

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40122 of 2018

(Arising out of Order-in-Original No. 58992/2017 dated 05.10.2017 passed by the Commissioner of Customs, Chennai-VII, No. 60, Rajaji Salai, Custom House, Chennai - 600 001)

M/s. Sameer Logistics Private Limited

: Appellant

No. 17/35, Ramasamy Street,
Mannady, Chennai – 600 001

VERSUS

Commissioner of Customs

: Respondent

Chennai-VII Commissionerate,
No. 60, Rajaji Salai, Custom House, Chennai – 600 001

APPEARANCE:

Shri G. Derrick Sam, Advocate for the Appellant

Shri Harendra Singh Pal, Assistant Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40646 / 2023

DATE OF HEARING: 13.06.2023

DATE OF DECISION: 03.08.2023

Order : [Per Hon'ble Mr. Vasa Seshagiri Rao]

Brief facts of the appeal are that M/s. Sameer Logistics Private Limited, Linghi Chetty Street, Chennai, who is a holder of regular Customs Broker Licence No. 306/2014 issued by the Chennai Customs Commissionerate, have challenged the Order-in-Original No. 58992/2017 dated 05.10.2017 which has ordered revocation of their Customs Broker Licence apart from forfeiture of security deposit of Rs.1,00,000/- and also imposition of penalty of Rs.50,000/-, under the provisions of Regulation 20 (7) of the Customs Brokers Licensing Regulations (CBLR), 2013.

2. The appellant had filed a Bill-of-Entry No. 4393017 dated 26.02.2016 on behalf of M/s. Jeppiar Furnace and Steels Pvt. Ltd., Chennai (IEC: 0403028752), namesake importer, for clearance of goods described as "Low Melting Steel (LMS) Bundle Scrap" which arrived in five 20 feet containers. The import documents namely, invoice, Bill-of-Lading, etc., were in the name of M/s. Lakshmi Impex, Madurai and the goods were reportedly sold to M/s. Jeppiar Furnace and Steels Pvt. Ltd. Royapettah, Chennai on High Sea Sale (HSS) agreement basis.

3.1 On specific intelligence, the DRI, Chennai Zonal Unit (DRI-CZU), examined this consignment. Apart from the declared goods, smuggled cigarettes valued at Rs.4.13 crore were found and seized. Consequently, investigation conducted has revealed that Mr. I. Durai Murugan, owner of M/s. India Exim Services, had filed the above impugned Bill-of-Entry on receipt of the import documents from Mr. S. Murugan of M/s. Sri Lakshmi Impex, Madurai. From the voluntary statement of Mr. I. Durai Murugan, that the Bill for impugned clearance was raised in the name of M/s. India Exim only and not in the name of the appellant.

3.2 Mrs. R. Premavathy, who was qualified under Rule 9 of the Customs House Agents Licensing Regulations, 1984, is the authorized signatory of the Customs Broker at Chennai. In her voluntary statement recorded before the Senior Intelligence Officer, it has been *inter alia* admitted that she could not get enough business in Chennai and so, she had joined hands with Mr. I. Durai Murugan of M/s. India Exim Services. Her job was only to disclose the password for filing the Bill-of-Entry online for a monthly remuneration of Rs.20,000/- and it was also agreed that M/s. India Exim Services and M/s. Sameer Logistics Pvt. Ltd. would use the same office address, which also got approved by the Customs Broker Section of the Custom House.

3.3 On further summons, Mr. I. Durai Murugan has specifically replied that he did the marketing for his company viz. M/s. India Exim Services and that all the clients for whom clearance was made were his clients only and had no connection with Smt. R. Premavathy. Mr. S. Murugan had entered into a High Sea Sale Agreement with M/s. Jeppiar Furnace and Steels Pvt. Ltd. and had provided him two import documents for filing the Bill-of-Entry, namely: a High Sea Sale Agreement between M/s. Sri Lakshmi Impex and M/s. Jeppiar Furnace and Steels Pvt. Ltd. and another High Sea Sale Agreement between M/s. Sri Mahalakshmi Impex and M/s. Jeppiar Furnace and Steels Pvt. Ltd. He also appears to have *inter alia* admitted that the aforesaid import documents were cleared and the consignments were handed over to Mr. K. Murali, a local transporter, as per the direction of Mr. S. Murugan.

