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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CUSAA 19/2021

RUBAL LOGISTICS PVT LTDAppellant

Through: Ms. Vibha Narang, Mr. Akash
Garg, Advs.

versus

THE COMMISSIONER OF CUSTOMS, GENERAL, NEW
DELHIRespondent

Through: Mr. Anurag Ojha, SSC with
Mr. Kumar Abhishek, Mr.
Subham Kumar, Ms. Seema
Tyagi, Ms. Veena Tyagi, Mr.
Rajeev L. Seth and Mr. Sunder
Singh, Advs. for Customs
Ms. Sushila Narang, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

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25.07.2024

1. This appeal is directed against the order of the Customs Excise and Service Tax Appellate Tribunal [“CESTAT”] dated 24 June 2019 and in terms of which a penalty of INR 40,000/- as imposed on the appellant-Custom House Agent [“CHA”] has been upheld based on a purported violation of clauses (d), (e) and (m) of Regulation 11 of Customs Brokers Licensing Regulations, 2013 [“CBLR, 2013”].

2. We note that the CESTAT on facts had found as follows:-

“6. After hearing both the parties and perusing the entire record, we are of the opinion as follows:-

Present is apparently a case of misdeclaration, misclassification and under valuation of import of wireless Point of Sale Devices (POS) and Mobile Point of Sale Device (MPOS). Department is of the opinion that the product (MPOS) has been imported by M/s.Pax Technology India Pvt. Ltd. and cleared through the Customs broker, M/s. Rubal Logistics Pvt. Ltd. i.e. the present appellant, who initially filed the Bill of Entry on the basis of invoices raised by M/s. Wang Technologies Ltd. by replacing



earlier invoice raised by M/s. Pax Technology Ltd., Hong Kong to M/s. Pax Technology India Pvt. Ltd. itself. From the Order-in-Original, it is observed that the adjudicating authority has gone into the details of the statements of all concerned recorded at the stage of investigation. Not only this, the authority has perused the Master Distribution Agreement of M/s. Pax Technology India Pvt. Ltd. and has observed that the soft-ware license was an integral part of the devices without which the impugned devices could not be operated and that the value of soft ware license fee has to be included in the total value of the devices. Based on these observations that the impugned goods were held to be misclassified and misvalued/ misdeclared. However, as far as the role of the appellant is concerned, it is observed by the adjudicating authority that he bonafidely believed about the changed invoice to be the correct one. The CHA is rather observed to have complied with the formalities as that of KYC documentation. It is in view whereof that his license has not been revoked. However, the penalty has been imposed under 11 (d), (e) & (m) of CBLR, 2013. These read as follows:-

31.4.1 Whereas Regulation 11 (d) of CBLR, 2013 states that:

“A Custom broker shall advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs of Assistant Commissioner of Customs, as the case may be”

31.4.2 Whereas, Regulation: 11(e) prescribes that:

“A Customs Broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage”

31.4.3 Whereas Regulation 11(m) of CBLR

“A Customs Broker shall discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay”

3. As is manifest from the above, the case was essentially raised against the importer with it being alleged that he had indulged in misclassification and undervaluation of the imported articles. The CESTAT had taken note of the undisputed position that the action of revocation of license was ultimately recalled. In view of the above, it



is apparent that the CHA could not have been held to be in violation of clauses (d), (e) and (m) of Regulation 11.

4. This becomes further apparent from the conclusions of the CESTAT which appear in Para 6.1 and are extracted hereinbelow:-

“6.1 These provisions require the Customs Broker to exercise due diligence to ascertain the correctness of any information and to advise the client accordingly. Though the CHA was accepted as having no mensrea of the noticed mis-declaration /under- valuation or misquantification but from his own statement acknowledging the negligence on his part to properly ensure the same, we are of the opinion that CH definitely has committed violation of the above mentioned Regulations. These Regulations caused a mandatory duty upon the CHA, who is an important link between the Customs Authorities and the importer/exporter. Any dereliction/lack of due diligence since has caused the Exchequer loss in terms of evasion of Customs Duty, the original adjudicating authority has rightly imposed the penalty upon the appellant herein.”

5. The CESTAT had come to the firm conclusion that although there was no *mens rea* which could be attributed to the CHA, it did not proceed in the matter with due caution and diligence. In our considered opinion, since the principal allegation was solely made against the importer with respect to misdeclaration, we find ourselves unable to discern any violation of clauses (d), (e) or (m) of Regulation 11 of the CBLR, 2013.

6. We, accordingly, allow the instant appeal and set aside the order of the CESTAT insofar as it upholds the imposition of penalty. The appeal shall consequently stand allowed to the aforesaid extent.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 25, 2024/neha