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

\+ CUSAA 159/2018

M/S KVS CARGO ..... Appellant

Through: Mr. Ashish Batra and Mr. Sarthak Sachdev, Advocates.

versus

COMMISSIONER OF CUSTOMS (GENERAL) NEW CUSTOMS HOUSE NEW DELHI ..... Respondent

Through: Mr. Harpreet Singh, Sr. Standing Counsel with Mr. Suresh Chaudhary and Ms. Suhani Mathur, Advocates.

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

O R D E R

% **09.10.2018**

On 25.07.2018 the following question of law was framed for consideration in this appeal:-

> *"Did the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) fall into error in holding that the appellant violated the Regulations 18 and 20 of Custom Broker Licensing Regulations, 2013 and in upholding the order-in-original of the Commissioner, in the circumstances of the case, and if so, whether forfeiture of security deposit was warranted?"*

The facts of the case are that the appellant was a customs licence holder against whom a show cause notice dated 08.11.2016 was issued alleging impropriety in facilitating the Bill of Entry No. 5224790 dated 11.05.2016 in the name of M/s Shiva Enterprises being received as correct. Based upon the investigations, the statement of one Mr.Dinesh, proprietor of M/s Shiva Enterprises i.e. the importer had been recorded. Subsequently, the statement of another individual namely Mr. Vinod was also recorded – he claimed that he was the actual controller of M/s Shiva Enterprises i.e. the importer. The statement of the petitioner's proprietor too was recorded in which he stated that the Bill of Entry was filed on behalf of M/s Shiva Enterprises i.e. the importer and that he had an understanding with one Mr. Prakash, who used to introduce clients to him. This resulted in the show cause notice dated 20.01.2017 under the Customs Broker Licensing Regulations, 2013. The resultant order of 11.07.2017 by the Commissioner imposed penalty of revocation of licence and forfeiture of security as well. The premise of these findings was violation of Regulations 11(a), 11(d), 11(e) and 11(h) of the CBLR Regulations, 2013. The appellant approached the Tribunal which set aside the order of revocation but upheld the order of forfeiture and penalty.

It is urged that the role ascribed to and found against the appellant, cannot lead to any inference of violation of CBLR, 2013. In this regard it is submitted that the material on record shows that the CB holder has used correct documents of an existing firm and could not be expected to ascertain or verify whether the owner was real one or a *benami* onwer. The facts show that though the owner of the importing firm (M/s Shiva Enterprises) was one Mr. Dinesh; the real owner or controller (i.e. *benami* owner) was one Mr. Vinod.

The Court is of the opinion that there is some merit as far as the appellant's argument is concerned. In this case the Customs Authorities have not held that any clandestine material was brought or that the goods were mis-declared or the contraband was the subject matter of the Bill of Entry in question. The role of the appellant was merely one of a facilitator. There is no material on record to show that the KYC documents were fraudulent or incorrect or in any manner irregular. In these circumstances, to expect the CB holder to carry out further investigations and independent inquiry not only about the existence of importing firm but also about its real owner is beyond the mandate of the law.

In view of the above findings, the question of law is answered in favour of the appellant. The concurrent findings of the Commissioner and the CESTAT are hereby set aside. The appeal is allowed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

OCTOBER 09, 2018
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