

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
PRINCIPAL BENCH, WEST BLOCK NO.2,  
R.K.PURAM, NEW DELHI-110066  
**COURT NO. III**  
**Appeal No. : C/51614/2022-DB**

[Arising out of the Order-in-Original No. 34/ZR/POLICY/2022 dated 20/05/2022 passed by Commissioner of Customs (Airport & General), New Custom House, NEW DELHI]

**M/s Akansha Logistics**

**.....Appellant**

House No. 133B/54s,  
1<sup>st</sup> 60 Feet Road, Molarband Extn.,  
Badarpur, New Delhi – 110 044

**Versus**

**Commissioner of Customs, New Delhi**

**....Respondent**

(Airport and General)  
New Custom House,  
Near IGI Airport, New Delhi-110037

**APPEARANCE:**

Shri B. L. Yadav, Consultant, for the Appellant  
Shri Nagendra Yadav, authorized representative for the  
Department

**CORAM:**

**HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)**

**HON'BLE Ms. BINU TAMTA, MEMBER (JUDICIAL)**

**DATE OF HEARING: 14.02.2023**

**DATE OF DECISION: 21.03.2023**

**FINAL ORDER NO. 50354/2023**

**Per P. Venkata Subba Rao:**

M/s. Akansha Logistics<sup>1</sup> filed this appeal to assail the Order-in-Original dated 20.5.2022 passed by the Commissioner of Customs (Airport and General), New Delhi whereby he revoked the Customs Brokers licence of the appellant, forfeited the entire security deposit and imposed a penalty of Rs. 50,000/-.

2. The undisputed facts of the case are that the appellant is a licenced Customs Broker and in that capacity, it can file Bills of Entry and Shipping Bills in any Custom House. On 23.11.2011,

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<sup>1</sup> The appellant

Shipping Bill no. 6351994 was filed in the Nhava Sheva Custom House in the name of M/s. Roha Dye Chem Pvt. Ltd. for export of "VAT BLUE 20" with the appellant's name as the Customs Broker. When the goods were examined by the Special Intelligence and Investigation Branch<sup>2</sup> of the Custom house, it was found that the container had, instead of the declared goods, 24.57 MT of red sanders logs whose export is prohibited. After investigation, an SCN was issued by the officers of Nhava Sheva and an adjudication order dated 14.12.2020 was passed by the Additional Commissioner of Customs, Nhava Sheva in the matter of the attempted smuggling.

3. Before the Additional Commissioner, the appellant's submission was that the Shipping Bill was not filed by it or with its knowledge or consent. It had nothing to do with the attempted export at all. After considering all the evidence, the Additional Commissioner recorded his finding regarding the appellant as follows in paragraph 20(g) as follows:

- "g) M/s Akansha Logistics vide their letter dated 22.05.2017 stated that the said Shipping Bill was not filed by them and someone fraudulently misused their name for export of contraband goods. Shri Prabhakar Singh and Manjiri Koyande representatives of M/s Akansha Logistics, in their statement recorded under Section 108 of Customs Act, 1962 on 01.12.2011 also stated the same it appears that Shri Sameer used a forged CHA pass and other KYC documents belonging to exporter M/s Roha Dye Chem and CHA M/s Akanska Logistics for his fraudulent attempt of export Red Sanders. Statements of Shri Kalpesh J. Pathak and Shri Shrikant Pawar also reveal that they had no business relationship with M/s Akanksha Logistics. Therefore, I find that CHA M/s Akanska Logistics did not file the said Shipping Bill for the said fraudulent export, however it appears that CHA M/s Akansha Logistics were not vigilant about the misuse of their License and hence failed to comply with Facility Notice No. 41/2009 dated 10.07.2009, issued by the Commissioner of Customs, JNCH, which states that the importers/exporters/CHA are advised to convey the details of the B/E or S/B which were not filed by them, immediately on receipt of such details against their respective

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<sup>2</sup> SIIB

IEC or CHA number to facilitate the department in initiating suitable action in respect of such documents filed by unscrupulous elements. Their negligence rendered the said seized and Sanders liable for confiscation under Section 113 (d), 113 (h) and 113 (i) of the Customs Act, 1962; hence CHA M/s Akansha Logistics (CHA 11/1466) is liable for imposition of penalty under Section 114 (i) of The Customs Act, 1962”.

