

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70439 of 2022

(Arising out of Order-in-Original No. 02-COMMR-CUSTOMS-LKO-2022-23,
dated-12/07/2022 passed by Commissioner, Customs (Preventive), Lucknow)

M/s Prakhar Gupta

.....Appellant

(117/H-2/115,Pandu Nagar,
Kanpur,UP-208005)

VERSUS

Commissioner, Central (Prev.) Lucknow,

....Respondent

(5th & 11th Floor Kendriya Bhawan
Lucknow, U.P.)

WITH

Customs Appeal No.70212 of 2023

(Arising out of Order-in-Original No. 03-COMMR-CUSTOMS-LKO-2022-23,
dated-15/02/2023 passed by Commissioner, Customs (Preventive), Lucknow)

M/s Prakhar Gupta

.....Appellant

(117/H-2/115,Pandu Nagar,
Kanpur,UP-208005)

VERSUS

Commissioner, Central (Prev.) Lucknow,

....Respondent

(5th & 11th Floor Kendriya Bhawan
Lucknow, U.P.)

APPEARANCE:

Shri T. Chakrapani, Consultant for the Appellant

Shri Santosh Kumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.-70530-70531/2024

DATE OF HEARING : 23.04.2024
DATE OF DECISION : 20.08.2024

SANJIV SRIVASTAVA:

Appeal No. C/70212/2023 is directed against Order No. 03/COMMR./ CUSTOMS/LKO/2022-23 dated 15.02.2023 of the Commissioner Customs (Preventive) Lucknow. Vide the impugned order following has been held

"ORDER

- (i) I revoke the Customs Broker Licence No.05/CB/Regular/KNP/2016 dated 28.09.2016 (PAN: ASLPG5339H) issued to Shri Prakhar Gupta and order for forfeiture of whole of security, under Regulation 14 of CBLR, 2018 for violation of provisions of Regulation 10(a), 10(b), 10(d), 10(e), 10(f), 10(k) & 10(n) of CBLR, 2018.*
- (ii) I also impose a penalty of Rs.50,000/- (Rupees Fifty Thousand only) under Regulation 18 of CBLR, 2018, on the Customs Broker M/s Prakhar Gupta for violation of Regulation 10(a), 10(b), 10(d), 10(e), 10(f), 10(k) & 10(n) of CBLR 2018.*
- (iii) I order for surrender of photo-identity card issued in Form-F by the Customs Broker Shri Prakhar Gupta under proviso to Regulation 17(8) of CBLR, 2018."*

1.2 Appeal No. C/70439/2022 is directed against Order No. Order No. 02/COMMR./CUSTOMS/LKO/2022-23 dated 12.07.2022 of the Commissioner Customs (Preventive) Lucknow. Vide the impugned order following has been held

"ORDER

In exercise of powers conferred upon me under the provisions of regulation 16(2) of CBLR, 2018, I hereby continue the suspension of Customs Broker License No. 05/CB/REGULAR/KNP/2016 dated 28.09.2016 (PAN:ASLPG5339H) issued to Shri Prakhar Gupta, 117/H-2/115, Pandu Nagar, Kanpur-208025,' with immediate effect till further orders."

2.1 Appellant is holding a Customs Broker License No. 05/CB/REGULAR/KNP/2016 dated 28.09.2016 (PAN: ASLPG5339H) issued by the Commissioner of Central Goods and Service Tax, Kanpur. The Customs broker is registered under Regulation 7(3) of Customs Broker Licensing Regulation, 2018 (here-in-after referred as 'CBLR, 2018') to work in Customs Commissionerate - New Delhi.

2.2 Investigations were taken against M/s JCS Botanicals, New Delhi- in respect of a bill of entry No.7368812 dated 04.02.2022 at ICD Jhattipur, Panipat through the Appellant for clearance of their goods as declared by them. On completion of investigations matter have been adjudicated as per Order-in-Original No. DLI/CUSTOM/PREV/AK/JC/498/2021-22 dated 28.03.2022 holding as follows:

"ORDER

- i) I order for confiscation of impugned goods of M/s JCS Botanicals, First Floor, M-163, Greater Kailash Part-II, New Delhi-1 10048 (I:C-LY7P586621) under bill of entry no. 7368812 dated 04,02.2022 totally valued at Rs. 28,74,114/- (Rupees Twenty Eight Lakhs Seventy Four Thousands One Hundred Fourteen) under Scction 111(d) & Section 11 1(o) of the Customs Act, 1962.*
- ii) I accept the request of the importer for re-export of goods covered under Bill of Entry No. 7368812 dated 04.02.2022 and give an option to to Importer to redeem the said goods totally valued at Rs. 28,74,1 14/- (Rupees Twenty Eiglit Lakhs Seventy Four Thousands One Hundred Fourteen) on payment of Redemption Fine of Rs 1,50,000/-(Rupees One Lakh Fifty Thousand Only) under Section 125 of the Customs Act, 1962 for Re-export only, subject to the condition that all the statutory requirements of re-export are fulfilled*

iii) I impose penalty on the importer M/s JCS Botanicals, under Section 112 (a) (i) of the Customs Act, 1962 amounting to Rs.1,00,000/- (Rupees One Lakh Only).

iv) I propose that for violations of the provisions of the Customs Broker Licensing Regulations, 2018, as discussed in above, necessary action by the Customs Broker license issuing authority i.e. the Commissioner of Customs (Airport & General), New Customs House, New Delhi, may be taken under Regulation 14, Regulation 15 and/or Regulations 16 of the Customs Broker Licensing Regulations, 2018, against the Customs Brokers M/s Prakhar Gupta and M/s Good wings Maritime Pvt. Ltd.

v) I impose penalty on Mr. Prakhar Gupta Prop. of M/s Prakhar Gupta under Section 114AA of the Customs Act, 1962 amounting to Rs. 1,00,000/- (Rupees One Lakh Only)

vi) I impose a penalty on Mr. Awadhendra Kumar Director of M/s Goodwings Maritime Pvt. Ltd. under Section 114AA of the Customs Act, 1962 amounting to Rs. 1,00,000/- (Rupees One Lakh Only)."