3.4 Shri K. Murali, vide his statement, has *inter alia* stated that his job was confined to removing the customs cleared consignments to the importer's destination as mentioned in the KK Form issued by the Customs House Agent. Mr. S. Murugan of Madurai had approached him for transportation of his consignment imported in the name of M/s. Sri Lakshmi Impex and M/s. Sri Mahalakshmi Impex. It is also stated by him that when approached by Mr. S. Murugan, the CHA's were Allwin Cargo (represented by Mr. Suresh) and Sameer Logistics (represented by Mr. I. Durai Murugan and his staff Mr. Ashok). The cleared consignments were initially diverted to Gummidipundi, as directed by Mr. S. Murugan and later, from November 2015, the cleared containers were taken to the premises of one M/s. Ananya Industries, No. 131/1a, Manali High road, Chennai-57 for segregation, whereafter the containers would be taken to the actual destination specified in the KK Form. In view of the above, it appeared to the Revenue that post customs clearance, the goods were handed over to the transporter arranged by Mr. S. Murugan with the knowledge of the CHA.

3.5 M/s. Jeppiar Furnace and Steels Pvt. Ltd. vide their letters dated 11.03.2016 and 14.03.2016, have categorically denied their involvement in the smuggling of cigarettes.

3.6 It is also seen from the records that Mr. S. Murugan, Proprietor of M/s. Sri Lakshmi Impex (IEC: 3515010068), his two sons namely, Mr. Sudalai Muthu Murugan, Director of M/s. Lakshmi Impex and Mr. M. Mayandi, were given numerous summons to appear before the investigation for enquiry and to give evidence, which were not complied with.

4. From the foregoing, it has been revealed that the appellant had colluded with unscrupulous persons and had failed to discharge their obligations as a customs Broker as envisaged under the CBLR, 2013 and had contravened the provisions of Regulations 11(a), 11(b), 11(m), 11(n), 11(e) and 11(k) of the CBLR, 2013, thereby resulting in the Order of Suspension of the Customs Broker dated 31.01.2017 and Order of Continuation of Suspension dated 23.03.2017 under Regulation 19(2) *ibid*.

5. A Show Cause Notice dated 07.04.2017 was accordingly issued to the appellant-CHA under Regulation 20 of the CBLR, 2013 proposing to revoke the Customs Broker Licence issued to the appellant, forfeiture of their security deposit and imposition of penalty, under Regulation 18 read with Regulation 20 of the CBLR, 2013 for their failure to comply with the provisions of the CBLR, 2013.

6. The Inquiry Officer vide his report dated 07.07.2017, affirmed the violation of Regulations 11(a), 11(b), 11(m), 11(n), 11(e) and 11(k) of the CBLR, 2013, which was forwarded to the appellant-Customs Broker vide letter dated 12.07.2017. A written reply was received from the Customs Broker on 16.08.2017.

7. The Commissioner of Customs, Chennai-VII Commissionerate, during adjudication, has, vide order impugned herein, after observing that the appellant was in the knowhow to be indulging in wrong practices, ordered revocation of the Customs Broker Licence, imposed a penalty of Rs.50,000/- under Regulation 18 and further ordered forfeiture of the part security deposit of Rs.1,00,000/- under Regulation 18, also ordering surrender of the 'G' Cards and 'F' cards issued to the appellant's employees forthwith.

8. Feeling aggrieved against the above order passed by the Ld. adjudicating authority, the appellant has preferred the present appeal before this forum.

9. Ld. Advocate Mr. G. Derrick Sam, representing the appellant, while reiterating the grounds of appeal, has submitted his contentions, which are summarized as given below: -

(a) The appellant had filed the Bill-of-Entry as per the import documents received from Mr. S. Murugan, a Madurai based scrap dealer, who was introduced by their marketing agent Mr. I. Durai Murugan. The description 'Low Melting Steel Bundle Scrap' was declared as per the supplier's invoice.

(b) The IEC Certificate given to the appellant is genuine, which was not disputed by the DRI, and the genuineness of the same was duly verified by the appellant.

(c) The appellant had no role in the case made out against the importer for concealment of the cigarettes.

(d) The concealment of cigarettes in the containers is the basis for suspension of Customs Broker Licence. As a Customs Broker, the appellant had filed the Bill-of-Entry No. 4393017 dated 26.02.2017 in Chennai

Customs as per the documents / commercial invoice with the said description. The appellant has filed the Bill-of-Entry in the name of M/s. Jeppiar Furnace and Steels Pvt. Ltd. only on the strength of the High Sea Sale Agreement, which is an acceptable procedure in Customs.

