IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No.42680 of 2018

(Arising out of Order-in-Original No. 65893/2018 dated 1.11.2018 passed by the Commissioner of Customs, Chennai – VIII, Chennai)

M/s.Liyakath Shipping and Logistics **Appellant**
No. 12/9, Krishnan Koil Street
Mannady, 2nd Phase, 2nd Floor
Seaview Towers, Chennai – 600 001.

Vs.

Commissioner of Customs **Respondent**
Chennai VIII Commissionerate
Custom House
No. 60, Rajaji Salai
Chennai – 600001.

APPEARANCE:

Shri B. Satish Sundar, Advocate for the Appellant
Shri S. Balakumar, AC (AR) for the Respondent

CORAM

Hon'ble Ms. SulekhaBeevi C.S., Member (Judicial)
Hon'bleShriP. VenkataSubbaRao, Member (Technical)

Final Order No. **42365 / 2021**

Date of Hearing : 25.08.2021
Date of Pronouncement:05.10.2021

Per Ms. SulekhaBeevi C.S.

The appellant is a Customs Broker having license issued from Chennai Customs with validity upto 27.4.2024. They also transact business in Mumbai Nhava Sheva Port through their Power of Attorney holder Shri Ellish Paul Parampog.

2. The appellant is aggrieved by the impugned order passed by the adjudicating authority revoking the license and forfeiture of

security deposit of Rs.25,000/-. A further penalty of Rs.50,000/- was imposed under Regulation 14 of CBLR, 2018.

Brief facts:-

(a) On 21/23.2.2017, the appellant filed 12 shipping bills before the Nhava Sheva Customs on behalf of M/s. Neel Exim. The shipping bills were assessed and LET export order granted. The goods were declared as “suits” showing eligibility of drawback under Sl. 6203/6204The export consignments were examined by the officers and on noting certain discrepancies, samples of the goods were forwarded to the Textile Committee at PUB, Nhava Sheva. Report of the Textile Committee dated 15.3.2017 showed that the goods declared as blended were actually found to be cotton thereby change in the CTH (6207, 6208, 6209) as well as the admissiblity of drawback and rebate of State levies (ROSL). As part of investiagtgion, statements were recorded. On 22.5.2017, the goods were provisionally released to the exporter on furnishing bond equal to 100% of the FOB value of the goods and bank guarantee of Rs.35 lakhs.

(b) On completion of investigation, Show Cause Notice dated 22.8.2017 was issued to the exporter as well as the appellant herein under section 124 of the Customs Act, 1962 proposing rejection of the declared FOB value of the goods, redetermination of the same, rejection of claim of drawback at Rs.30.74 lakhs and redetermination of the same at Rs.17.99 lakhs, rejection of claim of rebate of State levies at Rs.9.69 lakhs and redetermination of the same at Rs.6.81 lakhs, confiscation of the goods under section 113(i) and 113(i)(a) of the Customs Act, 1962 r/w Rule 11 of FTDR proposing penalties in terms of section 114(iii)of the Customs Act, 1962 and 114AA of the Act ibid on the exporter. In the said Show Cause Notice, the appellant was called upon to show cause why penalty under section 114(iii) and penalty under section 158(2)(ii) of the Customs Act should not be imposed.

(c) On 3.11.2017, Order in Original was passed by the adjudicating authority (Joint Commissioner of Customs, Nhava Sheva) by which the proposal against the appellant for imposing penalty under section 114(iii) of the Customs Act, 1962 was dropped. However, penalty of Rs.25,000/- under section 158(2)(ii) of the Customs Act, 1962 was imposed. On 24.11.2017, the appellant paid the penalty as against the said order.

(d) Subsequently, on the basis of the same incident, the present Show Cause Notice dated 4.4.2018 was issued by the Chennai Customs Commissionerate invoking Regulation 20(1) of CBLR, 2013. The allegation in the present Show Cause Notice is that the appellant failed to fulfill their responsibilities in terms of Regulation 11(d), (e), (n) and Regulation 17(9) of the CBLR, 2013. Pursuant to the inquiry conducted, in accordance with the Regulations, the report of Inquiry Officer dated 31.7.2018 was submitted and a copy was furnished to the appellant on 31.8.2013. In the said inquiry report, the Inquiry Officer observed that the appellant has not violated the provisions of Regulation 11(d), (e) and (n) of CBLR, 2013. However, it was observed that there was lack of effective supervision on the part of the appellant in transacting the business through their employee by filing the shipping bills in the Nhava Sheva Commissionerate by a person not qualified and thereby failed to fulfill the responsibilities in terms of Regulation 17(9) of CBLR, 2013. After due process of law, the present impugned order was passed by the adjudicating authority on 1.11.2018 wherein the adjudicating authority ordered to revoke the license of the appellant and also ordered for forfeiture of the security deposit of Rs.25,000/-. A penalty of Rs.50,000/- was imposed under Regulation 14 of CBLR 2018 (read with Regulation 18 of CBLR, 2013). Hence this appeal.

3. The learned counsel Shri B. Satish Sundar appeared for the appellant. He referred to the facts narrated in the Show Cause Notice issued by the Nhava Sheva Commissionerate to contend that the present Show Cause Notice has been issued on the very same set of facts and allegations. The statement of the Power of Attorney holder of the appellant was recorded on 17.3.2017 under section 108 of the Customs Act, 1962. It is stated by him that the exporter met him in person and requested for clearance of the export cargo after handing over all the relevant documents including KYC documents. On receipt of the export documents, he instructed Shri Bhagwan Patil, employee of the appellant to scrutinize the documents and file checklist with respect to 12 shipments. It is further stated by him that he was present during the examination of the cargo by the officers and also participated in the panchnama proceedings. There is no allegation that the exporter did not exist or that his address of IEC is fake. The appellant has been careful and diligent as the KYC documents were proper and authorization from the exporter was also obtained. The discrepancy is with regard to only misclassification and overvaluation of the goods. The appellant had gone by the details given by the exporter in the shipment documents.

4. Further that mis-declaration and overvaluation so as to claim higher drawback has come to light only on the basis of the report of the Textile Committee. The Power of Attorney holder of the appellant has deposed before the officers that he had filed the shipping bills as per the declarations made by the exporter and that he was not aware of the mischief done by the exporter to claim excess drawback. Only on the basis of the test reports of the Textile Committee and the market inquiry, the appropriate classification as well as excess drawback claim was ascertained.

5. The adjudicating authority in the earlier proceedings has categorically held that the appellant had no role in the misdeclaration of the goods or attempt to claim higher drawback. The adjudicating authority therefore dropped the penalty proposed in the Show Cause Notice under section 114(iii) of the Customs Act, 1962. However, it was held by the adjudicating authority that the employee of the appellant Shri Bhagwan Patil had filed a checklist of the 12 shipping bills on ICEGATE from his office on instructions from the Power of Attorney holder of the appellant and that Shri Bhagwan Patil did not hold any customs pass or any qualification under CBLR 2013 for attending to such work pertaining to clearance of cargo in customs. For this reason, that appellant did not engage qualified persons for attending to the work, a penalty of Rs.25,000/- was imposed upon the appellant for violation of the Regulations under section 158(2)(ii) of the Customs Act, 1962. The relevant para with regard to discussion and finding in the earlier order is reproduced as under:-

> "16. I further find that Mr.BhagwanPatil filed the checklist of the said twelve Shipping Bills ICEGATE from his office on instructions

> from Mr Ellish Paul Parampog and that Mr BhagwanPatil does not hold any Customs Pass or any qualification under Customs Brokers Licensing Regulation 2013 (CBLR, 2013) for attending the work pertaining to clearance of cargo through Customs. Thus, I find that M/s.Liyakath Shipping and Logistics Pvt. Ltd., Customs Broker, is liable for imposition of penalty under Section 158 (2)(ii) of the Customs Act, 1962. I am not inclined to penalise the Customs Broker, M/s.Liyakath Shipping and Logistics Pvt. Ltd. under Section 114 (iii) of the Customs Act, 1962, as the Customs Broker filed the documents as per the details mentioned by the exporter in the export documents/invoice and hence Custom Broker has limited role to decide valuation or classification etc. "

6. The operative portion of the said order reads as under:-

> "I impose penalty of Rs.25,000/- (Rupees Twenty five thousand only) on M/s.Liyakath Shipping and Logistics Pvt. Ltd. (11/2012), Custom Broker under Section 158 (2) (ii) of the Customs Act, 1962 for contravention or failure to comply with regulations under CBLR, 2013."

7. The appellant had paid the above penalty of Rs.25,000/- only to buy peace and to avoid litigation. However, on the very same allegations, the present Show Cause Notice has been issued by the Chennai Commissionerate. The present proceedings are said to be initiated under CBLR, 2013 as per the Show Cause Notice.

8. When the allegations contained in the present Show Cause Notice have already been raised in the earlier Show Cause Notice issued by the Nhava Sheva Commissionerate and culminated by the Order in Original dated 3.11.2017, wherein the appellant has been penalized under section 158(2)(ii), the penalty imposed in this proceeding amount to double jeopardy. The appellant is being penalized for the very same violations in the second round of proceedings which is against the provisions of law. To support this, he relied upon the decision in the case of K. Padmanabhan Logistics Pvt. Ltd. Vs. Commissioner of Customs, Chennai – 2018 (362) ELT 916 (Tri. Chennai).

9. With regard to the merits of the case, the learned counsel submitted that the Inquiry Officer has held that the appellant has not violated the provisions of Regulation 11(d), (e) and (n) of the CBLR, 2013. The only observation made by the Inquiry Officer is that there was lack of effective supervision by the appellant as Shri Bhagwan Patil who did not have necessary qualification was allowed to deal with activities relating to the filing of the shipping bills. The statement of Shri Bhagwan Patil who is the employee of the appellant was recorded on 4.5.2017. He stated that he was working as a document clerk for the appellant. On receiving instructions from Ellish Paul Parampog and on receipt of the documents with respect to export consignments, he had processed and filed the shipping bills through ICEGATE from their office with respect to the export consignments of M/s. Neel Exim. The learned counsel asserted that shri bhagwan Patil acted as per instruction of appellant and therefore cannot be said that there is no effective supervision. The adjudicating authority in the earlier Order in Original dated 30.11.2017 has categorically held that the appellant has filed the documents with the customs as per the details mentioned by the exporter in the export document and that appellant did not have much role with regard to the valuation and classification declared in these documents. From such finding, it can be concluded that the appellant has acted as a Customs Broker for the exporter in a bonafide manner and did not have any role in the misdeclarations done by the exporter. The said findings ought to have been taken into consideration by the adjudicating authority before deciding to revoke the license, forfeit security and imposing penalty.

10. The adjudicating authority appears to have merely affirmed the findings in the inquiry report that there was lack of proper supervision by the appellant in the transaction of the business by their employees. The appellant is a Customs Broker licensed to operate from Chennai. On the strength of the license issued at Chennai they are allowed to operate at Nhava Sheva and Mumbai. Supervision cannot be done on a day-to-day basis and it can only be practically carried out in a general manner. The operations in Mumbai and Nhava Sheva are carried out through Power of Attorney who is a qualified person as per the CBLR. The statement under sec. 108 of the Customs Act, 1962 as well as the affidavit filed by the said Power of Attorney before the Inquiry Officer clearly states that they had undertaken the export work of M/s. Neel Exim only after proper interaction with the exporter in person. They received the document from them and conducted proper verification in regard to the KYC documents. The processing of shipping bills was done by employee Shri Bhagwan Patil on the instructions of the Power of Attorney holder who is a qualified person.

11. It is also not discernible from the inquiry report or from the discussions made by the adjudicating authority as to what is the reason to hold that there was improper supervision of the employees by the appellant to hold that Regulation 17(9) of CBLR, 2013 has been violated. Shri Bhagwan Patil who is his active employee, works only as per the instructions of the Power of Attorney of the appellant. The alleged improper supervision has not in any way resulted in non-fulfillment of the obligations of the appellant under the CBLR, 2013. Since it is prima facie clear from the inquiry report that the appellant

has not violated Regulation 11(d), (e) and (n), there is no material on record to show culpability and wantonness on the part of the appellant which alone would make them liable for penal action. Mere negligence per se in carrying out certain task entrusted is not sufficient to invoke penal provisions under the Act.

12. He adverted to the present Show Cause Notice dated 4.4.2018 and submitted that the adjudicating authority has been carried away by the averments in the Show Cause Notice at para 27 which refers to two other Show Cause Notices issued to the appellant. Another Show Cause Notice dated 19.12.2017 was issued to the appellant which culminated in Order in Original No. 63714/2018 dated 4.6.2018 wherein penalty of Rs.50,000/- was imposed for the alleged infraction of the provisions of CBLR, 2013. The appellant has preferred an appeal against the said order and the same is pending before the Tribunal as Appeal No. C/41815/2018. When such proceedings have not attained finality, the adjudicating authority ought not to have considered such facts for arriving at the conclusion to revoke the license of the appellant.

13. In any case, the alleged infractions are not so grave so as to impose harsh punishment of revocation of license and forfeiture of security. The learned counsel relied upon the decision in the case of Ashiana Cargo Services Vs. Commissioner of Customs – 2014 (302) ELT 161 (Del.) and Kunal Travels (Cargo) Vs. Commissioner of Customs, Airport, Delhi – 2017 (354) ELT 447 (Del.) to argue that the punishment has to be proportionate to the violation and the revocation can only be justified in the presence of aggrevated factors

that indicate the infraction to be grave in nature. He prayed that the appeal may be allowed.

14. The learned AR Shri S. Balakumar appeared for the department. He supported the findings in the impugned order. He adverted to the discussions in para 5 and 6 of the impugned order. He submitted that if the goods were not intercepted before export and samples sent for test to the Textile Committee, the exporter would have availed ineligible drawback. It is a clear case of misdeclaration and overvaluation with an intention to avail higher drawback. In para 5 of the impugned order, it is seen that the checklist for export documents were filed on ICEGATE from the appellant's office. The employee Shri Bhagwan Patil also knew the password. The appellant has allowed a person who is not properly qualified to use the password for filing documents on ICEGATE. This is clear violation of Regulation 17(9) of CBLR, 2013. In para 5.3 of the inquiry report, the inquiry officer has noted that Shri Bhagwan Patil does not possess any relevant qualification for the job of customs clearance. This is enough to establish that appellant has violated Regulation 17(9) of CBLR, 2013. There is no proper supervision by the appellant on the business transacted in Mumbai and only a monthly report is being submitted by the Power of Attorney. The learned AR argued that the appellant having permitted unauthorized use of ICEGATE access and also recruiting persons without relevant qualification for customs clearance procedures and non-maintenance of proper records of the employees working in their office reflect the lack of supervision of the appellant as obligated

under the Regulations. He submitted that the impugned order does not call for any interference.

15. Heard both sides.

16. The foremost contention raised by the learned counsel is that of double jeopardy. It is submitted by him that the very same allegations for violation of Customs Broker Regulation was raised in the earlier Show Cause Notice dated 22.8.2017 issued to the appellant under section 124 of the Customs Act, 1962. The said proceedings culminated in a finding that the appellant has allowed Shri Bhagwan Patil who does not possess proper qualification to deal with customs clearance activities and thus failed to comply with CBRL2, 2013 for which penalty of Rs.25,000/- was imposed under section 158(2)(ii). The very same allegations have been raised in the present Show Cause Notice dated 4.4.2018. The very same finding has been arrived that the appellant allowed Shri Bhagwan Patil, a person without proper qualification to do activities relating to customs clearance and thus violated Regulation 17(9) of CBLR for which however now the license has been revoked along with forfeiture of security and penalty of Rs.50,000/-.

17. For better understanding of both proceedings, the relevant para in the Show Cause Notice issued by the Nhava Sheva Commissionerate is reproduced as under:-

> *"7.13 As per sub regulation 11 of Customs Brokers Licensing Regulation, 2013:-*
>
> *(b) Transact business in the Customs Station either personally or through an employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be.*

(d) Advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to 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.

7.14 As per Section 158 (2) (ii) of Customs Act, that any person who contravenes any provision of a rule or regulation or abets such contravention or who fails to comply with any provision of a rule or regulation with which it was his duty to comply, shall be liable to a penalty which may extend to fifty thousand rupees."

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(f) Why for the act of omission and commission which has made the said goods liable for confiscation, the penalty should not be imposed on Shri Pradeep Prahalad Rai dadhich, Partner M/s.Neel Exim under Section 114AA of the Customs Act, 1962.

(g) Why for the act of omission and commission which has made the said goods liable for confiscation, the penalty should not be imposed on M/s.Liyakath Shipping and Logistics Pvt. Ltd. (**11/2012),** Custom Broker under Section 114 (iii), 158 (2) (ii) of the Customs ACT, 1962.

18. The above Show Cause Notice culminated in the Order in Original passed by the adjudicating authority at Nhava Sheva Commissionerate which reads as under:-

"Investigation revealed that;

xxxx xxxx xxxx xxxx

8.18 Shri Ellish Paul Parampog holder of power of attorney of M/s.M/s.Liyakath Shipping and Logistics Pvt. Ltd. (11/2012) had admitted that he had instructed an unauthorised person who was not holding the Customs Pass or any qualification under CB, to scrutinise the documents and file the checklist of the said 12 shipments on ICEGATE from his office. As a CB, M/s.Liyakath Shipping and Logistics Pvt. Ltd. (11/2012) has failed to scrutinize the documents given by the exporter properly and classify the goods under correct CTH. They also failed to ensure proper admissibility of drawback and ROSL benefits against the said 12 shipping bills. As a Customs Broker he was expected to know the Customs Law, rules and regulation therein to transact business as per Customs Law. This clearly showed the recklessness and act of nonfeasance on the part of Customs Broker,M/s.Liyakath Shipping and Logistics Pvt. Ltd. (11/2012). Their timely interventions would have averted the attempted case of availment of drawback and ROSL benefits. By the said acts of commission and omission, they have rendered themselves to penalty in terms of Section 114 (iii) & 158 (2) (ii) of the Customs Act, 1962 and for appropriate action under Customs Brokers Licensing Regulation 2013.

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Findings

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16. I further find that Mr.BhagwanPatil filed the checklist of the said twelve Shipping Bills ICEGATE from his office on instructions from Mr Ellish Paul Parampog and that Mr BhagwanPatil does not hold any Customs Pass or any qualification under Customs Brokers Licensing Regulation 2013 (CBLR, 2013) for attending the work pertaining to clearance of cargo through Customs. Thus, I find that M/s.Liyakath Shipping and Logistics Pvt. Ltd., Customs Broker, is liable for imposition of penalty under Section 158 (2)(ii) of the Customs Act, 1962. I am not inclined to penalise the Customs Broker, M/s.Liyakath Shipping and Logistics Pvt. Ltd. under Section 114 (iii) of the Customs Act, 1962, as the Customs Broker filed the documents as per the details mentioned by the exporter in the export documents/invoice and hence Custom Broker has limited role to decide valuation or classification etc.

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ORDER

xxxx xxxx xxxx xxxx

(i) I impose penalty of Rs.25,000/- (Rupees Twenty five thousand only) on M/s.Liyakath Shipping and Logistics Pvt. Ltd. (11/2012), Custom Broker under Section 158 (2) (ii) of the Customs Act, 1962 for contravention or failure to comply with regulations under CBLR, 2013."

19. From the above, it can be seen that for the allegations raised in the earlier Show Cause Notice in regard to violation of CBLR, 2013, penalty has been imposed upon the appellant under section 158(2)(ii) of the Customs Act, 1962. Section 158 reads as under:-

"158. Provisions with respect to rules and regulations.—

(1) All rules and regulations made under this Act shall be published in the Official Gazette.

(2) Any rule or regulation which the Central Government or the Board is empowered to make under this Act may provide—

(i) for the levy of fees in respect of applications, amendment of documents, furnishing of duplicates of documents, issue of

> certificates, and supply of statistics, and for rendering of any services by officers of customs under this Act;
>
> (ii) that any person who contravenes any provision of a rule or regulation or abets such contravention or any person **who fails to comply with any provision of a rule or regulation with which it was his duty to comply, shall be liable to a penalty which may extend to fifty thousand rupees**"

20. The above section deals with the penalty that can be imposed for contravention of any provision of a rule / regulation. When such violations have already been adjudicated against the appellant in a previous proceeding, the very same are made the subject matter of this subsequent proceedings by which the appellant has been held guilty and punished.

21. The learned counsel has relied on the decision in the case of K. Padmanabhan Logistics Pvt. Ltd. (supra) wherein the question that was considered by the Tribunal was whether when jurisdictional Customs Commissionerate of another customs station has issued an order of prohibition under Regulation 23, a parallel action of suspension of license under Regulation 19 can be issued by the parent Customs Commissionerate in respect of an act or omission involving the Customs Broker at the other customs station. The Tribunal held that such simultaneous action for the very same act, omission is not contemplated at the other customs station as it would amount to double jeopardy. The fact presented by the case on hand are slightly different. As noticed above, the allegations and findings in the earlier proceedings as well as the subsequent proceedings are entirely the same. The difference is only on the punishment imposed. In the earlier proceedings, for the very same infraction, the adjudicating authority has imposed only penalty of Rs.25,000/-. In

