CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II
(E-Hearing)

Customs Appeal No.70078 of 2023

(Arising out of Order-in-Original No.25/Pr.Commr./Noida-Cus/2022-23 dated 29/12/2022 passed by Commissioner of Customs, Noida)

M/s Transworld Cargo & Travels, **.....Appellant**
(2197/3, Chunna Mandi,
Paharganj, New Delhi-110055)

VERSUS

Commissioner of Customs, Noida **....Respondent**

(Concor Complex, PO Container Depot, Noida-201311)

WITH

Customs Appeal No.70079 of 2023

(Arising out of Order-in-Original No.25/Pr.Commr./Noida-Cus/2022-23 dated 29/12/2022 passed by Commissioner of Customs, Noida)

Shri Amit Kumar Singh, **.....Appellant**
(T8, Saraswati Apartment,
3rd Floor, Nearby Payal Cinema, Pratap Bihar,
Gaurampuri Dadri, Noida-203207)

VERSUS

Commissioner of Customs, Noida **....Respondent**

(Concor Complex, PO Container Depot, Noida-201311)

APPEARANCE:

Shri R.K. Hasija, for the Appellant
Shri A.K. Choudhary, Authorised Representative for the Respondent

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

FINAL ORDER NOs.70436-70437/2025

DATE OF HEARING : 17 April, 2025
DATE OF DECISION : 17 April, 2025

SANJIV SRIVASTAVA:

These appeals are directed against Order in Original No 25/Pr. Commr./ NOIDA-CUS/2022-23 dated 29.12.2022 of the

Principal Commissioner Customs, NOIDA Customs. By the impugned order following has been held:

ORDER

(i) *I reject the declared FOB value of the goods at Rs. Rs.2,22,12,968/- in terms of Section 14 of the Customs Act, 1962 and re-determine it at Rs.22,92,000/- only in terms of Rule 6 of the Customs Valuation (Determination of value of export goods) Rules, 2007 read with Explanation (1) (i)(b) of Rule 8 (2) of the CVR 2007and further read with Section 14 of the Customs Act,1962*

(ii) *I hereby order for confiscation of the goods covered under Shipping Bill No. 3335894 dated 22,06.2020, 3335891 dated 22.06.2020, 3335913 dated 22.06.2020, 3335888 dated 22.06.2020, 3335899 dated 22.06.2020, 3335890 dated 22.06.2020, 3335911 datec 22.06.2020, 3335889 dated 22.06.2020 under Section 113(i) & 113(i)(a) of the Customs Act, 1962.*

(iii) *In lieu of the confiscated goods mentioned at (i) above I order for a redemption fine amounting to Rs.5,00,000/- (Rupees Five Lakhs only) under Section 125 of the Customs Act, 1962*

(iv) *I impose a penalty of Rs, 10,00,000/- (Rupees Ten Lakhs only) under the provisions of Section 114(ii) of the Customs Act, 1962 on M/s Pixar International.*

(v) *I impose a penalty of Rs.5,00,000/- (Rupees Five Lakhs only) under the provisions of Section 114AA of the Customs Act, 1962 on M/s Pixar International.*

(vi) *I impose a penalty of Rs.5,00,000/- (Rupees Five Lakhs only) under the provisions of Section 114(i)fof the Customs Act, 1962 upon, Shri Nirmal Singh, Partner of M/s. Pixar International.*

(vii) *I impose a penalty of Rs.3,00,000/- (Rupees Three Lakhs only) under the provisions of Section 114AA of the Customs Act, 1962 upon Shri Nirmal Singh, Partner of M/s. Pixar International.*

(viii) *I impose a penalty of Rs.5,00,000/- (Rupees Five Lakhs only) upon Shri Tarun Gopal, Partner of M/s. Pixar International under the provisions of Section 114(i) of the Customs Act, 1962, for the acts as detailed in foregoing paras.*

(ix) *I impose a penalty of Rs.3,00,000/- (Rupees Three Lakhs only) upon Shri Tarun Gopal, Partner of M/s, Pixar International under the provisions of Section 114AA of the Customs Act, 1962, for the acts as detailed in foregoing paras.*

(x) *I impose a penalty of Rs.3,00,000/- (Rupees Three Lakhs only) on Shri Amit Kumar Singh, Customs Broker G-card No, 41/2019 under the provisions of Section 114(i) of the Customs Act, 1962.*

(xi) *I impose a penalty of Rs.2,00,000/- (Rupees Two Lakhs only) on Shri Amit Kumar Singh, Customs Broker G-card No. 41/2019 under the provisions of Section 114AA of the Customs Act, 1962.*

(xii) *I impose a penalty of Rs.5,00,000|- (Rupees Five Lakhs only) on M/s. Transworld Cargo & Travels under the provisions of Section 114(i) of the Customs Act, 1962.*

(xiii) *I impose a penalty of Rs.3,00,000|- (Rupees Five Lakhs only) on M/s. Transworld Cargo & Travels under the provisions of Section 114 AA of the Customs Act, 1962.*

(xiv) I also order for initiation of action against Shri Amit Kumar Singh, Customs Broker and M/s. Transworld Cargo Travels under CBLR, 18 in a separate proceeding.

1.2 Appeals have been filed by only two persons namely Shri Amit Kumar Singh, Customs Broker (Appellant 1) and M/s.

Transworld Cargo Travels (Appellant 2) whereas many others are penalized by the impugned Act. This order is thus limited to the two appellants who have filed these appeals.

2.1 M/s Pixar International (IEC No. AAXFP1693D & GSTIN 07 AAXFP1693D1ZT) (Exporter) filed eight shipping bills on 22.06.2020 for exporting consignments of Mobile Back Cover and Mobile Temper. The said shipping bills were duly supported by the GST Invoices dated 20.06.2020. FOB value of Mobile Temper was declared as Rs 489.77/- per piece and that of Mobile Back Cover as Rs 565.12/- per piece, making total value of all the consignments as Rs 2,22,12,968/-.

2.2 Exporter vide letter dated 29.06.2020 received in Commissionerate on 03.07.2020 requested to replace the material in the export consignment stating that they had erroneously sent unfinished good instead of finished goods which continue to be in their ware house.

2.3 On examination of goods on 03.08.2020 by the shed officers in presence of Appellant 1 the goods were found to be inferior quality and highly overvalued.

2.4 Investigations were initiated against the exporters in terms of the provisions of Customs Act, 1962 and the declared business premises of exporter was visited at the address provided. On visit it was found that exporters were not engaged in conducting any business form that premises and never own the same even on rent.

2.5 After completion of investigation a Show cause Notice dated 02.09.2021 was issued to the exporters and others including the appellants. Show cause notice alleged that

- appellant 1 failed to perform his duties in as much as he had not verified the antecedents of exporter by visiting the business premises and thus have failed to perform the duties cast on him under Regulation 10 (d), (e), (j), (k), (m), (n) & (o);

- appellant 2 failed to perform his duties in as much as he had not verified the antecedents of exporter by visiting the business premises and thus have failed to perform the duties cast on him under Regulation 10;
- Appellant 1 and Appellant 2 thus colluded with exporter with intention to get undue custom benefits.
- Both appellant 1 and Appellant 2 are liable to penal action under Section 114 (iii) and 114 AA of the Customs Act, 1962.

2.6 The show cause notice has been adjudicated as per the impugned order.

2.7 Aggrieved appellants have filed these appeals.

3.1 I have heard Shri R K Hasija and Shri Shivang Puri Advocates for the appellant and Shri A K Choudhary, Authorized Representative for the revenue.

3.2 Arguing for the appellants learned counsel submits:

- The basic charge against the appellants is that they have failed to physically verify the business premises of the exporter on whose behalf they had filed the shipping bills for the export of goods under claim of various export incentives like IGST Refund, Duty Drawback etc.,
- They had done the proper KYC on the basis of the document, and by verifying them from the independent sources including the websites of the concerned departments of Government of India.
- It is not provided in the law that appellant should have physically cause verification of the business premises in each and every case. No charge of misconduct can be imputed on this account leading to violation of provisions of Customs Broker Licensing Regulation, 2018. Reliance is placed on the decisions as follows:

  - Anax Air Services Pvt. Limited. [2022 (1) TMI 115 CESTAT New Delhi]
  - Mauli Worldwide Logistics [2022 (7) TMI 368 CESTAT New Delhi]
- It has not been established that appellants had abetted and colluded with the exporters.
- The goods are not liable for confiscation. Reliance is placed on following decisions:
  - JBN Apparels Pvt. Ltd. [2025 (3) TMI 514 CESTAT New Delhi]
  - Kritika Enterprises [2025 (4) TMI 528 CESTAT New Delhi]

3.3 Authorized representative re-iterated the findings recorded in the impugned order.

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

4.2 Impugned order records the findings as follows against the two appellant who are in appeal before CESTAT.

> *6.8.1 Now I discuss the proposal in the show cause notice for imposition of penalty upon Shri Amit Kumar Singh under Section 114(iii) and 114AA of the Customs Act, 1962.*
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> *6.8.2 It has been alleged that Sh. Amit Kumar Singh, (G-Card 41/2019-20) of CHA M/s Jyoti Cargo has not performed his duties in as much as he has not verified the antecedents and the business premises of M/s Pixar international and he has also not followed the provisions of Regulation 10 of CBLR, 2018.*
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> *6.8.3 As per Regulation 10(d) of the Customs Brokers Licensing Regulations, 2018 a Customs Broker shall 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

6.8.4 As per Regulation 10(e) of the Customs Brokers Licensing Regulations, 2018 a Customs Broker shall 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.

6.8.5 As per Regulation 10(n) of the Customs Brokers Licensing Regulations, 2018 a Customs Broker shall 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,

6.8.6 As per Regulation 10(o) of the Customs Brokers Licensing Regulations, 2018 a Customs Broker shall inform any change of postal address, telephone number, e-mail etc. to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, of all Customs Stations including the, concerned Deputy Commissioner or Assistant. Commissioner of the Commissionerate who has granted the license immediately within two days

6.8.7 Shri Amit Kumar Singh in his defence reply has contended that as per Regulation 10(n) the verification of identity and functioning of the exporter at the declared address is to be done by using reliable; independent, authentic documents, data or information. By mandating the process, no procedure has been prescribed Therefore, CHA has to be use reliable independent, authentic documents, data of information etc. He has contended that IEC, GSTIN can be verified online. Further, Rent Deed *provided by the exporter is supported by electricity bill of BSES Rajdhani Power Ltd and still in the name of Mr. Jagdish Tiwari who had apparently lent the premises to the exporter firm. Adhaar Cards/ PAN cards/ voter ID cards of the partners were also apparently authentic. He has further contended that nowhere has it been prescribed that the CHA should personally go/visit the premise of the exporter. All what is required is that it should be verified by using reliable, independent, authentic documents data or information*