- (e) The import documents viz. invoice, packing list, Bill-of-Lading, Pre Shipment Inspection Certificate, etc., describe the goods as "Low Melting Steel Bundle Scrap". Mr. I. Durai Murugan, the marketing agent of the Customs Broker, has also revealed the same facts.
- (f) The Ld. adjudicating authority has failed to appreciate that the appellant had undertaken the clearance work in good faith that the import item was only steel scrap, which is a normal item of import through Chennai Port and further, the appellant had not noticed any discrepancies in the import documents.
- (g) The appellant had not contravened Regulation 11(a) inasmuch as both Mr. S. Murugan and Mr. Mayandi are existing persons and not fictitious, which fact was confirmed by the DRI investigation. The appellant had thus filed the Bill-of-Entry based on the genuine IEC Certificate of Mr. S. Murugan.
- (h) The import documents were received using the digital signature of Mrs. Premavathy, the authorized signatory. The goods were declared as per the import documents received viz., invoice, packing list, sale contract, Bill-of-Lading, Pre Shipment Inspection Certificate and High Sea Sale Agreement in the name of M/s. Jeppiar Furnace and Steels Pvt. Ltd. and there was no allegation against the appellant in this regard. Hence, the appellant has not allowed any unauthorized persons and

consequently, there was no contravention of Regulation 11(b).

- (i) The appellant had not contravened Regulation 11(m) since there is no evidence on record to show that they had delayed the process of clearance and had not discharged their duties with care and speed; in the case of import, their role is limited to filing Bill-of-Entry, processing the Bill-of-Entry for assessment, arranging for examination, etc. There is no evidence to show that the appellant was having knowledge about concealment/misdeclaration.
- (j) Except the DRI, no one was having intelligence about the smuggling of cigarettes. The appellant had acted in good faith since the IEC was genuine and had no knowledge about the concealment at the time of filing / processing of the Bill-of-Entry and thus, there was no contravention of Regulation 11(n).
- (k) On similar lines, the appellant has also denied contravention of Regulations 11(e) and 11(k).
- (l) The statements recorded from Mr. Mayandi of M/s. Sri Lakshmi Impex, Mr. Sudalai Muthu Murugan, Mr. K. Murali do not reveal any involvement of the appellant or their staff in the smuggling of foreign brand cigarettes in containers. The appellant had not aided / colluded with the importer at any point of time and further, there was no evidence to prove their involvement.
- (m) The following decisions were relied upon in support: -
- *K.S. Sawant & Co. v. Commissioner of Customs (General), Mumbai [2012 (284) E.L.T. 363 (Tri. - Mum.)]*

- *Thawerdas Wadhoomal v. Commr. of Cus. (General), Mumbai [2008 (221) E.L.T. 252 (Tri. – Mum.)]*
- *L.M.S. Transport Co. v. Commissioner of Cus., Mumbai [2014 (299) E.L.T. 368 (Tri. – Mum.)]*
- *HIM Logistics P. Ltd. v. Commissioner of Cus., New Delhi [2016 (338) E.L.T. 725 (Tri. – Del.)]*
- *Setwin Shipping Agency v. Commissioner of Customs (General), Mumbai [2010 (250) E.L.T. 141 (Tri. – Mum.)]*
- *S.J. International v. Commissioner of C.Ex., Nagpur [2014 (300) E.L.T. 125 (Tri. – Mum.)]*

10.1 The Ld. Authorized Representative Shri Harendra Singh Pal (Assistant Commissioner) has submitted that the Customs Broker has clearly violated the Customs Brokers Licensing Regulations (CBLR), 2013 on many counts and so, revocation of their licence is justified; Negligence on their part in allowing unapproved persons in transacting the Customs business has resulted in smuggling of foreign cigarettes valued at Rs. 4.13 crores, by a novel *modus operandi* which was detected by the Directorate of Revenue Intelligence.

10.2 He has argued for confirmation of the order of the Commissioner of Customs.

11. We have considered the submissions made by both the appellant and the Revenue and have also gone through the facts obtaining in this appeal.

12. The issues that are required to be decided by us in this appeal are: -

- (1) Whether the revocation of Customs Broker Licence of the appellant by the Commissioner of Customs, Chennai vide Order dated 05.10.2017 is justified in the facts and circumstances of the present case?

(2) Whether the order of forfeiture of security deposit of Rs.1,00,000/- made by the appellant, under Regulation 18 of the CBLR, 2013, is in order? and

(3) Whether the imposition of penalty of Rs.50,000/- on the appellant in terms of Regulation 18 of the CBLR, 2013, is justified?

