HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE T.AMARNATH GOUD

CENTRAL EXCISE APPEAL NO.55 OF 2019

J U D G M E N T
(*Per Honourable Sri Justice M.S.Ramachandra Rao*)

This CEA is filed under Section 130A(1) of the Customs Act, 1962 (for brevity, 'the Act') challenging the order dt.26.03.2019 in Final Order No.A/30419/2019 in Appeal No.C/31278/2018.

2. The respondent was a customs broker originally registered as Customs House Agent under Custom House Agents Licensing Regulations, 2004. His licence was renewed up to 22.04.2008. The officers of the Directorate of Revenue Intelligence (DRI), Bangalore investigated a case pertaining to M/s. Logo Trading and M/s. Azomatrix Impex based in Coimbatore who misdeclared "rejected/torn/damaged items of leather like material with negligible value" as 100% pure leather items with a malafide intention to claim drawback.

3. After investigating the matter, the officers of DRI seized the goods and issued a show-cause notice to the concerned persons through the Assistant Commissioner of Customs, Bangalore.

4. It is the contention of the Department that the respondent had attended to customs work on behalf of one of the fraudulent exporters by name M/s. Shakthishka Exports and that the person who actually

handled the export one Shri S.Uma Mahesh, a G-Card holder, was investigated by DRI.

5. The said individual in his statement under Section 108 of the Act stated that he was the Managing Partner of M/s. V.D. Logistics which has 20 staff and that he was using the customs broker licence of the respondent from January, 2010 to process exports and that he was paying the respondent Rs.25,000/- per month through NEFT to the account of the respondent.

6. The Department then issued a show-cause notice to the respondent under Regulation 18 of the Customs Brokers Licensing Regulations, 2013 (for brevity, 'the Regulations') proposing revocation of the licence of the respondent and forfeiture of part or whole of the security and imposition of penalty not exceeding Rs.50,000/- on the respondent.

7. The respondent contested the show-cause notice stating that he himself filed the shipping bills on two importers after verifying IEC with the JDGFT, the addresses of the parties and the CST number. He also contended that no drawback was received by M/s. Shatishka Exports since the goods were seized by the Customs and subsequently adjudicated.

8. During the personal hearing before the Adjudicating Authority, the respondent cross-examined Shri S. Uma Mahesh who had said that

he was using the licence of the respondent but in the cross-examination, the said S. Uma Mahesh retracted his statement regarding paying Rs.25,000/- per month to the respondent for using the licence and stated that he had signed the statement before the DRI under threat.

9. However, the Adjudicating Authority came to the conclusion that the respondent had sublet the broker licence to the said Shri S. Uma Mahesh for Rs.25,000/- per month, and revoked the licence of the respondent invoking Regulation 18 read with Regulation 20 of the Regulations. He also ordered forfeiture of the entire security deposit collected at the time of issue of licence apart from levying penalty of Rs.50,000/- under Regulation 22 of the Regulations on the respondent.

10. This was assailed by the respondent before Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Regional Bench at Hyderabad.

11. The respondent denied violation of the conditions of the licence or subletting of his licence to Shri S. Uma Mahesh, and contended that the said statement was obtained from the said individual under duress. He stated that the prohibition of the operation of the respondent in Bangalore Customs House was already revoked by the Commissioner of Customs, Bangalore and therefore, the instant proceedings may also be dropped and the Order-in-Original be set aside.

12. The appellant's Representative however supported the findings of the Adjudicating Authority.

13. By the impugned order dt.26.03.2019 in Final Order No.A/30419/2019, the Tribunal found force in the contention of the Revenue that the respondent had sublet his licence for shipping the bills in question, but held that once Shri S. Uma Mahesh retracted the statement during the cross-examination, the officers of the Revenue should have further questioned him about the amounts being transferred at Rs.25,000/- per month when he had categorically said that he had not paid any amount to the respondent. It also observed that the respondent should have been confronted with the bank transfers to establish that the licence was indeed sublet to the said Shri S. Uma Mahesh by the respondent. It therefore gave benefit of doubt to the respondent and held that he had himself got the shipping bills filed using the services of Shri S. Uma Mahesh. It further held that though the respondent failed in discharging his obligation under Regulation 11(a) of the Regulations in not verifying the antecedents of the exporters and Regulation 17(a) in not supervising the work of his employees, only penalty of Rs.50,000/- would suffice and that the respondent was entitled to restoration of his licence. It also set aside the forfeiture of the security deposit directed by the Adjudicating Authority.

14. Assailing the same, this Appeal is filed.

15. Heard Sri B.Narasimha Sarma, counsel for the appellant.

16. The counsel sought to contend that under Regulation 18 of the Regulations, the competent authority is entitled to revoke the licence of a customs broker and order for forfeiture of part or whole of the security or impose penalty in excess of Rs.50,000/- for violating the regulations and that the Tribunal erred in showing sympathy to the respondent and revoking the order of the Adjudicating Authority by restoring the respondent's licence, setting aside the forfeiture of the security deposit and only imposing penalty of Rs.50,000/- on the respondent.

17. A reading of Regulation 18 of the Regulations indicates that the various options/punishments indicated therein are in the alternative and it is not mandatory for the Adjudicating Authority to revoke the licence of a customs broker for all infractions of the Regulations. The reason assigned by the Tribunal, i.e., that there was retraction of the statement made by the witness about subletting of the licence by the respondent to him stating that there was duress at the time when the statement was taken from him under Section 108 of the Act, and the officials of the Revenue had not confronted him with the bank transfers to establish that the licence was sublet by the respondent to the said Shri S. Uma Mahesh for consideration, and giving of benefit of doubt to the respondent, cannot be said to be perverse based on no evidence or contrary to law.

18. We are of the considered opinion that the Tribunal had rightly exercised its jurisdiction and the punishment imposed on the respondent is proportionate and so we do not see any reason to interfere with the order passed by the Tribunal.

19. The Appeal accordingly fails and is dismissed. No costs. Pending miscellaneous petitions in this CEA, if any, shall also stand dismissed.

M.S.RAMACHANDRA RAO, J

T.AMARNATH GOUD, J

13th FEBRUARY, 2020

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