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

CUSTOMS APPEAL NO.42 OF 2024

Principal Commissioner of Customs
Mumbai-General .. Appellants
Versus
Lingama Logisol Pvt. Ltd. .. Respondent

Mr. M.P. Sharma a/w Ms. Mamta Omle for the appellants.
Mr. Anil Balani for respondent.

CORAM : M. S. Sonak &
Jitendra Jain, JJ.
DATE : 11 December 2024

P.C.:- [M.S. Sonak J]

1. Heard learned Counsel for the parties.

2. This appeal is filed against the judgment and order dated 7 September 2023 made by the Customs Excise and Service Tax Appellate Tribunal (CESTAT). Mr. Sharma, learned counsel for the appellant, submits that the following substantial questions of law are involved in this appeal ;

(I) Whether the CESTAT is justified in law in partly allowing the Appeal by setting aside the order of revocation of the license of the Respondent and forfeiture of the security deposit.

(II) Whether the CESTAT is correct & justified law in holding

that there is no requirement under Regulation 10(a) of CBLR, 2018 for the customs broker to have personally met the proprietor or any authorized person, despite the fact that the said Regulation specifically requires the Customs Broker to obtain written authorization "from each of the companies, firms or individuals by whom he is for the time being employed"?

3. Mr. Sharma, learned counsel for the appellant, submits that there is a contradiction in the impugned judgment and order. On the one hand, the judgment or order admits default on the part of the respondent (customs broker) and maintains the penalty of Rs.50,000/- against him. On the other hand, however, the definite findings of the Principal Commissioner of Customs (General) regarding breach of the various Sub-clauses of Regulation 10 of Customs Brokers Licensing Regulations (CBLR) dealing with the obligations of customs brokers have been ignored or condoned by setting aside the revocation of the respondent's licence and forfeiture of security deposit submitted by the respondent.

4. Mr. Sharma submits that in Regulation 10 (d) context, the respondents' director admitted that they had never met the Importer Exporter Code (IEC) holder before the detention of exported goods. He also revealed that the exported goods belong to a person other than that exporter. However, despite obligations cast on the respondent under Regulation 10(d) of CBLR 2018, these facts were not brought to the

notice of the Deputy Commissioner of Customs. Mr. Sharma submitted that the exporters M/s Swastik Enterprises and M/s Ganesh Exports were non-genuine exporters who had only lent their name for exports. He submitted that the respondent/customs broker failed to comply with the obligations under Regulation 10 of the CBLR, facilitating these non-genuine exporters in making exports. He submitted that CESTAT was not justified in interfering with the Principal Commissioner's order, and this appeal gives rise to the above-mentioned substantial question of law.

5. Mr. Balani, learned counsel for the respondent, submits that the appeal only involves issues of fact. He submits that the CESTAT has evaluated the factual material on record following the CESTAT's decision in the case of ***'Commissioner of Customs (Airport and General) New Delhi Vs. M/s Bright Clearing & Carrier Pvt. Limited'***[1]. He submitted that ***M/s Bright Clearing (Supra)*** interprets the nature of obligations cast upon the customs broker. He submitted that the Principal Commissioner's approach was contrary to the law in ***M/s Bright Clearing (Supra)***. Upon applying the correct principles in ***M/s Bright Clearing (Supra)***, the CESTAT has concluded that there was no serious breach of the obligations. Still, the CESTAT found a partial failure in complying with the obligations under Regulation 10(d), which called for maintaining the penalty of Rs.50,000/- imposed against the respondent.

1 Customs Appeal No.51658 of 2021 dated 18 November 2022

However, the CESTAT concluded that there was no warrant to revoke the respondents' licence and forfeit the security deposit.

6. The rival contentions now fall for our determination.

7. The Tribunal, in the first place, has extensively quoted and applied the law laid down in the ***M/s Bright Clearing (Supra)***. This decision, by referring to the decision of the Delhi High Court in the case of ***'Kunal Travels'***[2] has observed that the Customs House Agent (CHA) is not an inspector to weigh the genuineness of the transaction. He is a processing agent of documents concerning the clearance of goods through the customs house, and in that process, only such authorised personnel of the CHA can enter the customs house area. It would be far too onerous to expect the CHA to inquire into and verify the genuineness of import/export transactions. When such code is mentioned, there is a presumption that the customs authorities would have done an appropriate background check in this regard, i.e. KYC, etc.

8. ***M/s Bright Clearing (Supra),*** after referring to the obligation of the customs broker, held that the burden is very liberal open and therefore, the scheme and its potential misuse cannot be put at the door of the customs broker. Just as the officers' responsibility ends doing this part of the job (which may be of issuing the registration without physical verification or allowing the exports without assessing the documents or

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examining the goods) the customs broker's responsibility ends with fulfilling this responsibility under Regulation 10 of the CBLR, 2018. The dispute in these appeals relates to CBLR (10)(n), which, the Tribunal has discussed, did not require any physical verification of the address of the exporter/importer.

9. The CESTAT, in this case, has examined the material documents on record and evaluated them. Going by the principles laid down in ***M/s Bright Clearing (Supra),*** the circumstance that M/s Swastik Enterprises and M/s Ganesh Export were or were not ultimately found to be non-genuine exporters cannot be the test for holding that the respondent/customs broker had failed in his obligations. Even after compliance with his obligations by a customs broker, the exporters may be eventually found to be non-genuine. In this case, the CESTAT, in paragraph 12.3, has recorded the following finding of fact.

> *12.3. In the present form of sub-Regulation 10(n) of CBLR, 2018, the said earlier regulation 13(0) had been modified by adding the Goods and Service Tax Identification Number (GSTIN) as one more particular for verification by the Customs Broker with the advent of introduction of GST in 2017. On careful perusal of the above details, It transpires that the Regulations and the Board's circular provide that certain specific features of an importer/ exporter needs to be verified in terms of specified documents mentioned in Annexure to the said Circular dated 08.04.2010, in order to fulfill the obligations by a Customs Broker. In the present case, it is also on record that the export entities being proprietorship firms, the particulars regarding the legal name of the exporter firms and their addresses have been verified by the CB on the basis of specified documents. In this regard, we also*

refer to the Public Notice No.26/2019 dated 14.10.2019 issued by the Commissioner of Customs (Export), Air Cargo Complex informing the trade that the public notices issued in respect of 'verification of documents in respect of first time of import of goods' is mutatis mutandis we applicable to 'first time export goods' also. We also find that in compliance with these instructions, the appellants Customs Broker had filed necessary documents in respect two exporters viz., M/s Swastik Enterprises and Ganesh Export, and the letter/approval has been given by the Office of the Deputy Commissioner of Customs, Precious Cargo Customs Clearance Centre, located at 'G' Tower, Bharat Diamond Bourse, Bandra Kurla Complex, Mumbai providing 'First time Export/Import approval in view of Public Notice No.08/2013 dated 17.09.2013'. In respect of M/s Swastik Enterprises the approval was given by letter dated 21.08.2020 and for M/s Ganesh Export the approval has been given vide Note dated 24.05.2018, copies of which has been placed as records in this case. In the said reference, it is stated that based on the reference documents submitted by the appellants in respect of two exporters involved in this case viz. Swastik Enterprises and Ganesh Export, the said office of DC, Customs states that the request has been approved by the Competent Authority and the exporters/Customs Broker is allowed to initiate for the first time Import/export through Precious Cargo Customs Clearance Centre (INDPC4). Further, it is also on record that the GSTIN and IEC certificates have been issued to the said two exporters by the competent authorities properly and their Identity has not been doubted by the department.

10. Similarly, the CESTAT, in paragraph 12.5 has recorded the following finding of fact:

12.5. From the above detailed analysis made in the above case law, it is clear that the appellants CB in this case cannot be held responsible in cases where they have verified the identity of the exporter through prescribed records. Further, in the present case the appellants have also obtained the first time export verification of the exporters conducted by the appropriate customs authorities and a specific approval has been given by the Competent Authority and the same has been communicated by

> *the Deputy Commissioner of Customs, DC, stating that the exporters/Customs Broker is allowed to initiate for the first time import/export through Precious Cargo Customs Clearance Centre having Customs-EDI port code INDPC4. Thus, we find that the conclusion arrived at by the Principal Commissioner in the impugned order to the extent that the appellants have violated in not fulfilling the obligation cast on them under Sub-regulation 10(n) is not legally sustainable.*

11. The above findings of fact cannot be set to be vitiated by any perversity. It is not as if the above findings are based on no material on record. This appeal is restricted to substantial questions of law. In the absence of any perversity in the record of findings of fact, it is not open to this Court to re-appreciate the material on record as if it were exercising first appellate powers without any statutory restrictions. The findings of fact recorded by the CESTAT in this case cannot be said to be perverse findings.

12. The CBEC has issued a circular dated 8 April 2010 regarding KYC norms for the identification of clients by CHA. This circular mainly refers to the verification of documents. Nothing on record shows that the respondent did not verify such documents in this case. In fact, the CESTAT, on analyzing the material, held that the respondent duly certified such documentation. Therefore, based upon the respondents' director's statement that he had never met the IEC holder before the detention of the exported goods or that it was ultimately discovered that

the exported goods belonged to some other person, we cannot say that the CESTAT's approach or findings give rise to the substantial material of law as proposed or are sufficient to style the findings of fact recorded by CESTAT as perverse.

13. The CESTAT, in this case, has, without saying so, applied the 'Doctrine of Proportionality'. Since there was some lack of care on the part of the respondent, the penalty of Rs.50,000/- has been maintained. However, the order of revocation of license, thereby debarring the respondent from functioning as a customs broker or forfeiture of the entire security, has been set aside.

14. The record shows that in this case, M/s Swastik Enterprises and M/s Ganesh Exports produced GSTIN and IEC certificates that were issued to them by the competent authority. The department has not doubted their identities. The department also issued the first-time export/ import approvals given public notice dated 17 September 2013. Upon verification of all these facts, the respondent may have processed the export papers of these two entities. Considering all these factors and the approach suggested in ***M/s Bright Clearing (Supra),*** we do not deem it appropriate to fault the CESTAT's order exercising the limited jurisdiction of entertaining an appeal only on substantial questions of law.

15. For all the above reasons, we are satisfied that the substantial questions of law as proposed do not arise in this appeal. The questions are mainly issues of re-appreciation of facts, and therefore, they cannot be styled as questions of law, much less still substantial questions of law.

16. For the above reasons, we decline to entertain this appeal and dismiss it without any cost order.

(Jitendra Jain, J.) **(M. S. Sonak, J.)**