

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 10821 of 2021- DB

[(Arising out of OIO-KND-CUSTM-000-COM-16-2020-21 dated 10/02/2021 passed by Commissioner of CUSTOMS-KANDLA)]

ASIA SHIPPING SERVICES

Proprietor Anil M Karia 59 Sector-1-A
Gandhidham, Gujarat

.....Appellant

VERSUS

C.C.-KANDLA

Custom House,
Near Balaji Temple,
Kandla, Gujarat

.....Respondent

WITH

(i) CUSTOMS Appeal No. 10822 of 2021- DB (HARENDRA M KARIA)

(ii) CUSTOMS Appeal No. 10540 of 2021- DB (C.C.-KANDLA)

(iii) CUSTOMS Appeal No. 10541 of 2021- DB (C.C.-KANDLA)

[(Arising out of OIO-KND-CUSTM-000-COM-17-2020-21 dated 10/02/2021 passed by Commissioner of CUSTOMS-KANDLA),(Arising out of OIO-KND-CUSTM-000-COM-16-2020-21 dated 10/02/2021 passed by Commissioner of CUSTOMS-KANDLA), (Arising out of OIO-KND-CUSTM-000-COM-17-2020-21 dated 10/02/2021 passed by Commissioner of CUSTOMS-KANDLA)]

APPEARANCE:

Shri S Bissa, Advocate for the Appellant

Shri Anoop Kumar Mudvel, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. 10124-10127/2024

DATE OF HEARING: 10.10.2023
DATE OF DECISION: 10.01.2024

RAJU

Appeals have been filed by M/s. Asia Shipping Services and Shri Harendra M Karia against imposition of penalty of Rs. 50,000/-. Two appeals have also been filed by Revenue, one against Asia Shipping and other against Shri. Harendra M Karia.

2. Learned Counsel for the Asia Shipping and Shri Harendra M Karia pointed out that the proceedings initiated under CBLR for revocation of license against M/s Asia Shipping Services and Shri Harendra M Karia were

dropped. However, the penalty of Rs. 50,000/- was imposed on Asia Shipping/ Shri Harendra M Karia under Regulation 18 of Customs Broker Licensing Regulation.

2.1 Learned Counsel Pointed that M/s Asia Shipping Services operated as Custom House Agent under Regulation 8 of Customs House Agent Licensing Regulation, 1984 and Shri Harendra M Karia was working as authorized Executive/Clerk and was actually engaged in the work as Customs House Agent. Shri Harendra M Karia qualified examination of Custom Broker Agent under Regulation 9 of CHALR 1984. Shri Harendra M Karia also passed examination of Customs House Agent under Regulation 9 of CHALR 1984 and based on the qualification of Shri Harendra M Karia and M/s Asia Shipping Services had applied for regular license in form under Regulation 10 (1) of CHLAR 1984. In the said application, it was declared that Shri Harendra M Karia will actually engage in the work of Customs House Agent. Further Shri Anil Karia proprietor of M/s Asia Shipping Services executed a power of attorney in fact and at law for and on behalf of the firm which was accepted by the Custom Authorities. Accordingly, identity card was issued to Shri Harendra M Karia as power of attorney of M/s Asia Shipping Services Gandhidham which was valid until it was to be revoked. The identity card was never revoked nor surrender by Shri Harendra M Karia. The Custom House Agent License was granted in the year 1993 to M/s Asia Shipping Services under Regulation 10(1) of CHALR, which authorized the said firm to engage in Custom Clearances work to be transected through Shir Harendra M Karia.

2.2 Meanwhile Shir Anil karia Proprietor of M/s Asia Shipping Service also qualified the exam of customs house agent under Regulation 9 of CHALR 1984. He requested for inclusion of his name in the CHA license, in terms of Provision of Regulation 18 (2) of the CHALR, 1984. No person other than

the one who is qualified in the examination referred to in Regulation 9 was allowed to work in customs station as a newly authorized employee on behalf of that firm or company. His application was however not considered and original license was returned to them. No appeal was filed against the said return of license and non-inclusion of name of Anil Karia in the said license.

2.3 Learned counsel pointed that the name of Anil Karia could not have been rejected under Regulation 18(2) of the Customs Act as Shri Anil karia had qualified in the examination refer to in Regulation 9 of CHALR. In the year 2016, M/s. Asia Shipping Services applied for renewal of license and submitted self-attested copy of that license indicating that the customs house work shall be transected only through Shri Harendra M Karia as the said license was renewed for a period up to 2026. Learned Counsel pointed out that the revenue was of the opinion that the Custom house work for the appellant could have been conducted only through Shri Harendra M Karia.

2.4 Subsequently, Shri Harendra M Karia applied for an independent custom house agent license in individual capacity based on is on qualification having passed the CHA examination in 1993. In the said application Shri Harendra M Karia declared that earlier the applicant had not applied for a license to at that Custom house agent and also submitted that this was his first application.

2.5 Shri Harendra M Karia also submitted a under taking wherein he stated that he had not obtained any CHA license in the name of himself or in the name of any company/firm on the basis of CHA examination passed by him under the provisions of CHALR 1984 or CHALR 2004. Based on the application a license was granted to Shri Harendra M Karia under Regulation 9 of CHALR whereby he was authorized to transect business as custom house agent in his individual capacity. The revenue came to the

conclusion that based on the qualification obtained by Shri Harendra M Karia two licenses were obtained one in the name of Asia Shipping Services and other in the name of Shri Harendra M Karia in individual capacity Regulation 17(1) prescribes that a person who has qualified in an examination referred to in Regulation 8 may engage himself in the work relating to the clearance of goods through custom on behalf of a firm or company licensed under Regulation 9 provided that at any time he shall not so engage himself on behalf of more than one such firm or company. Similar provisions also exist in terms of Regulation 15 of CBLR 2013. The CBLR 2018 also prescribed under Regulation 7 that a condition that at any given time any director, partner or an authorized employee shall engage himself for transacting under CBLR on behalf of more than one firm or company. The notice alleged that the appellant Shri Harendra M Karia violated the above provisions by working simultaneously in Asia Shipping Service and under his own license as Harendra M Karia.

