Customs House,
Near IGI Airport,
New Delhi.

Respondent

APPEARANCE:

Ms. Reena Rawat, Advocate for the appellant
Shri Rakesh Kumar, Authorised Representative for the respondent

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V.SUBBA RAO, MEMBER (JUDICIAL)

FINAL ORDER NO. 55526 /2024

DATE OF HEARING: 27.03.2024
DATE OF DECISION: 15.04.2024

BINU TAMTA:

The appellant being the Customs Broker ('CB') has challenged the Order-in-Original No.66/MK/POLICY/2018 dated 15.11.2018, whereby the Commissioner of Customs revoked the Customs Broker Licence and ordered for forfeiture of the security deposit of Rs.75,000/, however refrained from imposing any penalty on the appellant.

2. On the basis of an offence report in the form of order-in-original dated 27.04.2018, it was found that the consignment imported by M/s. Royal International (importer) through the appellant under Bill of Entry No.2253896 dated 28.05.2013 was mis-declared as the quantity found was in excess to the declared quantity, some of the items were not declared and some of the items were declared as un-branded but were found to be branded like Samsung, Nokia, Sony, etc. and also resorted to under-valuation so as to evade the customs duty. The statement of Shri Sunil Badlani, Authorised Signatory of the importer and also Shri Praveen Singh Patwal, Proprietor was recorded under Section 108 of the Customs Act, 1962. Shri Praveen Singh Patwal had also sent a letter dated 02.09.2013, the contents thereof revealed that, "he was approached by Sh. Rajesh Bansal for allowing him (Rajesh Bansal) to import goods on his (Patwal) IEC and he (Patwal) allowed him (Rajesh) to use his (Patwal's) IEC; that Rajesh Bansal and his brother Manoj Bansal assured him that they would import only 2-3 consignments of OGL goods from China which will be as per law; that after considering their proposal, he handed over photocopy of IEC of M/s. Royal International to them; that as per their advice current account was opened in HDFC Bank, Karol Bagh in the name of M/s. Royal International and he (Patwal) signed on blank account opening form; that he had never signed any cheque or any other document such as authorization, Bill of Entry, import order etc.; that he never authorized any person to act as CHA or to any person to represent him before Customs; that he was shocked when customs officers visited his residence on 07.06.2013; that he contacted

Rajesh Bansal and Rajesh Bansal told him that he (Rajesh) would accompany him to Customs office; that he was forced to tender statements by Shri Rajesh Bansal and Shri Narender (CHA), which were typed and he signed them without even reading them; that all the consignments were imported by Shri Rajesh Bansal and his associates; that Rajesh Bansal and Narender were influential persons and his signatures were forged on several documents; that Shri Rajesh Bansal and Shri Narender and their associates were trying to shift the blame on him in order to escape from the liabilities." Statement of Shri Rajesh Bansal was also recorded under Section 108 of the Act, who was the actual importer, who claimed himself to be doing all the work of import.

3. Statement of Shri Narender Narula, Proprietor of GND Cargo Movers, 'CB' was also recorded under Section 108 of the Act on 13.06.2013 and 07.10.2013, wherein, he, inter alia stated that M/s. Royal International authorized them to file B/E No.2253896 dated 28.05.2013; that Shri Sunil Badlani, Authorised Representative of M/s.Royal International provided them the invoice and packing list by hand; that after customs clearance, they used to deliver the goods to Shri Sunil Badlani; that Agency Charges were paid in cash by Shri Sunil Badlani; that they had started handling the work of this importer from March, 2013; that since the documents were delivered at the office by Shri Sunil Badlani, whom he knew for a long time, they had not visited the office of the importer given in IEC, however, they met the importer, Shri Patwal at his residence, C-152, INA Colony, New Delhi; that on 07.06.2013, when the Customs officers

