Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 3

Customs Miscellaneous (AE) Application No. 10234 of 2023
(filed by applicant)
in
Customs Appeal No. 10380 of 2014-DB
(Arising out of OIA-446/COMMR-A-/JMN/2013 Dated-20.11.2013 passed by Commissioner of Customs -JAMNAGAR(PREV))

Ms Tulsi Logistics Private Limited ....**Appellant**
508, Premier Chambers,
R.C Dutt Road, Vadodara-Gujarat

VERSUS

C.C.Jamnagar (Prev) ....**Respondent**
Sharda House...Bedi Bandar Road,
Opp. Panchavati, Jamnagar-Gujarat

WITH

(i) Customs Appeal No. 10298/2014 (Arun Panchal); (ii)Customs Appeal No. 10377/2014 (Harsh Shah Director); (iii)Customs Appeal No. 10661/2014 (Jaysukh Vaghela); (iv) Customs Appeal No. 11299/2014 (Arun Gondaliya); (v) Customs Appeal No. 11579/2014 (Santosh Patil); (vi) Customs Appeal No. 13683/2014 (Sanjay Gandhi); (vii) Customs Appeal No. 11511/2016 (Shri Arun Panchal); (viii)Customs Appeal No. 11070/2017 (Arun Gondaliya); (ix) Customs Appeal No. 11071/2017 (Jaysukh Vaghela);
(Arising out of OIA-449/COMMR-A-/JMN/2013 Dated-20.11.2013 passed by Commissioner of Customs -JAMNAGAR(PREV))
(Arising out of OIA-448/COMMR-A-/JMN/2013 Dated-20.11.2013 passed by Commissioner of Customs -JAMNAGAR(PREV))
(Arising out of OIA-450/COMMR-A-/JMN/2013 Dated-20.11.2013 passed by Commissioner of Customs -JAMNAGAR(PREV))
(Arising out of OIA-451/COMMR-A-/JMN/2013 Dated-20.11.2013 passed by Commissioner of Customs -JAMNAGAR(PREV))
(Arising out of OIA-491/COMMR-A-/JMN/2013 Dated-18.12.2013 passed by Commissioner of Customs -JAMNAGAR(PREV))
(Arising out of OIA-485/COMMR-A-/JMN/2013 Dated-12.12.2013 passed by Commissioner of Customs –JAMNAGAR(PREV))
(Arising out of OIA-JMN-CUSTM-000-APP-020-022-16-17 Dated-12.05.2016 passed by Commissioner of Customs –Jamnagar (Prev))
(Arising out of OIA-JMN-CUSTM-000-APP-055-056-16-17 Dated-27.01.2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-I(Appeal))

APPEARANCE:
Shri Saurabh Dixit (Advocate), Shri Vikas Mehta (Consultant), Shri Mrugesh Pandya (Advocate), Shri M.G. Yagnik (Advocate) appeared for the Appellant
Shri Sanjay Kumar, Superintendent (Authorized Representative) for the Respondent

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

FINAL ORDER No.11522-11531/2024

DATE OF HEARING:15.04.2024
DATE OF DECISION:11.07.2024

RAJU

Following appeals have been filed by appellants:

