

Nipun Impex Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-22-2002

Reported in : (2002)(103)LC863Tri(Delhi)

Judge : S T G.R., P Bajaj

Appellant : Nipun Impex

Respondent : Cc

Judgement :

1. This appeal has been preferred by the appellants against the impugned order dated 20.3.2002 passed by the Commissioner of Customs vide which the licence of the appellants has been revoked and forfeiture of the security deposited had been also ordered.

2. The facts leading to the filing of the present appeal may briefly be stated as under- Shri Ashwani Sareen is now the proprietor of the appellants' firm, M/s Nipun Impex (in short 'NIP'). He was earlier one of the three partners of firm, M/s All Rich International Cargo Services (in short, ARC). The two other partners in that firm were S/Sh Kartik Naidu and Shri Santosh Reddy. They had entered into partnership by executing partnership deed dated 15.7.1995. The Customs Authorities granted temporary licence to their firm, M/s ARI, with the condition that Shri Ashwani Sareen, Proprietor of the appellants' Firm, shall alone transact the Customs House work on behalf of the firm. Later on, Shri Ashwani Sareen qualified the examination under Regulation 9 of the Customs House Agent Licence

Regulations, 1984 (in short CHA Licence Regulations) and he thereafter intimated the Department vide letter dated 29.1.1998 about the dissolution of the firm, M/s ARC, on account of retirement of the other two partners as well as due to service of notice of dissolution dated 15.1.1998, by him on both of them. The Customs Authorities issued regular licence on the basis of that application to Shri Ashwani Sareen who reconstituted the proprietorship concern, namely, M/s NIP (appellants). Later on, a show cause notice dated 28.4.1999 was issued to him for revocation of the licence on the ground of misconduct for having misinformed the Customs Authorities about the dissolution of the earlier firm, M/s ARC. He contested the correctness of that notice. The other two partners of firm, M/s ARC, also disputed the dissolution of the firm and denied the receipt of notices of dissolution from Shri Ashwani Sareen. They referred to Clause 22 of their partnership deed executed between them which envisaged that the decision of majority shall be conclusive and binding on all the partners.

3. An inquiry was also ordered by the Customs Department and the Deputy Commissioner was appointed as an inquiry officer who after going through the material placed before him by Shri Ashwani Sareen and other two partners of M/s ARC submitted the report that Shri Ashwani Sareen, Proprietor of the appellants' firm, M/s NIP, had never acted prejudicial to the Revenue and was not guilty of any misconduct. The Commissioner, however, after receipt of the report passed the impugned order revoking the licence in the name of the appellants' firm, M/s NIP, and ordered for the forfeiture of the security furnished by them.

4. The learned Counsel has contended that any dispute between the partners of the erstwhile firm, M/s ARC, about its dissolution could not be adjudicated upon by the Customs Authorities. The aggrieved partners could only pursue their remedy in accordance with the terms of the partnership deed i.e. by making reference to the arbitrator as per the clause in the deed or knock the door of the Civil Court for the redressal of the grievance, if any, against Shri Ashwani Sareen, Partner. The licence of Shri Ashwani Sareen could not be revoked for having not violated the provisions of the CHA Licenee Regulations, 1984 as per even the report of the inquiry officer. Therefore, the impugned order deserves to be set aside.

5. On the other hand, the learned JDR, has only contended that the information about the dissolution of the firm, M/s ARC, furnished by Shri Ashwani Sareen, Proprietor of the appellants' firm, M/s NIP, had been found to be incorrect and that amounted to misconduct on his part.

Therefore, the impugned order passed by the adjudicating authority is perfectly valid.

6. We have heard both sides and gone through the facts on record. The bare perusal of the record shows that the initially the licence issued was temporary and it was no doubt in the name of the firm, M/s ARC, but the specific condition mentioned was that the entire Customs House work will be looked after on behalf of that firm only by Shri Ashwani Sareen. It also remains undisputed that Shri Ashwani Sareen later on qualified the requisite examination in terms of Regulation 9 of the CHA Licence Regulations, 1984. He vide letter dated 29.1.1998 informed the Customs Authorities about the dissolution of the firm due to the retirement of the other two partners and his having also served notice of dissolution dated 15.1.1998 on those partners. Before issuing the permanent licence, the Customs Authorities satisfied themselves about the correctness of the fact alleged by him in the application and issued him the licence on 23.3.1998. No misconduct in carrying out the Customs House work had been attributed to him.

7. The sole ground on which the Commissioner has passed the impugned order as is evident from the record is that Shri Ashwani Sareen misinformed the Department about the dissolution of his partnership firm known as M/s ARC as his two other partners in that firm, namely, Shri Kartik Naidu and Shri Santosh Reddy, had disputed the receipt of the notices of dissolution and their retirement from the firm. But the record shows that after issuing show cause notice to the appellants, an inquiry officer was appointed to look into this ground. The inquiry officer did not believe the version of other two partners that they had not given the letters of retirement, from the firm, to Shri Ashwani Sareen and that their signatures were obtained on blank papers. This version of these partners as per the inquiry report was afterthought.

8. Moreover, the dispute between the partners regarding the valid dissolution of the firm could not be adjudicated upon by the Commissioner or Customs. The aggrieved partners had a remedy in accordance with the terms of the partnership deed for referring the dispute to the arbitrator or even otherwise to approach the Civil Court for establishing their right. In this context, reference may also be made to B.B. Bros. and Ors. v. Commissioner of Customs, Calcutta 1999 (33) RLT 386, wherein it has been observed that the Customs Authorities do not have the jurisdiction to go into the validity of the partnership, and the only remedy for sorting out the dispute between the parties regarding the tampering of a partnership deed lies in the filing of Civil Suit before the Court of Law and not before the Department which is not competent to decide upon the contractual civil obligations between the partners.

9. After having once issued the licence to Shri Ashwani Sareen, proprietor of the appellants' firm, M/s NIP, and he having been not found to have committed any act or omission in relation to the customs house business, constituting misconduct, could not be penalised by revoking the licence simply on the ground that the aggrieved partners of his erstwhile firm had raised dispute about the dissolution of the firm, M/s ARC. For this dispute, the aggrieved partners could only approach the Civil Court for appropriate remedy. The licence was issued to Shri Ashwani Sareen when he fulfilled the conditions of Regulation 7 of CHA Licence Regulations, 1984. Even the Commissioner in the impugned order had observed that he had not acted in a manner prejudicial to the interest of the Revenue. His view that since he was guilty of misinforming the Department about the dissolution of the earlier firm, M/s ARC, that was enough to cast serious aspersion on his reliability and tantamount to gross violation of CHALR, 1984, cannot be legally subscribed. The licence could be revoked by the Commissioner only if he was guilty of any misconduct while carrying out the Customs House work resulting in loss to the Revenue, but that had not been found against him. Therefore, in our view, the impugned order of the Commissioner cannot be legally sustained and deserves to be set aside.

10. In view of the discussion made above, the impugned order of the Commissioner of Customs is set aside and the appeal of the appellants, stands

accordingly allowed with consequential relief, permissible under the law.

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