CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Appeal No. 10676 of 2023
(Arising out of OIO-KND-CUSTM-000-COM-02-2023 dated 24.07.2023 passed by Commissioner of Customs- Kandla)

PURSHOTAM CHATRABHUJ THACKAR **...Appellant**
4, KOMAL COMPLEX, 1ST FLOOR, WARD NO. 12B,
GANDHIDHAM-370201

VERSUS

C.C. KANDLA **...Respondent**
CUSTOM HOUSE,
NEAR BALAJI TEMPLE,
KANDLA-GUJARAT

APPEARANCE:
Shri Amit Laddha, Advocate appeared for the Appellant
Shri Anand Kumar, Superintendent (Authorized Representative) for the Respondent

CORAM: **HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR**
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 10041 /2024

DATE OF HEARING: 13.10.2023
DATE OF DECISION: 04.01.2024

RAJU

This appeal has been filed by Purshotam Chatrabhuj Thackar against order of Commissioner suspending the Customs Broker License of the appellant under regulation 16(1) of CBLR 2018 read with regulation 10 of CBLR 2018 followed by order dated 23.08.2023 continuing the suspension order dated 24.07.2023 in terms of regulation 16(2) of CBLR 2018.

The facts of the case of as follows:

Date	Particulars
02.11.2016	M/s.Neminath Industries having IEC No.0315079053 (hereinafter referred to as the "exporter') filed Shipping Bill Nos.2014912 and 2014929 both dated 02.11.2016 through Customs Broker M/s.Maj Shipping Pvt. Ltd. for export of goods contained in factory stuffed container.
08.11.2016	The officer posted for clearance of Factory Stuffing Containers at MSWC CFS suspected the genuineness of the factory stuffing permission produced by M/s. Neminath Industries for the above-mentioned two Shipping Bills. The said Factory Stuffing Permission (FSP) produced by the exporter was sent for verification to FSP Cell, JNCH on 08.11.2016 wherein it was informed that the said FSP letter was not issued by their office.
10.11.2016.	Therefore, the matter was referred to the Central Intelligence Unit (CIU), JNCH for investigation.
11.11.2016	The goods contained in the above mentioned containers were examined by the officers of CIU, JNCH at CONCOR DRT CFS under Panchnama.
	During further investigation, it was found that the invoices submitted to the Central Excise Department for the subject consignments at the time of factory stuffing were different from the invoices produced for Customs clearance.
11.11.2016	Thereafter a search was conducted at the premises of M/s. Neminath Industries situated at Gala No.6, Bhayander Industrial Estate, CSM Road, Bhayander East, Thane by a team of officers of CIU, JNCH and Central Excise, Thane-II office. However, it was found that Gala No.6 does not exist in the Bhayander Industrial Estate. Further inquiry revealed that M/s. Neminath Industries used to function from Gala No.1, Naronha Estate, Near United Rubber Industries, Near Ghatak, Kashi-Mira Road, Bhayander East, Thane which was in control of Mr. Tarun Jain.
	Further intelligence gathered indicated that several factory stuffed containers were exported in the name of the various firms / companies and on suspicion of fraudulent exports on similar modus operandi may have taken place on inflated value by manipulation of documents.
	Data pertaining to the Shipping Bills filed by the exporters were sought by EDI Section, JNCH and it was found that a total of 1474 Shipping Bill were filed by the exporters.
	The details of Factory Stuffing Permission (herein after referred as “FSPs”) received from the FSP cell, JNCH were examined, and it was noticed that FSPs were used fraudulently by making and producing forged export documents.
	Since, no FSP had been issued to M/s. Neminath Industries (IEC No.0315079053), M/s. Adinath Industries (IEC No.0315064196) & M/s. Arihant Industries (IEC No.0311050638) by the FSP Cell, JNCH, therefore, out of the total 1474 Shipping Bills, 384 Shipping Bills pertaining to M/s. Neminath Industries (IEC No.0315079053), 259 Shipping Bills pertaining to M/s. Adinath Industries (IEC No.0315064196) & 230 Shipping Bills pertaining to M/s. Arihant Industries (IEC No.0311050638) were filed using fake Factory Stuffing Permissions.
	Or further analysis of the data, remaining 571 Shipping Bills pertaining to M/s. Neminath Industries (IEC No.0315059281) & M/s. Adinath Industries (IEC No.0314078461), it was observed that data pertaining to 40 Shipping Bills of M/s. Neminath Industries (IEC No.0315059281) and 48 Shipping Bills of M/s. Adinath Industries (IEC No.0314078461) was not found with the Central Excise department. Out of the remaining Shipping Bills,

