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

% *Date of Decision : 29.10.2024*

\+ **<u>CUSAA 82/2024 & CM APPL. 63876-77/2024</u>**

COMMISSIONER OF CUSTOMS (AIRPORT AND GENERAL) NEW DELHI

.....Appellant

Through: Mr Aditya Singla, SSC, Mr Ritwik Saha and Ms Medha Navani, Advocates for CBIC

versus

M/S SHAKTI CARGO MOVERS

.....Respondent

Through: Mr Piyush Kumar, Ms Shikha Sapra, Ms Reena Rawat, Mr Dhruv Sharma, Mr Mohd Yasin, Mr Sufyan Hasan, Mr Adarsh Pandey, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

<u>VIBHU BAKHRU, J.</u> (*ORAL*)

1. The Revenue has filed the present appeal, impugning an order dated 29.04.2024 (hereafter *the impugned order*) passed by the Central, Excise and Service Tax Appellate Tribunal (hereafter *CESTAT*) in Customs Appeal No. 50122/2024.

2. The respondent is a Custom Broker and had filed the aforesaid appeal before the learned CESTAT impugning the order-in-original dated 17.10.2023, whereby it's Customs Broker License (hereafter *licence*), was

revoked. In addition, the Commissioner of Customs (hereafter *CoC*) had also imposed a penalty of ₹50,000/-.

3. The aforesaid punitive action was taken by the CoC on account of certain exports facilitated by the respondent which were made by the exporters, who are allegedly found to be non-existent at their principal place of business. The Directorate General of Analytics and Risk Management (hereafter *DGARM*) analysed the data available with it and identified certain persons whose registration under Central Goods and Services Tax Act, 2017/State Goods and Services Tax Act, 2017 (hereafter *CGST Act/SGST Act*) appeared to be suspicious. Physical verification of the said tax payers was conducted and it was found that some of the taxpayers or persons registered under the CGST Act/SGST Act were not in existence at their declared place of business. Some of these taxpayers had been issued Importer Exporter Codes (IEC) by the Directorate General of Foreign Trade (DGFT) and goods had been exported in their names. DGARM also identified the Custom Brokers that had facilitated the export goods from such persons and forwarded the data to the Customs Authorities.

4. The respondent was identified as one of the Custom Brokers, who had facilitated export of goods from such a person, who although registered under the CGST Act/SGST Act was found to be non-existent at its declared place of business. Based on the aforesaid information, a Show Cause Notice dated 24.04.2023 (hereafter *SCN*) was issued to the respondent and thereafter, an enquiry was conducted.

5. The respondent's license was suspended with effect from 13.02.2023.

And, the order of suspension of licence was confirmed on 02.03.2023. The aforesaid proceedings culminated in the order in original dated 17.10.2023.

6. The CoC found that the respondent had fallen foul of complying with Section 10(n) of the Customs Broker Licencing Regulation, 2018 (hereafter CBLR). The said regulation is set out below:-

> "**10. Obligations of Customs Broker**.—A Customs Broker shall –
> (a) to (m) *** ***
> (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;
> (o) to (q) *** ***."

7. It is the case of the respondent that it had performed its functions diligently and had obtained the KYC documents from the concerned exporter namely M/s Shree Enterprises. However, the CoC found to the contrary and held that the respondent had not collected the relevant KYC documents as required. Accordingly, the CoC proceeded to pass the said order in original dated 17.10.2023, revoking the respondent's licence.

8. It is material to note that the allegation against the respondent was confined to the exports made by M/s Shree Enterprises. The respondent had facilitated the said entity to export goods (readymade garments) under 132 (one hundred and thirty-two) shipping bills during the period from February 2021 to May 2021.

9. The respondent had obtained documents such as partnership deed,

rent agreement from 02.01.2020 to 01.12.2020, electricity bill, PAN number of the constituent partners of M/s Shree Enterprises, and the registration deed of M/s Shree Enterprises. On the aforesaid basis, the respondent contended that it had obtained the necessary documents for verifying that M/s. Shree Enterprises was extant at the declared place of business. The respondent also claimed that it had physically verified the existence of the exporter. However, the CoC faulted the respondent, essentially, on the ground that the respondent had not physically verified the premises of the said exporter (M/s Shree Enterprises) prior to the export of the goods in question. The CoC examined the documents produced by the respondent and observed that "there is sufficient indication that the so-called business address was dis-functioning and the claims that the Custom Broker physically verified the address are false". The respondent was also faulted for not producing any telephone bills.

10. The learned CESTAT examined the controversy and found that the respondent had taken reasonable steps to verify that M/s Shree Enterprises was functioning at the given address at the material time. The learned CESTAT noted that none of the documents, which were produced by the respondent were found to be forged or fabricated.

11. Admittedly, the DGFT had issued IEC to M/s Shree Enterprises. At the material time, the GST registration for the said entity was also valid. The learned CESTAT referred to Section 79 of the Indian Evidence Act, 1872, which posits a presumption of genuineness of documents, that have been certified by an officer of the Central Government. The documents evidencing the issuance of IEC as well as the registration under the CGST

Act/SGST Act (allocation of Goods and Service Tax Identification Number – GSTIN) were undeniably documents, which emanated from the government authorities and therefore, the respondent cannot be faulted in relying upon the same. There is also no dispute that the documents such as the rent agreement and the electricity bill that were collected by the respondent from the entity in question and furnished to the CoC, are genuine documents. There are no allegations that the said documents are forged or fabricated.

12. The CoC had faulted the respondent for accepting such documents on the ground that the rent agreement had expired on 01.12.2020 and the goods were exported thereafter from February 2021 to May 2021. Similarly, the respondent was faulted for accepting the electricity bill furnished by the exporter in question (M/s Shree Enterprises) on the ground that it pertained to the month of June, 2020.

13. In this regard, the learned CESTAT observed – in our view rightly so – that it was not necessary for the Custom Broker to keep a continuous surveillance at the physical address of an exporter. The KYC documents are required to be obtained at a time when a particular entity is onboarded as a client of the Custom Broker. It is also necessary for the Custom Broker to periodically verify the same. Plainy, the rent agreement and the electricity bill could not be considered to be stale or were required to be disbelieved.

14. In view of the above, the impugned order setting aside the order-in-original dated 17.10.2023 cannot be faulted.

15. No substantial question of law arises in the present appeal. The same

is, accordingly, dismissed. Pending applications also stand disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

OCTOBER 29, 2024
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Click here to check corrigendum, if any