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

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\+ **CUSAA 279/2018**

KVS CARGO ..... Appellant

Through: Mr Priyadarshi Manish and Ms Anjali Manish, Advocates.

versus

THE COMMISSIONER OF CUSTOMS (GENERAL)
NEW CUSTOM HOUSE, NEAR IGI AIRPORT,
NEW DELHI ..... Respondent

Through: Mr Harpreet Singh, Senior Standing Counsel with Mr Ankit Singh, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **17.10.2019**

1.This is an appeal by a Customs Broker (CB) against the impugned order dated 21st September, 2017, passed by the Customs Excise Service Tax Appellate Tribunal ('CESTAT') in Appeal No.C/50755/2017-CU(DB), whereby the CESTAT has found the Appellant to have been in violation *inter alia* of Regulations 11 (a) and 11 (d) of the Customs Brokers Licensing Regulations, 2013 ('CB Regulations') and has ordered, in modification of the order of the Commissioner of Customs, forfeiture of the whole of the amount of the security deposit as well as a penalty of Rs.50,000/-.

2. The brief facts are that the Appellant M/s. KVS Cargo held a CB License. Its sole proprietor is Mr Sameer Jha and its two employees are one Mr

Girish Nathani, a G-card holder and Mr Moti Khanna. It appears that the Appellant was issued a show-cause notice ('SCN') dated 28th July, 2016 by the Directorate of Revenue Intelligence ('DRI'). In the said SCN, it was alleged that M/s Unisys Enterprises, of which Mr Sachin Gulati and Ms Akriti Jain were partners had engaged in the import of nutritional supplements in violation of the FSSAI Act 2006, through the present Appellant. Specific to the Appellant, the allegation was that the CB did not undertake due diligence by verifying the antecedents of the importer and the premises from which the importer was operating, and had thus violated, *inter alia*, Regulations 11 (a) and 11 (d) of the CB Regulations.

3. Following on the above development, a separate SCN dated 31st August, 2016 was issued by the Customs Department to the Appellant, requiring it to show cause as to why the CB license should not be revoked for not complying with the requirements of the CB Regulations.

4. In the enquiry that ensued, the Inquiry Officer ('IO') returned a finding, exonerating the Appellant completely and holding that it had not contravened any of the CB Regulations, including Regulations 11 (a) and 11 (d). Specific to the allegations concerning 11 (a) of the CB Regulations, the finding was that in the course of the cross-examination of Mr Sachin Gulati, it transpired that he had met Mr Nathani and Mr Moti Khanna, the employees of the Appellant. As far as Regulation 11 (d) of the CB Regulations is concerned, the IO held that a personal meeting of the CB with the importer was not legally required and that dealing with an importer through a mediator was sufficient.

5. When the matter travelled to the Commissioner of Customs, he gave a disagreement note and held that the statement of Mr. Sachin Gulati showed that it was one Mr Aman Vachher who was the actual importer of the goods and that it was Mr Vachher who had appointed the Appellant to act as CB for M/s Unisys Enterprises. According to the Commissioner, although Mr Gulati had deviated from his earlier statement during cross-examination, this was an "afterthought at this belated stage". According to the Commissioner, both partners were unaware about the import made by Mr Aman Vachher himself.

6. In the appeal by the present Appellant before the Customs, Excise and Service Tax Tribunal (CESTAT), there appears to have been a cursory appraisal of the record by the CESTAT. In paragraph 9 of the impugned order, only one part of the statement of the partners of M/s Unisys Enterprises, that they were not aware of the details of imports, and had never met Mr Sameer Jha, has been taken note of. The subsequent statements of the partners, particularly Mr Sachin Gulati, admitting to have met the employees of the Appellant, have not been noticed. In fact, the findings in the enquiry report have not been noticed.

7. The Court is of the view that this was a selective reading of the evidence on record, which actually shows that all the parties were actually acting in consort. Be that as it may, specific to the allegation against the present Appellant, the ingredients of the Regulation 11 (a) of the CB Regulations do not appear to have been made out, particularly in view of the admission by

Mr Sachin Gulati that he did meet the employees of the Appellant. Correspondingly, even the ingredients of the Regulation 11 (d) of the BV Regulations, do not appear to have been made out. The CESTAT has rendered a finding on the violation of Regulation 11 (d) only on the basis that the Appellant had not even met the actual importer.

8. It must be noticed at this stage that this Court while dismissing the appeal by the Department, being Custom Appeal No. CUSAA No. 122/2018 against the same impugned order of the CESTAT, by an order dated 9th October, 2018, made the following observations in relation to the order of the CESTAT reducing the punishment to forfeiture of the security deposit and levy of penalty of Rs.50,000:

> "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."

9. With the dismissal of the above appeal, it is plain that the plea of the Department that there ought to have been both a revocation of the license and forfeiture of security, since both go together, has been negated by this Court. In other words, even according to the Department, if there is no cancellation of licence then there cannot be a forfeiture of security.

10. In view of the discussion above, and the Court having held that neither Regulation 11 (a) nor Regulation 11 (d) of the CB Regulations were attracted in the facts of the present case, there was no justification for imposition of any of the penalties on the Appellant.

11. For the aforementioned reasons, the appeal is allowed and the impugned order of the CESTAT, directing that the Appellant would have to forfeit the security deposit and suffer a penalty of Rs.50,000/- is hereby set aside.

12. The appeal is allowed in the above terms. No costs.

CM 43232/2019 (exemption)

13. Allowed, subject to all just exceptions.

CMs 43230-43231/2019 (delay)

14. For the reasons explained in the applications, the delay in filing and re-filing the appeal is condoned and the applications are allowed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 17, 2019

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