

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 52789 of 2019 [DB]

[Arising out of Order-in-Original No.111/MK/POLICY/2019 dated 13.11.2019
passed by the Commissioner of Customs (Airport & General), New Delhi]

M/s. ICS Cargo

GH-9/129, Paschim Vihar,
New Delhi-110087

...Appellant

VERSUS

**Commissioner of Customs
(General), New Delhi**

New Custom House,
Near IGI Airport,
New Delhi-110037

...Respondent

APPEARANCE:

Mr. Prabhat Kumar and Mr. Karan Kanwal, Advocates for the Appellant
Mr. Rakesh Kumar, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 14.10.2022
DATE OF DECISION: **06.01.2023**

FINAL ORDER No. 50016/2023

DR. RACHNA GUPTA

Present is an appeal by a Customs House Agent (hereinafter referred as CHA) against the order of revocation of his customs broker license and an order of forfeiture of the whole amount of security deposit and imposition of penalty. The facts in brief for the present adjudication are as follows:

1.1 That the appellant was issued a Customs Broker License No. R-37/97 being valid up to 28.11.2026 by Commissioner of Customs, New Custom House, New Delhi. The appellant was also registered in Mumbai Customs, Ludhiana/Amritsar Customs, Visakhapatnam Customs, Noida Customs and Kandla Customs. A Show Cause

Notice No. 68/2018 dated 22.05.2019 was served upon the appellant and some importers by DRI, DZU, Delhi, alleging under valuation of imported goods i.e. power tools of Dongcheng brand and other Chinese brand through various ports by certain importers controlled by Shri Yusuf Pardawala and Shri Sidharth Sharma. The appellant was alleged to have facilitated the import clearance work for those imported goods. The said show cause notice was served pursuant to the search operation dated 12.04.2017 at the premises (residential/official/godowns) of certain Mumbai and Hyderabad based importers including importers like M/s. Yuri Impex Pvt. Ltd., M/s. Yuri International and M/s. Ray Exim India Pvt. Ltd. Those all were found to be operated by one Shri Yusuf Pardawala s/o Mohammad Hussain Pardawala. During search, electronic devices including threeiphone 7, one Coolpad, two Seagate Internal Hard Drives and one Apple Mcbook were resumed from the premises of Shri Yusuf Pardawala which were got forensically examined. The documents recovered from the e-mail of Shri Yusuf Pardawala were found containing actual invoices/packing lists/sales appendix forms in relation to certain other companies i.e. M/s. Maggie Marketing Pvt. Ltd., M/s. Safeboat Technologies Pvt. Ltd. and M/s. Honeywell Tradelinks Pvt. Ltd.

1.2 Pursuant to those investigations that alerts were issued upon said companies through Risk Management Division, Mumbai. It was found that five containers containing Power tools/Grinding Wheels/Cutting Wheels have been imported vide four Bills of EntryNo. 9423486 dated 24.04.2017, 9706617 dated 16.05.2017, 9709877 dated 16.05.2017 and 9709844 dated 16.05.2017, in the

company namely M/s. Maggie Marketing Pvt. Ltd., were pending clearance at Customs Port Nhava Sheva; and one consignment of Power Tools imported vide Bill of Entry No. 9851096 dated 26.05.2017 in name of M/s. Impex Steel & Bearing Co. was pending clearance at Sea Port, Kolkata. These 5 consignments were placed on hold as per alert from the DRI and were seized vide seizure memo dated 22.06.2017. Investigation could not complete within the stipulated time hence Show Cause Notice for time extension dated 06.10.2017 was issued under Section 110(2) of the Customs Act, 1962. The time for investigation was extended vide Order-in-Original dated 11.10.2017.

1.3 Statements of both Shri Yusuf Pardawala and Shri Sidharth Sharma dated 22.06.2017 and 08.11.2017/13.11.2017 respectively were recorded. Since Shri Sidharth Sharma had stated about all customs work with respect to the impugned consignments to have been dealt with by Shri Yusuf Pardawala himself or by the CHA M/s. ICS Cargo or by Shri Pankaj Singh, for CHA M/s. ICS Cargo that the statement of Shri Suresh K. Aggrawal, partner of M/s. ICS Cargo/the appellant was also recorded on 13.11.2017. After the investigation in respect of said 5 (five) seized consignments was completed that Show Cause Notice bearing No. 68/2018 dated 11.04.2018 was issued by DRI to M/s. Impex Steel & Co., M/s. Maggie Marketing Pvt Ltd., Shri Sidharth Sharma, Director of M/s Maggie Marketing Pvt. Ltd. and to Shri Yusuf Pardawala on 18.10.2017. This Show Cause Notice was forwarded by Customs Mumbai to Commissioner of Customs (Airport & General), Delhi vide letter dated 18.02.2019, received in Delhi on 25.02.2019.

1.4 Based on the entire investigation including the statements recorded during the investigation, Delhi Commissionerate alleged that the IEC of the importer firms viz M/s. Maggie marketing Pvt. Ltd., M/s. Safeboat Technologies, M/s. Honeywell Tradelinks Pvt. Ltd. and M/s. Emrick Distributors were used by the CHA/appellant for clearance of impugned consignments for some monetary consideration on commission basis. It was also alleged that despite being the CHA, appellant was required to verify the IEC used for clearance of imported consignments related to Shri Yusuf Pardawala. In spite of being well aware of the fact that the IEC of these firms was used for name sake only, the CB had facilitated the customs clearance for the imported consignments related to Shri Yusuf Pardawala thereby violating the provisions of Customs Broker Licensing Regulations, 2018. Accordingly, a Show Cause Notice No. 13/2019 dated 22.05.2019 was issued by Commissioner of Customs (Airport & General), Delhi to be served upon the appellant, proposing the revocation of his CB license for the said violation. The said proposal has been confirmed vide Order-in-Original No. 111/2019 dated 13.11.2019. Vide the said order the appellant's license has been revoked on the grounds of violation of Regulations 10(a), 10(d) and 10(n) of Customs Broker Licensing Regulations (hereinafter referred as CBLR), 2018. Being aggrieved the impugned appeal has been filed to assail the said order.

2. We have heard Shri Prabhat Kumar and Shri Karan Kanwal, learned Counsels for the appellant and Shri Rakesh Kumar, learned Authorized Representative for the department.