2.3. Consequent to above order dated 28.03.2022, the Commissioner of Customs, (Airport & General), New Delhi-110037 passed a Prohibition Order No.29/ZR/PROHIBITION/POLICY/2022 dated 26.04.2022 holding as follows:

"ORDER

(i) I hereby prohibit the Customs Broker License No. 05/CB/Regular/KNP/2016 (PAN ASLPG5339H) valid upto 27.09.2026 of M/s Prakhar Gupta from working in the all station of Customs under Delhi jurisdiction (Port and Airport & ACC) with immediate effect under Regulation 15 of CBLR 2018.

- (ii) *M/s Prakhar Gupta is directed to surrender all the original Customs Pass issued to their employee/ partners/directors immediately.*
- (iii) *Further forward the above case to Office of Commissioner of Customs. Kanpur/Lucknow(parent Commissionerate) for necessary action under Regulation 16 and/or Regulation 17 of CBLR 2018.*

9. This order is being issued without prejudice to any other action that may be taken against the CB or any other person(s)/ firm(s) etc under the provisions of the Customs Act, 1962 and Rules/Regulations framed there under or any other law for the time being in force for the present or any other past violations committed by them”

2.4 Consequently for contravention of Regulations 10(a), 10(b), 10(d), 10(e), 10(f), 10(k) & 10(n) of the CBLR, 2018 vide Order No.01/COMMR./CUSTOMS/LKO/2022-23 dated 24.05.2022 was suspended.

2.5 Subsequently by order referred in para 1.2 above, the order of suspension has been further extended. Appellant has filed C/70439/2022 against the said order.

2.6 As per proviso to regulation 16(2) of CBLR, 2018, the further proceedings were followed as provided in Regulation 17 of CBLR, 2018 and accordingly a Show cause Notice No. 01/COMMR./CUSTOMS/ LKO/2022-23 dated 22.07.2022 was issued for the contravention of Regulations 10(a), (b), (d), (e), (f), (k) & (n) of CBLR, 2018.

2.7 Assistant Commissioner of Customs, CCSI Airport, Lucknow was appointed to inquire into the matter submit his inquiry report for further proceedings

2.8 Vide letter C.No. (14)001/Air Cargo/LKO/inquiry/2022/2269 dated 16.11.2022, inquiry officer submitted his report as follows:

- Letters dated 11.10.2022 and 15.10.2022 were issued to the Appellant providing opportunity of being personally heard on 14.10.2022, 17.10.2022 & 18.10.2022 respectively but neither he nor any representative of him appeared on the said dates for the personal hearing. Only an e-mail dated 08.10.2022 received from him.
- The Appellant and M/s Goodwings Maritime Pvt. Ltd. are in business since 2018-19 under mutual agreement. As per statement dated 21.03.2022 of Shri Awadhendra Kumar, he has been filing papers for clearance of import and export consignments on behalf of Appellant since 2018-19 as per mutual consent and agreement.
- Further, for Customs related work, a unique ID is to be allotted to a CB for clearance purpose and for verification of mandatory documents like invoice, packing list, Bill of Lading/Airway Bill, etc. Also, digital signature of the CB is required while filing Bill of Entry where CB needs to properly mention the details of goods, value, quantity, Customs Tariff heading, exemption notification details, if any and other necessary details and accordingly, a checklist is generated which is signed by the CB which is then forwarded to the Importer for cross-checking. After confirmation of the details by the importer, the CB uploads the check list electronically in EDI system which subsequently generates the Bill of Entry. Appellant was well aware about the consignment. The ID/Password and information pertaining to Digital Signature are confidential and known to the CB only. Hence, it is impossible that the impugned B/E could have been filed without knowledge and consent of the CB. Appellant has contravened the provisions of Regulation- 10 (a) of the CBLR, 2018
- As per CBLR, 2018, it is obligatory on part of the CB to get such authorization from the Importer and to authorize his G Card holder for examination of such consignment before Customs authorities, to which he failed. Appellant has

contravened the provisions of Regulation- 10 (b) of the CBLR, 2018

- Appellant was required to advise his clients about the provisions of the relevant Acts, Rules & Regulations while import of goods. Appellant failed to observe and has violated the obligations cast upon him under CBLR, 2018 by filing a B/E violating the laid down procedures in respect of such prohibited goods which were not permitted for import into India and cannot be cleared by Customs authorities. Appellant has thus contravened the provisions of Regulation- 10 (d) of the CBLR, 2018.
- Appellant overlooked the laid down procedures for handling and submission of documents for import of impugned goods with his client and other stakeholders and failed to ascertain the correctness of information in relation to filing of Bill of Entry & other documents in relation to clearance of Import consignment under the impugned bill of entry for the reasons best known to him in contravention of the provisions of Regulation- 10 (e) of the CBLR, 2018.
- Appellant failed to observe the laid down procedures for filing documents for import of goods with his client and other stakeholders and did not intimate the provisions of law for the import of the impugned goods to his client who was entitled to the same contravening the provisions of Regulation- 10 (f) of the CBLR, 2018.
- Appellant failed to maintain up to date records such as bill of entry and other documents in respect of the impugned import consignment and has attempted unsuccessfully to subvert the accountability for failure to comply with the provisions of relevant Acts/rules/orders/Public Notices, etc, and the CBLR, 2018, contravened the provisions of Regulation- 10 (k) of the CBLR, 2018.
- Appellant failed to verify the correctness of the information contained in the impugned bill of entry and

other supporting documents and has been in a denial mode to accept that he had filed the bill of entry under question, contravening the provisions of Regulation- 10 (n) of the CBLR, 2018

- Accordingly, Inquiry Officer stated that Appellant has contravened the provisions of Regulation- 10 (a), (b), (d),(e),(f),(k) & (n) of the CBLR, 2018.

2.9 After considering the reply submitted by the Appellant in defense and flowing the principles of natural justice matter has been adjudicated as per the impugned order which is subject matter of appeal No C/70212/2023.

3.1 We have heard Shri T Chakrapani Consultant for the Appellant and Shri Santosh Kumar for the revenue.

4.1 We have considered the impugned order along with the submissions made in the appeal and during the course of arguments.

4.2 As the subsequent to the order of extension of suspension which is subject matter of appeal No C/70439/2022 order revoking the license of the Appellant as Custom Broker has been passed this appeal becomes in fructuous and is accordingly dismissed.

4.3 In the impugned order following findings have been recorded for revoking the license of the Appellant:

"12.6 Now, coming to the contention of the party regarding the double jeopardy subsequent to issuance of suspension order dated 24.05.2022 under Regulation 16(1) ibid, I want to draw attention on Regulation 15 of CBLR, 2018 which is reproduced as below:-

15. Prohibition.- Notwithstanding anything contained in these regulations, the Principal Commissioner or Commissioner of Customs other than those referred to in regulation 7 may prohibit any Customs Broker from working in one or more sections of the Customs Station, if he is satisfied that such Customs Broker has not fulfilled his obligations as laid down under regulation 10 in relation to work in that section or sections:

Provided that the period for which any Customs Broker may be prohibited from transacting business in one or more of the Customs Stations shall not exceed one month from the date of such prohibition:

Provided further that where the license of the Customs broker is suspended as a consequence to prohibition, the time period specified in regulation 16, shall be reckoned from the date of such suspension

From Regulation 15, it is clear that the time period of the prohibition shall not exceed one month from the date of prohibition i.e. from 26.04.2022. After one month from prohibition, the Customs Broker might transact their business in the jurisdiction of Delhi Customs Commissionerate. Meantime, consequence to prohibition order dated 26.04.2022, the suspension order under Regulation 16(1) of CBLR, 2018 and continuation of suspension order under Regulation 16(2) of CBLR, 2018 for contravention of provisions of Regulation 10 of CBLR, 2018 were issued, which are consequence proceedings in the matter, as per law.

Hence, I find that the allegation of Customs Broker is not acceptable since the suspension order under Regulation 16(1) read with 2nd proviso to Regulation 15 was issued well within the period of prohibition. Therefore, it cannot be termed as double jeopardy.

12.7 Now, as regard to the allegation of the Customs Broker that cause of incident related to Delhi Customs only and not related to other Customs area, I find this not maintainable under Regulation 15, 16 & 17 of CBLR, 2018. The prohibition order under Regulation 15 is issued by the Commissionerate under whose jurisdiction offence was done and consequential proceedings under Regulation 16 & 17 were to be taken up by the parent Commissionerate i.e. Customs Broker's licence issuing Commissionerate. Thus, I find that the contention of the Customs Broker is not based on law and thus not acceptable

12.8 Now, coming to the contention of the Customs Broker that the clearance of the impugned consignment was attempted by the Customs Broker M/s Goodwings Maritime Pvt. Ltd., through its director Mr. Awadhendra Yadav without requisite authorization, by illegally using the Licence of Customs Broker M/s Prakhar Gupta. In this regard, I agree with the view of the Inquiry officer that for working as Customs Broker, a User Id and Password is to

be allotted to the CB for login in ICEGATE EDI System. Further, filing a bill of entry, the digital signature is required for which a dongle is provided to the Customs Broker and without using dongle, the documents cannot be digitally signed. Meaning thereby, that the gateway for filing a BOE is doubly secured. Therefore, the allegation of the Customs Broker that someone has used his credentials and filed the impugned BOE is not maintainable Besides, to prove his bonafide, in case of leakage of credentials, the Customs Broker was required to inform the department immediately and also to lodge a police complaint but he did nothing. Thus, I find the contentions of the party Shri Prakhar Gupta as not tenable

12.9 As regard the contention of the party that he has not defaulted any of the provisions of Regulation 10(a), (b), (e), (f), (k) & (n) of CBLR, 2018, I take one by one Regulation.

(i) Regulation 10(a) of CBLR, 2018: - 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.

In the instant case, Mr. Prakhar Gupta has stated that he does not know the importer and the said BOE was filed in the name of his licence. The importer denied of having any contact/agreement/dealing with Shri Prakhar Gupta, which means, the impugned consignment was attempted for the clearance without obtaining the requisite authorization by Shri Prakhar Gupta from the importer

Further, I find that the two firms, namely, Ms Prakhar Gupta and M/s Goodwings are in business since 2018-19 under mutual agreement. As per statement dated 21.03.2022 of Shri Awadhendra Kumar, he has been filing papers for clearance of import and export consignments on behalf of Customs Broker M/s Prakhar Gupta since 2018-19 as per mutual consent and agreement. In this regard, as para 2.11 of Order-in-Original dated 28.03.2022 issued by the Joint Commissioner of Customs (Preventive), New Customs House, New Delhi, an agreement dated 16.07.2018 was submitted to by Sh. Awadhendra Kumar states therein "I hereby confirm you that I, Prakhar Gupta confirm that we (CHA-PRAKHAR GUPTA & AWADHENDRA KUMAR) are partner at mutual understanding terms and in all

circumstances we both are liable to handle the situation and transact business mutually and no financial liability shall fall on M/s Prakhar Gupta"

Hence, submission of M/s Prakhar Gupta that the consignment pertaining to B/E No. 7368812 was not authorized by him or he was not aware about the matter under scrutiny is an afterthought only and the said explanation arose only after the consignment was held up by Customs Authorities for further formalities.

It is obligatory on part of the CB to get such authorization from the Importer to which he failed. So, merely saying that though the signature on the aforesaid authority letter seems to his own but he had not signed any such letter and the same had not been issued by him, appears to be a lame excuse and subversion of responsibility and accountability only to avoid the possible legal consequences for breaching the trust and faith reposed on a CB. Therefore, I am of the view that the Customs Broker has contravened the provisions of Regulation 10(a) of CBLR, 2018.

(ii) Regulation 10(b) of CBLR, 2018:- transact business in the Customs Station either personally or through an authorised employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be.

In the instant case, I find that the Customs Broker M/s Prakhar Gupta was neither involved personally nor having any authorized employee. Though Shri Sanjay Kumar is G-card holder but he is not the employee of M/s Prakhar Gupta. The impugned consignment was attempted to get cleared by Shri Sanjay Kumar who is actually employee of M/s Goodwings Maritime Pvt. Ltd, but filed BOE in the name of Ms Prakhar Gupta on the basis of his authorization letter. It was not followed in letter and spirit by him and attempt was made by him to shift the responsibility of mischief on other firms and personnel. Thus, I find that Shri Prakhar Gupta of M/s Prakhar Gupta has contravened the provisions of Regulation 10 (b) of the CBLR, 2018.