	79 Shipping Bills pertaining to M/s. Neminath Industries (IEC) No.0315059281) and 20 Shipping Bills pertaining to M/s. Aadinath Industries (IEC No.0314078461) were filed using FSPs.
09.06.2021	The statement of Shri Dilip Purshotam Thackar, Partner of the Appellant was recorded under Section 108 of the Customs Act, 1962.
08.04.2022	Another summons was issued to the Appellant on 08.04.2022 whereby Shri Dilip Purshotam Thackar, Partner of the Appellant was summoned to produce the copy of Aadhar Card, PAN card and copies of emails / documents received from Mr. Tarun Popatlal Jain from email ID tarun.tj1012@gmail.com or any other email ID. In response to the aforesaid summons, the Appellant vide letter dated 25.04.2022 provided the documents as sought in the summons.
14.03.2023	An investigation report received from the Principal Commissioner of Customs, Mumbai dated 14.03.2023 along with investigation report dated 10.01.2023 outlining that the Appellant worked as Customs Broker on behalf of M/s. Adinath Industries without verifying the relevant documents necessary for Customs Broker work and for necessary action against the Appellant.
31.03.2023	Show Cause Notice No.2554/2022-23/ADC/CEAC/CAC/JNCH was issued by the Additional Commissioner of Customs, Nhava Sheva, Mumbai
24.07.2023	On the basis of above-mentioned investigation report dated 14.03.2023 and 10.01.2023, Order No. KND-CUSTM-000-COM-02-2023-24 ("impugned order-1") was passed against the Appellant wherein it was held that the Appellant has failed to verify the identity of clients and functioning at the declared address and dealt with Mr. Lokesh Bansal and Mr. Tarun Jain who claimed to be the exporter.
23.08.2023	Order No. KND-CUSTM-000-COM-06-2023-24 ("impugned order-2") was passed against the Appellant wherein suspension was continued in terms of Regulation 16(2) of CBLR, 2018.
22.09.2023	Show Cause Notice No. CUS/LIC/MISC/189/2023-CB was issued by the Respondent to call upon to Show Cause as to why the customs broker license issued to the Appellant should not be revoked under Regulation 14 read with Regulation 17 of CBLR, 2018.
	Hence, the present Appeal challenging the above-mentioned impugned order-1 & 2 passed by the Respondent.

2. Learned counsel for the appellant pointed out that the regulation 16 of CBLR 2018 mandates immediate action for suspension. He argued that in the present case action was initiated 7 years from the date of alleged offence. The shipping bills were filed in the year 2016 and action for suspension of Custom Broker License was initiated in the year 2023. He pointed out that regulation 16(1) of CBLR 2018 prescribes that only where immediate action is necessary, the license should be suspended.

He relied on the decision of Tribunal in the case of National Shipping Agency 2008 (226) ELT 46(BOM).

> “**2.** The power of suspension is pursuant to the powers conferred under Regulation 20(2) of the CHALR, 2004. As we have noted in the earlier judgments, this is an emergent power to be used in those cases where it is required that the CHA licence be immediately suspended. The very fact that alleged violation is of the year 2005, as the import had taken place in September, 2005 and order of suspension was issued on 30-10-2006 itself would indicate that that there is no emergency which required that the licence be suspended. The tribunal has noted that it is always open to the appellants herein to take steps even after the order of the tribunal sated 11-5-2007. It appears that no show cause notice has been issued to the respondents herein, till date.
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> **3.** Considering the above facts, in our opinion, the question of law would not arise and consequently appeal dismissed. We make it clear that it will be open to the appellants to record independent findings irrespective of the questions noted in the order of the tribunal.”

3. Learned counsel also relied on the CBIC Instruction No. 24.2023 dated 18.07.2023 wherein it was provided that in case of suspension of license of custom broker, the Commissioner should record the reason as to why he considers it an appropriate case where the immediate suspension is necessary. Learned counsel argued that no reason was given at the time of suspension as to why immediate suspension was necessary.

4. Learned counsel further pointed out that role of the appellant was limited filing 29 shipping bills out of 1474 shipping bills under challenge. He argued that he had conducted due diligence in terms of Regulation 10 of CBLR 2018 by taking into account all the relevant documents provided by the alleged exporter for the export of goods like Aadhar Card, Pan Card, IEC Certificate etc before filing the shipping bill. In this background, it cannot be said that the appellant violated regulation 10 of CBLR 2018. He argued that so long as the exporter holds a valid IEC code, PAN and submits all such relevant KYC documents to custom broker, on the basis of which the custom broker filed shipping bills, the custom broker cannot be blamed for any alleged mis-declaration by the

exporter. He pointed out that in this case the appellant had obtained all KYC documents from the exporter before filing shipping bills. Learned counsel further pointed out that the alleged exporter was a regular exporter who had obtained factory stuffing permission. The goods were being stuffed at factory and therefore it was presumed that all the necessary documents like invoice, packing list, container number, inspection lot, description, classification, weight, value, specification etc. would be verified by the officers supervising the factory stuffing.