3. Learned Counsel for the appellant foremost has objected the impugned order as being barred by time. It is submitted that the impugned offence was detected on 12.04.2017, however, no offence report was submitted by DRI to the Commissioner of Customs who had issued the license till 11.04.2018. The show cause notice of 22.05.2019 is therefore beyond the period of 30 days from the date of detection of the offence. There is the delay of 1 Year and 12 days from the date of offence report and there has been a delay of 2 years and 11 days in conduct of the proceedings from the date of detection of offence. Hence the Show Cause Notice itself is alleged as barred by time. It is impressed upon that the failure to adopt the timeline for the procedure of investigation under CBLR, 2018 and under Circular No. 9/2010 dated 08.04.2010 is a definite ground to set aside the impugned adjudication. As per the aforesaid circular, the overall time limit of 9 months from the date of receipt of offence report has been fixed by prescribing the separate time limits at various stages of issue of show cause notice, submission of enquiry report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, recording his findings on the issue of suspension of CHA license and for passing of an order by the Commissioner of Customs. Learned Counsel submitted that the time limit neither of regulation 20(2) nor of regulation 22 of CBLR, 2004 which is Regulation 16 and 17 respectively of CBLR, 2018 has been followed by the department. The circular fixing the timeline was very much binding upon the adjudicating authority. The findings of original adjudicating authority are therefore highly barred by time and thus are liable to be set aside on this sole ground. Leaned Counsel has relied upon

the decisions of Hon'ble Supreme Court in the case of **M/s. RDB Textiles Ltd. Vs. Commissioner of C. Ex. & S.T., Kolkata-IV reported as 2018 (359) E.L.T. 433 (S.C.)** and **Commissioner of Customs, Calcutta Vs. Indian Oil Corporation Ltd. reported as 2004 (165) E.L.T. 257 (S.C.)**

3.1 While submitting upon the merits, it is mentioned by learned Counsel for the appellant that the appellant has always conducted his business of being a customs broker by adhering to the provisions of customs act and the rules and regulation framed thereunder. He has fulfilled all requirements under CBLR and there is no case for revocation of his license. It is submitted that initially the license of the appellant was suspended in terms of Regulation 16 of CBLR, 2018. However, the said suspension was revoked vide Order-in-Original No. 56/2019 dated 24.04.2019. Learned Counsel emphasized that the grounds which led to the revocation of the suspension order are applicable to present show cause notice also. Those grounds were rather binding on the original adjudicating authority as well but the authority has ignored those grounds. The investigation has been held as barred by time vide the said order dated 24.04.2019 while revoking the order suspending the license of CHA. The CBEC Circular dated 08.04.2010 has been made the basis of the said order of revocation. It is further impressed upon that the proviso to Regulation 16(2), CBLR ousts the jurisdiction to proceed under regulation 17 once the suspension of Customs Broker License gets revoked. Otherwise also, the impugned order amounts to be double jeopardy as the appellant has been prosecuted twice for the same offence.

3.2 It is further submitted that the appellant otherwise had filed Bills of Entry based on the documents as were provided to him by the importers. The CB was not at all aware of any alleged manipulation of import invoices at any stage of clearance of the goods as such there is no violation under 10(a), 10(d) and 10(n) of CBLR, 2018 as is alleged against the appellant. The authorizations from each of the importers involved in the present case were duly obtained by the appellant. The same has not been denied except that some invoices are alleged to have not been received directly from the importing firms. The appellant had otherwise advised all the importers to comply with all customs acts and rules and regulations. It is not the case of the department that Importer Exporter Code (IEC) was incorrect. There is no evidence on record to prove that appellant had any personal or pecuniary interest in the impugned imports. It is further submitted that there was no role of the appellant in undervaluation of the goods as such the decision of revoking his CB license is highly unjustified and unreasonable. Learned Counsel also submitted that the cross-examination of Shri Sidharth Sharma has not been taken into consideration by the adjudicating authority below. Learned Counsel has relied upon the decisions of this Tribunal in the case of **M/s. Bharat Overseas Communicators Vs. Commr. Of Cus. (General), Mumbai reported as 2007 (209) E.L.T. (Tri.-Mumbai)** and **M/s. R.S. Kandalkar & Co. Vs. Commissioner of Central Excise, Mumbai reported as 2014 (299) E.L.T. 360 (Tri.-Mumbai)**. The order under challenge is accordingly prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting these submissions, learned DR has impressed upon the correctness and genuineness of the findings in the order under challenge. It is submitted that the statement of Shri Sidharth Sharma and Shri Yusuf Pardawala are sufficient to prove the involvement of the appellant. The questions raised during cross-examination of Shri Sidharth Sharma are nothing but an afterthought to misguide as has been rightly observed by the adjudicating authority below. The impugned order is impressed upon to have been based on the meticulous evidence in the form of documents recovered during search, retrieved from the gadgets recovered during search and in the form of statement of all concerned acknowledging their involvement. It is mentioned that Show Cause Notice dated 23.05.2019 is well within 90 days of receiving offence report in Delhi Commissionerate on 25.02.2019. The action taken cannot be said to have been hit by time bar of Regulation 17 of CBLR, 2018. It is also mentioned that proceedings for revocation of license are independent of proceedings for suspension of license under Regulation 16 of CBLR, 2018. The procedure under Regulation 17 of CBLR, 2018 can still continue even if the order suspending CHA license has been revoked. Learned DR relied upon the decision of **M/s. Green View Logistics Vs. Commissioner of Customs (Airport & General), Delhi reported as 2021 (9) TMI 258 (Tri.-Del.)**.