2.6 The impugned order after examining the facts comes to the conclusion that though two operative licenses on the strength of the qualification of one person i.e. Shri Harendra M Karia were obtained due to failure to complete the formalities for deletion of the name of Shri Harendra M Karia from the CB license of M/s Asia Shipping Service and inclusion of the name Shri Anil Karia therein. The impugned order comes to the conclusion that this happened due to confusion and presumptions. The impugned order also holds that there is no mala fide intention of conspiracy. The impugned order also holds that if the proper procedure had been followed and the name of Shri Harendra M Karia who was qualified under Regulation 9 of CHALR substituted with the name of Shri Harendra M Karia and that there would have been no violation. In light of that taking a lenient view, the

charge for revocation of license is dropped by commissioner. However, a penalty of Rs.50,000/- has been imposed on Harendra M Karia.

2.7 Similar action has been taken, in respect of Asia Shipping wherein the proceedings under for revocation of license against Asia Shipping are also dropped. However, penalty of Rs. 50,000/- has been imposed under Regulation 18.

2.8 Learned Counsel for Asia Shipping and for Shir Harendra M Karia Pointed out that revenue is not competent for filing the appeal against the order passed under CBLR as there is no provision in law. He relied on the decision Tribunal in the case of Commissioner of Customs., Ludhiana Safe clearing and Forwarding Services 2019 (366) ELT 735 (Tri.-Chan).

2.9 Learned Counsel pointed out the appellant has not acted dishonestly. It was pointed out that if the Revenue had allowed the deletion of name of the Shri Harendra M Karia and inclusion of name of Shri Anil Karia in the license of M/s. Asia Shipping. Earlier when they applied for the same no such procedural laps would have occurred. He pointed out that Shri Anil Karia was at that time qualified and could have been edit to the license of M/s Asia Shipping.

3. Learned AR relied on the grounds of the appeals. He pointed out that there was an offence as various provisions of CHLAR were violated. Shri Harendra M Karia was instrumental in getting license for M/s Asia Shipping as well as in his own name and therefore, was responsible for violation of CHLAR, 2004 and 1984.

4. We have considered rival submissions. We find that it is not denied by Revenue that Shri Anil Karia had qualified the regulations 9 exam for CHLAR. It is also a fact that Shri Harendra M Karia had qualified the exam under regulation 9. It is also a fact that an application was made for

substitution of the name of Shri Harendra M Karia with that of Shri Anil Karia in the license of Asia Shipping. The said request was not accepted though they qualified for such substitutions as per law.

4.1 Considering all these facts and the conclusions, the Commissioner has decided not to revoke the licenses. However, the commissioner has imposed the penalty of 50,000/- each on Shri Harendra M Karia and M/s Asia Shipping.

4.2 Revenue has filed appeal against dropping all the charges on revocation of license against Shri Harendra M Karia and M/s Asia Shipping. M/s Asia Shipping & Shri Harendra M Karia relied on the decision of Tribunal in the case of Safe clearing and Forwarding Services (supra) to assert that there is no provision for filing appeal by revenue against the decisions of Commissioner passed under CHLAR and therefore the said appeals are not maintainable. The said decision observes as follows:-

“3. Considering the fact that Regulation 19 of the Custom Broker Licensing Regulations, 2018 is the relevant to deal the appeal filed by the Revenue, which is reproduced herein below :

*“**Regulation 19. Appeal.** - A Customs Broker or F-Card holder, who is aggrieved by any order passed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, under regulation 16 or regulation 17, may prefer an appeal under Section 129A of the Act to the Customs, Central Excise and Service Tax Appellate Tribunal established under sub-section (1) of Section 129 of the Act :*

Provided that a G-Card holder aggrieved by any passed by Deputy Commissioner or Assistant Commissioner of Customs under these regulations may prefer an appeal under Section 128 of the Act to the Commissioner of Customs (Appeals) against the orders of the Deputy Commissioner or Assistant Commissioner of Customs, as they may be, who shall proceed to decide the appeal expeditiously within two months of the filing of the appeal.”

On going through the said regulation, only the Customs Broker or F-card holder can file an appeal before this Tribunal against the order of the Commissioner of Customs (General) under the Customs Brokers Licensing Regulations, 2018.

4. Admittedly, there is no provision of filing the appeal by the Revenue. In these circumstances, question of stay of operation in the impugned order does not arise. Consequently, stay application as well as the appeal are dismissed.”

5. We find that no other authority has been cited by the Revenue to counter the decision of Tribunal cited by the counsel for M/s Asia Shipping and Harendra M Karia. In this background, we have no option but dismissed the appeals filed by the Revenue as not maintainable.

6. The appeals filed by Shri Harendra M Karia and M/s Asia Shipping relate to the imposition of penalty of Rs. 50,000/- on each of them. We find that the Commissioner has admitted that it was a procedural lapse. Shri Harendra M Karia and M/s Asia Shipping had acted bona fide by applying for substitution and thereafter it was the responsibility of Revenue to allow the substitute in the license of M/s Asia Shipping. Having failed to do so, it was a fault of Revenue and not that of the appellants. In these circumstances, we find that the imposition of penalty under Regulation 18 even though there was technical violation is not justified. The penalties imposed against Shri Harendra M Karia and M/s Asia Shipping is set aside and appeals are allowed.

(Pronounced in the open court on 10.01.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

