CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. I

CUSTOMS APPEAL NO. 50306 OF 2024

[Arising out of the Order-in-Original No. 06/ZR/Policy/2024 dated 29/01/2024 passed by The Commissioner of Customs (Airport & General), New Delhi-110037.]

M/s Primus Logistics Pvt. Ltd. **……Appellant**
A-4, Jaitpur Ext. Part – I,
Near Banke Buhari Mandir, Badarpur,
New Delhi – 110 044.

Versus

Commissioner of Customs, (Airport & General), **….Respondent**
New Customs House, Near IGI Airport,
New Delhi – 110 037

APPEARANCE:
Dr. Prabhat Kumar and Shri Abhishek Ranjan, Advocate for the appellant.
Shri Girijesh Kumar, Authorized Representative for the Department

CORAM:
HON'BLE JUSTICE MR. DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51861/2025

DATE OF HEARING : 04.11.2025
DATE OF DECISION: 12.12.2025

P.V. SUBBA RAO

M/s Primus Logistics Pvt. Ltd.[1], a Customs Broker, filed this appeal to assail the Order dated 29.01.2024[2] passed by the Commissioner of Customs (Airport & General), New Delhi[3] revoking its Customs Broker licence and directing

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1. **Appellant**
2. **impugned order**
3. **Commissioner**

forfeiture of its security deposit and imposing penalty of Rs. 50,000/- on the appellant.

2. This appeal was allowed by this Bench by Final Order No. 57993 of 2024 dated 06.08.2024. Revenue assailed the Final Order before Delhi High Court and by order dated 08.10.2025, the High Court remanded the matter directing this Tribunal to decide the matter on merits by 15.12.2025. Accordingly, the matter was listed on 04.11.2025.

3. We have heard learned counsel for the appellant and learned authorized representative for the Revenue and perused the records.

4. The impugned order decided the proposals made in the show cause notice dated 09.08.2023[4] issued to the appellant relying on two documents which have been called **RUD-1** and **RUD-2** as follows: -

(i) **RUD-1 :** A letter dated 22.05.2023 sent by the Deputy Commissioner of Customs (Customs Broker Section), New Customs House, Mumbai;

(ii) **RUD-2 :** Investigation report sent by the Commissioner of Customs(Imp), SIIB, JNCH, Mumbai Customs Zone II for suspension of the CB licence of the appellant.

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4. SCN

5. Paragraph 3 of the SCN running from page 1 to 26 to reproduce the investigation report (**RUD – 2**) against an importer M/s Trishaa Overseas who had imported goods under Bill of Entry No. 9655434 dated 21.07.2022.

6. In paragraph 4 of the SCN, Regulations 10(a), 10(d), 10(e) and 10(n) of the Customs Broker Licensing Regulations, 2018[5] have been reproduced.

7. In paragraph 5 of the SCN it is said that it appeared that the customs broker had contravened provisions of Regulations 10(a), 10(d), 10(e) and 10(n) of CBLR. Accordingly, it was proposed to revoke the licence of the appellant, forfeit the security deposit and imposed penalty on the appellant. An inquiry officer was also appointed in the show cause notice.

8. The findings of the inquiry officer are reproduced below:-

> I have gone through matters on record which forms part of the relied upon documents of the present SCN, as well as the investigation report dated 24.03.2023 issued by the Deputy Commissioner of Customs, SIIB (I), JNCH, Nhava Sheva – V.
>
> 2. I find that the CB has been charged with violating Regulations 10(a), 10(d), 10(e) & 10(n) of the CBLR, 2018. These Regulations are complimentary of each other and are to be read as a whole; and in essence, implies that the Customs Broker was negligent in verifying the credentials of the importer and in scrutinizing the documents submitted by the Importer, that he failed to exercise due diligence while filing the said Bill of Entry, that he failed to verify the where about of the importer and also failed to inform the Customs officers of

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5. CBLR, 2018

any violation (s) being made by the importer and that he withheld correct information.

3. I find that the Customs Broker when he had appeared before the SIIB officers to record the statements, as elaborated in the said SCN, during the course of investigation, he submitted that their office had verified all the KYC documents of the importer viz. GSTIN registration certificate, IEC on DGFT website online only. They didn't verify the address of importer physically. After online verification of IEC and GSTIN, the said importer seemed Genuine. He further submitted that no one from the office knew the importer and never met him. That they filed the Bill of Entry No. 9655434 dated 21.07.2022 on the basis of documents received from the proprietor of freight forwarding company namely M/s Shree Ram Logistics. The CB admitted that it was their mistake that in greed of business neither they asked about the actual importer nor did they verify KYC properly.

4. I find that despite being given ample opportunities to the Customs broker to present himself before the undersigned to provided representation/written submission and anything in his defense, the customs broker didn't appear in person nor provided any submissions. Non-participation of the Customs Broker amounts to an indirect admission of guilt.

