O-37

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (CUSTOMS)
ORIGINAL SIDE

CUSTA/17/2020
IA NO:GA/1/2020
COMMISSIONER OF CUSTOMS [AIRPORT AND ADMINISTRATION]
VS.
J. D. IMPEX

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE BIVAS PATTANAYAK
Date : 6th July, 2022.

Appearance:
Ms. Manashi Mukherjee, Adv.
…for appellant
Mr.S Banerjee, Adv.
..for respondent

The Court : This appeal by the revenue has been filed challenging the order dated 18th December, 2019 passed by the Customs, Excise and Service Tax Appellate Tribunal, East Regional Bench, Kolkata [Tribunal] in appeal no.75678/2017 arising out of the order in original no.KOL/CUS/AIRPORT/ADMN/03/2017 dated 30th January, 2017.

The revenue has raised the following substantial questions of law for consideration.

i] Whether the impugned order on the face of it is contrary to the legislative intent and spirit of the Regulation 11 & 17 of the Customs Broker Licensing Regulation 2013 and the duties of the custom broker under the said Regulation ?

ii] Whether the respondent is not liable as per Regulation 17[9] of the Customs Broker Licensing Regulation 2013 which stipulates that á customs broker shall exercise such supervision as may be necessary to ensure the proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment’ in the facts and circumstances of the present case and is erroneous and perverse findings has been arrived at by the learned Tribunal?

iii] Whether holding G card enable any Custom Broker to violate the said Regulation 11 of 2013 ?

We have heard Ms. Manashi Mukherjee, learned standing counsel for the appellant/revenue and Mr. Banerjee, learned advocate appearing for the respondent. The respondent is a custom house agent having been granted a licence under the Customs House Agent Licensing Regulation, 2004 presently under the Customs Broker Licensing Regulation, 2013 by an order in original dated 30th January, 2013, the Commissioner of Customs [A & A], Kolkata revoked the licence granted to the respondent under Regulation 20[1] of the 2013 Regulation and the full amount of security deposit made by the appellant was ordered to be forfeited. Challenging the said order the respondent had filed a appeal before the Tribunal. The case of the respondent before the Tribunal was that the entire allegation of violation of Regulation 11[a], 11[d], 11[e], 11[m], 11[n] & 17[9] of the 2013 Regulation is in respect of certain activities undertaken and done by one Sri Dattatray S. Weling and it was alleged that the said person was a third party to whom the respondent had rent out their licence against commission. The respondent contended that the said allegation is absolutely baseless and reference was made to the cross-examination of the said Sri Dattatray S. Weling before the inquiry officer where he had made inconsistent statement. The respondent contended that the said Sri Dattatray S. Weling was a G cardholder of the respondent and there cannot be any violation of the provisions of 2013 Regulation. The revenue resisted the appeal by contending that the entire act of clearance was taken by Sri Dattatray S. Weling using the licence of the respondent against commission and the respondent was rightly held to have violated the provisions of the 2013 Regulation. The learned Tribunal firstly considered as to whether the said Sri Dattatray S. Weling was a G cardholder of the respondent at the relevant point of time when the import consignment was handled at Mumbai. It was pointed out that during cross-examination before the inquiry officer and Assistant Commissioner of Customs the said Sri Dattatray S. Weling categorically stated that he was holding G card of the respondent. However, there was no document on record. Subsequently, the document was produced and it was noted that Sri Dattatray S. Weling was a G cardholder of the respondent, Customs Broker. Further, the Tribunal noted that the original G card of said Sri Dattatray S. Weling was not with the DRI, Mumbai. However, on facts it held that the said Sri Dattatray S. Weling was an employee and G cardholder of the respondent at the relevant point of time. However, the Tribunal noted that the import consignment was handled by the said Sri Dattatray S. Weling and all communications and correspondences were made to the importer by him and not by the respondent. The Tribunal noted that in the order in original dated 30th January, 2017 it had been pointed out that the said Sri Dattatray S. Weling had discharged all the obligations under Regulation 11 of the 2013 Regulation but the Commissioner arrived at a conclusion that there was violation of different obligations under different regulations by the respondent. The Tribunal on facts noted that the obligations under Regulation 11 having been fulfilled, the respondent cannot be stated not to have discharged the obligation and on fact concluded that there was no violation of Regulation 11 of the 2013 Regulation. Thus, we find after considering the factual position the Tribunal had granted relief to the respondent. We are informed by the learned advocate for the respondent that though the order in original was passed on 30th January, 2017, the Customs Broker Licence granted to the respondent had not been revoked till date. This submission is placed on record.

In the light of the above, we find there is no question of law much less substantial question of law arising out for consideration in this appeal.

Accordingly, the appeal fails and the same is dismissed. Consequently, the stay application, IA NO:GA/1/2020 stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

Pkd/GH.