



2024:DHC:5354-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on: 15 July 2024**
Judgment pronounced on: 22 July 2024

+ CUSAA 81/2023 & CM APPL. 56889/2023

ARADHYA EXPORT IMPORT CONSULTANTS
PVT LTD

.....Appellant

Through: Mr. Pradeep Jain, Mr.
Shubhankar Jha and Ms. Harneet
Pushkarna, Advs.

versus

COMMISSIONER OF CUSTOMS (AIRPORT AND
GENERAL), NEW CUSTOMS HOUSE
NEW DELHI

.....Respondent

Through: Mr. Harpreet Singh, SSC with
Ms. Suhani Mathur, Adv.

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

J U D G M E N T

YASHWANT VARMA, J.

1. The appellant impugns the final order passed by the **Customs, Excise And Service Tax Appellate Tribunal**¹ dated 03 October 2023 and which has come to record the following conclusions in paragraph 21 of the order impugned before us:

“This Tribunal in the case of **M/s Swastic Cargo Agency Limited vs. Commissioner of custom 2023 (2) TM 677 (Tribunal-Delhi)** has held that this being a case of facilitating the fraudulent exports carried out and it being duly proved during the enquiry proceedings that the exporter were non-existent. CB is rightly held to have failed to verify the correctness of the document thereby violating its

¹ CESTAT



obligation as a customs broker even forfeiture of security deposit has rightly been ordered. In the light of the obligations conferred upon the CB by the Regulations CBLR, 2018 and the proven fraudulent act and conduct of CB on record, we hold that suspension of his licence is quite a proportionate penalty. The order under challenge is upheld to this extent. In the light of the entire above discussion, holding that there is no violation of Regulation 10(e) has been set aside but violation of Regulation 10(n) of CBLR, 2018 by the appellant has been confirmed with confirmation that CB licence, in given circumstances is proportionate penalty. Hence, the appeal stands party allowed and cross-objections stands allowed, consequently licence stands suspended.”

2. The appellant was a **Customs Broker**² which was granted a licence on 12 April 2017. Apart from the aforesaid licence which was granted to it by the Commissioner of Customs, New Delhi, it also held a separate CB Licence issued by the Mumbai Commissionerate. The respondent on the basis of information received sought to investigate transactions undertaken by M/s Fine Overseas and against whom it was alleged that it had fraudulently availed of **Integrated Goods and Services Tax**³ refund as well as drawback benefits.

3. On the basis of the inquiry and investigation which was undertaken, the Principal Commissioner of Customs on 07 September 2020 directed the withdrawal of permission granted to the appellant in terms contemplated under Regulation 7(3) of **Customs Brokers Licensing Regulations, 2018**⁴. The respondent essentially alleged that the appellant was liable to be held guilty of infraction of Regulations 10(e) and 10(n) of CBLR 2018.

4. Pursuant to the above the matter was examined and heard by the Commissioner of Customs who by an order of 15 September 2020

² CB

³ IGST

⁴ CBLR 2018



suspended the CB License held by the appellant. Subsequent to the post decisional hearing afforded to the appellant, a final order came to be passed on 05 October 2020 revoking the Commissioner of Customs revoking the suspension that had operated. Aggrieved by the aforesaid the respondent approached the CESTAT by way of an appeal.

5. It is that appeal which has ultimately come to be allowed by CESTAT. It becomes relevant to note that quite apart from the various contentions which were addressed on merits, we find that the order impugned before us is liable to be set aside for the following reasons.

6. As is manifest from a reading of paragraph 21 of the impugned order, the CESTAT upon finding that the appellant had facilitated fraudulent exports proceeded to observe that suspension of the license of the appellant was a “proportionate penalty”. It came to the aforesaid conclusion despite having found that no violation of Regulation 10(e) had been made out. It had on an ultimate analysis come to the conclusion that the appellant was guilty of infracting Regulation 10(n).

7. However, the CESTAT has clearly committed a patent illegality in construing suspension to be a penalty which is otherwise contemplated under the CBLR 2018. It is pertinent to note that suspension is a measure which can be adopted by the respondents in situations where they be of the opinion that immediate action is required to be taken against a CB pending investigation and inquiry as is contemplated under Regulation 16. It becomes further pertinent to note that the penalties which are contemplated under the CBLR 2018 stand enumerated in the following terms:

“18. Penalty-

(1)The Principal Commissioner or Commissioner of Customs may impose penalty not exceeding fifty thousand rupees on a Customs



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Broker or F card holder who contravenes any provisions of these regulations or who fails to comply with any provision of these regulations.

(2) The Deputy Commissioner or an Assistant Commissioner of Customs may impose penalty not exceeding ten thousand rupees on a G card holder who contravenes any provisions of these regulations in connection with the proceedings against the Customs Broker.