4.1 Learned DR further mentioned that there is sufficient evidence that Appellant/Customs Broker has failed to inform the authorities about unauthorized use of IEC despite it was in his

knowledge. Hence, there is violation of various clauses of Regulation 10 of CBLR, 2018. The order is therefore reasonable and justified. Appeal is accordingly prayed to be dismissed. To support his submissions learned DR has relied upon the following decisions:

- (i) Commissioner of Customs Vs. K.M. Ganatra & Co. reported as 2016 (332) E.L.T 15 (S.C.)**
- (ii) M/s. Bhaskar LogisticServices Pvt. Ltd. Vs. Union of India reported as 2016 (340) E.L.T. 17 (Pat.)**
- (iii) M/s. Sriaanshu LogisticsVs. Commissioner of Customs, New Delhi reported as 2019 (369) E.L.T. 1431 (Tri. Delhi)**
- (iv) D.M. Mehta & Bros. Vs. Commissioner of Customs (General), Mumbai reported as 2017 (346) E.L.T 477 (Tri.-Mumbai)**
- (v) M/s. Welcome Air Express Pvt. Ltd. Vs. Commissioner of Cus. (Airport & Administration) reported as 2022 (380) E.L.T. 544 (Cal.)**
- (vi) K.V.Prabhakaran Vs. Commissioner of Customs, Chennai reported as 2019 (365) E.L.T. 877 (Mad.)**
- (vii) Jasjeet Singh Marwaha Vs. Union of India reported as 2009 (239) E.L.T 407 (Del.),**

5. Having heard the rival contentions and perusing the entire records. Following are observed to be the questions of moot adjudication:

- (i) Whether the timeline of Regulation 16 and 17 of Customs Broker License Regulations (CBLR), 2018 was mandatory to be followed while revoking the license and the order of

revocation of license of appellant, Customs Broker (CB) is barred by time as the same has not been followed.

(ii) Whether once the order suspending the license of CHA/appellant was revoked, the proceedings of revocation of license under Regulation 17 of CBLR, 2018 could not be initiated?

(iii) Whether the appellant has violated Regulation 10(a), 10(d) and 10(n) of CBLR, 2018?

6. **Findings with respect to the Issue No.1 framed as above:**

To adjudicate, foremost it is necessary to look into the Regulation 17 of CBLR, 2018, which reads as follows:

17. Procedure for revoking license or imposing penalty.— (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.*

(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.*

(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.

(4) 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.

(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).

(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.

(7) The Principal Commissioner or Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs Broker, pass such orders as he deems fit either revoking the suspension of the license or revoking the license of the Customs Broker within ninety days from the date of submission of

the report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, under sub-regulation (5) :

Provided that no order for revoking the license shall be passed unless an opportunity is given to the Customs Broker to be heard in person by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be.

(8) Where in the proceedings under these regulations, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, comes to a conclusion that the F card holder is guilty of grounds specified in regulation 14 or incapacitated in the meaning of the said regulation, then the Principal Commissioner of Customs or Commissioner of Customs may pass an order imposing penalty as provided in regulation 18:

Provided that where an order is passed against an F card holder, he shall surrender the photo identity card issued in Form F forthwith to the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(9) Where in an offence report, charges have been framed against an F card holder in addition to the Customs Broker who has been issued a license under regulation 7, then procedure prescribed in regulations 16 and 17 shall be followed mutatis mutandis in so far as the prescribed procedure is relevant to the F card holder:

Provided that where any action is contemplated against a G card holder alone under these regulations, then instead of authority referred to in sub-regulation (8), a Deputy Commissioner or Assistant Commissioner rank officer shall pass such order as mentioned in the said sub-regulation along with debarring such G card holder from transacting the business under these regulations for a period of six months from such order.

Provided further that where an order is passed against a G card holder, then he shall surrender the photo identity card issued in Form G

forthwith to the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

6.1 Upon perusal of the above regulation, it can be seen that an independent right has been vested with the Commissioner of Customs to initiate action *de hors* the enquiry under Customs Broker License Regulations and the Customs Act against the Customs Broker (CB) licensed in his jurisdiction. The regulation does not only contemplate action against the erring Brokers but also contemplates a timely action. Hence, the action which has to be initiated against the erring brokers, the same has to be in strict compliance with the said provision as laid down by this Court in the case of **M/s. Kamatchi Agencies Vs. Commissioner of Customs, Chennai reported as 2001 (129) E.L.T. 29 (Mad.)**.

The law of limitation is common to both the parties. The provision not only enables the Commissioner to levy penalty, but also empowers him to revoke the license of Customs Broker, which is an extreme step curtailing the right to carry on any trade or profession as guaranteed by the Constitution of India. To our opinion, the object behind such a provision can only imply the following:

- (a) the truth must be culled out at the earliest point in the interest of not only the Customs Broker but of the department also,
- (b) that such unlawful activities must be curbed at the earliest point by revoking the license,
- (c) unless a time limit is prescribed, action would not be initiated.

6.2 We also opine that the purpose for which such time limit has been prescribed is to curb the smuggling of goods and associated illegal activities at the earliest and in the result to cancel the

licences of the brokers if they are involved and to impose penalty. Another purpose is that the proceedings which affect the lives, properties and business of Customs Broker/CHA should be decided without wastage of time out without the Customs Broker/CHA being at the whims of the departmental authorities. The interpretation of a statute must always be to give a logical meaning to the object of the legislation and the aim must be to implement the provisions rather than to defeat it. The Apex Court in the judgment of **Babu Verghese and others Vs. Bar Council of Kerala reported as AIR 1999 SC 1281**, has held as under:

"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any Statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor (1875) 1 Ch.D 426 which was followed by Lord Roche in Nazir Ahmad v. King Emperor 63 Indian Appeals 372 = AIR 1936 PC 253 who stated as under:

"Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

6.3 Also, the use of the language "shall" in the regulation cannot be termed as "directory" as one of the consequence of the action is the revocation of the licence and it would also pave way for inaction by the officials breeding corruption. The law in this respect has been settled by Hon'ble Apex Court in **Sharif-Ud-Din Vs. Abdul Gani Lone [AIR 1980 SC 303]**, by holding that the question whether a provision of law is mandatory or not depends upon its language, the context in which it is enacted and its object. The Court made an important observation as follows:

"In order to find out the true character of the legislation, the Court has to ascertain the object which the provision of law in question is

to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one."

Another simple test to determine whether a time limit stipulated in a rule is directory or mandatory, is to see whether there is any indication in the Rule itself about the consequences of non-compliance with the same. If a statutory provision contains a prescription and also stipulates the consequences of non-compliance with the condition, it would normally be taken to be mandatory. If the consequences of non-compliance are not indicated, then, the provision has to be seen only as directory."

