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Date: 28.04.2025

CESTAT Kolkata emphasized that minor administrative errors without dishonest intent should not result in penal consequences

The Eastern Zonal Bench of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Kolkata, delivered an important ruling on 17th April 2025, dismissing an appeal filed by the Revenue against M/s. Nalini Bandhu Ray & Sons, a licensed Customs Broker.

Case Background:

- M/s. Nalini Bandhu Ray & Sons filed a Bill of Entry for the importer M/s Lalwani Ferro Alloys based on instructions and documentation provided by their client.
- Later, it emerged that the consignee name had been changed by the overseas supplier to M/s QVC International Pvt. Ltd., but this change was not communicated to the Customs Broker.
- The Revenue alleged a violation of Regulation 10(e) of the Customs Broker Licensing Regulations, 2018 for failing to exercise due diligence.

Tribunal's Key Observations:

1. No Malafide Intention or Negligence:

- The Customs Broker acted on duly authorized documentation provided by the client-importer.
- Invoice, packing list, and Bill of Lading numbers matched, and no discrepancy was evident at the time of filing.

2. Miscommunication, Not Misconduct:

- The Customs Broker was unaware of the changed consignee details, and such a communication lapse could not be attributed to negligence or mala fide intent.
- Email addresses and phone numbers were considered secondary data, and all major consignment details were verified correctly.

3. Inquiry Report Findings Upheld:

- The Inquiry Officer and Adjudicating Authority earlier concluded that the customs broker had not violated Regulation 10(e).
- The CESTAT agreed with these findings, emphasizing that minor administrative errors without dishonest intent should not result in penal consequences.

Final Ruling:

- The Tribunal upheld the original Order-in-Original that dropped charges against M/s Nalini Bandhu Ray & Sons.
- The Revenue's appeal was dismissed for lack of merit.

Importance of the Decision:

This judgment reinforces the principle that Customs Brokers must indeed exercise due diligence but also acknowledges that inadvertent mistakes without wrongful intent, especially when based on client-provided documentation, do not automatically constitute violations of licensing regulations.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Kolkata

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**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75221 of 2020

(Arising out of Order-in-Original No. KOL/CUS/AIRPORT/ADMN/01/2020 dated 13.01.2020 passed by the Principal Commissioner of Customs (Airport & ACC), Custom House, 15/1, Strand Road, Kolkata – 700 001)

Pr. Commissioner of Customs (Airport & Air Cargo) : Appellant

Custom House, 15/1, Strand Road,
Kolkata – 700 001

VERSUS

M/s. Nalini Bandhu Ray & Sons

Clearing Agent's Hall, Custom House, 15/1, Strand Road,
Kolkata – 700 001

: Respondent

APPEARANCE:

Shri Faiz Ahmed, Authorized Representative, for the Appellant (Revenue)

None for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75974 / 2025

DATE OF HEARING / DECISION: 17.04.2025

ORDER: [PER SHRI ASHOK JINDAL]

The Revenue is in appeal against the impugned order.

2. The facts of the case are as under: -

- (i) M/s. Nalini Bandhu Ray & Sons, Clearing Agent's Hall, 15/1, Strand Road, Custom House, Kolkata-700 001, is a regular Customs Broker having Licence No. N-3, PAN No. AAEFN2054M issued by the Commissioner of Customs (Airport & Admn.), Custom House, Kolkata under Regulation 7(1) of Customs Broker Licensing Regulations, 2013 [Now Regulation 7(1) of the

Customs Broker Licensing Regulations, 2018].

The validity of the License is up to 19.02.2026.