Appeal No.	Appellant	Penlaty Rs.	SCN and OIA Details
C/10380/2014	M/s Tulsi Logstics Private Limited	20,00,000/-	SCN Dt. 18.05.2012 and OIA No. 446/Commr(A)/JMN/2013 dated 20.11.2013
C/10377/2014	Shri Haresh Shah	20,00,000/-	SCN Dt. 18.05.2012 and OIA No. 450m/Commr(A)/JMN/2013 dated 20.11.2013
C/13683/2014	Sanjay Gandhi, Prop. Of M/s Global Marine Agencies (Custom House Agent)	20,00,000/-	SCN No. VIII/10-10/Addl. Commr/O&A/2012 dated 18.05.2012 (Page 93 of appeal memo) OIO No. 68/Addl. Commissioner/2012-13/AS dated 27.03.2013 (page 29 of the appeal memo) OIA No. 485/Commr(A)/JMN/2013 dated 12.12.2013 (page 13 of appeal memo)
C/10661/2014	Shri Jaysukh Vaghela	5,00,000/- u/s 114 (i) of Customs Act, 1962. (reduced to Rs. 4 lakh by Ld.Commissioner)	SCN F. No. VIII/10-10/Addl. Commr/O&A/2012 (Page 86 of appeal memo) OIO No. 68/Addl. Commissioner/2012-13/AS dated 27.03.2012 passed by Ld. Additional Commissioner (Page 26 of appeal memo) OIA No. 449/Commr (A)/JMN/2013 dated 20.11.2013 passed by Ld. Commissioner (A) (Page 11 of appeal memo)
C/11071/2017	Shri Jaysukh Vaghela	Rs. 3 Lakh u/s 114(i) of Customs Act, 1962	SCN F. No. VIII/10-438/ADC/O&A/2015 dated 19.08.2015 (Page 84 of appeal memo) OIO No.06/Addl. Commissioner/2016 passed by Ld. Additional Commissioner (Page 28 of appeal memo) OIA No. JMN-CUSTOM-000-APP-055-056-16-17 dated 27.01.2017 passed by Ld. Commissioner (A) (Page 16 of appeal memo)
C/11299/2014	Shri Arun Gondaliya	4.0 lakh u/s114(i) of Customs Act, 1962 (Reduced from Rs. 5.0 lakh by Commissioner (Appeals)	SCN F. No. VIII/10-10/Addl. Commr/O&A/2012 dated 18.05.2012 (Page 86 of appeal memo) OIO No. 68/Addl. Commissioner/2012-13/AS dated 27.03.2013 passed

			by Ld. Additional Commissioner (Page 26 of appeal memo) OIA No. 451/Commr(A)/JMN/2013 dated 20.11.2013 passed by Ld. Commissioner (A) (page 11 of appeal memo)
C/11070/2017	Shri Arun Golndaliya	Rs. 3 lakh u/s 114 (i) and Rs. 10 lakh u/s 114AA	SCN F. No. VIII/10-438/ADC/O&A/2015 dated 19.08.2015 (Page 84 of appeal memo) OIO No. 06/Addl. Commissioner/2016 dated 10.02.2016 passed by Ld. Additional Commissioner (page 28 of appeal memo) OIA No. JMN-CUSTOM-000-APP-055-056-16-17 dated 27.01.2017 passed by Ld. Commissioner (A)
C/11579/2014	Shri Santosh Patil	Rs. 10 lakh under section 114(i) and Rs. 5 lakh u/s 112(b) of the Customs Act, 1962	Appeal No. S/49-139/CUS/JMN/2013 OIO No. 68/ADC/2012-13
C/10298/2014	Shri Arun Panchal	4.0 lakh u/s114(i) of Customs Act, 1962 (Reduced from Rs. 5.0 lakh by Commissioner (Appeals)	OIA No. 448/Commr(A)/JMN/2013 dated 20.11.2013 passed by Ld. Commissioner (A)
C/11511/2016	Shri Arun Panchal	Rs. 3 lakh u/s 114 (i)	OIA-JMN-CUSTM-000-APP-020-022-16-17 dated 12.05.2016

From various appellants allegedly involved in various offences.

2. Heard the counsels for the appellant namely Shri Saurabh Dixit, Shri Vikas Mehta, Shri Mrugesh Pandya, Shri M.G. Yagnik and Shri Sanjay Kumar, authorized representative appearing for the revenue.

3. The brief facts of the case are that M/s Suave Chemicals (India) had allegedly sought to export Muriate of Potash (MOP) falling under 2804 2000, in the guise of "Cobalt Sulphate" by substituting the samples drawn by Custom Officers.