5. I find that a clear-cut violation and negligence exists on the part of the Customs Broker, as made out in the RUD's and the Investigation Report issued by the Deputy Commissioner of Customs, SIIB (), JNCH, Nhava Sheva – V. But choosing not to defend himself, the Customs Broker has rendered himself liable to penal and regulatory action, as charged.

Conclusion

In view of the observations and finding as above, I conclude that the Customs Broker M/s Primus logistics Pvt. Ltd.:

(i) Has contravened the provisions of Regulations 10(a), 10(d), 10(e) & 10(n) of Customs Broker Licensing Regulation (CBLR) 2018; as charged, and therefore,

(ii) Their Broker License should be revoked and appropriate part of the security submitted at the time of issue of their License Registration, should also be forfeited in terms of Regulation 14 read with Regulation 17 of the said regulations ;

(iii) Appropriate penalty should be imposed on them under the provisions of Regulation 18 of CBLR 2018 read with Regulation 17 of CBLR, 2018.

9. Thus, there is no specific finding as to how the appellant had violated each of the four regulations- 10(a), 10(d), 10(e) and 10(n) in the inquiry report. A copy of the inquiry report was provided to the appellant under the cover letter dated 03.11.2023. The Commissioner held a personal hearing on 23.01.2024 in which Shri Kunal Kishore Mishra, sole card holder of the appellant had appeared and sought two days' time for submission of written reply, i.e., upto 25.01.2024 and requested to drop the proceedings. After considering the submissions of the appellant, the Commissioner held in the impugned order that the appellant violated Regulations 10(a), 10(d), 10(e) & 10(n) of CBLR.

10. We now proceed to examine each of these regulations, the findings of the Commissioner with respect to them, the submissions of the appellant and record our findings.

Regulation 10(a)

11. Regulation 10(a) requires the Customs Broker to '*obtain an authorization from each of the companies, firms or individuals by whom, he is for the time being, employed as a Customs Broker and produce such authorization whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be'*. The findings of the Commissioner on this Regulationare as follows: -

(i) I find that the CB in their written representation dated 25.01.2024 had submitted that the above **Regulation 10(a) is wrongly invoked as it is a matter of record that the CB firm had obtained due authorization from the importer and the same was produced before the investigating officer and the copy of the same is once again enclosed with their submission for ready reference and the same may kindly be taken on record; that even the SCN does not allege that the CB firm has not obtained the authorization before filing the Bill of Entry or the CB firm failed to produce the same on being asked and instead the same was produced before the investigating officer along with all import & KYC documents and thus the contravention of Regulation 10(a) is wrongly alleged and the same is wrongly held to be proved**.

(ii) I find that the Inquiry Officer had observed that the Customs Broker when appeared before the SIIB officers to record the statements, during the course of Investigation, has submitted that their office had verified all the KYC documents of the importer viz. GSTIN registration certificate, IEC on DGFT website online only; that they didn't verify the address of importer physically; that after online verification of IEC and GSTIN, the said importer seemed genuine to the CB. He further submitted that no one from the office knew the importer and never met him; that they filed the Bill of Entry No. 9655434 dated 21.07.2022 on the basis of documents received from the

proprietor of freight forwarding firm namely M/s Shree Ram Logistics; that the CB admitted that it was their mistake that in greed of business neither they asked about the actual importer nor did they verify KYC properly.

(iii) It is to mention here that to obtain authorization from Exporter/Importer before filing papers with the Customs authorities is the very first obligation of the Customs Broker enlisted under Regulation 10 of CBLR, 2018. I am of the view that in the instant case, the CB miserably failed to produce any such authorization. During the course of investigation, statement of Shri Mehul Chandrakant More, G card as well as Power of Attorney holder of M/s Primus Logistics Pvt. Ltd., was recorded on 30.12.2022 under Section 108 of Customs Act, 1962 wherein he inter-alia stated that the business of import & Export clearance was very less in their firm, so they were searching importer and exporter in the market for business; that Shri Dhirendra Shukla Proprietor of M/s Shree Ram logistics promised them to give business on commission basis. Accordingly, Shri Shukla contacted their CB firm for clearance of above said B/E; that neither he nor their staff knew Shri Lalit Kumar Chaurasia; Proprietor of M/s Trishaa Overseas, that he never met Shri Lalit Kumar Chaurasia; that he had received all the necessary documents i.e. invoice, Packing List Bill of Lading etc. from Shri Dhirendra Shukla, Proprietor of M/s Shree Ram logistics; that it was their mistake that in greed of business neither they asked about actual Proprietor i.e. Shri Lalit Kumar Chaurasia nor they verified KYC properly.

