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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-30-2000

Reported in : (2000)(122)ELT581TriDel

Appellant : Krishan Kumar Sharma

Respondent : Commissioner of Customs

Judgement :

1. This is an appeal filed against revokation of Customs Licence and forfeiture of security of Rs. 50,000/-deposited by the appellant.
2. The facts of the case are that M/s. Krishan Kumar Sharma is a holder of Customs House Agent Licence. During the course of scrutiny of the records while examining the application for renewal of the licence, the Department alleged that M/s. K.K. Sharma had sublet their work of Customs clearance to another company by name "TRACK" who were not authorised by the Customs Department to deal with the Customs clearance work. It was alleged that sub-heading of their work was apparent from the fact that M/s. Indian Institute of Pulses Research, Kanpur had appointed CHA M/s. Krishan Kumar Sharma to handle their Bill of Entry No. 764989 dated 28.04.1999; that the CHA should have raised the bills for his services to M/s. Indian Institute of Pulses Research, Kanpur and payment should have been received by the CHA; that the Bill in the instant case for the services was raised by M/s. Track to the said importer and payment was received by them; that subsequently the CHA raised the bill to M/s. Track; that similar position was seen in respect of Bill of Entry No. 209037, dated 22.04.1999 filed on behalf of

M/s. Agro Dutch Foods Ltd., Chandigarh. Accordingly, a SCN was issued to the appellant asking to explain as to why the Customs House Agent Licence issued to him should not be revoked and the security amount should not be forfeited.

3. Arguing the case Shri V.R. Sethi, Ld. Counsel submits that the only allegation in the SCN was that the service rendered by M/s. Track was for the clearance of the goods from Customs for which M/s. Track was not authorised; that the Customs House Agent had instead of handling the Bill of Entry themselves authorised illegally M/s. Track for the Customs Work and thus Regulation 13 of Customs House Agents Licensing Regulations, 1984 was violated. Ld. Counsel submitted that in the instant case the Department has not been able to support this finding in-as-much as the appellant handled the Bill of Entry as is clear from the Bill of Entry; that the appellant never authorised M/s. Track for the Customs work; that in fact M/s. Track asked the appellant to handle the work of Customs clearance in respect of these two Bills of Entry; that there was no question of transfer of licence; that it is clear from the fact that the authority for clearance of work in respect of both Bills of Entry was in favour of the appellant; that M/s. Track only secured the work from the importers and approached the appellant who were CHA licence holders; that the goods were cleared through the Customs by the appellant themselves; that after clearance work, the bill for agreed upon amount was raised by the appellant in favour of M/s. Track; that M/s. Track raised their own bill under different heads; that the format of the bills by M/s. Track is the same as that of the appellant, therefore, Customs Authorities have presumed that the Customs clearance work was handled by M/s. Track. Ld. Counsel submits that it was contrary to the facts on record; that there was no evidence on record to show that M/s. Track handled the Customs clearance work.

Ld. Counsel submitted that the evidence was otherwise. It clearly showed that the appellant filed Bills of Entry on behalf of the importers and cleared the consignments. Ld. Counsel submitted that raising of bill by M/s. Track on the importer in no way shows that M/s.

Track handled the Customs work. Ld. Counsel, therefore, submitted that no evidence has been brought on record to show that the appellant had sublet its

Customs clearance work to any other person or agency. Ld.

Counsel also submitted that if bill is the criterion then the appellant had also raised the bill for Agency and Service Charges and so there are two bills raised by two persons but the work has been handled only by one person i.e. the appellant. Ld. Counsel submitted that no doubt M/s. Track had received payment for the bill raised by them the appellants have also received payment in respect of Customs work handled by them. Ld. Counsel submitted that the appellant instead of receiving payment for Customs clearance work from the importer himself received the payment from M/s. Track.

4. Regarding signing of Annexure 2 of Bill of Entry by Shri V.N.Choudhry, Ld. Counsel submitted that Shri Choudhry was issued 'G' Card in view of the appellant having applied to the Asstt. Commissioner of Customs for issuing identity card in form 'G' as an employee of the appellant's firm; that it was the bona fide belief of the appellant that Shri Choudhry, holder of 'G' Card could sign the document though the Bill of Entry was signed by the authorised representative of the firm. Ld. Counsel, therefore, submitted that the Department has not been able to make out a case and prayed that the appeal may be allowed.

5. Shri R.D. Negi, Ld. DR submitted that the two bills clearly showed that M/s. Track had issued the bills; that M/s. Track was not the Customs House Agent and was not authorised to handle Customs clearance work. He submitted that bill issuance clearly showed that M/s. Track was handling Customs clearance work for and on behalf of the M/s. K.K.Sharma. Ld. DR also referred to signing of Annexure 2 by Shri Choudhry and submitted that Shri Choudhry was not authorised to sign any document annexed to the Bill of Entry. Reiterating the findings of the Ld. Commissioner, Ld. DR submitted that the case of sub-heading has been established and therefore, the authorities below have rightly revoked the Customs House Agent Licence of the appellant and forfeited the security amount.

6. We have heard the rival submissions. The first issue is whether the Customs clearance work was handled by M/s. Track, the evidence on record is two bills issued by M/s. Track. Bills have been issued by M/s. Track indicating the Agency and Service also. Agency and Service can be collected only by a Customs House

Agent. The Department's case was that since M/s. Track has collected Agency and Service charges in their bill, they have acted as Customs House Agent without authority and illegally and since they were working for M/s. K.K. Sharma, therefore, the case of sublet is proved as against this the appellant states that the work was brought by M/s. Track from the importer but as M/s. Track were not a Customs House Agent Licence holder, therefore, they entrusted the work of Customs clearance to M/s. K.K. Sharma. It was submitted that M/s. K.K. Sharma prepared the Bills of Entry and signed the documents as CHA and issued their bill to M/s. Track.

Looking to the above facts, we find that there is nothing on record to prove that Customs clearance work was handled by M/s. Track. Bill of Entry and other documents requiring Customs House Agents' signature was signed by M/s. K.K. Sharma or his authorised representative. Second minor objection is that Shri V.N. Choudhry had signed the Annexure 2 to the Bill of Entry. Further, it has been submitted that Shri V.N.Choudhry was holding 'G' Card from the Customs under which he could operate in the Customs area and if he had signed the Annexure 2 to Bill of Entry that signature was legally made and in no way indicated that Shri V.N. Choudhry was working for any other person other than M/s.

K.K. Sharma. Having considered the above facts, we hold that no case for subletting the Customs House Agent clearance work to M/s. Track has been proved by the Customs Authorities. In the circumstances the revocation of licence and forfeiture of security is not sustainable in law in the present case. In the circumstances, the impugned order is set aside and the appeal is allowed.

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