OD-5

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

CUSTA/13/2023
IA NO.GA/1/2023
COMMISSIONER OF CUSTOMS (ADMN. & AIRPORT), KOLKATA
-Versus-
M/S. SUNGLORY AGENCY

BEFORE:
The Hon'ble T.S. SIVAGNANAM, CHIEF JUSTICE
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 11th October, 2023

Appearance :
Mr. K.K. Maiti, Adv.
Mr. Tapan Bhanja, Adv.
..for the appellant

Mr. Arijit Chakraborti, Adv.
Mr. Nilotpal Chowdhury, Adv.
Mr. Prabir Bera, Adv.
Mr. Deepak Sharma, Adv.
...for the respondent

The Court : This appeal has been filed by the revenue challenging the order dated 31st March, 2023 passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata (Tribunal) in Order no.75193.

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

(i) Whether the Learned Tribunal is required to consider the true spirit and meaning of regulation 10(n) of Regulation, 2018, read with Circular no.

09/10-CUS dated 8.04.2010 before setting aside the Order-in-original dated 08.08.2022 ?

(ii) Whether the Learned Tribunal is required under law to provide independent reason for setting aside the Order in Original ?

(iii) Whether the documents submitted by the respondent can be considered as full compliance of the provisions of regulation 10(n) read with Circular no. 09/10-CUS dated 8.04.2010 ?

(iv) Whether the Learned Tribunal has exceeded the jurisdiction by denying the report of the GSTN Authorities regarding non-existence/fictitious business place of the exporters when the Learned Tribunal has no jurisdiction to interfere with any matter related to CGST Act, 2017 ?

We have heard Mr. K.K. Maiti, learned Counsel appearing for the appellant and Mr. Arijit Chakraborti, learned Counsel for the respondent.

The respondent is a customs broker who has been issued a license under the provisions of the Customs Broker Licensing Regulation, 2018 (CBLR). A show cause notice under Regulation 17(1) of the Regulations of 2018 dated 16th October, 2020 was issued calling upon the respondent to show cause as to why the Customs Broker license issued to them should not be revoked and their security deposit not ordered to be forfeited under the provisions of Regulation 2014 for violation of the provisions of Regulation 10(n) of the CBLR, 2018. Pursuant to the show cause notice, the respondent submitted their reply and the Assistant Commissioner of Customs (Airport and Administration), Customs House, Kolkata was appointed as an Enquiry Officer to enquire into the matter who had afforded an opportunity of personal hearing to the respondent and has drawn a report dated 18th March, 2021. The Principal Commissioner of Customs (Airport and Administration), Kolkata (PCC) did not accept the report on the ground that the report has been drawn excluding vital evidence and the report is not legal and therefore not acceptable and accordingly a notice was issued directing the respondent to appear for a personal hearing, pursuant to which the PPC passed Order in Original dated 8th August, 2022 revoking the Customs Broker license granted to the respondent and forfeiting the entire security deposit and also imposing a penalty of Rs.50,000/-. Challenging the said order, the respondent preferred appeal before the Tribunal. The learned Tribunal by the impugned order has allowed the appeal. Aggrieved by the same, the revenue has preferred the present appeal suggesting the aforementioned substantial questions of law. The issue which falls for consideration before the Tribunal was with regard to the rule of the Customs broker qua Regulation 10(n) of the 2018 Regulations. The said Regulation reads as follows :-

> *"The Customs Broker shall verify correctness of Importer-Exporter (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information."*

In terms of the above Regulation, there is an obligation on the part of the Customs broker to verify the correctness of the Importer-Exporter Code (IEC) number, Goods and Service Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information.

Thus, the question was as to how the Customs broker has to undertake the verification process as mandated in Regulation 10(n) of the CBLR. As could be seen from the report drawn by the Assistant Commissioner of Customs (not accepted by the PCC), the respondent has furnished the list of documents which he had collected from 11 of his clients and for illustration, we take it for one of the clients namely, M/s. Vaishnvi Trading and Suppliers. The documents submitted by the respondent were GSTIN ID Enquiry's screenshot from Indian Customs EDI System, KYC Form, Form GST REG-06, copy of PAN Card, copy of Aadhar Card, Acknowledgement letter dated 15.10.2018 from Karnataka Bank to Deputy Commissioner of Customs and Certificate of IEC no. ATFPP8387H issued by DGFT.