In another decision cited as **1997 9 SCC 132 (Mohan Singh v. IAAI)**, the Apex Court has held:-

"If the object of the enactment is defeated by holding the same directory, it should be construed as mandatory whereas if by holding it mandatory serious general inconvenience will be created to innocent persons of general public without much furthering the object of the enactment, the same should be considered as directory

As to whether a provision is mandatory, would in the ultimate analysis depend upon the intent of the law maker and that has to be gathered not only from the phraseology of the provision but also by considering its nature, its design and the consequence which would follow from construing it in one way or the other.

The Hon'ble Supreme Court in the case of P.T. Rajan v. TPM Sahir and others (2003-8-SCC-498) categorically held that test of mandatory or Directory. Context, purport and object of the statute to be ascertained. Procedural provision if uses

"shall" may be construed as directory if no prejudice is caused. Provision requiring statutory functioning to perform a statutory function within the prescribed time to be considered as directory."

6.4 Thus we hold that the time limit prescribed in Regulation 17(1) has to be understood in the context of the strict time schedule prescribed in various portions of the Regulations. Regulation 17(1) prescribes a time limit of 90 days from the date of receipt of offence report within which action is to be initiated i.e. for issuance of Show Cause Notice to Customs Broker who has to file his defense within 30 days of receipt of said Show Cause Notice.

6.5 The appellants have also brought to the notice a circular bearing No.9/2010-Customs, dated 8-4-2010, issued by the Central Board of Excise and Customs, about clarification on procedures in issuance of notices to the CHAs and the time limit for completion of suspension proceedings against CHA/licensee in terms of Regulation 17 of CBLR, 2018 (the then Regulation 22) in para 7.1 thereof which reads as follows:

7.1 The present procedure prescribed for completion of regular suspension proceedings takes a long time since it involves inquiry proceedings, and there is no time limit prescribed for completion of such proceedings. Hence, it has been decided by the Board to prescribe an overall time limit of nine months from the date of receipt of offence report, by prescribing time limits at various stage of issue of show cause notice, submission of inquiry report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs recording his findings on the issue of suspension of CHA license, and for passing of an order by the

Commissioner of Customs. Suitable changes have been made in the present time limit of forty five days for reply by CHA to the notice of suspension, sixty days time for representation against the report of AC/DC on the grounds not accepted by CHA, by reducing the time to thirty days in both the cases under the Regulations.

The Apex Court in decision reported as **[(1996) 10 SCC 387 = 1996 (87) E.L.T. 19 (S.C.)]**, in the case of **Ranadey Micronutrients Vs. Collector of Central Excise**, held that the Board Circular is binding on the Revenue and there cannot be any challenge on the ground of inconsistency with the statutory provision and also taken note of. Yet another decision reported in **(2004) 3 SCC 488 = 2004 (165) E.L.T. 257 (S.C.)**. **Commissioner of Customs, Calcutta and others Vs. Indian Oil Corporation Ltd. and Another**, also laid down the similar proposition.

6.6 In the light of the above discussed case law and the fact that the Customs House Licensing Regulations having statutory force, as also reiterated in the above cited circular, we are of the view that 90 days prescribed under Regulation 17(1) of CBLR, 2018, the erstwhile Regulation 22(1) of CBLR, 2004 is mandatory in nature which cannot be treated as directory and thus has to be fully enforced by the adjudicating authorities. We place reliance on the decision of the Hon'ble Supreme Court in the judgment reported in 2013 (10) SCC 765 while relying upon its earlier judgment in 1998 (7) SCC 123 = 2008 (228) E.L.T. 162 (S.C.) has held:-

"It is a settled legal proposition that law of limitation may harshly affect a particular party, but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice, but to enforce it giving full effect to the same. The legal maxim "duralexsedlex" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore the provision to relieve what it considers a distress resulting from its operation." (See: The Martin Burn Ltd v. The Corporation of Calcutta, AIR 166 SC 529; and Rohitas Kumar & Ors. v. Om Prakash Sharma & Ors. AIR 2013 SC 30). In view of the above, we are of the candid view that none of the submissions advanced on behalf of the appellants is tenable."

6.7 Reverting to the facts of the present case, we observe that DRI proceeded based on the information about certain undervalued imports and conducted search at various premises of different importers based in Mumbai and Hyderabad on 12.04.2017. The goods recovered during those search were seized on 22.06.2017. But the requisite show cause notice could not be issued within six months, the time prescribed by the statute for the purpose. However, a show cause notice praying time extension under Section 110(2) of Customs Act, 1962 was issued on 06.10.2017 and the time was extended vide Order-in-Original dated 11.10.2017. It is thereafter that DRI issued a Show Cause Notice bearing No. 68/2018 dated 11.04.2018 to the Customs Broker/the present appellant. The said Show Cause Notice was sent to Delhi Commissionerate, the Licensing Commissionerate vide letter dated 25.02.2019. Pursuant thereto that the impugned Show Cause Notice dated 23.05.2019 was served upon the appellant within 90

days of the letter received in Delhi Commissionerate. But the prima facie framing of charges into the allegations against appellant was vide Show Cause Notice dated 11.04.2018 issued by DRI. What constitutes offence report was not earlier defined but Regulations 2018 in explanation to Regulation 17 of CBLR, 2018 defines offence report as follows:

Explanation.—Offence report for the purposes of this regulation means a summary of investigation and prima facie framing of charges into the allegation of acts of commission or omission of the Customs Broker or a F card holder or a G card holder, as the case may be, under these regulations thereunder which would render him unfit to transact business under these regulations.

6.8 The bare perusal makes it clear that the offence report in the present case is of 11.04.2018. It is department's case that the show cause notice of 11.04.2018 / offence report was received in Delhi, the Commissionerate of competent jurisdiction, only on 25.02.2019 and as such the show cause notice dated 23.05.2019 is well within the period of 90 days. In view of entire above discussion and in view of Regulation 17(1) of CBLR, 2018 and that the timeline prescribed under Regulation 17 being mandatory in nature, it is held that the Commissioner of Customs who received the offence report dated 11.04.2018 on 25.02.2019 has issued the show cause notice to the CHA on 23.05.2019, while following strictly the timeline, well within 90 days of receiving the offence report. Thus, we hold that the show cause notice in question was within 90 days from the date when Delhi, Commissionerate received the intimation about alleged acts / omissions of Customs Broker / appellant and the period of 90

days has to reckon from the date of receipt of offence report by the Commissioner issuing show cause notice.