6.8.8 He has contended that it is not a case of the Department that IEC code, GSTIN number, Voter ID card Adhaar Card and electricity bills, etc are also not doubted in the show cause notice. Merely because on enquiry the address of the partner could not be found being incomplete cannot be attributed to the CHA or the present Noticees in as much as the documents such as PAN Cards, IEC, GSTIN, Adhaar Cards or voter ID cards are issued by the Constitutional Government authorities and not by the private persons. It is also not the case of the Department that these documents have been obtained by fraud by the exporter and also it is not a case that these documents have been cancelled/ withdrawn by the authorities. When the authenticity/ genuineness of these documents is not doubted, it should be held that by using these documents, CHA has exercised due diligence to ascertain the correctness of the information provided by the exporter. In the absence of any mandate of personal visit to the premises, due diligence has been exercised by the CHA using these documents. CHA has neither any authority nor any means to challenge the authenticity of these documents. As such there is sufficient compliance and there is no violation of any regulation by the CHA. He has relied upon the case law of M/s Anax Air Services Pvt Limited vs. Commissioner of Customs, New Delhi- 2022 (1) TMI 115-

CESTAT NEW DELHI, He has also contended that the allegation of collusion of exporter and him is very serious and has not been established by the Department in the present case. There is no statement of any person indicating that either exporter or he had connived or abetted each other at any point of time. That collusion or abetment has to be established beyond any iota of doubt and in the absence of any such evidence, the charge of collusion or abetment is baseless and the show cause notice in the absence of any such evidence is liable to be dropped

6.8.9 I find that on 08.09,2020 Inspector (SIIB), Noida Customs visited the principal place of Business of M/s Pixar International, i.e. Unit-22, Ground Floor, CSC (Opposite SDM Office) Sector-10, Phase-1 Dwarka, N. Delhi for physical verification of the premises. During the verification it was revealed that said exporter does not exist at the said address and the owner of the said premises (since 07.12.2018) Sh. Satvir Gupta, (having AADHAR NO-956485345204),S/o Sh. Dinesh Chand Gupta, R/O RZ-10, West Sagarpur Nangal Raya, South West Delhi, Delhi Cantonment-110046 has stated in writing that he does not know any such company and he had never let out the said property to anybody Company/Firm since 07.12.20018, However M/s Pixar International, at the time of KYC, have submitted a rent agreement dated 28.08,2019 bearing the signatures of Sh. Jagdish Tiwari as the owner of the property and Sh. Nirmal Singh, the Partner of M/s Pixar International.

6.8.10 Thus as per physical verification M/s Pixar International was not found functioning at the given address. Further, owner of the said premises was Sh. Satvir Gupta and not Sh. Jagdish Tiwari Moreover, Sh. Satvir Gupta has stated in writing that he does not know any such company and he had never let out the said property to anybody/ Company/ Firm since 07.12.20018.

6.8.11 As discussed supra on physical verification the exporter was found non-existent at the declared address. Thus from the above it is clear that he had not verified the antecedents and functioning of M/s Pixar international at the declared business premises. Non-existence of the business premises at the given address later on came in to notice of the officers of Noida Customs when they visited the premises of M/s Pixar International on 08.09.2020.

6.8.12 Thus I find that Shri Amit Kumar Singh has not performed his duties in as much as he has not verified the antecedents and the business premises of M/s Pixar International and he has also not followed the provisions of Regulation 10 of CBLR, 2018. It was his duty to advise their client to comply with the provisions of the Act, other allied Acts, and in case of non compliance, should have brought the matter to the notice of Customs which they failed to do so. I also find that said Customs Broker did not exercise due diligence and also did not discharge his duty as a Customs Broker with utmost efficiency

6.8.13 From the above it is evident that Shri Amit Kumar Singh has-not performed his duty diligently as provided under Customs Brokers Licensing Regulations and in addition, he aided and abetted in attempted export of mis-declared and highly overvalued goods and thus was involved in the matter for facilitation in attempted export of mis-declared / highly overvalued goods

6 8.14 Since the impugned goods as discussed supra have been held liable for confiscation under Section 113(i) and 113(ia) of the Customs Act, 1962, therefore penalty under Section 114 (iii), ibid is imposable on Shri Amit Kumar Singh, Customs Broker. He is also liable for penal action under section 114AA of the Customs Act' 1962 as he aided and abetted in submission of false documents/ information to get undue benefit of export incentives.

6.8.15 Further I find that by violating the provisions stipulated in Regulation 10 of the Customs Broker Licensing Rules, 2018 Shri Amit Kumar Singh, Customs Broker has also rendered himself liable for action under the said Rules.

6.9.1 There is also proposal in the Show Cause Notice for penal action under Section 114(i) and 114AA of the Customs Act, 1962 against M/s Transworld Cargo & Travels

6.9.2 It has been alleged that Ms Transworld Cargo & Travels, 2197/3, Chuna Mandi, Paharganj New Delhi-110055 has not verified the business premises of the exporter in as much as the exporter was found nonexistent at the give address since M/s Transworld Cargo & Travels, CHA as prescribed vide Public Notice No, 33/2020 dated 30.07.2020 gave an undertaking, required for first time exporter to get KYC checked from SIIB, at ICD, Dadri under CBLR, 2018 verifying the address which was found to be fake/ non existent

6.9.3 M/s Transworld Cargo & Travels in their defence reply have contended that they only submitted KYC of the said exporter/ importer and they have no involvement to making clearance of said shipment mentioned in the letter and also do not have any knowledge regarding clearance of this shipment