- (ii) An offence report was received on 31.05.2019 from the Deputy Commissioner of Customs, Special Investigation Branch (Port), Kolkata in reference to their office letter dated 16.05.2019, wherein it was informed that the Customs Broker, M/s. Nalini Bandhu Ray & Sons, had filed a Bill of Entry in the name of an importer namely M/s. Lalwani Ferro Alloys against the IGM, where goods were consigned in the name of another importer.
- (iii) It appears from the Offence Report that M/s QVC International Pvt. Ltd. made a complaint that they were not able to file Bill of Entry against the IGM No. 2220380 dated 25.03.2019 (Bill of Lading No. DLTG90003500 dated 23.02.2019) as a Bill of Entry had already been filed in the name of another importer against the said IGM Line Number.
- (iv) On investigation, it was found that there was a contract between M/s Lalwani Ferro Alloys and M/s Singmat Pte. Ltd., the overseas supplier for the consignment of Ferro Silicon. But due to breach of contract and/or other reasons, the overseas supplier denied delivery of the consignment to M/s Lalwani Ferro Alloys, and accordingly the Bill of Lading No. DLTG90003500 dated 23.02.2019, issued to M/s Lalwani Ferro Alloys via e-mail was amended by changing the name of the notified beneficiary from M/s Lalwani Ferro Alloys to M/s QVC International Pvt. Ltd. (IEC-0210033371).
- (v) The Shipping Line, M/s PIL (India) Pvt. Ltd. also confirmed during Personal Hearing that the

name of the notified beneficiary had been changed from M/s Lalwani Ferro Alloys to M/s QVC International Pvt. Ltd. as instructed by their agent based in Dalian, and had issued original Bill of Lading No. DLTG90003500 dated 23.02.2019 in favour of M/s QVC International Pvt. Ltd. Also, the overseas supplier, M/s Singmat Pte Ltd. vide their e-mail dated 22.04.2019 confirmed that M/s QVC International Pvt. Ltd. is the bona fide beneficiary of the said consignment. Accordingly, the IGM No. 2220380 dated 25.03.2019 was filed by the Shipping Line, M/s PIL(India) Pvt. Ltd. in the name of M/s QVC International Pvt. Ltd.

- (vi) Meanwhile, M/s Lalwani Ferro Alloys Pvt. Ltd. authorized the CB, M/s Nalini Bandhu Ray & Sons to file the Bill of Entry against the IGM No. 2220380 dated 25.03.2019. The CB, M/s Nalini Bandhu Ray & Sons filed the Bill of Entry No.2586352 dated 27.03.2019 against the said IGM on the basis of the e-mail documents provided by M/s Lalwani Ferro Alloys without checking the name of the Consignee, M/s QVC International Pvt. Ltd. The Customs Broker, M/s Nalini Bandhu Ray & Sons, was entrusted with the responsibility to check and verify all the details against the IGM before filing a Bill of Entry. But the CB, M/s Nalini Bandhu Ray & Sons failed to discharge their duties and filed the Bill of Entry No. 2586352 dated 27.03.2019 against the IGM No. 2220380 dated 25.03.2019 in favour of M/s Lalwani Ferro Alloys, which was not the consignee of the said consignment.

(vii) On the basis of the aforesaid Offence Report issued by Deputy Commissioner of Customs, Special Investigation Branch (Port), Kolkata, the Revenue sought to initiated proceedings against the Customs Broker, M/s. Nalini Bandhu Ray & Sons (the appellant herein) for their alleged violation of the provisions of the Customs Broker Licensing Regulations, 2018 (CBLR, 2018).

3. An inquiry was conducted and thereafter, an Inquiry Report was obtained. On the basis of the above Inquiry Report, the Id. adjudicating authority dropped the charges against the respondent herein vide the impugned Order-in-Original No. KOL/CUS/AIRPORT/ADMN/01/2020 dated 13.01.2020.