(iii) Regulation 10 (d) of CBLR, 2018: 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.

In the present case before me, I find that it was obligatory on part of M/s Prakhar Gupta to advise his client M/s JCS Botanicals about the provisions of the relevant Acts and Rules & Regulations while import of goods. As per Plant quarantine Order, 2003, the 'Direct Root Crocus (Crocus Sativus L)', Salab (Dactylorhiza Hatagirea D) and Shikakal (Postinaca Sativa L) are not allowed to be imported into India but they imported these items. Further, dried plant material of Gulgafiz (Gentiana Olivieri G) for medical purpose is allowed to be imported only from China, but, in the instant case, the origin of country is Afghanistan

In the instant case, M/s Prakhar Gupta failed to observe and has violated the obligations cast upon him under CBLR, 2018 by filing a B/E violating the laid down procedures in respect of such prohibited goods which were not permitted for import into India and cannot be cleared by Customs authorities in view of relevant Acts/Orders/Regulations. Therefore, the Customs Broker has failed to advise their client to act as per provisions of Customs Act, 1962 allied Acts / Orders and Regulations issued in this regard and contravened Regulation 10(d) of CBLR, 2018.

(iv) Regulation 10 (e) of CBLR 2018: 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.

In the instant case, I find that the Customs Broker has not ascertained whether the declared goods were being imported into India as per prevailing law. He overlooked the laid down procedures for handling and submission of documents for import of impugned goods with his client and other stakeholders and failed to ascertain the correctness of information in relation to filing of bill of entry & other documents in relation to clearance of Import consignment under the impugned bill of entry for the reasons best known to him. Hence, I am of the firm view that the Customs Broker has violated the provisions of the Regulation 10(e) of CBLR, 2018.

(v) Regulation 10 (f) of CBLR 2018: not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information.

In the instant case, the importer has stated that they did not know Shri Prakhar Gupta personally and never

contacted the CB Shri Prakhar Gupta for clearance of this consignment. They sent the copy of hiring letter and other relevant documents to the Customs Broker through their e-mail address "archit1992sharma@gmail.com" to email "accounts@goodwingsmaritime.com" of M/s Goodwings Maritime Pvt. Ltd. Therefore, I find the consignment was filed without following requisite procedures under statutory provisions and without requisite authorization and the two Customs Brokers did not disclose their modus operandi to the importer.

Further, as discussed in para 10.1 (i) & (iv) supra, M/s Prakhar Gupta failed to observe the laid down procedures for filing documents for import of goods with his client and did not inform the provisions of law for the import of the impugned goods to his client who was entitled to the same. Therefore, I find that Shri Prakhar Gupta of Ms Prakhar Gupta has contravened the provisions of Regulation 10 (f) of the CBLR, 2018.

(vi) Regulation 10 (k) of CBLR 2018: maintain up to date records such as bill of entry, shipping bill, transshipment application, etc., all correspondence, other papers relating to his business as Customs Broker and accounts including financial transactions in an orderly and itemised manner as may be specified by the Principal Commissioner of Customs or Commissioner of Customs or the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be.

In the instant case, I find that M/s Prakhar Gupta has failed to maintain up to date records such as bill of entry and other documents in respect of the impugned import consignment and has attempted unsuccessfully to subvert the accountability for failure to comply with the provisions of relevant provisions made in this regard

Further, I also find that Customs Broker Shri Prakhar Gupta and Shri Awadhenra Kumar of M/s Goodwings Maritime Pvt. Ltd. mutually agreed to work together. Shri Prakhar Gupta does not even know anything about impugned consignment and imported goods, so, non-maintenance of statutory records is explanatory per se.

Thus, Shri Prakhar Gupta of Ms Prakhar Gupta has contravened the provisions of Regulation 10 (k) of the CBLR, 2018.

(vii) Regulation 10 (n) of CBLR 2018: verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information.

In the instant case, I find that Shri Prakhar Gupta is in agreement with M/s Goodwings Maritime Pvt. Ltd. that they will work together in partnership and this fact has been admitted by the both Customs Brokers in their statements rendered before the investigating officers and relied upon in the prohibition order dated 26.04.2022. Shri Pakhar Gupta has also stated that they had mutual understanding to file papers with Customs in the name of his firm. even of all other processes relating to customs clearances of goods, were carried out by Ms Goodwings Maritime Pvt. Ltd. except fling of BOE. M/s Prakhar Gupta has also accepted to have received payments from M/s Goodwings Maritime Pvt. Ltd. out of this arrangement. Therefore, it can be easily understood that in various matters documents have been filed by M/S Goodwings Maritime Pvt. Ltd. on behalf of M/s Prakhar Gupta and payments shared by M/S Prakhar Gupta. Further, in his statement, Shri Awadhendra Kumar has stated that Shri Prakahar Gupta gave him blank signed letters on firm's letterhead which implies that Shri Prakahar Gupta was hand in glove with Shri Awadhendra Kumar of M/s Goodwings Maritime Pvt. Ltd.

As evident above, M/s Prakhar Gupta has failed to verify the correctness of the information contained in the impugned bill of entry and other supporting documents and has been in a denial mode to accept that he had filed the bill of entry under question. Thus, I find that Shri Prakhar Gupta of Ms Prakhar Gupta has contravened the provisions of Regulation 10 (n) of the CBLR, 2018, also.

Therefore, I find that Shri Prakahar Gupta is equally responsible in the case where any mis-declaration or any fault made in filling of documents or clearances of import / export by M/s Goodwings Maritime Pvt. Ltd. Mere saying that he has not authorized anyone for clearances of the said consignment is an afterthought and a futile attempt to obfuscate the departmental proceedings. The revelation of Shri Prakahar Gupta came only when consignment was found improper. I believe that such behavior from an educated person, who is licensed to work with government

for smooth functioning of import / export, is not acceptable. In this case, I am of the view the BOE No.7368812 dated 04.02.2022 pertaining to the importer M/s JCS Botanicals was filed in the name of M/s Prakhar Gupta through his login Id and password.

