



\$~182

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

+ CUSAA 63/2024

VIJENDRA SINGH

.....Appellant

Through: Dr. Ashutosh, Mr. J.B. Sharma
& Mr. Dharambir Singh, Advs.

versus

COMMISSIONER OF CUSTOMS

.....Respondent

Through: Ms. Arunima Dwivedi, SSC
along with Ms. Pinky Pawar
and Mr. Aakash Pathak, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

10.07.2024

%

1. This appeal under Section 130 of the Customs Act, 1962 [**'Act'**] questions the correctness of the decision rendered by the Customs, Excise & Service Tax Appellate Tribunal [**'CESTAT'**] dated 10 January 2024. In terms of the said order, the CESTAT has on an ultimate analysis of the facts and material existing on the record, affirmed the view taken by the Commissioner of Customs [**'Commissioner'**] who finally absolved the appellant from the spectre of revocation of license and confined the penal action to the imposition of a penalty of INR 50,000/-.

2. Before us it was principally argued that although the license of the appellant had been initially suspended, the suspension subsequently came to be revoked by an order of 09 March 2017. It was the submission of learned counsel for the appellant that in the absence of any new or fresh material having been gathered in the



course of the inquiry which was undertaken under the Customs Broker Licensing Regulations, 2013 [and now substituted by the Customs Broker Licensing Regulations, 2018 hereinafter to be referred to as the ‘**Regulations**’], the imposition of penalty was unjustified.

3. Having gone through the order impugned, we note that both the Commissioner as well as the CESTAT have taken note of the statement of Shri Shashikant Maruti Pol, an employee of the appellant, and had found the following facts which emerged from the record:-

“6. In the grounds of appeal, the appellant had submitted that the order is violative of principles of natural justice since none of the grounds taken by him were appreciated and the order has been passed mechanically. We do not find any substance in the submission as the records show that sufficient opportunity has been granted to the appellant at all the stages and he has submitted detailed representation dated 22.02.2017 and response dated 28.04.2019 to the show cause notice and submitted reply dated 4.07.2019 to the Inquiry Report and has been granted personal hearing. The Adjudicating Authority had considered the statements of the employee of the Customs Broker and also of Shri Prashav Himanshu Shah, Proprietor of M/s. Pacific Imports, whereby the compliance of the Regulations had been appreciated. We are of the opinion that in the proceedings conducted under the Regulations the principles of natural justice have been followed and the findings are justified on the basis of the material on record.

7. The main submission raised in the grounds of appeal is that after the earlier order dated 9.03.2017, whereby the suspension of his license was revoked, there is no fresh material on record and no substantial evidence against him to establish the contravention of the provisions of the Regulations. In the absence of further material, it is not proper to reverse the findings of the Commissioner. From the paragraph quoted above from the order of the Commissioner on the earlier occasion, we find that he has specifically observed that the appellant has prima-facie contravened the provisions of Regulation 11(n) of CBLR 2013, (equivalent to Regulation 10(n) of CBLR 2018) as his employee Shashikant Maruti Pol had accepted in his voluntary statement that the bill of entry dated 7.12.2016 had been filed by him without verifying KYC norms and that the import documents had been received by him from Shri Mehul Shah through courier and, therefore, the appellant had not verified the antecedent, identity and functioning of his client, M/s Pacific Imports. Further, the Commissioner left the liberty to proceed on conclusion of the



investigation and on availability of all facts of the case, penal action in terms of provisions of CBLR, 2013 be taken against the Customs Broker. It is clear that violation of 11(n) was noted by the Commissioner even at that stage. In that view it cannot be said that on the basis of the inquiry report no further action is maintainable. Under the Regulations, the immediate action required in such like cases is to pass a suspension order to restrain the Customs broker to act any further on the basis of the license. It is thereafter that the Regulation provides for detailed investigation, by holding an enquiry and then proceed further as provided therein.

8. In the present case, the Inquiry Officer considered the statements recorded under Section 108 of the Customs Act of Shri Prashv Himanshu Shah, proprietor of M/s Pacific Imports, Shri Mehul Shah, Shri Ketur Bhavsar and Shri Shashikant Maruti Pol, employee of the appellant in the light of the various provisions of the Regulations which were alleged to have been violated by the appellant and found the same to be proved. In his statement, Shri Prashv Himanshu Shah stated that his uncle Shri Mehul Shah was using the IEC for import of goods and is doing business in the name of his IEC and he does not have any knowledge about import and export of goods. In other words, he is a dummy IEC holder and Shri Mehul Shah is the actual importer.”

4. On an ultimate analysis of the aforesaid, the CESTAT found that Regulations 10(d) and 10(e) had been breached. It was in the aforesaid backdrop that CESTAT ultimately came to the following conclusion:-

“13. We are therefore of the considered opinion that the appellant has failed to comply with the obligations under the Regulations as discussed *above*. This now brings us to the penalty to be imposed on the appellant. The regulations provide for various penalties which can be imposed on the customs broker for violation of the provisions thereof. Regulation 17 provides for revocation of the license of a customs broker and for forfeiture of whole or part of the security. Regulation 18 provides for imposing penalty on the customs broker not exceeding Rs.50,000/-. The punishment of revocation of license has been held to be a very harsh punishment as it takes away the livelihood of a person on absolute basis. The Commissioner in the impugned order has taken a very fair and balanced *view* in refraining to order for revocation of licence and merely ordered for forfeiture of the security amount and imposing penalty of Rs.50,000/-, which would act as a deterrent to the appellant to be more cautious and diligent in executing his work.”



5. As is manifest from the above, the CESTAT found that the Commissioner had taken a balanced view in the matter and desisted from proceeding to revoke the license of the appellant which otherwise would have been warranted. It appears that in order to balance the equities, the Commissioner ultimately came to the conclusion that a forfeiture of the security deposit and the imposition of a penalty of INR 50,000/- would suffice.

6. In our considered opinion, the mere fact that the suspension of license had come to be revoked, cannot possibly be viewed as restricting the respondents from proceeding further in accordance with Regulation 17. As is manifest from the provisions made for the suspension of license, the same is liable to be invoked where the authorities be of the opinion that immediate action is warranted. Such an order of suspension is liable to be either revoked or continued dependent upon the circumstances which may prevail and as contemplated under Regulation 16(2).

7. However, and merely because the suspension of that license was revoked, the same would not interdict the conclusion of the inquiry for imposition of penalty as contemplated in terms of Regulation 17.

8. We consequently find no ground to interfere with the view as expressed by CESTAT. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 10, 2024/RW