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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 04.12.2018

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CUSAA 93/2018

VIJENDER SINGH

..... Appellants

Through: Dr.Ashutosh & Ms.Fatima, Advs.

versus

**COMMISSIONER OF CUSTOMS
(IMPORT & GENERAL)**

..... Respondent

Through: Mr.Harpreet Singh, Sr.Std.Counsel
with Ms.Suhani Mathur, Advocate

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J (ORAL)

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1. The present appeal is directed against a judgment dated 24.11.2017 passed by the Customs Excise and Service Tax Appellant Tribunal (hereinafter referred to as an "the Tribunal") in Appeal no. C-52666/2015 filed by the appellant herein.

2. The appellant was engaged as a Customs House Agent (hereinafter referred to as an "CHA") by one M/s Vision Minerals and Energy in respect of a consignment which it intended to export to Indonesia. It was alleged by the Customs Authorities that the shipping bills describe the goods as "OWC Drilling Chemical Additive" whereas the goods were in fact Potassium Chloride (Muriate of Potash) of fertilizer grade which was restricted by the

Director General of Foreign Trade. A show cause notice dated 09.04.2010 was issued to the exporter and others including the appellant under Section 124 of the Customs Act. As far as the appellant is concerned, the show cause notice called upon him to show cause as to why action should not be initiated for cancellation of his CHA License under the CHA Licensing Regulation, 2004 (hereinafter referred to as "the Regulations") and also as to why penalty under Section 117 of the Act should not be imposed upon him.

3. The said show cause notice was adjudicated by the Commissioner by an order dated 27.06.2011. The Commissioner came to the conclusion that the goods had been mis-declared and that the appellant had failed to discharge the obligations of a CHA. A personal penalty of ₹50,000/- was imposed on the appellant. However, no order was made regarding proceedings against the appellant for cancellation of his CHA License. This order was carried in appeal to the Tribunal by the appellant in Appeal no. C-77/2012-CU(SM) which was allowed on 30.06.2017. It was held that the order in original did not return any specific finding against the appellant on account of contravention of the Act or Rules made there under. The penalty imposed on the appellant was, thus, set aside.

4. In the meantime, however, the authorities had issued a second show cause notice dated 20.07.2012 to the appellant, this time under the Regulations, contemplating revocation of his CHA license and the forfeiture of his security deposit under Regulation 20. It is evident from the said show cause notice that it was based on the same transactions as the show cause notice dated 09.04.2010. The second show cause notice resulted in an order dated 24.04.2015 wherein the imposition of the personal penalty

upon the appellant under the first order has been noticed, and it has been held that he had violated the provisions of Regulations 13(d), (e), (f) & (n) of the Regulations. The appellant's contention that he had already been adjudicated in respect of the same transaction was repelled on the ground that outcome of the proceedings under the Customs Act and the Regulations were different and independent of each other. The Commissioner directed that the security deposit of ₹75000/- furnished by the appellant be forfeited. The appellant's appeal against this order was dismissed an order of the Tribunal dated 24.11.2017.

5. The appellant has filed the present appeal against the said order 24.11.2017. The appeal was admitted by an order of this Court dated 17.07.2018 and the following question of law was framed:-

“Did the Customs Excise and Service Tax Appellant Tribunal (CESTAT) fall into error in holding that the appellant and the CHA were responsible, in the circumstances of the case, in upholding the penalty imposed by it?”

6. Dr. Ashutosh, learned counsel for the appellant submitted that the impugned order is liable to be set aside on the short ground that the first order had already been set aside by the Tribunal holding that no allegations of any contravention of the Act or abetment of any such contravention had been established against the appellant. Mr. Harpreet Singh, learned standing counsel for the Revenue, on the other hand, submitted that the proceedings under the Act and the Regulations are distinct and the action under the Regulations may be contemplated even when no action is taken under the Act.

7. Having considered the submissions of the counsel, we are of the view that the authorities were not justified in proceeding against the appellant under the Regulations in respect of the very same transactions which were the subject matter of the first show cause notice, and in respect of which the penalty levied upon him had already been set aside. In this case, the appellant was also made party to the first show cause notice and was in fact subjected to an order of penalty thereunder. The second show cause notice was issued immediately after the said order of penalty. It was not based on any material other than the transactions covered in the earlier round of proceedings and the order in original dated 24.04.2015 passed pursuant thereto, in fact specifically notices that the appellant had been visited with a penalty under the first show cause notice. The first order having being set aside by the Tribunal, on the ground that no specific contravention of the Act had been alleged or established against the appellant, it is difficult to see how the Revenue could sustain an entirely inconsistent order in respect of the second show cause notice. The provisions of the Regulations which have been invoked against the appellant contemplate non-compliance with the provisions of the Act by the client of the CHA and regulates the relationship between the CHA and his client. Seen in the light of these facts, the contention of the Revenue that the proceedings initiated against the appellant under the Act and Regulations were distinct is untenable.

8. The question of law is therefore answered in the affirmative, i.e. in favour of the appellant and against the Revenue. The impugned order of the Tribunal dated 24.11.2017 is set aside, as is the order in original dated 24.04.2015. The show cause notice dated 20.07.2012 issued against the

appellant is discharged. The appeal is allowed in the aforesaid terms but without any order on costs.

PRATEEK JALAN,J.

S. RAVINDRA BHAT,J

DECEMBER 04, 2018

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