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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CUSAA 122/2018**

COMMISSIONER OF CUSTOMS (GENERAL) ..... Appellant

Through: Mr. Harpreet Singh, Sr. Standing Counsel with Mr. Abhishek Ghai, Mr.Rajat Gava and Ms. Suhani Mathur, Advocate.

versus

KVS CARGO ..... Respondent

Through: Ms. Anjali J. Manish, Mr. Priyadarshi Manish, Ms. Nidhi Saini and Mr.Sagar Rohatgi, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **09.10.2018**

This appeal by the Customs Authorities challenges an order of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), which granted partial relief to the respondent CB holder. The Revenue contends that the penalty of forfeiture was the appropriate one having regard to the totality of circumstances.

The inquiry was initiated against the CB holder/respondent on allegations of failure to perform due diligence and by invoking various clauses of the Customs Brokers Licensing Regulations, 2013 (hereafter 'Regulations'). It was contended that the CB holder filed an import document and facilitated the importation of goods and articles at the behest of a firm of dubious credentials. In this regard it was contended that the inquiry revealed discrepancies in the residential address of the partner of the importer M/s Unisys Enterprises and that the CB holder did not properly discharge his functions. The enquiry initiated resulted in a complete exoneration by the Inquiry Officer. The Commissioner however disagreed and proposed to penalize the CB holder. A show cause notice was issued which resulted in revocation of the license and forfeiture of the security amount. The CB holder appealed to the CESTAT which held that violation of Regulation 11(a) was established as was the case with Regulation 11(d) however, on an appreciation of overall conspectus of the circumstances, the Tribunal felt that the CB holder merely accepted the information furnished to him without carrying any other verification. Instead the penalty of revocation the CESTAT imposed the penalty of forfeiture of security and a penalty of `50,000/-. Learned counsel for the Revenue urged that this Court should set aside the CESTAT's order and pointed out that Regulation 18 authorizes two categories of penal order – i) revocation of license and forfeiture of security; and ii) penalty. Highlighting that the course adopted by the Tribunal of merely forfeiting the security was inadequate in the circumstances, learned counsel invited this Court to set aside the CESTAT's order and restore the orders of the Commissioner. Undoubtedly, the Regulation authorizes one set of penalties in the alternative – revocation coupled with forfeiture of security or part thereof **or** penalty.

The adjudicating or appellate authorities were thus not afforded the option of picking up the one element from the revocation and forfeiture option and imposing penalty along with forfeiture. To that extent, the CESTAT clearly went beyond the Regulations. However, this Court is not persuaded to exercise jurisdiction to set aside the order entirely because the role ascribed to the CB holder was one of carelessness and negligence. In this regard the Court notices that both the authorities – the Commissioner as well as he CESTAT appeared to have imposed almost impossibly high standards upon the CB holder who is expected to not only verify the correctness of the documents with reference to the publically available material but also carry out independent investigations. No doubt, the CB holder acts as an interface between the Customs Authorities and facilitates the task of a consignee/importer, yet to expect such an independent agent – who is not a public servant or in any way connected with the customs department to act as a public trustee (an expression used by the Commissioner), is beyond what is contemplated.

For the above reasons, the appeal is dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

OCTOBER 09, 2018
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