Thus, I find that the role of Customs Broker is highly unsatisfactory as the Custom Broker failed to comply with the obligations imposed upon him under the provisions of Regulation 10 of the CBLR, 2018 and failed to discharge his duties as a Customs Broker. I totally agree with the Inquiry report submitted by the Assistant Commissioner of Customs, CCSI Airport Lucknow and find that M/s Prakhar Gupta, Customs Broker has contravened the Regulations 10(a), 10(b), 10(d), 10(e), 10(f), 10(k) & 10(n) of CBLR, 2018

12.10. Now, I want to discuss here the provisions of Regulation 14 of CBLR 2018. For the sake of brevity, I reproduce the same as below:-

14. Revocation of licence or imposition of penalty- The Principal Commissioner or Commissioner of Customs may, subject to the provisions of regulation 17, revoke the 151 license of a Customs Broker and order for forfeiture of part or whole of security, on any of the following grounds, namely:-

- (a) failure to comply with any of the conditions of the bond executed by him under regulation 8;*
- (b) failure to comply with any of the provisions of these regulations, within his jurisdiction or anywhere else:*
- (c) commits any misconduct, whether within his jurisdiction or anywhere else which in the opinion of the Principal Commissioner or Commissioner of Customs renders him unfit to transact any business in the Customs Station;*
- (d) adjudicated as an insolvent;*
- (e) of unsound mind; and*
- (f) convicted by a competent court for an offence involving moral turpitude or otherwise.*

On plain reading of the above, I find that Regulation 14(b) clearly states that if any Customs Broker fails to comply with any of the provisions of these Regulations within jurisdiction or anywhere else, the licence of the said CB may be revoked.

In the present case, as discussed above in Paras 12.1 and 12.2 supra, the Customs Brokers has violated Regulation 10 of CBLR, 2018. He failed to comply with the obligations which were supposed to be fulfilled by him, being a Customs Broker. Therefore, I have no option left than to exercise the provisions prescribed in Regulation 14 of CBLR, 2018.

12.11 Now, I come to the issue whether penalty under Regulation 18 of CBLR, 2018 is warranted. As per Regulation 18(1) of CBLR, 2018:-

18. Penalty.- (1) The Principal Commissioner or Commissioner of Customs may impose penalty not exceeding fifty thousand rupees on a Customs Broker or F card holder who contravenes any provisions of these regulations or who fails to comply with any provision of these regulations.

According to Regulation 18(1) of CBLR, 2018, on contravention of any provisions or failure to comply with any provision to Regulations, penalty could be imposed on the Customs Broker. Here, in the present case, it has already been proved that the customs Broker has contravened provisions of Regulation 10 of CBLR, 2018. Therefore, I impose penalty on the Customs Broker under Regulation 18 of CBLR, 2018.

FINDINGS

I find that the party Shri Prakhar Gupta, in his statement dated 04.03.2022 submitted, inter alia, that neither he filed the subject bill of entry No.7368812 dated 04.02.2022 nor he had any information of mis-declared goods which were seized at ICD Jhattipur, Panipat. He maintained that his customs broker login Id and password were somehow leaked and M/s Goodwings Maritime Pvt. Ltd. filed the subject bill of entry through his credentials, in the name of Customs Broker M/s Prakhar Gupta. He also submitted that he informed the Customs authorities of the illegal import vide bill of entry no.7368812 dated 04.02.2022, through e-mail dated 21.02.2022

Poring over the documents available on record, I am of the opinion that the party's plea that he himself informed the Customs official through e-mail dated 21.02.2022 as soon as he came to know about it, is an after-thought and concocted find that Shri Prakhar Gupta, in his statement dated 04.03.2022, stated that the importer M/s JCS

Botanicals, New Delhi and Shri Awadhendra Kumar (one director of Ms Goodwings Maritime Pvt. Ltd) contacted him on 21.02.2022 and told him about the incident. I am of the opinion that M/s Goodwings Maritime Pvt. Ltd. had no reason to contact the party Shri Prakhar Gupta on 21.02.2022 as the subject bill of entry was filed through Shri Prakhar Gupta's credentials. Shri Prakhar Gupta in his said statement, has also accepted to have received payments from M/s Goodwings Maritime Pvt. Ltd. through bank account of the party M/s Prakhar Gupta. From the above stated facts, I am of the opinion that the party Shri Prakhar Gupta e-mailed to Customs Authorities on 21.02.2022 only after coming to know that the subject Bill of Entry No.7368812 dated 04.02.2022 was marked for 100% examination by RMS and was examined by Customs Authorities on 21.02.2022 in presence of two independent witness and Shri Sanjay Kumar, he authorised representative of M/s Prakhar Gupta in this case

As regard the denial of the party Shri Prakhhar Gupta not to have issued any authorization to Shri Sanjay Kumar, I find from the records that the party Shri Prakhar Gupta admitted that the signature on the authorization letter of Shri Sanjay Kumar seemed to be his own but he never signed it; I find it a lame excuse and a meek response towards the responsibilities and accountabilities of a Broker, only to avoid possible legal consequences

As regard the party's plea that he did not file the said Bill of Entry No.7368812 dated 04.02.2022 and had no information about goods under the said Bill of Entry, I would like to discuss the process of filing of documents and generation of Bill of Entry on EDI system. For Customs related work, a unique ID is to be allotted to a CB for clearance purpose and for verification of mandatory documents like invoice, packing list, Bill of Lading/Airway Bill, etc. Also, digital signature of the CB is required while filing Bill of Entry where CB needs to properly mention the details of goods., value, quantity, Customs Tariff heading. exemption notification details, if any and other necessary details and accordingly, a checklist is generated which is signed by the CB which is then forwarded to the Importer for cross-checking. After confirmation of the details by the importer, the CB uploads the check list electronically in EDI system which subsequently generates the Bill of Entry. This digital signature is the responsibility of the person who possesses it. The party Shri Parkhar Gupta has miserably failed to

submit anything that his unique ID, Password and Digital Signature were not used by him but by someone else. He has also not informed about any legal action taken by him in case of stolen identity, despite a lapse of nearly one year since the illegal import. Besides, in his statement dated 04.03.2022 the party Shri Prakhar Gupta has stated that Customs Broker M/s Prakhar Gupta and Ms Goodwings Maritime Pvt. Ltd., have mutual understanding and are working hand in glove for all Customs related work. The Bill of Entry no. 7368812 dated 04.02.2022 was filed with the party Shri Prakhar Gupta's credentials using his ID and digital signature and Shri Prakhar Gupta, himself gave his credentials to M/s Goodwings Maritime Pvt. Ltd. I find that this a modus operandi adopted by the party Shri Prakhar Gupta to repudiate when some untoward incidence like present case comes into light.

I find that the party Shri Prakhar Gupta has rendered himself liable for action under Regulation 14 of CBLR, 2018. I also find that the party Shri Prakhar Gupta has rendered himself liable for action under Regulation 18 of CBLR, 2018.”

4.4 From the plain reading of the impugned order holding that Appellant have contravened the provisions of Regulation 10 (a), (b), (d),(e),(f),(k) & (n) of the CBLR, 2018 we are constrained to observe that the same is nothing but dittoing of the findings recorded in the inquiry report without any application of judicial mind or thinking to regulation contravened and the facts in hand.

4.5 From the facts of case we find that the a bill of entry has been filed using the login id and password of the Appellant. Subsequently the consignment covered by the said bill of entry is found to be mis-declared and has been confiscated, allowed to be redeemed against payment of redemption fine, for re-export.

4.6 Except for the few statements, whose excerpts are reproduced in the impugned order no other evidence has been adduced in the entire proceedings to hold the Appellant guilty of contravention of various provisions of Regulations 10 (a), (b), (d),(e),(f),(k) & (n) of the CBLR, 2018. To examine the

role of the Appellant in the case we refer to the extracts of various statements as recorded in the impugned order:

- *Statement dated 24.02.2022 of Shri Sanjay Kumar (the authorized representative during examination process) - In his statement dated 24.02.2022, he inter-alia stated that he was authorized by the CHA Prakhar Gupta vide said authorization letter dated 21.02.2022 to get the examination done by the Preventive Officers of consignment under bill of entry no 7368812 dated 04.02.2022 and that the signatures on the said letter appear to be of Shri Prakkhar Gupta but he has not signed the said letter in front of him; that he is working as G Card (G Card No. 145/2004) in M/s Goodwings Maritime Pvt. Ltd. CB No. R-14/2020; that he does not work for the Customs Broker Prakhar Gupta; that he was directed by Shri Awdhendra Kumar (Mob No 9013877280) who is the owner of M/s Goodwings Maritime Pvt. Ltd. having CB No. R-14/2020, to go and get examined the goods under bill of entry no. 7368812 dated 04.02.2022 filed by the Customs Broker Prakhar Gupta by the Customs Preventive officers; that the said authorization letter dated 21.02.2022 was received by him through Mrs. Mohini (Mob. No. 9990707280) who is an accountant in the Customs Broker M/s Goodwings Maritime Pvt. Ltd. CB No. R-14/2020; that he does not know the importer personally.*
- *Statement dated 24.02.2022 of Shri Archit Sharma Prop. of M/s JCS Botanicals (the importer):- In his statement dated 24.02.2022, Shri Archit Sharma inter-alia stated that Prakhar Gupta, CHA No. ASLPG5339HCH003 is the Customs Broker in the subject consignment; that he does not have address, email & contact no. of the Customs Broker Prakhar Gupta; that they sent the hiring letter and other relevant documents to the customs broker in this case through his email address "archit1992sharma@gmail.com" to email "accounts@goodwingsmaritime.com" of M/s*

Goodwings Maritime Pvt. Ltd. the clearing agent or customs broker; that he does not have the copies of the documents; that he is not sure whether M/s Goodwings Maritime Pvt. Ltd. the clearing agent/customs broker and Prakhar Gupta, the Customs Broker are same or not, but he sent the documents on the said email address as provided by Customs Broker Prakhar Gupta

- *Statement dated 04.03.2022 of Shri Prakhar Gupta:- In his statement dated 04.03.2022, Shri Prakhar Gupta S/o Shri Pankaj Kumar Gupta, 117/H-2/115, Pandu Nagar, Hans Nagar, Kanpur Nagar Uttar Pradesh 208005 (CHA No. 05/CB/REGULAR/KNP/2016) & (ASLPG533HCH003), on being shown copy of the letter dated 21.02.2022, authorizing therein Shri Sanjay Kumar, stated that though the signatures on the same seems similar to my signature but he had not signed any such letter and the same had not been issued by him; that he does not know anything about this letter; that he cannot say who has signed this letter; that he does not have the original of this letter; that a consignment under bill of entry no. 7368812 dated 04.02.2022 was filed for import through his CHA License, however the same was not filed by him; that he does not know anything about the importer as he was never in contact of the said importer as the said consignment was filed by M/s Goodwings Maritime Pvt. Ltd.; that they are working in partnership with M/s Goodwings Maritime Pvt. Ltd. and they have understanding that they can file papers with customs in the name of my customs broker license; that he had never authorized M/s Goodwings Maritime Pvt. Ltd. in writing to file papers with customs in the name of customs broker license Prakhar Gupta and this was being done only on verbal understanding between CHA firm Prakhar Gupta and M/s Goodwings Maritime Pvt. Ltd.; that they never had any written agreement / authorization with M/s Goodwings Maritime Pvt. Ltd. for working under*