3.1 As per show cause notice MOP available in India is imported from various countries for industrial use and there is no exemption on said imports. However, if MOP is being used as manure or in the manufacture of complex fertilizers, exemption of duties are available by virtue notification 21/2002 (Sr. No. 107)-Cus dated 01.03.2002 as amended. In terms of the said notification concessional rate of basic custom duty at the rate of 5% is applicable if MOP is being used as manure or for the manufacture of complex fertilizers. The countervailing duty on the said goods is 1% in terms of Notification No. 4/2005-CE dated 01.03.2005 (Sr. No. 63). The show cause notice alleged that by virtue of Notification No. 20/2006-Cus dated 01.03.2006 (Sr No. 4) fertilizers and all goods used for the manufacture of fertilizers are exempted from payment of SAD. Thus, when the said exemption notifications are availed, then total duty payable by the importer is 6.26% (BCD @ 5%, CVD @1%, Education Cess @ 2%, Secondary higher education cess @1%), while the duty liability when said exemption are not availed is 34.11% (BCD @ 10%, CVD @16%, Education Cess @2%, Secondary higher education cess @1%, Customs Cess @ 2%, Customs Secondary and Higher Education Cess @ 1%, SAD @ 4%).

4. The show cause notice further alleged that the said exporter namely, Suave Chemicals had filed shipping bill No. 3716184 dated 18.05.2011 and No. 3716193 dated 18.05.2011 declaring the goods as an "organic chemical – Cobalt Sulphate" under duty draw back scheme. The total quantity sought to be exported was 42 MT valued at Rs. 1,65,55,808/- and with the country of destination was Malaysia. Representative samples were drawn in respect of Shipping Bill No. 3716193 dated 18.05.2011 and Shipping Bill No. 3716184 dated 18.05.2011 vide test memo dated 24.05.2011 and dated 23.05.2011. The said representative samples were sent to chemical examiner by special messenger to ascertain the actual description and chemical composition of the said goods. The samples were tested and found to be MOP by the Chemical Examiner as indicated in the test reports both dated 25.05.2011. From the test report it appear that the export consignment were mis-declared as "inorganic chemical – Cobalt Sulphate" whereas actual goods were "MOP".

5. Show cause notice alleged that the MOP is a restricted commodity under Foreign Trade Policy 2009-2014. Notification No. 03/2009 dated 27.08.2009 issued by DGFT defines the nature of restriction for the export of Potassium Chlorides i.e. MOP as follows:

i. They will not claim any concession for the quantity intended to be exported; or
ii. They will return the concession if already claimed from the Government; and

iii. Furnish certificate from the statutory auditors to the Department of Fertilizers and Customs that the quantity intended to be exported has been imported in the last six months and no concession/ subsidy has been claimed; and
iv. Export realization in free foreign exchange only.

Thereafter, the said goods were placed in seizure vide Punchnama dated 25-26.06.2011 under the reasonable belief that the same are liable to confiscation under Customs Act, 1962. The preliminary investigation revealed that the exporter namely, M/s Suave Chemicals had earlier also made exports of MOP in the guise of cobalt sulphate through CHA M/s Global Marine Agency.

6. The office premises of CHA M/s Global Marine Agencies were searched on 26.05.2011 however no incriminating documents were found. Further investigations revealed that the CHA M/s Global Marine Agencies had leases out their CHA license to M/s Tulsi Logistics-Vadodara for the work done at Pipavav Port. Thereafter office premises of M/s Tulsi Logistics were search under Punchnama dated 26.05.2011 and some incriminating documents were recovered. Thereafter another premises of M/s Tulsi Logistics located at Jafrabad Road, Rajula were searched under punchnama dated 26.05.2011 but no incriminating documents were found there.

7. Thereafter statements of Shri Jaysukh B. Vaghela Senior Executive of CHA M/s Global Marine Agencies Services was recorded under Section 108 of Customs Act on 26.05.2011, 28.05.2011, 02.06.2011, 03.06.2011 and 11.06.2011 in the said statements, he clarified that he was shown as employee of CHA M/s Global Marine for working at Pipavav Port but infact he was an employee of M/s Tulsi Logistics Private Limited and was incharge of all the work handled at Pipavav Port by M/s Tulsi Logisitics Private Limited. While working at Pipavav Port, he came in contact with representative of M/s Suave Chemicals, Shri Hitesh and Shri Arun Panchal an employee of Tulsi Logistics Private Limited. Shri Arun Panchal had informed him that M/s Suave Chemical (India), intended to start export of Cobalt Sulphate at Pipavav Port but he would be providing the samples for the same separately which would have to be replaced with samples drawn by the officers of customs at the time of examination of the export cargo.

