

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

COURT-2

Customs Appeal No. 20295 of 2023

[Arising out of the Order-in-Original No.BLR-CUSTOM-COMM-05-2023 dated 21.3.2023 passed by the Commissioner of Customs, Bangalore.]

M/s. UDL Logistics Pvt. Ltd.

Survey No.136/9, Site No. 4 & 5,
Sneha Nagar, Kashi Nagar Main Road,
Opposite Iyengar Bakery,
Amruthahalli,
Bangalore – 560 092.

....Appellant

Vs.

The Commissioner of Customs

City Customs Commissionerate
P.B. No.5400, C.R. Building,
Queen's Road,
Bangalore – 560 001.

....Respondent

Appearance:

Mr. Sundaranathan, Advocate
Mr. Neeraj Kumar, AR

....For Appellant

.... For Respondent

CORAM:

HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)

Date of Hearing: 14/07/2023

Date of Decision: 09/01/2024

FINAL ORDER No. 20036 of 2024

Per R. BHAGYA DEVI:

The appellant is in Customs Broker holder of Customs Broker License No.CUS/BLR/CB/03/2020 valid up to 27.02.2030.

2. The DRI officers intercepted export consignments pertaining to M/s. TEAC Engineers where the products were

declared as "Ductile Industrial Pipes" but on examination the consignment, it contained red sanders logs which are prohibited items for export. Since the appellant had filed these shipping bills and had violated the Customs Brokers Licensing Regulations (CBLR) 2018 and therefore, they were issued with show-cause notice which culminated into impugned order wherein the Commissioner revoked the license and ordered for forfeiture of entire security deposit and imposed penalty of ₹50,000/-. The appellant is in appeal against this impugned order.

3. On behalf of the appellant, the learned counsel submits that one Mr. Satishkumar claiming to be representative of the exporter sought the services of the appellant to export 'Industrial Ductile Pipes'. Mr. Satishkumar submitted all the export documents along with the KYC documents attested by the exporter in original. With these documents, the genuineness of the exporter was verified online from the webpages of the Government Authorities and also that of the exporter and all the documents were found to be genuine. Hence, the appellant filed the shipping bills for export of 'Industrial Ductile Pipes'. It is further claimed that several others including the Department Officials were issued with show-cause notice and the notice is still pending, but based on the offence report, the authorities proceeded to proceed against the appellant by issuing notice and adjudicating the case against the appellant alleging violation of Regulation 10 (e) and 10 (n) of CBLR 2018. It is claimed that the offence report dated 22.7.2022 was issued by the principal

Commissioner of Customs, Bengaluru while the enquiry report stated referred to the investigation report dated 20.2.2022. Therefore, the show-cause notice dated 10.10.2022 is barred by limitation in terms of Regulation 17(1) CBLR 2018. To support his claim, he placed reliance on **Shri Pradeep Kumar Seth vs. CC, New Delhi: Final Order dated 27.2.2023 (Tri.-Del.)**.

3.1 On merits, it is submitted that Regulation 10(e) is about exercising diligence while imparting instructions to the client and admittedly there is no finding on this aspect but the only allegation was that authorisation was not obtained from the exporter which is incorrect since the appellant had verified the genuineness of the exporter from the online webpages. To substantiate their claim on merits, the following decisions were relied on to claim that online verification was sufficient to verify the genuineness of the exporter.

- K. S. Sawant & Co vs. CC, Mumbai: 2012 (284) ELT 363 (Tri.-Mum.)
- Shri Pradeep Seth vs. CC, New Delhi: Final Order dated 27.2.2023 (Tri.-Del.)
- Trans Asia Shipping Services vs. CC, Bangalore: Final Order dated 5.6.2023 (Tri.-Bang.)
- M/s. Sadagati Clearing Services Pvt. Ltd. vs. CC (Air), New Delhi: Final Order dated 29.5.2023 (Tri.-Del.)
- M/s. Ashok Malhotra vs. CC (Airport), New Delhi: Final Order dated 30.05.2023 (Tri.-Del.)
- E. Maj Shipping Pvt. Ltd. vs. CC (Airport) New Delhi: Final Order dated 24.05.2023 (Tri.-Del.)

4. The Authorised representative reiterated the findings of the Commissioner in the impugned order.

5. Heard both sides.

6. On perusal of records, it is observed that a show-cause notice No.155/2021-22 dated 24.1.2022 was issued to the exporter and also the appellant for the same offence for which they are in appeal against the impugned order. Simultaneously, another show-cause notice No.5/2022/Commr. dated 10.10.2022 was issued to the appellant under Regulation 17(1) of CBLR, 2018. In the above show-cause notice dated 24.1.2022, it is alleged that Mr. Najeeb Zainudeen was the kingpin involved in the export of the red sander logs and there were many others involved including Mr. Satishkumar who had used IEC details of the exporter for export of prohibited goods. The only allegation against the appellant in this show-cause notice that he had violated the conditions under Regulation 10(e) and 10 (m) of CBLR 2018 and thus, was made them liable for penalty under Section 114, 114(AA) of the Customs Act, 1962. Before completion of the adjudication proceedings of the above show-cause notice, another show-cause notice No.5/22 dated 10.10.2022 was adjudicated which is now before us. The Commissioner in the impugned order observed that *"I agree with the Customs Broker's submission that they are not supposed to physically verify the address of the importer/exporter as the same is not a legal obligation on the part of the CB to fulfil. Further, I also agree with the CB that as per the provisions of the Regulations of CBLR 2018, their job is to verify the genuineness of the exporter/importer, their GSTIN and not the goods. I am also*

of the opinion that they are not expected to check the genuineness of the goods as the verification or examination of the goods is the statutory function of the Customs. They may not have the knowledge of any mis-declaration of the quality, quantity, nature and value of the goods by the importer/exporter." After recording the above observations, the Commissioner finds that the appellant had not received any authorisation from the exporter for the said consignment as per the Regulation 10(a) of the CBLR 2018. Accepting the fact that the shipping bill was filed based on the KYC documents, invoices and packing list made by Mr. Satishkumar, Commissioner alleges that the appellant should have received authorisation and all other documents directly from the exporters which resulted in fraudulent export. The act of negligence on the part of the appellant was only to the extent of not verifying the authenticity of the documents and to check whether the orders have been placed by the exporters. The appellant has placed before us documents to show that the KYC documents were authorised by the exporter and also placed before us the mahazar which shows that the department had seized certain documents which included original attested copy of KYC documents of the exporter including certificate of IEC, GST registration certificate, PAN card and Aadhar Card. Since based on these documents, they had verified online and filed the shipping bill in good faith; they cannot be penalised for the illegal attempt to export prohibited goods. Moreover, the main show-cause noticed dated 24.1.2022 which deals with the main culprits should have been adjudicated along

with the present notice. In view of the above, we find no reason for revoking the license of the appellant and for forfeiture of the security deposit. Therefore, we set aside the revocation of license and forfeiture of the security deposit.

7. However, the fact remains that the goods that were declared as 'Industrial Ductile Pipes' were found to be 'red sander logs' and the shipping bills were filed by the appellant. For having violated the Regulations of CBLR in not verifying the genuineness of Mr. Satishkumar who claims to be the authorised representative of the exporter will warrant penalty under CBLR 2018. Accordingly, we uphold the penalty of Rs.50,000/- (Rupees Fifty Thousand Only). The appeal is allowed partly.

(Order pronounced in open court on 09/01/2024.)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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