6.9 In the light of entire above discussion, we hold that findings about proceedings being barred by time have already attained finality. The statute i.e. CBLR, 2018 is prescribing the time limit which is otherwise mandatory unless there is a gross abuse of process of law by the alleged defaulter and there is utmost bona fide and diligence on the part of the officers proceeding against the said alleged defaulter.

Resultantly, the first issue as framed above is decided in affirmative holding that the timeline of Regulations is mandatory to be followed and Commissioner (Customs), Delhi has duly followed the same. Thus impugned show cause notice dated 23.05.2019 issued against the appellant is well within time.

7. **Findings with respect to the Issue No.2 as framed above:**

Learned Counsel for the appellant on this issue had submitted that once the suspension of Customs Broker License of the appellant was revoked vide order dated 22.04.2019 under Regulation 16(2) of CBLR, 2018, the Commissioner could not have proceeded under Regulation 17 of CBLR, 2018 for revocation of the

license. It is impressed upon that while following Regulation 16 of CBLR, 2018, the Commissioner could invoke Regulation 17 if and only if, instead of revoking the suspension of the license, he would had decided for license to remain suspended. These submissions have been rebutted by the Learned DR submitting that the proceedings under Regulation 17 of CBLR, 2018 are independent of the action taken under Regulation 16 thereof.

7.1 In order to appreciate the said contentions, it would be appropriate to reproduce Regulation 16 of CBLR, 2018 which talks about suspension of CB License and also Regulation 14 which talks about the revocation of the license. The provisions read as follows:

16. Suspension of license- (1) *Notwithstanding anything contained in regulation 14, the Principal Commissioner or Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the license of a Customs Broker where an enquiry against such Customs Broker is pending or contemplated:*

Provided that where the Principal Commissioner or Commissioner of Customs may deem fit for reasons to be recorded in writing, he may suspend the license for a specified number of Customs Stations. (2) Where a license is suspended under sub-regulation (1), the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, shall, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs Broker whose license is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the Customs Brokers:

Provided that in case the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, passes an order for continuing the suspension, further procedure thereafter shall be as provided in regulation 17.

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

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

7.2 The bare perusal of these regulations makes it clear that Regulation 14 of CBLR, 2018 deals with revocation of license or imposition of penalty. It provides that the Commissioner of Customs may, in accordance with the procedure as given in regulation 17, revoke the license of the Customs Broker and pass an order for forfeiture of part or whole of security on the grounds mentioned in the said regulation. Regulation 16 thereof deals with suspension of license. It provides that notwithstanding anything contained in regulation 14, the Commissioner of Customs, **where an inquiry against the Customs Broker is pending or contemplated,** may, in cases where immediate action is necessary, suspend the license of a Customs Broker. It also provides that in such a situation where the license has been

suspended, a notice of opportunity of hearing has to be provided to the Customs Broker, whereafter the Commissioner of Customs may either revoke the suspension or continue with it. In a case where the Commissioner of Customs passes an order for continuing the suspension, further procedure thereafter shall as provided in regulation 17, be followed.

7.3 We further observe that Regulation 17 as reproduced earlier in this order talks about a lengthy detailed and time taking procedure so as to curb all possibilities of any injustice to the CB and also to curb the possibility of any loss to the department either in terms of revenue or in terms of illegal activities being committed by the license holders. However, under Regulation 16, action of suspending this license of Customs Broker is taken immediately in certain cases depending upon the seriousness or gravity of alleged offence, however, for a short period of 30 days. At the expiry of this period of 30 days if the Commissioner still opines that during pendency of inquiry Customs Broker still not be allowed to work, he may order this license to remain suspended. But if there seems no more such necessity during the pending inquiry, the suspension may be revoked.

7.4 Regulation 16 itself provides that such immediate action can be taken either during pendency of the enquiry against CHA or even when enquiry is contemplated. It means that action taken either under Regulation 16(1) or under 16(2) is not a bar for inquiry against CHA to continue or to be initiated, irrespective of the order is of revocation of suspension or of continuation of suspension. The

pending enquiry has to proceed as per Regulation 17 and enquiry which is contemplated has to begun as per Regulation 14 followed by Regulation 17. Hence, action under Regulations 14 and 17 is independent of order passed under Regulation 16 and vice versa. Both can be invoked independently. Thus, it is clear that action under regulation 16 can be taken during the pendency of proceedings initiated under regulation 14 to revoke the license of the Customs Broker. It becomes abundantly clear that any order whether of continuation of suspension of CB's Lincese or of revocation thereof is not a bar for the inquiry as has already been initiated under Regulation 14 following the procedure prescribed under Regulation 17 of CBLR, 2018. Hence, the contention of appellant is not sustainable and we hold that irrespective of the order of revocation of suspension of appellants license the proceedings for revocation under Regulation 17 of CBLR, 2018 thereof have rightly been continued against him.

With these observations the Issue No. 2 is decided in negative holding that the findings recorded under Regulation 16(2) of CBLR, 2018 cannot in any manner have any bearing on the findings recorded under Regulation 17. We draw our support from the decision of the Principal Bench of this Tribunal in the case of M/s. Green View Logistics Vs. Commissioner, Customs (Airport & General)-New Delhi reported as 2021 (9) TMI 258 – CESTAT NEW DELHI.

8. **Findings with respect to the Issue No.3 framed as above:**

We observe that the basic allegation against the appellant/Customs Broker are that he was in connivance with Shri Yusuf Pardawala, the beneficiary of imported goods and Shri Sidharth Sharma, the Director of three importing firms and was very much aware that the Bills of Entry for clearance of consignments were filed for the companies controlled by Shri Sidharth Sharma despite the consignments belonged to Shri Yusuf Pardawala. The appellant is specifically alleged to have used Import Export Code (hereinafter referred as IEC) of importer firms i.e. M/s. Maggie Marketing Pvt. Ltd., M/s. Safebot Technologies Pvt. Ltd., M/s. Honeywell Tradelinks Pvt. Ltd. and M/s. Emrick Distributors Pvt. Ltd. and facilitated customs clearance of consignments for Shri Yusuf Pardawala against some monetary consideration on commission basis. Being a Customs Broker, he was required to verify the IEC. Based on these allegations that violation of Regulation 10(a), 10(d) and 10(n) of CBLR, 2018 has been confirmed against appellant vide the impugned order under challenge. We proceed to adjudicate the alleged violations separately as follows:

8.1 Violation of Regulation 10(a).

Regulation 10(a) reads as follows:

Sec 10 (a) of the CBLR 2018 states that obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

8.1.1 We observe that the Bills of Entry as were filed by the appellant are in the names of such companies which are controlled

by Shri Sidharth Sharma and have a valid IEC. There is no denial of Shri Siddharth Sharma that the impugned goods have been imported in name of his companies. Though there is an admission of Shri Sidharth Sharma that with respect to the power tools as have been imported by his companies, Shri Yusuf Pardawala was the beneficial importer but he simultaneously has accepted that the shipment of power tools has been imported in the name of his firm M/s. Maggie Marketing Pvt. Ltd. and that he was dealing with the beneficial importer for getting a 2% commission for allowing him to use the name of his firm i.e. M/s. Maggie Marketing Pvt. Ltd. There is no denial of the owner of the importing companies, Shri Sidharth Sharma that he had not authorized M/s. ICS Cargo, the CHA, to facilitate the clearance of the imports made by those companies. It is not the case of the department that the appellant failed to produce the said authorization to the competent officer.

8.1.2 We further observe that Shri Yusuf Pardawala in his statement has acknowledged that Shri Sidharth Sharma offered his companies for import of various goods of Shri Yusuf Pardawala on commission basis. Shri Yusuf Pardawala had assured Shri Sidharth Sharma to give him continuous work in the form of future shipments of power tools/grinding wheels on 2% commission basis. Thus it is clear that appellant/Customs Broker has facilitated customs clearance in the name of such companies which were having valid IEC of goods imported by the owner of these companies. He had facilitated clearance of goods imported by companies, Shri Sidharth Sharma who only had duly authorized the appellant for the same. Hence, it is clear that appellant ha valit

authorization to act on behalf of the companies in whose names appellant filed the Bills of Entry. The alleged arrangement apparently and admittedly is between the importer and the beneficial importer for some commission to the importing firm, the appellant Customs Broker cannot be held liable for the same. However for alleged under valuation of imported goods the importer as well as the beneficial importer both can be prosecuted by the department. There is no evidence on record nor is the allegation that appellant was making any wrongful gain. Accordingly, we do not find any violation of regulation 10(a) as has been alleged against the appellant.

8.2 **The violation of Regulation 10(d).**

Regulation 10(a) reads as follows:

10(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;

8.2.1 The department has alleged that Shri Yusuf Pardawala was engaged in import of the subject goods powertools/Grinding wheels etc. from Chinese based firm M/s. Dongcheng. Supplier sent the original invoice bearing actual value of the said goods directly to Sh. Yusuf Pardawala, however, he used to submit the undervalued invoices to the Indian Customs. In same modus operandi, he also had used IEC of other importer firms viz. M/s. Maggie Marketing Pvt. Ltd., M/s. Safebot Technologies, M/s. Honeywell Tradelinks Pvt. Ltd and M/s. Emrick Distributors (actually owned by Shri Sidharth

Sharma) to clear his imported consignments. It is alleged against the appellant that despite being aware of the facts of mis-utilisation of IEC, CHA Instead of intimating the same to the customs department, himself got connived with Shri Yusuf Pardawala to facilitate the customs clearance work for subject goods with malafide intention to evade customs duty. And also, after clearance of the consignments, the same were dispatched by him to the godowns of Mr. Yusuf Pardawala. Hence, it appeared that the CB had failed to bring the matter to the notice of the DC/AC of Customs, thereby violating Regulation 10(d) of CBLR, 2018 (read with erstwhile Regulation 11(d) of CBLR, 2013).

8.2.2 As already observed and held above that appellant was assisting the import clearance for those firms only in whose names the goods were imported. The Director of those firms has admittedly authorized the appellant to file the Bills of Entry in the names of his firms and to assist the clearance of imported goods. Though Shri Sidharth Sharma stated that appellant used to receive documents with respect to the import of power tools directly from Shri Yusuf Pardawala prior filing the Bills of Entry for the same, however, in the companies of Shri Sidharth Sharma and it has been relied upon by the adjudicating authority. But we observe that the cross-examination of Shri Sidharth Sharma and the statement of Shri Pankaj Singh has totally been ignored by the adjudicating authority.

8.2.3 Shri Sidharth Sharma, in his cross-examination dated 10.08.2019, has specifically stated that he used to send his staff

along with the import documents to ICS Cargo after informing the same telephonically to Shri Suresh K. Aggrawal/the appellant. This particular deposition falsifies the statement that the import documents used to be received by the appellant through Shri Yusuf Pardawala directly. Shri Sidharth Sharma has further deposed, while being cross-examined, that he only used to send his own transport for taking delivery of goods. This deposition falsifies that appellant used to directly deliver the imported goods to Shri Yusuf Pardawala premises. The subsequent deposition during cross-examination that all goods imported in his companies belong to him (Shri Sidharth Sharma) and that he only used to place orders on his foreign suppliers after importing those goods and he only used to sell the same to Shri Yusuf Pardawala, later being a big business entities falsify entire allegations and findings against the appellant.

8.2.4 Shri Sidharth Sharma has specifically acknowledged, while being cross-examined, that his earlier statements were taken under coercion hence stands rebutted in the light of his cross-examination. This deposition of Shri Sidharth Sharma help us to conclude that the confirmation of allegations against the appellant based merely on the statement in chief of Shri Sidharth Sharma which has been rebutted by him during his cross-examination is absolutely wrong. There appears nothing on record to prove that the appellant was in direct conversation with Shri Yusuf Pardawala and accordingly, there arises no reason with the appellant to advice Shri Sidharth Sharma to not to let his companies name be used by Shri Yusuf Pardawala while importing power tools. When the importing firms having valid IEC was making profit on commission

basis, under an arrangement with another big businessman while importing goods in their names.

8.2.5 We further observe that the above findings stands corroborated from the deposition of Shri Pankaj Singh alias Banti who has acknowledged that he was doing freight forwarding work for all consignments filed in M/s. Yuri Impex Pvt. Ltd., M/s. Yuri International, M/s. Ray Exim India Pvt. Ltd., M/s. Maggie Marketing Pvt. Ltd., M/s. Impex Steel & Bearing Co., M/s. Safebot Technologies Pvt. Ltd. and M/s. Honeywell Tradelinks Pvt. Ltd. All the documents as that of bill of lading related to the consignments of power tools/cutting wheels filed in the above said companies were handed over to him by Shri Yusuf Pardawal himself and on the basis of that bill of lading he as a freight forwarder used to get a delivery order issued from shipping line and thereafter the consignment used to be handed over to Suresh K. Aggrawal who as Customs Broker, used to file Bills of Entry for the respective consignments. This particular statement demolishes the entire case of the department that it was Customs Broker who had connived with Shri Yusuf Pardawala and Shri Sidharth Sharma to facilitate the import clearance in the name of the companies owned by Shri Sidharth Sharma but for Shri Yusuf Pardawala.

8.2.6 In the given circumstance, we do not find any reason with the appellant to be aware of the arrangement between Shri Sidharth Sharma and Shri Yusuf Pardawala and Shri Pankaj Singh and as such he had no reason to advise in this respect to the importer about provisions of the applicable acts, rules and

regulations. Once nothing was to his notice there was no reason with the appellant to bring anything to the notice of the competent officer as was the requirement of regulation 10(d). Hence we hold that violation of 10(d) of CBLR, 2018 has wrongly been confirmed against the appellant.

8.3 **The violation of Regulation 10(n).**

Regulation 10(n) reads as follows:

10(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;

8.3.1 We observe that there is no allegation of the department that the IEC (Importer Exporter Code) for the importers in whose name the Bills of Entry were filed by appellant/CHA were incorrect. The goods and service tax identification number GSTIN has also not been admitted to be the correct number of the said importers. Even the importers are not denied to be functioning at the declared addresses. Once the IEC and GSTIN is found to have been genuine even the importers were found existing at the declared addresses, mere allegation that some other person was importing goods in the name of the importers whose names were mentioned in the Bills of Entry does not render the identity of the importer as doubtful especially when there is an apparent arrangement, with mutual consent between the importer and the said other person, the beneficial owner of the imported goods.

8.3.2 There has been an amendment in Section 2(26) of the Customs Act, 1962 which defines importer. After the said amendment not only the owner of the imported goods is importer but even a beneficial owner of such goods is also defined as importer. From the facts and the circumstances above, we observe Shri Yusuf Pardawala would have been the beneficial owner of the goods. Hence, he equally is an importer but the goods owned by him have been imported by a validly existing importing firm. **The appellant herein was transacting the business of those validly existing firms that too under the authority of the owner of said companies for getting clearances of those goods.** Hence, we hold that the allegations about the wrong identity of the client of appellant are absolutely baseless. Thus, we hold that appellant/CHA had no reason to declare that Shri Sidharth Sharma was not the importer. Otherwise also when statute itself does not distinguish between the owner of the goods and person who is the importer, CHA has no reason nor any necessity to take a different position and to declare the same to the competent authority. As such we do not find any violation of Regulation 10(n) of CBLR, 2018 by the appellant.

8.3.3 We further observe that there is no evidence on record to prove that the appellant had any personal or pecuniary interest in the impugned imports or that the imports were for any other personal benefit of the appellant. From the above discussion about the documents and information of the importer, it is crystal clear that the CHA herein had played his role diligently. The only allegation otherwise about the imported goods is that of under

valuation thereof. Appellant is not a valuation expert and had played no role in the under valuation of the goods. To our opinion appellant acted purely on the basis of documents as that of invoice/purchase orders supplied by the importers. Sole allegation that the documents with respect to import of power tools were directly supplied by Shri Yusuf Pardawala to the appellant are highly insufficient to be a cogent evidence of alleged connivance of the appellant with either Shri Yusuf Pardawala or with Shri Sidharth Sharma or with both. Otherwise also, this allegation stand rebutted by the statement of Shri Pankaj Singh who acknowledged to have received the documents from Yusuf Pardawala and he delivered those to the appellant.

8.3.4 As already observed above that the cross examination of Shri Sidharth Sharma has not been taken into consideration by the adjudicating authority below. We hold that the Commissioner has wrongly concluded that there is no evidence to rebut the veracity the statement of Shri Sidharth Sharma. It is rather observed that Shri Sidharth Sharma had submitted a letter dated 25.10.2017 on behalf of M/s. Maggie Marketing Pvt. Ltd. retracting his earlier statements but the order under challenge is miserably silent to the same. Mention of said retraction is even found recorded in subsequent statement of Shri Sidharth Sharma dated 08.11.2017, wherein, he acknowledged his retraction and reiterated that his earlier statements were given under pressure. Thus, we hold that the statement which has been relied upon by the authorities to confirm allegations against appellant while revoking his license was actually a retracted version. As already observed above the cross-

examination of the said witness, fully supports the case of appellant. The silence to retraction and cross-examination of witness is sufficient to set aside the order of revoking license and imposing penalty. We found no evidence as that of placement of purchase order by the appellant and of foreign remittances in favour of the appellant etc. which might prove the alleged connivance of the appellant. Thus, the findings of adjudicating authority below are held to be based on presumptions and surmises only. Even the Show Cause Notice as served upon the appellant is based on third party evidence i.e. on the documents recovered from premises of Shri Yusuf Pardawala.

