OD-2

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

CUSTA/5/2023
IA NO:GA/1/2023, GA/2/2023

COMMISSIONER OF CUSTOMS AIRPORT AND ADMNISTRATION, KOLKATA
VS.
M/S. GRANADA AIR SERVICES PVT. LTD.

BEFORE:
THE HON'BLE THE CHIEF JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE AJAY KUMAR GUPTA
Date : 26TH JUNE 2023.

*Mr. Kaushik Dey, Adv.*
*Mr. Tapan Bhanja, Adv.*
*...for appellant.*
*Mr. Arijit Chakraborty, Adv.*
*Mr. R. N. Banerjee, Adv.*
*Mr. Prabir Bera, Adv.*
*Mr. Deepak Sharma, Adv.*
*Mr. Piyush Kumar, Adv.*
*...for respondent.*

The Court : Heard Counsel on either sides.

It appears that there is a delay of 41 days in filing the appeal. We have perused the affidavit filed in support of the condone delay petition and we find that sufficient cause has been shown for not preferring the appeal within the period of limitation. Accordingly, the application is allowed and the delay in filing the appeal is condoned.

This appeal filed by the Customs under Section 130 of the Customs Act, 1962 (the Act) is directed against the order dated 29.04.2022 passed by the Customs, Excise and Service Tax Appellate Tribunal, East Regional Bench, Kolkata (the Tribunal) in Customs Appeal No. 75410 of 2022.

The Revenue has raised the following substantial questions of law for consideration :-

1. Whether setting aside of the order in original by the Learned Tribunal is justified when the respondent has not followed any of the condition mentioned under Regulation 10(d) and 10(n) of the CBLR 2018 ?
2. Whether the Learned Tribunal's order is correct when it is admitted and apparent on the face of the record that the respondent has never been in contact with the actual importers, never verified the identity of his client and failed to discharge his obligation under CBLR 2018 ?
3. Whether the decision of the Hon'ble Supreme Court in the case of Commissioner of Customs Vs. K.M. Ganatra and Company relied upon by the Adjudicating Authority is applicable in the present case of the case ?

We have heard learned Counsel for the either side.

The order impugned in this appeal was passed by the learned Tribunal setting side the order passed by the Principal Commissioner of Customs, Airport and ACC Commissionerate, Customs House, Calcutta under the provisions of the Customs Broker Licensing Regulations, 2018. The allegation against the respondent, Customs Broker is that they have contravened regulation 10(d) and regulation 10(n) of The CBLR. Admittedly, the respondent Customs Broker was a noticee in a proceeding initiated under Section 124 of Customs Act and Section 124 of the Act denotes whereby penalty proceedings were initiated and by order dated 30.07.2021 the Principal Commissioner had imposed a penalty of Rs.79,20,000/- on the respondent Customs Broker (Company) and a sum of Rs.59,40,000/- as penalty for the employee of the respondent company. As against the said order the respondents had filed a writ petition before this Court wherein initially there was an order of stay and subsequently the writ petition was disposed of by relegating an intra Court appeal which was proposed to be filed against the said order. It is submitted by the learned Advocate for the respondents that as against the order passed in the writ petition an intra Court Appeal has been filed and the same is pending. However, the present proceedings have been initiated under CBLR 2018. So far as the allegation that respondent has violated regulation 10(d) of the Act, inasmuch as the respondents failed to advice their client only to comply with the provisions of the Customs Act and other allied acts and rules and regulations. The learned Tribunal took into consideration the facts of the case after noting that the case was of an import and the allegation was over valuation. What appears to have weighed our mind of the Commissioner while revoking the Customs Broker Licence in favour of the respondent was the materials which were culled out and the statements which were recorded during the course of investigation conducted by DRI. The learned Tribunal on facts found that the value as has been given in the Bill of Entry was enhanced by the approved valuer and further enhanced by the assessing officer of the Customs Department. Therefore, the learned Tribunal came to the conclusion that in the background of those facts the respondent Customs Broker cannot be held guilty for not able to find out correct value of the goods, as could be seen from the facts of the case that the valuation which was done by the department was much higher than the valuation as suggested by the Government approved valuer which was higher than the value which was declared in the Bill of Entry filed by the respondent. Therefore, on facts the tribunal has come to such a conclusion, we cannot disturb the said finding while examining the correctness of the order passed by the learned tribunal in an appeal filed under section 130 of the Act as we are required to see whether any substantial question of law arises for consideration. Therefore, the factual finding rendered by the tribunal cannot be interfered and consequently the leave granted by the learned tribunal exonerating the respondents from the allegation of non compliance of regulation 10(d) of the CBLR, 2018 has to be affirmed. The next allegation was that the appellant had failed to comply with the regulation 10(n) of the Act which mandates that the Customs Broker usually verify the correctness of Importer Exporter Code (IEC) number, goods and services tax identification tax (GSTIN) identity of his client and functioning of his client at the declared address by using reliable, independent, authentic document, data or information. The Tribunal noted that admittedly the appellant has taken up such verification on the basis of the documents which were available in the Government website and this was held to be sufficient compliance of regulation 10(n) of the Act. Furthermore, the Tribunal on facts noted that the statements, which were recorded during the course of investigation, which appears to have taken a considerable length of time, remain uncorroborated. The revenue's plea before us is that those statements were not retracted by the persons who deposed. Furthermore, the Tribunal on facts found that it is not the case of the revenue that the documents for undertaking the KYC of the importer were not taken by the respondents and the only allegation was that the respondent Customs Broker had not physically met and physically verified the premises.

The Tribunal to support this conclusion that physical verification by going over to the office of his client is not required, by relying upon the decisions of the High Court of Delhi in the case reported in *2017 348 ELT 625 (Del).* Thus when it has not been disputed by the revenue that the respondent Customs broker had admittedly undertaken an exercise of verifying the KYC details by comparing the details available in the Government Website the Tribunal granted relief to the respondents and to set aside the findings recorded against the respondent in so far as the alleged violation of regulation 10(n) of the Act.

Thus we find that the matter being entirely factual no substantial question of law arises for consideration in this appeal. Accordingly, the appeal filed by the revenue fails and dismissed.

We make it clear that this appeal has been dismissed on the ground that there is no substantial question of law involved for consideration and any finding/observation made in this order cannot be taken advantage by the respondents in their challenge to the order of adjudication dated 30.07.2021 which is now stated to be pending before the Division Bench of this Court in an intra-Court filed by the respondents.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(AJAY KUMAR GUPTA, J.)

Pkd/GH.