8. Shri Jaysukh B. Vaghela thereafter met Shri Hitesh of M/s Suave Chemical. In consultation with Shri Arun Panchal, it was decided that the

samples provided by Shri Hitesh would be used to replace the samples of the export consignment of "Cobalt Sulphate" drawn by officers of customs at the time of examination. This job of replacing samples was to be carried out by Shri Arun Gondaliya, Field Supervisor of M/s Tulsi Logistics at Pipavav. He further stated that Shri Hitesh came personally with the samples for the first few consignments and thereafter started sending samples by courier from Mumbai. Thereafter, it was also decided in consultation with Shri Arun Panchal that Shri Hitesh would send scanned copies of the export document printed out of which would be taken at Pipavav and the same would be signed by Shri Arun Gondaliya as authorized Representative. He further admitted that the exports of M/s Suave Chemicals were carried out in this manner by replacing the samples drawn by officers of customs at the time of examination with the samples provided by Shri Hitesh. He also stated that Shri Hitesh of M/s Suave Chemicals had paid Rs. 1,00,000/- for the job of replacing the samples.

9. He clarified that the said amount paid through cheque in favour of Shri Arun Gondaliya which was deposited in the bank account of Arun Gondaliya at Axis Bank, Pipavav. Out of the said amount Rs. 49,000/- have been withdrawn and distributed among Shri Arun Gondaliya, Shri Vipul Visani, Shri Chandresh Kava and Shri Valera Vagh and himself. He also stated that on one occasion, Shri Hitesh was accompanied by Shri Santosh Patil. Thereafter statements of Shri Arun Mohanlal Panchal, Ex-Assistant Manager of M/s Tulsi Logistics, Shri Sanjay Gandhi, Proprietor of Global Marine Agencies were recorded. Statements of Shri Haresh Shah, Director of M/s Tulsi Logistics was also recorded. Relying primarily on these statements show cause notice was issued to the appellants namely M/s Tulsi Logisitcs Private Limited, Jaysukh Vaghela, Arun Goldaliya, Santosh Patil and Sanjay Gandhi seeking to impose penalties under Section 114(i) of the Customs Act, 1962/ 114AA of the Customs Act, 1962 / 112(b) of the Customs Act 1962. The mater was adjudicated and following penalties were imposed under section 114(i) of the Customs Act, 1962:

Name of the person	Amount of penalty (Rupees) under Section 114(i)	
	(in figures)	In words
M/s Tulsi Logistics	25,00,000/-	Twenty Five Lakh
Harsh Shah, Director	25,00,000/-	Twenty Five Lakh

Shri Sanjay Gandhi	25,00,000/-	Twenty Five Lakh Only
Shri Santosh Patil	10,00,000/-	Ten Lakh Only
Shri Jaysukh Vaghela	5,00,000/-	Five Lakh Only
Shri Arun Gondaliya	5,00,000/-	Five Lakh Only
Shri Arun Panchal	5,00,000/-	Five Lakh Only

And following under 112(b) of Customs Act, 1962

Name of the person	Amount of penalty (Rupees)	
	(in figures)	In words
Shri Santosh Patil	5,00,000/-	Five Lakh Only

The appellants challenged the order in original before Commissioner (Appeals), who vide Order-in-Appeals mentioned therein passed the following order:

