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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CUSTA/17/2024
IA NO: GA/1/2024

M/S. SAI-DUTTA CLEANING AGENCY PRIVATE LIMITED
VS
UNION OF INDIA AND ANR

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 26th April, 2024

<u>Appearance</u> :

Mr. Shovendu Banerjee, Adv.
Mr. Soumyajit Mishra, Adv.
... for the appellant.

Mr. K. K. Maiti, Adv.
Mr. Tapan Bhanja, Adv.
...for the respondent.

Ms. Sarda Sha, Adv.
...for the UOI.

The Court : This appeal by the Customs House agent is directed against the final order dated 26th July, 2023 passed by the Customs, Excise, Service Tax Appellate Tribunal, Regional Bench, Kolkata(Tribunal) being Final Order no.76173.

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

i) Whether the Learned Tribunal should have considered and erred in law in not considering that, in the entire show cause notice John Miranda and Rakesh Magoo or the importer have never given any statement alleging that the petitioner was aware of the alleged mis-declaration of value, hence it is crystal clear that the department on the basis of assumption, presumption and surmise has proceeded in the matter without any evidence.

ii) Whether the Learned Tribunal should have considered and erred in law in not considering that the petitioner after obtaining the authorization from the importer viz. M/S. Surya Trading Co., Delhi in course of ordinary business filed the bill of entry on the basis of the invoice, packing list, bill of lading, import-export code number etc. provided by the importer. The goods were examined by the customs officers and clearance was done and handed over to the importer. As a CHA the petitioner was never a party or it is not possible for the petitioner to be a party to under valuation of the goods as your petitioner is no way related with the goods. There is no evidence been adduced (as there cannot be any) to the effect that the petitioner is in any way involved in such activities so the question of aiding and/or abetting in the duty evasion in respect of the bills of entry filled by the petitioner as a CHA does not and cannot arise.

We have heard Mr. Shovendu Banerjee, learned Counsel appearing for the appellant, Mr. K. K. Maiti, learned standing Counsel for the respondent and Ms. Sarda Sha, learned Counsel for the Union of India.

The appellant is a Custom House agent and by an adjudication order penalty of Rs.2 lacs had been imposed on the appellant. Aggrieved by such order, the appellant preferred appeal before the Tribunal which was dismissed and aggrieved by the same the appellant is before us.

We have elaborately heard the submissions of the learned Advocates for the appellant and the learned standing Counsel for the respondent.

As could be seen from the order of adjudication, the allegations against the appellant are very specific and has been noted in paragraph of the Order-in-Original, which is the basis on which show cause notice was issued. Thereafter, liberty was granted to the appellant to file their reply and they were personally heard in the matter and the Order-in-Original was passed. The adjudicating authority in paragraphs in 33.2 and 33.3 has clearly brought out the modus adopted by the appellant and how the appellant was a party to the entire under valuation exercise. This factual finding has been affirmed by the learned Tribunal.

Therefore, we find no questions of law, much less substantial questions of law, arising for consideration in this appeal.

The learned Counsel for the appellant placed reliance on the decision in the case of Commissioner of Customs(Import) Vs. Trinetra Impex Pvt. Ltd., 2020(372)E.L.T. 332(Del.). The said appeal filed by the department was dismissed after taking note of the facts of the case wherein the Court on facts held that the Custom House agent in the said case had acted bonafide and merely facilitated the imports. In the instant case the factual finding is different and the adjudicating authority has recorded the modus adopted by the appellant.

Thus, we find there is no substantial question of law arising for consideration in this appeal.

The appeal is dismissed.

The stay application (GA/1/2024) is also dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

SN/mg
AR(CR)