OD–28

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

CUSTA/20/2023
IA NO: GA/1/2023
COMMISSIONER OF CUSTOMS (ADMN. & AIRPORT), KOLKATA
VS
M/S. B. K. CLEARING AGENCY

BEFORE :
THE HON'BLE Chief JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 18th November, 2023

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

Mr. Asok Bhowmick, Adv.
...for respondent

The Court : - This appeal by the revenue has been filed challenging the order passed by the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata in Customs Appeal No. 75018 of 2022, dated 26th April, 2023.

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

(i) Whether the Learned Tribunal has committed gross error of law by not considering that the activities of the CB firm is being conducted by Shri Arup Ghosh which amounts to transfer of license in terms of Regulation 1(4) of CBLR, 2018 or not ?

(ii) Whether the observation of the Learned Tribunal in relation to 10(d) and 10(m) CBLR, 2018 is correct or not ?

(iii) 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 ?

(iv) Whether function of Shri Arup Ghosh as an employee of Customs Broker of M/s. B.K. Clearing Agency amounts to violation of Regulation 7 when the said Arup Ghosh is proprietor of M/s. Just Logistic 1 ?

We have heard Mr. K.K. Maiti, learned Advocate appearing for the appellant and Mr. Asok Bhowmick, learned Advocate appearing for the respondent.

The respondent was granted a Customs Broker license in the year 2017 and at present covered by the provisions of the Customs Brokers Licensing Regulations, 2018. The appellant department took action against the respondent and cancelled the license granted to the respondent on the ground that the respondent has violated regulations 1(4), 10(d), 10(m), 10(n) and 13(12) of the CBLR 2018. The respondent challenged the said order by filing an appeal before the Tribunal. The Tribunal by the impugned order has allowed the appeal and aggrieved by the same the department has filed the present appeal.

With regard to the violation of Regulation 1(4) of the CBLR 2018, the allegation against the respondent assessee was that the respondent had transferred all works related to clearance of under invoiced raw human hair to one Arup Ghosh and he has misused the license to acquire the consignments of raw human hair through Airport Cargo Complex, Kolkata. In this regard, a statement recorded from the proprietor of the respondent was referred to wherein he stated to have admitted that he used to get payments by transfer from bank account of L.G. Enterprises only irrespective of the exporters and this L.G. Enterprises is a sister concern of M/s. Just Logistic –1, owned by Arup Ghosh. Therefore, the department's contention was that the customs clearance charge was collected by Arup Ghosh in the account of L.G. Enterprises which is owned by his wife and thereafter he used to transfer the money into an account of a third party. This, according to the department, will clearly show that the respondent literally transferred his license to Arup Ghosh, otherwise the payments for customs clearance should have come into the account of the respondent directly from the exporters. It is not in dispute that the said Arup Ghosh has been handling the clearance work for the respondent in the capacity of a G Card holder and authorised representative of the respondent.

After taking into consideration the facts, the learned Tribunal found that the respondent has been clearing the export consignments for their client S. S. Impex, Hydrabad from June 2019 to December, 2020, Arup Ghosh has been in-charge of the clearing work in his capacity as G. Card holder and authorised representative for more than a year. Therefore, the Tribunal came to the conclusion that it cannot be taken to be a case where the respondent has transferred the license to Arup Ghosh and furthermore, receipt of payment by the respondent from L.G. Enterprises, owned by the wife of Arup Ghosh, cannot be a sole ground to conclude that the respondent has transferred the license to Arup Ghosh. The Tribunal was convinced on facts that this being an internal arrangement it cannot be treated to be an alleged violation of Regulation 1(4) of the CBLR 2018. Noting the factual position, we affirm the view taken by the learned Tribunal, more particularly, when it is not in dispute that Arup Ghosh has been handling the clearance work for the respondent in the capacity of a G Card holder and authorised representative.

The next allegation against the respondent was that they violated the regulation 10(d) of the CBLR which mandates that Customs broker has to advise his clients to comply with the provisions of the Customs Act, 1962 and in the case the clients fail to comply with the provisions of the said Act, the Customs broker will be held responsible and may result in cancellation or suspension of the license. The Tribunal took note of the factual position that 81 shipping bills have been cleared during the period June 19 to December 2020 and none of those shipping bills came to the adverse notice of the department. More importantly, the Tribunal has rightly noted the fact that the shipping bill in question which has led to the cancellation of the license of the respondent was not filed by the respondent but was filed by Just Logistic–1, which was a company owned by Arup Ghosh. Therefore, the Tribunal was right in coming to the conclusion that there was no evidence available on record to substantiate the allegation that the respondent has not advised their clients properly. Therefore, the finding rendered by the Tribunal in this regard stands affirmed.

The next allegation against the respondent was with regard to the violation of Regulation 10(m) which mandates that the Customs broker should perform his duties efficiently and with utmost skill. Noting the facts the Tribunal, in our view, rightly held that there was no record to prove that the respondent has not performed its duties efficiently or in an expeditious manner.

Therefore, we find that the conclusion of the Tribunal that the respondent has not violated Regulation 10(m) of the CBLR 2018 is affirmed.

The next allegation against the respondent is with regard to Regulation 13(2) which mandates that Customs broker has to supervise and ensure proper conduct of his employees in the transaction of the business and in the event of any violation the Customs broker will be held responsible for all acts and omissions of its employees. The Tribunal took note of the fact that Arup Ghosh, the G-Card holder and authorised representative of the respondent, has handled the clearance work for the exporter M/s. S. S. Impex, Hydrabad and the department has not raised any objection in this regard. Furthermore, as noted previously, the shipping bill in question was not filed by the respondent but was filed by Just Logistic–1 and, therefore, the Tribunal rightly held that the respondent cannot be held liable for any violation that might have been committed by Just Logistic–1. Therefore, the finding rendered by the Tribunal in this regard also stands affirmed.

The next allegation against the respondent was with regard to violation of Regulation 10(n) of the CBLR 2018, which mandates that Customs broker has to verify the correctness of the i.e. Code, GSTIN and the functioning of the client at the declared address using reliable, independent and authentic data, documents or information. The appellant had contended before the Tribunal that they have made due verification as required under Regulation 10(n) and has obtained the documents list as i.e. Code, GSTIN etc from independent and reliable sources and had authentic documents and data. The Tribunal examined this aspect of the matter and has found that all those documents are not in dispute and have been issued by various Government agencies and entities, which would go to substantiate the existence of the exporter at the relevant time when these documents were issued.

The Tribunal has also taken note of the other facts and also examined as to in what manner the Customs broker can proceed to verify the authenticity and the reliability of the documents pertaining to his clients.

After taking note of various decisions on this aspect rendered by the Tribunal as well as the fact that proper due diligence has been done by the respondent qua their client M/s. S. S. Impex, Hydrabad accepted the case of the appellant.

Thus, we find that Learned Tribunal on a deep appreciation of the factual position has granted relief to the appellant and we find no grounds to interfere with the orders passed by the Tribunal.

Accordingly, the appeal fails and is dismissed.

The substantial questions of law are answered against the appellant revenue.

The stay application IA NO : GA/1/2023 is also dismissed.

(T.S. SIVAGNANAM, C J.)

(HIRANMAY BHATTACHARYYA, J.)

SN/GH.