

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH

CUSTOMS APPEAL NO. 51143 OF 2019

(Arising out of Order-in-Original No. 12/MK/Policy/2019 dated 13.02.2019 passed by the Commissioner of Customs (Airport & General), New Delhi)

M/s Paramount Cargo & Logistics Solutions **...Appellant**

A-398/7, 1st Floor, Road No.2,
Mahipalpur Extn. New Delhi – 110037

Versus

Commissioner of Customs, New Delhi **....Respondent**
(Airport and General)

New Custom House,
Near IGI Airport, New Delhi-110037

Appearance:

Present for the Appellant : Shri Ramakant Gaur and Ms. Sneha Arya, Advocates

Present for the Respondent: Shri Rakesh Kumar, Authorized Representative

CORAM:

HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 15.3.2023
DATE OF DECISION: 11.4.2023

FINAL ORDER NO. 50448/2023

P. Venkata Subba Rao

This appeal was allowed by this Tribunal by Final Order dated 31.7.2020. Revenue filed appeal CUSAA 24/2021 before the Hon'ble High Court of Delhi. After hearing some arguments, the High Court found that several aspects of the matter were not considered by this Tribunal in the Final Order and with the consent

of the parties, by order dated 1.2.2023, remanded the matter to this Tribunal with a direction to conclude the fresh proceedings as expeditiously as possible preferably within a period of four months.

The relevant parts of the order of the High Court are as follows:

9. The appellant has projected the following question for consideration of this Court:

"Whether the CESTAT is right in law in allowing the appeal and to set aside the Order-in-Original No. 12/MK/Policy/2019 dated 13.02.2019 passed by Commissioner of Customs (Airport & General), NCH New Delhi in terms of Regulation 18 and 22 read with Regulation 20(7) of the Custom Broker Licensing Regulations, 2013".

10. After some arguments, it is noticed that the learned CESTAT has not examined various aspects of the matter including whether there was an admission on the part of the respondent that it had not examined some of the aspects of the matter.

11. There is a controversy whether in fact the respondent had used the portal itself as has been stated by the respondent in its letter dated 09.11.2018 sent in response to the Show Cause Notice dated 30.08.2018 (annexed as part of Annexure R-5 to the counter affidavit filed by the respondent).

12. In the said response, the respondent had inter alia stated as under:

"In reference to SB No. 4933845 dated: 17/05/2018 we had received invoice cum packing list from the exporter, the check list was prepared by us and same was sent for approval to the exporter.

On receipt of approval the checklist was further submitted to ICEGATE and the shipping bill 4933845 dated 17th May 2018 was generated.

Checklist with shipping bill number was sent to the exporter for his reference and shipping instruction was, further, awaited.

Copy of the checklist/ invoice/ Email communication related to the said shipping bill is enclosed for your kind perusal."

13. It appears from the said response that it was the respondent's case that it had uploaded the necessary documents on the ICEGATE portal and shipping bill No. 4933845 dated 17.05.2018 was generated. However, in its reply / representation to Inquiry Report, the respondent stated as under:

"35. It is further acclaimed in the inquiry report that the process of registration in ICEGATE which requires Digital Signature, PAN CARD and any Form of identity proof which can only be done by the 'F' and 'G' card holders of the CHA firm. Thus, Ashish Sharma could not have Impersonified as CHA Holder. However, registration is a one time process and filing of documents does not require login id and password of the CHA holder to obtain the Shipping Bill No. and the same was done by

Ashish Sharma in the present case. Therefore such allegations are baseless and liable to be set aside."

14. Learned counsel for the respondent states that there was confusion in the understanding of the counsel and the respondent's stand that it had not permitted the use of its portal by any other person and had generated the shipping bill itself, has been misconstrued.

15. It is seen that the learned CESTAT had also recorded the respondent's stand in a similar language in Paragraph 13 of the impugned order.

16. It is also contended on behalf of the respondent that if it is accepted that the respondent was remiss in its obligations, the punishment imposed is highly disproportionate.

17. After some arguments, learned counsel for the parties state that there are several aspects of the matter which have not been considered by the learned CESTAT as the same had possibly not been advanced before the learned Tribunal.

18. In view of the above, at consent of the parties, the impugned order is set aside and the respondent's appeal is restored with the learned CESTAT to decide afresh.

19. It is clarified that all rights and contentions of the parties are reserved.

20. Learned CESTAT is requested to conclude the fresh proceedings as expeditiously as possible preferably within a period of four months from today.

(emphasis supplied)

2. We have heard learned counsels for the appellant and the learned authorised representative for the Revenue and perused the records. We now proceed to examine the facts of the case and the submissions advanced on behalf of the parties and decide the appeal.

Facts of the case

3. The appellant is a Customs Broker with customs brokers' licence which was valid till 24.10.2027 but the Commissioner of Customs (Import & General) revoked it by order¹ dated 13.02.2019 issued under Regulations 14 & 18 read with Regulation 17 of Customs Brokers Licensing Regulations, 2018². The Commissioner also forfeited the security deposit of Rs. 75,000/- made by the

¹ **Impugned order**

² **CBLR, 2018**

appellant and imposed penalty of Rs. 50,000/-. Aggrieved, the appellant filed this appeal. In the impugned order, the Commissioner found that the appellant found that the appellant had not complied with regulations 1(4), 10 (a),10(b), 10(d) and 10 (e) of the CBLR,2018. The appellant contests these findings of the Commissioner.

4. The facts which lead up to this order are as follows. Shipping Bill No. 4933845 dated 17.05.2018 was filed in the Customs Electronic Data Interchange³ with the appellant as the Customs Broker and M/s. Hindustan Exim India (proprietor Ashish Sharma) having importer-exporter code⁴ 0516931385 as the exporter with the description of the goods as 'Note books, ladies leather wallet, leather bag, brass artwares, silk ladies skirt, silk ladies dress, silk ladies trouser, cotton wall hangings, etc.' of a free on board⁵ value of Rs. 4,0,417.18 destined for London Metropolitan Port. It needs to be pointed out that a Customs Broker licensed by one Commissioner can operate in any of the Custom Houses across the country. In this case, the appellant was licensed by Commissioner of Customs (Import &General)(the respondent herein) and the Shipping Bill was filed to export goods from the Air Cargo Complex, New Custom House, New Delhi.