Customs Laws in their name; that they do not have any authorized person/employee of CHA firm Prakhar Gupta who looks after the work of filing papers, clearance, examination with customs authorities for import or export purpose; that Shri Sanjay Kumar (5348 3852 6736 - Aadhar Card) is not his employee and he is an employee of M/s Goodwings Maritime Pvt. Ltd.; that ShriAwdhendra Kumar of M/s Goodwings Maritime Pvt. Ltd. gave the said authorization letter dated 21.02.2022 to Shri Sanjay Kumar; that no transaction has been made to him or his firm M/s Prakhar Gupta from anyone so far in respect of the subject consignment; that payments are made by M/s Goodwings Maritime Pvt. to Ms Prakhar Gupta through bank account for filing of documents or clearance of import/export in the name of M/s Prakhar Gupta. Further on being asked that for the purpose of clearance of subject consignment, how they were hired as Customs Broker by the importer and how the documents for filling the import documents under subject consignment were provided to them by the importer, he stated that he did not have any contact with the importer for clearance of this consignment and the same was filed by M/s Goodwings Maritime Pvt. Ltd. in the name of M/s Prakhar Gupta; that he never received or got any authorization/agreement or any other document from the importer or any other person for filling papers for clearance of subject consignment and so he does not know anything about this consignment or anything about this matter. He, further stated that for the last six months he is taking care of his father in Kanpur and looking after his business there and he is visiting Delhi about after six months; that the importer and Shri Awdhendra Kumar of M/s Goodwings Maritime Pvt. Ltd contacted him on and after 21.02.2022 and told him about this matter; that only the importer and/or Shri Awdhendra Kumar of M/s

Goodwings Maritime Pvt. Ltd. can tell about this import consignment and he cannot tell anything about it.

- *Statement dated 07.03.2022 of Shri Awadhendra Kumar: In his statement dated 07.03.2022, Shri Awadhendra Kumar inter-alia stated that he is one of the two directors of M/s Goodwings Maritime Pvt. Ltd. H.No. 265, Flat No. FF, Bhuyia Chowk, Mehrauli South Delhi-110030 that M/s Goodwings Maritime Pvt. Ltd. is engaged in the business of freight forwarding and clearance of import and export goods; that the consignment under Bill of Entry No. 7368812 dated 04.02.2022 was filed neither by me nor by M/s Goodwings Maritime Pvt.; that the documents of this consignment were received by me on behalf of Customs Broker M/s Prakhar Gupta; that he personally work on behalf of M/s Prakhar Gupta for clearance purpose of import & export consignments from Customs so he got these documents to file the papers with Customs Department for clearance of the said consignment and he filed these documents on behalf of M/s Prakhar Gupta; I have been authorized in this regard by the Customs Broker M/s Prakhar Gupta; that he does not have copy of the said authorization, and will submit the same; that he got the said documents in original from the Importer; that the letter dated 21.02.2022 authorizing Shri Sanjay Kumar, was issued by Shri Prakhar Gupta and he submitted purportedly original of the said letter dated 21.02.2022; that the original of the said letter dated 21.02.2022 was destroyed as the scan copy was sent to Shri Sanjay Kumar and that this is the letter in original written and prepared again to submit to the Customs Authorities; that he is working with M/s Prakhar Gupta in partnership; that he does not have any legal document but we have a written agreement and he will submit copy of the same; that Shri Sanjay Kumar (identity no. 5348 3852 6736) is G-Card holder of M/s Goodwings Maritime Pvt. Ltd.; that he sent*

Shri Sanjay Kumar to handle the said consignment for examination by the Customs Officers on 21.02.2022; that he gave the said original authorization letter dated 21.02.2022 to Mrs. Sneha to scan and send to Shri Sanjay Kumar and Mrs. Sneha sent this letter to Shri Sanjay Kumar through her mobile no. 9990707280 on his direction; that Mrs. Sneha is the employee of M/s Goodwings Maritime Pvt. Ltd.; that he directed Mrs. Sneha in the capacity of Director of M/s Goodwings Maritime Pvt. Ltd. and as a partner of Ms Prakhar Gupta to send the said letter to Shri Sanjay Kumar; that Shri Prakhar Gupta gave him signed blank letters on his letterhead.

- *Statement dated 21.03.2022 of Shri Awadhendra Kumar:-*
In his statement dated 21.03.2022, Shri Awadhendra Kumar stated that his statement dated 07.03.2022 is true and correct; that Shri Sanjay Kumar and Mrs. Sneha both are employee of M/s Goodwings Maritime Pvt. Ltd. and they also work for M/s Prakhar Gupta who also have office in the same premises i.e. H.No. 265, Flat No. FF I, Bhuyia Chowk Mehrauli South Delhi-110030; that his company M/s Goodwings Maritime Pvt. Ltd. has no role in clearance of the said consignment under Bill of Entry No. 7368812 dated 04.02.2022 of M/s JCS Botanicals; that he collected the original documents, original authority letter from the importer for filling for clearance for the consignment on behalf of M/s Prakhar Gupta; that he does not have these original documents and will submit the same by 22.03.2022. On being pointed out regarding the statement of Shri Sanjay Kumar that he did not work for Customs Broker M/s Prakhar Gupta, Shri Awadhendra Kumar stated that Shri Sanjay Kumar worked for M/s Prakhar Gupta in this case only though he is not a worker or employee of M/s Prakhar Gupta Shri Awadhendra Kumar stated that as Mr. Prakhar Gupta had no G- Card but they only had H-Card Shri Rohit Mishra), so, on 21.02.2022, I directed Shri

Sanjay Kumar to go and get examination done as recommended by Shri Prakhar Gupta. On being shown the e-mail dated 21.02.2022 of Shri Prakhar Gupta and statement dated 04.03.2022 of Shri Prakhar Gupta, wherein he claimed that his Customs Broker License has been used without his authorization and that the authorization letter dated 21.02.2022 was not signed by him Shri Awadhendra Kumar stated that the facts represented by me above are true and correct and what Shri Prakhar Gupta has said may be due to some unfavorable conditions only known to him and he stated all irrelevant facts; that he has been filing papers for clearance of import and export consignments on behalf of Customs Broker M/s Prakhar Gupta since 2018-19 as per mutual consent from them and he will submit the agreements in this behalf by 22.03.2022.