5. Learned counsel further pointed out that there is no allegation of any pecuniary gain by the appellants on account of alleged fraud committed by the exporter.

6. Learned counsel further pointed out that the appellant had complied with provisions of regulation 11(n) of CBLR, 2013 read with Regulation 10(n) of CBLR, 2018 which requires the appellant to exercise due diligence.

7. He argued that the Customs Broker is required to verify the correctness of ISD number, GSTIN, identity of the client and the address through the KYC documents. He argued that the regulation 11(n) of CBLR, 2018 does not contemplate that the custom broker should physically visit the premises of importer, exporter. He relied on the following decisions:

- Anax Air Services Final Order No. 50002/2022 dated 01.01.2022
- S. Prakash Kushwaha 2023 (384) ELT 89 (Tri. Del.)
- Perfect Cargo & Logistics 2021 (376) ELT 649 (Tri-Del.)

8. Learned counsel further argued that no evidence has been produced that the broker had any knowledge about the fake factory stuffing permission. He argued that the exporter had provided the KYC

form, certificate from shops and Establishment Act, Udhyod Adhaar, PAN card, IEC Certificate etc. In these circumstances, no further verification was necessary on the part of the appellant in respect of the alleged exporter.

9. He argued that in absence of any evidence of appellant's involvement in the alleged fraud, no action can be initiated against the appellant. He relied on the following decisions:

- Sai Shipping Services 2009 (239) ELT 104
- Ashok Jaiswar 2006 (200) ELT 122

10. Learned Authorized Representative relies on the impugned order.

11. We have considered the rival submissions. We find that the current appeal has been filed against order of suspension dated 24.07.2023 of Customs Broker License and the order of continuation of suspension dated 23.08.2023. A perusal of the order shows that the charge against the appellant is that they had failed to verify the identity of the clients and functioning of the clients at the declared address and dealt with Mr. Lokesh Bansal and Mr. Tarun Jain who claimed to be the exporter. It was alleged that Mr. Tarun Jain was neither the IEC Holder of any of five firms including Ms Adinath Industries nor was holding any post in any of the such firm. The second ground is that address mentioned of IEC of Ms. Adinath Industries and Others were found to be non-existent. The order observes as follows:

> "4.5 In this regard, I find that thenotice has raised pertinent issues pertaining to the issue having taken place many years ago and also that there are no clear indications that the consignments handled by them have not been proved to have involved forged documents. While I do agree that these are valid points, it is also a matter of fact admitted by the notice that they had not dealt with the actual IEC holder. This was not a one-off consignment being handled by the notice that they could pass of non-verification of IEC as genuine mistake. Further, by their own account they had discontinued handling the client on account of payment issues. It therefore goes beyond reasonableness that they have not found it necessary to check the genuineness/existence of the IEC holder. I agree that that suspension should not be resorted to as a matter of fact as mandated by recent Board Instructions. But here is a case where a huge fraud has occurred and the

> Custom Broker has been found wanting on the most fundamental responsibilities of a Custom Broker i.e. ascertaining the identity and KYC of his client."

It is noticed that the CBIC Vide instruction No. 24/23 dated 18.07.2023 has advised the field formation as follows:

> "2. The matter has been examined. The Regulation 16 fo CBLR, 2018 provides that notwithstanding anything contained in Regulation 14, the Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the licence of a customs broker, where the enquiry against such customs broker is pending or contemplated.
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> 3. Since the power is specified to be exercised in specified circumstances, that is, the appropriate cases where immediate action is necessary, it indicates that suspension is not visualized for application in a manner routine or mechanical or in every case. This aspect is to be kept in view by the Commissioner of Customs in the course of considering a proposal to suspend the licence of a customs broker. Before doing so, the Commissioner should also take the care also of recording his/her reasons as to why it is considered an appropriate case where immediate action of suspension is necessary."

It is seen that the Commissioner in his order has observed that the appellant has failed to verify the antecedents of the exporters whereas there is a clear assertion on the part of the exporter that they had conducted the KYC on the basis of documents submitted by the exporter. There is no requirement under CBLR for the custom broker to physically verify the address. In these circumstances, we do not find any merit in the observations of the Commissioner on the basis of which the suspension was ordered to be continued. The impugned order is therefore set aside and appeal is allowed.

(Pronounced in the open court on 04.01.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha