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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-16-2003

Reported in : (2004)(92)ECC676

Judge : S Kang, a T V.K.

Appellant : Skyways

Respondent : Commissioner of Customs (Gen.)

Judgement :

1. M/s. Skyways have filed this Appeal against the cancellation of their Customs House Agent's Licence by the Commissioner of Customs under the impugned Order No. 14/Adj/KRB-2003, dated 30-5-2003.

2.1 Shri Harbans Singh, learned Advocate, submitted that the Appellant was granted CHA Licence in 1985; that he employed one Shri Ashok Kumar Kalra, A 'G' Card holder, to assist him in his work after obtaining prior approval of the Customs Authorities; that on 8-8-97, one Shipping Bill of M/s. Crafts Creations & Collections Inc. was filed for export of 5000 pieces of ladies garments valued at Rs. 12,44,950/- under claim of drawback amounting to Rs. 2,61,549.50 p. by the Appellant; that examination revealed that the goods were children garments made of sub-standard and Cheap material and it contained only 3923 pieces and the value of the goods was about l/10th of the value declared in the shipping bill; that Appellant's CHA licence was suspended vide Order dated 3-11-97; that on Appeal, the Tribunal directed the Commissioner to issue a show cause notice and adjudicate the matter.

2.2 He, further, mentioned that an Inquiry Officer was appointed who in his Report dated 8-6-98 observed that Shri S.L. Juneja, Proprietor of the Appellant firm, had tried to shift, without any material, the responsibility of fraudulent export from CHA to Shri Nitin Kapoor of M/s. J.A. Export International; that the Commissioner, under Order dated 5-10-98 observed that there was substance in the argument of the Appellant and ordered for a fresh inquiry, besides renewing CHA Licence; that Shri Ashok Chanana, Proprietor of M/s. Craft Creations and Collections, under their letter dated 11-7-2002 informed that they had nothing to do with the impugned export; that the Inquiry Officer observed that there had to be a clear understanding between Ashok Chanana and Nitin Kapoor for sharing of draw back process; the CHA could not have been the beneficiary of the drawback and CHA could not be treated as Exporter; that forging the signature of Kalra on Shipping bill might be committed by the employee probably for expeditions clearance. The learned Advocate emphasised that the Inquiry Officer gave his findings that "although there has been an act of omission on the part of the CHA through their employee there is no material evidence to indicate that they had the motive of exporting overvalued goods with the intention of claiming excessive drawback." 2.3 The learned Advocate mentioned that the Commissioner has, however, disagreed with the Report observing that the CHA had not taken any authorization either from Nitin Kapoor or Craft Creations & Collections Inc. as is required under Regulation 14 (a) of the Customs House Agent Licensing Regulations (CHALR); that the CHA has also contravened the Provision of Regulation 14(b) as the Customs Clearance work was not controlled by CHA but by M/s. TCT Cargo & Travels of which Kalra is a Director and that the Appellant has also failed to exercise proper supervision over his employee as Kalra had directed his staff to put his (Kalra's) initial on the export document and thus contravened Regulation 20(7) of CHALR. The learned Advocate contended that the Commissioner had failed to appreciate that the Shipping Bill, Invoice and other document bear the signature of the Exporter; that the fact that the Shipping document contain the necessary particulars confirms the hollowness of denial by the Exporter of his concern with the consignment; that the Exporter had signed all the shipping papers prepared by CHA and this fact goes to show that he had authorized the Appellant to file the shipping document and seek clearance of the consignment. He also mentioned that the Appellant had employed a 'G' Card holder to comply with the requirements of law; that Kalra had directed his staff to take Appellant's signature and as the employee signed himself, it is an error committed by the employee without his knowledge. He also contended that the facts essential to prove violation of Regulation 20(7) were not alleged in the show cause notice and thus the Appellant had no opportunity to explain or rebut the charge.

3. He also submitted that no show cause notice has been issued under the Customs Act for over valuation and less quantity placed for export.

He also contended that there is nothing on record to show that Customs Clearance work had been entrusted to M/s. TCT Cargo & Travels. He relied upon the decision in the case of Sharp Cargo Movers v. C.C., New Delhi, 2003 (162) E.L.T. 361 (Tri. - Del.) = 2003 (57) RLT 512 (CEGAT) wherein the licence of CHA was allowed to be renewed till Adjudication of the show cause notice. Reliance has also been placed on the decision in the case of Falcon Air Cargo and Travel (P) Ltd. v. CC, New Delhi, 2002 (141) E.L.T. 284 (T).

4. Countering the arguments, Shri Virag Gupta, learned Departmental Representative, submitted that the Appellant had received orders from Nitin Kapoor and the goods were also collected from a godown; that goods were found to be less in quantity than declared on examination; that further the goods were mis-declared and the valuation was mentioned which was more than 10 times the real value; that Charges were specifically mentioned in the show cause notice which had contained the allegation that "M/s. Skyway have failed to comply with the requirement of CHA Licensing Regulation by contravening the provisions of Regulation 14(a), 14(b), 14(e), 14(f), 14(j), 14(k) and 14(l) and 20(7) of CHALR' 84." He therefore, contended that the Appellant can not claim that charges were not mentioned in the show cause notice issued to him. He referred to the finding of the Commissioner in the impugned Order that the case is still unfinalized and it can not be concluded that no show cause notice can be issued for goods being exported improperly with an intention to claim excessive drawback and the said intention was being realized by excessive delegation by CHA, Appellant. He relied