- *Statement dated 23.03.2022 of Shri Archit Sharma Prop. of M/s JCS Botanicals (the importer):- In his statement dated 23.03.2022, Shri Archit Sharma inter-alia agreed with all contents and manner of his previous statement dated 24.02.2022; that he does not have address & email of the Customs Broker Shri Prakhar Gupta, but his contact no. known to him was submitted; that he never contacted the Customs Broker Shri Prakhar Gupta for clearance of this consignment; that the copy of hiring letter and other relevant documents to the Customs Broker in the instant case were sent to the customs broker through my e-mail address "archit1992sharma@gmail.com" to email "accounts@goodwingsmaritime.com" of M/s Goodwings Maritime Pvt Ltd., that however he does not have any proof in this regard; that he sent documents/ details of the instant consignment t email "accounts@goodwingsmaritime.com" of M/s Goodwings Maritime Pvt. Ltd. on the directions of Shri Awadhendra Kumar who is director of 1329 Customs Broker company*

M/s Goodwings Maritime Pvt. Ltd. as they had a dealing with him for clearance or their consignment; that he was under impression that the clearance would be done through his customs broker license of M/s Goodwings Maritime Pvt. as Shri Awadhendra Kumar told him; that he cannot say anything about the allegations of Shri Prakhar Gupta; that he came to know about this fact that their subject consignment was filed on the license of Customs Broker M/s Prakhar Gupta, when the said consignment was filed for clearance; that however he was under impression that Shri Awadhendra Kumar would have done it correctly

2.12 Shri Awadhendra Kumar submitted copy of an agreement letter dated 16.07.2018 stating therein as "I hereby confirm you that I, Prakhar Gupta confirm that we (CHA-PRAKHAR GUPTA & AWADHENDRA KUMAR) are partner at mutual understanding terms and in all circumstances we both are liable to handle the situation and transact business mutually and no financial liability shall fall on M/s Prakhar Gupta"

4.7 From the above excerpts as recorded in impugned order we do not find even an iota of evidence as per which it can be concluded that Appellant was responsible for filing of the said bill of entry. Proprietor of importer Mr Archit Sharma specifically states that he never had contacted or met the Appellant or was even under impression that bill of entry for clearance of his consignments were to filed by the Appellant. On the contrary he specifically states that the work for the clearance of the said consignment had been entrusted by him to M/s Goodwings Maritime Pvt Ltd. He had even sent all the documents to the email address of the said Custom Broker "accounts@goodwingsmaritime.com" from his email address archit1992sharma@gmail.com. Admittedly all the persons who are concerned with the clearance of the said goods happen to be employee M/s Goodwings Maritime Pvt Ltd. Interestingly in the present case though an authorization letter dated

21.02.2022 has been said to be signed and issued by the Appellant but the fact about denial of the his role in respect of clearance of the said consignment was intimated to customs by the Appellant by his email of the same date. Further original copy of the said authorization letter in the name of Shri Sanjay Kumar has not been produced by anyone at anytime during the investigation. When Appellant has denied about having signed or issued any such authorization letter the signatures on the letter have not been subjected to any forensic examination by a hand writing expert. Except for statement of the Shri Awadhendra Kumar that he was working as per agreement letter dated 16.07.2018 in partnership with Appellant there is nothing to implicate the Appellant in the entire proceedings. Even copy this agreement letter submitted by Shri Awadhendra Kumar has not been subjected to any forensic examination. On the contrary this letter goes on to establish the case that Appellant has stated in his statement to effect that his login id and password has been compromised and used for filing this bill of entry. In the order in original dated 28.03.2022 after examining all the evidence in paar 3.11 following has been recorded:

“Thus it appeared that Mr. Awadhendra Yadav presented a manipulated/ concocted document in the form of authorization letter dated 21.02.2022. Further as he said he destroyed the original letter which was to be submitted to the Customs Authorities. He also used blank signed documents of another firm and appear to have used them with govt. Departments.

Further, from the email dated 21.02,2022 of Mr. Prakhar Gupta and other documents/ submissions and statements of Mr. Sanjay Kumar, the authorized person, Mr. Archit Sharma, Prop. M/s JCS Botanicals (the importer firm), Mr. Prakhar Gupta Prop. MIs Prakhar Gupta (the Customs Broker) & Mr. Awadhendra Yadav, Director of Ms Goodwings Maritime Pvt. Ltd. (the another Customs Broker Co.)

recorded under Section 108 of the Customs Act, 1962, it appears that the impugned consignment has not been filed for clearance by M/s Prakhar Gupta, the Customs Broker but the same has been filed by Mr. Awadhendra Yadav, Director of M/s Goodwings Maritime Pvt. Ltd.;

Further, there was no contacts/ agreement dealing between Customs Broker M/s Prakhar Gupta and Importer M/s JCS Botanicals for clearance of the impugned consignment, as evident from the statement of Mr. Prakhar Gupta and Mr. Archit Sharma. Instead, Mr. Awadhendra Yadav dealt with the importer for clearance of the consignment, in the capacity of Director of M/s Goodwings Maritime Pvt. Ltd., the another Customs Broker Co. The importer dealt with Mr. A wadhendra Yadav and provided him the requisite documents which were filed for clearance,

Thus clearance of the impugned consignment was attempted by the Customs Broker M/s Goodwings Maritime Pvt. Lid, through its director Mr. Awadhendra Yadav without requite authorization, by illegally using the License of Customs Broker M/s Prakhar Gupta."

4.8 Be that as it may be, is solitary case of mis-declaration noted in the present case enough to revoke the licence of a custom broker and deprive him of the livelihood. Evidently the bill of entry has been filed as per the information made available by the importer either to Appellant or M/s Goodwing Maritime Pvt. Ltd.. The case of mis-declaration has been adjudicated without issuance of show cause notice on the basis of waiver of show cause notice by the importer implicating the Appellant and imposing penalty of Rs 1,00,000/- on him under Section 114AA of the Customs Act, 1962, and without holding him liable for penal action under Section 112 (a) or 112 (b) of the Customs Act,1962. Only importer has been held liable under Section 112 (a) of the Customs Act, 1962 for contravention making the goods liable

for confiscation under Section 111 (d) and (o) of the Customs Act, 1962.

4.9 As observed earlier the impugned order holding that Appellant have contravened the provisions of regulation 10 (a), (b), (d),(e),(f),(k) & (n) of the CBLR, 2018 is without any basis in law or on cogent examination of the facts in hand. Thus we do not find any merits in the impugned order.

5.1 Appeal No C/70439/2022 is dismissed as infructuous.

5.2 Appeal No C/70212/2023 is allowed.

(Pronounced in open court on 20.08.2024)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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