(3) The imposition of penalty or any action taken under these regulations shall be without prejudice to the action that may be taken against the Customs Broker or F card holder or G card holder under the provisions of the Customs Act, 1962 (52 of 1962) or any other law for the time being in force.”

8. As is manifest from the aforesaid discussion, the CESTAT has in effect handed down an order as a result of which an order of suspension would continue in perpetuity. The impugned is thus rendered unsustainable on this score alone.

9. While the above would have been sufficient to warrant the order impugned before us being set aside, we have also examined the appeal from the angle of a purported violation of Regulation 10(n) of the CBLR 2018. Our attention in that respect was drawn to the order dated 05 October 2020 passed by the Commissioner of Customs which had duly taken note of the statement of Shri Zoheb Moin, the authorised representative and manager of M/s Fine Overseas, which had been recorded on 04 April 2019 under **Section 108 of the Customs Act, 1902**⁵. The same is extracted hereinbelow:

“Statement of Shri Zoheb Moin, authorised representative of M/s. Fine Overseas was recorded on 04.04.2019 under Section 108 of the Customs Act, 1902, wherein he, inter-alia, stated that the official address of the M/s. Fine Overseas is Barwalan, Shiv Shakti Ganga Mandir, Moradabad-244001 and the said office is on rental basis and he submitted the rent agreement; he is a Manager of said firm i.e. M/s. Fine Overseas (IEC-BREFS9644C) and Shri Sirajul Kallu is the Proprietor of the said firm. Further, he stated that the GSTN No. of M/s. Fine Overseas is 09BRJEPS9644C1ZF and annual turnover

⁵ 1902 Act



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of financial year 2017-18 is around 0.8 to 1 Crore; and they sale products in UAE and no products are sold in the domestic market; and there are 2 consignee/buyers of the company in UAE, i.e. (1). Anwar-Alnanda General Trading LLC and (2) PAM Global General Trading FZE for the exported goods; and they get the purchase orders via Phone and mail and supply the goods on credit of 180 days and all the payments from purchaser are received via bank i.e. M/s. Kotak Mahindra Bank Account No.972826182 and Allahabad Bank Current Account No. 50442121872; and they have received a part payment of USD 4100\$ (In Rs.3066513.75) in current Account in M/s. Kotak Mahindra Bank on 01.11.2018 vide remittance transaction advice no. 0144XAR18141149 from M/s. Pam Global General Trading FZE; and they are merchant exporter and they purchase goods from various traders i.e. M/s. Sai Enterprises, M/s. Sai Traders and M/s. S.D. Trading and they make payments through cheques and RTGS from the above mentioned banks; and they filed/exported 08 Shipping Bills via Customs Broker Ms. Aradhya Export Import Consultant Pvt. Ltd. in the financial year 2018-19; and they exported the goods i.e. Clutch plates at the rate of Rs.850/ and the Glass item Rs. 250/- to 400/- with 15% margin; and they file regular GST returns and taxes of M/s. Fine Overseas (IEC-BREPS9644C), and submitted the Supplier's tax invoices. Supplier's e-way bills, Supplier's return and Transporter documents for the exported goods from JNCH Port. Further, he inter-alia stated that they adjust the IGST on export against the Input Tax Credit (ITC) received against purchased made from different suppliers of M/s Fine Overseas and he submitted the Electronic Credit Ledger Report from August 2018 to September, 2018; and stated that the company was formed in July, 2018 but they did not yet file the Income Tax return of M/s. Fine Overseas (IECBREPS9641C).”

10. A perusal of the aforementioned statement reveals that Shri Zoheb Moin had duly placed on record the official address, rent agreement, **Importer Exporter Code⁶**, **Goods and Services Tax Identification Number⁷** and the annual turnover for **Financial Year⁸** 2017-18 of M/s Fine Overseas as well as well as the details pertaining to its business activities.

11. At this juncture, we also deem it apposite to take note of

⁶ IEC

⁷ GSTIN

⁸ F.Y.



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Regulation 10(n) which reads as follows:

“10. Obligations of Customs Broker-

xxx

(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. A reading of Regulation 10(n) reveals that the CB would not be in violation of its obligations if he has relied on “reliable, independent, authentic documents, data or information” such as the IEC and GSTIN which are issued by the **Director General of Foreign Trade**⁹ and GST Officers respectively. Furthermore, Regulation 10(n) does not necessitate a physical verification of the veracity of the exporter. We therefore find merit in the contention of the appellant that the CESTAT committed a manifest illegality in holding that the appellant was guilty of having failed to discharge the obligation placed in terms of Regulation 10(n) of CBLR 2018.

13. It is thus apparent that the judgment handed down by the CESTAT is patently erroneous and cannot be sustained.

14. We accordingly allow the instant appeal and set aside the order of the CESTAT dated 03 October 2023.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 22, 2024

rsk

⁹ DGFT