CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20092 of 2021

(Arising out of Order-in-Original No. MLR-CUSTM-000-COM-05-2020-21 dated 27.11.2020 passed by the Commissioner of Customs, Mangaluru.)

M/s. Cargo links
Customs Broker,
1st Floor, ABCO Trade Centre,
Kottara Chowki, Mangalore – 575 006. **...........Appellant(s)**

VERSUS

Commissioner of Customs,
New Customs House, Panambur,
Mangaluru – 575 010. **..........Respondent(s)**

APPEARANCE:

Mr. B. Venugopal, Advocate for the Appellant
Mr. Maneesh Akhoury, Assistant Commissioner (AR) for the Respondent

CORAM:
Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Mr Pullela Nageswara Rao, Member (Technical)

Final Order No. 20312 /2026

Date of Hearing: 14.11.2025
Date of Decision: 16.03.2026

Per: Pullela Nageswara Rao

This appeal is filed against the Order-in-Original No. MLR-CUSTM-000-COM-05-2020-21 dated 27.11.2020 passed by the Commissioner of Customs, Mangaluru.

2. The brief facts are the appellant M/s. Cargo Links is a custom broker issued with a Custom Broker License under CBLR,

2018 by Mangalore Customs. The appellant was the Custom Broker for M/s. Reliable Cashew Company Pvt., Ltd., (RCCPL) who have imported 27.670 MT of Cashew Kernels packed in 1220 cartons from Alahan, through New Mangalore Port vide Bill of Lading [B/L] No. SAFM711862923 dated 22.05.2019 covered under IGM No.7728081 dated 26.06.2019 filed in ICES. As per the B/L, the goods were shipped by the M/s. DINCOMCI 01 BP E41, Abidjan in a 40 feet container TCKU6591010. The appellant was issued with a showcase notice dated 25.06.2020 under Regulation 17 of Custom Broker Licensing Regulations, 2018 alleging that the appellant had failed to fulfill their obligation and comply with the provisions of CBLR, 2018 and committed misconduct in the transaction of business for the purpose of Customs Act, 1962 in terms of Regulation 10(d), 10(e), 10(i), 10(m). 10(q) and 13(2) of CBLR, 2018. These allegations were made with regard to claim of No Objection Certificate (NOC) made by the importer for return of imported goods based on the reason of delay in shipment was not bona fide and true to the facts and the custom brokers M/s. Cargo Links were in possession of copy of the original sale contract dated 01.05.2019, which they failed to bring to the notice of the Department and therefore the provisions of Regulations of CBLR, 2018 have been violated. In this regard the Inquiry Report dated 23.09.2020 submitted by the inquiry officer in terms of Regulation 17(5) based on the above show cause notice dated 25.06.2020 had implicated the appellant for non-compliance of provisions of Regulation 10(d), 10(e), 10(i), 10(m), 10(q) and 13(2) CBLR, 2018, based on the inquiry report the Commissioner of Customs, Bangalore passed Order-in-Original dated 27.11.2020 wherein the violations under Regulation 10(d), 10(e), 10(i), 10(q) and 13(2) CBLR, 2018, were dropped and a penalty of Rs. 10,000/- was imposed on the appellant under Regulation 18 of CBLR, 2018 for non-fulfillment of obligation cast under Regulation 10 (m) of CBLR, 2018. Aggrieved, with the impugned dated 27.11.2020 the appellant filed this appeal before this Tribunal.

3. The learned counsel for the appellant during the hearing submits that; the findings of respondent Commissioner are contrary to law and facts of the case and also ignoring the binding precedents of the Hon'ble Courts and the Tribunal; the inquiry officer failed to apprise /appreciate the e-mail communication between the appellant and the importer in its perspective and had entertained an erroneous opinion /conclusion/ and the respondent Commissioner adopted with no proper findings reasons to invoke Regulation 10(m) of CBLR, 2018 to impose penalty which is untenable;

4. The learned counsel submits the sequence of events and correspondence exchanged by emails chronologically; on 14.06.2019: Importer enclosed Sale Contract No. DIN/Rel 004 dated 01.05.2019, amongst other import documents, to enquire about the status of the cargo arrival and also enquired about the applicable Customs duty as per the amended ITC Policy [Ref: DGFT Notification No. 8/2015-2020, dated 12.06.2019]; 25.06.2019: The Appellant provided a worksheet showing the revised duty liability on the said import cargo to the Importer as per the enhanced Minimum Import Price fixed by DGFT; 26.06.2019 Import cargo arrived at New Mangalore Port and IGM was filed and inward entry was given; 28.06.2019: Appellant sent check list for filing Bill of Entry to the Importer; 02.07.2019: Importer e-mail to Appellant seeking procedure for re-export of the import cargo to Dubai without clearing the same; 05.07.2019: Appellant sent a copy of Notification No. 25/2019-Cus, dated 06.07.2019 (withdrawal of the existing duty exemption available of BCD @ 45% in respect of cashew kernel, whole or broken, vide Sl. No. 23 and 24) to the Importer; 09.07.2019 to 11.07.2019: Series of trail mails between Shipper (Dincomci), Shipping Line (Damco, Safemarine) and Importer resulting in conclusion for cancelling the original contract stating

the delay in shipment period and also seeking re-export permission from Customs Authorities; 11.07.2019:Importer forwarded the trail of above mails mentioned to the Appellant and requested to do the needful in the matter, this mail was sent by Importer to Appellant; 17.07.2019: Importer request to the overseas supplier to send a revised contract for submitting to Customs for returning the cargo; 24.07.2019 Importer informed the Liner that they have to file letter with Customs for call back of container /cargo, as per the advice of the Customs Broker; 26.07.2019: Appellant forwarded draft format to the Importer for callback of container by the shipper/ liner for submission to Customs giving the reasons of delay in shipment; Importer sent the signed letter of the Liner (MAERSK) to the Appellant for submission to the Customs; 29.07.2019 Submission by letter by Liner to the Customs to issue NOC for callback of the container, on the grounds of delay in shipment and not meeting the terms of the contract; 02.08.2019: Importer forwards a copy of sale contract dated 01.04.2019 showing the shipment period as 10th May 2019 and a letter dated 07.07.2019 issued by the shipper DINCOMCI addressed to Customs informing that they wish to divert the cargo to Dubai since the Importer has cancelled the transaction on account of delay in shipment; 20.08.2019: Appellant forward a format letter to be submitted to Suptd. (IGM/VGM) requesting to permit sending back of container stating the reason that there was a delay in shipment from the supplier and they will not be filing Bill of Entry.

5. The learned counsel further submits that; the Inquiry Report makes reference to emails dated 14.06.2019, 11.07.2019 and 02.08.2019 to hold that the Appellant was aware of existence of original contract dated 01.05.2019 and also concocted sale contract dated 01.05.2019; aware that the Importer is planning to cancel the original contract on the grounds of delay in shipment; had active knowledge of the facts and plan to mis-represent facts before the Customs Department.

6. The learned counsel submits that for the following reasons invoking the provisions of CBLR,2018 are not proper: None of e-mail exchanges referred above would not support the above conclusions arrived by the Inquiry officer and at the most they are self-serving assumptions and without any basis, as none of the e-mails referred above do not in any manner indicate or suggest that the Appellant had advised or participated in the decision for cancellation of the sale contract citing the reason for delay in shipment. The Appellant has merely acted upon the representation made by the RCCPL under instructions that the impugned import cargo is under sale contract dated 01.04.2019 and the contract dated 01.05.2019 pertains to another import consignment. RCCPL being a regular importer of cashew kernels from Dincomci, Ivory Coast, under a long-term supply contract and each shipment is covered by a contract, the Appellant had no reasons to disbelieve the importer; the Appellant was under bona fide belief that the cancellation of contract dated 01.04.2019 on the ground of delay in shipment (as the said import would be uneconomical for the Importer due to change in the provisions of FTP and consequently the Customs duties) is legally permissible and accordingly acted on the instructions of the importer; this fact is clear from the statement dated 09.09.2019 of Shri. Jeethan Sequeira, Partner of M/s. Cargolinks; the Appellant was under the bona fide belief as above and the Importer was well within his legal right to cancel the import cargo for the economic reasons, the Appellant had no reason to either suspect or even assume any illegality or non-compliance on the part of the Importer, which would necessitate bringing it to the notice of the Customs Authorities and such a bona fide act cannot be held against the Appellant to invoke regulation 10(m) of the CBLR, 2018; the cross-examination of Shri. Rajkumar, Manager Finance of RCCPL, would clearly evidence that the Appellant has not provided any advice contrary to legal provisions and in contravention of the provisions of

Customs Act, 1962 and the allied laws. The Respondent Commissioner however without appreciating such clarifications in the correct perspective concluded the proceedings in complete disregard to the procedure prescribed under Regulation 17 of CBLR, 2018.

7. The learned counsel submits that; the confirmation of charge of non-fulfilment of obligations under Regulation 10(m) to impose penalty on Appellant is contrary to records /evidence on record, against the oral evidences recorded during the inquiry proceedings and merely based on self-serving assumptions and thus required to be set aside, in terms of the following decisions:

a. . Advent Shipping Agency Vs. Principal Commissioner of Customs (A&A), Kolkata - (2023) 2 (Centax 157 (Tri-Cal)

b. . M.K. Shah and Co. Vs. Commissioner of Customs (Airport & ACC), Kolkata - (2023) 2 Centax 34 (Tri-Cal)

c. Perfect Cargo & Logistics Vs. C.A. (Airport & General), New Delhi - 2021 (376) ELT 649 (Tri-Del)

8. The learned counsel further submits that; the Inquiry Report relies upon the findings given under Charge 1 invoking Regulation 10(d) of CBLR. 2018 to confirm Charge 4 invoking Regulation 10(m) of CBLR, 2018: Charge-1; failed to comply with the Regulation 10(d) of CBLR, 2018 in as much as they failed to advise their client to comply with provisions of the Act in the matter of filing Bill of Entry immediately on import of subject goods and in the matter of procedure related to re-export of subject imported goods also failed to bring the mater of non-compliance to the notice of the Deputy/Assistant Commissioner of Customs, Mangalore; Charge-4: Failed to comply with Regulation 10(m) of CBLR, 2018 inasmuch as they failed to exercise due diligence to ascertain the correctness of

information they imparted to their client in the matter related to re-export of subject imported goods.

9. The learned counsel further submits that; Respondent Commissioner having dropped all other charges, including Charge 1 invoking Regulation 10(d) of CBLR, 2018 could not have confirmed Charge 4 for invoking Regulation 10(m), which not only reveals a clear non-application of mind but also gross illegality in the impugned order. As can be seen from the Inquiry Report, for confirming the Charge 4 [invoking Regulation 10(m)], the Inquiry Officer fully relies upon the findings given by him in the Charge 1 [invoking Regulation 10(d)). In other words, if the Charge 1 is dropped, then automatically the Charge 4 also should be dropped since both the charges are confirmed on the same findings. Thus, the impugned order is self-contradictory and is therefore worth negation and liable to be set aside.

10. The learned counsel further submits that there is no serious/ grievous contravention of the provisions of Regulations of the CBLR, 2018 as charged / founded in the impugned order. The Appellant had acted responsibly as a licensed Customs Broker on bona fide belief based on all the relevant import documents /records as obtained from the Importer and duly discharged their duties under regulations of CBLR, 2018. Therefore, the self- contradictory impugned order does not sustain both in law and against the facts of the case.

11. The learned counsel further submits that; the Appellant, a licensed custom broker, relies on the following Supreme Court decisions wherein it was held that the duty of the assessee-Appellant ends with disclosure of primary facts and they need not educate the officer about the possible inferences that can be drawn from such disclosure.

a. **Calcutta Discount Co. v. ITO, 2002-TIOL-550-SC-IT-CB also reported in 1961 (41) ITR 191 (SC),** wherein it was held that as long as primary facts are within the knowledge of the Department, the assessee is under no duty to disclose inferential facts or legal inferences which may be drawn from such facts. It is not the duty of the assessee, the Court held, to educate the assessing officer about the inferences of fact or law, which the officer may draw from primary facts brought on record by the taxpayer.

b. **Parashuram Pottery Works Co. Ltd v. ITO, 2002-TIOL-573- SC-IT also reported in (1977) 106 ITR 1 (SC),** wherein it was held that "the duty of the assessee in any case does not extend beyond making a true and full disclosure of primary facts. Once he has done that his duty ends. It is for the Income-tax Officer to draw the correct inference from the primary facts. It is no responsibility of the assessee to advise the Income tax Officer with regard to the inference which he should draw from the primary facts...".

12. The learned counsel further submits that; the Appellant had acted in good faith and they were under a bona-fide belief, there is no evidence led by the Revenue to establish mala fide intent. When there was no *mens rea* or culpable mental state or any reason to suppress facts, there could be no cause for disciplinary action and thus the benefit of reasonableness / bona fide, to be applied. It is therefore prayed before the Hon'ble Tribunal to extend the benefit of reasonableness and bona fide, and request to set aside the charges and the penalty imposed under Regulation 18 of CBLR, 2018.

13. The learned Authorised Representative (AR) for the Revenue reiterated the findings in the impugned order of the Commissioner.

14. Heard both sides and perused the records.

15. The issue in this case is with regard to the violation of Regulation 10(m) of the CBLR, 2018 by the Appellant-Customs Broker. The Custom Broker was issued with the show cause notice for violation of Regulations 10(d), 10(e), 10(i), 10(q) and 13(2) CBLR, 2018, and the inquiry officer in his inquiry report held that the custom broker has violated Regulations 10(d), 10(e), 10(i), 10(q) and 13(2) CBLR, 2018. The learned Commissioner based on the inquiry report had adjudicated the issue and dropped the charges with respect to Regulations 10(d), 10(e), 10(i), 10(q) and 13(2) CBLR, 2018, however he held that the Custom Broker had violated Regulation 10(m) of CBLR, 2018 and had imposed the penalty of Rs. 10,000/- under Regulation 18 of the CBLR, 2018. The Custom Broker was penalised for violation of Regulation 10(m) on the grounds that he was aware of the original contract dated 01.05.2019 and also made another sale contract dated 01.05.2019 with respect to import of cashew imports, when there was change vide DGFT Notification No. 8/2015-2020 dated 12.06.2019 wherein in the revised import policy on Cashew Kernel, the existing condition of 'FREE to PROHIBITED", where CIF less than Rs.680 per kg for broken Kernels and less than Rs.720 per kg for whole Kernels and also change in the rate of duty from 45% BCD to 70% BCD, the custom broker had facilitated the importer in obtaining the no objection certificate (NOC) on the grounds that there is a delay in shipment by the shipping line as evident from the communication /documents submitted by the Appellant-Customs Broker. We find that in the proceeding against the importer the Adjudicating authority has taken a lenient view and allowed the re-export on the following grounds;

> "31. However, although investigation very clearly evidences that the claim for NOC made by the noticee for return of subject goods based on the reason of delay in shipment was not bona fide and true to the facts, I am inclined to take a lenient view in the matter considering

that it cannot be forced upon anyone to import goods into the country contrary to their wish or against their business proposition. The noticee has made a prayer for re-export of goods and in this context, it merits to be considered that it may not be prudent for anyone to import the goods and bring, into the country for business purpose, in which a loss is unexpectedly anticipated. The noticee has clearly stated at the enquiry that the goods were being considered to be exported purely on account of unaffordable duty and that they would not have imported if the notification was issued before the actual export. Hence, I consider permitting re-export of subject goods, albeit on payment of penalty under Section 114AA of the Customs Act, 1962 for their act of omission with regard to preparation of false documents and misstatement in the transaction of business under the Customs law as provided under CBIC Circular No.100/2003-Cus dated 28.11.2003 read with Circular No.4/2015-Cus dated 20.01.2015. In support of my decision to allow re-export, I rely on the judgment of Hon'ble Delhi High court in the case of ZTE Corporation Vs Commissioner reported in 2014 (304) ELT 35 (Del). wherein it is held that even when the goods are virtually abandoned by the importer /purchased (on becoming aware of the liability to pay anti-dumping duty), so long as the ownership continues with the supplier, the request for return of cargo through re-export cannot be turned down. I also take into account the ratio of judgments in the case of Al-Fretlmim Engineering Vs. Commissioner reported in 2007 (219) ELT 490 (Tri-Bang) and Pacific International Traders Vs. UOI reported in 2002 (142) E.L.T. 544 (Bom.). In view of the above, and considering that the importer has accepted their mistake, I condone their lapses and take a lenient view while imposing penalty under Section 114AA of the Customs Act,

1962. As requested by the Party in their prayer in reply dated 16.01.2020, I am inclined to give the permission to re-export."

16. Further, we find that the Commissioner has dropped the charge of non-compliance of Regulation 10(d) of CBLR,2018, which was considered to invoke non-compliance of Regulation 11(m) of CBLR,2018.

17. In view of the above discussion and in the facts and circumstances of the case the imposition of penalty of Rs. 10,000/- on the ground of violation of Regulation 10(m) of CBLR, 2018 cannot be sustained, hence the impugned order is liable to be set aside. Accordingly, the impugned order is set aside, and the appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in Open Court on 16.03.2026)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Raja…