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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CUSAA 37/2024

COMMISSIONER OF CUSTOMS AIRPORT AND GENERAL ....Appellant

Through: Mr. Gibran Naushad, Adv.

versus

M/S NPL IMPEX PVT LTD .... Respondent

Through: Mr. Chinmaya Seth and Mr. A.K. Seth, Advocates.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

<u>O R D E R</u>

% **23.09.2024**

1. Revenue impugns the final order passed by Customs Excise & Service Tax Appellate Tribunal ["CESTAT"] Delhi dated 04.10.2023 and which has come to record the following conclusions in Para No. 22 of the order impugned as under:-

> "22. In light of the entire above discussion, we hold that adjudicating authority has failed to appreciate the statements on record as a whole as discussed above. As observed above, if the statements would have been read as a whole, apparently there is no violation of 10(d) and 10(n) of CBLR, 2018 is observed to have been committed by the appellant. For the above reasons, the order under challenge is hereby set aside. Consequent thereto the appeal stands allowed."

2. The facts as are necessary for deciding the controversy at hand are that an information was received by the Officers of DRI that one Sandeep Jain was engaged in the import of Water Treatment Membranes by resorting to mis-declaration and gross under valuation of an intent to evade appropriate customs duty. The intelligence further indicated that Sandeep Jain floated various firms in the name of his family members and other persons and had been importing

goods through various name-sake IEC holders.

3. Acting on the said information, searches were conducted at the office premises of Sandeep Jain and the statements of various persons were recorded. Show Cause Notice dated 29.07.2020 was issued to Sandeep Jain and various firms.

4. Respondent is a Customs Broker ["CB"]. An offence report dated 04.09.2020 was issued by the Joint Commissioner against the respondent alleging the role played by him in illegal import of Water Treatment Membranes.

5. Subsequently, a Show Cause Notice dated 29.11.2020 was issued to the respondent and an Inquiry Officer was appointed. After enquiry, Order-in-Original dated 21.06.2021, found the respondent in violation of Regulations 10(d) and 10(n) of the Customs Brokers Licensing Regulations, 2018 [**"CBLR"**] and revoked the Customs Broker (CB) License of the respondent. Security deposit of Rs. 75,000/- furnished by the respondent was forfeited and a penalty of Rs. 50,000/- was also imposed on the respondent.

6. Feeling aggrieved, respondent preferred an appeal before the learned CESTAT. CESTAT did not accept the findings of the Commissioner Customs and therefore set aside the order under challenge.

7. Revenue has preferred the present appeal against the aforesaid order passed by the CESTAT and has posited the following questions of law for our consideration:-

> "A) Whether the Hon'ble CESTAT has tendered the Impugned Order without appreciating the Statement of Shri Hoshiar Singh, Director of M/s NPL Impex Pvt. Ltd dated 04.07.2018 wherein it has been categorically admitted that the CB did not comply with the provisions of CBLR, 2018 and/or CBLR 2013 in relation to its dealings with Shri Sandeep Jain and associated namesake

importers including M/s Arvi International, M/s. Sunshine Enterprises, M/s. Swift Enterprises and M/s. Aahana International?
B) Whether the Hon'ble CESTAT failed to appreciate that the actions of the Respondent were completely contrary to and in violation of Regulations l0(d) and 10(n) of CBLR, 2018 and/or Regulation 11 of CBLR, 2013?
C) Whether the Hon'ble CESTAT was right in setting aside the Order-in-Original dated 21.06.202Ion the grounds that the adjudicating authority failed to appreciate the statements on record as a whole?
D) The appellant craves leave to add, alter or amend any substantial question of law raised above at the time of the hearing."

8. Learned Standing Counsel appearing for the appellant has submitted that CESTAT failed to appreciate the statement of Shri Hoshiar Singh, Director of the respondent, wherein, he admitted that he had not made compliance with the provisions of CBLR, 2018 in relation to his dealings with Sandeep Jain and other associated namesake importers. Relying upon his statement, it has been submitted that CB never made any effort to verify the premises of the importer companies and made all its dealings with Sandeep Jain, who is not even the authorized representative of the importer companies. It is also submitted that the consignments were delivered to the godown of Sandeep Jain and final bills were also raised and delivered at his residence/godown, even though, he was not the authorized representative of the importer companies. It is further argued that Regulation 10(n) of CBLR imposes an obligation upon the CB to verify the identity of his clients and their existence at the declared address which he has not done in this case in gross violation of Regulations and thus he has not discharged his obligations under the Regulations and has connived with Sandeep Jain inasmuch as no effort was made to check the credentials of importer companies. It is thus submitted that CESTAT has not duly appreciated the facts and

merits of the case and therefore CESTAT order is misplaced and not in consonance with law.

9. Challenge to the impugned final order is against the finding returned qua Regulation 10(d) and 10(n). Regulation 10(d) of the CBLR is reproduced as under:-

> "10(d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be."

10. Taking note that the Adjudicating Authority confirmed the violation of Regulation 10(d) on the basis that none of the IEC holders responded to the summons and even Sandeep Jain did not cooperate in the investigation, the observation of the CESTAT in Paras No. 12 & 13 is as under:-

> "12. We observe, from the record that Shri Sandeep Jain did appear before the investigating authorities. His statement was also got recorded even *prior* the issuance of show cause notice by DRI i.e. on 19.06.2018. Otherwise also, we do not find any provision either in the Customs Act or under CBLR, 2018 regulations which fixes a responsibility upon CB for ensuring the. attendance of importers and associated people before the investigation authorities. We also observe that the impugned show cause notice in Para 23 thereof records the fact that Shri Sandeep Jain was present and that he even had filed Writ Petition in Hon'ble Delhi High Court against the investigating authorities. We observe that these facts are mentioned in the Order-in-Original being reproduced verbatim, but the adjudicating authority has ignored the same. Thus we hold that the absence of the importers and Shri Sandeep Jain has been wrongly observed in the order under challenge and CB has wrongly been held responsible for the said absence.
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> 13. The same otherwise cannot be a ground to allege violation of 10(d) CBLR, 2018. We draw our support from the decision of this Tribunal in the case of **Parvath Shipping Agency Vs. Commissioner of Cusctoms (Gen.)**, **Mumbai, reported as 2017 (357) E.L.T 296 (Tri.-Muni)**. It is also apparent on record of order under challenge Para 7 thereof that appellant had provided all the requisite documents to the investigating authorities as and when those were asked initially in October, 2018. This statement was

even prior dated 04.07.2018 when he disclosed all the facts to the investigating agencies. In the light of these observations, we hold that appellant has not violated Regulation 10 (d) of CBLR, 2018."

11. Regulation 10(n) reads as under:-

> "10(n) Verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information."

12. The Adjudicating Authority found the CB in violation of Regulation 10(n) on account of the reason that importers were not traceable during investigation and the firms were not existing at the declared addresses. After considering the submissions, CESTAT recorded the following findings:-

> "18. Further perusal of statement of appellant himself reveals that he had met the proprietors/IEC holders of four impugned importing firms M/s. Arvi International, M/s. Sunshine Enterprises, M/s. Swift Enterprises and M/s. Durga Enterprises. He deposed that KYC of four of these firms was done by him. For completing the said procedure, he met four of the IEC holders at his office, verified all original documents i.e. IEC, GST, Aadhaar Card, PAN Card, cancelled checks and bank statements. He stated that he met all these IEC holders once in presence of Shri Sandeep Jain at his office itself who was introduced by the importers themselves to be their representative. Shri Sandeep Jain takes care of all the activities with respect of these firms and as far as he knows these firms were in the name of the employees or relatives of Shri Sandeep Jain.
> 19. We hold that the statement of appellant proves the compliance of obligation 10(n). We, however, observe that this deposition of appellant has been wrongly interpreted by the adjudicating authority to confirm violation of 10(n) of CBLR against him. We observe that the adjudicating authority has picked up the statements in parts to confirm to the allegations despite that all statements as got recorded during investigation, when are read as a whole and in the light of the other statements so recorded, it comes as a clear corroborative deposition that the appellant had met the IEC holders, in person. They handed over to him all such documents as are required under KYC guidelines circular and they acknowledged Shri Sandeep Jain to be their representative for all dealings with appellant/CB with respect to the imports to be made by these IEC

harder. Once this is the fact then mere knowledge that Shri Sandeep Jain was the representative of the importing firms does not amount to the violation of 10(n) especially when the IEC holders were found available.

20. Further, we are of the opinion that from the statements on record there is apparent consensual arrangement between Shri Sandeep Jain and the IEC holders which has nowhere been barred under CBLR, 2018. In any circumstance CB/appellant cannot be held responsible for the reason that admittedly he is not the party to the alleged mis-declaration and undervaluation nor department could produce any evidence that the appellant had been a beneficiary of this arrangement.

21. Though with respect to M/s. Swift Enterprises and M/s. Sunshine Enterprises, Shri Sandeep Jain has denied any association but it is apparent in the statement of the appellant that all the transactions with respect to M/s. Sunshine Enterprises as well as M/s. Swift Enterprises were being taken core by Shri Sandeep Jain only. The export documents with respect to these two firms also, Shri Sandeep Jain only used to mail to the appellant, in the same way he used to mail it for the other importing firms. The payment also used to go to the respective accounts as were disclosed by Shri Sandeep Jain / the IEC holders. Goods for both these firms also were coming from the same exporters i.e. Mr. Tony Pan and Ms. Samanta of China through their firm M/s. CixiKochin Water Filtration Inc, China. The exports for these two firms also have been made during the same proximity of time and imported goods have been transported through the same transporter Vijay Transport Company to the same godown at Paschim Vihar and Mundka Village in Delhi where used to go the imported goods of remaining importing firms. These godowns have been acknowledged by Shri Sandeep Jain. In the given circumstances irrespective Shri Sandeep Jain is admittedly the beneficiary of imports made by six importers but the fact remains is that all importers have requisite documents, all of them are actually existing and it was a consensual arrangement between them and said Shri Sandeep Jain with no benefit to the appellant out of the said arrangement. Appellant otherwise was admittedly having all the requisite documents of these importing firms which he admittedly produced before the department. Thus, we hold that the appellant has not violated Regulation 10(n) of CBLR, 2018."

13. CESTAT thus found that CB had met the IEC holders in person and they handed over the documents as are required under KYC guidelines and they themselves acknowledged Sandeep Jain to be their representative. CESTAT rightly observed that the Regulations

nowhere bar such kind of consensual arrangement between the IEC holders and Sandeep Jain. CESTAT has also noted that on behalf of the importing firms, Sandeep Jain had handed over the export documents and the payments also used to go to the respective accounts as disclosed by Sandeep Jain/IEC holders. CESTAT concluded that all the importers were having requisite documents and they were in existence and appellant had not reaped any benefit out of the arrangement between the importers and Sandeep Jain.

14. We find that the order passed by the CESTAT is based on sound reasoning and due application of principles of law and thus on an overall consideration of the above, we find ourselves unable to discern any substantial question of law that may be said to arise upon the appeal.

15. Appeal shall consequently stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

23 SEPTEMBER 2024
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