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

CUSTA/3/2023
IA NO. GA/1/2023
COMMISSIONER OF OCUSTOMS (AIRPORT & ADMINISTRATION) KOLKATA
VS.
M/S. S K KANJILAL

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 14th March, 2023

Appearance :
Mr. Bhaskar Prasad Banerjee, Adv.
Ms. Manasi Mukherjee,, Adv.
...for appellant
Mr. R.N. Bandopadhyay, Adv.
Mr. Vikash Singh,, Adv.
...for respondent

The Court : - This appeal filed by the revenue under Section 130 of the Customs Act is directed against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata dated 26.7.2022 by which the appeal filed by the respondent was allowed and the order in original dated 25.11.2019 revoking the license granted to the respondent under the provisions of the Customs Broker Licensing Regulation 2018 was set aside. The revenue has raised the following substantial questions of law for consideration:

a) Whether the impugned order on the face of it is contrary to the legislation and the spirit and intent of the regulation, the very object of the Customs Broker Licensing Regulation.

b) Whether the respondent is not liable as per Regulation 10(d) of the Customs Broker Licencing Regulation, 2018 wherein a customs broker shall advice his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof and in case of noncompliance shall bring the matter to the notice of the Deputy Commissioner of

Customs or Assistant Commissioner of Customs as the case may be which the respondent failed to do.

c) Whether the respondent failed to advise the client to comply with provisions of the Act and Rules and Regulations and failed to bring the matter of this non compliance to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, thereby violating the provisions of Regulation 10(d) of CBLR, 2018.

d) Whether an offence once made can be undone or compensated by paying any amount to the offender. Whether a concept of leniency or proving bonafide by the offender by making payment is at all acceptable by the statute.

e) The intention of the legislature is not clear wherein they have incorporated Regulation 17 of the Customs Broker Licensing Regulation 2018 wherein the Commissioner shall after considering the report of the inquiry and the representation made thereon, if any, made by the Customs Broker, pass such orders as he deems fit either revoking the suspension of the licence or revoking the license of the customs broker imposing penalty not exceeding the amount mentioned in Regulation 18 within 90 days from the date of submission of report by the Deputy Commissioner of the Customs or Assistant Commissioner of Customs, under Sub Section(5);

We have heard learned Counsel on either side.

The short question involved in the instant case was whether the Principal Commissioner of Customs was justified in revoking the Customs Brokers License granted in favour of the respondent.

The Customs Department initiated investigation against four exporters and as a consequence of such investigation as prohibition order dated 5.3.2019 prohibiting the respondent from working as a Customs Broker under the jurisdiction of the

Commissioner of Customs (Preventive) West Bengal under regulation 15 of the CBLR 2018. Thereafter, show-cause notice dated 31.5.2019 was issued to the respondent alleging that the respondent has violated regulation 10(d) and 10(e) of the CBLR 2018. The respondent submitted his explanation, however, the same was not accepted by the authority and the license was revoked. Challenging the same the respondent preferred appeal before the Tribunal. The Tribunal took note of the facts of the case and noted that let export orders were issued by the Customs Department after due verification by the concerned officials and the export manifest was also generated thereby implying that the goods in question has crossed the border. The Tribunal noted that in such factual scenario, the mere allegation that the respondent has not advised the exporter in an appropriate manner and he did not exercise due diligence was not established by the revenue by bringing on record the role played by the respondent in the alleged fake exports. It appears to be not in dispute that the respondent was not a co-noticee against any action initiated under the Customs Act along with the exporters and the allegation against the respondent is that they alleged to have violated regulation 10(d) and 10(e) of the Act. The Tribunal after noting the facts of the case slightly modified the order of penalty by ordering forfeiture of only Rs.25,000/- from and out of the security deposit furnished by the respondent. Thus in our view, the Tribunal has examined the facts of the matter and exercised discretion and interfered with the order of revocation of license. Thus we find that there is no question of law, much less substantial question of law arising for consideration in this appeal.

Accordingly, the appeal fails and dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.