

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.1

Customs Appeal No.75800 of 2023

(On behalf of Appellant)

[Arising out of Order-in-Original No.Kol/Cus/A & A/Commissioner/CBS/26/2023 dated 19.09.2023 passed by Commissioner of Customs (Airport & ACC), Kolkata]

M/s SP Agency

Sukeas Lane, Basement, Kolkata-700001

Appellant

VERSUS

Commissioner of Customs (Admn. & Airport), Kolkata

15/1, Strand Road, Kolkata-700001

Respondent

APPEARANCE :

Shri Rahul Tangi & Shri Shovit Betal, both Advocates for the Appellant
Shri Tariq Sulaiman, Authorized Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR.RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO...77507/2023

DATE OF HEARING : 08 .11.2023

DATE OF DECISION : 08 .11.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the licence of the Customs Broker has been suspended by the Principal Commissioner of Customs (Airport & Administration), Kolkata.

2. The facts of the case are that the appellant is a Customs Broker and their licence was valid up to 15.07.2027.

2.1 M/s Garg Seasonwears filed bill of entry dated 13.07.2021 through the appellant for import of one consignment of decorative items such as balloons, banners, electric balloon pump, kid brush, mini-LED clips light, PVC wall decorative items, ribbon, inflatable PVC items etc. The said goods were examined and on examination, it was found that item at Sl. No.1 of the bill of entry declared as "Small Balloons (PAC)"

classified under CTI 95059090 was objected to on the allegation of misclassification under CTH 9505 instead of CTH 9503 to evade payment of appropriate customs duty. Therefore, the consignment was confiscated and seized. The other goods were released and the disputed goods also allowed to be released provisionally.

2.2 Thereafter, an offence report dated 16.08.2023 against the Appellant was prepared alleging that the appellant intentionally misclassified, and mis-declared balloons under CTH 9505 instead of CTH 9503 to evade payment of appropriate customs duty.

2.3 It was alleged in the report that before 01.01.2021 i.e., when the mandatory BIS certification had not come into effect the appellant had facilitated clearance of balloons for different importers under CTH 9503 however, it is only after the mandatory BIS certification came into effect, the Appellant started classifying the balloons under CTH 9505 only to evade the mandatory registration condition.

2.4 It was also alleged that while the present investigation was pending, the appellant had filed two bills of entry dated 27.07.2021 and dated 30.07.2021 having similar nature of goods for the same importer and cleared the same under CTH 40169590.

2.5 Based on the above, violation of Regulations 10(d), (e) and (m) of the CBLR, 2018 was alleged against the appellant.

2.6 The said offence report was received by the Ld. Commissioner of Customs, Airport and ACC Commissionerate, Customs House, Kolkata on 17.08.2018. Thereafter, vide CB Order No.21/2023 dated 31.08.2023 by exercising power under Regulation 16(1) of the CBLR, 2018, the license of the CB was suspended, and the matter was fixed

for post suspension hearing on 06.09.2023 in terms of Regulation 16(2) of the CBLR, 2018.

2.7 After hearing of post suspension, the order of suspension was confirmed.

2.8 Against the said order, the appellant is before us. The

3. The Id.Counsel for the appellant submits that the suspension of licence is not warranted in the instant case since the requirement of Regulation 16 (1) of the CBLR, 2018 has not been fulfilled. It is his submission that the action is required immediately and in this case, the suspension has been allowed between the date of cause of action and the date of suspension of licence. Therefore, such delay does not require action under Regulation 16 (1) of CBLR, 2018. This is more so, in the light of the fact that during this period, the investigation has been completed and even the Show-Cause Notice dated 25.08.2023 issued to the appellant as well as the importer. It is a settled law that immediate suspension of Customs Broker is warranted when there is an apprehension that the Customs Broker may interfere in investigation or tamper with evidence to prejudice the investigation. Upon conclusion of investigation and issuance of Show-Cause Notice, no such apprehension remains. Therefore, the suspension of the appellant's license in the present case is legally untenable.

3.1 To support his contention, he relies on the following decisions :

- M.K. Saha and Company vs. Commissioner of Customs (Airport and Administration), Kolkata, 2021 (376) ELT 534 (Tri-Kolkata),
- M/s India Transport & Travel Private Limited vs. Commissioner of Customs (Airport & ACC), Kolkata, 2023 (4) TMI 785 – CESTAT Kolkata,

- Shakti Cargo Movers vs. Commissioner of Customs, New Delhi, 2023 (9) TMI 1389 – CESTAT New Delhi
Babaji Shivram Clearing and Carriers Pvt Ltd vs. Union of India, 2011 (269) ELT 222 (Bom)

3.2 He further relied on Instruction No.24/2023 dated 18.07.2023 regarding suspension of brokers, wherein it is stated that suspension should not be resorted to in a mechanical license of custom manner since it hampers the business of custom brokers. It also stated that before exercising the power of suspension, the reason of immediate necessity to exercise such power should be clearly recorded.

3.3 In that circumstances, he submits that the Bill of Entry was filed on 13.07.2021, the goods were examined by the customs officers on 23.07.2021 and the license was suspended only on 31.08.2023. It is submitted that no reasons have been adduced as to what was the immediate necessity to suspend the license in the instant case after a period of 2 years.