4. Aggrieved from the said order, the Revenue is in Appeal, on the following grounds: -

(a) The Customs Broker, M/s. Nalini Bandhu Ray & Sons filed the Bill of Entry No.2586352 dated 27.03.2019 against the IGM No. 2220380 dated 25.03.2019 on the basis of the e-mail documents provided by M/s Lalwani Ferro Alloys without verifying the details of IGM which had already been filed in favour of another Importer M/s QVC International Pvt. Ltd. by Shipping Line M/s PIL (India) Pvt. Ltd. It is responsibility of the Customs Broker to verify the correctness of information and exercise due diligence before filing Bill of Entry. In the instant case, ICEGATE IGM not only contained email and phone number but also contained GSTIN and PAN number of the actual Importer (M/s QVC International Pvt. Ltd.) and though it was the

option of the Importer to change their phone number and email but GSTIN and PAN numbers are unique for every Importer. Overlooking sensitive and unique information like GSTIN and PAN number of the actual Importer (M/s QVC International Pvt. Ltd.) and filing the Bill of Entry against PAN number of another Importer (M/s Lalwani Ferro Alloys) who is not the Consignee, is in violation of Regulation 10(e) of CBLR, 2018. The above fact also points out that the role of the CB, cannot be ruled out in clearing the goods from Customs Control without proper authorization from the actual Importer i.e. M/s QVC International Pvt. Ltd., in collusion with M/s Lalwani Ferro Alloys. Therefore, Inquiry Officer's conclusion in her Inquiry Report dated 11.10.2019 which is also endorsed by the Adjudicating Authority that the charge for violation of Regulation 10(e) of CBLR, 2018 seems to be untenable, is not valid. Also, Inquiry Officer's observation that the offence was nothing but a human error, is not sufficient to give the Customs Broker, the benefit of doubts about its intention whether it was mala-fide or bona-fide. Ground of miscommunication taken by the I.O. and also the Adjudicating Authority is without any legal basis. The Customs Broker, is duty bound under CBLR, 2018 to act in a manner the law mandates. Thus, it was observed that, it was clear case of violation of Regulation 10(e) of CBLR 2018.

- (b) Further, handling of many import documents of M/s. Lalwani Ferro Alloys, before and after this incident, and non-examination of the Importer (M/s, Lalwani Ferro Alloys) in the

instant case do not, in any way, absolve the Customs Broker, M/s. Nalini Bandhu Ray & Sons of its responsibility under Regulation 10(e) of CBLR, 2018.

5. Heard the Ld. Authorized Representative appearing on behalf of the Revenue and gone through the impugned order.

6. In the impugned order, the Id. adjudicating authority has found that the respondent had filed the Bill of Entry on the basis of invoice, packing list and other documents, which were re-directed per mail received from the overseas supplier to them by the importer. The correspondence submitted by the respondent will suffice that respondent was instructed by the client-importer to file the Bill of Entry on the basis of e-mail copies and the respondent was also provided due authorization. It is also observed that the invoice number, Bill of Lading number and its quantity tallied in all respects. However, in the IGM, a different e-mail and phone number were mentioned. The concerned employee of the respondent did not give attention to the e-mail, and phone number as it was secondary information to him because it was not the option of the importer to use a different e-mail address and mobile number and the respondent was not concerned with that. Had it been noticed in advance, they would have questioned the importer before filing of the impugned Bill of Entry. This was unintentional and without any motive. In this case, the respondent was not informed by their client regarding changes, which fact stands corroborated by the Inquiry Report. The respondent was not concerned with the different e-mail address and mobile number given by their client as has appeared

in IGM. In practice, the name of the importer is not mentioned during generation of ICEGATE of the IGM; since all mandatory requirements tallied in IGM, the respondent filed the Bill of Entry on that basis. Subsequently, the foreign supplier changed the name of the consignee in India, which was not communicated by the overseas supplier to the importer as well as the respondent. In these circumstances, it cannot be contemplated that the respondent had failed to undertake due diligence in this case. Therefore, we find that the charge of violation of Regulation 10(e) of the Customs Brokers Licensing Regulations, 2018 to "exercise due diligence to ascertain the correctness of any information, which he imparts to a client with relation to any work related to clearance of cargo or baggage" is untenable, as has been held by the Inquiry Officer in the Inquiry Report.

7. In view of the above, we do not find any infirmity in the impugned order. Hence, we uphold the same.

8. Consequently, we do not find any merit in the appeal filed by the Revenue and accordingly, the same is dismissed.

(Operative part of the order was pronounced in open court)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)