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

% **Date of decision: 13th October, 2023**

+ CUSAA 51/2023

COMMISSIONER OF CUSTOMS AIRPORT AND
GENERAL Appellant

Through: Mr. Anish Roy, Sr. Standing
Counsel (CBIC)

versus

M/S ICS CARGORespondent

Through: Mr. Prabhat Kumar and Mr.
Karan Kanwal, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. This appeal has been preferred by the Commissioner of Customs¹ under Section 130 of the Customs Act, 1962² assailing impugned order dated 06 January 2023 passed by the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi³, whereby the order dated 13 November 2019 revoking the license of the respondent/CB/CHA⁴, was set aside.

BRIEF FACTS:

2. Briefly stated, the respondent was issued a Customs Broker License bearing No. R-037/97 valid upto 28 November 2026 by the

¹ Appellant

² Act

³ CESTAT

⁴ Customs Broker(CB)/Customs House Agent: these terms used interchangeably in this judgment



appellant and the respondent was registered with the Customs at Mumbai, Ludhiana/Amritsar, Visakhapatnam, Noida and Kandla. It is brought out that the DRI⁵ conducted search operations on 12 April 2017 and 13 April 2017 at the premises of several importer companies viz. M/s. Yuri Impex Pvt. Ltd., M/s. Yuri International and M/s. Ray Exim India Pvt. Ltd., companies which were being run by one Mr. Yusuf Pardawala. The raids were conducted in relation to the import of various power tools from China, which were imported through several ports by the importers and allegedly undervalued. During the course of investigation, the statements of Mr. Yusuf Pardawala as also one Mr. Sidharth Sharma were recorded under Section 108 of the Act and certain documents viz, various invoices and packing lists besides emails of the importers were seized unraveling the *modus operandi* adopted by the importers. During the course of investigation, it was also revealed that there were 5 containers containing the goods which were undervalued, four at Navasehara and one at Sea Port, Kolkata, which were also seized.

3. It is the case of the appellant further that during the course of investigation, statement of one Mr. Suresh Kumar Aggarwal, a partner of the respondent/CB/CHA was recorded on 15 January 2018 and 22 January 2018. In so far as the respondent is concerned it is alleged that the respondent had facilitated clearance work for certain imported goods on commission basis, without verifying the IECs numbers used for the imports and having due knowledge that the mastermind was Mr. Yusuf Pardawala, who was the real beneficiary or the beneficial

⁵ Directorate of Revenue Intelligence



owner. A SCN⁶ No. 13/2019 dated 22 May 2019 was issued to the respondent proposing that the clearance of imported goods at the Customs Ports by the respondent was in violation of various provisions of the Customs Broker License Regulations, 2018⁷. The SCN was eventually confirmed vide Order-in-Original No.111/2019 dated 13 November 2019 on the grounds of violation of regulation 10(a), 10(d) and 10(n) of the CBLR, and consequently, the license of the respondent was revoked invoking powers under regulation 14 and 17(7) of the CBLR. Further, security deposit of Rs. one lac ten thousand made by the respondent was also forfeited and penalty was imposed.

4. The impugned order dated 13 November 2019 was assailed before the learned CESTAT, which, on the basis of the pleadings and arguments addressed before it, framed the following issues:

- “(i) Whether the timeline of Regulation 16 and 17 of Customs Broker License Regulations (CBLR), 2018 was mandatory to be followed while revoking the license and the order of revocation of license of appellant, Customs Broker (CB) is barred by time as the same has not been followed.
- (ii) Whether once the order suspending the license of CHA/appellant was revoked, the proceedings of revocation of license under Regulation 17 of CBLR, 2018 could not be initiated?
- (iii) Whether the appellant has violated Regulation 10(a), 10(d) and 10(n) of CBLR, 2018?”