8.3.5 We also observe that Commissioner (Appeals) has committed an error while ignoring the most cogent part of the statement of Shri Siddharth Sharma, wherein, he has specifically acknowledged that payments and charges for clearance etc. were paid to the appellant from the accounts of the concerned companies in whose names the Bills of Entry were filed. The another cogent deposition absolving entire liability of the appellant is that the clearance work of the import consignments of power bills and other related items in his company was handled by Shri Pankaj Singh alias Banti who did not work for M/s. ICS Cargo rather was the Director of a freight forwarding company in the name of M/s. JMD Clearing and Forwarding Pvt. Ltd. The said deposition has been corroborated by Shri Pankaj Singh himself. We do not find any evidence on record to prove that transportation of the goods to the premises of Shri Yousuf Pardawala were facilitated by the appellant/CB. On the contrary, there is sufficient admission of Shri

Sidharth Sharma, while being cross-examined, that he only used to arrange his vehicles for transporting the imported goods to respective places. Shri Sidharth Sharma has willingly provided his IEC on M/s. Maggie Marketing Pvt. Ltd. for use of imports to Shri Yusuf Pardawala and in fact, till the date of imports no remittances used to be sent by Shri Yusuf Pardawala to Shri Sidharth Sharma because Shri Yusuf Pardawala actually used to purchase those shipments on credit basis and used to make the payments of those imported goods in favour of M/s. Maggie Marketing Pvt. Ltd. of Shri Sidharth Sharma and it was thereafter that Shri Siddharth Sharma used to make the remittances for those shipments. Apparently and admittedly, no Bill of Entry has been filed by appellant in name of any company of Shri Yusuf Pardawala.

8.3.6 These particular admissions which received due corroboration, are sufficient for us to hold that there was no role of appellant/CB in the mutual arrangement between Shri Sidharth Shama and Mr. Yusuf Pardawala. In fact it stands proved in record that the arrangement was never brought to the notice of appellant. Hence, there was nothing with appellant to hide from the department. Mere taking certain documents of importer from a person appearing on behalf of the importer who is otherwise validly existing at the declared address and having valid IEC and GSTIN. is highly insufficient to hold that CHA has failed in performing his duties of Customs House Agent deliberately.

With these discussions we decide the third issue of adjudication in favour of the appellant holding that the

Commissioner (Appeals) has wrongly confirmed the violation of Regulation 10(a), 10(d) and 10(n) of CBLR, 2018 against the appellant.

9. We further observe that learned DR has laid emphasis upon several case laws where the objective of Customs Broker License regulations has been appreciated and where Customs Brokers have been punished for the noticed fault. We have no reason to differ from the decision of Hon'ble Apex Court in the case of **Commissioner of Customs Vs. K.M. Ganatra & Co. reported as 2016 (332) E.L.T 15 (S.C.)**, wherein, it was held that while acting as a Customs House Agent one should not be a cause for violation of the provisions of Customs Broker License Regulations and even of Customs Act, 1962. A CHA cannot be permitted to misuse his position as a CHA by taking advantage of his excess to the department. Any misuse of such position by the customs House Agent will have far reaching consequences in the transaction of business by the Customs House Officials. However, we observe that the relied case law is not applicable to the given facts and the circumstances for the reasons as mentioned below. The decision of **M/s. Bhaskar Logistic Services Pvt. Ltd. Vs. Union of India reported as 2016 (340) E.L.T. 17 (Pat.)** is not applicable because in that case CHA had stood surety for his client importer which was found to be a fictitious firm and the Customs Broker was found aware that the IEC holder and the person importing goods are different but still he failed to bring the said fact to the notice of the department. In the present case, the CB has facilitated the clearance of imported goods in the name of importers who were

validly existing and who only had imported the goods except that some of the goods imported were meant for someone else but for certain commission to the importer itself and there is no evidence of knowledge of this arrangement between the two with Customs Broker, the appellant.

10. In the case of **M/s. Sriaanshu Logistics Vs. Commissioner of Customs, New Delhi reported as 2019 (369) E.L.T. 1431 (Tri. Delhi)** there was an apparent admission of customs broker that he filled the Bill of Entry in respect of the consignments but had never met the IEC holder/owner of the importing firms. In the present case, it is not even the allegation of the department that appellant/CHA was not in touch with his importer client, Shri Siddharth Sharma for whose company appellant facilitated the customs clearance.

11. In the case of **D.M. Mehta & Bros. Vs. Commissioner of Customs (General), Mumbai reported as 2017 (346) E.L.T 477 (Tri.-Mumbai)**, the persons employed by the CHA used to bring all papers such as invoice bill of lading, warehousing certificates etc. and used to give those documents to the CHA who himself had never met any of those importers and who failed to produce both of those persons during investigation even in his defense. Apparently the same is also not the fact of the present case. In the case **M/s. Welcome Air Express Pvt. Ltd. Vs. Commissioner of Cus. (Airport & Administration) reported as 2022 (380) E.L.T. 544 (Cal.)**, the CHA there had failed to obtain the authorization from the importer who had employed him as CHA

and had failed to produce the said authorization before the customs authority when it was demanded. The appellant herein was duly authorized by the importing firm and provided all details of his importer client during investigation and all of those were found genuine.

12. In the case of **K.V.Prabhakaran Vs. Commissioner of Customs, Chennai reported as 2019 (365) E.L.T. 877 (Mad.)**, the CHA therein had lent his CHA License to third party for usage without knowing the actual importer and goods to be imported and was just getting Rs.1000/- for each consignment. This also is not the fact of the present case. The appellant herein was in personal dealings with Shri Sidharth Sharma. All documents were being received from the importing firms only either through Shri Shidharth Sharma or through the freight forwarding company. In the case of **Jasjeet Singh Marwaha Vs. Union of India reported as 2009 (239) E.L.T 407 (Del.)**, the CHA therein had refused access to his records relating to the transactions as were objected by the officers of Central Intelligence Unit, in violation of Regulation 14(J) of CHALR, 1984 and they in fact had failed to maintain the requisite records. It is not even the department's case in the present appeal.

13. In the light of entire above discussion, we hold that though the revocation of suspension of appellant's license was not an impediment while proceeding with the inquiry under Regulation 14 in terms of Regulation 17 of CBLR, 2018 and that the department has strictly followed the mandatory timeline of this provision.

However, we hold that the appellant has not committed any alleged violation of Regulation 10(a), 10(d) and 10(n) of CBLR, 2018. Thus, we hold that the order of revoking the license of appellant and of imposing penalty upon the appellant is absolutely wrong, unreasonable and unjustified. Therefore, we hereby set aside the order under challenge. Consequent thereto, the appeal stands allowed with all consequential benefits to the appellant.

[Order pronounced in the open Court on **06.01.2023**]

(P.V.SUBBA RAO)
MEMBER (TECHNICAL)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

HK