Name of the person	Order-in-Appeal Number	Amount of penalty (Rupees) under Section 114(i)	
		Order-in-Original	Order-in-Appeal
M/s Tulsi Logistics	OIA-446-COMMR(A)/JMN/2013 dated 20.11.2013	Rs.25,00,000/-	Rs.20,00,000/-
Harsh Shah, Director	OIA-450-COMMR(A)/JMN/2013 dated 20.11.2013	Rs.25,00,000/-	Rs.20,00,000/-
Shri Sanjay Gandhi	OIA-485-COMMR(A)/JMN/2013 dated 12.12.2013	Rs.25,00,000/-	Rs.20,00,000/-
Shri Santosh Patil	OIA-491-COMMR-A/JMN/2013 dated 18.12.2013	Rs.10,00,000/-	Rs.10,00,000/-
Shri Jaysukh Vaghela	OIA-449-COMMR(A)/JMN/2013 dated 20.11.2013	Rs.5,00,000/-	Rs.4,00,000/-
Shri Arun Gondaliya	OIA-451-COMMR(A)/JMN/2013 dated 20.11.2013	Rs.5,00,000/-	Rs.4,00,000/-
Shri Arun Panchal	OIA-448-COMMR(A)/JMN/2013 dated 20.11.2013	Rs.5,00,000/-	Rs.4,00,000/-

10. Thereafter another show cause notice was issued in respect of exports made in past by M/s Suave Chemical (India) essentially relying on the same set of evidences. The said show cause notice was adjudicated and following penalties were imposed under Section 114(i):

Name of the person	Amount of penalty (Rupees)	
	(in figures)	In words
Shri Arun Panchal	Rs.3,00,000/-	Three Lakh Only
Shri Jaysukh Vaghela	Rs.3,00,000/	Three Lakh Only
Shri Arun Gondaliya	Rs.3,00,000/	Three Lakh Only

And following under 114AA of Customs Act, 1962

Name of the person	Amount of penalty (Rupees)

	(in figures)	In words
Shri Arun Gondaliya	10,00,000/-	Ten Lakh Only

The appellants challenged the order in original before Commissioner (Appeals), who vide Order-in-Appeals mentioned therein passed the following order:

Name of the person	Order-in-Appeal Number	Amount of penalty (Rupees) under Section 114(i)	
		Order-in-Original	Order-in-Appeal
Shri Arun Panchal	OIA-JMN-CUSTM-000-APP-020-022-16-17 dated 12.05.2016	Rs.3,00,000/-	Rs.3,00,000/-
Shri Jaysukh Vaghela	OIA-JMN-CUSTM-000-APP-055-56-16-17 dated 27.01.2017	Rs.3,00,000/-	Rs.3,00,000/-
Shri Arun Gondaliya	OIA-JMN-CUSTM-000-APP-055-56-16-17 dated 27.01.2017	Rs.3,00,000/-	Rs.3,00,000/-

11. From facts of the mentioned aforesaid above, it is apparent that the cases are mainly made out on the basis statement of various entities/ appellants therein. In all the proceedings, it is noticed that the appellants had sought cross examination of the other co-noticees, however in none of the cases cross-examination of co-noticees, has been allowed. Further it is noticed that while allegations of substitution of samples has been made there are no details available, in show cause notice or in impugned orders, as to how the substitution of samples took place. The show cause notice merely states that the samples drawn by the custom officers were replaced at the behest of and by the noticees. It has not been specified as to how, the samples drawn by customs officers could have been replaced without their knowledge and if it indeed happened with the knowledge of the customs officers how it could have continued for so long period of time.

12. A perusal of order in appeal No.s OIA-446/COMMR-A-/JMN/2013 dated 20.11.2013, OIA-449/COMMR-A-/JMN/2013 dated 20.11.2013, OIA-451/COMMR-A-/JMN/2013 dated 20.11.2013, OIA-491/COMMR-A-/JMN/2013 dated 18.12.2013, OIA-485/COMMR-A-/JMN/2013 dated 20.12.2013, shows that it essentially relies on the finding of the Tribunal in the case of **Global Marine Services reported at 2012 (286) ELT 730 (Tri. Del.)**. The said order of the Tribunal was issued in an appeal filed by Global Marine Services against suspension of their CHA license. The said decision of Tribunal was relied by Commissioner (Appeals) in

disposing off the appeals. The Tribunal order does not come to any finding that the samples were replaced. The said decision relied by Commissioner (Appeals) only gives a prima facie finding as under:

