

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

REGIONAL BENCH – COURT NO. III

Customs Appeal No. 40220 of 2021

(Arising out of Order-in-Original No. TCP-CUS-PRV-COM-06-2020 dated 30.06.2020 passed by Commissioner of Customs (Preventive) No. 1 Williams Road, Cantonment, Tiruchirappalli-620 001)

M/s. Cochin Air Cargo Clearing House

...Appellant

No. A/6, 1st Floor
Khajamian School Complex
TVS Tollgate Trichy, Tamilnadu
600100.

Versus

**Commissioner of Customs (Preventive),
Tiruchirappalli**

...Respondent

No. 1, Williams Road,
Cantonment, Trichy-620001.

With

Customs Appeal No. 40222 of 2021

(Arising out of Order-in-Original No. TCP-CUS-PRV-COM-06-2020 dated 30.06.2020 passed by Commissioner of Customs (Preventive) No. 1 Williams Road, Cantonment, Tiruchirappalli-620 001)

M/s. E. Kochurani

...Appellant

House Door No.30/369/A
Opp: Naval Air Port
Matsyapuri, Cochin
Tiruvananthapuram-682029

Versus

**Commissioner of Customs (Preventive),
Tiruchirappalli**

...Respondent

No. 1, Williams Road,
Cantonment, Trichy-620001

And

Customs Appeal No. 40223 of 2021

(Arising out of Order-in-Original No. TCP-CUS-PRV-COM-06-2020 dated 30.06.2020 passed by Commissioner of Customs (Preventive) No. 1 Williams Road, Cantonment, Tiruchirappalli-620 001)

M/s. V. A. Mary Das

...Appellant

House Door No.30/369/A
Opp: Naval Air Port
Matsyapuri, Cochin
Tiruvananthapuram-682029

Versus

**Commissioner of Customs (Preventive),
Tiruchirappalli**

...Respondent

No. 1, Williams Road,
Cantonment, Trichy-620001

And

Customs Appeal No. 40224 of 2021

(Arising out of Order-in-Original No. TCP-CUS-PRV-COM-06-2020 dated 30.06.2020 passed by Commissioner of Customs (Preventive) No. 1 Williams Road, Cantonment, Tiruchirappalli-620 001)

M/s. Cochin Air Cargo Clearing House

...Appellant

Door No. 30/369A
(Opposite Naval Air Port),
Matsyapuri,
Cochin-682 029

Versus

**Commissioner of Customs (Preventive),
Tiruchirappalli**

...Respondent

No. 1, Williams Road,
Cantonment, Trichy-620001.

APPEARANCE:

For the Appellants : Shri Hari Radhakrishnan, Advocate

For the Respondent : Shri Rudra Pratap Singh, Additional Commissioner / A.R.

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

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

DATE OF HEARING : 17.08.2023

DATE OF DECISION : 25.09.2023

FINAL ORDER Nos. 40842-40845/ 2023

Order : Per Ms. Sulekha Beevi C.S.

The issue involved in all there appeals being connected they were heard together and are disposed of by this common order.

1.1 The appellant in C/40220/2021 viz, M/s Cochin Air Cargo Clearing House is a licensed Customs Broker whose parent Commissionerate is at Thiruvanthapuram. The firm also operates under Customs stations in Mumbai, Trichy, Tuticorin,

and Chennai. The appellant herein is a branch officer operating in Trichy.

1.2 The appellant in C/40222/2021 Viz, Ms. E. Kochurani is the managing partner of the licence holder.

1.3 The appellant in C/40223/2021 viz. Mr. V.A. Mary Das is a partner of the licence holder.

1.4 The appellant in C/40224/2021 is the administrative officer at Cochin.

2. Brief facts are that on 10.06.2019 acting on specific intelligence that fake/ substandard "Air Inlet Automobile spare parts were being attempted to be exported by classifying the same under CTH 84212300 (as declared in shipping bill) and over invoicing the value as Rs. 3,46,95,519/- (declared value as FOB) by M/s Swiss Global, vikaspuri Delhi, (hereafter referred as Exporter), the officers attached to Air Cargo Complex (ACC) and Air Intelligence unit, Airport Trichy, visited the premises at Airport and noted that the said exporter had filed five shipping bills dated 09.06.2019 as free shipping bills claiming MEIS benefits through the Customs Broker (1st appellant herein). Examination was carried out in the presence of the representatives of the appellant and it revealed that the cargo proposed to be exported under the shipping bills were substandard materials. It appeared that the exporter had intentionally inflated the actual value in order to claim ineligible MEIS benefits and undue benefit by way of IGST refund. The export cargo was detained and investigation was initiated.

