

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

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20049 of 2023

(Arising out of Order-in-Original No. COC-CUSTOMS-000-COM-09/2022-23 dated 25.10.2022 passed by the Commissioner of Customs, Cochin.)

M/s. Cappithan Agencies

CCBA Building, Ground Floor,
I.G. Road, Willingdon Island,
Cochin – 682 009.

Appellant(s)

VERSUS

The Commissioner of Customs

Customs House,
Cochin – 9.

Respondent(s)

APPEARANCE:

Shri Baby M.A, Advocate for the Appellant

Shri Jathin K.A, Authorised Representative for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER
(TECHNICAL)**

Final Order No. 20421 /2024

DATE OF HEARING: 24.01.2024

DATE OF DECISION: 22.05.2024

PER : R. BHAGYA DEVI

The appellant, M/s. Cappithan Agencies, holds a customs broker licence having validity upto 05.01.2027. For certain contraventions of the provisions of the Customs Broker Licensing Regulations, 2018 (CBLR, 2018) an offence report dated 08.10.2021 was registered by the Preventive Commissionerate, Cochin alleging that smuggling syndicate was involved in illicit

smuggling of gold declaring them as Diplomatic Cargo. Thereafter, a show-cause notice No.21/2021 dated 28.12.2021 was issued, an inquiry officer was also appointed who submitted his report vide letter dated 29.07.2022. The appellant filed their replies to the notice vide letter dated 10.02.2022/24.08.2022 and statements also were recorded from all the respective persons involved in the offence including the statement from the Branch Manager of the appellant. After detailed investigation and based on the inquiry report, the Commissioner revoked the license of the appellant under Regulation 14 and 17(7) of CBLR, 2018 along with forfeiture of entire amount of the security deposit and also imposed penalty of Rs. 50,000/- under Regulation 14 read with Regulation 18 (1) of CBLR, 2018.

2. The learned counsel submits that the appellant is a Customs Broker having a licence under Regulation 7 of the CHALR, 2018, valid upto 05.01.2027 and having extended Customs broker activities at Thiruvananthapuram, Chennai, Mumbai, Bangalore and Uttar Pradesh. He submits that on 05.07.2021, the Customs Preventive officers had seized 30.245 kgs of gold from consignment declared as Diplomatic Cargo and an offence report was registered. The appellant premises was searched and statements were recorded from the Branch Manager of the appellant. It is submitted that the appellant has been undertaking the customs broker activities for the UAE Consulate from 2017 onwards for their Diplomatic Cargo and the Bill of Entry for the above consignment was also filed with the *bona fide* belief that it is a Diplomatic Cargo (personal effects) by availing the benefit of the exemption Notification No.3/1957-Cus. dated 08.01.1957.

2.1 It is submitted that vide Section 17(5) of CBLR, 2018, the inquiry officer is legally bound to submit report within 90 days from the date of the show-cause notice and in the instant case, notice was issued on 28.12.2021 and inquiry report was submitted only on 29.07.2022 and therefore, it is barred by limitation. Since time limits for issuing show-cause notice and completion of inquiry, not adhered to, revocation of license not sustainable. He relies on the following judgements to substantiate his arguments on time bar.

- M/s. Overseas Air Cargo Services Versus Commissioner of Customs General New Delhi 2016 (240) ELT- 119 (DEL)
- Commissioner of Customs, Tuticorin versus MKS Shipping Agencies Pvt. Ltd. 2017 (348) ELT 640 (MAD)
- ICS cargo Vs. Commissioner of Customs (General) (2023) 13 Centax 19 (Tri. Del)
- M/s LEO Cargo Services Vs. Commissioner of Customs (Airport & General) New Delhi 2022 (382) E.L.T. 30 (Del)

2.2 It is further submitted that as per Section 17(4) of CBLR, 2018, the appellant is entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings. He submits that the adjudicating authority denied cross-examination stating that: *"I also find a list of 33 Bills of Entry and 07 persons, who are said to have cleared some of the consignments in question as attached to the written submission. Having found that the request itself was not required to be admitted under law, the mere fact that 07 personnel are required to be cross examined cause serious doubts on whether the noticee intends to bring a correct closure to the procedure or to drag it indefinitely."* Such a finding of the respondent is highly unlawful and arbitrary. The adjudicating authority failed to appreciate that as per Section 17(4) of CBLR 2018, the Customs Broker shall be entitled to cross-examine the persons examined

in support of the grounds forming the basis of the proceedings, and where the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines permission to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing. Thus, impugned order is unsustainable for the reason that no opportunity extended for cross examination and relied on the decisions in the case of:

- Muhammad Fariz and co. Vs. Commissioner of customs, cochin 2019 (369) ELT- 218 (KER)
- Sri Balaganesan Spinners versus Joint Commissioner of Customs, Tuticorin 2021 (377) ELT- 510 (Mad)

2.3 The Learned Counsel further submitted that the offence report and other relied upon documents, if any, were not provided to them and therefore, without the documents they could not submit their replies countering the allegations; hence, the order is devoid of merits. It is stated that the respondent issued show-cause notice without providing copy of the relied upon documents in spite of repeated requests which is evident from their letters dated 10.02.2022 and 24.08.2022. This Hon'ble Tribunal directed the respondent to serve the copies of the relied upon documents as per the Memo dated 26.07.2023 filed by the Counsel and the respondent provided a copy of offence report dated 30.06.2020 and a copy of the authorization letter dated 30.06.2020 was submitted to the Asst. Commissioner of Customs, Air Cargo Complex, Trivandrum. But the appellant asked for all the documents pertaining to the import taken away from the appellant's premises at the time of search and seizure. It is claimed that non-supply of documents relied upon by the respondent is against the principles of natural justice and therefore, the impugned order cannot be sustained. He relied on the following decisions:

- Vishnu Kumar Traders (P) Ltd Vs. Commissioner of Customs Chennai IV 2019 (369) ELT 1070(Tri. Chennai)
- Paramount Cargo & Logistic Solution Vs. Commissioner of Customs (Airport & General) 2021 (375) ELT 674 (Tri. Delhi)
- Kothari Filaments Vs. Commissioner of Customs (Port), Kolkata 2009(233) ELT 289 (SC)

2.4 The learned counsel submits that Regulation 10(d) of the CBLR, 2018 reads "advise his client to comply with provisions of the Act, other allied Acts and 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 case may be". Section 108 statement was recorded from Shri Godfrey Pratap, the Branch Manager of the appellant, in which he submitted that appellant has been undertaking the Customs Broker activities for UAE Consulate in Trivandrum since its beginning in 2017 and while clearing each consignment, appellant acted with *bona fide* belief that the consignments are meant for Consulate General UAE. In the present case, the appellant filed 33 Bills of Entry from 03.05.2019 to 27.06.2020 excluding Bill of Entry No.8045238 dated 01.07.2020. It is an admitted fact that the importer had approached appellant for clearing the baggage meant for diplomats and as per the documents furnished by the importer, there was no prohibited or restricted items to advise the client regarding their failure to comply with any provisions of Act, Rules or Regulation and all the 33 Bills of Entry were cleared by the proper officers of the respondent. Bills of Entry were filed with supporting documents provided by the office of the Consulate to claim the goods as Diplomatic Cargo (personal effect) by availing exemption from payment of customs duty under Notification No. 3/1957-Cus. dated 08.01.1957 which is approved by concerned Customs officers from time-to-time. It is

submitted that whenever the goods are declared as Diplomatic Cargo, the appellant has no role to challenge such declaration while filing the Bill of Entry for the UAE Consulate. Hence, it reliably construed as the documents submitted with the Bills of Entry are genuine and no query arose at the time of clearance of those consignments. Thus, the finding regarding lack of due diligence on the part of the appellant is unsustainable, as the appellant has not contravened Regulation 10(d) as there was no failure to comply with any of the provisions of the Act/Rules/Regulations.

2.5 As per Regulation 10(e) of the CBLR, 2018 the 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. Due diligence is a process or effort to collect and analyze information before making a decision or conducting a transaction so a party is not held legally liable for any loss or damage. There is no specific allegation or finding regarding violation of Regulation 10(e) of the CBLR, 2018. There was no allegation or evidence that Custom Broker had imparted any information to their clients, case of concealment of gold in the consignment was alleged on the basis of examination of the cargo and the Customs Broker could not have detected concealment of gold from documents supplied by exporter without examination of goods. When goods are imported, Customs Broker have no opportunity to verify or cross-check the declaration with goods physically available. Thus, there is no reason to allege violation of Regulation 10(e) of the CBLR, 2018.

2.6 As per Regulation 10(n) of the CBLR, 2018 is to verify correctness of IEC 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 present case, the appellant undertook the clearance of the consignment with all relevant authenticated documents issued by Consulate General UAE, Trivandrum as Diplomatic Cargo. It is an admitted fact that the authorisation to the appellant was given by the Consulate General UAE, Kerala under his signature which is evident in para 24 of the impugned order stating *that "it appears that the allegations of breach of Regulation 10(a) of CBLR, 2018 do not survive since authorizations appear to have been obtained in cases."* Further, department do not have a case that Form-7 is not filed along with any of the Bills of Entry. As per the deposition made by Shri Shafeeq, Asst. Accountant in Consulate, "that he has been entrusted with preparing documents; that the document they prepare is from a stock template called "Form – 7" which having a serial number on it and the seal described above is affixed by the said Diplomat Mr. Rashed personally." Moreover Shri Rashed Khamis Alimusaiqri Al Ashmei, Consulate General of the UAE, Trivandrum personally told the Customs Officials that "one Sarith previous Public Relation Officer is the person who helps him clearing his goods in India; that he takes the help of this Sarith as he is not familiar with rules and procedures in India. He further informed that Mr. Sarith is the person who will be able to enlighten more about this import consignment." Moreover, entrusting an agent by the importer is not barred by the Customs Act, 1962 and nowhere, it is mentioned that the agent must be an employee of the importer. Hence, such allegation is unsustainable as the consignee himself revealed the authenticity of Shri Sarith acted as his agent before the Customs Officials. Thus, reason for alleging that Shri Sarith is not an authorized person to collect goods on behalf of Hon'ble Charge d' Affairs Shri Rashed Khamis

Ali Musaiqri Al Shemeili and to allege violation of 10(n) of the CBLR, 2018 is unsustainable. Regulation 10(n) of CBLR, 2018 does not mandate how documents should be handed over by exporter/importer to client; only requirement is that Know Your Customer (KYC) documents must be received and verified to ensure identity of client. To substantiate his arguments relied on the following case laws:

- M/s. M.K. Sha & Co. Vs CC (Airport & ACC), Kolkata: 2023 (2) Centax 34 (Tri. Cal)
- Final Order No. 50561/2022 dated 04.07.2022 in the matter of M/s Mauli Worldwide Logistics in appeal No. C/50997/2021-DB
- Commissioner of Customs (A & A) Vs. BK Clearing Agency: (2024) 14 Centax 65 (Cal.)
- Sinha Shipping Agency Vs. Commissioner of Customs: (2024) 14 Centax 17 (Tri.-Cal)

2.7 It is further submitted that the entire allegation is only based on the offence report and there are no other documents relied upon in the notice and since, the appellant has no opportunity to verify or cross-check the declaration filed by the importer, the allegations are not sustainable. There is no finding regarding alleged violation of Regulation 10(n) of the CBLR, 2018. Moreover, Shri Rashed Khamis Ali Masaiqri Al Shemeili who is the importer of the consignment, himself admitted before the Customs Officer that Shri Sarath is the authorised person by UAE Consulate to clear the goods meant for them in India. Thus, the reason for alleging that Shri Sarath is not an authorised person to collect the goods on behalf of Hon'ble Charge 'd Affairs and thus, invoking 10(n) of CBLR 2018 is unsustainable. Reliance is placed on the following decisions:

- M/s. MK Sha and Co. Vs. CC airport & ACC Kolkata: 2023 (2) Centax 34 (Tri. -Cal)

- Final Order No.50561/2022 dated 04.07.2022 in the case of M/s. Worldwide logistics in appeal number C/50997/2021-DB.

2.8 The learned counsel further submits that the order is beyond the scope of the show-cause notice. Para 21 of the impugned order reveals that the Bills of Entry were filed to make it appear that the consignor in at least three cases was shown as the Ministry of Foreign Affairs, Abu Dhabi, whereas the actual consignors happen to be Mr. Salim Yousuf Hasan Abe, Mr. Faisal Fareed, Dubai as evident from the Airway Bills relating respectively to Bills of Entry 7987721 dated 24.06.2020, 8019046 dated 27.06.2020 and 8045238 dated 01.07.2020. There is no such allegation in the show-cause notice and hence, it is apparently clear that the impugned order is beyond the scope of the show-cause notice. He submits that adjudication order is beyond the scope of show-cause notice was not sustainable in view of the following decisions.

