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**(2016) 06 KAR CK 0066**  
**In the Karnataka High Court**  
**Case No : CSTA No. 2 of 2015**

Commr. of Cus., Bangalore-I

APPELLANT

Vs

Accurate Clearing and Shipping Agency

RESPONDENT

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**Date of Decision :** 09-06-2016

**Acts Referred:**

**Citation :** (2016) 341 ELT 578

**Hon'ble Judges :** Jayant Patel and B. Sreenivase Gowda, JJ.

**Bench :** Division Bench

**Advocate :** Shri N.R. Bhaskar, Senior CGSC and Smt. Manjula K.S., Advocate, for the Appellant; None, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Jayant Patel, J. - This appeal is directed against the order dated 3-7-2014 passed by the Tribunal [2015 (319) E.L.T. 531 (Tribunal)], whereby the Tribunal has modified the order passed by the Original Authority and has confirmed the order of forfeiture of security deposit. It has further observed that the respondent herein may apply for fresh licence with fresh security deposit, in accordance with law.

2. We have heard Smt. Manjula K.S. for Sri. N.R. Bhaskar, learned Senior Central Government Standing Counsel for the appellant.

3. The contention raised on behalf of the appellant was that the first authority, i.e., the Commissioner of Customs considering the seriousness of the matter and having also found that the respondent-broker has committed breach of the regulation, exercised the power for cancellation of the licence, imposition of penalty and forfeiture of security deposit. However, the Tribunal in exercise of the appellate power has reduced the penalty, which as per the learned Counsel is erroneous and therefore, this Court may consider. It is submitted that the proprietor cannot get away from the liability on the mere ground that his employee did not properly take care for observance of the regulations. She

submitted that the penalty was properly imposed and the Appellate Tribunal has erroneously interfered with the order of the first authority. Hence, this Court may consider. She also relied upon a decision of the Apex Court in the case of Commissioner of Customs v. M/s. K.M. Ganatra and Co. reported in 2016-TIOL-13-SC-CUS : 2016 (332) E.L.T. 15 (S.C.) (there is no equivalent citation) in Civil Appeal No. 2940/2008 decided on January 14, 2016 and more particularly the observations made at Para 15 of the said decision.

4. It appears to us that the Tribunal in the impugned order has interfered with on the ground of proportionality of punishment. Two aspects weighed with the Tribunal. One was that M/s. V.J. Enterprises, namely Vijayakumar was not a bogus party, but was a party for existence. Further, the agreement between Ganeshan to give certain percent of profit to Vijayakumar had transpired and therefore, the goods were cleared in the name of V.J. Enterprises. Tribunal also found that Vijayakumar has signed all the papers and therefore, it is not a matter where the import has taken place on the name of the parties which did not exist at all. Another ground which has weighed the Tribunal was that the respondent had engaged Sri. T. Saravanan and it was on account of no proper care taken by the employee, the lapse for verification has taken place. The Tribunal has also taken note that the age of the respondent was 69 years and he had to take help of his staff. The Tribunal further considered the aspect that for a period of more than eight months the licence remained under suspension and therefore, no profits could be forfeited by the respondent. This is also one of the punishment in addition to the punishment imposed for forfeiture of security and imposition of penalty of Rs. 50,000/-. After taking into consideration the aforesaid aspects, the Tribunal has exercised the discretion of imposing penalty of Rs. 50,000/- and forfeiting the security already deposited, with the observation that the respondent herein may apply for a fresh licence which may be considered in accordance with law.

5. In our view, when the discretion has been exercised, and considering the facts and circumstances, such discretion exercised cannot be said to be perverse, which would be a case for interference in exercise of power with this Court. It is required to be stated that when two views are possible and if one is opted by the lower authority, such would not call for interference.

6. The reliance placed upon the decision of the Apex Court in the case of Commissioner of Customs v. M/s. K.M. Ganatra and Co. (supra) is ill-founded because in the case before the Apex Court, it was found in the investigation that the licence was allowed to be used by certain unauthorized person for monetary consideration and further, the agent had allowed the unauthorized person to handle the shipping bills which are not the fact situation in the present case. It is true that the agent has to honour the trust by observance of the relevant regulations, but at the same time when the punishment is to be imposed, there is discretionary power to be exercised in a reasonable manner, by considering the aspect of gravity of the crime or breach. We do not find that even if the principles

observed in the said decision are considered, it can be said that the discretion exercised by the Tribunal in the impugned order is perverse, as sought to be canvassed. In view of the above, we do not find any case for interference.

7. Hence, the appeal is meritless and therefore, dismissed.