IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2016

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE N. KIRUBAKARAN

C.M.A.No.227 of 2015
and M.P.No.1 of 2015

M/s. Transport Logistics
3rd Floor, New No.231, Old No.111,
Angappa Naicken Street,
Chennai 600 001.
rep. by its Proprietor M.Dhanraj

... Appellant

vs.

1. The Customs,
Excise and Service Tax Appellate Tribunal,
Annexe 1sr Floor, Chennai 600 006.
by its Assistant Registrar.

... Respondent/Appellate Authority

2. The Commissioner of Customs
(Seaport - Imports),
No.60, Rajaji Salai, Custom House,
Chennai - 600 001.

... 2nd Respondent/respondent

Civil Miscellaneous Appeal is filed under Section 130(1) of Customs Act, 1962, for framing the substantial questions of law arising out of impugned Final Order No.40876, dated 02.12.2014 in Appeal No.C/40093/2014-DB passed by the 1st respondent herein, viz, The Customs, Excise and Service Tax Appellate Tribunal, Chennai, upholding the order of the second respondent herein viz., The Commissioner of Customs (Seaport - Import), Chennai by dismissing the appeal filed by the appellant.

For Appellant : Mr.N.Viswanathan
For Respondents: Mr.K.Mohanamurali for R2
R1- Tribunal

JUDGMENT

(Judgment of the Court was delivered by N. KIRUBAKARAN, J.)

The above appeal has been filed by the Custom House Agent aggrieved over the dismissal of appeal filed by the CESTAT against the order of cancellation of CHA licence and imposing Rs.3,00,000/- as penalty by the Commissioner of Customs on the ground of violation of Custom House Agent licence Regulation, 2004 and forfeiture of security deposit of Rs.75,000/-.

2. The appellant is a Custom Broker Licence holder, under Custom House Agent Licence Regulation (CHALR), 2004, which is valid upto 29.07.2020. Mr.M.Dhanraj is qualified under Regulation 8 of the CHALR, 2004 and he is a sole proprietor and authorised signatory of the Customs Broker. On 18.02.2012, there was a raid by the Directorate of Revenue Intelligence (DRI) officials and they seized the consignment of M/s. A.I. Enterprises, Thirunallur, vide shipping bill No.7630721, dated 18.02.2012. The said consignment was examined and found mis-declaration of goods. The declared export item was 'Ragi' whereas, what was found was 22.03 MTs of 'Red Sanders Logs' in the containers. The clearance of the said containers was done by Mr.Elango and Mr.Mari of M/s. Aruthura Logistics using the custom broker licence of the appellant. It is alleged that signed blank custom documents were handed over to M/s.Aruthura Logistics, which were used for clearance of the exported goods.

3. Since the DRI found mis-declaration of goods and also prohibited custom item of Red Sanders logs, the appellant's CHA licence was suspended. After following the procedure namely, conducting enquiry by the Commissioner of Customs (Seaport-Imports, Chennai), the Customs broker licence issued to the appellant was revoked and security deposit of Rs.75,000/- was forfeited.

4. Against the said order an appeal has been preferred before the Customs, Excise & Service Tax Appellate Tribunal. The Commissioner, Customs, Excise & Service Tax Appellate Tribunal confirmed the order passed by the Commissioner of Customs (Exports) revoking the licence as well as forfeiture of security deposit. Against the said order of the CESTAT present appeal has been preferred.

5. At the time admission, the following questions of law were framed:

> "1.Whether on the facts and circumstances of the case, the Tribunal was right in confirming the order of the Commissioner imposing extreme penalty for revocation of CHA licence on a specific plea that there is no evidence and no mensrea in the case registered by the DRI?
>
> 2.Whether the Tribunal was correct in filing to consider the retio laid down in the decision rendered by the Delhi High Court dated 14.03.2014 in the case of Ashiana Cargo Services Vs. Commissioner of Customs, reported in 2014 (302) ELT 161 (Del.)."

6. Heard Mr.N.Viswanathan, learned counsel appearing for the appellant and Mr.K.Mohanamurali, learned Senior Panel counsel appearing for the second respondent.

7. It is seen that the DRI raided the consignment and it was found the goods were mis-declared and prohibited item for export i.e., Red Sanders Logs were found in the containers. The goods were stuffed in the containers in the presence of the Customs Officials. After verification only, the Custom Official sealed the containers. After sealing of the containers, the containers were transported to the sea port. Only on the way, the DRI Officials raided and found out the offence. As far as the Custom House Agent work is concerned, it is over when the goods were stuffed and the sealing of the containers was done by the Custom House Officials. On the way if the sealing was tampered and goods were substituted, it should be the work of the transporter in connivance with the exporter. No role of the CHA licence holder could be presumed as his role came to an end when the container was sealed. Therefore, substitution of the goods and for tampering of the custom seal of the container, cannot be fastened on the Custom House Agent.