- Essar Power Gujrat Ltd Vs. CC Jamnagar (Prev.): (2023) 4 Centax 142 (Tri. Ahmd)/2023 (384) ELT 436(Tri. – Ahmd.)
- Global Vectra Helicorp Ltd. Vs. Commissioner of Customs (Preventive) Delhi: (2023) 10 Centax 18 (Tri. - Del)
- Reliance Transport & Travels Ltd. Vs. Commissioner of Customs, New Delhi: 2019 (369) ELT 1317 (Tri.- Del)

2.9 It is submitted that the Customs House Agent is merely a processing agent of documents with respect to clearance of goods through Customs House and not inspector to weigh the genuineness of transaction. Custom Broker operates on basis of document supplied to him and does not physically see goods before their receipt in customs area. Customs broker is not supposed to physically visit the premises of clients to ensure functioning of his clients at the declared address but supposed to verify the same by using authentic documents.

- M/s Perfect Cargo & Logistics Vs CC (Airport & General): 2021 (376) E.L.T 649 (Tri. Del)
- Advent Shipping Agency Vs. Principal commissioner of Customs (A & A): (2023) 2 Centax 157 (Tri. Cal)
- M/s Kunal Travels (Cargo) Vs. CC(I&G), IGI Airport New Delhi: 2017 (354) ELT 447 (Del)

2.10 It is stated that the adjudicating authority levelled an unsustainable allegation against the appellant that the appellant mis-declared the Consignor name in three Bills of Entry. It is an admitted fact that the authorisation to the appellant was given by the Consulate General UAE, Kerala under his signature which is evident in para 24 of the impugned order stating that "it appears that the allegations of breach of Regulation 10(a) of CBLR, 2018 do not survive since authorizations appear to have been obtained in cases." Further, department do not have a case that Form-7 is not filed along with any of the Bills of Entry. As per the deposition made by Shri Shafeeq, Asst. Accountant in Consulate, "that he has been entrusted with preparing documents; that the document they prepare is from a stock template called "Form – 7" which having a serial number on it that the seal described above is affixed by the said diplomat Mr. Rashed personally." Moreover, it can be seen from the deposition of Shri M Jayaraj, Cargo Manager in M/s. Emirates Sky Cargo, Trivandrum that "Letter dated 29th June 2020 from Rashed Khamis Ali Musaiqri Alshemeili to Emirates Sky Cargo, Dubai authorizing Mr. Faisal Fareed Theparambil authorized to hand over the items on his behalf for booking No.176 19938262 vide Flight No. EX 9828 and requesting to accept the shipment. The said document is signed by Mr. Rashed". The same is in other two cases also declared as Diplomatic Cargo. The appellant is not personally known to Mr.Faisal Fareed Theparambil or Mr.Saleem Yousuf Hasan Albe

and the change in consignor name made as per the instruction from the agent of the Consulate General. From such corroborative evidence, it is apparently clear that the appellant declared the Consignor name as Ministry of Foreign Affairs, Abu Dabi with a *bona fide* belief that all are from Ministry of Foreign Affairs, Abu Dabi.

2.11 The learned counsel also submits that simultaneously show-cause notice No.29/2020-21 dated 16.06.2021 was issued by Commissioner of Customs (Preventive) under Section 124 of the Customs Act, 1962 which was adjudicated vide Order-in-Original dated 31.10.2023 in which the adjudicating authority imposed penalty of Rs.4 Cr. on the appellant under Section 112(a) and (b) of the Customs Act, 1962 and the same is under challenge before the Hon'ble High Court of Kerala. The respondent failed to appreciate that there is no reason or justification to issue an order of revocation which is considered as harsh and cohesive action. Such proceedings are initiated only where serious personal involvement with knowledge of the Customs broker is alleged in smuggling activities. More than 25 family who works in five stations became jobless and suffering to meet both the ends due to such unlawful/stringent act of the respondent.

3. The Authorized Representative (AR) for the Revenue submits that detailed investigations conducted against the appellant revealed the following irregularities:

- (i) The Appellant M/s. Cappithan Agencies had obtained the documents required for the clearance of cargo, arrived in the guise of Diplomatic Cargo from Shri Sarith and allowed Shri Sarith to take delivery of two trial cargos covered

under two Bills of Entry dated 15.07.2019 and also 21 consignments from Air Cargo Complex, which contained smuggled gold, even after Shri Sarith's resignation from UAE Consulate, Trivandrum. This has been corroborated by the voluntary statements of Shri Sarith, Smt. Swapna and Shri Shefeeq K and the gate passes issued to the vehicle of Shri Sarith at Air Cargo Complex, Trivandrum. It appeared that the Customs Broker had failed to verify the authenticity of documents received from Shri Sarith, who was not an employee of the UAE Consulate, Trivandrum and also failed to exercise due diligence to ascertain the correctness of information related to the clearance of the cargo.

- (ii) It is further submitted that the smuggling syndicate had smuggled a total of about 136.828 kg of gold covered under 20 Bills of Entry and also smuggled about 30.245 kg of gold, covered under one Bill of Entry, which was seized on 05.07.2020. In respect of the following Bills of Entry, the Customs Broker had mis-declared the consignor's details in the respective Bills of Entry:

Sl. No.	Bills of Entry/ Date	Consignor details as per AWB	Consignor details mentioned in the Bills of Entry
1	7987721/ 24.06.2020	Saleem Yousuf Hasan Albeshar	Ministry of Foreign Affairs, Abu Dhabi
2	8019046/ 27.06.2020	Faizal Fareed, Dubai	Ministry of Foreign Affairs, Abu Dhabi
3	8045238/ 01.07.2020	Faizal Fareed, Dubai	Ministry of Foreign Affairs, Abu Dhabi

- (iii) He also submits that the invoices and packing lists were not filed with most of the Bills of Entry. In view of the above facts, there was enough evidences against the appellant M/s. Cappithan Agencies who was involved in the smuggling of about 136.828 kg of gold declared as

Diplomatic Cargo, including the consignment from which 30.245 kg gold was seized at Air Cargo Complex, Trivandrum on 05.07.2020. By deliberate mis-declaration and repeatedly violating norms in respect of clearance of Diplomatic Cargo and delivering the imported cargo without proper authorisation, the appellant actively abetted in the smuggling of 136.828 kg of gold and also abetted smuggling of 30.245 kg gold, seized by Customs at Air Cargo Complex, Trivandrum on 05.07.2020.

