ORDER OD – 5

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

CUSTA/14/2020
IA NO: GA/1/2020
COMMISSIONER OF CUSTOMS (ADMN & AIRPORT)
VERSUS
M/S. S GUHA SARKAR & CO.

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
AND
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 9th February 2024.

1. Case called out. None appears for the appellant to press the appeal.

2. A Show Cause Notice No.05/2017 P.C. (A&A) was issued by the Commissioner of Customs (Airport and Administration), Customs House, Kolkata, requiring the respondent to show cause as to why its Customs House Agent License No.S-114 issued under Regulation 9)1) of CHALR, 2004 [now, Regulation 7(1) of CBLR, 2013] held by it should not be revoked and its security deposit be forfeited under the provisions of Regulation 20(1) of CHALR, 2004 [now, Regulation 18 of CBLR, 2013]. The aforesaid show-cause notice was adjudicated and an Order in Original dated 27.02.2018 was passed by the Commissioner of Customs (Airport and Administration), Customs House, Kolkata, revoking the license of the respondent and forfeiting the full amount of security deposit furnished by the respondent.

The respondent filed an Appeal No.C/76938 of 2018 before the Customs, Excise and Service Tax Appellate Tribunal, Kolkata, which was allowed by the Tribunal by order dated 23.01.2020 holding as under:-

"6. Learned departmental representative supports the impugned order and asserts that it calls for no interference.

7. We have considered the submissions on both sides and perused the records. As far as the first submission of the appellant is concerned, we do find that by OIO No.KOL/CUS/AIRPORT/ADMN/17/2016 dt. 30.08.2016 issued on 31.08.2016 in another matter pertaining to the appellant, the learned Principal Commissioner of Customs, Kolkata had already revoked the license of the appellant and has also ordered forfeiture of the entire amount of security deposit furnished by their appellant. These facts have also been confirmed in Para 26 of the impugned order as reproduced above. Therefore, we find that on the day the order was passed there was no customs broker's license of the appellant in existence. There is nothing on record to show that the earlier revocation has been set aside by any higher judicial forum. We also find that the entire security deposit has already been forfeited in the earlier order and there is nothing on record to show that any higher judicial forum had set aside such forfeiture. There is no other penalty in the impugned order. We, therefore, find that the impugned order is bad in law inasmuch as the license which has been revoked is non est as it had already been revoked and the forfeited amount of security deposit also does not exist as it had already been forfeited.

8. We also find force in the argument of the appellant that after 2013, Customs Broker Licensing Regulations, 2013 have replaced the erstwhile CHALR, 2004 and therefore the earlier regulations do not exist any longer. We find that these regulations were notified by notification No.65/2013-CUS (NT) dt. 21.06.2013. The preamble part of the notification reads as follows:

> *"In exercise of the powers conferred by sub-section (2) of section 146 of the Customs Act, 1962 (52 of 1962), and in supersession of the Customs House Agents Licensing Regulations 2004, except as respect things done or omitted to be done before such supersession, the Central Board of Excise and Customs hereby makes the following regulations, namely:"*
>
> *9. A plain reading of the above shows that the erstwhile regulations have been completely superseded except in respect of things which were already done. We also find that there is no separate savings clause in the CBLR, 2013. Therefore, regardless of the fact that the appellant was licensed prior to the introduction of CBLR, 2013, the present proceedings, having been initiated post 2013, must be proceeded under the new regulations. CHALR, 2004 cannot be invoked as they did not exist during the relevant period.*
>
> *10. In view of the above, without going into the merits of the allegations made in the show cause notice and affirmed in the impugned order, we set aside the impugned order as bad in law.*
>
> *11. The impugned order is set aside and the appeal is allowed."*

3. It is undisputed that by order in Original Order No. KOL/CUS/AIRPORT/ ADMN/17/2016 dated 30.08.2016 passed by the Commissioner of Customs (Airport and Administration), Customs House, Kolkata had revoked the license of the respondent and also ordered forfeiture of the entire security amount deposit. That order of forfeiture of security and revocation of license was passed prior to the show-cause notice dated 31.05.2017 and the Order in Original in question dated 27.02.2018. Operative portion of the order dated 27.02.2018 is reproduced below:-

"i. The Customs Broker licence No. S-114 (PAN: ABLFS8858G) held by M/s S. Guha Sarker & Co. issued by the Commissioner of Customs (Admn.), Custom House, Kolkata is hereby revoked under Regulation 20(1) of the CHALR, 2004 [Now Regulation 18 of CBLR, 2013];

ii. The full amount of Security Deposit furnished by the CB, M/s S. Guha Sarker & Co. is ordered to be forfeited under the Regulation 20(1) of the CHALR, 2004 [Now Regulation 18 of CBLR, 2013]."

4. Since the license of the respondent was revoked by an Order in Original dated 30.08.2016 and the entire security deposit was forfeited, therefore, there was no occasion to pass another order subsequently to revoke and forfeit the security which already stood forfeited.

5. In view of the aforesaid, we find that no substantial question of law is involved in the impugned order of the Tribunal. Therefore, the appeal is dismissed at the admission stage.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

S. Kumar