visited the office of the importer, they came to know that he had shifted his office from there; that when contacted, he (Patwal) told him that he will apply to the DGFT for change of address; that about 50-60 import consignments of that importer had been cleared through them; that he came to know at the time of examination through his G-Card holder that mis-declaration had been found in the consignment and the goods had been seized; that the B/E had been filed by them purely on the basis of documents supplied to them and the mis-declaration found was not in their knowledge; and that previous import consignments cleared through them were in order and no such mis-declaration was ever found; that Mr. Rajesh Bansal met him for the first time around March,2013 and informed him that they intend to import mobiles and mobile accessories in the name of M/s. Royal International and he (Narender) informed him (Rajesh) his terms and conditions and asked for KYC norms and about his agency charges of Rs.700/- per B/E and other receipted expenses; that Shri Bansal also introduced him to Shri Patwal as the IEC holder; that, thereafter, whenever the consignments arrived, documents used to be sent by Shri Rajesh Bansal to him for filing before Customs and or else his (Narender) field boy used to go to Shri Rajesh Bansal's office at Tip Top Market, Karol Bagh, to collect the documents; that on some occasions, Shri Sunil Badlani used to come; that he used to get copy of invoice/packing list and he/his (Narender) employee used to collect Airway Bills from the Airlines/freight forwarder; that thereafter Bill of Entry used to be filed through his own system in his office through EDI; that Customs Duty used to be paid by them for M/s. Royal International from his

account in SBI; that for payment of duty, payments used to be received by them through RTGS from M/s.Royal International; that after customs clearance, goods used to go to the premises of Shri Rajesh Bansal at Karol Bagh, New Delhi and payments used to be made by Shri Rajesh Bansal/Sunil Badlani; that all his charges used to be paid from the account of M/s. Royal International.”

4. Apart from the contraventions of the Customs Act, the 'CB' had also contravened the provisions of the Customs Broker Licence Regulations, 2013 (CBLR) and hence show cause notice dated 29.05.2018 was issued as the 'CB' failed to comply with the provisions of the Regulation 11(d) and (n) of CBLR and was therefore, liable for action under Regulation 18 read with Regulations 20 and 22. Accordingly, Inquiry Officer was appointed, who submitted the inquiry report dated 23.08.2018 observing that the 'CB' has infringed the provisions of CBLR, 2013 and, is, therefore, liable for penal action thereunder.

5. On adjudication, by the impugned order, the allegation under Section 11(d) were held to be not sustainable, however, the 'CB' was held guilty for violation of Regulation 11(n) of CBLR. Accordingly, the licence was revoked along with the order for forfeiture of the whole amount of the security deposit. Being aggrieved, the present appeal has been filed by the appellant before this Tribunal.

6. We have heard Ms. Reena Rawat, Counsel for the appellant and Shri Rakesh Kumar, Authorised Representative on behalf of the Revenue.

7. The appellant in his submissions denied that M/s. Royal International was a dummy importer as the Proprietor, Shri Praveen Singh Patwal being busy with other fieldwork had appointed Sh. Rajesh Bansal to attend his day to day work. The learned Counsel also submitted that under Regulation 11(n) the Customs Broker is not required to personally and physically visit at the declared address of the IEC holder to verify their antecedent as to whether they are operating from the address given in the IEC certificate. The appellant having duly adhered to KYC norms by obtaining two IDs and IEC certificate and by verifying from sites of Income Tax Department and DGFT, respectively, extreme punishment of revocation of license was not sustainable.

8. The limited challenge in the present appeal is to the violation of the provisions of Regulation 11(n) of CBLR, 2013 by the appellant, which reads as:-

“Regulation 11(n) verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;”

The aforesaid provision casts an obligation on the Customs Broker to verify the correctness of IEC number, identity of his client and his functioning at the declared address. On investigation, officers of the Customs found that the IEC holder, Shri Praveen Singh Patwal had

his office at the given address during the period from 1 April 2010 to May 2012. Therefore, it implies that when the appellant undertook the work of the said IEC holder in March 2013, he was no more operating from that address and as the appellant failed to verify the correct address of the IEC holder at the relevant period, he contravened the provisions of Regulation 11(n). We also find that this was not the solitary incident rather as per the statement of the Customs Broker, he had cleared around 60 to 70 consignments in the past on behalf of the importer and yet failed to verify the functioning of the importer at the declared address. Since the importer firm was found to be non-existent at the given address, the appellant is guilty of violating the obligation in terms of Regulation 11(n) and hence is liable to be penalised.