3. The E-way Bill showed that, the same was generated on 10.06.2019, whereas, the cargo reached the point of export (Air cargo, Trichy) on 09.06.2019 itself. A copy of the invoice dated 24.05.2019 issued by supplier of the goods was also submitted by the Customs Broker, by which it came to light that though supplier and buyer were located in Delhi, the IGST was paid instead of CGST/SGST which was not proper.

4. The Exporter was called upon by letter dated 14.06.2019 to submit their explanation as to the inflated pricing along with necessary document. In turn the exporter vide letter dated 19.06.2019 totally denied the observations made by

department and requested for permission to take back the cargo, as the buyer in Hong Kong was reluctant to receive the shipment due to delay. On perusal of the postal letter, it revealed that the letter was dispatched from Postal Circle Trichy, though the sender's address was mentioned as Delhi.

5. Due to non-delivery of letter dated 14.06.2019 to the exporter summons was issued to the exporter through post. An e-mail was also send on 02.07.2019. However, no reply was received from the exporter's side.

6. Market enquiry was conducted on 10.07.2019 to ascertain the actual price of the export cargo. It was found that similar goods of quality air filters were sold at Rs. 50/- per piece against the declared value of Rs. 549/- per piece by the exporter which established that the goods were overvalued. The goods were seized under *mahazar* and statements were recorded. After investigation, Show Cause Notice dated 25.02.2020 was issued under Section 124 of Customs Act, 1962 against the exporter, its proprietor and various others including the appellants. The notice proposed to impose penalty on these appellants under Section 114 (iii) and 114 AA of the Customs Act 1962. After due process of law, the original authority imposed penalty of Rs. 2,00,00,000 (Two crores only) under Section 114(iii) & 114 AA on Sri. V.A. Mary Das, manager, his wife Smt. Kochu Rani, Managing Partner of M/s Cochin Air Cargo clearing House, Cochin for the reason that they acted as agents of the exporter and therefore are to be deemed to be the exporter of the goods, (attempted export) under Section 147(3) of the Customs Act, 1962 – A penalty of Rs. 3,00,00,000/- (Three Crore only) was imposed on M/s Cochin Air Cargo Clearing House, Cochin (present Licence holder) under section 114(iii) & 114AA holding that they acted as agents of the exporter and therefore be deemed to be the exporter of the goods, (attempted export) under Section 147(3) of the Customs Act, 1962. A penalty of Rs. 3,00,00,000 (Three crore only) was imposed on Cochin Air Cargo Clearing House, Trichy (Branch unit) under Section 114(iii) & 114AA of the Act, holding that they acted as agents of the exporter and therefore are to be deemed as the exporter of

goods, (attended export), under Section 147(3) of Customs Act 1962.

7. Aggrieved, by such order, imposing the penalties the appellants are now before the Tribunal.

8. The Ld. Counsel Sri Hari Radhakrishnan appeared and argued for the appellants. It is submitted that the appellant firm is the authorized Customs Broker having the parent licence issued from Trivandrum Customs Commissionerate. As the work load at Cochin was more, the appellant shifted their administrative office to Cochin. They were also operating in Customs stations in Cochin, Mumbai Trichy, Tuticorin & Chennai. For smooth functioning of each branch, branch managers are appointed. The activities at Trichy were handled by Branch Manager, Shri Sabeer Ahamed Sayeed. He was responsible to ensure compliance of statutory requirements while undertaking import/export activities. He is an authorized 'H' card holder under Customs Brokers Licensing Regulations (CBLR, 2018) to attend to Customs related work.

