S.S. Clearing and Forwarding Vs. Cc(G)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-23-2005

Reported in : (2005)(189)ELT451Tri(Mum.)bai

Judge : J Balasundaram, Vice, S T S.S.

Appellant : S.S. Clearing and Forwarding

Respondent : Cc(G)

Judgement :

1. The appellants are a licencee under the Customs House Agent Licensing Regulations, 1984 (hereinafter referred to as "CHALR 1984' for short). Vide Order dated 15.7.2005 their security of Rs. 25,000/- was ordered to be forfeited and the licence issued was revoked.

2. Brief factual background relevant is that a Bill of Entry dated 12.2.2001 by the importer M/s. S.B. Impex was field declaring the same as Sodium Bicarbonate, where the appellants were the Customs House Agent. The goods were examined and thereafter allowed clearance.

Subsequent to this clearance, during the search of the godown 921 bags were seized in a warehouse outside the town, by the officers, on an allegation that the description on the same shown was 'Titanium Dioxide', which were said to have been cleared on the above said Bill of Entry filed by M/s. SB Impex. Show Cause Notice dated 27.3.2002 came to be issued by the Commissioner, consequent to the enquiries made.

This Show Cause Notice did not make any allegation against the appellants herein. Nor consequent thereto, this CHA licensee was made a party.

3. Somewhere in January 2004, the appellant company was served a Show Cause Notice under the CHALR 1984 and a regular enquiry and proceedings was commenced, wherein Articles of Charges were framed. Enquiry was held and concluded on 10.2.2004. Replies were made to the Commissioner of Customs along with reliance placed on various decisions. However, without considering the submissions the Commissioner proceeded to order cancellation of the CHA Licence. Hence, the present appeal.

4. After hearing both sides, and considering the material, it is found : (a) that the appellants employed about 29 persons and have been functioning as a CHA for the last many years and have a blemish free record. They not only function as CHA for importing the cargo through Customs House in Mumbai but also Nhava Sheva Customs House.

(b) The subject consignment of Sodium Bicarbonate were importing as far back as 27.2.2001 and the licence was not even suspended and the appellants were allowed to operate smoothly and during the said period of investigation/enquiries of the incorrect import of Titanium Dioxide; nothing adverse has been found against the company as regards the said clearance of 5 containers of 'Sodium Bicarbonate' as no Show Cause Notice was served on them under the Customs Act, 1962 for the misdeclared import.

(c) M/s. S.B. Imports were importers, even before engaging the appellant company. Even though there was an alert issued wit respect to M/s. S.B. Impex, This Bill of Entry was processed by the Customs Officers and the goods were allowed clearance, without any hindrance or and objection being found by the scrutinizing Appraisers in the Customs House and the Examining Shed Appraisers in the Docks. The goods were declared as 'Sodium Bicarbonate' and no marks or labels or consignment tags of Titanium dioxide' as subsequently seized in the godown premises were observed by the Shed Staff. There is no allegation of any collusion between the Shed staff and the CHA company, the appellant herein. The CHALR 1984 by definition provided that the agency gets over on complete delivery of the goods, after payment and requisite duty i.e. the clearance of the goods from the Customs. In the present case, it is on record that M/s. S.B. Impex and their sister concerns were regular importers whose work was being attended to by other CHA. The bona fides of this new clients could not suspects by the appellants, as they were not a new comes in the field of imports. The charges as made out in the CHALR 1984 therefore cannot be sustained especially for non obtaining the authorization in view of the decision in the case of Om Freight Forwarders v. Commissioner, (T).

(d) The fact that the appellants were not issued a Show Cause Notice under Section 124 of the Customs Act, 1962 for a penalty under Section 112 ibid for the subject goods seized in the warehouse ascribed to have been cleared with assistance of the appellants, would indicate that they were totally innocent about the alleged import of 'Titanium Dioxide' in the guise of Sodium Bicarbonate by M/s. S.B. Imports. The present action initiated, after a lapse of about four years or more for an import made, where enquiries did not reveal positive pre concert or knowledge about the goods being misdeclared would call for setting aside this order under CHALR 1984 and allowing this appeal. Though we do not accept the plea of proximity of an alleged offence and action for cancellation of CHA Licence as being made out. When for an alleged offence of misdeclaration, the CHA is not charged as an abetter or having aided the importer in the clearance of misdeclared goods and there is no positive actus rheus on part of the CHA to have the goods cleared knowingly, which are otherwise liable to confiscation, we would not upheld the cancellation of the licence and forfeiture of the security amount deposited by the CHA under CHALR 1984 as arrived by the ld. Commissioner.

(e) From the Panchnama made at the Bhiwandi godown, where 921 bags were found to contain 'Titanium Dioxide', which were found, there was no indication of the Bill of Entry numbers and other material which could be indicating the goods to be linked to Bill of Entry handled by the CHA. In this case, the entire transportation was arranged by the importers/their representatives Ex-Docks. The detailed investigation made by the investigating officials could not reveal and lapse on part of the CHA, to call for penal liability.

(f) It is on record that the Intelligence Unit of the Customs House who had investigated the alleged clearance of Titanium Dioxide by declared it as Sodium Bicarbonate have themselves given no objection certificate for revival of the licence to the CHA company from time to time would induce us to conclude that there is no case or cause for cancellation of the subject CHA Licence and or forfeiture ordered of the security amount.

5. In view of out findings hereinabove, we would set aside the order of cancellation of the Licence and forfeiture of the security amounts as on the grounds as arrived at by the Ld. Commissioner, after setting aside the order and allow the appeal.