The respondent's contention was that after collecting all these documents and verifying the same, and upon being satisfied that the respondent has done due verification in terms of the obligation couched upon them under Regulation 10(n) processed the documents for 11 of the clients. As can be seen from the Regulation placed before this Court, there is no dispute to the fact that the exports had taken place and refunds have been sanctioned and paid to the exporters. The case of the Department is that exporters are not traceable. Admittedly, no action has been initiated under the provisions of the Customs Act against the exporter nor any show cause notice was issued under Section 124 of the Customs Act against the exporters or the respondent customs broker. After having found that the exporters are not traceable, there appears to be a feeble attempt made by the Department to confer upon Customs broker by proposing to examine as to whether the Customs broker has done proper verification in terms of the obligation under Regulation 10(n) of the CBLR. The learned Tribunal has examined as to how the verification process has to be done by the Customs broker and in this regard had placed reliance on a decision of the co-ordinate Bench of the Tribunal in the case of M/s. Anax Air Services Pvt. Limited vs. Commissioner of Customs, New Delhi (Airport and General), passed by the Principal Bench of the Tribunal in Customs Appeal No. 50987 of 2021.

Learned Tribunal noted it will be extremely difficult, if not totally impossible for Customs broker to physically visit the premises of each of its client for verification. The Tribunal also has held that the Regulation gives the option of verifying, using documents, data information and if there are authentic, independent and reliable documents or data or information to show that the client is functioning at the declared address, the obligation on the part of the customs broker is fulfilled. Furthermore, the documents which have been issued by the various authorities of the Central Government has not been shown to be either fake or forge. Therefore, the Tribunal concluded that there was no reason for the customs broker to doubt the authenticity of those documents or doubt the reliability of those documents. It is not the case of the department that the documents which were produced by the respondent/customs broker were false and fabricated documents and there is nothing on record to even remotely suggest such an allegation. The Tribunal has, in our view, has rightly held that the obligation of the customs broker under regulation 10(n) does not include keeping a continued surveillance on the client to ensure that he continues to operate from that address and has not changed its operations. After noting the decision in Anax Air Services Pvt. Limited, the learned Tribunal has also considered the facts of the case and noted that the original office report was based on DGARM as in the case of Anax Air Services, and the Tribunal on facts found that the respondent customs broker has verified all the documents such as KYC, GSTIN, AADHAR, PAN, etc. as submitted by the exporter before processing their shipping bills. The decision in Anax Air Services Pvt. Ltd. was noted by the Principal Bench of the Tribunal in the case of S. PRAKASH KUSHWAHA & CO. VS. COMMR. OF CUS (AIRPORT & GENERAL) NEW DELHI; 2023 (384) ELT 89 (Tri.-Del.). From the said decision, we find that all the cases arise out of a common report drawn by DGARM and the appeal filed by the appellant therein was allowed. As could be seen from the language employed in Regulation 10(n), it cannot be read in to the regulation that there is an obligation on the part of the customs broker to ensure the correctness of the action of the Government Department or the documents which have been issued by the various Government Departments. All that is mandated under the said regulation is to verify with the reliable, independent and authentic document, data or information. The stand taken by the respondent even at the time of enquiry that all set of documents which were produced clearly would satisfy the mandate under regulation 10(n) of the Act. Thus, we are of the view that the learned Tribunal has rightly explained the scope and obligation under regulation 10(n) and the finding would not call for any interference. The learned standing Counsel appearing for the appellant placed reliance on the decision of the learned Tribunal in HLPL GlOBAL LOGISTICS PVT. LTD. –VS- COMMISSIONER OF CUSTOMS, NEW DELHI, 2019 (370) E.L.T. 501 (Tri.-Del.). We find the said decision cannot be applied to the facts of the present case as in the said decision action was initiated by Customs Act and show cause notice was issued under Section124 of the Customs Act and the Tribunal held that the nature of goods which were imported in the said case being 'rough diamond' the customs broker could have exercised more vigilant approach before taking up the consignment for customs clearance after verification of the KYC norms of the importer which was not done in the said case.

Therefore, the decision in HLPL GlOBAL LOGISTICS PVT. LTD. (supra) could not render any assistance to the case of the revenue.

For the above reasons, the appeal fails and the same is dismissed and the substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

SN/Pkd/GH.
AR (CR)