8.1. In June 2019, the exporter viz., M/s. Swiss global, New Delhi approached the Branch Manager of the appellant for doing the export related activities. Shri Shabeer Ahamed also collected the signed KYC form and entire documents from the exporter. All documents, in the nature of IEC issued by Ministry of Commerce & Industry, Bank account details, GST Registration certificate, PAN card & Aadhar card of the exporter were obtained before filing the shipping bill. After verifying the documents from websites, the documents were accepted and appellant filed the shipping bills. These shipping bills were filed through e-system duly signed by G-card holder through digital signature. The Ld. Counsel submitted that the copies of the KYC documents were produced before the officers of the department. The same are also filed along with appeal paper book. The allegation of the department that appellant as a CB did not verify KYC of the exporter and that appellant abetted in export of over-invoiced goods so as to earn undue MEIS benefit and refund of IGST are factually baseless.

8.2 Moreover, a Show Cause Notice was issued to the appellant under the CBLR, 2018 alleging violation of the

Regulations and proposal to revoke the license of the appellant. The original authority vide O-I-O No. 01/2020 dated 16.11.2020 ordered for revocation of license and directed to forfeit the security deposit. A penalty of Rs. 50,000/- was also imposed. Against such order, the appellant filed appeal before the Bangalore Bench of the Tribunal and vide Final Order No. 20036/2021 dated 18.02.2021, the Tribunal set aside the revocation of license, for forfeiture of security deposit and the penalty imposed. The Tribunal held therein that the department has failed to produce any evidence to establish that appellant had connived in the over valuation of the goods. In the said order, though Tribunal had set aside the order of revocation, had made an observation that as the CHA Licence of the appellant had already expired on 13.04.2020, the appellant has to file application afresh. Against such observation, the appellant filed appeal (Customs Appeal No. 05/2021) before the Hon'ble High Court of Kerala and vide Judgment dated 08.07.2021 the Hon'ble High Court modified the order passed by Tribunal by setting aside the above observation of the Tribunal. The Ld. Counsel urged that these facts would establish that the appellant had no knowledge about the over valuation of goods and had no role to play in the alleged attempt to export the goods.

8.3. Moreover the penalty is imposed under Section 114(iii) & 114 AA alleging that the appellant acted as agent of exporter of goods and therefore is deemed to be exporter in terms of Section 147(3) of the Act. The Ld. Counsel adverted to Section 147 and submitted that there is nothing in the provision which binds the CHA/CB who acts on behalf of the importer/exporter with the goods. The original authority has misconceived the provision. To support this argument the Ld. Counsel relied upon the decision in the case of Gajanan B. Sudrik vs. CC(EP)Mumbai 2014(304)ELT159(Tri-Mub).

8.4. It is submitted by the Ld, Counsel that other than the allegation that the appellant did not verify the antecedents of exporter there is no allegation raised against the appellant. The appellant had collected all KYC documents. In the case of Kunal Travels (Cargo) vs CC (ING) New Delhi 2017 (354) ELT 447 (Delhi) it was held by the Hon'ble High Court that all that the CHA is to exercise due diligence. Unless there is evidence, no

presumption can be made that CHA had intention to defraud. In the present case, it is alleged by department that the reply sent to the letter issued by department to the exporter having been dispatched from Trichy, the branch office of appellant has abetted the incident of over valuation of goods. The appellant has no knowledge about such letter. Merely, because the letter was dispatched from Trichy it cannot be said that appellant has abetted. No reason to fasten on such serious allegation on the appellant. The Ld. Counsel prayed that the appeals may be allowed.

9. The Ld. Authorized Representative Shri Rudra Pratap Singh appeared and argued on behalf of the department. It is submitted that on careful study of the suppliers invoice it was seen that the goods were supplied to the exporter by M/s Moonlight International, Delhi. When the buyer & seller are both situated in Delhi, the sale is considered as an intra-state transaction under the GST Act. The supplier is expected to collect CGST & SGST only. But in this case, the invoice showed that the supplier had collected IGST. This would help exporter to seek refund later. Further market enquires revealed that the goods (Air Inlet Automobile spare parts) were Rs. 30 per piece and the price was escalated to Rs.599.64 per piece by the supplier. Again the export price is shown as US\$8 per piece (Rs.549.60) which is less than the purchase price (Rs.599.44). All these facts reveal the intent to defraud and make illegal gain.