8. No doubt the role of the appellant in clearing the goods is vital as he is the only authorised person of the Custom House. The appellant cannot plead that he has authorised one Ilango and Mari to use his custom house broker licence. The CHA licence holder is the authorised person of the Custom House and he is duty bound to comply with the provisions of CHA regulations and there should not be any violation of the various provisions of the CHA regulations. Since the shipping bill used to be filed in the name of the Custom House Agent, they should be very responsible in dealing with both export as well as import. A perusal of the order passed by the Collector, Custom Commissioner as well as the order impugned herein would reveal no connivance on the part of the appellant either in mis-declaration or substitution of the goods by tampering with the Custom seal. Therefore, the extreme penalty of cancellation of

CHA licence is not warranted in this case.

9. The Division Bench of Delhi High Court in Ashiana Cargo Services vs. Commissioner of Customs (ING) reported in 2014 (302) ELT 161 held that punishment must be proportional to gravity and nature of infraction by CHA and every infraction of CHA regulations, either under Regulation 2013 of Customs House Agents Licensing Regulations, 2004 or elsewhere, cannot lead to revocation of licence. In that case, the High Court while dealing with the order of CESTAT confirming the revocation licence of the appellant therein for violation of CHA regulation, was set aside and restored the Custom House Licence on the ground that the agent was unable to do work for eight years and he was severally penalised. In that case also the Custom House Licence Agent issued G cards to non-employees and for the said violation, the licence was revoked and he was without it for eight years. In those circumstances, the Delhi High Court restored the licence holding that the revocation of licence would be more serious civil consequences read in background of the freedom under Article 19(1)(g) of the Constitution of India. Though the Delhi High Court Judgment was referred by the Tribunal, it did not follow the said judgment.

10. Even though the appellant herein is guilty of handing over blank signed forms to third parties, that would not attract the punishment of cancellation of licence, since no other grave charges could be fastened on the appellant, as there was no role played by him either in the substitution of goods or tampering with custom seal, as it happened outside the custom yard after the sealing was made by the Custom Officials.

11. The Honourable Calcutta High Court in Commissioner of Customs (Preventive) West Bengal vs. Over Land Agency reported in 2006 (204) ELT 554 (Cal.) held that in the absence of allegation of collusion or connivance of the customs official, the exporter or customs house agent cannot be held guilty or penalised for violation of the provisions of the Act. In that case, it was held the Custom House Agent is not bound to point out to the Assistant Commissioner of Custom that their acts are in conformity with provisions of the statute or to advise them to act in accordance with law.

12. By the said judgment, the Calcutta High Court dismissed the appeal filed by the Commissioner of Customs, setting aside the revocation of Custom House Licence of the licence holder by the Commissioner of Customs. In this case also, the custom house licence agent cannot be held liable as the alleged offence took place after his role was over namely, dealing of the container. Once the role of the CHA licence came to over, he cannot be responsible for subsequent events.

13. In any event, for giving signed blank forms to third parties, the revocation of licence is harsh penalty and the punishment should commensurate for guilty of offence. Therefore, the order of the Commissioner of Customs revoking the CHA licence as confirmed by the CESTAT is set aside.

14. By this order, this Court only restore the CHA licence. However, forfeiture of the security deposit is concerned, there is a violation of CHA regulation by the appellant. Interest of justice would be met by restoring the CHA licence and confirming the order of forfeiture of security deposit.

15. This Court is of the view that the CHA licence agent was out of work for more than three years and that itself is a sufficient punishment for the appellant. Therefore following the Delhi High Court judgment in Ashianan Cargo Services case and the Judgment of the Calcutta High Court in Over Land Agency case reported in 2006(204) E.L.T. 554 (Cal.) the question of law are answered in favour of the appellant. The CHA licence of the appellant shall stand suspended from 20.07.2012 to 30.04.2016. The appellant is directed to make the security deposit on or before 30.04.2016. On such deposit, the CHA licence shall be restored with effect from 01.05.2016. Appeal is allowed. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To,

1. The Assistant Registrar
Customs, Excise and Service Tax Appellate Tribunal,
Annexe 1sr Floor, Chennai 600 006.

2. The Commissioner of Customs (Seaport - Imports),
No.60, Rajaji Salai, Custom House,
Chennai - 600 001.

+1 cc to Mr.K.Mohanamurali Advocate sr.14041
+2 ccs to Mr.N.Viswanathan Advocte sr.13974

C.M.A.No.227 of 2015

aa18/04/2016