(iv) It is also observed that though the CB, in their written representation, has mentioned that they are submitting authorization from the importer but the authorization from the importer i.e. M/s Trishaa Overseas had not been found enclosed with the written submission dated 25.01.2024. I also notice that the CB under Para 20 of their written submission dated 25.01.2024, has submitted list of documents they were attaching with their reply but the authorization letter said to be enclosed with their reply is nowhere listed in the said list. Also,

> **I find that nowhere in the offence report it is mentioned that the CB was in possession/ has produced authorization received from the importer**. I am of the view that as the CB had obtained documents from third party, it is clear that they did not obtain authorization from the importer. In view of the above, agreeing with the Inquiry officer, I conclude that the submission of the CB that they have authorization from the importer since the investigation was underway, is an afterthought only and therefore, the Customs Broker has violated the Regulation 10(a) of the CBLR, 2018.

12. The appellant submitted before us that it had obtained authorization from the importer before filing the Bill of Entry and therefore it was wrong to say that it had not obtained any authorization therefore there was no violation of Regulation 10(a). A copy of the authorization dated 10.04.2022 issued by M/s Trishaa Overseas, the importer, in favour of the appellant with reference to the import consignments at Mumbai/JNPT Port, is placed at page 108 of the appeal. It specifically states that the importer appoints the appellant as its CB to file Bill of Entry on its behalf and represent it before the Customs and other allied agencies to complete all the documentation formalities up to the delivery of the import consignment. The Bill of Entry was filed on June 2013 after obtained this authorization.

13. Learned authorized representative for the Revenue vehemently supported the impugned order.

14. We have considered the findings in the impugned order and the submissions of both sides. The first defence of the

appellant before the Commissioner was that the SCN does not state either that it had not obtained an authorization or that having obtained, it failed to produce it before the Assistant Commissioner or Deputy Commissioner when he asked for it. The impugned order also does not show that the SCN does, indeed, state that the appellant had not obtained an authorization or that having obtained, it failed to produce before the Deputy Commissioner or Assistant Commissioner. Learned authorized representative for the Revenue also could not show us that this was the allegation anywhere in the SCN. **It is our considered view that the impugned order could not have gone beyond the SCN; it was a specific point of defence by the appellant before the Commissioner and the impugned order simply ignored this point of defence.**

15. The Commissioner concluded that the appellant had indeed, violated Regulation 10(a) even though there is no assertion in the SCN that the appellant had either not obtained an authorization or that having obtained it had not produced it to the Assistant Commissioner or Deputy Commissioner when called for. This finding of the Commissioner is based on two documents- the statement recorded by the investigating officer under section 108 of the Customs Act, 1962 and the offence report (which does not state that the authorization was produced). We find that the statement said to have been recorded by the investigating officer under section 108 is not a

document relied upon in the SCN in these proceedings. Therefore, no reliance can be placed on any such statement to draw an inference that the appellant had not obtained an authorization. As far as the offence report is concerned, if it does not say, as recorded by the Commissioner, that the authorization was produced, it does not establish that the authorization was called for but it was not produced by the appellant. Unless the offence report says that the authorization was called for from the appellant by the Deputy Commissioner or Assistant Commissioner and that the appellant did not produce it, no inference can be drawn that the appellant had violated Regulation 10(a).

16. **In view of the above, we find that the findingof the Commissioner in the impugned order, that the appellant had violated Regulation 10(a) is without any evidence.**

Regulations 10(d) and 10(e)

17. Regulation 10(d)requires the Customs Broker to *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*.

18. Regulation 10(e) requires the Customs Broker to *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.

19. The findings of the Commissioner regarding these two regulations is as follows:

> "(i) I find that the CB in their written representation dated 25.01.2024 had submitted that the importer had imported the goods which were not declared in the Invoices/Packing List, on the basis of which the Bill of Entry was filed by the CB firm; that there is no allegation or evidence that the CB firm or any of its employees were aware of any such mis-declared goods and the fact remains that the CB firm and its employees had come to know about the mis-declaration only at the time examination of the goods by the department; that the evidence on record in the form of statements recorded under section 108 of the Customs Act, 1962 confirm that the CB firm or its employees were not aware of any mis-declaration of the goods; that if the importer without the knowledge of the CB imports prohibited goods, the CB cannot be expected to give any advice, as advise can be given only in respect of the declared goods; that the goods declared in the invoices were not violating any provision of the Policy and there is no allegation that the CB firm mis-classified the same and thus the question of failing to give advice does not arise; that there is no evidence in the form of statement of the importer/freight forwarder or any other person or any corroborative evidence to prove that we, the CB, as the Customs Broker, have ever given wrong advice; that the statutory provisions contained in the said regulation advising the client to comply with the Customs Law and allied laws/regulations and to bring the fact of non-compliance the notice of the Assistant/ Deputy Commissioner of Customs could arise only in respect of the goods declared in the Bill of Entry and not in respect of any concealed goods of which we had no knowledge at all. Hence, invoking this provision of Regulation 10(d) of the CBLR, 2018 is incorrect.