5. The Special Cell of Delhi Police seized a large quantity of narcotic drugs and psychotropic substances which were to be exported under the above Shipping Bill through Air Cargo Complex, New Delhi. The seizure took place after a gate pass was obtained

³ EDI

⁴ IEC

⁵ FOB

and the goods were taken inside the air cargo complex and were in the truck in the parking lot of the Air Cargo Complex and some labels were being pasted on the cartons. The goods had not yet been taken inside the Customs area. Delhi Police booked the case under Narcotic Drugs and Psychotropic Substances Act, 1985⁶ and arrested Shri Ashish Sharma⁷, the owner of the exporter firm mentioned in the Shipping Bill. Investigations revealed that Ashish filed the papers to seek clearance of the consignment using the credentials of the appellant but he had no authority in the firm of the appellant Customs Broker. He also admitted to the Delhi Police that he had exported several such consignments of NDPS concealed in the goods and he had filed all the papers for such exports using the Customs Broker's licence of the appellant.

6. This information was conveyed by the Delhi police to Commissioner of Customs, Air Cargo Complex, New Delhi who, in turn, intimated the details to the Commissioner of Customs (Import & General) who is the respondent herein.

7. It appeared to the respondent that the appellant had allowed Ashish, who is not their authorised person, to mis-utilise its licence to smuggle narcotic drugs and psychotropic substances and the appellant's Customs Broker licence was suspended by an Order dated 7.6.2018. The appellant gave written submissions dated 19.6.2018 through its advocate in which the appellant's stand was as follows:

STAND OF THE NOTICEE

⁶ NDPS Act

⁷ Ashish

From the investigation conducted by the investigators of Delhi Police (Special cell), it is apparent on the record that the CHA licence holder Shri Rajesh Pant has nothing to do with the alleged offence. It is Shri Ashish Sharma, who fraudulently used, misused and abused the process of law. **He impersonated himself as a Custom House Agent and thereby committed an offence under section 419 of the Indian Penal Code.**

It is a matter of record that the Drug Syndicate, unearthed by the special cell of Delhi Police, including Shri Ashish Sharma were sending certain consignments, with the help of some government official posted at the X-ray machines and elsewhere, thereby, defying all the security measures taken by the Government of India. Then how can a poor CHA licence holder come to about the ingredients of the shipments being sent by an exporter. He has no ways or means to find out the malafide intentions of Shri Ashish Sharma or any of his syndicate members. He, not only fell prey of the mal-design of this syndicate but also is being victimized by the departmental action, who want to terminate the licence without ascertaining the culpability of the CHA licence holder or on his behalf. Even sufficient time is not being granted to him to get acquainted with the facts so that an effective reply can be filed. The fraudulent acts of the said Ashish Sharma and said other persons, have caused irreparable damages, wrongful loss to the noticee and the accused persons have drawn wrongful gains. The aforesaid fraudulent acts of the accused persons are punishable under the relevant provisions of the Indian Penal Code. The noticee is collecting the information and he said he will take appropriate recourse against the accused person under the provisions of the penal laws. It is a matter of record that the accused persons were nabbed at the parking of the cargo terminal, whilst they were attempting to take the contraband goods into the customs area. It is submitted that the offence is not complete in the present set of circumstances, as far as the invocation of the provisions of the Customs Act are concerned. The noticee cannot be held accountable for the nefarious activity conducted by other accused person, without his knowledge.

NO INDEPENDENT AND SEPARTE INVESTIGATION

It is specifically pointed out that the Customs department has not conducted any independent investigation into the matter and referred and relied upon the excerpts of piecemeal investigation conducted by the officers of Special cell, Delhi Police. The Customs Department has failed to put forth its fact finding enquiry and the analysis thereof and hence caused the travesty of justice. Any such information available with the department has not been rendered to the noticee which is blatant violation of the law and principles of natural justice. It is humbly requested the information and the documentary evidence, which are available and felt sufficient by the department of Customs to initiate the present proceedings, may be supplied to the noticee, before taking any decision in this regard.

It is further submitted that it is quintessential to conduct independent investigation by the concerned investigating agency, in order to level and hold the charges. For this, reliance has been placed upon the decision of the Apex Court in **KTMS Mohd. v Union of India, (1992) 3 SCC 178:1992 SCC (Cri) 573** at

page 193, wherein the Hon'ble Supreme Court while relying, on a judgment delivered by the Constitutional bench of the Court in **Shanti Prasad Jain v Directorate of Enforcement, 1962 AIR 1764**, held as under:

25. Needless to emphasise that the FERA and the I.T. Act are two separate and independent special Acts operating in two different fields.

26. This Court in Ravula Subba Rao v. CIT [AIR 1956 SC 604 : 1956 SCR 577 : (1956) 30 ITR 163] has pointed out:

"The Indian Income Tax Act is a self-contained Code exhaustive of the matters dealt with therein, and its provisions shown an intention to depart from the common rule, qui facit per alium facit per se."

27. Further, in Pannalal Binjraj v. Union of India [AIR 1957 SC 397 : 1957 SCR 233 : (1957) 31 ITR 565] it has been observed thus:

"It has to be remembered that the purpose of the Act is to levy income tax, assess and collect the same. The preamble of the Act does not say so in terms it being an Act to consolidate and amend the law relating to income tax and super tax but that is the purpose of the Act as disclosed in the preamble of the First Indian Income Tax Act of 1886 (Act II of 1886). It follows, therefore, that all the provisions contained in the Act have been designed with the object of achieving that purpose."

28. Coming to the FERA, it is a special law which prescribes a special procedure for investigation of breaches of foreign exchange regulations. Vide Shanti Prasad Jain v. Director of Enforcement [(1963) 2 SCR 297 : AIR 1962 SC 1764 : (1963) 33 Comp Cas 231] . The proceedings under the FERA are quasi-criminal in character. It is pellucid that the ambit, scope and intendment of these two Acts are entirely different and dissimilar.

8. In a nutshell, the appellant:

- a) did not dispute the seizure of the narcotic drugs and psychotropic substances by the Delhi Police from Sharma and others;
- b) that they were seized from the consignments destined to be exported against the Shipping Bill filed with the appellant as the Customs Broker and Hindustan Exim India as the exporter;

- c) asserted that Sharma had impersonated as Custom House Agent and thereby committed an offence under section 419 of IPC (cheating by impersonation) and said that it would take action against Sharma;
- d) asserted that since the goods were seized in the parking lot before being brought into the Customs area, no offence was committed under the Customs Act;
- e) that the Customs should have conducted an independent investigation which they had not done.

