IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO. 9 OF 2024

Principal Commissioner of Customs
(General) ….Appellant

V/s.
Shrilcon Shipping And Logistics …Respondent

Mr. M.P. Sharma a/w Ms. Mamta Omle for Appellant.
None for Respondent.

CORAM : K.R. SHRIRAM &
JITENDRA JAIN, JJ.
DATED : 28th AUGUST 2024

P.C. :

1. The appeal is filed under Section 130 of the Customs Act, 1962 (the Act) impugning an order dated 7th December 2022 passed by the Customs, Excise and Service Tax Appellate Tribunal, Mumbai (CESTAT).

2. Respondent is a Customs Broker holding the Customs Broker License issued under Regulation 7(1) of the Customs Broker License Regulation, 2013 (now Regulation 7(2) of CBLR, 2018) (the CBLR).

3. The Commissioner of Customs had issued a Show Cause Notice to various importers who had allegedly over valued a cargo of rough diamonds imported from Hongkong and Dubai. In the process, action was also taken against respondent as respondent was the customs broker through whom the imported goods were cleared. The Commissioner of

Customs held that respondent had violated Regulations 10(a), (d), (f), (g) and (n) of CBLR, 2018. Penalty of Rs.50,000/- under Regulation 18 of the CBLR was imposed on respondent. The entire amount of security deposit furnished by respondent under Regulation 14 was forfeited and respondent's customs broking license was revoked under Regulation 14 of the CBLR. Respondent was also directed to surrender the original license as well as the cards issued to respondent by the customs department. Aggrieved, respondent filed an appeal before the CESTAT. The CESTAT, by its order dated 7th December 2022 which is impugned in the petition, allowed the appeal.

4. The CESTAT has observed that respondent had specifically prayed for cross-examination of certain persons whose statements were relied upon in the Show Cause Notice to implicate respondent. The cross-examination was denied without any specific grounds. The CESTAT has also observed that under Sub Regulation (4) of Regulation 17 of the CBLR, the customs broker shall be entitled to cross-examination of the persons whose statements were used as grounds for forming the basis of the inquiry proceedings and in case, the inquiry officer declined to permit cross-examination of such persons, then he is required to record the reasons in writing for denial. The CESTAT has come to a finding that no reasons have been recorded. The CESTAT has also noted that there are allegations that certain persons were in telephonic touch with respondent but the contents

of the conversation have not been brought on record for a specific finding that appellant had active role in alleged over valuation of the imported consignment. The CESTAT has also relied on the judgment of the Telangana High Court in ***Shasta Freight Services Pvt. Ltd. vs. Principal Commissioner of Customs, Hyderabad***[1] upheld by the Hon'ble Apex Court[2].

5. We see no reason to interfere because when action is being taken under the provisions of the CBLR, the department was duty bound to comply with the provisions of the CBLR when the broker prays for cross-examination of those persons on whose statements reliance has been placed to implicate the broker. We also find that this is the only ground on which the appeal has been allowed and we find that neither in the proposed questions of law nor in the grounds of appeal, this issue has even been raised.

6. Appeal dismissed.

(JITENDRA JAIN, J.) **(K.R. SHRIRAM, J.)**

1 2019 (368) E.L.T. 41 (Telangana)
2 2022 (381) E.L.T. 436 (S.C.)