OD-31

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

CUSTA/14/2023
IA NO: GA/1/2023
COMMISSIONER OF CUSTOMS AIRPORT AND ADMINISTRATION, KOLKATA
VS
M/S AYUSHI LOGISTIC COMPANY

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 22ND MARCH, 2024.

Appearance :
Mr. Kaushik Dey, Adv.
Mr. Tapan Bhanja, Adv.
...for appellant
Mr. Arijit Chakraborty, Adv.
Mr.Nilotpal Chowdhury, Adv.
Mr. Prabir Bera, Adv.
...for respondent

The Court :- This appeal filed by the revenue is directed against the order dated 12.4.2023 passed by the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata in final order no.75215 of 2023. The revenue has raised the following substantial question of law for consideration.

(i) Whether setting aside of the order in original by the Learned Tribunal is justified when the respondent has not followed the condition mentioned under Regulation 10(a), 10(d), 10(e), 10(f) and 13(12) of the CBLR' 2018?

(ii) Whether in the facts and circumstances of the instant case the Learned Tribunal' 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?

We have heard learned advocates on either side.

The respondent filed the appeal before the tribunal challenging the order passed by the Commissioner of Customs [Airport and Administration], Kolkata affirming the order of revocation of the Customs Brokers Licence issued to the respondent under the provisions of the Customs Brokers' Licensing Regulation, 2013 [CBLR]. The respondent was issued the Customs Brokers Licence on 27.10.2018 and it is stated to be valid upto 4.10.2027. The licence was suspended on 11.04.2019 and confirmed on 01.05.2019. This order was put to challenge before the tribunal which allowed the appeal filed by the respondent by order dated 12.4.2023. Aggrieved by the same, the revenue has preferred the present appeal. We find that the tribunal framed three questions for consideration, namely; [I] whether the Principal Commissioner of Customs was right in passing the order dated 18.12.2021 based on the first inquiry report?; [2] whether the Customs Broker has failed in his dues as attracted under the CBLR, 2018?; and [3] whether the revocation of licence and forfeiture of security deposit was just and proper?

So far as the first question is concerned, the tribunal took note of the order passed by this court in a writ petition being order dated 07.09.2021 and held that the Principal Commissioner of Customs was justified in deciding the notice based on the inquiry report. The next, the tribunal proceeded to consider as to whether the respondent had violated the provisions of the CBLR, more particularly, regulations 10[a], 10[d], 10[e], 10[f], and 13[12]. The tribunal has examined the factual position thoroughly and has dealt with each of the regulations in separate paragraphs and rendered its findings which all decided in favour of the respondent.

Mr. Dey, learned senior standing counsel for the appellant strenuously contended that the tribunal committed an error in reversing the order passed by the Principal Commissioner of Customs, inasmuch as, the evidence which was brought on record was not properly appreciated.

We are not persuaded by the said submission as we find that the tribunal as recorded reasons after deciding the factual position. Admittedly, the mis-declaration was detected only after the DRI conducted an investigation and the samples, which were drawn by and sent to the laboratory for examination. Therefore, the tribunal concluded that there was no violation of regulation 10[d] of the CBLR. Similarly, the tribunal also referred the other regulations and found on facts that the department was not able to establish that there has been any violation committed by the respondent, the Customs Broker. With regard to the alleged violation of regulation 13[12], the Tribunal in paragraph 16 of the impugned order has discussed in detail about the factual position and held that the respondent cannot be made responsible for mis-declaration if any done by the importer one Joytirmoy Biswas. Thus, we find that the Tribunal on re-appreciation of the factual position has rendered a finding in favour of the respondent and there arises no questions of law much less substantial question of law in this appeal. That apart, we also find that the licence was suspended from 11.4.2019 and though the respondent succeeded before the Tribunal by virtue of an order dated 12.4.2023 till date the respondent has not been able to operate its licence. This in our view, assuming that the respondent had committed certain violation of the provisions of the CBLR, the period of suspension and subsequent revocation undergone by the appellant of these five years would be sufficient punishment. Thus, for the above reasons we find no ground to interfere with the order passed by the Tribunal.

Accordingly, the appeal is dismissed so also the application.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA,J.)

pkd/GH.