the subsequent proceedings, for the very same infraction, the adjudicating authority ordered to revoke the license and forfeit security deposit of Rs.25,000/- besides imposing penalty of Rs.50,000/-. The principle of "*autrefois convict*" called 'double jeopardy' is enshrined in Article 20(2) of the Constitution of India. "No person shall be prosecuted and punished for the same offence more than once." Although the learned counsel for appellant has put forward this plea, in our view, the facts do not give rise to a situation of double jeopardy in the strict sense. The earlier Show Cause Notice dated 22.8.2017 is issued under section 124 of the Customs Act, 1962, of course, for violation of the provisions of CBLR, 2013. Section 158 of the Customs Act, 1962 makes such violations punishable under the said Act. The present Show Cause Notice dated 4.4.2018 is issued under section 20(1) of the CBLR, 2013. The proceedings though on the very same set of facts and allegations are initiated under different laws. True, that the CBLR, 2013 Regulations are framed as per Sec. 157 of the Customs Act, 1962 which empowers the Board to make these Regulation consistent with the Act and Rules. These Regulations though framed under the Customs Act, 1962 are a complete code by itself dealing not only with duties / obligations of Customs Broker but also the control and supervision by the department in the nature of disciplinary actions. Being proceedings under the provisions of two different law, the plea of double jeopardy would be of no avail.

22. The learned counsel has also argued on the merits of the case. He has taken pains to argue that Shri Bhagwan Patil had acted only on the instructions of the Power of Attorney holder of the appellant at

Nhava Sheva Port and therefore it cannot be said that the appellant has violated Regulation 17(9) of CBLR, 2013. We cannot agree. It is an admitted fact that Shri Bhagawan Patil was an employee of the appellant. It is also an admitted fact that he did not possess proper qualifications to engage in customs clearance activities. Regulation 17(9) of CBLR, 2013 reads as under:-

> *"17(9) The Customs Broker shall exercise such supervision as may be necessary to ensure the proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment."*

23. The appellant as a Customs Broker is obliged to recruit persons who have proper qualification and only engage such persons to deal with clearance of goods. The appellant having allowed Shri Bhagawan Patil to use the password for filing documents on the ICEGATE has in our view, indeed violated Regulation 17(9) of CBLR, 2013.

24. The question then is whether such infraction is so grave to impose a punishment of revocation of license and forfeiture of security. This has to be answered by considering the fact that the appellant has already been subject to trial / proceedings for the very same infraction before the Nhava Sheva Commissionerate. We then have to hold that the violation, in the background of this case does not attract such harsh punishment of revocation of license or forfeiture of security deposit. The punishment by way of penalty would meet the ends of justice. The appellant has suffered and paid the penalty of Rs.25,000/- imposed under sec. 158(2)(ii) of Customs Act, 1962 in the earlier proceedings. It is submitted by the learned counsel that such penalty has attained finality as the appellant did

not prefer any appeal.. On such score, a further penalty of Rs.50,000/- imposed under the Customs Broker Regulation is unwarranted. The same requires to be set aside which we hereby do.

25. From the foregoing, we hold that the impugned order cannot sustain. The same is set aside. The appeal is allowed with consequential relief if any.

(Pronounced in open court on 05.10.2021)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

(**P. VENKATA SUBBA RAO**)
Member (Technical)

Rex

P.V. Subba Rao

26. I concur with the order of Member (Judicial) except with respect to the following: Para 21, inter alia, states as follows:

> "The earlier show cause notice dated 22.08.2017 is issued under Section 124 of the Customs Act, 1962, of course, for violation of the provisions of CBLR, 2013. Section 158 of the Customs Act, 1962 makes such violations punishable under the said Act."

27. In my view, Section 158 does not make any offence punishable under the Act. It deals with the Rule making power of the Central Government and the regulation making power of the Board. It reads as follows:

> "SECTION 158. Provisions with respect to rules and regulations. –
>
> (1) All rules and regulations made under this Act shall be published in the Official Gazette.

(2) Any rule or regulation which the Central Government or the Board is empowered to make under this Act may provide -

(i) for the levy of fees in respect of applications, amendment of documents, furnishing of duplicates of documents, issue of certificates, and supply of statistics, and for rendering of any services by officers of customs under this Act;

(ii) that any person who contravenes any provision of a rule or regulation or abets such contravention or who fails to comply with any provision of a rule or regulation with which it was his duty to comply, shall be liable to a penalty which may extend to fifty thousand rupees."

28. In my view, there is no provision for imposing any penalty under Section 158 itself. It only enables the Central Government to make Rules or the Board to make Regulations which may provide for imposition of penalty. The Adjudicating Authority has no power under this Section. Though such penalty was imposed by the adjudicating authority in the earlier proceedings and was also paid by the appellant, it is important to clarify this legal provision.

29. I concur with the learned Member (Judicial) in holding that the impugned order cannot sustain, setting it aside and allowing the appeal.

(P.V. Subba Rao)
Member (Technical)

RM

(Pronounced in open court on 05.10.2021)