9. After considering this reply and holding a personal hearing, the Commissioner passed an order dated 22.6.2018 confirming the suspension of the licence. Thereafter, a Show Cause Notice dated 30.8.2018 was issued alleging that the appellant had contravened Regulations 1(4), 10(a), 10(b), 10(d) and 10(e) of CBLR, 2018 and proposing to revoke the licence, forfeit the security deposit and impose penalty under Regulation 19 read with Regulation 17. Shri Jamir Ahmed, Assistant Commissioner, ACC-Import was appointed as the Inquiry officer to whom the appellant was required to submit its reply.

10. The appellant submitted its reply dated 9 November 2018 and also attended personal hearing. The appellant's reply was, in brief, as follows:

- a) The shipping bill was filed on 17.5.2018 and on 18.5.2018, Delhi Police seized drugs from 4 cartons out of the 27 which were brought to be exported under this Shipping Bill. These cartons were brought in a Mahindra

Champion Tempo which was in the parking lot of the air cargo complex before the goods were to move for customs clearance.

- b) Four persons including Ashish Sharma were arrested by the Delhi Police and investigations showed that Ashish Sharma had prepared customs clearance documents as 'Custom House Agent' (Custom House Agent or CHA is an expression used in the regulations earlier which was replaced by the term Customs Broker or CB and these two are often loosely used interchangeably).
- c) Based on this statement, the appellant's CB licence was suspended for allowing Ashish Sharma, who is an unauthorized person to misutilise its licence.
- d) No independent investigation was done by the Customs.
- e) **Ashish impersonated as the appellant and hence committed an offence under section 419 of the IPC.**
- f) Since the drugs were seized outside the Customs area, no offence was committed as far as the Customs Act is concerned.
- g) **The Shipping Bill dated 17.5.2018 was filed by the appellant based on the invoice cum packing list received from the exporter, the checklist was prepared and it was sent to the exporter by email for approval and after receiving the approval, the Shipping Bill number was generated and the shipping bill number and the checklist were communicated to the exporter.**

11. The Enquiry officer recorded in his report that no emails of correspondence between the appellant and the exporter were submitted before him.

12. Thus, at this stage also, the appellant's position was that the drugs were seized by the police outside the Customs Area. It disputed the allegation that it had allowed the Ashish to mis-utilise its licence but it took two different stands. First, that Ashish had impersonated the appellant and filed the papers and thereby committed an offence under section 419 of IPC. Second, that the appellant itself had filed the Shipping Bill based on the email communications with the exporter (whose proprietor is Ashish Sharma) and it was awaiting further instructions and Ashish brought goods but they had not yet entered the Customs area and were still in the parking lot at the time of seizure. This is contradictory to the first stand because only Shipping Bill was filed in the case and the goods were not even brought into the Customs area and if the shipping bill is filed by the appellant itself, then Ashish could not be impersonating as the appellant if the appellant itself had done the Customs work.

13. In his report, the Enquiry officer found that:

- a) The Shipping Bill dated 17.5.2018 was filed with the appellant as the CB and it can be filed through the ICEGATE portal only by the 'F' card holder (i.e., the main Customs broker) or 'G' card holders (i.e., the employees of the Customs broker who have been authorised) and in this case, it was filed by Ashish who was neither and

hence was not authorised. This would not have been possible without the appellant giving its credentials and digital signature to Ashish. Similarly, the earlier shipping bills also could not have been so filed by Ashish without the appellant giving his credentials to him.

- b) The appellant had not obtained any authorization from the exporter as it was not able to produce any such authorization.
- c) The appellant did not transact business personally or through its employees but through an unauthorized person- Shri Ashish.
- d) The appellant did not advise its client, the exporter to comply with the provisions of Act and Rules and several NDPS were attempted to be exported in this case and were also exported in the past through several shipping bills.
- e) The appellant did not exercise due diligence to ascertain the correctness of information which it had provided to its client.
- f) The appellant had transferred the licence to Ashish by allowing him to use its credentials to file the Shipping bills.
- g) For all the reasons, it is amply proved that the appellant had contravened Regulations 1(4),10(a), 10(b), 10(d) and 10(e) of CBLR, 2018

14. After the Inquiry report was submitted, the appellant submitted a letter dated 25.1.2019, paragraphs 34 and 35 are as relevant and these are as follows:

34. It is mentioned in para 9 that "no email communications" regarding the exports between the noticee and the exporter has been presented. However, the same has already been submitted by the noticee during the adjudication proceedings.

35. It is further acclaimed in the inquiry report that the process of registration in ICEGATE which requires Digital Signature, PAN Card and any Form of identity proof which can only be done by the F and G card holders of the CHA firm. Thus, Ashish Sharma could not have impersonified as CHA holder. However, registration is a onetime process and filing of documents does not require login ID and password of the CHA holder to obtain the Shipping Bill No. and the same was done by Ashish Sharma in the present case. Therefore, such allegations are baseless and liable to be set aside.

15. After considering the SCN, the enquiry report, written submissions of the appellant and submissions made during the personal hearing held on 6.2.2019, the Commissioner passed the impugned order holding that the appellant had violated regulations 1(4), 10(a), 10(b), 10(d) and 10(e) of CBLR, 2018.

Submissions on behalf of the appellant

16. The following submissions were made on behalf of the appellant.

- i) Ashish is the exporter and he had provided the invoice and packing list by email to the appellant based on which the appellant had filed the shipping bill dated 17.5.2018. Copy of these email communications have been enclosed as Annexure A-18 to the appeal.

- ii) Based on the above documents, the appellant prepared a checklist and sent to Ashish for approval and after receiving the approval, generated the shipping bill number and communicated it to Ashish along with the check list.
- iii) Thereafter, Ashish arranged with an airline for export and got an Airway Bill (AWB) issued.
- iv) Only after the goods enter the Customs area, the Shipping Bill would be registered by the Customs officer in the EDI and the system gives an inspection/examination order and the goods are examined by the Customs officer and finally Let Export Order (LEO) is issued by the officer. The appellant can only file a Shipping Bill based on the invoices and packing list provided by the exporter but has no way of knowing the actual contents of the packages which the exporter brings for export nor has the appellant any right to examine the contents of the packages.
- v) In this case, the goods were seized by the police in the parking lot even before they entered the Customs area.
- vi) Regulation 10 of CBLR, 2018 does not place any obligation on the appellant to look into the information provided by the exporter to examine if the transaction is genuine or to check the actual contents of the goods brought by the exporter.
- vii) The IEC of Hindustan EXIM India mentioned on the Shipping Bill was issued by the DGFT and the appellant had no reason to doubt it. The appellant also obtained a KYC form from the exporter which is at Annexure 19. A

copy of the authority letter dated 1.5.2018 is Annexure-20.