5. Shorn of unnecessary details, the learned CESTAT decided the first two issues against the respondent/CB, which are not in challenge in the present matter. Suffice it to state that the learned CESTAT

⁶ Show Cause Notice

⁷ CBLR



referred to Regulation No.14, 16⁸ & 17⁹ of the CBLR as also Circular bearing No. 9/10-Customs dated 08 April 2010 *inter alia* relying on the expression “offence report”¹⁰ and held that the impugned SCN was issued within the mandatory period of 90 days from receipt of the the “offence report” and, therefore, not time barred. It was further held that mere suspension of licence and later its revocation vide order dated 22 April, 2019 under Regulation 16 of the CBLR did not preclude the Commissioner (Appeal) from conducting an inquiry against the CB/CHA in terms of the powers under Regulation 14 and 17 of the CBLR for the reason that an action under Regulation 16 is immediate in nature depending upon the seriousness and gravity of the alleged offence whereas Regulation 17 prescribes a complete procedure for hearing the party concerned.

6. Coming to the last issue, learned CESTAT on appreciation of the evidence brought on record, found that the case of the appellant that respondent/CHA was in violation of regulation 10(a), 10(d) and 10(n) of CBLR was not made out, and consequently the impugned order as well as the penalty imposed were set aside.

⁸Regulation 16 vests powers with the Commissioner or Commissioner of Customs to suspend a license of a Custom Broker where an inquiry against such Custom Broker is pending or contemplated.

⁹Regulation 17 provides the procedure for revoking license or imposing penalty including issuance of Show Cause Notice, hearing, recording of evidence and final decision in a time bound manner.

¹⁰ Explanation to Regulation 17 of CBLR defined ‘offence report’ as follows:

“Offence report for the purposes of this regulation means a summary of investigation and prima facie framing of charges into the allegation of acts of commission or omission of the Customs Broker or a F card holder or a G card holder, as the case may be, under these regulations thereunder which would render him unfit to transact business under these regulations.”



GROUND OF APPEAL:

7. The impugned order dated 06 January 2023 passed by the learned CESTAT has been assailed *inter alia* on the ground that the impugned order is arbitrary, perverse and violative in vestige fairness inasmuch as it ignored the fact that the retraction of admitted statement without any evidence of threat or coercion was not sustainable; and that the learned CESTAT failed to appreciate that the respondent/CHA was under the obligation to inform the department about misuse of the IECs being done by the importers and that it also overlooked that the evidence brought on the record clearly raised an inference that the respondent/CHA was in knowledge of the *modus operandi* being adopted by the importers regarding the undervaluation of the imported goods. In the alternative it is submitted that although there was no direct evidence so as to bring out connivance with regard to undervaluation on the part of the CHA, nonetheless CHA was liable to be prosecuted for imposition of penalty under Section 114AA of the Act.

8. On filing of the present appeal, advance notice was issued to the respondent/CHA and a short affidavit is filed by Mr. Suresh Kumar Aggarwal, partner of the firm and needless to state that the impugned order in so far as it determined issue No. 3 in its favour is supported.

ANALYSIS AND DECISION:

9. Having heard the learned counsels for the parties and on perusal of the record, at the outset we find no merit in the present appeal. The reasons are not far to seek. Section 130 of the Act provides as follows:



“130. Appeal to High Court.—(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for the purposes of assessment), if the High Court is satisfied that the **case involves a substantial question of law.**

(2) The [Principal Commissioner of Customs or Commissioner of Customs] or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be—

- (a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Principal Commissioner of Customs or the other party;
- (b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;
- (c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(2.A) The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

PROVIDED that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which—

- (a) has not been determined by the Appellate Tribunal; or
- (b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

(7) When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.



(8) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.”

10. A careful perusal of the aforesaid Section would show that an appeal lies to the High Court only when the impugned decision/order involves a substantial “question of law”. Suffice it to state that this Court cannot re-appreciate the evidence brought on the record in the proceedings conducted before the Adjudicating Authority as well the CESTAT and re-appreciate the same so as to come to a different finding unless the appreciation of evidence is perverse or manifestly erroneous and/or is contrary to the law. In the case of **Chandna Impex Pvt. Ltd. v. Commissioner of Customs New Delhi**¹¹, the Supreme Court examined as to what constitutes a question of law in the context of Section 130 of the Act and approved its earlier decision in the case of *Hero Vinoth v. Seshammal* [(2006) 5 SCC 545] as also the Constitution Bench decision of this Court in *Sir Chunilal v. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd.* [AIR 1962 SC 1314] also a number of other decisions on the point. The Supreme Court culled out three principles for determining whether a question of law raised in a case is substantial, which are as under:

“24. (iii) The general rule is that the High Court will not interfere with the concurrent findings of the courts below.