9. We also find that the appellant was aware that IEC did not belong to Shri Rajesh Bansal rather he was using the IEC of another person i.e. Shri Praveen Singh Patwal of M/s Royal International. As per the statement of Shri Narender Narula, the proprietor of the appellant company, Mr. Rajesh Bansal informed him that they intend to import mobiles and mobile accessories in the name of M/s Royal International which was sufficient to infer that Shri Rajesh Bansal was not the owner of the IEC but the appellant failed to verify the correctness of IEC number. From the facts of the present case, it is evident that the manner in which Shri Bansal was dealing with the appellant in relation to the imports for all practical purposes, he was the actual importer and Shri Praveen Singh Patwal was merely a dummy IEC holder. He categorically stated that whenever the

consignment arrived, the documents were sent to him by Shri Rajesh Bansal or else his field boy used to go to the office of Shri Rajesh Bansal at Tip Top Market, Karol Bagh to collect the documents. More important was that after customs clearance, the goods used to go to the premises of Shri Rajesh Bansal at Karol Bagh is a pertinent factor which could not have been ignored by the appellant. Similarly, the payments used to be made by Shri Rajesh Bansal or Sunil Badlani. The entire working was within the knowledge of the appellant and the fact that this *modus-operandi* was followed in the past clearances of around 60-70 consignments clearly reflects connivance on the part of the appellant. In this regard, we would like to refer to the decision in **Bhaskar Logistic Services Private Limited versus Union of India - 2016 (340) ELT 17 (PAT)**, the Patna High Court emphasized that a person, who imports goods must hold a valid Importer-Exporter Code Number, observing as under:-

"31. Thus, the importer/exporter is a person who imports or exports goods on his own account and such person must have his own account number in his name as granted by the Director General of Foreign Trade and is under obligation to declare it to the Customs in terms of Rule 12 of Foreign Trade (Regulation) Rules, 1993. It is the legislative intent that only one Importer-Exporter Code is allowed against one Permanent Account Number (PAN) and no person could import or export without IEC. If the actual importer or exporter is not having his own IEC, he could be able to circumvent the obligation imposed under Customs Act or under any other law, for the time being in force."

10. We are of the considered view that the appellant being a Customs Broker was required to verify the antecedent of the importer, who in the present case was only a dummy head of the company and all the affairs were being handled by Rajesh Bansal,

which he failed to do so. In **M/s Swastik Cargo Agency Vs. Commissioner of Customs, New Delhi – 2023 (2) TMI 677 – CESATA NEW DELHI**, where practically the entire transaction of export was controlled and managed by the proprietor of the freight forwarder, we held that it virtually amounts to subletting the license and therefore, the revocation of the license and the forfeiture of security deposit was justified.

11. Also on same set of facts that Narendra Narula, Proprietor of GND Cargo Movers (CHA) was well aware of the fact that Shri Praveen Singh Patwal was the proprietor of M/s. Royal International and Shri Rajesh Bansal was actually importing the goods in the name of M/s Royal International, although Shri Bansal was not the proprietor of the said firm, show cause notice dated 29.11.2013 was issued under the Customs Act, 1962 and on adjudication, order-in-original dated 30.03.2018 was passed whereby penalty of Rs.10 lakhs was imposed on Shri Narendra Narula under Section 112 (a) of the Act. The findings given on the same facts in the collateral proceedings on adjudication are binding.

12. The role of the Customs Broker and the purpose of issuing the license has been dealt in series of earlier decisions. The Apex Court in the case of **Commissioner of Customs versus M/s. KM Ganatra & Company - 2016 (332) ELT 15** placed reliance on the decision in **Noble Agency versus Commissioner of Customs, Mumbai – 2002 (142) ELT 84**, where it was observed:-

“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...."**

13. In **Sri Kamakshi Agency versus Commissioner of Customs, Madras – 2001 (129) ELT 29**, the Madras High Court observed as under:-