(ii) The CB had further submitted that they had carried out due diligence while filing the bill of Entry and if the importer would have asked about the policy provisions or BIS requirement in respect of any goods we would have definitely advised to take necessary registration and comply with the provisions o0f the Policy etc. Thus we have carried out due diligence and there is no violation of Regulation 10(e) of the CBLR and thus the said allegation may kindly be dropped, the same being de void of any merit.

(iii) I find that the Inquiry Officer had observed that the Customs Broker was negligent in verifying the credentials of the importer and in scrutinizing the documents submitted by the Importer, that he failed to exercise due diligence while filing the said Bill of Entry, that he failed to verify the whereabouts of the importer and also failed to inform the Customs officers of any violation (s) being made by the importer and that he withheld correct information.

(iv) I observe that the obligation of CB under Regulation 10(d) of CBLR 2018 is limited to advise his client to comply with the provisions of the Act and in case of non-compliance, to bring the matter to the notice of the Deputy/Assistant Commissioner of Customs and under Regulation 10(e) of CBLR 2018 the obligation of CB is to exercise due diligence to ascertain the correctness of any information being imparted to any importer/exporter. I find that the CB had filed the Bill of entry on the basis of the import documents supplied by the freight forwarder and not the importer. During the course of investigation, statement of Shri Mehul Chandrakant More, G-Card and Power of Attorney holder of M/s Primus Logistics Pvt. Ltd. was recorded on 30.12.2022 under section 108 of Customs Act, 1962 wherein he inter-alia stated that he had received all the necessary supporting documents i.e. Invoice, Packing List Bill of Lading etc. from Sh. Dhirendra Shukla, Proprietor of M/s Shree Ram logistics, a freight forwarding company that gave them business for import

clearance; that it was their mistake that in greed of business neither they asked about actual Proprietor of importer i.e. Sh. Lalit Kumar Chaurasia nor they verified KYC Properly.

(v) I further observe that the instant case involves mis-declaration for import of goods done in a very planned and meticulous way by the aforesaid Importer involved; that the declarations and supporting documents such as commercial invoices etc. filed before the Customs authorities were false in every respect. In this regard, I find that it was the responsibility of the CB to advise their client about the importance of authenticity and truthfulness of the documents filed before the Customs Authorities. I find that the CB did not fulfill their obligations as envisaged in the CBLR, 2018 inasmuch as they did not advise their client M/s Trishaa Overseas to comply with the provisions of Section 46 (4) of the Customs Act, 1962 wherein the importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods. However, in the instant case, I find that the Bill of Entry was filed containing totally false information/data and also the imported goods were grossly mis-declared.

(vi) I am of the considerate view that the CB was negligent in filing the papers for the above imports. I find that CB didn’t properly advise to their client (Importer) to file correct import papers before the Customs authorities and did not exercise due diligence in the matter. This negligence has resulted in intentional/ unintentional involvement of CB in import of goods which were grossly mis-declared in order to evade Customs duty on the same. I find that the CB, M/s Primus Logistics Pvt. Ltd. failed to discharge their duties as Customs Broker and facilitated import of goods which were found to be grossly mis-declared; that the CB, M/s Primus Logistics Pvt. Ltd. had failed to discharge their responsibilities, duties and obligations cast upon him as Customs broker under the provisions of the

> Customs Brokers Licensing Regulations, 2018. Hence, I find that the CB was in violation of provisions of Regulations 10(d) and 10(e) of the CBLR, 2018. The Inquiry officer is also of the same views and I concur with his findings that the CB did not comply with the provisions of Regulations 10(d) and 10(e) of the CBLR, 2018.

20. The submission of the learned counsel for the appellant with respect to these two regulations is that the appellant was not aware that the importer had mis-declared the goods and they were concealed or that the importer had violated any policy requirement under the BIS and, therefore, the allegation was mis-placed. With respect to Regulation 10(e) the submission of the appellant is that it had exercised due diligence by verifying the importers IEC, GSTIN, PAN, Aadhar, etc.

21. Learned authorized representative for the Revenue vehemently supported the impugned order.

22. We have considered the submissions advanced by the learned counsel and the findings of the Commissioner on this issue with respect to these regulations. Regulation 10(d) requires the Customs Broker to advise his client to follow the provision of other allied Acts, Rules etc. and in case of non-compliance bring the matter to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs. Regulation 10(e) requires the Customs Broker to ascertain that the information which he imparts to the client i.e., the

importer or exporter is correct. Nothing in the finding of the Commissioner establishes that the appellant had not advised the importer or that the appellant was aware that the importer was violating any provision or Acts or Rules and had not brought to the knowledge of the Assistant Commissioner/ Deputy Commissioner.