6.9.4 I find that KYC is the basic procedure for ascertaining the genuineness of the exporter/ importer so that an unscrupulous person does not get away with the undue benefit of the government schemes /exemptions for export / import or violations of the provisions of the Customs Act 1962

6.9.5 As discussed supra the exporter had been found non-existent at the declared address. Therefore, M/s Transworld Cargo & Travels had not followed the provisions of Regulation 10 of CBLR 2018 in as much as they had not *exercised due diligence in performing their duties as entrusted to them under CBLG, 2018. Further, from their act it transpires that Exporter and CHA acted hand in gloves with intention to got undue customs benefits i.e. refund of IGST and benefits of Duty Drawback and other incentives. From the act of Customs Brokers it is evident that they had aided and abetted the exporter to get undue benefits as mentioned above and actively involved in the matter.*

6.9.6 Since the impugned goods as discussed supra have been held liable for confiscation under Section 113(i) and 113(ia) of the Customs Act, 1962, therefore penalty under Section 114 (iii), ibid is imposable on M/s Transworld Cargo & Travels, CHA. They are also liable for penal action under section 114 AA of the Customs Act 1962 as they aided and abetted in submission of false documents/ information to get undue benefit of export incentives.

6.9.7 Further I find that by violating the provisions stipulated in Regulation 10 of the Customs Broker Licensing Rules, 2018 M/s Transworld Cargo & Travels, CHA has also rendered themselves liable for action under the said Rules.

6.10.1 Relied upon the following case laws for above findings regarding Customs Broker/ CHA-

6.10.2 Hon'ble CESTAT, New Delhi, Principal Bench in the case of Ms Falcon India (Customs Broker) vs Commissioner of Customs (Airport & General), New Customs House, New Delhi vide Final Order No. 50259/2022 dated 21.03.2022 held that a Customs Broker or Customs House Agent is a very important person in the transaction in the Customs House. Hence it is appointed as an accredited broker as per Regulation and is expected to discharge responsibilities under them. Violations even without interest are sufficient to take action against the Customs Broker. While it is true that Customs Broker is not expected to do the impossible, *but Customs Broker is expected to act with great sense of responsibility and take care of the interest of both the client and the revenue. Customs Broker is expected to advise the client to follow the laws and if the client is not complying, it is obligated under CBLR to report to Assistant Commissioner/Deputy Commissioner. Relevant portion of the said judgment is reproduced below:*

> *"29. In the case of Jasjeet Singh Marwaha, Delhi High Court has held that the CHA can be held responsible for violation of the Customs Act also and not only for violation of CHALR. Relevant paragraph of the judgment is as follows:*
>
> > *"6.3 The provisions referred to hereinabove make it clear that an owner or importer can act through an agent. In the instant case, the appellant who is admittedly the CHA of the importers, both filed as well as filled up the contents of the bill of entry, a fact which is not denied, on behalf of the three importers referred to hereinabove. In view of these facts and the provisions referred to hereinabove, it cannot be said that the agent cannot be held to be liable for violation of the provisions of the Act. The purpose of providing for appointment of an accredited agent, that is, an agent who has been issued a licence under the Regulations framed under the Act, is not only to facilitate the clearance of goods, but in doing so, to hold either one of them or both accountable for the actions which they take, based on which the clearance of goods imported into the country is brought about. The contention that the licence of a CHA can be suspended only for violation of the Regulations framed under the Act i.e., CHALR, 2004 is clearly untenable given the purpose for which the licence is issued and the provisions of the Act."*
> >
> > *(emphasis supplied)*

32. The Supreme Court has in K.M. Ganatra & Co. held as follows:

> *"15. In this regard, Ms. Mohana, learned senior counsel for the appellant, has placed reliance on the decision in Noble Agency v. Commissioner of Customs, Mumbai [2002 (142) E.L.T. 84 (Tri. - Mumbai)] wherein a Division Bench of the CEGAT, West Zonal Bench, Mumbai has observed :-*
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> *"The CHA occupies a very important position in the Customs House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations...."*
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> *We approve the aforesaid observations of the CEGAT, West Zonal Bench, Mumbai and unhesitatingly hold that this misconduct has to be seriously viewed.*
>
> *16. Resultantly, we allow the appeal and set aside the orders of the High Court and the Tribunal and restore that of the Commissioner. There shall be no order as to costs".*

33. The above decisions lay down that the Customs Broker (or Custom House Agent) is a very important person in the transactions in the Custom House and it is appointed as an accredited broker as per the Regulations and is expected to discharge all its responsibilities under them. Violations even without intent are sufficient to take action against the appellant. While it is true, as has been decided in a number of cases, that the Customs Broker is not expected to do the impossible and is not expected to physically verify the premises of the importer or doubt the documents issued by various Governmental authorities for KYC, it is equally true that the Customs Broker is expected to act with great sense of responsibility and take care of the interests of both the client and the Revenue. It is expected to advise the client to follow the laws and if the client is not complying, it is obligated under the Regulations to report to the Assistant Commissioner or Deputy Commissioner. Fulfilling such obligations is a necessary condition for the CB licence and it cannot be termed as 'spying for the department' as argued by the appellant before us. It has also been argued that if it spies for the department, it will lose its business. It is evident from the facts of this case, that the appellant was not only aware of the benami Bills of Entry but has actually filed them with the full knowledge that they were benami and they were filed by Anil after a case has of undervaluation has been booked by DRI against him. It is afraid of losing business because it has built its business model on violators who, it does not want to upset by reporting to the department. Therefore, we find no reason to show any leniency towards the appellant. At any rate, once 30 C/50934/2021 violation is noticed, it is not for the Tribunal to interfere with the punishment meted out by the disciplinary authority, viz., the Commissioner unless it shocks our conscience. In this case, it does not."