- viii) The impugned order is arbitrary and simply accepted the inquiry report without examining the submissions.
- ix) In paragraph 20.4.2 of the impugned order, the Commissioner has erred in observing that it would not have been possible for Ashish to file the Shipping Bill dated 17.5.2018 and the previous shipping bills using the licence of the appellant unless the appellant allowed it. However, the Commissioner failed to appreciate that the appellant had no knowledge of the malafide intentions of Ashish.
- x) In paragraph 20.4.3, the Commissioner placed reliance on the statement of Ashish without initiating any independent enquiry. There is not a single document to show that the appellant was aware of what Ashish was doing and his dealings in contraband.
- xi) The appellant has never transferred or sublet its licence to Ashish. Therefore, there was no violation of Regulation 1(4) of the CBLR, 2018.
- xii) The appellant has also not violation Regulations 10 (b) and 10 (d), 10(e) of CBLR, 2018.
- xiii) Heavy reliance is placed on the statement of Ashish to the police.
- xiv) In the chargesheet filed by the police before the court, the appellant is nowhere mentioned as an accused. Any

further action will be taken by the police under the NDPS Act.

- xv) There is no offence report as per Regulation 17 and therefore, the present proceedings could not have been started.
- xvi) No statements of the appellant were recorded by the Customs officers under section 108. Ashish was, in fact, arrested along with others by police outside the Customs area.
- xvii) No separate independent investigation was conducted by the Customs under the Customs Act.
- xviii) The appellant was not allowed to cross-examine the witness.
- xix) Even if it is admitted, for the sake of argument that the charges against the appellant are established, the penalty of revoking the licence, forfeiting the security deposit and imposing a penalty is disproportionate.
- xx) The appellant places reliance on the following case laws:
 - (i) **Marks Logistics Mahavir & Co. Building versus The Commissioner of Customs⁸ ;**
 - (ii) **Kunal Travels (CARGO) versus Commissioner of Customs (Import & General)⁹ ;**
 - (iii) **K.T.M.S. Mohd. Versus Union of India¹⁰ ;**
 - (iv) **Shriwin Shipping & Logistics versus Commissioner of Customs, Commissionerate – VIII¹¹ ;**
 - (v) **GSP Shipping & Logistics Agency versus Commissioner of Customs (Airport & Administration) , Kolkata¹² ;**

⁸ 2015 SCC OnLine CESTAT 3515

⁹ 2017 SCC OnLine Del 7683

¹⁰ 1992 SCC (Cri.) 573

¹¹ 2019 SCC OnLine CESTAT 2168

- (vi) **Sadanand Chaudhary versus CC (G), New Delhi¹³ ;**
- (vii) **R.S.R. Forwarders versus CC¹⁴ ;**
- (viii) **M/s Ashiana Cargo Services versus Commissioner of Customs (I&G)¹⁵ ;**
- (ix) **Dhanajaya Reddy versus State of Karnataka¹⁶ ;**
- (x) **Zuari Cement Limited versus Regional Director, Employees' State Insurance Corporation, Hyderabad and Ors.¹⁷**

Submissions on behalf of the respondent

17. Learned authorised representative for the Revenue vehemently supported the impugned order and submitted as follows:

- (i) In the first round of this appeal, the appeal was allowed on the ground that the principles of natural justice were violated in not allowing the appellant to cross-examine Ashish but the fact that the appellant himself has repeatedly stated that Ashish has impersonated him and filed the papers was not considered.
- (ii) In view of this and on account of some submissions of the respondent, the Hon'ble High Court remanded the matter to this Tribunal.
- (iii) There are three different sets of laws to be considered- NDPS Act, 1985, Customs Act, 1962 and the CBLR, 2018. Police booked the case and arrested Ashish and others

¹² **MANU/CK/0066/2020**

¹³ **2018 SCC Online CESTAT 2266**

¹⁴ **2018 SCC Online CESTAT 3637**

¹⁵ **2014 SCC Online Del 1161**

¹⁶ **(2001) 4 SCC 9**

¹⁷ **(2015) 7 SCC 690**

under the Narcotic Drugs and Psychotropic Substances Act, 1985 and that matter will be dealt with by the appropriate court. Therefore, there is no reason for the Customs officers to also investigate the matter as per NDPS Act; as far as this Act is concerned, Delhi Police is the investigating agency.

- (iv) As far as the Customs Act is concerned, goods attempted to be exported in violation of any prohibition under any law for the time being in force are liable for confiscation under section 113. Thus, in such cases, the goods can be seized and proceedings can commence under the Customs Act or under the Act under which there is prohibition on export. In serious cases such as arms and drugs, the cases are, as a matter of practice, continued under the relevant criminal laws. However, in this case, the goods were seized by the police even before the goods entered the Customs area and therefore, there was no need for the Customs to conduct any investigation.
- (v) The present proceedings are only under CBLR, 2018 and it only needs to be decided if the Commissioner was correct in holding in the impugned order that the appellant violated Regulations 1(4), 10(a), 10(b), 10(d) and 10(e) of CBLR, 2018 and if so, the revocation of its licence, forfeiture of security deposit and imposition of penalty can be sustained.
- (vi) The appellant's submission that it had not let Ashish file the Shipping Bill using its credentials but it had filed the

Shipping Bill does not appear correct for two reasons- firstly, the appellant itself has repeatedly stated that Ashish had impersonated it and filed the papers. Secondly, the appellant's so called email communications with Ashish with respect to this Shipping Bill were not presented to the Inquiry officer as recorded by him. If the appellant had, indeed communicated through email with Ashish and filed the Shipping Bill dated 17.5.2018 by itself, there was no reason for the appellant not to provide copies of the email.

It is incorrect for the appellant to say that the entire allegation against it is based on the statement of Ashish to the police during interrogation and hence, it should be allowed to cross examine him. In fact, it is also based on the repeated assertions of the appellant itself that Ashish had impersonated and filed the papers.

(vii) As far as the doctrine of proportionality is concerned, the Customs brokers licence is issued only after an examination and great responsibility is cast on the appellant to protect the interests of both its clients and of the Government. Once the appellant allowed anyone to use its licence and credentials to be used by anyone else to file the Shipping Bill, no sanctity remains to the licence. As is evident in this case, the other persons can use misuse the licence sublet by the licence to smuggle drugs, arms or any contraband. Therefore, a strict view must be taken and the impugned order must be upheld.

