

\$~4

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 03.01.2017

+

CUSAA 2/2016
AKSHEY GUPTA

..... Appellant

Through: Mr. Rajshekhar Rao, Mr. Ishaan Madaan, Mr. Subhiksh Vasudev and Mr. Chaitanya Puri, Advs.

Versus

THE COMMISSIONER OF CUSTOMS (GENERAL)

..... Respondent

Through: Mr. Amit Bansal, Mr. Akhil Kulshrestha and Ms. Seema Dolo, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

S. RAVINDRA BHAT (ORAL)

1. Admit.

2. Following question of law arises for consideration:

“Did the CESTAT fall into error in upholding the revocation of the appellant’s CHA license in the circumstances of the case?”

3. The appellant is aggrieved by an order of the Customs Excise and Services Tax Appellate Tribunal (CESTAT) whereby an order dated 14.10.2015 revoking its Customs House Agents Licence, issued under the Customs House Agents Licensing Regulations, 2004

(hereinafter referred to as 'the CHALR, 2004 Regulations' for short) was upheld. The Show Cause Notice issued against the appellant alleged that in 2011 it had committed some misconduct by way of lapses on its part in regard to consignments by one M/s Durga International. The appellant in reply to the show cause notice, had contended that it was investigated and questioned in 2012 after which nothing was heard and that in the circumstances alleging that it was responsible for the mis-declaration of goods (instead of a consignment of chaat masala, a prohibited item of 30 kg of Ketamine was alleged to have been exported) was made belatedly. The specific allegation against the appellant was that as CHA it failed to make diligent inquiry with respect to the consignment as it was expected to under Regulation 13(e) and 13 (o) of the CHALR, 2004 Regulations. The appellant had denied the allegations and contended that the exporter was a functioning business entity. Initially, the respondent issued suspension order and later conducted an inquiry. The inquiry was completed after considerable delay – in fact it transgressed the time limit prescribed by the Regulations and the guidelines framed thereunder. The Inquiry Report held the petitioner guilty. Based upon the findings in the Inquiry Report, the competent officer passed the order in original whereby the appellant's CHA licence was revoked and its security forfeited. The CESTAT upheld this order.

4. Mr. Raj Shekhar Rao, the learned counsel for the appellant contended that the findings of the order in original of the CESTAT cannot be sustained, it is submitted that the Inquiry Officer

completely ignored the relevant materials such as the investigation report unequivocally indicated that export house in fact was in existence. The learned counsel relied upon the letter written by the Narcotics Control Bureau of the Central Government to the Canadian High Commission on 21.12.2011 to say that the whereabouts of the proprietor of the consignor i.e. M/s Durga International was known and that in fact the inquiry was made from him. It is stated that the failure to take into account these crucial facts has resulted in a patently erroneous finding which was accepted by the order in original without any comment. Learned counsel also relied upon *Agricultural Processed Food Products registration certificate issued to the Exporter i.e. M/s Durga Enterprises on 19.06.2009* in support of the submission that having regard to these materials which were part of the record, the findings were unwarranted.

5. Likewise, it is stated that relevant documents pertaining to the other two exporters i.e. M/s Damini International and M/s Shiv Jyoti Sales Corporation, were also placed on record. Although the Inquiry Officer accepted the explanation with respect to M/s Shiv Jyoti Sales Corporation, it failed to take into account the explanation and documents pertaining to M/s Damini International in addition to M/s. Durga International. The learned counsel relied upon the judgment of this Court in *Impexnet Logistic v. Commissioner of Customs (General) 5300 of 2016, decided on 01.06.2016* and *Overseas Air Cargo Services v. Commissioner of Customs (General) CUSAA 8/2016, decided on 20.07.2016* to say that the time limit of 9 months

within which the inquiry has to be completed under the CHA regulations; is absolute. These judgments in turn had relied upon other decisions of this Court such as *Shankar Clearing & Forwarding v. C.C. (Import & General)*: 2012 (283) E.L.T. 349 (Del.) and by Madras High Court in *Sanco Trans Ltd. v. Commissioner of Customs, Sea Port/Imports, Chennai* : (2015) 322 E.L.T. 170 (Mad.)

6. Mr. Amit Bansal, the learned counsel for the respondent argued that the impugned order pertains only to pure question of fact which could not warrant re-appreciation by this Court. It is submitted that the fact that prohibited items were exported cannot be disputed. In the circumstances, the petitioner was issued with the Show Cause Notice after a slight delay itself was not damaging or fatal to the Revenue's case having regard to the gravity of the misconduct. The learned counsel emphasised that the charge against the petitioner was not of exporting but rather omitting to make due investigation as to the veracity and identity of the exporter. These facts stood established; fairly and on reasonable appreciation of the material. In the circumstances, the revocation of the licence was justified.

7. This Court has considered the record. It is evident from the plain reading of the material which is placed before the Enquiry Officer by the petitioner that it had made some inquiries, and had produced relevant material to substantiate its contentions in that regard. Regulations 13(e) and 13(o) read as under:

*“Regulation 13(e): Exercise due diligence
to ascertain the correctness of any information*

which he imparts to a client with reference to any work related to clearance of cargo or baggage.

Regulation 13(o): 'A Customs House Agent' shall verify antecedent, correctness of the Import Export Code (IEC) Number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents date or information".

8. The text of the above regulations makes it clear that the Revenue intended that some reasonable or fair inquiry as to the existence of the exporter was a necessary obligation before a CHA ventures to be represented. In the present case, the CHA was charged with having failed to secure that responsibility in respect of three entities [M/s Shiv Jyoti Sales Corporation, M/s Durga International and M/s Damini International]. The material on record shows that the Registration Certificate of the three entities as well as IEC members were available and had in fact been produced by the appellant in the course of the inquiry proceedings. However, the Enquiry Officer appears to have completely overlooked them and returned the finding that such inquiries have not been made nor has any material been disclosed. What is more, the Enquiry Officer even appears to have completely given a go by not disclosing and not discussing the letter addressed by the Narcotics Bureau, Government of India to the Canadian High Commission on 21.12.2011 whereby an exception was made that an investigation was going on and an inquiry had been made from the proprietor of M/s Durga International and uncritical acceptance of the Enquiry Officer's report by the adjudicating officer

and the failure of the CESTAT to examine the records in our opinion visit that finding. Furthermore, the Court is also of the opinion that the nature of the misconduct or omission alleged against the appellant and the final penalty imposed upon it have no oral imposition of proportionality. Even if the respondents were able to establish that there was omission or failure on the part of the appellant to comply with due diligence requirement, for some reason at least in the circumstances of this case, the revocation of the licence which has almost a permanent effect, was not warranted at all. Another aspect is that the inquiry in this case was completed fairly beyond the period of 9 months stipulated by the CHA Regulations of 2004. Consistent with the previous rulings of this Court (noticed earlier), the findings cannot be sustained.

9. For the above reasons, the question of law framed has to be and is answered in favour of the appellant and against the respondent. The appeal is therefore allowed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

JANUARY 03, 2017/acm