

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH, BANGALORE
COURT NO. I**

Appeal No. C/22022/2018-SM

Arising out of Order-in-Original No. COC-CUSTM-000-COM-79-17-18, Dated: 19.03.2018
Passed by Commissioner of CUSTOMS, COCHIN

Date of Hearing: 30.07.2019

Date of Decision: 30.07.2019

**TRIWAY FORWARDERS PVT LTD
36/1289, PUTHENTHURA, LISIE HOSPITAL ROAD
COCHIN COCHIN - 682010 KERALA**

Vs

**COMMISSIONER OF CUSTOMS
COCHIN-CUS. CUSTOM HOUSE, WILLINGDON ISLAND
COCHIN - 682009 KERALA**

Appellant Rep by: Shri G Shanmugam, Adv.

Respondent Rep by: Mr Madhup Sharan, AC (AR)

CORAM: S S Garg, Member (J)

Cus - The appellant is a Customs broker based at Cochin port and also functioning at other ports - During the relevant period, an O-i-O was passed alleging contravention of provisions of the CBLR 2013 - Pursuant to an inquiry, a penalty was imposed on the appellant, which then triggered the present appeal.

Held - In the O-i-O, it was observed that action was taken against the appellant based on an O-i-O passed by the Commissioner of Customs at Nhava Sheva Port - It is observed that in the absence of any offence report alleging violation of Regulation 11(d), 11(e) and 11(f) of the CBLR, there was no basis to decide the matter any further - It was also observed that there was no allegation of wilful mis-declaration proved against the assessee in the inquiry conducted by the Inquiry Officer - In view of such findings, it was unjustified on the Commissioner's part to impose a penalty without holding the assessee to be guilty of violation of the CBLR as alleged against the appellant - Hence the penalty imposed on the appellant is unsustainable and merits being set aside: CESTAT

Appeal allowed

Case laws cited:

Commissioner of Customs vs. Shiva Khurana: - 2019-TIOL-178-HC-DEL-CUS... Para 3.1

Kailash Bahiru Jadhav vs. Commissioner of Customs (Export) - 2019-TIOL-2015-CESTAT-MUM... Para 3.1

FINAL ORDER NO. 20607/2019

Per: S S Garg:

The present appeal is directed against the impugned order dated 19.3.2018 passed by the Commissioner of Customs whereby the Commissioner has imposed a penalty of Rs.50,000/- on

the appellant for their failure in exercising supervision of proper conduct of their employee in transaction of business.

2. Briefly the facts of the present case are that the appellant is a Custom Broker firm based at Cochin and are functioning at other ports also. The action in the present case was taken against the appellant in the case of Order-in-Original issued by the Principal Commissioner of Customs, Nhava Sheva Port alleging contravention of provisions of Custom Broker Licensing Regulation, 2013 against the appellant. After holding inquiry against the appellant, the Commissioner on the basis of the inquiry imposed a penalty of Rs.50,000/- which is under challenge.

3. Learned counsel for the appellant submitted that the impugned order imposing the penalty of Rs.50,000/- on the appellant is not sustainable in law as the same has been imposed without any evidence against the appellant. He further submitted that the appellant has been functioning as Customer Broker for the past several years without any complaint against them. He further submitted that their employee Shri K. Srinivasan, G-Card holder filed the Bill of Entry classifying the goods under CTH 8471 6025 to avail the benefit of Sl. No.8 of Notification No.24/2005-Cus. dated 1.3.2005 in spite of classifying the said goods under CTH 8441 1010. He further submitted that the appellants have classified the said goods under 8471 6025 on the basis of a specific instruction of the importer and also in the light of the fact that proof of clearance of identical goods, were permitted to be cleared by the customs authorities at Nhava Sheva Port under CTH 8471 6025. He further submitted that the appellants have undertaken this sale clearance of the importer M/s. Angel India Impex, New Delhi and has merely adopted the classification already approved by the Department. He further submitted that in the impugned order, the Commissioner (A) has observed in para 12 as under:

"12. In the absence of an offence report which alleged violations of Regulations 11(d) to (f), I find that there is no basis here to decide the same. I find that the adjudicating authority has not made any adverse finding against the CB in his order. There is also no allegation of willful mis-declaration, non-compliance with the provisions of Customs Act or withholding of information contained in any order/instruction/public notice to their client."

3.1 He further submitted that in view of the fact that there is no willful mis-declaration and non-compliance of the provisions of the Customs Act, the imposition of penalty is not tenable. In support of his submission, he relied upon the following decisions:

- *Commissioner of Customs vs. Shiva Khurana*: - **2019-TIOL-178-HC-DEL-CUS**

- *Kailash Bahiru Jadhav vs. Commissioner of Customs (Export)* - **2019-TIOL-2015-CESTAT-MUM**

4. On the other hand, the learned AR defended the impugned order and submitted that the appellant has been negligent in supervising his employees who have filed a wrong classification without properly verifying the facts.

5. After considering the submissions of both the parties and perusal of the material on record, I find that the Commissioner in his findings in the impugned order has observed that the action against the appellant has been taken on the basis of the Order-in-Original passed by the Commissioner of Custom, Nhava Sheva Port. He has further observed that in the absence of any offence report which alleged violation of Regulation 11 (d), (e), (f), there is no basis to decide the same and further, he has also observed that there is no allegation of willful mis-declaration proved against the appellant in the inquiry conducted by the Inquiry Officer. In view of these findings of the Commissioner, it was not justified on the part of the Commissioner to impose a penalty of Rs.50,000/- without holding the appellant guilty of violation of Regulation as alleged against him. In view of above infirmities, I am of the considered view that imposition of

penalty on the appellant is not sustainable in law and therefore, I set aside the same by allowing the appeal of the appellant with consequential relief, if any.

(Operative portion of the Order was pronounced in Open Court on 30.07.2019)