13. There is no doubt that Mrs. R. Premavathy, who was the authorized signatory of the appellant, has admitted that her job was only to disclose the password for filing the Bill-of-Entry online for a monthly remuneration of twenty thousand rupees. The entire business was being transacted by Mr. I. Durai Murugan of M/s. India Exim Services, representing the appellant M/s. Sameer Logistics Pvt. Ltd. The impugned goods were found to be imported on behalf of M/s. Jeppiar Furnace and Steels Pvt. Ltd., Chennai by Mr. S. Murugan of M/s. Sri Lakshmi Impex, Madurai on fabricated documents. The appellant, by allowing Mr. I. Durai Murugan of M/s. India Exim Services, has thus clearly contravened the provisions of various Regulations of the CBLR, 2013.

14. As apparent from the Show Cause Notice No. CHN/R-306/2014-CBS dated 07.04.2017, it has been alleged that the Customs Broker viz. M/s. Sameer Logistics Pvt. Ltd. has contravened: -

(a) Regulation 11(a) of the CBLR, 2013 by not obtaining any authorization from the actual importer / IEC holder and thus aided / abetted the misuse of IEC by unauthorized persons;

(b) Regulation 11(b) *ibid.* by not transacting the business in the Custom House through authorized employees and by allowing unapproved people;

(c) Regulation 11(m) *ibid.* by not discharging his duties with utmost speed and efficiency and without any delay;

- (d) Regulation 11(n) *ibid.* by not verifying the antecedents of the IEC holder and not knowing the identity of the actual importer;
- (e) Regulation 11(e) *ibid.* by allowing unauthorized persons to import the goods by misuse of IEC of a third party, thereby failing to exercise due diligence to ascertain the correctness of the information furnished by the importers or their authorized agents; and
- (f) Regulation 11(k) *ibid.* by not maintaining any records of any sort in respect of the Customs documents filed.

15. We find that the appellant, through Mr. I. Durai Murugan, have facilitated imports by persons other than the IEC holder, by misusing the IEC of M/s. Jeppiar Furnace and Steels Pvt. Ltd. and knowingly issued KK Form thereby enabling to hand over the imported goods to the transporter arranged by Mr. S. Murugan, when the Bill-of-Entry was filed in the name of M/s. Jeppiar Furnace and Steels Pvt. Ltd. Investigations have proved the culpability of Mr. S. Murugan of M/s. Sri Lakshmi Impex and how the conspiracy to smuggle huge value of cigarettes was carried out with the connivance of Mr. I. Durai Murugan representing the appellant.

16.1 The appellant, relying upon the decision rendered in the case of *M/s. K.S. Sawant & Co. v. Commissioner of Customs (General), Mumbai [2012 (284) E.L.T. 363 (Tri. - Mumbai)]*, has submitted that mere signing of documents by a CHA would not prove that the clearances were undertaken by the CHA and punishment for the same could not be revocation of licence of the CHA as that would be extreme and harsh.

16.2 Our attention has also been drawn to the decisions rendered in the cases of *M/s. L.M.S. Transport Co. v. Commissioner of Customs (General), Mumbai [2014 (299)*

E.L.T. 368 (Tri. – Mumbai) and Thawerdas Wadhoomal v. Commissioner of Customs (General), Mumbai [2008 (221) E.L.T. 252 (Tri. – Mumbai)] to argue that revocation of licence is not justified when third party was merely bringing business to the CHA and also when the CHA is filing the documents in good faith on the basis of the material handed to him by his clients.

17.1 The appellant has submitted that the DRI has examined the imported goods on 8th and 9th March, 2016 where the concealment of cigarettes in LMS Scrap containers was detected and statements from the Customs Broker and other related persons were recorded on 14th March, 2016. Whereas the Show Cause Notice under Regulation 20 of the CBLR, 2013 was issued only on 07.04.2017 i.e., after one year from the detection. From the Show Cause Notice and the adjudication order, the actual date of receipt of the offence / investigation report from the DRI is not ascertainable. So, the appellant has argued that the entire proceedings under the Customs Brokers Licensing Regulations, 2013 are void as the time-limit of nine months provided under C.B.E.C. Circular No. 09/2010 dated 08.04.2010 has not been complied with.

17.2 We find that though the imported goods were examined and seized in March 2016, the CHA Licence was suspended by the Commissioner of Customs on 31.01.2017 i.e., more than nine months after the initial detection of smuggling, vide Order of Suspension dated 31.01.2017. The suspension was continued vide another Order dated 23.03.2017. The Show Cause Notice, proposing revocation of licence, was issued on 07.04.2017 and the Inquiry Report was submitted on 07.07.2017 and thereafter, the order of revocation of licence was passed by the Commissioner of Customs vide his Order dated 05.10.2017. Thus, we find that all the time-limits prescribed under the CBLR, 2013 have been complied with by the Department. It is not the case of the appellant that

his licence was suspended soon after the seizure of the contraband. Completing investigations and sending a report has taken around nine months and the appellant was allowed to continue to carry on with his business till his licence was suspended only on 31.01.2017.