23. The finding in the impugned order that the appellant had violated Regulation 10(d) is based on statements recorded of the persons under section 108 of the Customs Act, 1962 which are not relied upon in the show cause notice issued under these proceedings. In our considered view, a document which has not been relied upon in the SCN cannot be used to conclude any findings against the noticee.

24. Further, even if the importer or exporter violated some provisions of the Act or Rules, it does not prove that the Customs Broker had not advised him to follow the Act or Rules. It is perfectly possible that despite the advice of the Customs Broker, the importer may have violated the provisions of the Act or Rules. There is also nothing in record to show that the Customs Broker was aware of the violations by the importer. We, therefore, find that the finding of the Commissioner in the impugned order that the appellant had violated Regulation 10(d) cannot be sustained.

25. Regulation 10(e) requires the Customs Broker to ensure that it provides only correct information to the client. There is

nothing on record or in the findings of the Commissioner to show that the appellant had provided any incorrect information to the importer. We, therefore, the finding in the impugned order that the appellant had violated Regulation 10(e)also cannot sustained.

Regulation 10(n):

26. Regulation 10(n) requires the customs broker to verify the 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.

27. The finding of the Commissioner in the impugned order on this issue is as follows:

> (i) I find that the CB in their written representation dated 25.01.2024 had submitted that there has been no violation of Regulation 10(n) of the CBLR, 2018 in the instant case; that they had taken precaution that the correctness of the IEC number and identity of the importer are not in doubt or dispute; that the Show Cause Notice under reference also does not make an averment that IEC/GST registration were forged; that the original KYC documents were duly received by them and are on record, which were handed over at the time of investigation and are on record; that they submit the copy of the following KYC documents duly certified by the importer :- IEC, GST REG 06, Aadhar Card copy, IEC Copy, PAN Card Copy, Shop & Establishment Registration of Govt. of Maharashtra, Copy of Electricity Bill.

(ii) I find that the CB had further submitted that they confirm that there is no discrepancy in IEC and address of the importer; that they further submit that during the course of investigations, the importer was found existing at the given addressed of Trishaa Overseas, the premises at 119/D- Mhada Colony, Near Vasant Vihar were searched; that after verification of the statutory documents, there was no doubt about the genuineness of the importer not existing at the given address more so when the importer was already registered with J.N. Customs House and the business of clearance was received through a known intermediary; that they have obtained authorization as well as KYC documents; that the CBLR do not mandate physical verification of the importer's/exporter's premises and thus there is no violation of Regulation 10(n) and thus the allegation is required to be dropped and prayed accordingly.

(iii) I find that the Inquiry Officer in inquiry report dated 02.11.2023 had observed that the Customs Broker during the investigation inter alia submitted that they didn't verify the address of importer physically; that after online verification of IEC and GSTIN, the said importer seemed Genuine to the CB; that no one from their office knew the importer and never met him; that they filed the Bill of Entry No. 9655434 dated 21.07.2022 on the basis of documents received from the proprietor of freight forwarding company namely M/s Shree Ram Logistics; that the CB admitted their mistake that in greed of business neither they asked about the actual importer nor did they verify KYC properly.

(iv) In this regard, I find that in the instant case the CB has contended that KYC documents were obtained by the Noticee and available with the Noticee at all times. I find that the CB vide their letter dated 25.01.2024 has submitted copies of below mentioned documents to establish identity of the importers and verify the place of business of the importers –

(a) Copy of IEC of Importer;

(b) Copy of GST Registration (Form GST REG-06) of Importer;
(c) Copy of Aadhar Card of the importer;
(d) Copy of PAN Card of the importer ;
(e) Copy of Electricity Bill No. 000000 618655456 for the month of November 2019 ;
(f) Copy of Shop & Establishment Registration Certificate issued by Maharashtra Government in respect of the registered premises of Importer ;

(v) I observe that the Regulation 10(n) of the CBLR, 2018 unambiguously stipulates that a Customs Broker shall verify antecedents, correctness of Importer Exporter Code (IEC) Number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. I also observe that the said Regulation is one of the fundamental work for any Customs Broker and also the most important. This is the basis of any work undertaken by any Customs broker. Further, I am also of the view that fulfillment of obligation by the Customs Broker of Regulation 10(n) of CBLR, 2018 also act as a deterrent measure for unscrupulous importers/exporters.

(vi) From the above, I find that the instant case is regarding mis-declaration of import goods in order to evade Customs duty. I further find that in the aforementioned Offence Report i.e. Investigation Report from Commissioner of Customs (NS-V), SIIB (Imp), JNCH, Mumbai Customs Zone – II, it has been mentioned that Search Warrant dated 26.10.2022 for search of office premises of the importer remained unexecuted as the said premises was found to be occupied by some other person on rent and a shop of readymade garments was found to be functioning from the said address of the importer. Further, I notice that in Statement dated 17.11.2022 of Sh. Lalit Kumar Chaurasia, Prop. of M/s Trishaa Overseas (Importer) recorded under Section 108 of the Customs Act, 1962, he admitted that he has given his IEC to Shri Dhirendra Shukla Prop. of M/s Shree Ram Logistics on a consideration of Rs. 20,000/- per

month and the said consignment actually belongs to some other person namely Mr. Rizwan. Further, Shri Mehul More, G Card of CB firm in his statement dated 30.12.2022 recorded under Section 108 of the Customs Act, 1962 admitted that for filing of BE No. 9655434 dated 21.07.2022, they received all the documents from Shri Dhirender Shukla and in greed of business neither they asked Shri Dhirender Shukla about the actual importer nor they verified KYC properly. He further submitted that they checked only GSTIN and IEC of the importer online before filing the said Bill of Entry.

(vii) Although, I find that various KYC documents have now been produced by the CB vide their letter dated 25.01.2024 but those documents are not time sensitive in the sense that they did not by themselves indicate whether they were taken before the import, at the time of the import or thereafter. However, in view of confessional statement dated 30.12.2022 of Shri Mehul More, G Card and Power of Attorney holder of the CB, I am of the considerate view that it is evident that the CB has violated the provisions of the Regulation 10(n) of the CBLR, 2018 by not identifying the identity and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. In view of the above I find that the CB has violated the provisions of Regulation 10(n) of CBLR, 2018.

28. The submission of the learned counsel for the appellant is that the appellant had obtained the IEC, GST Registration, Aadhar Card, PAN card,Electricity bill, etc. from the importer and verified them and did not physically verified the existence of the appellant. His submission is that the Customs Broker is not required to visit the importer’s premises and physically verify the existence of the importer. He relies on the judgment of this Delhi High Court in the case of **Kunal Travels** versus

Commissioner of Customs (Import & General)[6]. It ishis submission that the appellant had not violated Regulation 10(n).

29. Learned authorized representative for the Revenue vehemently supported the impugned order

30. We have considered the submissions advanced by both sides and findings of the Commissioner. It is not in dispute that the appellant had verified the existence of the appellant through KYC documents and had also verified the genuineness of the documents online. The appellant did not physically visit the place and verify the existence of the importer. Undisputedly, the IEC was issued by the DGFT and the GSTIN was issued by GST authorities with the address indicated in the documents. The customs broker cannot sit in judgment over the decision of the officers who issued the documents and verify if the documents were correctly issued by the officers. If *benami* IEC or DGFT were issued to entities which did not exist at all at their stated places of business, the officers who issued such *benami* documents can alone be responsible and NOT the Customs broker who trusted the documents issued by the officers. In **Kunal Travels,** Delhi High Court examined the scope of the responsibility of the Custom House Agent under CHA Licensing Regulations, 2004. Subsequently, the Custom House Agents have been renamed Customs Brokers and the

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6. 2017 (354) E.L.T. 447 (Del.)

CHA Licensing Regulations, 2004 have been replaced by CBLR, 2018. Regulation 13 of CHALR 2004 is similar to Regulation 10 of CBLR. In **Kunal Travels**, Delhi High Court held as follows:-

> 11. The obligations of the CHA are stipulated in Regulation 13 of the CHALR-04 :
>
> "13. **Obligations of Customs House Agent.** - A Customs House Agent shall -
>
> (a) obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as Customs House Agent and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs;
>
> (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;
>
> (c) not represent a client before an officer of Customs in any matter to which he, as an officer of the Department of Customs gave personal consideration, or as to the facts of which he gained knowledge, while in Government service;
>
> (d) advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs;
>
> (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;
>
> (f) not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Commissioner of Customs, from a client who is entitled to such information;
>
> (g) promptly pay over to the Government, when due, sums received for payment of any duty, tax or other debt or obligations owing to the Government and promptly account to

his client for funds received for him from the Government or received from him in excess of Governmental or other charges payable in respect of the clearance of cargo or baggage on behalf of the client;

(h) not procure or attempt to procure directly or indirectly, information from the Government records or other Government sources of any kind to which access is not granted by the proper officer;

(i) not attempt to influence the conduct of any official of the Customs Station in any matter pending before such official or his subordinates by the use of threat, false accusation, duress or the offer of any special inducement or promise of advantage or by the bestowing of any gift or favour or other thing of value;

(j) not refuse access to, conceal, remove or destroy the whole or any part of any book, paper or other record, relating to his transactions as a Customs House Agent which is sought or may be sought by the Commissioner of Customs;

