

In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066

Appeal No.C/51579/2017

(Arising out of Order-in-Original No.40/KB/Policy/2017 dated 11.07.2007 passed
by Commissioner of Customs (General), New Delhi)

M/s KVS Cargo ...Appellant

Vs

Commissioner of Customs (Gen) New Delhi ...Respondent

Appearance:

Present for the Appellant : Sh Ashish Batra, Advocate

Present for the Respondent : Shri P. Juenja, AR

Coram:

Justice (Dr) Satish Chandra, President

Hon'ble Mr V.Padmanabhan, Member (Tech)

Date of hearing: 22.12.2017

Date of decision: 23.01.2018

Final Order No.50297/2018

Per V.Padmanabhan,

The appeal has been filed against the Order-in-Original No.40/2017 dated 11.07.2017 in which the Customs Broker (CB) License of the appellant was revoked and the whole amount of security deposit of Rs.75,000/- was forfeited. Aggrieved by the impugned order, the present appeal has been filed.

2. With the above background, we heard Shri Ashish Batra, Advocate as well as S/Shri P. Juneja and R.K. Manjhi, DRs.

3. The brief facts of the case are as follows:

The appellant as CB filed the bill of entry in respect of M/s Shiva Enterprises for clearance of goods as per the details given to him by the importer. But on examination of goods, apart from the declared goods, other goods like cosmetic items of different brands, mobile phones of different brands, electronic items of various brands were also found. In addition, it was noticed during physical examination that the undeclared goods were found bearing marking of "Made in India", being of brands like Lakme, Ponds, Lotus, etc. After obtaining samples of the original products from the respective manufacturers in India and comparing the same with the imported goods, it appeared that the imported goods were counterfeit goods involving violation of IPR Rules, 2007. In addition, the description and value of imported goods were also mis-declared. The investigation by Customs authorities also revealed that Shri Dinesh, who was shown as the proprietor of M/s Shiva Enterprises, importer, was not the actual owner of the firm but Shri Vinod Kumar was the owner, who got the goods imported in the name of M/s Shiva Enterprises. The appellant CB was alleged to have violated Regulation 11(a) of the CBLR, 2013 in as much as they have failed to obtain authorization from the actual importer. Further, violation of Regulation 11(d) of CBLR, 2013 was also alleged against the custom broker in as much as they have failed to advice the actual importer regarding the compliance of the provisions of the Customs Act. Further violation of Regulation 11(e) [failure to

exercise due diligence]; 11(n) [failure to verify the antecedents of the importer] was also alleged. The adjudicating authority upheld the allegations and revoked the Custom Broker License and also ordered forfeiture of the security deposit. Aggrieved by the impugned order, present appeal has been filed.

4. The Id Counsel for the appellant argued as follows:

- i) The bill of entry has been filed on the basis of the documents made available by the importer and the appellant cannot be expected to know the actual goods contained in the imported consignment.
- ii) Even though, in the original statements given by S/Shri Dinesh and Vinod Kumar, they had admitted the customs offence of mis-declaration, during the course of cross-examination, the said statements stand retracted but the adjudicating authority has failed to give due weightage to such retraction.
- iii) The Inquiry Officer has held that the appellant is not guilty of violation of Regulation 11(a).
- iv) He also relied on the decision of the Tribunal in appellant's own case of different imports vide Final Order No.56660/2017 dated 21.09.2017 in which the Tribunal set-aside the revoking of the CB license.

5. The Id DR justified the impugned order. He submitted that the CB did not declare the details of the imported goods correctly in the bill of entry. They failed to obtain the relevant details, such as the brand, and did not declare the same in

bill of entry as required. The customs offence case pertaining to M/s Shiva Enterprises is before the Hon'ble Settlement Commission in which the offences stand admitted. Consequently, he submitted that the impugned order is fully justified.

6. We have heard both sides and perused the appeal record.

7. The bill of entry in respect of goods imported by M/s Shiva Enterprises was filed by the appellant. The investigation made by customs has established that in addition to declared goods, huge amount of contraband was also found undeclared. Shri Dinesh, proprietor of M/s Shivay Enterprises was also shown only on record whereas the actual importer was Shri Vinod Kumar. In his statement, Shri Dinesh, Proprietor has admitted that he was not the actual importer but he has only lend his name. The IEC code number of M/s Shiva Enterprises was also allowed to be utilized for the import. The appellant has obtained the authorization from Shri Dinesh which becomes null and void since he was not the actual importer. Consequently the infraction of Regulation 11 (a) stands established.

8. Regarding Regulation 11(d), the CB is expected to advice their client, to comply with the provisions of the Customs Act, it stands established that the appellant has not met the actual importer. In view of above, the failure to observe Regulation 11(d) stands established.

9. Regulation 11(e) requires due diligence by CB to ascertain the correctness of information by importer and 11(n) requires the CB to verify the antecedents, correctness of IEC code number, identity of the client, etc. From the record, it is seen that M/s Shiva Enterprises was showing Shri Dinesh Kumar as proprietor. However, Shri Vinod Kumar was the actual beneficiary of all the transactions but the entire documentation was shown in the name of M/s Shiva Enterprises. The CB has made no efforts to verify the functioning of his client at the given address and the correctness of IEC code number. It is evident that the CB has failed to verify antecedents, correctness of IEC details, etc.

10. During the course of investigation, statements of both S/Shri Dinesh and Vinod Kumar have been recorded more than once. Both the persons have admitted the fact that Shri Vinod Kumar is the owner of the imported goods but Shri Dinesh was shown as proprietor of M/s Shiva Enterprises. Regarding the CB, Shri Vinod Kumar has been changing his stand as to whether the CB was aware of the mis-declaration in the consignment. Anyhow, in the facts and circumstances of the present case, we are convinced that the appellant is guilty of the violation of CBLR, 2013 but considering the peculiar circumstances, we are also of the view that revoking the CB license would be too grave a penalty to be imposed for the above violation. The ends of justice will be met by imposing a penalty of Rs.50,000/- on the appellant, in addition to forfeiture of the whole amount of security deposit.

11. In view of the above, appeal is partially allowed and revoking of CB license is set-aside and penalty of Rs.50,000/- is imposed, in addition to forfeiture of security deposit.

(Pronounced in Court on 23.01.2018)

(Justice (Dr) Satish Chandra)
President

(V. Padmanabhan)
Member(Technical)

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