Findings

18. We have considered the submissions on both sides and perused the records. This case was remanded by the High Court of Delhi for the reason that in the first round the appeal was allowed only on the ground that principles of natural justice were violated in not allowing cross-examination of Ashish without appreciating all the evidence on record and also for the reason that the appellant's submission regarding proportionality of punishment to the alleged offence was also not considered.

19. We now proceed to record the undisputed facts and the disputed facts and the evidence available on record to establish them and if those facts confirm the alleged violations and if so, whether the punishment is proportionate to their gravity.

20. The undisputed facts of this case are:

- i) the Shipping Bill dated 17.5.2018 was filed on the Customs EDI system with the appellant as the Customs Broker and Hindustan as the exporter.
- ii) narcotic drugs and psychotropic substances were seized by the Delhi Police and four persons including Shri Ashish Sharma who is said to be the proprietor of Hindustan EXIM India, the exporter were arrested.
- iii) the drugs were found in the packages meant to be exported against the Shipping Bill but the goods had not yet entered the Customs area and were still in the parking lot of the export cargo shed.

- iv) The case under NDPS Act was booked and is being investigated by the Police and will be dealt with by the appropriate court. It is not part of the present proceedings.
- v) The goods were not yet in the Customs area and were not under the control of the Customs officers. Therefore, there is no case of seizure, confiscation, etc. under the Customs Act.
- vi) The assertion that Ashish had similarly exported drugs using the credentials of the appellant as Customs broker in the past under several Shipping Bills is based on the statement of Ashish to the police during interrogation.
- vii) No details of the past shipping bills have been mentioned by either side in any of the documents (although it would have taken the department very little time to pull from the system details of the Shipping Bills filed with the appellant as the Customs Broker and Hindustan Exim as the exporter).
- viii) Thus, the present case can only be confined to the present shipping bill.

21. Thus, as far as the appellant is concerned, there is no case against it either under the NDPS Act or any case of attempted illegal export under the Customs Act. The enquiry by the Customs and the current proceedings are confined to see if the appellant had violated CBLR, 2018.

Facts in issue

22. The contended facts in this case are:

- i) Did the appellant allow Ashish to use its credentials to file Shipping Bills?
- ii) Did Ashish impersonate the appellant and file papers with the Customs and if so, is it possible to do so without the appellant allowing him to do so?
- iii) Was the Shipping Bill dated 17.5.2018 filed by the appellant or by Ashish?
- iv) Did the appellant violate Regulations 1(4), 10(a) 10(b), 10(d) and 10(e) of CBLR, 2018?
- v) If the answer to (iv) is YES, is the penalty proportionate to the gravity of the offence?

23. The only case in this appeal against the appellant is that it had allowed Ashish to use its credentials to file the export documents in the case which it could not have done because the Customs Broker should operate by himself ('F' card holders) or through its employees ('G' card holders). The case of the Revenue is that by allowing Ashish to use its credentials, the appellant violated several provisions of the CBLR, 2018 and hence the impugned order taking action under CBLR, 2018.

24. According to the Revenue, the appellant allowed Ashish Sharma to use its credentials using which he filed the Shipping Bill dated 17.5.2018. According to the statement of Ashish Sharma, he had similarly filed shipping bills in the past using the credentials of the appellant. In the absence of any details of the past Shipping

Bills being produced by either side, we confine ourselves to examining the Shipping Bill dated 17.5.2018.

25. The appellant has two contradictory stands on this issue. The first is that the appellant itself filed the Shipping Bill on behalf of Hindustan whose proprietor is Ashish Sharma and had communicated the shipping bill number along with the checklist by email and was awaiting further instructions regarding shipping. According to the appellant, as far as the airway bill is concerned, it has to be issued by the carrier or its agent and such agents are approved by IATA and it was not competent to issue the airway bills. Therefore, Ashish Sharma obtained the airway bill and the goods were brought but they were not yet brought into the Customs Area and therefore, it had not violated any provisions. It is also its submission that registration is a one-time process and once the Shipping Bill is registered, anyone can access it and no credentials are required.

26. The other contradictory stand of the appellant is that Ashish Sharma impersonated it and such impersonation is an offence and it proposes to take action under section 419 of the Indian Penal Code. This section reads as follows:

Section 419. Punishment for cheating by personation.

Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

In other words, the stand of the appellant is that Ashish Sharma personated as the appellant and did the work and thereby cheated the appellant.

27. The second stand of the appellant can only mean that Ashish personated as the Customs Broker (the appellant) and did what the Customs broker could do but he could not. Transporting goods intended for export to the parking lot of the air cargo complex cannot be such an act because anybody can do it and Ashish, as the exporter, could also do it. It is a matter of record that the goods had not yet entered the Customs area only after which further customs procedures could take place. Thus, the only customs work which was done prior to the seizure with respect to the Shipping Bill dated 17.5.2018, is the filing of the checklist and generation of the Shipping Bill. Therefore, by personating the appellant, Ashish could have only done these. In other words, the shipping bill was filed using the credentials of the appellant by Ashish and not by the appellant. This stand of the appellant is consistent with the position of the Revenue.

28. Learned counsel for the appellant also argued that, once the registration is completed, no credentials such as user ID and password are required to access the Shipping Bill. In its letter dated 25.1.2019 sent after the enquiry report also, the appellant, *inter alia*, stated as follows:

35. It is further acclaimed in the inquiry report that the process of registration in ICEGATE which requires Digital Signature, PAN card and any form of identity proof which can only be done by the 'F' and 'G' card holders of the CHA firm. Thus, Ashish Sharma could not have impersonified as CHA holder. **However, registration is a onetime process and filing of documents does not require login ID and password of the CHA holder to obtain the Shipping Bill No. and the same was done by Ashish Sharma in the present case. Therefore, such allegations are baseless and liable to be set aside.**

29. During hearing learned counsel for the appellant asserted forcefully that once the Shipping Bill number is generated, anybody

can present any papers and export goods against them if one has the Shipping Bill number and the appellant has no control over it. This is a rather unusual assertion that once a Shipping Bill number is generated, anybody can present any papers to the Customs and export any goods against that shipping bill. The role of the Customs Broker does not end with generation of the Shipping Bill number. Thereafter, the Customs Broker has to get the goods carted (entered in the Customs area), get the Shipping Bill registered, get the examination or inspection order from the system, assist in the examination process and once an order permitting clearance of goods for export under Section 51 which is commonly known as Let Export Order (LEO) is issued, the role of the Customs Broker comes to an end. Any role of the Customs broker in the Customs EDI system can only be played by the Customs broker and not by anybody without the credentials and his digital signature. Of course, the Customs EDI would show those actions as having been done by the Customs broker once these credentials and digital signature are used. Therefore, to impersonate a Customs broker and file papers in the Customs EDI system, one must have login credentials and the digital signature of the Customs broker which can only be given by the Customs broker. Further, as far as the Shipping Bill dated 17.5.2018 is concerned, no processing before the Customs took place after filing the Shipping Bill because the seizure took place before the goods entered the Customs area.