- (iv) It is further submitted that Shri Godfrey Prathap Branch Manager of the appellant rendered the two consignments covered under Bills of Entry No.4061616 and No.4061920 both dated 15.07.2019 liable for confiscation under Section 111(m) of the Customs Act, 1962. He also rendered 136.828 kg of gold valued at Rs. 46,49,96,275/- and 30.245 kg gold valued at Rs.14,82,00,010/- liable for confiscation under Section 111(d), (i), (l) and (m) of the Customs Act, 1962. Since the said two trial cargos and 167.073 kg of gold are rendered liable for confiscation penal action in terms of Section 112 (a) and (b) of the Customs Act, 1962. As per provisions of the Customs Broker Licensing Regulations, 2018, the appellant, Customs Broker had contravened Regulations 10(a), 10(d), 10(e), 10(m) and 10(n) of the Regulations *ibid*, based on which an Offence Report dated 08.10.2021 was registered to the for violations under the Customs Broker Licensing Regulations, 2018. The offence report spelt out that the appellant had failed to obtain an authorisation from each of the companies, firms or individuals by whom he was employed as a Custom Broker and bring the matter to the notice of the higher authorities of the Customs Establishment, thereby had contravened the provisions of

Regulation 10(a) and (d) of CBLR, 2018 i.e. to advise his client to comply with the provisions of the Customs Act, 1962 and in case of non-compliance bring the matter to the notice of the higher authorities of Customs. Further, by the act of omission, it also appeared that the Customs Broker had contravened the provisions of Regulations 10(e), 10(m) and 10(n) which required him to exercise due diligence to ascertain the correctness of any information which he imparted to his client, discharge his duties as Customs Broker with utmost speed and efficiency and failing to physically verify the KYC details and address of his client. The appellant had violated the above-mentioned provisions of CBLR, 2018 and there was sufficient ground for initiating proceedings under Regulation 17 of CBLR, 2018. In view of the above, the Commissioner of Customs, Cochin was justified in revoking the license and forfeiture of the security deposit under Regulation 14 of CBLR, 2018 along with imposition of penalty under Regulation 18 of CBLR, 2018.

- (v) From a perusal of the statements dated 14.08.2020 of Shri. Godfrey Pratap the Manager it emerged that they were aware that Shri Sarith was no longer an employee of the UAE Consulate. The appellant had filed three Bills of Entry to make it appear that the consignor was 'Ministry of Foreign Affairs, Abu Dhabi' whereas the actual consignors were private individuals. It is not in doubt that the cargo whose consignor is mis-declared as the 'Ministry of Foreign Affairs' to make it appear genuine for the automated system, cannot be normally considered as an oversight as claimed by Shri Godfrey Prathap. This claim has also to be seen in the context of such repeated mis-declarations as consequences of which gold came to be smuggled into

India. The Customs Broker as per Regulation 10(d), was not only required to advise the client to comply with the provisions of the Act but also required to report such non-compliance to the Customs. The Customs Broker did have knowledge that the consignor was not the Ministry of Foreign Affairs. He neither advised the client nor apprised the department. This brings him in violation of Regulation 10(d) of the Customs Brokers Licensing Regulations, 2018. Due to the reason that the Customs Broker was aware of Shri. Sarath's role in the clearance of cargo read with reasons discussed above regarding his authorisations, Regulation 10(n) was breached. The Customs Broker was responsible for making the consignments containing the contraband look innocuous by repeated mis-declaration of the consignor address. He failed to guide his client and to alert Customs and instead ended up facilitating the smuggling of gold. Thus, his actions of omission and commission violates Regulation 10(d) and 10(e). Thus, the gross violations by the Customs Broker in meeting his obligations which has eventually facilitated large scale smuggling of gold. That smuggling of gold is itself deleterious to the national economy as has been held by the Apex Court in the case of **State of Maharashtra vs. Natwarlal Damodardas Soni [1983 (13) ELT 1620 (S.C)]**. The responsibility of the Custom House Agent is also recognised by the Apex Court in the matter of **Commissioner of Customs Vs. K M Ganatra and Co. [2016 (332) ELT 15 (SC)]**.

- (vi) F. The revenue further stated that the Show Cause Notice No.29/2020-21 dated 16.06.2021 was adjudicated by the Commissioner of Customs (Preventive), Kochi vide Order-in-Original No.COC-CUSTM-PRV-COM-04-2023-24 dated

31.10.2023. in this order the Commissioner observed that the Appellant had cleared 21 consignments on behalf of UAE Consulate as Diplomatic Cargo. On investigating it was found that these consignments contained gold which were smuggled by a syndicate including Smt. Swapna, S/Shri Sandeep, Sarith, Ramees K.T etc., concealing in the consignments in the guise of diplomatic cargo. The Customs Broker had failed to verify the authenticity of documents received from Shri Sarith, who was not an employee of the UAE Consulate, Trivandrum and also failed to exercise due diligence to ascertain the correctness of information related to the clearance of cargos. In respect of three Bills of Entry, the Customs Broker had mis-declared the consignor's details as "Ministry of Foreign Affairs, Abu Dhabi, UAE" in the respective Bills of Entry when in reality, the cargo was consigned by private individuals. Further, Invoices and Packing Lists were not filed with most of the Bills of Entry. This clearly showed the *mala fide* intention of the noticee and collusion with the smuggling syndicate and thereby abetment in the smuggling of about 136.828 kg of gold in the consignments declared as diplomatic cargo, including the consignment from which 30.245 kg gold was seized at Air Cargo Complex, Trivandrum on 05.07.2020.

