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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Customs]

ORIGINAL SIDE

CUSTA/21/2023
IA NO: GA/1/2023

PRINCIPAL COMMISSIONER OF CUSTOM
(AIRPORT AND ADMINISTRATION), KOLKATA
VS
M/S. JYOTI CUSTOMS BROKER SERVICE
PVT.LTD.

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 24th May, 2024

Appearance :
Mr.Vipul Kundalia, Adv.
Ms.Aishwarya Rajyashree, Adv.
..for the appellant.

Mr.A.K. Bhowmik, Adv.
Mr.H.K. Pandey, Adv.
Mr. T.K. Mitra, Adv.
…for the respondent.

The Court : This appeal filed by the revenue under Section 130(1) of the Customs Act, 1962 is directed against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata, Regional Bench, Court No.2 (Tribunal) in Customs Appeal No.75640 of 2021 dated 2nd May, 2023.

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

"a) Whether the handling of untraceable consignment by the exporter is a violation of Regulation 10(n) of CBLR 2018?

b) Whether the Learned Tribunal erred in law in holding that verification of documents by the CB other than the documents prescribed in the annexure to the Circular 9/2010 dated 08/04/2010 substantiate the existence of the exporter at the relevant time?

c) Whether the Learned Tribunal erred in law in placing reliance on M/s. Anax Air Services Pvt. Ltd. vs Commissioner of Customs (Airport and General) New Delhi, which does not stand as the same was pronounced altogether in different facts and circumstances?

d) Whether the Learned Tribunal erred in law in not considering that the responsibility of verifying the correcting the IE Code, GSTIN and functioning of their clients lie on the CB as per Regulation 10(n) CBLR, 2018?

e) Whether the Learned Tribunal erred in law in not considering that CB has to verify identity and functioning of his client at the declared address by using reliable, independent, authentic document, data or information which the CB has failed to do, the CB must be held responsible for non-existence of the exporter at the given address?

f) Whether the Learned Tribunal erred in law in not considering that non-compliance of Regulation 10(n) CBLR, 2018 has caused huge loss of revenue to the Government?"

We have heard Mr. Vipul Kundalia, learned senior standing counsel, assisted by Ms. Aishwarya Rajshree, learned counsel for the appellant and Mr. A.K. Bhowmik, learned counsel for the respondent.

The short question which falls for consideration in the instant case is whether the learned Tribunal was right in setting aside the order of revocation passed by the Commissioner of Customs revoking the custom's broker licence granted to the respondent under Regulation 14 of the Customs Broker Licence Regulation 2018 (CBLR).

After elaborately hearing the learned advocates for the parties and also carefully perusing the facts of the case, we find that the only allegation against the respondent is that they have violated the Regulation 10(n) of the Act. The learned Tribunal has done thorough fact finding exercise and found that the respondent has collected all the documents such as IEC, GSTIN etc. submitted by the exporter before processing their shipping bills and the Tribunal also held that if they are not found to be existing in the said address, subsequently the customs broker cannot be held responsible for their non-existence at the address specified. The learned Tribunal had noted one of its earlier decision on the said point. Identical issue was decided by this Court in the case of Commissioner of Customs (Admn. & Airport) Kolkata Vs. Sunglory Agency in CUSTA/13/2023 dated 11th October, 2023. The Court pointed out that as could be seen from the language employed in Regulation 10(n), it cannot be read into the regulation that there is a 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 various Government departments. All that is mandated under the said Regulation is to verify with reliable, independent and authenticated documents, data or information. On facts the learned Tribunal in the instant case has found that the respondent at the time of enquiry had produced all the documents which are required as mandated under Regulation 10(n) of CBLR.

In the light of the above, the order passed by the learned Tribunal is justified and does not call for any interference.

For the above, the appeal is dismissed and the substantial questions of law are answered against the revenue. The connected application stands closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

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