4. Thus, the undisputed facts of the case are that the appellant had nothing to do with the attempted smuggling of red sanders and it had not either filed the Shipping Bill nor had it authorised anyone else to file the Shipping Bill in its name. However, the additional commissioner held that the appellant was negligent in not checking which Shipping Bills were filed in its name as directed by the Commissioner of Customs, Nhava Sheva in paragraph 4 of Facility Notice No. 41/2009 dated 10.7.2009. On this ground the Additional Commissioner imposed penalty on the appellant against which the appellant filed an appeal before the Commissioner (Appeals) which is pending.

5. Treating the order dated 14.12.2020 passed by the Additional Commissioner, Nhava Sheva as an Offence Report, the Commissioner (Airport and General) New Delhi issued an SCN dated 20.5.2022 to the appellant proposing revocation of licence under Regulation 17 of CBLR 2013 which culminated in the issue of the impugned order.

6. Learned consultant for the appellant submits that the only finding against the appellant is that it was negligent in not checking which Shipping Bills were filed in its name. He submits that during the relevant period, Customs Brokers had the option of the filing the Shipping Bills online after logging in or through the Service Centre in the Custom House. If they are filed at the Service Centre,

there is no need to log in as the information is provided in hardcopy to the service centre who type it in and generate the Shipping Bill. In this case, the undisputed facts are that one, Shri Vipin D Salunke prepared a fake Customs pass pretending to be the employee of the appellant and filed the Shipping Bill at the service centre in the Custom House. Since the Shipping Bill was not filed online but was filed in the service centre, the appellant had not received any alert from the system that a Shipping Bill has been filed in its name. Therefore, the question of the appellant reporting to the Customs does not arise because it itself was not aware of that the Shipping Bill was filed and the Customs EDI system at that time did not have any mechanism to send messages to the Customs Brokers in case of Shipping Bills filed in the service centre.

7. Learned counsel submits that the appellant therefore had no reason to suspect that someone might have filed a Shipping Bill using its name in Nhava Sheva especially since it mainly operates in Delhi. Therefore, the allegation of negligence itself is not sustainable and the revocation of licence based on such allegation is likewise, not sustainable.

8. Learned authorised representative for the Revenue supports the impugned order and submits that although the appellant had not filed the Shipping Bills, it should have been more vigilant and alerted the department when the Shipping Bill was filed in its name. Although the system did not send an alert, the appellant could have logged in, checked which shipping bills were filed and reported. Further, when it was found that the appellant's name was

used to make a fake ID card by Shri Salunke the appellant should have taken some action.

9. We have considered the submissions. The SCN issued to the appellant alleges that the appellant violated Regulation 10(d) of CBLR, 2018. This reads as follows:

**Regulation 10. Obligations of Customs Broker: -**

A Customs Broker shall -

(d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

10. It is undisputed that the appellant had not filed the Shipping Bill at all and the exporter in whose name the Shipping Bill was filed was not its client. Therefore, if the exporter violated laws and attempted to smuggle out red sanders, by no stretch of imagination can the appellant be faulted. To come to such a conclusion, it must be presumed firstly that the exporter was the appellant's client (which it was not) and that the appellant was aware that the Shipping Bill was filed (which it was not), that the appellant was aware that the exporter violated the laws (which it was impossible considering that the appellant was not even aware of the Shipping Bill) and ultimately that the appellant had not advised the exporter. Any Facility Notice by the Commissioner is to facilitate the processes and procedure in the Custom House and it does not take the shape of a statutory regulation. Therefore, even if there was a violation of any instructions in such notice, it does not automatically be concluded that the Regulations have been violated. The violation of the Regulation has to be established. At

any rate, if the appellant mainly operates in Delhi, it has no reason to keep checking the system for Shipping Bills and Bills of Entry filed in various Custom Houses across the country and also checking what instructions were issued by the respective commissioners. So long as it follows the instructions in the Customs formations where it operates, the appellant cannot be faulted.

11. Further, we find that if the system is not designed to send an alert to the Customs Broker if a Shipping Bill is filed in its name in the service centre at the Custom House and only sends an alert if it is filed online, we are unable to fathom how the appellant can be faulted if this loophole in the system was exploited by another person after making a fake Customs card.

12. In view of the above, we find that viewing it from any point of view, the impugned order cannot be sustained. The appeal is allowed and the impugned order is set aside with consequential relief to the appellant.

*(Order Pronounced in Court on 21.03.2023.)*

**(P. Venkata Subba Rao)**  
**Member (Technical)**

**(Binu Tamta)**  
**Member (Judicial)**

**PARMOD**