IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO. 21 OF 2015
WITH
NOTICE OF MOTION NO. 895 OF 2015

The Commissioner of Customs (General)	}	**Appellant**
versus		
Natraj Shipping Agency	}	**Respondent**

Mr. Pradeep S. Jetly for the Appellant.

Mr. R. V. Desai – Senior Advocate with Mr. R. B. Pardeshi and Mr. A. M. Khare i/b. M/s. KRP Legal for the Respondent.

CORAM :- S. C. DHARMADHIKARI & B. P. COLABAWALLA, JJ.

DATED :- NOVEMBER 23, 2015

P.C. :-

At the hearing of this Notice of Motion (NMA/895/2015), by consent of both sides, we take up the Appeal itself for admission.

2) The Appeal of the Revenue challenges the order passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench dated 20th June, 2014. Mr. Jetly appearing in support of this Appeal would submit that the Tribunal seriously erred in overruling the order-in-original dated

18th April, 2013. That order could not have been set aside and by a one paragraph reasons. Apart from the inadequacy and insufficiency of the reasons, the Tribunal missed the point that the order-in-original holds the Customs House Agent guilty of violation of Regulation 13(a) of the Customs House Agents Licensing Regulations, 2004. The Customs House Agent owe an obligation to the Department. The Department looks to him for he is the link or chain connecting the importer to the Revenue/Department. He has to satisfy himself that the importer is a genuine and bonafide person. That some documents were handed over to the Respondent does not mean that the import is valid and legal. The importer himself was a person involved in flagrant violation of the law. The Customs House Agent should not have assisted him in this manner. In that regard, our attention is invited to the order-in-original and particularly paragraphs appearing at page 126 of the paper book, namely, paragraphs 20, 21, 22 and 23.

3) On the other hand, Mr. Desai, learned Senior Counsel appearing for the Respondent Agent would submit that the Tribunal's order may be short, but it is correct. The factual and legal background has been noted. The Tribunal held that the order-in-original fails to take note of a relevant and germane fact.

That is that import documents like bill of lading, invoices, packing list and GATT declaration were handed over to the Respondent Agent duly signed. Thus, the original authority letters from M/s. Bombay Traders aurhotising the Respondent, along with these documents have been handed over. The Commissioner does not term the signatures on the same to be forged or fabricated or not genuine. Thus, these documents are not termed as bogus or fake. In these circumstances, the Appeal does not raise any substantial question of law and deserves to be dismissed.

4) We have, with the assistance of both Counsel, perused the short order of the Tribunal reversing that of the Commissioner. The principal charge was of violation of Regulation 13(a). That states that the Customs House Agent shall obtain an authorisation from each of companies, firms or individuals, by whom he is for the time being employed as Customs House Agent and shall produce such authorisation whenever required by the Deputy Commissioner of Customs and the Assistant Commissioner of Customs.

5) In the present case, the Commissioner refers to the entire materials, including the statements under section 108 of the Customs Act, 1962. These statements were relied upon. However, as held by the Tribunal, the core issue has been missed

by the Commissioner. In para 19 of his order, the Commissioner refers to the admission in cross-examination by one Alpesh Bhanushali. He admits that the original authorisation letter from M/s. Bombay Traders authorising the Respondent to act as Customs House Agent along with import documents like bill of lading, invoices etc. were given by the said Bhanushali to the Respondent. The original authority letter is dated 23rd September, 2011. In these circumstances, by terming the authorisation as so called and faulting the identity of the importer, the Commissioner could not have proceeded against the Customs House Agent. He could not have been held guilty of violation of Regulation 13(a) of the said Regulations.

6) That is how the Tribunal has proceeded. It accepted the argument of the Respondent that it was having proper authorisation from the importer, which was produced before the authorities. It has not been held that the authority letter produced was not genuine or the signature thereon is not forged. In such circumstances, the Tribunal holds that the absence of any finding by the Commissioner on such a vital aspect vitiates his order. Once there was a proper authorisation for clearance of the impugned consignment, then, Regulation 13(a) is not violated. This is a finding of fact based on factual material produced. It

cannot be termed as perverse or vitiated by any error of law apparent on the face of the record. Once the principal violation of other regulations cannot be sustained, then, the incidental and ancillary allegations of violation of the regulations must also fall to the ground. We do not think any substantial question arises for consideration and determination in this Appeal of the Revenue. It is accordingly dismissed. Once it is dismissed, the Notice of Motion does not survive and disposed of as such.

(B.P.COLABAWALLA, J.) **(S.C.DHARMADHIKARI, J.)**