> ***"11.*** *The association of the appellant with M/s. Tulsi Logistics (P) Ltd., Vadodara came out from the statement recorded under Section 108 of Customs Act, 1962 from the proprietor of the appellant concern. Appellant was paid consideration for the arrangement made with the user of its CHA licence. So also the statement recorded from the appellant brought out that Customs was persuaded to act on the basis of letter issued by appellant to get 'H' Card in the name of the staff of M/s. Tulsi Logistics (P) Ltd. There was no rebuttal to the test report came out from Customs Laboratory and appellant failed to prove to be stranger to the export of consignment of restricted goods by M/s. Sauave Chemicals (India) valued at Rs. 1.66 crores covered by two shipping bills aforestated. Filing of the shipping bills by the appellant was undenied and its nexus, connection as well as association to the seized goods i.e. MOP (Muriate of Potash) surfaced. Prima facie it was established that there was an attempt to defraud the interest of the country by misdeclaration of the description of the goods which were restricted item under law and export being made under Drawback scheme Revenue's interest was prejudiced. All these material facts dragged the appellant to the interim order of suspension as Revenue administration measure to arrest evasion.*
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> ***12.1*** *The very purpose of granting licence under Regulation 9 of 2004 Regulations is to authorize a person to act as CHA on behalf of importers and exporters to occasion import and export of goods at any Customs station in accordance with the provisions of Customs Act, 1962. In order to discharge such responsibility, the CHA is expected to have basic knowledge of Customs provisions. Regulation 8 of 2004 Regulations requires a person to appear examination conducted by Customs Department to test his capability in the matter of preparation of various documents, determination of value, [procedures of assessment, payment of duty and to assess the extent to which he is conversant with the provisions of Customs law and certain other enactments etc.*
>
> ***12.2*** *Upon qualifying the prescribed examination one becomes eligible to get CHA licence subject to 9ehavior9d9 of other provisions of Customs Act, 1962. Object of this Act is that CHA should ensure that he does not act as an Agent to carry out illegal activities for any person who avails his services in the matter of import and export and he should also not be a party to the violation of the provisions of the said Act misusing or permitting to misuse his position as a CHA and should not in any way associate himself in evasion of duty. Law reposes confidence on him. Therefore, breach of trust is not expected from him because any misuse of his position has far reaching consequences under law for which penal consequence of law is prescribed against his wrong doings.*
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> ***12.3*** *Under Regulation 13(d) of 2004 Regulations, it is the responsibility of the CHA to comply with the provisions of the Customs Act, 1962. He is expected to advise his clients lawfully and in case of non-compliance to law of Customs, his duty is to bring such act to the notice of the Customs authorities. Regulation 13(e) requires the CHA to exercise due diligence to ascertain the correctness of the information. Regulation 13(1) requires that all the documents must show the correct names of the parties. Regulation 19(8) requires CHA to exercise all necessary supervision of the conduct of its employees and failure thereof makes the CHA responsible for the acts or omissions of his employees. His obligations as prescribed by Regulation 13 are as follows :*
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>> *"**13. Obligations of Custom House Agent.** – A Custom House Agent shall :*
>>
>> *(a) Obtain an authorization from each of the companies, firms or individuals by whom he is for the time being employed as*

Custom House Agent and produce such 10 ehavior 10 d 10 on whenever required by an Deputy Commissioner of Customs or Assistant Commissioner of Customs;

(b) Transact business in the Customs Station either personally or through an employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs;

INot represent a client before an officer of Customs in any matter to which he, as officer of the Department of Customs gave personal consideration, or as to the facts of which he gained knowledge, while in Government service;

(d) Advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs, or Assistant Commissioner of Customs;

(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;

(f) Not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Commissioner of Customs, from a client who is entitled to such information;