- (vii) The AR further stated that the Customs Broker is contracted to make sure that the customs declaration is correct, duties and taxes are provided accurately, and payment is received so that goods can transit across borders smoothly and without disruption. From the documentary evidence and voluntary statements deposited by the other noticees under Section 108 of the Customs

Act, 1962. In the instant case the appellant had derailed from his duties and responsibilities with an intention to collude with the smuggling syndicate. He had actively abetted in smuggling of 167.073 kg of gold cleared through Air Cargo Complex, Thiruvananthapuram including the seized gold of 30.245 kg, which has been held liable for confiscation under Section 111(d), (i), (l) and (m) of the Customs Act, 1962 and such acts have rendered Shri. Godfrey Prathap liable to a penalty under Section 112(a) and (b) of the Customs Act, 1962. The Commissioner of Customs (Preventive), Kochi imposed a penalty of Rs. 4,00,00,000/- (Rupees Four Crore only) on the Appellant M/s. Cappithan Agencies, Customs Broker under Section 112 (a) & (b) of the Customs Act, 1962.

(viii) H. The AR places reliance on the following case laws:

- Principal Commissioner of Customs (General), Mumbai Versus Unison Clearing P Ltd. [2018 (361) ELT 321 (Bom.)]
- Noble Agency Versus Commissioner of Customs, Mumbai [2002 (142) ELT 84 (Tri. Mumbai)]
- Commissioner of Customs Versus K.M.Ganatra & Co. [2016 (332) ELT 15 (SC)]
- Unison Clearing Pvt. Ltd Versus Commissioner of Customs (General) [2015 (329) ELT 269 (Tri.-Mumbai)]

4. Heard both sides and perused the records. Based on the offence report received from the Customs Preventive Commissionerate Cochin, that huge quantity of gold was being smuggled in the guise of Diplomatic Cargo through Air Cargo Complex, Thiruvananthapuram, investigations were conducted at Thiruvananthapuram. On 11.07 2020, a Bill of Entry was filed by United Arab Emirates Consulate claiming the importer as Shri Rashed Khamis Alimusaiqri Ali Shemeli, Consulate General of

UAE, Trivandrum for the clearance of Diplomatic Cargo (personal effects) through their Customs Broker Cappithan agencies (the Appellant). The total quantity of the cargo was declared as 79 kgs claiming the benefit of exemption under Notification No.3/1957 dated 08.01.1957 from payment of customs duty in respect of import of Diplomatic Cargo. Form-7 meant for claiming the exemption was duly signed by Shri Rashed Khamis Ali Masaiqri Al Shemali. A letter dated 30.06.2020 was addressed to the Asst. Commissioner of Customs, Air Cargo Complex, Trivandrum requesting release of the cargo was produced. The invoice submitted by the consignee showed items as his personal baggage consisting of foodstuffs like dates, milk powder, Maggie, butter cookies, noodles and classic cookies and the total value was declared as Rs.43,056/-. On a reasonable belief that the goods are liable for confiscation under the provisions of the Customs Act, the officers of the Customs Preventive Commissionerate in the presence of two independent witnesses and also in the presence of Shri Rashed opened the consignment after obtaining No Objection Certificate from the Ambassador of United Arab Emirates in India. The said consignment of one carton box having a total weight of 79 kgs. as mentioned in the airway bill was found to contain foodstuffs and articles such as door closers, sanitary fittings, the speakers etc. These articles other than food items were examined in detail and on examination, it was found that 30,244 grams of gold was discovered as listed in the Table below:

Sl. No.	Description of items	Item under the said Sl. No.	Size and shape of yellow metal recovered	Weight of the yellow metal recovered (in gms)
1	MSM Locks – D140-SL-Silvermade by license of	1	Cylindrical shaped object	2090.300
		2	Cylindrical shaped object	1889.860
		3	Cylindrical shaped object	2146.210
		4	Cylindrical shaped object	2147.870

	MSM Locks Co. Ltd. Spain	5	Cylindrical shaped object	2049.840
		6	Cylindrical shaped object	2053.360
		7	Cylindrical shaped object	1744.950
		8	Cylindrical shaped object	1995.110
		9	Cylindrical shaped object	2071.520
		10	Cylindrical shaped object	1698.060
			Cylindrical shaped object along with broken pieces	358.990
2	XOXO Sanitation Series	1	Cylindrical shaped object	994.460
		2	Cylindrical shaped object	933.610
		3	Cylindrical shaped object	916.730
		4	Cylindrical shaped object	913.120
		5	Cylindrical shaped object	937.630
		6	Cylindrical shaped object	985.390
3	Pistol A6995R (Speaker Black color)	1	Thick ring shaped object	382.350
		2	Thick ring shaped object	346.970
6	Portable Max Volume Compressor	1	Cylindrical shaped object Part 1	2735.540
		2	Cylindrical shaped object Part 1	853.030
TOTAL				30,244.900
7	Black Carry Bag		No contraband was recovered	
	Shoe (Nike Black Color)	1		
	One pair	2		
	2 set of wire			

On enquiry with the Hon'ble Charge d'Affairs Shri Rashed, he informed that the items other than food items did not belong to him and Shri Sarith, the previous Public Relation Officer is the person who helped to clear his goods in India as he was not familiar with the Rules and Procedures in India. He disowned the gold seized by the customs authorities.

5. Based on the above investigations, two notices were issued one under Section 124 and the other under Section 146 to the Appellant who is the Customs Broker and these notices were adjudicated vide order in original No. COC-CUSTOM-PRV-COM-04-2023-24 dated 31.10.2023 and order in original No. COC-CUSTOMS-000-COM-09/2022-23 dated 25.10.2022. The present appeal is filed by the appellant challenging the Order-in-Original

No. COC-CUSTOMS-000-COM-09/2022-23 dated 25.10.2022 against revocation of his license, forfeiture of the security deposit and imposition of penalty. From the order dated 31.10.2023 referred above, it is very clear that a syndicate was operating in smuggling gold in the guise of Diplomatic Cargo and this gold was being concealed in those articles which were declared as their personal effects and most of them was declared as food stuffs. It is a fact that the gold was concealed under the metal items that were sent along with the food stuffs. These facts are not in dispute. The gold is absolutely confiscated and penalties have been imposed on various persons being part of the syndicate. The appellant was also confirmed to have abetted in the crime and Rs.4 crores penalty has been imposed on him under Section 112(a) and 112(b) of the Customs Act, 1962.

6. In the present appeal, we are concerned with the allegations against the appellant as a Customs Broker who is responsible for clearing the above consignment of gold which has been smuggled by the syndicate. The learned counsel has raised various issues. Let's examine each one of these issues.