30. Therefore, this stand of the appellant that Ashish impersonated the appellant, which is consistent with the position of the Revenue that Ashish Sharma had filed the papers using the

credentials of the appellant must be accepted. The irresistible conclusion will be that the appellant had allowed Ashish Sharma to use its credentials and digital signature to file the Shipping Bill.

31. We have also carefully examined the other contradictory stand of the appellant that it had filed the checklist on the ICEGATE portal and after obtaining confirmation from Ashish, filed the Shipping Bill. The appellant's submissions in this regard before the Inquiry officer and his findings were as follows.

As regard filing of Shipping Bill No. 4933845 dated 17.5.2018, they have received invoice cum packing list from the exporter, the checklist was prepared by them and the same was sent to the exporter for approval. On receipt of approval, the checklist was submitted to ICEGATE and Shipping Bill number 4933845 was generated. Checklist with Shipping Bill number was sent to the exporter for his reference and shipping instruction was awaited. He submitted a copy of the check list nad invoice related to the aforesaid Shipping Bill for perusal. **However, no email communications between the Customs broker and the exporter has been submitted. (emphasis supplied)**

32. After the inquiry report, the appellant sent a letter dated 25.1.2019 to the enquiry officer refuting paragraph 34 of his report in which it was recorded that the appellant had not submitted any emails to him. It reads as follows.

34. It is mentioned in para 9 that "no email communications" regarding the exports between the noticee and the exporter has been presented. **However, the same has already been submitted by the noticee during adjudication proceedings.**

33. In the appeal before us, copies of the emails said to have been exchanged are enclosed as Annexure A18 (pages 239 to 241 of the appeal). A Know Your Customer (KYC) form said to have been obtained from the exporter is enclosed as Annexure A19 (page 242 of the appeal) and the authority letter said to have been

given by the exporter is enclosed as Annexure A 20 (page 247 of the appeal). We have carefully examined these documents.

34. As pointed out by the learned authorised representative for the Revenue, the 'Authority Letter' enclosed as Annexure A 20 is dated 1 May 2018 and is addressed to the Deputy Commissioner of Customs, New Custom House, New Delhi and was neither addressed to or copied to the appellant. So, if it was submitted, it must be with the Deputy Commissioner and the office copy must be with the exporter not with the appellant.

35. We also find that letter is quite unusually worded and it reads as follows.

May 1, 2018

To
The Deputy Commissioner of Customs,
New Custom House,
New Delhi

Sub: **AUTHORITY LETTER**

Dear Sir,

We, HINDUSTAN EXIM INDIA hereby authorize M/s **PARAMOUNT CARGO & LOGISTIC SOLUTIONS** our CHA for custom clearance of all our Export/Import shipment on our behalf; we shall be responsible if any declaration is found wrong other than invoice, Packing List, **we shall also be responsible if found restricted/prohibited/contraband category.**

Thanking You,

For HINDUSTAN EXIM INDIA

Signed by proprietor

36. If a letter is issued authorizing any person, it is usually addressed to the person and if it is addressed to an authority, at least a copy is marked to the person being authorised. Such a letter must, logically be in the hands of the addressee which, in this case,

is the Deputy Commissioner and it cannot be in the hands of someone else. However, one may keep an office copy and what is presented could be an office copy which the appellant obtained from the exporter, and if so, there must be at least an acknowledgment. It is also rather unusual for an authorization to a Customs broker to transact business should refer to contraband. For all these reasons, we do not find that this authorization letter was given to the Deputy Commissioner.

37. To support its stand that the Shipping Bill was indeed filed by the appellant, it placed reliance on the 'email communications' between the appellant and the exporter with respect to the Shipping bills. The Inquiry officer recorded that no such emails were produced before him. The appellant's position that they were indeed, produced before the enquiry officer and have also been enclosed as Annexure 18 to the appeal. Therefore, these emails are essential to decide if the appellant is correct.

38. We have carefully examined the printouts of the emails enclosed as Annexure 18. The email ID of the appellant is rajesh@paramountlogistics.in as per the Appeal memorandum. The exporter had two email IDs as per the KYC hindustaneximindia@rediffmail.com and rrindialogistics@gmail.com. The first email with subject HEI-169.xlsx appears to have been sent (date is not mentioned) from ashishsharma.as@gmail.com to rozelogisticsindia@gmail.com. It reads 'Plz file the paper under dbk scheme and send me the check list'. The second email was a reply signed by Farman Tomar and

sent on 17 May 2018 at 2.44 PM from the email of mohan dobhal, rozelogisticsindia@gmail.com and it reads 'Dear Sir, Please find attd. Checklist for approval. Regards, Farman Tomar'. The reply to this email (date is not mentioned) is sent from ashishsharma.as322@gmail.com which says 'OK process and send me sb nmbr'. The fourth email (date is not mentioned) is sent from mohan dobhal rozelogisticsindia@gmail.com. to Ashish and says 'Dear Sir, Please find attd. Checklist with Sb No. Regards, Farman Tomar.' Evidently these were some email communications between Shri Farman Tomar using the email ID of Mohan Dobhal of rozelogisticsindia and one Ashish Sharma who has the email ID ashishsharma.as322@gmail.com. These were not communications between the appellant who has a proper email ID with its own firm name as the domain name and whose email ID according to the appeal is rajesh@paramountlogistics.in and the email IDs of the exporter which, according to the appeal are hindustaneximindia@rediffmail.com and rrindialogistics@gmail.com. We have considered the possibility that one of the juniors of the appellant might have communicated and even if it is so, the email ID would carry its business domain name and would be addressed to the email ID of the exporter mentioned in the KYC obtained by the appellant itself. For these reasons, we find that the printouts of the emails annexed as A18 to the appeal do not support the stand of the appellant that the Shipping Bill was filed by the appellant after obtaining approval of the exporter. If that was indeed the case, there was no good reason as to why the appellant had not produced printouts of the emails before the

Inquiry officer (as recorded by him). When one is faced with the possibility of the licence being revoked, it is unthinkable that one would not produce the copies of emails which would support one's case. If such emails existed, there was no reason as to why the appellant did not produce them in this appeal and instead produced some communication between emails IDs which, as per the appeal itself, are not the email IDs of either the appellant or the exporter.