¹¹ [2011] 7 SCC 289]



But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to ‘decision based on no evidence’, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

11. Tested on the touchstone of the aforesaid legal principles, reverting back to the instant matter, it would be relevant to extract Regulation 10(a) of the CBLR, which reads as follows:

Sec 10 (a) of the CBLR 2018 states that obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorization whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

12. On the said issue, learned CESTAT came to the following conclusions:

“**8.1.1** We observe that the Bills of Entry as were filed by the appellant are in the names of such companies which are controlled by Shri Sidharth Sharma and have a valid IEC. There is no denial of Shri Siddharth Sharma that the impugned goods have been imported in name of his companies. Though there is an admission of Shri Sidharth Sharma that with respect to the power tools as have been imported by his companies, Shri Yusuf Pardawala was the beneficial importer but he simultaneously has accepted that the shipment of power tools has been imported in the name of his firm M/s. Maggie Marketing Pvt. Ltd. and that he was dealing with the beneficial importer for getting a 2% commission for allowing him to use the name of his firm i.e. M/s. Maggie Marketing Pvt. Ltd. There is no denial of the owner of the importing companies, Shri Sidharth Sharma that he had not authorized M/s. ICS Cargo, the CHA, to facilitate the clearance of the imports made by those companies. It is not the case of the department that the appellant failed to produce the said authorization to the competent officer.



8.1.2 We further observe that Shri Yusuf Pardawala in his statement has acknowledged that Shri Sidharth Sharma offered his companies for import of various goods of Shri Yusuf Pardawala on commission basis. Shri Yusuf Pardawala had assured Shri Sidharth Sharma to give him continuous work in the form of future shipments of power tools/grinding wheels on 2% commission basis. Thus it is clear that appellant/Customs Broker has facilitated customs clearance in the name of such companies which were having valid IEC of goods imported by the owner of these companies. He had facilitated clearance of goods imported by companies, Shri Sidharth Sharma who only had duly authorized the appellant for the same. Hence, it is clear that appellant has valid authorization to act on behalf of the companies in whose names appellant filed the Bills of Entry. The alleged arrangement apparently and admittedly is between the importer and the beneficial importer for some commission to the importing firm, the appellant Customs Broker cannot be held liable for the same. However for alleged under valuation of imported goods the importer as well as the beneficial importer both can be prosecuted by the department. There is no evidence on record nor is the allegation that appellant was making any wrongful gain. Accordingly, we do not find any violation of regulation 10(a) as has been alleged against the appellant.

13. Likewise, regulation 10(d) is extracted as follows:

“Regulation 10(d).

10 (d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of noncompliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;”

14. On the said aspect, it has been held by the learned CESTAT as follows:

“8.2.1 The department has alleged that Shri Yusuf Pardawala was engaged in import of the subject goods powertools/Grinding wheels etc. from Chinese based firm M/s.. Dongcheng. Supplier sent the original invoice bearing actual value of the said goods directly to Sh. Yusuf Pardawala, however, he used to submit the undervalued invoices to the Indian Customs. In same modus operandi, he also had used IEC of other importer firms viz. M/s. Maggie Marketing Pvt. Ltd., M/s. Safebot Technologies, M/s.



Honeywell Tradelinks Pvt. Ltd and Mis. Emrick Distributors (actually owned by Shri Sidharth Sharma) to clear his imported consignments. It is alleged against the appellant that despite being aware of the facts of mis-utilisation of IEC, CHA Instead of intimating the same to the customs department, himself got connived with Shri Yusuf Pardawala to facilitate the customs clearance work for subject goods with malafide intention to evade customs duty. And also, after clearance of the consignments, the same were dispatched by him to the godowns of Mr. Yusuf Pardawala. Hence, it appeared that the CB had failed to bring the matter to the notice of the *DC/AC* of Customs/ thereby violating Regulation 10(d) of CBLR/ 2018 (read with erstwhile Regulation 11(d) of CBLR, 2013).