9.1. The appellants as Customs Broker have filed the shipping bill for the export of goods. In absence of interferences by the intelligence unit, the fraud would not have come to light. A letter was addressed by the department on 14.06.2019 calling for explanation from the exporter (M/s. Swiss Global). A reply dated 19.06.2019 was received by the officers which is purported to have been issued by Swiss Global, New Delhi. It was found that the letter was posted from Trichy though the address was mentioned as Delhi. The appellant has an office in Trichy and it can be safely inferred that appellant has connived with the exporter to export the cargo in such manner with an intent to make wrongful gain. The Ld. Authorized Representative prayed that the appeals may be dismissed.

10. Heard both sides.

11. The penalties have been imposed on the appellants under section 114(iii) and 114AA of the Customs Act, 1962. Section 147(3) also has been invoked to hold that appellants have acted as agent of exporter and is therefore deemed to be the exporter of the goods.

12. The allegation is overvaluation of the goods. The department has obtained details as to the price at which the exporter purchased the goods from the supplier viz., M/s. Moonlight Industries. This invoice and other KYC documents were submitted by the appellant before the officers. The appellant being a Customs Broker is duty bound to exercise diligence while performing the duties. In the present case, the appellant has obtained authorization from exporter and all KYC documents. The IEC, PAN details, GST registration etc. have been obtained. In such circumstances, it cannot be said that the appellant has not acted diligently. Moreover, a Show Cause Notice was issued to the appellant under section 17 of CBLR, 2018 alleging violation of the provisions of the Regulations with regard to the above incident. The Tribunal vide Final Order No. 20036/2021 dated 18.2.2021 has set aside the order of revocation. The jurisdictional High Court has modified the order by setting aside the observation made by the Tribunal that the appellant has to apply afresh. The relevant part of the order of the Tribunal reads as under:

"6..... After considering the submissions of both the parties and perusal of the Inquiry Report and the impugned order, we find that the Tribunal vide its order dt. 14/07/2020 has considered the alleged violation of Regulations 10(d), 10(n) and 13(7) of CBLR 2018 in respect of the export made by M/s. Swiss Global, New Delhi by various shipping bills filed by the appellant as CHA. After considering the material on record, we, by our detailed order, held that the order dt. 19/05/2020 passed by the Commissioner of Customs upholding the denial of renewal as well as continued suspension of licence was not sustainable in law and we set aside the same. We also noted in our order that when the inquiry was pending, the Commissioner should not have denied the renewal of licence of the appellant for the alleged violation of the CBLR, 2018. Further we find that in the present case, the Department has failed to bring any corroborative evidence or statement of anybody on record to prove that the appellant had Information, knowledge or have connived in the overvaluation of the goods or mis-declaration etc. We also note that the law is well settled that an element of mens-rea or direct or

indirect involvement attributable to the appellant through active knowledge or connivance is required to prove in a proceedings under CBLR, 2018. We noted a series of judgments in our order dt. 14/07/2020 but both the authorities have not considered the same at all. Both the authorities have not even distinguished the authorities relied upon by the appellant and have been noted in the order dt. 14/07/2020. From the perusal of the impugned order, it appears to us that the learned Commissioner was bent upon revoking the licence of the appellant In spite of the fact that the appellant were not responsible for violating the regulations as alleged against them. The impugned order is passed on the same lines as was passed by the learned Commissioner on 19/05/2020. In view of this, we are of the considered view that the impugned order is not sustainable in law and therefore we set aside the same. Since the appellant's CHA licence has already expired on 13/04/2020, we direct the appellant to apply afresh for their CHA licence and thereafter the learned Commissioner will decide afresh the renewal of the licence of the appellant in accordance with law. With these directions, we dispose of the present appeal.”