(k) maintain records and accounts in such form and manner as may be directed from time to time by a Deputy Commissioner of Customs or Assistant Commissioner of Customs and submit them for inspection to the said Deputy Commissioner of Customs or Assistant Commissioner of Customs or an officer authorised by him whenever required;

(l) ensure that all documents, such as bills of entry and shipping bills delivered in the Customs Station by him show the name of the importer or exporter, as the case may be, and the name of the Customs House Agent, prominently at the top of such documents;

(m) in the event of the licence granted to him being lost, immediately report the fact to the Commissioner of Customs;

(n) ensure that he discharges his duties as Customs House Agent with utmost speed and efficiency and without avoidable delay....”

12. Clause (e) of the aforesaid Regulation requires exercise of due diligence by the CHA regarding such information which he may give to his client with reference to any work related to clearance of cargo. Clause (l) requires that all documents

submitted, such as bills of entry and shipping bills delivered etc. reflect the name of the importer/exporter and the name of the CHA prominently at the top of such documents. The aforesaid clauses do not obligate the CHA to look into such information which may be made available to it from the exporter/importer. The CHA is not an inspector to weigh the genuineness of the transaction. It is a processing agent of documents with respect to clearance of goods through customs house and in that process only such authorized personnel of the CHA can enter the customs house area. What is noteworthy is that the IE Code of the exporter M/s. H.M. Impex was mentioned in the shipping bills, this itself reflects that before the grant of said IE Code, the background check of the said importer/exporter had been undertaken by the customs authorities, therefore, there was no doubt about the identity of the said exporter. It would be far too onerous to expect the CHA to inquire into and verify the genuineness of the IE Code given to it by a client for each import/export transaction. When such code is mentioned, there is a presumption that an appropriate background check in this regard i.e. KYC etc. would have been done by the customs authorities. There is nothing on record to show that the appellant had knowledge that the goods mentioned in the shipping bills did not reflect the truth of the consignment sought to be exported. In the absence of such knowledge, there cannot be any *mens rea* attributed to the appellant or its proprietor. Whatever may be the value of the goods, in the present case, simply because upon inspection of the goods they did not corroborate with what was declared in the shipping bills, cannot be deemed as misdeclaration by the CHA because the said document was filed on the basis of information provided to it by M/s. H.M. Impex, which had already been granted an IE Code by the DGFT. The grant of the IE Code presupposes a verification of facts etc. made in such application with respect to the concern or entity. If the grant of such IE Code to a non-existent entity at the address WZ-156, Madipur, New Delhi - 63 is in doubt, then for such erroneous grant of the IE Code, the appellant cannot be faulted. The IE Code is the proof of *locus standi* of the exporter. The CHA is not expected to do a background check of the exporter/client who approaches it for facilitation services in export and imports. Regulation 13(e) of the CHALR, 2004 requires the CHA to : "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" (emphasis supplied). The CHAs due diligence is for information that he may give to its client and not necessarily to do a background check of either the client or of the consignment. Documents prepared or filed by a CHA are on the basis of instructions/documents received from its client/importer/exporter. Furnishing of wrong or incorrect information cannot be attributed to the CHA if it was innocently filed in the belief and faith that its client has furnished correct information and veritable documents. The misdeclaration would be attributable to the client if wrong information were deliberately supplied to the CHA. Hence there could be no guilt, wrong, fault or penalty on the appellant apropos the contents of the shipping bills. Apropos any doubt about the issuance of the IE Code to M/s. H.S. Impex, it was for the respondents to take appropriate action. Furthermore, the inquiry report revealed that there was no delay in processing the documents by the appellant under Regulation 13(n).

13. This Court in *Ashiana Cargo Services* v*. Commissioner of Customs (I&G)* - 2014 (302) E.L.T. 161 (Del.) has *inter alia* held :

"…… 10. Beginning with the facts, there is virtually no dispute. There is a concurrent finding of fact by the Commissioner and the CESTAT that the appellant did not have knowledge that the illegal exports were effected using the G cards given to VK's employees. There was no active or passive facilitation by the appellant in that sense. Undoubtedly, the provision of the G cards to non-employees itself violated the CHA Regulations. This is an admitted fact, but it is not the Revenue's argument (nor is it the reasoning adopted by the Commissioner or the CESTAT) that this violation in itself is sufficiently grave so as to justify the extreme measure of revocation. Not any and every infraction of the CHA Regulations, either under Regulation 13 ("Obligations of CHA") or elsewhere, leads to the revocation of license; rather, in line with a proportionality analysis, only grave and serious violations justify revocation. In other cases, suspension for an adequate period of time (resulting in loss of business and income) suffices, both as a punishment for the infraction and as a deterrent to future violations. For the