6.10.3 Hon'ble CESTAT, Chennai in the case of M/s Oceanic Enterprises India Pvt. Ltd. Vs Commissioner of Customs, Chennai lf Commissionerate vide Final Order No 40316/2022 dated 08.06.2022 has held that-

> *"11. The main argument put forward by the learned counsel for appellant is that the allegations would only be violation of CBLR, 2018 and that the Customs Broker cannot be held responsible under sec. 112(a) of the Customs Act, 1962. Though it may be true that the Customs Broker acts as per the instructions of the importer, in the present case, as the importer himself is not traceable and the address as well as GST registration reflected in the documents are found to be fake, the act of the Customs Broker in filing the Bill of Entry acquires deep introspection. The Customs Broker has a very important position and has to safeguard the interest of both the importer and the Customs. The Regulations ensure that the Customs Broker discharges his duties in such a way that he safeguards the interest of customs by not importing prohibited goods. The undeclared goods were found to be counterfeit products of major brand. It is unbelievable to assume that the Customs Broker had no knowledge that the address of the importer or his company's address and GST registration were fake. He ought to have verified all these before filing the Bill of Entry. Though there are duties stated in the CBLR, the said Regulation has to be read along with the provisions of Customs Act, 1962. The Regulation is intended to make the clearance of export and import in a hassle-free manner for both importer/exporter and the customs. The trust embedded in the Customs Broker who has been issued a licence cannot be used in a negligent manner so as to permit undeclared/prohibited goods in large quantities.*

12. The Hon'ble jurisdictional High Court in the case of Shri Rama Thenna Thayalan (supra) observed as under:-

> *"9. Further, it is contended that as a Customs House Agent, his role is limited and for the declaration and mis-declaration of the goods, he cannot be liable for any contravention of Section 50(2) of the Customs Act, 1962. When the goods was stuffed in the container, it was only Coco Peats and the container was sealed by the Central Excise Officers. Only on verifying the Cargo, the Customs Officer has allowed the export and made an endorsement in the Shipping Bill as Let Export. During the investigation, it was established that when Red Sander was substituted for Coco Peat, without appreciating the facts and law properly, the Additional Commissioner had imposed penalty of Rs. 10,00,000/-, which was interfered by the Commissioner of Customs and reduced to Rs. 3,00,000/-. Whereas, on further appeal by the Department, the same has to be enhanced to Rs. 5,00,000/-, which is nothing but non-application of mind and improper application of the provisions of law.*
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> ** ** **
>
> *19. From the records and the own admission of the appellant, it is clear that the appellant had not discharged these obligations, which cast on him. It is a case where under the guise of Coco Peats, prohibited goods namely, Red Sanders weighing 10.760 MTs. has been transported. The DRI based on the intelligence gathered, had rescued the goods and found the Cargo was transported based on the Annexure - A containing the signature of the appellant Customs House Agent. Customs House Agent is governed by the Regulations framed by the Government in exercise of the powers conferred under the Customs Act, 1962. Therefore,*

> *misdeclaration of goods and attempt to export such goods is punishable under section 114 of the Customs Act. A Customs House Agent, who is a party to the mis-declaration, is liable to pay penalty not exceeding three times of the value of the goods mis-declared. The first respondent Tribunal is empowered to enhance the penalty imposed, if the penalty imposed is not adequate. Further, the provisions under the Regulations to punish the Customs House Agent for violation and contravention of the Regulations is in addition to the penal provisions prescribed under the parent act, namely, the Customs Act. It is incorrect to say that the Customs House Agent is liable only under the Regulations for any violation and contravention. The licence issued to the Customs House Agent under conditions not to commit any grave offence. If action under the Regulations not sufficient for the grave offence, the Customs House Agent is liable also to be proceeded under the Customs Act. There is no legal impediment to proceed against the Customs House Agent under the Customs Act besides action under the Regulations."*

13. From the discussions made above, I am of the view that there are no grounds to set aside the penalty imposed under sec. 112(a) of the Customs Act, 1962 on the appellant. I do note that penalty of Rs. 50,000/- has been imposed on the appellant as per Order in Original dated 8-9-2020 under CBLR, 2018. Taking this into consideration, I am of the view that the penalty of Rs. 5,00,000/- imposed under section 112(a) of the Customs Act, 1962 is high and requires to be reduced. I hold that reducing the penalty to Rs. 1,50,000/- (Rupees one lakh fifty thousand only) would meet the ends of justice. The impugned order is modified to the extent of reducing the penalty to Rs. 1,50,000/-

(Rupees one lakh fifty thousand only). The appeal is partly allowed with consequential relief, if any."

4.3 Penalties have been imposed upon the appellants under Section 114 (iii) and Section 114AA of the Customs Act, 1962. Section 114 of the Customs Act, 1962 read as follows:

114. Penalty for attempt to export goods improperly, etc.—

Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable,—

(i) ….
(ii) …..
(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

4.4 From perusal of the above section it is evident that penalty under this section could have been imposed on any person who does or abets in act of commission or omission of any act which would render the goods liable for confiscation under Section 113. The charge against the appellants for imposition of penalty under thus section is that they abetted in commission of the act of the exporter by not performing their duties diligently leading to confiscation of the goods under Section 113 of the Customs Act, 1962.

4.5 From the perusal of the impugned order reproduced above it is evident that all the findings that are recorded are in respect of the appellant failure to perform a duty or discharge an obligation cast on them under the Custom Broker Licensing Regulations, 2018. Not an iota of finding has been recorded towards of any provisions of the Customs Act, 1962 leading to the confiscation of the goods in terms of Section 113 of the Act ibid. Penalties under Section 114 (iii) would be imposable if the finding were recorded towards contravention of provisions of Customs Act, 1962 or knowingly abetting in act of contravention of the provisions of Act. The Custom Broker Licensing Regulation, 2018 is complete code providing for penalty for failure to discharge the obligations cast under the said regulation. Impugned order in para 6.8.15 and 6.9.7 specifically records that appellants are liable for action under said regulations. That being so without recording finding in respect of contravention of provisions of Customs Act, 1962 or knowingly abetting in act of contravention of the provisions of Act, the penalty imposed under the Customs Act, 1962 for the failure to discharge obligations cast under Custom Broker Licensing Regulation, 2018 needs to be held bad in law.

4.6 Appellant have strongly contended that they had discharged the obligations cast on them under Regulation 10 of the Custom Broker Licensing Regulations, 2018 as they had verified the antecedents of the exporters on the basis of the documents issued to the exporter by various government agencies including IEC and GSTIN. As they verified the antecedents of exporters on the basis documents and by verifying them from the independent sources, they were not mandated as per Regulation 10 (n) to cause the physical verification of the premises of the exporter by personally visiting the same. In case of Friends Cargo Services [Final Order No. 50241 /2024 dated 13.02.2024 in Customs Appeal No. 51471 OF 2022] Delhi Bench held as follows:

> *9. In order to appreciate the arguments of the Learned Counsel and the Learned AR, we need to refer to Regulation 10 of CBLR, 2018 which reads as follows:*
>
> > *"10. Obligations of Customs Broker.-A Customs Broker shall…*

(n) 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;"

10. We note that the learned consultant for the appellant has submitted that this responsibility cast on the CB as per the above regulation is fulfilled if the Customs broker obtains at least two KYC documents. It is not the responsibility of the Customs Broker to physically inspect the premises of each of its clients to ensure that it is operating from that address. He submits that it is far too onerous for the Customs Broker to fulfil such a responsibility. We find that Regulation 10(n) requires the Customs Broker to 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. This obligation essentially involves two step verification viz., the correctness of IEC number and the correctness of GSTIN and in addition, verify the identity and functioning of the client using reliable, independent, authentic documents, data or information. It is noted that IEC and GSTIN are issued by the Government departments. Therefore, any verification would be based on the copies of these documents submitted by the client/exporter, which can be verified independently online in DGFT/GSTN portals. The Department cannot expect the appellant/CB to be responsible to ensure the correctness of the actions of the Government Department which have issued these certificates. Consequently, verification of certificates as part of the obligation under Regulation 10(n) on the Customs Broker stands satisfied as long as it satisfies itself that the IEC and the GSTIN were issued by the concerned officers.

*We note that same view was taken in a similar case by this Tribunal in its decision in **M/s Bright Clearing & Carrier Pvt Ltd., vs Commissioner of Customs(A&G) and Star Carriers vs Commissioner of Customs(A&G) [2022 (11) TMI 935 - CESTAT NEW DELHI]** has held as follows:*

> *"7. Of the above, (a) and (b) require verification of the documents which are issued by the Government departments. The IEC number is issued by the Director General of Foreign Trade [DGFT] and the GSTIN is issued by the GST officers under the CBIC or by officers of the Government of India or under the Governments of State or Union territory. The question which arises is whether the Customs broker is required to satisfy itself that these documents or their copies given by the client were, indeed issued by the concerned government officers OR is the Customs Broker also required to ensure that the officers have correctly issued these documents. In our considered view, Regulation 10(n) of CBLR cannot be read to mean the latter as it would imply treating the Customs Broker as one who is competent and responsible to oversee and ensure the correctness of the actions by the Government officers. It would also mean that actions by the Customs Broker under the CBLR prevail over the actions by officers under the Foreign Trade (Development and Regulation) Act, 1992 (under which the IEC is issued by DGFT) and the Central Goods and Services Tax Act (or state GST Act) (under which the GSTIN is issued by the GST officers). In our view this is not a correct construction of the legal provision. Therefore, verification of certificates part of the obligation under Regulation 10(n) on the Customs Broker is fully satisfied as long as it satisfies itself that the IEC and the GSTIN were, indeed issued by the concerned officers. This can be done through online verification, comparing with the original*

documents, etc. and does not require an investigation into the documents by the Customs Broker. The presumption is that a certificate or registration issued by an officer or purported to have been issued by an officer correctly issued. Section 79 of the Evidence Act, 1872 requires even Courts to presume that every certificate which is purported to be issued by the Government officer to be genuine. It reads as follows:

> *79. Presumption as to genuineness of certified copies. The Court shall presume to be genuine every document purporting to be a certificate, certified copy or other document, which is by Law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer of the Central Government or of a State Government, or by any officer in the State of Jammu and Kashmir who is duly authorized thereto by the Central Government. Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf. The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.*

8. The onus on the Customs Broker cannot, therefore, extend to verifying that the officers have issued the certificate or registration correctly. It has been held by the High Court of Delhi in the case of Kunal Travels [2017 (3) TMI 1494- Delhi High Court] that "the CHA is not an inspector to weigh the genuineness of the transaction. It is a processing agent of documents with respect of clearance of goods through customs house and in that process only such authorized personnel of the CHA can enter the customs house area…….. It would be far too onerous to expect the CHA to inquire into and verify the genuineness of the IE code given to it by a client for each *import/export transaction. When such code is mentioned, there is a presumption that an appropriate background check in this regard i.e., KYC, etc. would have been done by the customs authorities….." (emphasis supplied)."*

Of course, if the Customs Broker comes to know that its client had obtained these certificates through fraud or misrepresentation, nothing prevents it from bringing such details to the notice of Customs officers for their consideration and action as they deem fit. However, the Customs Broker cannot sit in judgment over the certificate or registration issued by a Government officer so long as it is valid. In these cases, there is no doubt or evidence that the IEC and the GSTIN were issued by the officers. So, there is no violation as far as the documents are concerned."

11. Regulation 10(n) requires the Customs Broker to verify the identity of the client using reliable, independent, authentic documents, data or information. In other words, he should know who the client is and the client cannot be some fictitious person. As per the Regulation, this identity can be established by independent, reliable, authentic: a) documents; b) data; or c) information. Any of these methods can be employed by the Customs Broker to verify the identity of its client. It is not necessary that the CB appellant has to only conduct a physical verification or launch an investigation. So long as the CB can find documents which are independent, reliable and authentic to establish the identity of his client, this obligation is fulfilled. In addition, under Regulation 10(n) the Customs Broker is required to verify the functioning of the client at the declared address using reliable, independent, authentic documents, data or information. This responsibility, again, can be fulfilled using documents or data or information so long as they are reliable, independent and authentic. Nothing in this clause requires the Customs Broker to *physically go to the premises of the client to ensure that they are functioning at the premises. We find that both the GSTIN as well as the IEC indicates the address of the client. This in itself is independent data to verify the correctness of the identity/address of the client. We also note that there is nothing on record to show that either of these documents were fake or forged. Therefore, once verification of the address is complete as discussed above, the responsibility cast on the appellant under Regulation 10(n) stands fulfilled. In this regard, we note that the Principal Bench of this Tribunal in the case of M/s Mauli Worldwide Logistics vs Commissioner of Customs (A&G) [2022-TIOL-603-CESTAT-DEL] held as follows:*

> *"31. The responsibility of the Customs Broker under Regulation 10(n) does not include keeping a continuous surveillance on the client to ensure that he continues to operate from that address and has not changed his operations. Therefore, once verification of the address is complete, as discussed in the above paragraph, if the client moves to a new premises and does not inform the authorities or does not get his documents amended, such act or omission of the client cannot be held against the Customs Broker.*
>
> *32. We, therefore, find that the Customs Broker has not failed in discharging his responsibilities under Regulation 10(n). The impugned order is not correct in concluding that the Customs Broker has violated Regulation 10(n) because the exporters were found to not exist during subsequent verification by the officers."*

12. We note that in a recent judgment of the High Court of Delhi in the case of Naman Gupta vs Commissioner of Customs (A & G) dated 30.01.2024 in W.P. (C) 15808/2022 held as follows:

"20. It is thus evident from the legal position as enunciated in Kunal Travels (supra), Customs Broker is entitled to proceed on the basis that IEC has come to be generated in favour of the exporter after appropriate background check having been conducted by the customs authorities. The further details that may have been captured and form part of IEC Registration of an importer are aspects which have to be verified by the customs authorities themselves. Moreover, it is also not the case of the Department that IEC, GSTIN, PAN & Authorized Dealer Code of the exporters were not genuine. In the aforesaid backdrop the Court in Kunal Travels (supra) held that the obligation of the CHA under Section 13 (e) of the CHALR, 2004 cannot be stretched to it being obliged to undertake a further background check of the client. As such, as a Customs Broker, the petitioner cannot be held W.P. (C)15808/2022 Page 22 of 22 liable because exporters were not traceable, after the issuance of „Let Export Orders" and export of the goods out of the country."

4.7 Further I note that impugned order returns a finding that the appellants aided and abetted in attempted export of mis-declared highly over valued goods for the reason that they failed to verify the premises of exporters physically and discharged the obligations cast on them under Regulation 10 diligently. However even if it is held that appellants have failed to discharge their duties diligently then also the same cannot be said to be aiding, abetting or conniving with the exporters for attempt of export of these consignments. In case of Smt. Sushma [Final Order No. 51657/2021 dated 13.07.2021 in Custom Appeal No 52193 of 2019] Delhi Bench held as follows:

13. Hon'ble Supreme Court in the case of Shri Ram & Another vs. The State of Uttar Pradesh reported in 1975 SCC (3) 495 has specifically held that intentional aid and active Customs Appeal No. 52193 of 2019 [SM] complicity is *the gist of the offence of the abetment. I observe from the Show Cause Notice as also from the order under challenge that there is no allegation against the appellant about intentional aiding and active complicity. All what alleged is that the appellant conducted the market inquiry into a casual and amateur improper manner. There has been catena of judgments to show that any lapse in performance of duty by Custom Officer can at the most be considered as inefficiency which cannot lead to any charge of abetement or connivance thus attracting the penalty under Section 114 of Customs Act. I rely upon the decision of this Tribunal in the case of Boria Ram vs. Commissioner of Customs, New Delhi - 2017 (354) ELT 661 (Tri.-Del.) and also upon a decision of Tribunal Mumbai in the case of Ruchika International vs. Commissioner of Customs, Pune - 2015 (328) ELT 660 (Tri.- Mum.). It was held in this decision that the allegations of abeting the over valuation after collusion with exporter need specific cogent evidence. In absence thereof it is merely dereliction of duties which can be proceeded in terms of Central Civil Services Rule, 1965. I observe that there is no evidence produced by the Department that appellant in any way has benefited himself due to the impugned exports by Shri Sajjan Kumar. The entire burden was of the Department to prove knowledge on the part of the appellant but there is no such evidence nor even for the fact that some consideration has gone to the appellant for endorsing the market report. In the given circumstances, it is merely negligence or dereliction of duties which without intention Customs Appeal No. 52193 of 2019 [SM] cannot be called as collusion or abetment. Above all, Custom Officers are entitled to protection in view of section 155 read with section 106 of Customs Act as was held by Hon'ble Madras High Court in the case of Shri Vasudeva Bank vs. Union of India reported as 1990 (48) ELT 214 where the Hon'ble Court has analyzed the phrase "good faith" and has given protection to Government* *servants discharging their statutory duties. Further, I find that the entire onus was of the Department to bring on record some cogent evidence to prove the positive act of alleged abeting on part of the appellant. But there is nothing produced on record about any nexus of the appellant with the allegations of collusion and connivance with Sujjan Kumar for abeting the over-valuation of goods exported. Commissioner, Central Excise, New Delhi vs. MI Khan - 2000 (120) ELT 542 of this Tribunal is another decision where it has already been held that unless ingredients for proving the charge of abetment have been brought out in the Show Cause Notice and when there is no admission by the Custom Officer for alleged abeting, penalty under Section 114 cannot be imposed. Though the Adjudicating Authority below has taken a plea that the appellant in his statement has admitted for the alleged offence but the perusal of the document on record shows that the admission of appellant is only to the fact that the inquiry conducted by him with his Co-Inspector Naresh Kumar is an improper inquiry that too after it was brought to his notice that both the firms inquired by them are found by DRI to have been controlled by same Sajjan kumar who has been investigated in Customs Appeal No. 52193 of 2019 [SM] the impugned matter. The said statement, to my opinion, has wrongly been considered as an admission of appellant for abeting fraudulent exports made by Sajjan Kumar and for heavy amount of draw back being claimed by him.*

4.8 Section 114AA of the Customs Act, 1962 reads as follows:

114AA. Penalty for use of false and incorrect material.—

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for

> *the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.*

From the impugned order I do not find any finding recorded to the effect that appellants had in any way filed themselves or caused to be filed any declaration, statement or document which was false in material particulars for the purpose of transaction of business under the Customs Act, 1962. The allegation and findings recorded in the impugned order are to the effect that they have failed to perform the duties cast on them in terms of Regulation 10 of the Custom Broker Licensing Regulation Act, 2018 in a diligent manner. Even if the finding returned in the impugned order is accepted to be valid then also it cannot be concluded that appellant had filed or caused to be filed and such wrong or false document. That being so section 114AA of Customs Act, 1962 could not have been invoked for imposing the penalty upon the appellants. In case of Kamal Sehgal [Final Order No. 51660/2019 dated 28.01.2019 Customs Appeal No. 52266 of 2018 [SM]] Delhi bench held as follows:

> **"12. Keeping in view that the allegations against the appellants are mainly concerned with failure to discharge their duties and responsibilities mandated under various Regulations for dealing with goods in legalized manner. However, apparently, there is no material evidence available on records to prove that the appellants intentionally encouraged and supported the wrong doer i.e. the importer in doing the wrongful act of attempting to export the branded cosmetic goods in violation of Cosmetic Rules, 2010. Section 114A of the Act is applicable only when there is sufficient evidence about prior knowledge of wrong doing or existence of deliberated intend (malafide). It also provides for imposition of penalty for furnishing incorrect or false declarations and that such declaration should also be intentional with prior knowledge.**

> 13. In view of the entire above discussion, it has been held that the appellant since was unaware of the mandatory registration while importing branded cosmetics, as required by the Cosmetic Rules, 2010 being very recent in time. The malafide intent cannot be attributed to him. Onus was otherwise of the Revenue. There is no cogent positive evidence to prove the contrary. There might be intentional omission on part of importer but same cannot be presumed against the CHA unless & until proved. Hence, it is held that the Commissioner (Appeals) has wrongly imposed penalty under Section 114AA of Custom Act, 1962 upon the Appellant CHA. The order is, accordingly, hereby set aside appeal stands allowed."

4.9 In case of Him Logistics [Final Order No. 50586/2025 dated 05.05.2025 Customs Appeal No. 53566 Of 2018] Delhi Bench held as follows;

> *"13. In the instant case, we note that the appellant was in possession of the required KYC documents as mandated by the provisions of the law. The said KYC documents have not found to be fake or forged. It is an admitted fact that the appellant had in the past filed customs clearance documents for the said importer which had been cleared by the authorities. Revenue has not been able to clearly establish either active or passive role or any deliberate or mala fide act on part of the appellant. We find that the allegations that the appellant did not physically verify the premises of the importer, are not sufficient to fasten the appellant with the penalty. It has not been established that the appellant handled this consignment with any malafide motive. It is essential to establish an intentional or deliberate act or omission and to the act of abetment for imposition of penalty under Section 114AA of the Customs Act."*

4.10 Decisions relied upon in the impugned order have been rendered in the facts of specific case and without showing how they apply in the facts of the present case. The issue of penalty is question of fact and the applicability of decision needs to be discussed vis a vis the fact of the case in hand. I do not find any help from the said decisions in the facts of present case for upholding the penalties imposed. I do not find any merits in the impugned order to the extent it is in relation to the appellants herein.

5.1 Appeals are allowed.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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