CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20306 of 2021

[Arising out of F. No. S9/35/64-I&B dated 08/06/2021 passed by Commissioner of CUSTOMS, COCHIN]

M/s Mercantile & Marine Services
PB No 504 Bristow Road Willington Island
COCHIN
KERALA
682003

Appellant(s)

VERSUS

Commissioner of Customs,
Cochin-cus
CUSTOM HOUSE, WILLINGDON ISLAND
COCHIN
KERALA
682009

Respondent(s)

Appearance:

P.A.Augustian, Advocate For The Appellant

Shri P.Gopakumar, Authorised Representative for the Respondent

CORAM:
HON'BLE SHRI S. K. MOHANTY, JUDICIAL MEMBER
HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No.20847/2021

Date of Hearing: 09/11/2021

Date of Decision:23/11/2021

Per : P. ANJANI KUMAR

The appellants are a Customs broker and were issued license on 02.09.2016 valid till 16.09.2026. A baggage declaration No. 1527/19.04.2021 was filed by Mr. Althaf Moosan Mukri and on the basis of intelligence, DRI searched the baggage and recovered 14,763.3gms of Gold. Statement of Sh. Biju V. Joy, G-Card Holder of the appellant was recorded. The said G-Card holder accepted that he invested Rs.35 lakhs in the seized gold. On the basis of the offence report No.17/2021 received from DRI, the appellant was suspended on 25.05.2021. The same was confirmed by Order dated 08.06.2021. The appellant preferred an appeal to this Bench. On a Writ Petition filed by the appellant, Hon'ble High Court of Kerala vide Judgment dated 15.09.2021 directed this Tribunal to consider the matter on priority.

2. Learned Counsel for the appellants submits that the impugned order issued alleging violation of Regulation 10(d) and 10(e) of CBLR, 2018 is not sustainable; the impugned order takes a harsh and coercive action like suspension of license of running a business and consequently, large number of people and their livelihood is affected. He further submits that as per Regulation 17 of the CBLR 2018, the SCN needs to be issued within 90 days; in the instant case, the SCN was issued on 29.10.2021 and therefore is barred by limitation. He submits that CESTAT in the case of Manjunatha Cargo Pvt. Ltd. 2021(375) ELT 245 (Tri. Bang.) held that the time limit prescribed under CBLR is mandatory and not directory. He relies upon the following cases:

- *MNS Exports Private Limited Vs CC, Bangalore, 2007 (219) ELT 649 (Tri. Bang.)*
- *East West Freight Carriers (P) Ltd. Vs Collector of Customs, Madras, 1995 (77) ELT 79(Mad.)*
- *N.C. Singha & Sons Vs UOI, 1998 (104) ELT 11 (Cal.)*
- *M.K. Saha & Company Vs CC, Kolkata, 2021 (376) ELT 534 (Tri. Kolkata)*

3. On the other hand, the Authorized Representative appearing for the Department submits that smuggling of gold is a serious offence and requires most strict action possible. He relies upon the following cases:

- *SSS Sai Forwarders Pvt. Ltd. Vs CC, Mumbai, 2021 (377) ELT 119 (Tri. Mumbai)*
- *D.D. Cargo Agency Vs CC, New Delhi, 2021 (3) TMI 1164-CESTAT New Delhi.*

4. Heard both sides and perused the records of the case. The case of the Department is that the G-Card Holder of the appellant has accepted his role in the smuggling of the gold. However, we find that the role of the appellants themselves has not been clearly established so as to necessitate the suspension of Customs Broker License. Learned Authorized Representative for the Department submits that the matter is still under examination and Enquiry by the Department. We find that under the circumstances, the suspension of the license of the appellant is not warranted. Moreover, in the instant case, it has been reported that the SCN under CBLR has been issued. On completion of the enquiries and examination, the Department is free to take suitable action. In view of the above, we are of the considered opinion that the suspension of the license is not required. Therefore, the said suspension requires to be set aside and we do so. At the same time, we make it clear that this order should, in no way, come in the way of the action, as deemed fit, that may be taken by the Department on completion of the proceedings initiated against the appellant.

5. In view of the above, the order suspending the license of the appellant is set aside and the appeal is disposed of in the above terms.

(Order pronounced in the Open Court on **23/11/2021**)

(S. K. MOHANTY)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

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