

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH - COURT No. I

Customs Appeal No. 40339 of 2016

(Arising out of Order-in-Original No.35112/2015 dt. 12.02.2015 and Corrigendum dt. 22.04.2015 passed by Commissioner of Customs, (Seaport-Import), Custom House, No.60, Rajaji Salai, Chennai 600 001.)

M/s.RSM Clearing Services Pvt. Ltd. Appellant
Rep. by its Director M. Ruben,
No.72, MNJ Complex, First Floor,
Portion F 10A- Moore Street
Chennai 600 001.

VERSUS

The Commissioner of Customs (Seaport-Import)
Custom House,
No.60, Rajaji Salai,
Chennai 600 001.Respondent

APPEARANCE :

Shri A.K. Jayaraj, Advocate, for the Appellant
Shri Anoop Singh, Authorized Representative for the Respondent

CORAM :

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

FINAL ORDER No.41244/2024

DATE OF HEARING : 23.09.2024
DATE OF DECISION : 27.09.2024

Per: Shri P. Dinesha

1. Show cause notice dated 25.11.2013 reveals that the officers of the Docks Intelligence Unit of Customs House, Chennai appeared to have examined an imported consignment of goods, which were imported in the name of M/s. V.J. Enterprises. It further reveals that the said consignment was nothing but limestone and that the import documents were given to one Mr. Deva who appeared to have cleared the goods through Customs House Agent i.e., the appellant herein. Thereafter, it appears that the investigation was further carried out during the course of which the officers of DIU proceeded to record statements of the concerned persons. The SCN appears to have been issued to as many as six persons and the appellant herein is the sixth noticee; both the representatives of the contesting parties admitted during the course of hearing before us that the other noticees have not filed any appeals against any demand made against them after adjudication. Their statements are taken on record and hence, we restrict the scope of this appeal to the case of the 6th co-noticee who has filed the present appeal before us.

2. The allegation in the SCN against the appellant is at para 6 of the SCN; the same is based on the statement given

by the Manager of the appellant firm. The said Manager has only explained that the appellant firm did not know about the importer or any of the other noticees earlier. It is further revealed by him that the customs clearance of the subject Bill of Entry under RMS was on 24.11.2012, but however, the containers were transported to the godown only on 26.11.2012 and it was on the very same day that the DRI officers visited their office who revealed that poppy seeds were concealed within the limestone powder cargo.

3. The other allegation as could be seen from the SCN at para 16 is that at the time of issuing delivery order, since it was mandatory to get the signatures of consignee as well as the CHA, the signature of the Manager of the appellant firm appears in the capacity as the CHA. Based on investigation, it is alleged in the SCN that M/s. V.J. Enterprises, the IEC holder allowed one Mr. Maninder Singh – the 1st Noticee, to misuse its IEC which had resulted in the alleged import of poppy seeds without declaring the same, which amounted to the smuggling of poppy seeds. The allegation levelled against the appellant before us is that the CHA had facilitated the clearance of the consignment using the services of un-authorized person namely Mr.Devendra and failed to

verify the antecedents of their clients in terms of Regulation 13(o) of the CHALR, 2004.

4. Vide order dated 15.01.2014, the Commissioner of Customs passed an order of suspension of the Customs Broker's license under the provisions of Regulation 19(1) of CBLR 2013, whereby the suspension of the Customs Broker license was ordered with immediate effect, until further orders. Thereafter, an opportunity of personal hearing was also granted to the appellant, and it appears that the appellant did appear and present its case. It appears that thereafter the Commissioner passed Order-in-Original dated 13.02.2015 vide which, she proceeded to revoke the license of the Customs Broker, apart from ordering forfeiture of the entire amount of security deposit made by the Customs Broker. It is against this order that the present appeal has been filed before us.

5. Heard Shri A.K. Jayaraj, learned Advocate for the appellant and Shri Anoop Singh, learned Joint commissioner for the respondent.

6. After hearing both sides, we find that the following issues are to be decided by us:

“(i) Whether the Commissioner was justified in revoking the Customs Broker license of the appellant; and

(ii) the order of Commissioner to forfeit the entire security deposit, is in order?”

7. We find from the documents placed on record that the importer, i.e. M/s. V.J Enterprises is alleged to have allowed its IEC to be misused by one Mr. Maninder Singh and the only allegation against the present appellant is that it facilitated the clearance of the consignment using the services of un-authorized person, and failed to verify the antecedents of their client as required under Regulation 13(o) *ibid*. We do not find any explanation offered by Praveen, Manager of the appellant firm as why he facilitated the entry of one Deva during the clearance of consignment, which act itself is in clear violation of Regulation 13(o) *ibid*.

8. It is the case of Sri Jayaraj, Id. Advocate that for revoking the license of a Customs Broker, the authority shall follow the procedure prescribed under Regulation 20 *ibid*; Regulation 20(2) *ibid* specifically mandates that any order of suspending the license must be made within 15 days from the date of the receipt of a report from the investigating authority whereas, the receipt of such report is not necessary

for any action like suspension of license under the amended 2013 Regulations. According to him, the authority has issued the suspension order much after the prescribed 15 days limitation period and hence, without going into the merits, the impugned order revoking the Customs Broker license deserves to be set aside.

9. *Per contra*, Id. Joint Commissioner defended the orders of the Lower Authority. He also took us through some of the paragraphs in the impugned order to buttress his arguments.

10. We find that it is useful here to record some of the relevant dates along with events for convenience. The SCN issued is dated 25.11.2013 upon the filing of the Bill of Entry dated 21.11.2012. Order of suspension of License is dated 15.01.2014, the inquiry report is dated 22.05.2014; the SCN under CBLR is dated 25.02.2014. Finally, the order of revocation dated 12.02.2015 came to be passed by the Commissioner. Going by the dates, we may tend to agree with the assertions of the Id. Advocate that the order of suspension of license has been passed after the expiry of the prescribed period of limitation and hence, the suspension order is clearly in violation of Regulation 20(2) *ibid*. But what is challenged before us is the order of Revocation dated

12.02.2015 and hence, the legality or the correctness of an order dated 15.01.2014 cannot be decided now.

11. Be that as it may, we find that gravity of the alleged offence, if at all committed by the appellant does not call for capital punishment resulting in the very suspension of his Customs Broker License. The same, according to us, is also highly disproportionate. Initially, the order of suspension of license was passed in 2014, thereafter the impugned order was passed in the year 2015 and since then, the appellant is out of business which is perhaps its only source of income. The appellant must have suffered enough financially which itself is a deterrent factor and hence, to fasten the appellant with a permanent sealing down of its customs broker license may not be called for since the consequences of revocation are very serious since, apart from the members of own family, there may be employees and the members of their family who would be dependent for their sustenance/survival.

12. We are therefore of the view that it would meet the ends of justice, if we order for re-issuance of its Customs Brokers License subject to fulfilment of the prescribed procedural requirements, but however, we do not propose to interfere with impugned order insofar as the forfeiture of

security deposit is concerned. The appeal is partly allowed as indicated above.

(Order pronounced in the open court on 27.09.2024)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)