We find that the appellant tried to mislead us by producing irrelevant emails claiming them to be the emails regarding the Shipping Bill dated 17.5.2018 between the appellant and the exporter.

39. In view of the above, we find, based on the evidence, that the position of the Revenue that the Shipping Bill and other papers were filed by Ashish Sharma using the credentials of the appellant is correct. This is also one of the two contradictory stands taken by the appellant - that Ashish impersonated him. However, according to this stand of the appellant, Ashish impersonated him without his consent and to so impersonate, the credentials of the appellant were not required. As we have discussed above, when login ID, password and digital signature are required to file papers as Customs Broker in the Customs EDI system, it would be impossible for Ashish or anyone else to do so unless the credentials and the digital signature are provided by the appellant.

40. **Thus, we find based on the facts available on record, Ashish Sharma filed the Shipping Bill dated 17.5.2018, using the credentials of the appellant which would not have been possible without the appellant lending his licence to him by**

providing the login credentials as well as the digital signature.

Violation of the CBLR, 2018

41. The finding of the Commissioner in the impugned order is that the appellant violated Regulations 1(4), 10(a), 10(b), 10(d) and 10(e) of the CBLR, 2018 and the appellant disputes that it violated these. These regulation and our findings on the allegations of their violation are as follows:

Regulation 1(4)

Every license granted or renewed under these regulations shall be deemed to have been granted or renewed in favour of the licensee, and no license shall be sold or otherwise transferred.

42. According to the Revenue, the appellant allowed Ashish to use its licence to file the Shipping bill and thus, transferred/sublet its licence. According to the appellant, it has not transferred its licence to Ashish or allowed him to file the Shipping Bill or other papers before the Customs and the shipping bill was filed by the appellant itself. The other stand of the appellant is that Ashish impersonated as the appellant and filed the papers. As we have found that Revenue's position that Ashish filed the Shipping Bill using the credentials provided by the appellant which is consistent with the appellant's second stand (except to the extent of providing the credentials) is correct, we find that the appellant transferred its licence to Ashish insofar as the filing of the Shipping Bill dated 17.5.2018 is concerned (the other shipping bills alleged filed in the past and the exports made against them have not been brought on record by either side). We, therefore, uphold the finding of the impugned order that the appellant violated Regulation 1(4).

43. Regulation 10(a) reads as follows.

Regulation 10. Obligations of Customs Broker: -

A Customs Broker shall –

(a) 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 authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

44. According to the Revenue, the appellant had not obtained this authorization from Ashish and instead it gave its credentials to him so that he could file the Shipping Bills and other papers by himself. According to the appellant, it had, indeed, obtained an Authority Letter dated 1 May 2018 which is enclosed as Annexure A 20 to the appeal. As discussed earlier, this letter was addressed to the Deputy Commissioner of Customs and was not copied to the appellant. So, if it had, indeed, been submitted, it should have been in the office of the Deputy Commissioner and not with the appellant and the office copy of the letter would have been with the exporter but such an office copy would have an acknowledgement of the receipt of the letter by the office of the Deputy Commissioner. No such acknowledgement is on this letter. The letter is also rather unusually worded for an authority to a Customs broker to transact business specifically referring to contraband goods and indemnifying the appellant for any exports or imports found in 'prohibited/ contraband' category. For these reasons, we have already found that this letter was not delivered to the Deputy Commissioner and was not even addressed to the appellant. Therefore, we find that the impugned order was correct in its finding that the appellant violated Regulation 10(a).

45. Regulation 10(b) reads as follows.

Regulation 10.

A Customs Broker shall –

(b) transact business in the Customs Station either personally or through an authorized employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

46. According to the Revenue, instead of transacting the business by itself or through its employees, the appellant allowed Ashish to transact the business by providing its credentials to him. According to the appellant, it had filed the Shipping Bill dated 17.5.2018 based on the documents received from Ashish, who is the proprietor of the exporter firm and prepared a checklist, got it approved by Ashish, generated the Shipping Bill number and conveyed it to Ashish. All this correspondence was through email and it claims to have produced copies of the email before the Inquiry Officer. The Inquiry Officer recorded in his report that no emails were produced. The appellant contends that it had, indeed produced the emails and also enclosed copies printouts of these emails as Annexure A 18 (3 pages) to this appeal. We have already recorded our findings above that the papers which were enclosed were neither from the email ID of the appellant or to the email ID of Ashish as declared in the appeal itself. Thus, these printouts were only misleading and do not correspond to the transaction in question. We find no good reason as to why the appellant, who is facing the revocation of its licence would not produce the printouts of the correct emails to the Enquiry officer and would produce irrelevant emails in this appeal and claim them to be the emails which pertain to the communication which lead to the filing of the

Shipping Bill dated 17.5.2018. We, therefore, find that the appellant had not filed the Shipping Bill but allowed Ashish to do so and thereby violated Regulation 10(b).

47. Regulation 10(d) reads as follows.

Regulation 10.

A Customs Broker shall –

(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 non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

48. According to the Revenue, the appellant violated this regulation as it had, instead of advising its client to comply with the provisions of the Act, other allied Acts, Rules and Regulations, allowed Ashish to mis-utilise its licence to smuggle Narcotic Drugs and psychotropic substances. According to the appellant, it had not violated this regulation at all and it cannot be held responsible if the client (Ashish) declares something in the documents and brings some other goods (such as drugs in this case) for export. It has no means of ensuring that the exporter brings in the correct goods nor has it any powers to inspect or examine the goods. The appellant is correct in its assertion that it has no control over what goods have actually been imported into the country or what goods have actually been brought into the Customs area for export and that the shipping bill can only be filed based on the documents provided. Therefore, the appellant cannot be held responsible for the drugs which were brought concealed in the intended export consignment which, but for the seizure by the police, would have entered the Customs area. However, the appellant was clearly

remiss in advising Ashish to produce documents and advise its client (Ashish) that the Shipping Bill can only be filed by the appellant and allowing Ashish to file the Shipping Bill impersonating as the appellant. To this extent, the appellant violated regulation 10(d) of the CBLR, 2018.

49. Regulation 10(e) reads as follows.

Regulation 10. Obligations of Customs Broker: -

A Customs Broker shall –

(e) 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;

50. According to the Revenue, the appellant violated this Regulation for the same reason as given for alleged violation of Regulation 10(d). According to the appellant it had not violated this regulation. We do not find anything in the record to show that any information has been provided by the appellant to its client Ashish at all. Therefore, the allegation that the appellant had not provided correct information is not proved.

