
(2023) 11 CESTAT CK 0019

Customs, Excise And Service Tax Appellate, Bangalore

Case No: Customs Appeal No. 20332 Of 2022

M/S. Access World Wide Cargo

APPELLANT

Vs

Commissioner Of Customs

RESPONDENT

Date of Decision: Nov. 21, 2023

Acts Referred:

- Customs Brokers Licensing Regulations, 2013 - Regulation 9(2), 10(e), 14, 18
- Customs Act, 1962 - Section 75, 114AA

Hon'ble Judges: R. Bhagya Devi, Member (T)

Bench: Single Bench

Advocate: Pradyumna G.H, K. A. Jathin

Final Decision: Allowed

Judgement

R. Bhagya Devi, Member (T)

1. M/s. Access World Wide Cargo of the holder of Customs Broker License No. R-15/99 dated 03.05.99 in terms of the provisions of Regulation 9

(2) of Customs Brokers Licensing Regulations, 2013/2018. An offence case was booked against the exporter Aakansha Distributors (P) Ltd. (ADPL)

for an alleged offence of ineligible drawback and the same was subsequently confirmed vide Order-in-Original No. 628/2019 dated 29.10.2019.

During these proceedings it was found that M/s. Access World Wide Cargo knowing very well that the exporter was not eligible for drawback had

filed the shipping bills under the claim of drawback, thus, failed to discharge their obligations of the Customs Broker in terms of the Customs Broker

Licensing Regulations 2018. Therefore, the Commissioner in the impugned order imposed penalty of Rs. 50,000/- on the customs broker under

Regulation 14 read with Regulation 18 of the Customs Broker Licensing Regulations 2013/2018. Aggrieved by this order, the appellant is in appeal before me.

2. Today, when the matter came up for hearing, the learned counsel on behalf of the appellant submitted that the Order-in-Original No. 628/2009

dated 29.10.2019 was issued confirming the demand of Rs.50,48,749/- being the ineligible drawback to be recovered from the exporter ADPL. This

order also imposed penalty on the appellant under Section 114AA of the Customs Act, 1962. This order was appealed before this Tribunal and this

Tribunal vide Final Order No. 20666/2021 dated 10.08.2021 held that the ineligible drawback claimed by ADPL was challenged before the revisionary

authority and Section 114AA was not applicable to the Customs Broker and further, the Tribunal observed that there is no proof that there was a mala

fide and wilful misrepresentation by the customs broker. The Tribunal also noted that the that the Commissioner had totally misunderstood the facts

and had wrongly observed that the customs broker and the exporter have been operating from the same premises and have an identical ICE code

which suspected the bona fides of the customs broker and it was found that this finding was factually incorrect and without any basis and accordingly,

the penalty was set aside. Later on, a show-cause notice was issued to the appellant on 22.12.2020 invoking the provisions of Customs Broker

Licensing Regulations, 2013/2018. This show cause notice culminated into the present impugned order imposing penalty of Rs. 50,000/- for violation of

the conditions laid down by the Customs Broker Licensing Regulations, 2013/2018. The learned counsel submits that the earlier order was not only set

aside because of the wrong provisions of Section 114AA of the Customs Act, 1962 but also on merits. He also submits that Regulation 14 has various

conditions laid down for revoking the license. After consideration relevant facts and circumstances, the Commissioner had dropped the proposal to

revoke the license since none of the ingredients of Regulation 14 were attracted, penalty also should have been dropped. He also submits that under

Regulation 18, penalty is imposed for contravention of any of the provisions of the Customs Broker Licensing Regulations. It is submitted by the

appellant that he had in his statement clearly stated that the exporter was entitled to drawback under section 75 of the Customs Act and as claimed by

the Commissioner, nowhere they had stated that the exporter had directed them to file the shipping bills even though they brought to the notice of the

exporter that they were not eligible for drawback. They also relied on the following case laws in defence of their argument that the penalty cannot be

imposed when there are no cogent findings and in absence of any evidence for having violated the provisions of Customs Broker License Regulations.

â€¢ Kamal Sehgal Solutions Pvt. Ltd. vs. CC, Chennai: 2020 (371) ELT 685 (Mad.)

â€¢ KTR Logistics Solutions Pvt. Ltd. vs. CC, Chennai: 2020 (372) ELT 689 (Mad.)

â€¢ HSN Shipping Pvt. Ltd. vs. CC, Chennai: 2020 (372) ELT 689 (Mad.)

â€¢ M.M. Logistics vs. CC (Airport & General), New Delhi: 2020 (373) ELT 677 (Tri.-Del.)

â€¢ Manjunatha Cargo Pvt. Ltd. vs. CC, Bangalore: 2021 (375) ELT 245 (Tri.-Bang.)

3. The Authorised Representative on behalf of the revenue reiterating the findings of the Commissioner submits that the appellant is liable to be

penalised in as much as they have violated the conditions of the Customs Broker License Regulations, 2018.

4. Heard both sides. The facts of the case are not under dispute. Initially vide Order-in-Original No. 628/2009 dated 29.10.2019 passed by the

Commissioner imposing penalty on the appellant under section 114AA of the Customs Act 1962, was set aside by this Tribunal vide Final Order No.

20666/2021 dated 10.08.2021 wherein it was clearly observed that the Commissioner had misled himself with the wrong facts in concluding that the

appellant was involved in the illegal export. The impugned order though is an independent order issued in terms of the Customs House Licensing

Regulations 2013/2018, the offence remains the same that ineligible drawback claimed by the exporter ADPL. In the impugned order, the enquiry

officer in his report found that "It is seen from the facts of the case that the customs broker has informed the exporter about the non-availability of

drawback and exporters have on their own violation opted to go for drawback under Section 75. As such, there is nothing forthcoming in the show-

cause notice or the Order-in-Original that the customs broker has imparted any wrong information to the exporter. In fact, the allegation was that

while they have given right caution to the exporter, they have not intimated the Department when the exporter chose to do the other way. Hence, I do

not find any specific case of failure to exercise due diligence in imparting information to their client. Hence, the charge of failure to comply with

Regulation 10(e) cannot be held against the Customs Broker. The Commissioner in the impugned order based on the findings of the inquiry officer

held that I concur with the enquiry officer that the allegation of violations of Regulation 10(e) as unsustainable since the said provision requires

due diligence in imparting to the customer. In this case, the exporter was aware of the provisions and carried out the claim of drawback on their own

violation and it is not coming out that the customs broker has advised wrongly. The Commissioner also observed that the customs broker has been

functioning without any other blemish and considering that part of the drawback was dropped by the adjudicating authority he did not consider the case

of grave violation inviting drastic action like revocation and accordingly drops revocation of license.

5. The Tribunal vide its Final Order had clearly held that since the exporter had challenged the eligible claim of drawback before the revisionary

authority the matter was sub-judice and it also observed that the department had failed to prove that there is a mala fide and wilful misrepresentation

by the customs broker and accordingly penalty was set aside on the set of facts of ineligible drawback claimed by the exporter. Considering all these

facts and taking into account the unblemished record of the customs broker as held by the Commissioner, the penalty imposed upon the appellant is set

aside. The appeal is allowed.