OD-24

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/830/2022

M/S. MALLICK CLEARING AGENCY AND ANR.
-VS-
UNION OF INDIA AND ORS

BEFORE:
THE HON'BLE JUSTICE SMITA DAS DE
Date : July 4, 2025.

Appearance:
Mr. Protyush Chatterjee, Adv.
... for the petitioners

Mr. Vipul Kundalia, Sr. Adv.
Mr. Tapan Bhanja, Adv.
... for the Custom Authority

The Court : The writ petitioner has filed the instant writ challenging, *inter alia*, the Customs Broker Circular No. 41/2021 dated 30th June, 2021 passed by the Assistant Commissioner of Customs, Customs Broker Section.

Apropos the facts of the case is that the writ petitioner had filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal, Kolkata being Cus Appeal No. 79329 of 2018 challenging, *inter alia*, the order dated 26.07.2018 passed by the Commissioner of Customs (Airport & Administration Kolkata) wherein the authority concerned had revoked the CHA Licence of the petitioner under regulation 18 of CBLR, 2013 with forfeiture of security deposit under regulation 18 of CBLR, 2013 (New Regulation 14 of CBLR, 2018). Being aggrieved by the decision of the

Commissioner of Customs regarding the revocation of CB licence and forfeiture of the security deposit, the writ petitioner preferred an appeal before the Appellate Authority being the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata (hereinafter referred to as the “said Tribunal”). After hearing the matter at length, the Tribunal was pleased to allow the appeal by setting aside the impugned order dated 26.07.2018 holding inter alia “that revocation of the license of CHA is disproportionate of the offence committed by them under the various provisions of CBLR 2013 as amended. So is the case of forfeiture of the Security Deposit. But in the fact and circumstances of the case, we also find that the appellant deserves to be cautioned and vigilant in future for taking appropriate pre-caution while entering into the business through intermediaries.”

Being aggrieved by such order, Custom Department preferred an appeal before this Hon’ble High Court under Section 130 of the Customs Act, 1962 (hereinafter referred to the “said Act”) being CUSTA/13/2020 wherein the appeal was admitted on 13th January, 2021 on the following substantial questions of law :-

i) Whether setting aside of the order in original by the Learned Tribunal is justified when the respondent has not followed any of the condition mentioned under Regulation 11(a), 11(d), (k) and 11(n) of the CBLR 2013?

ii) Whether the Learned Tribunal’s order is correct when it is admitted and apparent on the face of the record that the respondent has not obtained any job clearance from the exporter and the authorization has been obtained through intermediaries after filing of the shipping bill?

After careful consideration of the instant appeal, the Division Bench of this Hon'ble High Court, presided over by the Hon'ble Chief Justice of this Hon'ble Court dismissed the appeal of the department and answered the substantial questions of law against the revenue.

The issue under challenge being the Circular (supra) has been kept alive only due to the observation made by the authority concerned that said licence shall remain inoperative till the finalization of the appeal filed by the Custom Department before the Hon'ble High Court being CUSTA/13/2022.

Since the appeal in question has already been decided in favour of the writ petitioner, therefore, the instant writ petition being WPO/830/2022 warrants no interference as the same has lost its force and has become infructuous accordingly in the light of the judgment passed in CUSTA/13/2020.

Accordingly, WPO/830/2022 is dismissed as infructuous.

(SMITA DAS DE, J.)

RS