3.4 It is further submitted that the Id.Commissioner in the impugned order has held that Regulation 16(1) cannot be confined to the rigidity of the words "immediate action" without context and has relied on the judgment in the case of Freight Logistics vs. Commissioner of Customs (Airport & General), New Delhi, 2022 (379) ELT 368 (Tri-Del) to justify that immediate action can be affected only when the role of the customs broker in the illegal export comes to light and it can be concluded that the customs broker had acted in negligence of the duty casted upon him.

3.5 It is further submitted that the Adjudicating Authority has failed to appreciate that the power to order suspension of license is an exception

to the procedure of detailed adjudication contemplated for revocation of license or imposition of penalty on a Customs Broker and has far reaching consequence of immediately stopping the livelihood of the Customs Broker.

3.6 At the outset, it is submitted that the aforesaid findings of the Ld. Commissioner are completely contrary to the catena of decisions placed before him. It is further submitted that even if the finding of the Ld. Commissioner that "immediate" does not mean as an when the consignment was imported but should be interpreted to mean the point in time when department after doing investigation comes to a prima facie view that Customs Broker has committed any violation is taken to be correct, still no justification has been provided why there was a delay of 8 months in suspending the license assuming that involvement of Customs Broker came into light only after recording of the statement of Shri Santosh Choudhary on 06.12.2022.

3.7 Further, the ruling in the case of Freight Logistics (supra) is not applicable to the present facts since the issue in the said matter concerned serious allegation regarding the customer broker's role in smuggling of goods by mis-declaring it and using IEC of a company without their knowledge or involvement. On the other hand, the present case pertains to pure interpretative dispute regarding appropriate classification of goods, in relation to which the examination was done by the Customs Department.

3.8 He further submitted that the importer of the goods and the Customs Officers are only responsible for classification. Customs Broker

has only a limited role in filing documents as per the information provided by the importer.

3.9 It is further submitted that in the instant case, the dispute relates to proper classification of goods.

3.10 It is further submitted that the responsibility regarding proper classification/ valuation of goods is on the importer and the customs officials and not on the Customs Broker Further, it is submitted that role of a Customs Broker is limited to filing of bill of entry on basis of description of goods and documents in support of the same furnished by the importer. In this regard, reliance is placed on the following rulings:

- Union of India vs. Garware Nylons Ltd, 1996 (87) ELT 12 (SC),
- Manjunatha Shipping Pvt. Ltd. v. CC, Bang., 2019 (369) ELT 1010 (Tri-Bang.)
- M/s Shaikh & Pandit Agencies Pvt Ltd vs. Pr. Commissioner of Customs of Customs (Airport and ACC), Kolkata, 2022 (8) TMI 1062 – CESTAT Kolkata,
- Fairdeal Shipping Agency Pvt Ltd vs. C.C. (General), Mumbai, 2019 (370) ELT 451 (Tri-Mumbai),
- RS Kandalkar & Co vs. Commissioner of Central Excise, Mumbai, 2014 (299) ELT 360 (Tri-Mumbai).

3.10 It is further submitted that the question of interpretation of law involved for suspension of licence is not warranted. Therefore, he submits that the impugned order for suspension of Customs Broker Licence is to be set aside.

4. On the other hand, the Id.A.R. for the Revenue, submits that the appellant has intentionally classified the goods under under CTH 9505 instead of CTH 9503 and admitted the same. In that circumstances, the appellant has deliberately acted for evasion of duty on the imported goods. Therefore, suspension of licence is correctly done by the Adjudicating Authority.

5. Heard both sides and considered the submissions.

6. We find that the Regulation 16 (1) of CBLR, 2018 reads hereinunder :

"Notwithstanding anything contained in Regulation 14, the Principal Commissioner or Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the license of a Customs Broker where an enquiry against such Customs Broker is pending or contemplated :

Provided that where the Principal Commissioner or Commissioner of Customs may deem fit for reasons to be recorded in writing, he may suspend the license for a specified number of Customs Stations."

7. After going through the said provisions, it is clear mandates of law that in case where immediate action is required only in such cases, the Commissioners can exercise their power to suspend the license. Admittedly, in this case, the importation took place on 13.07.2021 and the goods have been examined on 23.07.2021 and thereafter, the action has been taken against the appellant on 31.08.2023 by suspending their license after almost two years. Therefore, the said action of suspension of license cannot be said an immediate action.

8. In that circumstances itself, the order passed by the Principal Commissioner is illegal to be suspended immediately, so action of the Id. Commissioner for suspension of license is not immediate.

9. We further take note of the fact that in this case, the issue is regarding to classification of imported goods by the importer. In that case, if at all, the classification is claimed by the importer, the appellant is required to guide the importer for proper classification, but it was the issue of interpretation of impugned goods whether the goods are classified under CTH 9505 or CTH 9503.

10. In that circumstances, as the issue relates to interpretation of law, it cannot be said that the appellant has actually deliberately classified the goods to evade payment of duty.

11. In that circumstances, we hold that the action of suspension of Customs Broker Licence is not warranted.

12. In view of the above discussions, we set aside the order of suspension of Customs Broker Licence and restore the same.

13. In these terms, the appeal is allowed.

(Operative part of the order was pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(Rajeev Tandon)
Member (Technical)