8.2.2 As already observed and held above that appellant was assisting the import clearance for those firms only in whose names the goods were imported. The Director of those firms has admittedly authorized the appellant to file the Bills of Entry in the names of his firms and to assist the clearance of imported goods. Though Shri Sidharth Sharma stated that appellant used to receive documents with respect to the import of power tools directly from Shri Yusuf Pardawala prior filing the Bills of Entry for the same, however/ in the companies of Shri Sidharth Sharma and it has been relied upon by the adjudicating authority. But we observe that the cross-examination of Shri Sidharth Sharma and the statement of Shri Pankaj Singh has totally been ignored by the adjudicating authority.

8.2.3 Shri Sidharth Sharma, in his cross-examination dated 10.08.2019, has specifically stated that he used to send his staff along with the import documents to ICS Cargo after informing the same telephonically to Shri Suresh K. Aggrawal/the appellant. This particular deposition falsifies the statement that the import documents used to be received by the appellant through Shri Yusuf Pardawala directly. Shri Sidharth Sharma has further deposed, while being cross-examined, that he only used to send his own transport for taking delivery of goods. This deposition falsifies that appellant used to directly deliver the imported goods to Shri Yusuf Pardawala premises. The subsequent deposition during cross examination that all goods imported in his companies belong to him (Shri Sidharth Sharma) and that he only used to place orders on his foreign suppliers after importing those goods and he only used to sell the same to Shri Yusuf Pardawala, later being a big business entities falsify entire allegations and findings against the appellant.

8.2.4 Shri Sidharth Sharma has specifically acknowledged, while being cross-examined, that his earlier statements were taken under



coercion hence stands rebutted in the light of his crossexamination. This deposition of Shri Sidharth Sharma help us to conclude that the confirmation of allegations against the appellant based merely on the statement in chief of Shri Sidharth Sharma which has been rebutted by him during his cross-examination is absolutely wrong. There appears nothing on record to prove that the appellant was In direct conversation with Shri Yusuf Pardawala and accordingly, there arises no reason with the appellant to advice Shri Sidharth Sharma to not to let his companies name be used by Shri Yusuf Pardawala while importing power tools. When the importing firms having valid IEC was making profit on commission basis, under an arrangement with another big businessman while importing goods in their names.

8.2.5 We further observe that the above findings stands corroborated from the deposition of Shri Pankaj Singh alias Banti who has acknowledged that he was doing freight forwarding work for all consignments filed in M/s. Yuri Impex Pvt. Ltd., M/s. Yuri International, M/s. Ray Exim India Pvt. Ltd., M/s. Maggie Marketing Pvt. Ltd., M/s. Impex Steel & Bearing Co., M/s. Safobot Technologies Pvt. Ltd. and M/s. Honeywell Tradelinks Pvt. Ltd. All the documents as that of bill of lading related to the consignments of power tools/cutting wheels filed in the above said companies were handed over to him by Shri Yusuf Pardawal himself and on the basis of that bill of lading he as a freight forwarder used to get a delivery order issued from shipping line and thereafter the consignment used to be handed over to Suresh K. Aggrawal who as Customs Broker, used to file Bills of Entry for the respective consignments. This particular statement demolishes the entire case of the department that it was Customs Broker who had connived with Shri Yusuf Pardawala and Shri Sidharth Sharma to facilitate the import clearance in the name of the companies owned by Shri Sidharth Sharma but for Shri Yusuf Pardawala.

8.2.6 In the given circumstance, we do not find any reason with the appellant to be aware of the arrangement between Shri Sidharth Sharma and Shri Yusuf Pardawala and Shri Pankaj Singh and as such he had no reason to advice in this respect to the importer about provisions of the applicable acts, rules and regulations. Once nothing was to his notice there was no reason with the appellant to bring anything to the notice of the competent officer as was the requirement of regulation 10(d). Hence we hold that violation of 10(d) of CBLR, 2018 has wrongly been confirmed against the appellant.



15. In the same vein, it would be relevant to extract Regulation 10(n) which reads as follows:

“Regulation 10(n).

10(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;”

16. In this regard, the decision of the learned CESTAT goes as under:

“8.3.1 We observe that there is no allegation of the department that the IEC (Importer Exporter Code) for the importers in whose name the Bills of Entry were filed by appellant/CHA were incorrect. The goods and service tax identification number GSTIN has also not been admitted to be the correct number of the said importers. Even the importers are not denied to be functioning at the declared addresses. Once the IEC and GSTIN is found to have been genuine even the importers were found existing at the declared addresses, mere allegation that some other person was importing goods in the name of the importers whose names were mentioned in the Bills of Entry does not render the identity of the importer as doubtful especially when there is an apparent arrangement, with mutual consent between the importer and the said other person, the beneficial owner of the imported goods.

8.3.2 There has been an amendment in Section 2(26) of the Customs Act, 1962 which defines importer. After the said amendment not only the owner of the imported goods is importer but even a beneficial owner of such goods is also defined as importer. From the facts and the circumstances above, we observe Shri Yusuf Pardawala would have been the beneficial owner of the goods. Hence, he equally is an importer but the goods owned by him have been imported by a validly existing importing firm. **The appellant herein was transacting the business of those validly existing firms that too under the authority of the owner of said companies for getting clearances of those goods.** Hence, we hold that the allegations about the wrong identity of the client of appellant are absolutely baseless. Thus, we hold that appellant/CHA had no reason to declare that Shri Sidharth Sharma was not the importer. Otherwise also when statute itself does not distinguish between the owner of the goods and person who is the importer, CHA has no reason nor any necessity to take a different



position and to declare the same to the competent authority. As such we do not find any violation of Regulation 10(n) of CBLR, 2018 by the appellant.

8.3.3 We further observe that there is no evidence on record to prove that the appellant had any personal or pecuniary interest in the impugned imports or that the imports were for any other personal benefit of the appellant. From the *above* discussion about the documents and information of the importer, it is crystal clear that the CHA herein had played his role diligently. The only allegation otherwise about the imported goods is that of under valuation thereof. Appellant is not a valuation expert and had played no role in the under valuation of the goods. To our opinion appellant acted purely on the basis of documents as that of invoice/purchase orders supplied by the importers. Sole allegation that the documents with respect to import of power tools were directly supplied by Shri Yusuf Pardawala to the appellant are highly insufficient to be a cogent evidence of alleged connivance of the appellant with either Shri Yusuf Pardawala or with Shri Sidharth Sharma or with both. Otherwise also, this allegation stand rebutted by the statement of Shri Pankaj Singh who acknowledged to have received the documents from Yusuf Pardawala and he delivered those to the appellant.

8.3.4 As already observed above that the cross examination of Shri Sidharth Sharma has not been taken into consideration by the adjudicating authority below. We hold that the Commissioner has wrongly concluded that there is no evidence to rebut the veracity the statement of Shri Sidharth Sharma. It is rather observed that Shri Sidharth Sharma had submitted a letter dated 25.10.2017 on behalf of M/s. Maggie Marketing Pvt. Ltd. retracting his earlier statements but the order under challenge is miserably silent to the same. Mention of said retraction is even found recorded in subsequent statement of Shri Sidharth Sharma dated 08.11.2017, wherein, he acknowledged his retraction and reiterated that his earlier statements were given under pressure. Thus, we hold that the statement which has been relied upon by the authorities to confirm allegations against appellant while revoking his license was actually a retracted version. As already observed above the cross- examination of the said witness, fully supports the case of appellant. The silence to retraction and cross-examination of witness is sufficient to set aside the order of revoking license and imposing penalty. We found no evidence as that of placement of purchase order by the appellant and of foreign remittances in favour of the appellant etc. which might prove the alleged connivance of the appellant. Thus, the findings of adjudicating authority below are held to be based on presumptions and surmises



only. Even the Show Cause Notice as served upon the appellant is based on third party evidence i.e. on the documents recovered from premises of Shri Yusuf Pardawala.

8.3.5 We also observe that Commissioner (Appeals) has committed an error while ignoring the most cogent part of the statement of Shri Siddharth Sharma, wherein, he has specifically acknowledged that payments and charges for clearance etc. were paid to the appellant from the accounts of the concerned companies in whose names the Bills of Entry were filed. The another cogent deposition absolving entire liability of the appellant is that the clearance work of the import consignments of power bills and other related items in his company was handled by Shri Pankaj Singh alias Banti who did not work for M/s. ICS Cargo rather was the Director of a freight forwarding company in the name of M/s. JMD Clearing and Forwarding Pvt. Ltd. The said deposition has been corroborated by Shri Pankaj Singh himself. We do not find any evidence on record to prove that transportation of the goods to the premises of Shri Yousuf Pardawala were facilitated by the appellant/CB. On the contrary, there is sufficient admission of Shri Sidharth Sharma, while being cross-examined; that he only used to arrange his vehicles for transporting the imported goods to respective places. Shri Sidharth Sharma has willingly provided his IEC on M/s. Maggie Marketing Pvt. Ltd. for use of imports to Shri Yusuf Pardawala and in fact, till the date of imports no remittances used to be sent by Shri Yusuf Pardawala to Shri Sidharth Sharma because Shri Yusuf Pardawala actually used to purchase those shipments on credit basis and used to make the payments of those imported goods in favour of M/s. Maggie Marketing Pvt. Ltd. of Shri Sidharth Sharma and it was thereafter that Shri Siddharth Sharma used to make the remittances for those shipments. Apparently and admittedly, no Bill of Entry has been filed by appellant in name of any company of Shri Yusuf Pardawala.

8.3.6 These particular admissions which received due corroboration, are sufficient for us to hold that there was no role of appellant/CB in the mutual arrangement between Shri Sidharth Shama and Mr. Yusuf Pardawala. In fact it stands proved in record that the arrangement was never brought to the notice of appellant. Hence, there was nothing with appellant to hide from the department. Mere taking certain documents of importer from a person appearing on behalf of the importer who is otherwise validly existing at the declared address and having valid IEC and GSTIN is highly insufficient to hold that CHA has failed in performing his duties of Customs House Agent deliberately.



17. On a careful perusal of the reasons assigned by the learned CESTAT and extracted above, it is evident that the learned CESTAT conducted a meticulous exercise to examine and appreciate the evidence on the record and came to a categorical finding that the respondent/CHA was not guilty of non-performance of any of the statutory duties cast upon it. It is evidently brought out that there was a private arrangement between the two importers for which the respondent/CHA facilitated customs clearance in the name of companies, having valid IECs for the goods imported by the owners of the companies involved; and that the respondent/CHA had been duly authorized in this regard by Mr. Sidharth Sharma. There was proper verification on the part of the respondent/CHA with regard to genuineness of the IEC as also GSTIN¹² and mere allegations that some other person was importing goods in the name of the importers, whose names were mentioned in the Bills of Entry, did not render the identity of the importer doubtful especially when there was apparently an arrangement with mutual consent of the importer and the beneficial owner and in the said circumstances there was no basis for the Adjudicating Authorities to pass the impugned order thereby suspending the license of the CHA based on the statements of the importers, which were otherwise also retracted. The findings by the learned CESTAT assume legally correct approach in the teeth of the deposition of Mr. Sidharth Sharma, who testified that the payments and charges for clearance etc. were paid to the respondent/custom broker from the accounts of the concerned companies in whose names

¹² Goods and Services Tax Identification Number



the Bills of Entries were filed, coupled with the fact that no Bill of Entry was filed by the respondent/CHA in the name of any company of Mr. Yusuf Pardawala, which task evidently had been handled by one Pankaj Singh @ Bunty, Director of a freight company in the name of JMD Clearing and Forwarding Private Limited.

18. In view of the foregoing discussion, we find that the learned CESTAT neither committed any patent illegality nor any manifest error in appreciating the evidence on the record. The instant appeal fails to raise any question of law. Hence, the present appeal is dismissed in *limine*.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

October 13, 2023

Sadique