"The grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as Custom House Agent, it is seen that while Custom House Agent should be in a position to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an agent for carrying on certain illegal activities of any of the persons, who avail his services as Custom House Agent. In such circumstances, the person playing the role of Custom House Agent has got greater responsibility. The very prescription that one should be conversant with various procedures, including the offences under the Customs Act to act as a Custom House Agent would show that, while acting as Custom House Agent, he should not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as a CHA by taking advantage of the access to the department. The grant of licence to a person to act as Custom House Agent is to some extent to assist the department with the various procedures such as scrutinising the various documents to be presented in the course of transaction of business for entry and exit of conveyance or the import or export of the goods. In such circumstances, great confidence is reposed in a Custom House Agent. Any misuse of such position by the Custom House Agent will have far reaching consequences in the transaction of business by the Custom House officials."

14. In **Falcon India (Customs Broker) Versus Commissioner of Customs (Airport & General), New Delhi – 2022 (3) TMI 1268 – CESTAT New Delhi**, the Tribunal once again observed that the custom broker is a very important person in the transactions on the Customs house and is appointed as an accredited broker as per the Regulations and is expected to discharge all its responsibilities under them. Customs broker is expected to act with great sense of responsibility and take care of the interest of both the client and the revenue. Violations even without intent are sufficient to take action against the appellant.

15. On the issue of proportionality of punishment, we find that the adjudicating authority had taken a balanced view that CB cannot escape his duty of KYC verification just by obtaining photo copies of two identity and interest proof documents and therefore having violated regulation 11 (n) rightly revoked the CB license and forfeited the security deposit amount but refrained from imposing separate penalty on the appellant. In **Falcon India** (supra), the Tribunal was of the view that there is no reason to show any leniency once violation is noticed and it is not for the Tribunal to interfere with the punishment meted out by the disciplinary authority, i.e. the Commissioner, unless it shocks the conscience. We are also guided by the decision of the Bombay High Court in **Commissioner of Customs (General) Vs. World Wide Cargo Movers - 2010 (253) ELT 190 (Bombay)** where it has been held that once a violation is found, the discipline authority can take action and it

should not be normally interfered with, the relevant paragraph is quoted below:

"28. In our view, the Tribunal has committed a grave error in interfering with the decision of a domestic authority. In a departmental proceeding one has to see whether the principles of natural justice are followed and the findings are justified from material on record. Once both these aspects are satisfied if an outsider Tribunal interferes, its findings and order will be improper and perverse which is what has happened in the present case. **Similarly when one comes to the disciplinary measures, one must not lose sight of the fact that the appellant-Commissioner of Customs is responsible for happenings in the Customs area and for the discipline to be maintained over there. If he takes a decision necessary for that purpose, the Tribunal is not expected to interfere on the basis of its own notions of the difficulties likely to be faced by the CHA or his employees. The decision is best to be left to the disciplinary authority save in exceptional cases where it is shockingly disproportionate or mala fide. That is not the case here.**"

16. Referring to the provisions of Regulation 11(n) and the judicial pronouncements, Mr. Rakesh Kumar, learned Authorised Representative submitted that Shri Narula ('CB') in his statement recorded under Section 108 of the Act accepted that he has not verified the antecedents of the importer as the documents were handed over by Shri Badlani, an Associate of Shri Rajesh Bansal, who is not the IEC holder and he also admitted that the imports were made through a dummy IEC holder. He also submitted that the importer was using the IEC of another importer and CHA knowingly did not verify the antecedents and correctness in terms of Regulation 11(n). He also referred to the decision of **Shri Surjeet Singh Chabra Vs. Union of India - 1996 (10) TMI 106 SC** to submit that the statements recorded under Section 108 of the Act are

admissible before a Court of Law and in view of the admissions made in these statements, he referred to the settled principles that what is admitted need not be proved. We therefore, do not find any infirmity or perversity in the conclusion arrived at in imposing the punishment by the impugned order.

17. We, therefore uphold the impugned order and dismiss the present appeal.

18. Accordingly, the appeal stands dismissed.

[Order pronounced in open court on 15th April, 2024]

(Binu Tamta)
Member (Judicial)

(P. V. Subba Rao)
Member (Technical)

Ckp.