51. Thus, we find that the findings of the impugned order that the appellant had violated Regulations 1(4), 10(a), 10(b) and 10(d) must be sustained but the finding that it violated Regulation 10(e) cannot be sustained.

52. We have considered the case laws cited by the learned counsel for the appellant and find that these are distinguishable on facts. In **Marks Logistics**, it was found that the Customs broker was unaware of the violations and was not involved in them and hence the appeal was allowed. In **Kunal Travels**, Hon'ble High

Court of Delhi was seized of a matter where the client deliberately provided wrong information to the Customs broker and therefore, it was held that the Customs broker cannot be responsible for it. In **KTMS Mohd.**, Hon'ble Supreme Court held that Income Tax Act and FERA are entirely different laws and IT officers cannot launch a prosecution for perjury on the basis of a statement made to the enforcement officers. In this appeal, while the initial information came from the seizure by the police under the NDPS Act, the proceedings are under the CBLR, 2018 which provide a procedure for taking action for violations of the Regulations and this procedure has been duly followed. The appellant's licence was not revoked only because drugs were seized under the NDPS Act by the police but based on the enquiry report and other proceedings under the CBLR. Therefore, **KTMS Mohd.** will not advance the case of the appellant. In **Shriwin Shipping & Logistics**, the tribunal found that the department was not able to adduce any evidence to show that the appellant had allowed other persons to use its licence and therefore, allowed the appeal. In this appeal, we have discussed this issue at length and found that the appellant had allowed Ashish to use its licence. In **GSP Shipping, RSR Forwarders** and **Sadanand Chaudhary**, considering the facts and circumstances of those cases, the appeals were partly allowed. We have already discussed the case in this appeal. **Ashiana Cargo Services** underlined the need for proportionality of penalty. We will discuss shortly, the question of proportionality in this case. **Dhananjaya Reddy** was a criminal case, where the benefit of doubt was given to the accused. This appeal deals with a completely different case

of proceedings regarding revocation of a Customs Broker's licence to the appellant. **Zuari Cement** was a case where the Hon'ble Supreme Court upheld the decision of the Hon'ble High Court because the ESI court which passed the order had no jurisdiction to consider the question of grant of exemption. In this appeal, we find no difficulty with the jurisdiction.

53. The last issue to be decided is the proportionality of the offence to the violations. Learned counsel for the appellant vehemently argued that even if it is found that some regulations were violated, the doctrine of proportionality requires the penalty to be proportionate to the violations. In this case, there is no evidence or even any allegation that the appellant was in any way involved in the narcotic drugs and psychotropic substances. The chargesheet filed by the police also does not suggest any role of the appellant in the drugs. In fact, the appellant's statements to the police were to be used by the police to establish the case against the accused. As far as the Customs is concerned, there is no case under the Customs Act at all, because the goods were not even brought into the Customs area and they were seized by the police in the parking lot itself. The appellant had no role even in obtaining the airway bill for export which was obtained by the exporter itself through an IATA agent. Learned authorised representative asserts that a great responsibility is cast on the Customs broker to protect the interests of its clients as well as that of the Revenue. The appellant shirked all its responsibilities by simply giving its credentials to Ashish (who is not an authorised person) to file the Shipping Bills. Ashish, in turn, used the

credentials to smuggle drugs. Therefore, the punishment is just and fair and the impugned order calls for no interference.

54. We have considered the submissions on the question of proportionality. It is true that the appellant was not involved in attempted trafficking of the drugs. Had he been involved, action would have been taken by the police under NDPS Act. It is equally true that the goods were not in the Customs area. It is for this reason, that there is no case under the Customs Act. The only case in this appeal is that the appellant violated CBLR, 2018 and we have found that the appellant violated Regulations 1(4), 10(a), (b) and (d).

55. The question which arises is how serious are the violations and if revoking the licence, forfeiting the security deposit and imposing penalty is proportionate to the offence. The role of the Customs broker is one of great responsibility in the customs operations and it is for this reason, a licence is issued only after conducting an examination and after necessary background verifications. It is true that the Customs broker is not an inspector to examine the goods and cannot exercise any powers available to the officers. All that is required of the Customs broker is to fulfill its obligations under the CBLR, 2018. Once it fulfills all its obligations, if an exporter or importer attempts to deal in contraband by bringing goods which are not declared in the documents, the customs broker cannot be held responsible for such violations unless there is evidence that the Customs broker had the knowledge of or was colluding in the offence. However, as a

licencee, it has to fulfill its obligations and cannot lend, sublet, transfer, etc. its licence. Transferring the licence or allowing some unauthorized person to use its licence credentials to file Shipping Bills or Bills of Entry or any other papers is a very serious violation. Just as one cannot allow ones driving licence to be used by someone else to drive or allow ones passport to be used by someone else to impersonate and travel internationally, the Customs broker cannot allow its licence to be used by someone else impersonating it. A Chartered Accountant cannot allow anyone else to certify accounts using his name and credentials. A member of the bar cannot, similarly, not allow someone else to impersonate him, use his bar licence and appear in the courts. If such violation by a Customs broker is either condoned or is viewed leniently, no sanctity will be left in the entire system of licensing Customs brokers. Any Tom, Dick and Harry can simply borrow someone else's licence and keep filing Bills of Entry, Shipping Bills and other papers. In this case, we found that the appellant had allowed Ashish to use its credentials to file the Shipping Bill dated 17.5.2018 by impersonating as the appellant. The appellant attempted to prove that it itself had filed the Shipping Bill and claimed reliance on some emails which, according to the enquiry report, were not produced before the officer. **In this appeal, the appellant enclosed some irrelevant emails at Annexure A18 as the correspondence between it and the exporter to support its claim that it had filed the Shipping Bill.** The emails which were enclosed do not mention the Shipping Bill number and they were not from or to the email ID of the appellant or the

exporter. Considering all these factors, we find that the revocation of the licence, forfeiture of security deposit and imposition of penalty on the appellant are just and fair and proportionate to the serious nature of the violations by the appellant.

56. The impugned order is upheld and the appeal is dismissed except that no violation of Regulation 10 (e) of CBLR, 2018 is found.

(Order pronounced in open court on 11/04/2023.)

(P. Venkata Subba Rao)
Member (Technical)

(Dr. Rachna Gupta)
Member (Judicial)