upon the decision in the case of Sri Kamakshi Agency v. Commissioner, 2002 (142) E.L.T. A87 wherein the Supreme Court has dismissed the SLP filed by Kamakshi Agency against the judgment of the Madras High Court which had upheld the cancellation of CHA licence observing that the fraudulent activities carried on by Power of Attorney holder are to be treated as having been carried out by Proprietor of Petitioner Company himself. The learned Senior Departmental Representative also relied upon the decision in Noble Agency v. CC Mumbai, 2002 (142) E.L.T. 84 (T). In reply, the learned Advocate emphasised that since the Appellant was granted CHA licence, he has an unblemished record as CHA.5. We have considered the submissions of both the sides. The facts which are not in disputes are that the Appellant filed the Shipping Bill dated 8-8-97 of M/s. Crafts Creations & Collection Inc. for export of 5000 pieces of ladies garment, Rayon/cotton ladies tops valued at Rs. 12,44,950/- under claim of drawback. On examination the consignment was found to contain 3923 pieces of children garments made of sub-standard and cheap material and the value of the goods is said to be about 1/10th of the declared value. It is also not in dispute that the one Shri Subhash, an employee of M/s. TCT Cargo & Travels Pvt. Ltd. had forged the signature of Shri Ashok Kumar Kalra, 'G' Card Holder in M/s. Skyways. Shri Kalra in his statement dated 19-8-97 has deposed that the impugned Shipping Bill was filed through the office of M/s.

TCT Cargo & Travel in which he is one of the director; that the shipping bill was prepared on the basis of a copy of invoice received through fax from Nitin Kapoor of M/s. J.N. Exports International; that the packing list was also dictated by Nitin Kapoor on telephone. He also deposed that the goods were picked up from one 'sardarjee' on the instructions of Nitin Kapoor on phone. There is nothing on record to show that Kalra had retracted his statement dated 19-8-97. It is apparent from the material brought on record that Shri S.L. Juneja was not looking after the work relating to Customs as when Kalra was out of India during the period from 4-8-97 to 12-8-97, he did not bother to check up as to how the customs documents are being filed. It is on record which is not controverted that only S.L. Juneja, Appellant and Ashok Kalra were authorized to sign the Customs document. His negligence has led to the signing of shipping bills in question. He has thus not exercised supervision over the work as required under Regulation 20(7) of the Customs

House Agents Licensing Regulations, 1984. We also find no reason to interfere with the findings of the Commissioner to the effect that he has contravened the provisions of Regulation 14 (a) and Regulation 14(b) of the said Regulations, 1984 inasmuch as there is no authorisation from M/s. Craft Creations & Collection Inc on whose behalf the Shipping Bill was filed by the Appellant. Further, the Appellant has not conducted his business either personally or through an employee approved by the competent Customs Authority inasmuch as that the work was being conducted by M/s. TCT Cargo & Travels. This is established from the statement dated 19-8-97 of Shri Ashok Kalra. In reply to questions as to who prepared the Shipping Bill No. 18118, dated 8-8-97 and on what basis, he had answered as under: "As I have already stated that I was out of country from 4-8-97 to 12-8-97 When I came here and enquired about my office activities then I have come to know from Mr. Rohit, employee of my firm that above mentioned S.B. was presently held up with Customs. He further, informs me that the above S.B. was prepared at our office on the basis of a copy of invoice received through Fax from Shri Nitin Kapoor of M/s. J.N Exports and the packing list also dictated by Mr.

Nitin Kapoor on telephone at our office." [English translation of Statement as provided by the Appellant in Paper Book].

6. Shri Rohit Sethi in his statement dated 27-8-97 has deposed that he is working in M/s. T.C.T. Cargo & Travel (P) Ltd. as a manager and that the Shipping Bill in question was prepared by him and that one Subhash Kumar, employee of TCT Cargo & Travels had put the initials of Shri Ashok Kumar Kalra on the said Shipping Bill. He has also deposed in the said statement that at the time of leaving India, Shri Ashok Kalra had instructed him as well as other Staff members of M/s. TCT Cargo and Travels that anybody may put his initials on any document relating to Customs clearance in case Shri S.L. Juneja was not readily available so that work related to Customs clearance may not suffer. It is thus apparent that the work of Customs clearance assigned to the Appellant is carried out by M/s. TCT Cargo Travels (P) Ltd. Nothing has also been brought on record as to whether before forging the signature, Rohit has tried at all to take the signature of Shri S.L. Juneja. It has been held by the Madras High Court in the case of Shri Kamakshi Agency v.C.C., Madras, 2001 (129) E.L.T. 29 (Mad.) that virtually all the fraudulent

activities carried out by the Power of Attorney of CHA were to be treated as having been carried out by him. The Madras High Court has held that the Respondent had rightly revoked the Customs House Agent licence. This judgment has been affirmed by the Supreme Court as reported in 2002 (142) E.L.T. A87. The Tribunal in Noble Agency v. C C Mumbai, 2002 (142) E.L.T. 84 (T) has considered the role and obligation of a Customs House Agent as under : "The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligation even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations. Any deliberate contravention of the law has to be dealt with most seriously." 7. There is no force in the submission of the Advocate that as no show cause notice has been issued under Customs Act, action for revocation of licence can not be taken. In the present matter the facts clearly show the contravention of Regulation 14 and Regulation 20 of CHAL Regulations, 1984. The facts in Sharp Cargo Movers are different from the facts in the present matter. The allegation in that matter was that the Appellant had entered into criminal conspiracy for availing wrongful benefit of drawback which had, tell the matter regarding renewal of licence was decided, not been adjudicated. In the present matter licence has been revoked for not conducting the business of Customs House Agent as per the Regulations. The Appeal is thus rejected.