

2022 (8) TMI 74 - CESTAT KOLKATA
M/S. S.K. KANJILAL VERSUS COMMISSIONER OF CUSTOMS (AIRPORT & ADMINISTRATION) , KOLKATA

Revocation of Customs Broker Licence - forfeiture of security deposit - fake exports for the claim of drawback by a number of exporters - fake exports of various consignments to Bangladesh through Petrapol Land Customs Station

- HELD THAT:- There are no answers to the appellant's contention that "Let Export" orders were issued after due verification by the concerned officials and that export manifest was also generated, implying thereby that the goods in question had cross the border. But, in any case, other than mere allegations of no advice and no due diligence, as Revenue has not brought on record the role/roles played by the Appellant and that which amounted to connivance etc., since it is the settled position of law that allegations howsoever strong, cannot take the place of proof.

The revocation of licence was definitely not called for and hence the impugned order is set aside in so far as it relates to the revocation of Customs Broker Licence. But, however, since the Appellant was also unable to satisfy us on the aspect of advising its client and exercising due diligence, we are of the opinion that it would meet the ends of justice if a penalty by way of deterrent is imposed, inasmuch as, instead of forfeiture of the full Security Deposit, Rs.25,000/- of the sum is ordered to be forfeited under the provisions of Regulation 14 of CBLR, 2018.

Forfeiture of full Security Deposit as ordered is also set aside, but however, the same is restricted to a forfeiture to the extent of Rs.25,000/- - impugned order to the extent of revocation of Appellant's licence is set aside - appeal allowed.

No.- Customs Appeal No.75013 of 2020

Order No.- FINAL ORDER NO. 75405/2022

Dated.- July 26, 2022

**SHRI SANJIV SRIVASTAVA, MEMBER (TECHNICAL) AND SHRI P.DINESHA,
MEMBER(JUDICIAL)**

Shri R.N.Bandyopadhyay, Advocate for the Appellant (s)

Shri M.P.Toppo, Authorized Representative for the Respondent (s)

ORDER

By this Appeal, the Appellant has challenged the revocation of Customs Broker Licence by the Principal Commissioner of Customs (Airport & ACC), Kolkata, vide impugned Order-in-Original dated 25.11.2019.

2. We have heard Shri R.N.Bandyopadhyay, Ld.Advocate for the Appellant and Shri M.P.Toppo, Ld.Authorized Representative for the Respondent and have perused the documents placed on record before us.

3. A perusal of the Order-in-Original reveals that a prohibition order was received from Asstt. Commissioner of Customs, West Bengal, as to the investigation that was initiated into fake exports for the claim of drawback by a number of exporters; that some of the exporters had reported to have made fake exports of various consignments to Bangladesh through Petrapol Land Customs Station and thereby availed drawback; that the said exporters had not furnished Bank Realization Certificates confirming realization of export proceeds; that it was the Appellant who was appointed as Customs Broker in all the above exports; that such fraudulent activity of the scale involved could not be possible without the abetment and willful participation of the Appellant and that the Appellant was aware of the above exports and was directly involved in the fraudulent act.

4. The Revenue through the appropriate authority chose to suspend the Customs Broker Licence of the Appellant with immediate effect vide C.B. Order No.26/2019

dated 27.03.2019 under Regulation 16(1) of Customs Broker Licencing Regulation (CBLR), 2018 and the Customs Broker was given an opportunity of post suspensional hearing. In response, the Appellant sought for the provision of relied upon documents, in response to which the Revenue appears to have only provided a soft copy of prohibition order dated 05.03.2019 issued by the Principal Commissioner of Customs (Preventive). Subsequently, the Appellant filed written submissions wherein it took stand inter alia that the goods covered under all the Bills of Export were physically examined and "Let Export" orders were also issued by Superintendent of Customs which was later on allowed for shipment by Inspector of Customs; that some of the Bills of Export were handled by different Customs Broker namely M/s. Maa Kamakhya Enterprises; that the non-availability of Bank Realization Certificate was not the responsibility of the Customs Broker as per CBLR and that the "Let Export" order was passed by the proper officer after appraisal of the documents vis-à-vis the goods, only after completion of all the formalities was the export manifest generated, which implied that the goods in question had physically crossed the border.

5. In the impugned order the Principal Commissioner of Customs has referred to the Inquiry Report which was submitted on 26.08.2019 and the Appellant's submission and concluded that the findings of the Inquiry Officer that the Appellant had violated the Regulation 10(d) and 10(e) of CBLR, 2018 was correct and thereafter has ordered the revocation of Customs Broker Licence along with the order as to the forfeiture of full amount of the Security Deposit furnished by the Customs Broker as per Regulation 18 of CBLR, 2013.

6. Regulation 10(d) talks of advice by a Customs Broker to his client to comply with the provisions of the Act and 10(e) talks of the due diligence on the part of the Customs Broker and apparently, nowhere in the impugned order has the Commissioner brought on record as to on what basis did he come to the conclusion that the Appellant did not exercise due diligence. Be that as it may, the allegation of violation of Regulation 10(d) and 10(e) would not, in our opinion, invite a disproportionate punishment requiring the authority to curtail the very livelihood of the Customs Broker and the persons it has employed.

7. The Ld. Commissioner in the impugned order has also recorded the report of the Inquiry Officer, who has conveniently put the blame on the Appellant to prove its innocence. When the Revenue alleges violation, connivance, knowledge and intent, it is for the Revenue to justify its allegations by furnishing supporting documents and it cannot ask the Appellant to disprove its allegations.

8. From the records, we do not find answers to the appellant's contention that "Let Export" orders were issued after due verification by the concerned officials and that export manifest was also generated, implying thereby that the goods in question had cross the border. But, in any case, other than mere allegations of no advice and no due diligence, as Revenue has not brought on record the role/roles played by the Appellant and that which amounted to connivance etc., since it is the settled position of law that allegations howsoever strong, cannot take the place of proof.

9. In view of the above discussions, we are of the clear opinion that the revocation of licence was definitely not called for and hence we set aside the impugned order in so far as it relates to the revocation of Customs Broker Licence. But, however, since the Appellant was also unable to satisfy us on the aspect of advising its client and exercising due diligence, we are of the opinion that it would meet the ends of justice if a penalty by way of deterrent is imposed, inasmuch as, instead of forfeiture of the full Security Deposit, Rs.25,000/- (Rupees Twenty Five Thousand only) of the sum is ordered to be forfeited under the provisions of Regulation 14 of CBLR, 2018.

10. In the result –

(i) The impugned order to the extent of revocation of Appellant's licence is set aside;

(ii) Forfeiture of full Security Deposit as ordered is also set aside, but however, the same is restricted to a forfeiture to the extent of Rs.25,000/- (Rupees Twenty Five Thousand only).

11. The Appeal is allowed as indicated above.

(Operative part of the order was pronounced in the open Court.)