13. In the present case, the main argument put forward by the AR is that the letter dated 14.06.2019 issued to the exporter was replied by the Trichy office of the appellant. This is too flimsy evidence to allege that appellant had connived in the overvaluation of the goods. Merely because a letter by exporter at Delhi is seen dispatched from Trichy postal circle, it cannot be presumed that the appellant has sent it or that appellant has connived with exporter. The allegation against a Customs Broker in involvement of import/export fraud is serious as it affects their livelihood. We do not find any material sufficient to establish guilt on the part of the appellants. In the case of *Brijesh International vs. Commissioner of Customs (I&G), New Delhi 2017 (352) ELT 229 (Tri. Del.)*, the Tribunal held as under:-

“4. We have also gone through the Order-in-Original passed by the adjudicating authority. While discussing the issue of imposition of penalty upon CHA, he has only referred to the fact of misdeclaration of classification as also valuation by the main importer, M/s. Maya Overseas and has nowhere produced any evidence to show that the CHA knew about the incorrect classification and valuation of the goods. Otherwise also, we observe that the CHA declared the goods in the Bills of Entry based upon the information given to him by the importer and is not expected to investigate and find out the correct classification or value of the goods. In such a scenario, we find no reason to impose penalty upon the appellant. Accordingly, we set aside the impugned order and allow the appeal with consequential relief to the appellant.”

13. Again, the original authority has invoked sub-section (3) of section 147 to hold that the appellant is deemed to be the exporter of goods. The relevant sub-section reads as under:-

“SECTION 147. Liability of principal and agent. —

(3) When any person is expressly or impliedly authorised by the owner, importer or exporter of any goods to be his agent in respect of such goods for all or any of the purposes of this Act, such person shall, without prejudice to the liability of the owner, importer or exporter, be deemed to be the owner, importer or exporter of such goods for such purposes including liability therefor under this Act:

Provided that where any duty is not levied or is short-levied or erroneously refunded on account of any reason other than any wilful act, negligence or default of the agent, such duty shall not be recovered from the agent unless in the opinion of Assistant Commissioner of Customs or Deputy Commissioner of Customs the same cannot be recovered from the owner, importer or exporter.

14. The said section speaks about an agent acting on behalf of the principal under the Indian Contract Act, 1872. As per the principles of Agency, the principal is not bound by the acts of an agent if such acts have not been authorized. In order to avoid any person from absolving from the liability contenting that he has not authorized his agent to do such an act, the said provision introduces a legal fiction by which the agent is deemed to be the importer / exporter. This in no way extends to the acts done by a CHA/CB who acts on behalf of the importer / exporter under the provisions of Customs Act, Rules and Regulations. The Tribunal in the case of Gajanan B. Sutrik (*supra*) had occasion to consider similar issue and held as under:-

“5. We have carefully considered the submissions made by both sides. We have also perused the statements recorded from the appellants by the investigating agency. From the statement, no conclusion can be reached as to their involvement in the fraudulent transactions. All the appellants in their statements have deposed that they undertook/participated in transaction for export of goods in good faith. The CHA has also submitted the identification document such as bank opening account establishing the identity of the exporter. In these circumstances, invoking the provisions of Section 147 and deeming the CHA and his employee as agent of the exporter is clearly unsustainable in law. This Tribunal decision in case of *Aspinwall & Co.* (*supra*) affirmed by Hon’ble Apex Court also makes the position very clear. Therefore, in the absence of any evidence, linking the CHA firm or its employee to the fraudulent transaction undertaken by the exporter, and consequent imposition of penalty would not arise at all. As regards the role of Shri Manohar S. Anchan, it is

evident that his role was limited to introducing the exporter to the CHA. In the statement recorded under Section 108, he has clearly stated that he has not seen the goods and, therefore, he was not aware of the nature of the goods under export. In these circumstances, no *mala fide* can be attributed to Shri Manohar S. Anchan as to his knowledge of the fraudulent transaction. Therefore, imposition of penalty is not warranted.

6. Accordingly, we set aside the penalty imposed on the appellants Shri Manohar S. Anchan, Shri Suresh Dalvi, proprietor of CHA firm M/s. Indian Seaways and Shri Gajanan Sudrik, employee of CHA firm under Section 114 of the Customs Act, 1962. Thus the appeals are allowed.”

15. After appreciating the facts and evidence, we hold that the department has failed to establish that the appellants have connived or abetted in the overvaluation of goods and attempted export of the same. There is no iota of evidence to establish that appellants had falsified any documents. The ingredients of section 114A stands un established. Moreover, the invocation of sub-section (3) of section 147 against these appellant is totally erroneous.

16. In the result, the impugned order against the appellants are set aside. The appeals are allowed with consequential relief, if any.

(Order pronounced in open court on 25.09.2023)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

RKP