7. The first issue is whether the notice was time barred.

Regulation 17 (1) of CBLR reads :—

(1) The Principal Commissioner or Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the license or impose penalty requiring the said Customs Broker to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Customs Broker desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.

As per the Regulation 17(1) of CBLR 2018, the notice is to be issued within 90 days from the date of receipt of the offence

report. In the instant case, the offence report dated 8.10.2021 was issued by the Customs Preventive Commissionerate Cochin. The show-cause notice was issued on 28.12.2021 much before the 90 days' time limit prescribed under the Regulations.

Regulation 17(2): *The Commissioner of Customs may, on receipt of the written statement from the Customs Broker, or where no such statement has been received within the time-limit specified in the notice referred to in sub-regulation (1), direct the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, to inquire into the grounds which are not admitted by the Customs Broker.*

Regulation 17(3): *The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall, in the course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings, and he may also put any question to any person tendering evidence for or against the Customs Broker, for the purpose of ascertaining the correct position.*

Regulation 17(5): *At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall prepare a report of the inquiry and after recording his findings thereon submit the report within a period of ninety days from the date of issue of a notice under sub-regulation (1).*

As seen from the above sub-clauses of the CBLR, 2018, an inquiry officer has to be appointed and the inquiry officer needs to submit the report within 90 days from the date of issue of the notice. The appellant is referring to the inquiry report which needs to be submitted within 90 days from the date of issue of the notice. What is relevant here is whether the notice is issued within 90 days from the date of the receipt of the offence report and the decisions relied upon by the Counsel is regarding the delay in issuing the notices after 90 days from the date of receipt of the offence report and not applicable in the present set of facts where notice is not time barred. With regard to delay in filing the inquiry report, the Commissioner notes that the Regulation also suggests suspension of the license within 90 days of the inquiry report but no such action was taken and the

appellant continued to operate for the entire period following the alleged offence being committed. In other words, his right to pursue his vocation has not been prejudiced in any way by the alleged delay beyond the period laid down under regulation 17(5). It is also noted by the Commissioner that there has been delay on the part of the appellant in furnishing response to the show-cause notice by filing only an interim reply and insisting on unjustified cross-examination of the officers who were nowhere concerned with the case.

8. The learned AR for the Revenue has rightly relied on the judgement of the Hon'ble High Court of Bombay to justify that each and every report needs not be mandatory and one such report is the inquiry report where it depends on the cooperation of the appellant and his timely submissions. The Hon'ble High Court of Bombay in the case of Principal **Commr. of Cus. (General), Mumbai Versus Unison Clearing P. Ltd. 2018 (361) E.L.T. 321 (Bom.)** dated 19-4-2018 observed that:

"14. Adherence to the time schedule prescribed in the Regulation 20 in a rigid way would lead to a situation where non-compliance with the time frame and even deviation by a single day would resultantly invalidate the entire action and the licence which is under suspension or which is revoked, is liable to be restored. The procedural formality as required to be complied within the time frame prescribed in the regulation, even if it is deviated for whatsoever reason beyond the control of the revenue or the Customs House Agent would result into consequences of declaring the entire action invalid if the provision is construed as mandatory. On the other hand, if the provision the construed as directory, the Customs House Agent would be deprived of his licence for considerable long time, if the time schedule is not adhered to the Revenue at its sweet

choice would prolong the procedure and which is a likely situation, no attempts would be made to complete the inquiry within the stipulated period. This is what has weighed in the mind of the High Courts while dealing with the said regulation and holding the same to be mandatory. The catena of judgments on which reliance has been placed to declare the provision as mandatory have referred to the extraordinary delay caused at the instance of the revenue in conducting inquiry against the Customs House Agent, depriving them of their means of livelihood and it was observed that the purpose of prescribed time limit was to safeguard the interest of the Customs Broker and smooth import and export of goods. By relying on a celebrated principle, when a statute prescribes a thing to be done in a particular manner, it must be performed in such a manner, the use of the word "shall" in the Regulation has been construed as mandatory.

With due respect to the finding so recorded in the judgment of the Madras Court in case of Masterstroke Freight Forwarders P. Ltd. v. C.C.(I), Chennai-I, reported in 2016 (332) E.L.T. 300 (Madras) delivered by the Learned Single Judge, the parameters of construing a provision as mandatory or directory, when it deals with a discharge of a public duty and a resultant consequence has not been specifically taken into consideration. The salutary principle, whether statute imposes a public duty and lays down the manner and time within which the duty shall be performed, the injustice or inconvenience resulting from a rigid adherence to the statutory prescription, is a relevant factor for holding such provision only as directory has been completely overlooked. As observed by Justice Denman in Caldow v. Pixell, (1877) 2 CPD 562, "in considering whether the statute is imperative, the balance may be struck between inconvenience or sometime rigidly adhered to, or sometime departure from this direction". In that case, it was held that where a public

officer was directed by statute to perform a duty within a specific time the case is established that the provisions are only directory, as already discussed above. There might be reason why such time limits cannot be adhered to and these reasons may be at times attributable to the revenue and some time to the Customs house agent. Strict adherence to the said time limit and not making it even slightly flexible would warrant a situation where even one day deviation from the time line would be equally fatal as a delay of one year. This surely is not the intention in framing the Regulation. Undisputedly, the intention is to curb the delay in concluding the inquiries, however, it should not be stretched to an extent where it would defeat the very purpose of the Regulation, being to enforce a regime of discipline in the Customs arena and it would result in letting the miscreant set loose by taking benefit of deviation of the time schedule. The said CESTAT West Zonal Bench, Mumbai in *Unison Clearing Pvt. Ltd v. Commissioner of Customs (General), Mumbai (supra)* has in detail dealt with the Regulation 22 and has examined whether it has to be construed as mandatory or directory. Relying on catena of judgments delivered by the Hon'ble Apex Court, and specifically in *Delhi Air Take Services Pvt. Ltd. and Another v. State of West Bengal and Another*, CESTAT has concluded that while deciding whether the time period is directory or mandatory, it would be seen that the purpose of law prescribing it as mandatory and consequently the absence of provisions of consequences in case of non-compliance with the requirement would indicate that the provisions are directory irrespective of use of the word "shall". The CESTAT has concluded that if the time limits are construed as mandatory and the matter is put to an end, the purpose of Regulation would be defeated and so would be the intention behind framing such a Regulation. On the other hand, if there is no consequence stated in the regulation for non-adherence is a time period for conducting the inquiry, the time line cannot be

proved to be fatal to the outcome of the inquiry. Based on these observations the Tribunal had held the Regulation is directory in nature. However, in the present judgment which is impugned before us, the CESTAT has taken a view contrary to its earlier view in Unison Clearing Pvt. Ltd. (supra) and after referring to certain precedents where a view was taken that the regulations are mandatory delivered by the Tribunal itself, the Tribunal was pleased to quash and set aside the impugned order being not sustainable and allowed the appeals. It is to be noted that the Member Judicial (Ramesh Nair) who is a party to the judgment delivered by the said CESTAT in Unison Clearing Pvt. Ltd. v. Commissioner of Customs (General), Mumbai.

15. *In view of the aforesaid discussion, the time limit contained in Regulation (20) cannot be construed to be mandatory and is held to be directory. As it is already observed above that though the time line framed in the Regulation need to be rigidly applied, fairness would demand that when such time limit is crossed, the period subsequently consumed for completing the inquiry should be justified by giving reasons and the causes on account of which the time limit was not adhered to. This would ensure that the inquiry proceedings which are initiated are completed expeditiously, are not prolonged and some checks and balances must be ensured. One step by which the unnecessary delays can be curbed is recording of reasons for the delay or non-adherence to this time limit by the Officer conducting the inquiry and making him accountable for not adhering to the time schedule. These reasons can then be tested to derive a conclusion whether the deviation from the time line prescribed in the Regulation, is "reasonable". This is the only way by which the provisions contained in Regulation 20 can be effectively implemented in the interest of both parties, namely, the Revenue and the Customs House Agent."*

In view of the above, we are of the opinion that the notice was not time barred as alleged by the Learned Counsel.

9. The Second issue is with regard to non-production of relevant documents to the appellant by the respondent. As per the CBLR Regulation 17(6): *'The Principal Commissioner or Commissioner of Customs shall furnish to the Customs Broker a copy of the report of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, and shall require the Customs Broker to submit, within the specified period not being less than thirty days, any representation that he may wish to make against the said report.'*

As per the above clause, the Commissioner is to provide the inquiry report to the appellant, which was provided. The notice and the inquiry report are the two basic documents on which the entire allegations are based on and it clearly spells out the specific documents which have been given to the appellant. However, since the Learned Counsel alleged that relied upon documents were not produced, the AR was directed to produce the same. This bench on 21.07.2023 directed the Revenue to submit all the relied upon documents. On 23.11.2023, the AR submitted that they had received all the relied upon documents including the offence report and the same were handed over to the Learned Counsel. Accordingly, the Counsel was provided an opportunity not only on the documents received and even on the Order-in-Original dated 13.6.2023 which was issued at a later date. Therefore, we do not find any merit on the submission of non-production of documents as the learned counsel after providing all the documents was given an opportunity to make his submissions based on these documents which were received at a later date.

10. The third issue is with regard to refusal of cross-examination by the Commissioner. Regulation 17(4) reads:

"The Customs Broker shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings, and where the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines permission to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing."

10.1 With reference to cross-examination, the appellant in their interim reply did not ask for any cross-examination, however, in their final reply dated 24.8.2022 to the notice, the appellant had requested for cross-examination of Customs Officers and staff who had cleared the consignment. It may be pertinent to mention here that these officers cleared the consignment as Diplomatic Cargo based on the records filed before them and therefore, there is absolutely no role played by them. The Commissioner at Para 15 of the impugned order clearly states *'I have called for and examined the interim reply and do not find any request let alone repeated requests for cross examination. He also admits that cross examination of witnesses is to be mandatorily given by the inquiry officer under regulation 17 (4) where they are connected to the grounds forming the basis of the proceedings. In the instant case I find that the said officers have not given statements and their conduct is in nowhere relevant to the case at hand viz; the question whether the CB has flouted any of the obligations cast upon them.'* Relying on the Supreme Court's decision in the case of **Harinderpal Singh Shergill vs. Commissioner: 2010 (259) ELT A 19 (SC)**, he states that the request for cross-examination of 7 personnel who have cleared the Bills of Entry only goes to prove that they want the proceedings to be delayed. The officers who have cleared the consignment have

done so based on the declaration that it is a diplomatic cargo. Only on investigation and opening the consignment it was known that that gold was concealed in the cargo that was declared as diplomatic cargo. Therefore, we do not find any reason to disagree with the above observations of the Commissioner which appears to be only delay tactics.

11. The final issue is whether the appellant has violated any of the provisions of the CBLR, 2018. The relevant sub-clauses of Regulation 10 are reproduced below.

Regulation 10: Obligations of Customs Broker. - A Customs Broker shall

(d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;

(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;

Sl. No.	Bills of Entry/ Date	Consignor details as per AWB	Consignor details mentioned in the Bills of Entry
1	7987721/ 24.06.2020	Saleem Yousuf Hasan Albeshar	Ministry of Foreign Affairs, Abu Dhabi
2	8019046/ 27.06.2020	Faizal Fareed, Dubai	Ministry of Foreign Affairs, Abu Dhabi
3	8045238/ 01.07.2020	Faizal Fareed, Dubai	Ministry of Foreign Affairs, Abu Dhabi

As seen from the Table, the Bills of Entry were filed to make it appear as if the consignor in these cases was 'Ministry of Foreign Affairs Abu Dhabi' whereas the actual consignor was Shri Saleem, Shri Yousuf Hasan Albe and Shri Faizal Fareed, Dubai.

This was clearly evident from the airway bills relating to the respective Bills of Entry No.7987721 dated 24.06.2020, No.8019046 dated 27.06. 2020 and No.8045238 dated 01.07.2020. The cargo whose consignor is mis-declared as the 'Ministry of Foreign Affairs' to make it appear genuine for automated system for clearance as Diplomatic Cargo cannot be considered as oversight when the mistake is occasioned by the appellant who is well aware of the procedures. Such repeated mis-declarations which have resulted in smuggling of gold into India cannot be considered as oversight as claimed by the Branch Manager of the appellant in his statement. The appellant has also alleged that the above facts were not part of the notice issued to him. It is necessary to highlight here the fact that in dealing with the Customs broker with regard to the license first an offence report is issued which only specifies the allegations in brief. Thereafter, a notice is issued and an inquiry officer is appointed to look into the allegations and to give an opportunity to the appellants to defend himself. Hence, the inquiry report is a detailed report which provides the allegations, the documents relied upon and the defences provided by the accused and based on this, the order is issued. Therefore, in dealing with the CHALR it is the offence report and the inquiry report are the two significant documents that bring about the offence committed by the appellant.

12. The premises of the Appellant was searched and certain documents were recovered with regard to the above consignment. A statement was recorded from Shri Sarith on 06.07.2020 who stated that he went to the Dubai in 2007 and returned in 2016 and he worked as Public Relation Officer in UAE Consulate, Trivandrum from 2016 to 2019 and thereafter, resigned due to personal reasons. He admitted that he

approached the appellant for clearance of the consignment and paid them in cash to clear the same. A statement dated 07.07.2020 was recorded from Shri Godfrey Prathap, Branch Manager of the appellant who stated that he filed the Bill of Entry for clearance of the above goods as Diplomatic Cargo (personal effects) by availing the exemption from payment of customs duty under Notification No. 3/1957 dated 08.01.1957. He Submitted that the delivery order issued by M/s. Emirates mentioned the cargo as Diplomatic Cargo and information of the said cargo was received over phone from Shri Sarith who identified himself as former Public Relation Officer and was engaged in personal capacity as protocol officer for Shri Rashed Khamis Alimusaqri Al Ashmei, Consulate General of the UAE, Trivandrum in whose name the said carton had arrived. He was also informed by Shri Sarith that no documents will be required except the authorisation letter and the copy of the airway bill and they will be submitted personally by him as soon as the same is received and the documents were personally handed over by Shri Sarith. The airway bill showed the consignor as Shri Faisal Fareed and the consignee as Shri Rashed Khamis Alimusaqri Al Ashmei, Consulate General of the UAE, Trivandrum. He admitted that the Bill of Entry was filed online showing the consignor as 'Ministry of Foreign Affairs Abu Dhabi UAE' instead of what was mentioned in the airway bill on the instructions of Shri Sarith. He also stated that one of his clearing staff Shri Raveendran had informed him that Shri Sarith is not working for UAE Consulate but is engaged for personal work for the diplomats and there was no written communication regarding the fact that Shri Sarith is no longer employed with the Consulate and the payments used to be received by the Consulate through their bank account.

13. From the investigations, it is proved that the appellant had cleared 21 consignments on behalf of UAE Consulate as Diplomatic Cargo and further, the investigations proved that there was a syndicate operating for smuggling the gold. From the investigations and various statements and from the appellants own statement, it is proved that they were aware of the fact that Shri Sarith was no more with the Consulate. The appellant had failed to verify the authenticity of the documents received from Shri Sarith who was not an employee of the UAE Consulate, Trivandrum and also failed to exercise due diligence to ascertain the correctness of information related to the clearance of the cargo. In respect of three Bills of Entry, the appellant had declared the consignor's details as "Ministry of foreign affairs Abu Dhabi UAE" wherein the airway bill clearly shows that the goods were consigned by private individuals and the invoices and packing list were also not filed with the Bills of Entry which clearly shows a *mala fide* intention of the appellant and collusion with the smuggling syndicate, thus, abetting in the smuggling of 136.828 kgs. of gold including the seized consignment of 30.245 kgs of gold. The appellant as a Customs Broker as per Regulation 10(d) was not only required to advise the client to comply with the provisions of the Act but also required to report such non-compliance to the Customs. As rightly argued by the Revenue, the appellant knew that Shri Sarith was no more with the UAE Consulate and did have knowledge that the consignor was not the 'Ministry of Foreign Affairs' but neither advised the client nor apprised the department which is nothing but violation of Regulation 10(d) of the CBLR, 2018. The appellant was responsible for allowing smuggling of gold concealed in the personal effects declared as Diplomatic Cargo. He failed to guide his client and to alert

Customs and instead ended up facilitating the smuggling of gold, thus, his actions of omission and commission violates Regulation 10(d) and 10(e).

14. As clearly brought out by the Commissioner, the antecedents of the appellant also proves that under no circumstances he could be considered innocent in the above transactions. The appellant was prohibited by Chennai Customs vide F.No.S2/40/2004-CHA dated 12.07.2013 and Commissioner of Customs, Cochin vide order No.COC-CUSTM-000-COM-005 dated 07.04.2014 had imposed penalty of Rs.10,000/- on the appellant. An offence report for taking action against the appellant was received from Mumbai Customs vide F.No.Gen/CB/92/2022-CBS dated 22.04.2022. Based on the above facts, it is clear that appellant has violated Regulation 10(d), 10(n) and 10(e) of CBLR, 2018.

15. We find that their Lordships in the case of **Commissioner of Customs versus K.M. Ganatara 2016 (332) ELT 15 (SC)** observed as follows:

"The respondent, M/s. K.M. Ganatra & Co., was granted a Regular Customs House Agent (CHA) licence ----while the respondent was carrying on the business, a letter was received from the Joint Director, DRI, BZU, Mumbai wherein it was mentioned that certain units based in Moradabad and Rampur area were misusing DEEC and DEPC Scheme and submitting fictitious or forged shipping bills either with a view to obtain inadmissible Duty Entitled Pass Books (DEPBs) or for fulfilling the export obligations against advance licences under Duty Exemption Entitlement Certificate (DEEC) Scheme, and to obtain waiver of BG conditions against the DEEC Licence as per the Exim Policy, though in reality no physical export of goods was

taking place. In essence, the communication was to the effect that documents were fabricated to show that goods were exported.

3. *On the basis of the said enquiry report, the Commissioner of Customs (General), New Customs House Ballard Estate, Mumbai on 22-8-2006, after affording appropriate opportunity of hearing to the respondent and analysing the facts and the material brought on record, came to hold that there had been misuse of the licence issued in favour of the respondent and further the violation was serious in nature and it did tantamount to involvement in fraudulent activity affecting the revenue. Being of this view, it cancelled the licence and revoked the entire security deposit.*

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 :-*

"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...."

Based on the above observation, the apex court upheld the revocation of the licence and forfeiture of security deposit.

16. In the instant case, the very same Regulations have been violated and the trust reposed on the appellant has been mis-utilised for the benefit of few. Hence, we do not find any reason to interfere with the impugned order.

17. In view of the above discussions, we uphold the impugned order and dismiss the appeal.

(Order pronounced in Open Court on 22.05.2024.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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