(g) Promptly pay over to the Government, when due, sums received for payment of any duty, tax or other debt or obligations owing to the Government and promptly account to his client for funds received for him from the Government or received from him in excess of Governmental or other charges payable in respect of the clearance of cargo or baggage on behalf of the client;

(h) Not procure or attempt to procure directly or indirectly, information from the Government records or other Government sources of any kind to which access is not granted by proper officer;

(i) Not attempt to influence the conduct of any official of the Customs Station in any matter pending before such official or his subordinates by the use of threat, false accusation, duress or the offer of any special inducement or promise of advantage or by the bestowing of any gift or favour or other thing of value;

(j) Not refuse access to, conceal, remove or destroy, the whole or any part of any book, paper or other record, relating to his transactions as a Custom House Agent which is sought or may be sought by the Commissioner of Customs;

(k) Maintain records and accounts in such form and manner as may be directed from time to time by a Deputy Commissioner of Customs or an Assistant Commissioner of Customs and submit them for inspection to the said Deputy Commissioner of Customs or Assistant Commissioner of Customs or an officer 10ehavior10d by him whenever required;

(l) Ensure that all documents such as bills of entry and shipping bills delivered in the Customs Station by him show the name of the importer or exporter as the case may be and the name of Custom House Agent, prominently at the top of such documents;

(m) In the event of the licence granted to him being lost, immediately report the fact to the Commissioner of Customs;

> *(n) Ensure that he discharges his duties as Custom House Agent with utmost speed and efficiency and without avoidable delay;*
>
> *(o) Verify antecedent, correctness of Importer Exporter Code (IEC) number identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;*
>
> *(p) Not charge for his services as Custom House Agent in excess of the rates approved by the Commissioner from time to time under Regulation 25".[Emphasis supplied]*

> ***12.7*** *It may be noted that "every trial is a voyage of discovery in which truth is the quest." So also, a quasi-judicial enquiry is directed in this manner. Therefore wrongdoers are brought to enquiry through the process of investigation. Immediate suspension of the licence by an ex parte order within 15 days of receipt of the investigation report from Customs station under Regulation 20(2) is to keep the wrong doer away from the customs station to conduct a fair and uninterrupted investigation. Keeping such aspect in view, limitation for disposal of final proceeding under Regulation 20(1) runs from the date of receipt of "offence report" but not from the date of interim order of suspension. Cutting short the investigation in the guise of misconceived notion of limitation would be a mockery.*
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> ***19.*** *The appellant* ***appears to have allowed its agent exporter*** *to use its licence irresponsibly and thereby actively involved in the fraudulent act in connivance with the exporter. As a name lender to the exporter it caused prejudice to Revenue, making breach of trust and failed to discharge its responsibility under Regulation 13. Affecting the interest of the country was due to reckless and irresponsible behavior of the Appellant in the course of acting as a CHA licensee.* ***Accordingly interim order of suspension passed by the leaned Commissioner does not appear to be improper since principles of vicarious liability is applicable to the present case in hand****."*

From the above finding, it is apparent that the Tribunal in the said case did not come to any conclusion that the Global Marine was involved in substitution of samples or if the substitution of samples indeed happened. The order comes only to a prima facie findings and in such circumstances, reliance on this order to give final findings of the facts of the case is improper. Similarly, we also find that in appeal No. C/11070-11071/2017, the order in appeal does not examine the facts of the case or the evidence therein, but summarily comes to the conclusion that the samples have been replaced and the appellants are involved in such substitution. There is no evidence except statements and there is no examination regarding the manner of substitution if any. In Customs Appeal No. 11511/2016 also, it is noticed that there is no examination of evidence what so ever. In all the cases demand of cross examination of witnesses have been made but the said request has been summarily discarded. Since the entire case is based on statements and no cross examination has been provided the same cannot be relied as evidence. Moreover, the Revenue has failed to identify how the samples were replaced. There is only a bland allegation in the notice without any proof. In these circumstances, we do not find any merit in the impugned orders as it lacks evidence. The same are set aside and appeals are allowed. The miscellaneous application filed for additional evidence is also disposed of.

(Pronounced in the open court on 11.07.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha