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

\+ CUSAA 45/2024 & CM APPL. 27900/2024 (Stay)

COMMISSIONER OF CUSTOMS AIRPORT AND GENERAL .....Appellant

Through: Mr. Gibran Naushad, Senior Standing Counsel

versus

M S DURGA LINK LOGISTICS PVT LTD .....Respondent

Through: Ms. Reena Rawat & Ms. Jyotika Sharma, Advocates

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

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

% **16.07.2024**

1. Revenue impugns the final order passed by Customs Excise & Service Tax Appellate Tribunal [‘**CESTAT**’], Delhi dated 07.11.2023 and which has come to record the following conclusion in para 9 & 10 of the order impugned as under:-

> “9. In the light of the above discussion, we are not in conformity with the findings as far as Regulation l0(d), l0(j), l0(k) and l0(q) of CBLR, 2018 are concerned. The order under challenge is therefore set aside to this extent. However, the findings in the impugned order with respect to violation of Regulation l0(a), l0(b) and l0(e) are hereby confirmed. The order to this extent is upheld.
>
> 10. From the findings as arrived above, we are of the view that though the appellant is held guilty of the violations under Regulation l0(a), l0(b) and l0(e) but these are not so grave as to justify the revocation of the customs license. These violations are observed to be the consequence of negligence on part of the appellant custom broker. Depriving him of his livelihood is held to be disproportionate in the light of given findings. Hence, we are of the opinion that ends of justice would be met if the order of forfeiting security deposit and imposing penalty is upheld and as far as the order of revocation of license is concerned, the same be set aside. We draw our support from the decision of this Tribunal

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> in the case of **R.S.R. Forwarders Vs. Commissioner of Customs, New Deihi reported as 2018 (364) E.L.T. 541 (Tri.-Del.)** and also from the decision of **N.T. Rama Rao & Co. Vs. Commissioner of Customs, Chennai VIII reported as 2020 (371) ELT 789 (Tri.-Chennai)**. In the light of the above discussion, the order under challenge stands modified to the above discussed extent. The appeal resultantly stands partly allowed."

2. The factual background insofar as it is necessary for deciding the controversy at hand is that based on intelligence received, the goods covered by three shipping bills dated 23.01.2021, 11.02.2021 and 16.02.2021 filed by M/s. Batra Enterprises were examined by the Officers of SIIB, ICD (Export), Tughlakabad, New Delhi on 29.01.2021. The aforesaid shipping bills were filed by the respondent herein as Customs Broker (CB) for the Exporter.

3. The investigation, inter alia, revealed that respondent had allowed the freight forwarder i.e. M/s. Toshnek International, to use its credentials to file documents instead of filing the documents itself. The documents were uploaded by the freight forwarder sharing inflated quantities of Pan Masala while the actual documents filed in the docket that was shared had lesser quantities. This was done to claim excess IGST refund.

4. The Order-in-Original bearing No. 59/2021 was rendered in relation to the violations of Section 114 (iii) and 114AA of the Customs Act, 1962 by the exporter and its employees, freight forwarders and the respondent herein.

5. On 19.01.2022, a Show Cause Notice bearing No. 04/2022 was served upon the respondent for violation of Regulations 10(a), 10(b), 10(d), 10(e), 10(j), 10(k) and 10(q) of Customs Broker Licensing Regulations ("CBLR"), 2018.

6. The Order-in-Original dated 07.07.2022 found the respondent

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in violation of Regulations 10(a), 10(b), 10(d), 10(e), 10(j), 10(k) and 10(q) of CBLR, 2018, and revoked, the CB License of the respondent.

7. Being aggrieved, the respondent preferred an appeal before the CESTAT. CESTAT did not accept the findings of the Commissioner of Customs as far as Regulations 10(d), 10(j), 10(k) and 10(q) of CBLR are concerned. The order under challenge was therefore set aside to that extent. However, the findings with respect to violation of Regulations 10(a), 10(b) and 10(e) were confirmed.

8. CESTAT upheld the order of forfeiture of the security deposit and imposition of penalty but set aside the order of revocation of license.

9. Revenue, therefore, has preferred the instant appeal and has proposed the following questions of law for our consideration:-

> "A) Whether the Hon'ble CESTAT failed to appreciate that the actions of the Customs Broker, i.e. the Respondent herein, clearly fall within the ambit of the violations stipulated by Regulations 10(d), 10(j), 10(k) and 10(q) of CBL 2018?
> B) Whether the Impugned Order rendered by the Hon'ble CESTAT is inherently contradictory inasmuch the Hon'ble CESTAT confirmed the violations under Regulations 10(a) and 10(e) but did not confirm the violation under Regulation 10(d)?
> C) Whether the Hon'ble CESTAT has rendered the Impugned Order without taking into account the contents of the statements on record and without appreciating fully the facts and circumstances of the case?
> D) Whether the Hon'ble CESTAT was correct in setting aside the Order-in-Original bearing No. 43/ZR/Policy/2022 dated 07.07.2022 in relation to violations stipulated by Regulations 10(d), 10(j), l0(k) and 10(q) of CBLR 2018?"

10. Learned Standing Counsel appearing for the appellant has submitted that there is inherent inconsistency in the impugned order, inasmuch as, once CESTAT finds the respondent liable under Regulation 10(a), 10(b) & 10(e), it ought to have held the respondent liable for infraction of Regulation 10(d), particularly in the light of the

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findings of the CESTAT that there was no authorization on the part of the respondent pertaining to the freight forwarder and the CESTAT having found that the respondent did not undertake due diligence on the packing lists and the allied documents.

11. It is also submitted that respondent/Custom Broker by not exercising due diligence and being alert about the documentary records in relation to the activities of the exporter has violated Regulations 10(d), 10(j), 10(k) and 10(q) of CBLR, 2018.

12. The challenge to the impugned final order is against the finding returned qua Regulations 10(d), 10(j), 10(k) and 10(q). Regulation 10(d) of the CBL, 2018 reads as follows:-

> "**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 or Assistant Commissioner of Customs, as the case may be."

13. CESTAT took note of the statement of the exporter acknowledging that the invoice cum packing lists were prepared by their staff Ms. Akanksha Mishra, Accountant and that due to the clerical mistake on her part, the exporter also signed the same due to oversight and documents with the said ignored clerical mistake were forwarded to their CHA for filing the check list. The order also notes that the CHA approved the same due to oversight. The CESTAT also took note of the order dated 24.06.2022, passed in appeal against the issuance of Show Cause Notice wherein it was held that "there is no evidence that the appellant was aware of mismatch between the actual quantity of Pan Masala and still they declared the wrong quantity in shipping bills. The check list based upon documents provided by the exporter which was filed by the respondent (Custom Broker) was also approved by the exporter. Thus, it cannot be held that the appellant

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deliberately and intentionally made wrong declaration." CESTAT concluded from the statement of exporter that there is nothing on record which may prove that Customs Broker acquired any knowledge about any intentional change in the documents forwarded by him.

14. As regards mis-declaration of quantity allegations, CESTAT observed as under:-

> "We observe from the said Order-in-Appeal that the goods were duly sealed by the exporter after obtaining self sealing permission for the department. Hence, the appellant/CB had no occasion to verify the quantity and weight of the goods sealed. The appellant had no means to verify item wise quantity or weight of the goods and in fact as, customs broker, he is not required to do so. With these findings, the penalty as was imposed upon the appellant under Section 114 (iii) was also set aside. Once there was no knowledge with the appellant about the alleged mis-declaration, once it was a case of clerical mistake and over sightedness while preparing invoice/packing list no question arises for informing anything to the department. Violation of 10(d) there is not sustainable."

15. It is thus manifest that the mistake in the documents was committed by the staff of the exporter and not by the Customs Broker, who had no knowledge of the mis-declaration and thus cannot be held guilty for infraction of Regulation 10(d) for not bringing the matter to the notice of the Department.

16. Regulations 10(j), 10(k) and 10(q) of CBLR, 2018 reads as follows:-

> "**10(j)** not refuse access to, conceal, remove or destroy the whole or any part of any book, paper or other record, relating to his transactions as a Customs Broker which is sought or may be sought by the Principal Commissioner of Customs, as the case may be.
> **10(k)** maintain up to date records such as bill of entry, shipping bill, transhipment application, etc., all correspondence, other papers relating to his business as Customs Broker and accounts including financial transactions in an orderly and itemized manner as may be specified by the Principal Commissioner of Customs or Commissioner of Customs or the Deputy Commissioner of Customs or Assistant Commissioner of Customs as the case may be.

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> **10(q)** co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees."

17. The CESTAT found nothing on record to show that the Customs Broker had refused access, concealed or removed or destroyed the whole or any part of the documents relating to the impugned shipping bills. No sufficient evidence was found to show that G Cardholder of the CB had deposited the docket file to the scanning department of the Export Shed. According to the CESTAT, Customs Broker is not the custodian of the docket file. The CESTAT also took note that neither the G Cardholder nor F Cardholder of the appellant were aware about having different packing list in the file retaining the office of the respondent than the one as was sent to the Export Shed as docket file. The CESTAT also took note that it was the Customs Broker who ensured the presence of Saurabh Batra, partner of the exporter, their employee Ms. Akanksha Mishra and freight forwarder Sh. Pran Shankar Jha before the customs authorities. Not only this, he also got examined his authorized representative Prasanta Kumar Samanta, F Cardholder and Mr. Om Prakash Kashyap, G Cardholder, not only once but on several occasions. Hence, the CESTAT found no infraction of Regulations 10(j), 10(k) and 10(q) of the CBLR, 2018.

18. CESTAT also took note of the principle of proportionality of punishment vis a vis infraction made by the Customs Broker, while setting aside the order of revocation of license.

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19. We find that the impugned order 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. It shall consequently stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 16, 2024/*RM*

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