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2024:DHC:2055-DB

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

% Date of decision: 12.03.2024

\+ **CUSAA 17/2021 & CM APPL. 11107/2021**

SRIAANSHU LOGISTICS
THROUGH PROPRIETOR ..... Appellant

versus

COMMISSIONER OF CUSTOMS
(GENERAL) ..... Respondent

Advocates who appeared in this case:

For the Appellant: Ms. Reena Rawat and Ms. Jyotika Sharma, Advocates.

For the Respondent: Mr. Harpreet Singh, SSC with Ms. Suhani Mathur and Mr. Jatin Kumar Gaur, Advocates.

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns order dated 17.12.2018 passed by the Customs Excise Service Tax Appellate Tribunal [hereinafter, "the tribunal"], whereby the appeal filed by the appellant impugning the Order-in-Original dated 04.12.2017 has been dismissed.

2. Appellant was a custom broker and possessed a Custom Broker Licence. As per the appellant, he functioned as a custom broker since

the year 2010.

3. A suspension order dated 03.04.2017 was issued suspending the licence which was subsequently confirmed on 27.04.2017. The suspension was later converted into a revocation of licence by order dated 04.12.2017, the Order-in-Original, which became the subject matter of appeal before the Tribunal.

4. Order-in-Original dated 04.12.2017 notices the fact that the appellant had sub-let the licence to one Mr. Narender Narula and one Mr. Rupan Barua on commission basis for a monthly consideration of Rs. 50,000/- per month. The appellant also provided his login id and password to them and allowed them to use the digital signature of G-Card holder for uploading data.

5. The said custom broker license was misused and fraudulent imports were sought to be made. In one such instance, silver jewellery along with PCB for DTH and mobile phone and accessories etc. were misdeclared and sought to be imported. During investigation, the appellant admitted to the factum of permitting the use of his custom broker licence to Mr. Narender Narula and Mr. Rupan Barua against receipt of Rs. 50,000/- per month and also permitted the G-Card to be used for such transactions. The appellant further, in his subsequent statement, also admitted that the said broker licence was sub-let. He pointed out to six monthly transactions of Rs. 50,000/- each received by him for permitting Mr. Narender Narula and Mr. Rupan Barua to use his custom broker licence as also the G-Card.

6. It is an admitted position that statements that were given by the petitioner were never retracted.

7. By the Order-in-Original dated 04.12.2017, the Commissioner of Customs, noticing the provisions of the Custom Broker Licensing Regulations, 2013 (hereinafter referred to as the "Regulation"), particularly, Regulation 10, which prohibits any sale or transfer of the license. Regulation 11 (a) and 11 (b) of the said Regulations which mandate the transaction of business in customs either personally or through an employee duly approved *inter alia* by Deputy Commissioner of Customs or Assistance Commissioner of Customs. The Commissioner of Customs in the impugned order, noticing the violation, directed the revocation of the custom broker license apart from forfeiture of the security deposits.

8. Appellant filed an appeal impugning the Order-in-Original before the tribunal. The Tribunal notices the admission made by the appellant and also the contravention of regulations 10, 11 (a), (b), (d), (e) & (m) of the Regulations. The Tribunal further noticed that the appellant had admitted filing the bill of entry without meeting the IEC holder, proprietor, director or owner of the importing firms and also that he had permitted Mr. Narula and Barua to use his login ID and password and the Digital Signature Card of the G-Card holder to upload the data. Consequently, the appeal filed by the appellant has been dismissed by the Tribunal.

9. Subject appeal has been filed under Section 130 of the Customs

Act, 1962, which permits filing of an appeal if the High Court is satisfied that the case involves a substantial question of law.

10. Perusal of the impugned order as well as after hearing submissions of the learned counsels for the parties, we are of the view that no substantial question of law arises in the subject appeal and the same raised only purely factual issues.

11. The only submission made by the learned counsel for the appellant is with regard to proportionality of punishment i.e. of revocation of the customs broker licence.

12. Learned counsel for the appellant submits that the punishment is harsh and disproportionate to the said conduct. Reliance is placed by learned counsel on the judgment of a Coordinate Bench of this Court in *Ashiana Cargo Services Vs. Commissioner of Customs, 2014 (302) ELT 161 (Delhi).*

13. We are unable to accept the submission of the learned counsel for the petitioner for the reason that a Customs Broker occupies a very important position in the customs house. A lot of trust is kept in the customs broker by the importers, exporters as well as by the Government agencies. To ensure appropriate discharge of such trust, the Customs Broker Licensing Regulations have been framed and there has to be strict compliance thereof. Any contravention of such obligation would invite sanction as provided in the Regulations.

14. In *Ashiana Cargo Services* (*supra*), the custom broker had

issued G-Cards to his two employees and it was found that the employees were misusing their G-Cards. Unlike in the present case where the admitted position is that the appellant has permitted use of his login ID, password as well as the licence in exchange for remuneration. Further, we note that in *Ashiana Cargo Services* (*supra*), the Coordinate Bench of this Court has noticed cases where revocation of licence has been upheld. Some of the cases noticed pertain to where a power of attorney was issued to a party for using the CHA Licence and revocation was upheld. A case was also noticed where revocation had been upheld where the *mens rea* for infraction was found to have been present.

15. Reference may also be made to the judgment of the Supreme Court in *Commissioner of Customs Vs. K.N. Ganatra & Co. 2016 (332) ELT 15 (SC)*, whereby, the Supreme Court has noticed that subletting of licence amounted to serious violation and misconduct and consequently the Supreme Court declined to interfere with concurrent finding of fact by the Commissioner of Customs as also the Tribunal and declined to interfere in revocation of the licence.

16. In the instant case, we are of the view that the appellant having admitted permitting the use of his licence by third party in exchange for monthly remuneration, the punishment of cancellation of licence is not disproportionate. Further, as noticed hereinabove, no substantial question of law arises in the subject appeal.

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17. In view of the above, the appeal is dismissed.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MARCH 12, 2024/*vp*