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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9248 OF 2016

DHL Express (India) Pvt. Ltd. & Anr. …Petitioners
Versus
The Union of India & Another …Respondents

Mr. Prakash Shah, with Mr. Jas Sanghavi, i/b PDS Legal for the Petitioners.
Mr. Praddeep S. Jetly, for the Respondents.

CORAM: A.S. OKA AND RIYAZ I. CHAGLA, JJ.
DATED: 27th September 2017

PC:-

1. The submissions of the learned counsel appearing for the parties were heard on the earlier date. The factual controversy in brief which led to the filing of the present Petition will have to be noted.

2. An application was made by the second Petitioner as authorized person on behalf of the first Petitioner for grant of license under the Customs Brokers License Regulation 2013 (for short "**the said Regulation**") which came into force with effect from 21st June 2013. The application was made

pursuant to the public notice dated 12th December 2013. By order / communication dated 25th March 2015, the Deputy Commissioner of Customs, Custom Brokers Section, Mumbai rejected the application for grant of new custom brokers license (for short "**the license**") on the ground that condition specified in clause - (e) of the Regulation 5 is not satisfied. An Appeal was preferred against the said order by the Petitioners before the Customs Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai (for short "**Appellate Tribunal**"). It appears that the Appellate Tribunal entertained the Appeal however, when application for fixing early date of hearing of the said Appeal was filed by the Petitioners by order dated 25th January 2016, the Appellate Tribunal held that the Appeal was not maintainable in view of its own judgment in the case of ***Naresh Jaisingh Vs. Commissioner of Customs (General), Mumbai - 1***[1]***.*** The order of the Deputy Commissioner and order of the Appellate Tribunal have been impugned by the Petitioners in this Appeal. In a separate Appeal preferred by the Petitioner, the order of the Appellate Tribunal has been upheld by this Court

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1 2016 (332) E.L.T. 147 (Tri. Mumbai) by order dated 11th September 2017. The submission of the learned counsel for the Petitioner is based on his interpretation of clause (e) of Regulation 5. His submission is that a disqualification in clause (e) will apply only if the Applicant who applies for grant of license has been convicted of any offences under the Customs Act, 1962 (for short "**the said Act**"), the Central Excise Act, 1944 and Finance Act, 1994. His submission is that going by the scheme of the said enactments, all violations of the provisions of the said three enactments have not been made offences. Some violations attract penalty and some violations attract penal provisions under which the persons concerned can be prosecuted and convicted. His submission is that clause (e) uses the words "any offence". His submission is that clause (d) of Regulation 5 and clause (e) of Regulation 5 operate in different fields. On facts he did not dispute that the Petitioners have not challenged the judgment and order dated 30th October 2013 passed by the Appellate Tribunal at New Delhi by which a penalty was imposed on the Petitioners.

3. We have given very careful consideration to the

submissions. We have perused the said Regulation. Clause (c) of Regulation 2 defines Customs Broker which reads :-

> *REGULATION 2. Definitions. – In these regulations, unless the context otherwise requires, –*
> *(a) “Act” means the Customs Act, 1962 (52 of 1962);*
> *(b) “company” means a company as defined in the Companies Act, 1956 (1 of 1956);*
> *(c) “Customs Broker” means a person licensed under these regulations to act as agent for the transaction of any business relating to the entry or departure of conveyances or the import or export of goods at any Customs Station;*
> *(d) “firm”, “firm name”, “partner” and “partnership” shall have the same meanings respectively assigned to them in the Indian Partnership Act, 1932 (9 of 1932), but the expression “partner” shall also include any person who, being a minor, has been admitted to the benefits of partnership;*
> *(e) “Form” means form appended to these regulations;*
> *(f) “Schedule” means the schedule annexed to these regulations;*
> *(g) “section” means a section of the Act; and*
> *(h) the words and expressions used herein and not defined in these regulations but defined in the Act shall have the same meanings respectively assigned to them in the said Act.*

4. Regulation 3 provides that no person shall carry on business as a Customs Broker relating to the entry or departure of a conveyance or the import and export of goods at any customs station unless such person holds a license granted under the said Regulation. Regulation 4 provides for

inviting applications in the month of April every year. Regulation 5 is material for our consideration which reads thus:

> REGULATION 5. Conditions to be fulfilled by the applicants. –
> The applicant for a Licence to act as a Customs Broker in a Customs Station, shall prove to the satisfaction of the 2[Principal Commissioner of Customs or Commissioner of Customs, as the case may be], that
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> (a) he is a citizen of India;
> (b) he is a person of sound mind;
> (c) he is not adjudicated as insolvent;
> **(d) he has neither been convicted by a competent court for an offence nor any criminal proceeding is pending against him in any court of law; and**
> **(e) he has not been penalised for any offence under the Act, the Central Excise Act, 1944 and the Finance Act, 1994.**
> (f) An individual applicant or in case the applicant is a firm or company its partner or director or an authorised employee who may handle the Customs work shall;
> (i) be a graduate from a recognised University, and
> (ii) possess a professional degree such as Masters or equivalent degree in Accounting, Finance or Management, (CA/MBA/LLB/ACMA/ FCMA) or Diploma in Customs Clearance work from any Institutes or University recognised by the Government or is having at least two years experience in transacting Customs Broker work as G-Card holder.
> (g) he is retired Group A officer form the Indian Customs and Central Excise Services having a minimum of five years experience in Group 'A' service;
> (h) the applicant has financial viability as evidenced

> by a certificate issued by a Scheduled Bank or such other proof acceptable to the (Principal Commissioner of Customs or Commissioner of Customs, as the case may be) in terms of possession of assets of value of non less than five lakhs rupees;
> Provided that for the purpose of his satisfaction, the (Principal Commissioner or Commissioner) of Customs may make enquiries as may be deemed fit.

5. Various clauses of Regulation 5 lay down the qualifications or disqualifications for grant of a license under the said Regulation. Clause (d) specifically refers to conviction of an Applicant by a competent Court for an offence or pendency of criminal proceedings against the Applicant in any Court of law. Thus, conviction for an offence by a competent Court operates as a disqualification. The offence contemplated by clause (d) can be an offence punishable under any law.

6. Perusal of the provisions of the said Act, the Central Excise Act, 1944 and the Finance Act, 1994 will show that there are distinct provisions empowering imposition of penalty for various lapses, non compliances or breaches of the provisions of law. For example, under the said Act, Chapter 14 deals with imposition of penalties. In all the three statutes,

there are specific provisions relating to offences and prosecutions. Chapter 16 of the said Act deals with offences and prosecution. Clause (d) of Regulation 5 specifically applies when the applicant is convicted by a competent Court for an offence. Second part of Clause (d) makes it obvious that such conviction will have to be in criminal proceedings. Clause (d) covers conviction by a competent Court for the offences punishable under the said Act, the Central Excise Act, 1944 and Finance Act, 1994. Therefore, if the Applicant, who applies for a license has been convicted by a competent Court for the offences provided in any of the said three enactments, the disqualification in clause (d) will be applicable. If a Criminal Proceeding is pending in which the Applicant is being prosecuted for any such offences, it will also operate as a disqualification under Clause (d). Clause (e) uses the word “penalized” as distinguished from the word “convicted” in clause (d). In a given case an act or omission which is specifically made a penal offence under a statute may also attract penalty. In our view, Clause (e) will apply when the Applicant who applies for license has been penalised by imposing penalty for any act or omission which attracts imposition of penalty under the said Act, the Central Excise Act, 1944 and the Finance Act, 1994. As stated earlier, the disqualification Clause (d) uses the word “convicted” as distinguished from Clause (e), which uses the word “penalised”. Therefore, as in the present case, if the competent authority has imposed a penalty on the Applicant as provided in any of the three enactments, the disqualification under Clause (e) will be attracted. In the facts of the present case, it is an admitted position that an penalty has been imposed on the Petitioners and the order imposing penalty has not been challenged by the Petitioners. Therefore, we see no merit in the challenge to the order passed by the licensing authority rejecting the application for grant of license.

7. Hence we find that there is no merit in the Writ Petition under Article 226 of the Constitution of India. It is accordingly rejected. There will be no order as to costs.

(RIYAZ I. CHAGLA J.) **(A.S. OKA, J)**