18.1 Regarding the contravention of some of the provisions of the Customs Brokers Licensing Regulations, we tend to agree with the submissions of the appellant that the appellant had undertaken the clearance work in good faith and the imported item declared as LMS Bundle Scrap was on the basis of various documents namely, invoice, packing list, Bill-of-Lading, Pre Shipment Inspection Certificate, High Sea Sales Agreement, etc.; that there was no delay in discharge of their duties as a Customs Broker and in maintaining up-to-date records of clearance documents. Thus, the appellant has not contravened the provisions of Regulations 11(m) and 11(k) of the CBLR, 2013.

18.2 However, the appellant has allowed Mr. I. Durai Murugan of M/s. India Exim Services to file documents in the name of M/s. Jeppiar Furnace and Steels Pvt. Ltd. without obtaining any authorization from the importer and without verifying the genuineness of the High Sea Sales Agreement, fabricated by Mr. S. Murugan of M/s. Sri Lakshmi Impex, and also issuing KK Form to the transporter for clearance of the imported goods to unauthorized persons and not to the importer. So, the contravention of Regulations 11(a), 11(b), 11(n), 11(e) are proved.

19.1 The Customs Broker Licence was suspended with effect from 31.01.2017 which was finally revoked on 05.10.2017. So, the CHA was out of business for the last more than six years. We take note of the fact that the appellant is unable to do any business and the livelihood of not only the appellant, but also its employees is adversely

affected because of the suspension and revocation of the licence.

19.2 In this context, we refer to the decision rendered in the case of *M/s. Ashiana Cargo Services v. Commissioner of Customs (I & G) [2014 (302) E.L.T. 161 (Del.)]*, wherein it was held as under: -

*"12. Learned Senior Standing Counsel for the Customs has stressed that the infraction in this case is not a routine matter, but rather, illegal smuggling of narcotics by the G card users. However, given the factual finding that the CHA was not aware of the misuse of the G cards (and thus, also unaware of the contents being smuggled), no additional blame can be heaped upon the CHA on that count alone. Rather, the only proved infraction on record is of the issuance of G cards to non-employees, as opposed to the active facilitation of any infraction, or any other violation of the CHA Regulations, whether gross or otherwise. Neither have any such allegations been raised as to the past conduct of the appellant, from the time the license was granted in January, 1996. Equally, it is important to note that the appellant has - as of today - been unable to work the license for 8 years, and thus been penalized in this manner. This is not to say that the trust operating between the Customs Authorities and the CHA is to be taken lightly, or that violations of the CHA Regulations should not be dealt with sternly. **A penalty must be imposed. At the same time, the penalty must - as in any ordered system - be proportional to the violation. Just as the law abhors impunity for infractions, it cautions against a disproportionate penalty. Neither extreme is to be encouraged.** In this case, in view of the absence of any mens rea, the violation concerns the provision of G cards to two individuals and that alone. A penalty of revocation of license for this contravention of the CHA Regulations unjustly restricts the appellant's ability to engage in the business of the CHA for his entire lifetime. As importantly, it skews the proportionality doctrine, substantially lowering the bar for revocation as a permissible penalty, especially given the dire civil consequences that follow. On the other hand, the minority Opinion of the CESTAT, delivered by the Judicial Member, correctly appreciates the balance of relevant factors, i.e. knowledge/mens rea, gravity of the infraction, the stringency of the penalty of revocation, the fact that the appellant has already been unable to work his license for a period of 6 years (now 8 years), and accordingly sets aside the order of the Commissioner dated 24-1-2005."*

(Emphasis supplied)

19.3 Therefore, in the facts and circumstances of the above case, we are of the view that the violation of the CBLR, 2013 though stands established as detailed above, the revocation of Customs Broker Licence is too harsh a punishment and hence, the revocation is set aside considering the fact that the appellant's Customs Broker Licence was suspended and so, was out of business for more than six and a half years.

20. However, we uphold the forfeiture of security deposit as well as the penalty of Rs.50,000/- imposed by the adjudicating authority on the appellant. Accordingly, we set aside the order of revocation and direct the Commissioner of Customs to restore the Customs Broker Licence, as indicated above.

21. The appeal is partly allowed on the above terms.

(Order pronounced in the open court on **03.08.2023**)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)