punishment to be proportional to the violation, revocation of the license under Rule 20(1) can only be justified in the presence of aggravating factors that allow the infraction to be labelled grave. It would be inadvisable, even if possible, to provide an exhaustive list of such aggravating factors, but a review of case law throws some light on this aspect. In cases where revocation of license has been upheld (i.e. the cases relied upon by the Revenue), there has been an element of active facilitation of the infraction, i.e. a finding of *mens rea*, or a gross and flagrant violation of the CHA Regulations. In *Sri Kamakshi Agency* (supra), the licensee stopped working the license, but rather, for remuneration, permitted his Power of Attorney to work the license, thus in effect transferring the license for money. As the CESTAT noted, "9…… applicant instead of discharging his functions as a Custom House Agent in accordance with the Regulations, in flagrant violation of those Regulations went to the extent of encashing the facilities made available to him as a CHA by selling it for a price". Moreover, the Power of Attorney was - as a matter of fact - "actively involved in the fraudulent act in connivance with the importers and others and that as per the Power of Attorney Bond executed by Sri K. Natarajan, all acts, deeds and things done by Sri D. Sukumaran were to be construed as if they were done by himself. Therefore CUSAA 1-2016 & 12-2016 Page 11 of 15 virtually all the fraudulent activities carried out by the Power of Attorney of Thiru Natarajan were to be treated as having been carried out by Thiru K. Natarajan himself', i.e. the licensee. In OTA Kandla, too, *mens rea* (i.e. knowledge) of the licensee was established. By a statement of the petitioner under Section 108, Customs Act, followed by the inquiry, it was clear that the licensee was aware that the consignment contained gypseous alabaster, a prohibited substance, but nonetheless, participated in its release from the Kandla Port. In CUS.A.A. 24/2012 Page 10 *Santon Shipping* (supra), the adjudicating authority came 'to the conclusion that the fraud in this case has been committed in so many consignments over a long period of time and the same could not have happened without the connivance of the CHA". The revocation of the license was again informed by the fact of connivance (i.e. *mens rea* as to the infraction) of the

CHA. In *Eagle Transport* (supra), the CHA transferred the license altogether. As the CESTAT noted, `... the activities of the appellant firm were controlled day to day, not by Shrimankar but by employees of Amol Shipping Agency. We do not see how this does not amount to transfer of the licence in all but name. Hence, we must hold that the first and second articles of charge have been rightly held as proved." Moreover, more than 100 blank shipping bill forms were sent to a third-party. Following these aggravating factors, the penalty of revocation was justified by the CESTAT. Similarly, in *HB Cargo* (supra), relied upon by the majority of the CESTAT, the case did not concern any ordinary infraction of the CHA Regulations, but "an act of corruption", where blank shipping bills were issued by the partner and authorized representative of the CHA for a consideration of ` 150 per shipping bill.

11 Viewing these cases, in the background of the proportionality doctrine, it becomes clear that the presence of an aggravating factor is important to justify the penalty of revocation. While matters of discipline lie with the Commissioner, whose best judgment should not second-guessed, any administrative order must demonstrate an CUS.A.A. 24/2012 Page 11 ordering of priorities, or an appreciation of the aggravating (or mitigating) circumstances. In this case, the Commissioner and the CESTAT (majority) hold that "there is no finding nor any allegation to the effect that the appellant was aware of the misuse if the said G cards", but do not give adequate, if any weight, to this crucial factor. There is no finding of any *mala fide* on the part of the appellant, such that the trust operating between a CHA and the Customs Authorities (as a matter of law, and of fact) can be said to have been violated, or be irretrievably lost for the future operation of the license. In effect, thus, the proportionality doctrine has escaped the analysis.

12. Learned Senior Standing Counsel for the Customs has stressed that the infraction in this case is not a routine matter, but rather, illegal smuggling of narcotics by the G card users. However, given the factual finding that the CHA was not aware of the misuse of the G cards (and thus, also

unaware of the contents being smuggled), no additional blame can be heaped upon the CHA on that count alone. Rather, the only proved infraction on record is of the issuance of G cards to non-employees, as opposed to the active facilitation of any infraction, or any other violation of the CHA Regulations, whether gross or otherwise. Neither have any such allegations been raised as to the past conduct of the appellant, from the time the license was granted in January, 1996. Equally, it is important to note that the appellant has - as of today - been unable to work the license for 8 years, and thus been penalized in this manner. This is not to say that CUS.A.A. 24/2012 Page 12 the trust operating between the Customs Authorities and the CHA is to be taken lightly, or that violations of the CHA Regulations should not be dealt with sternly. A penalty must be imposed. At the same time, the penalty must - as in any ordered system - be proportional to the violation. Just as the law abhors impunity for infractions, it cautions against a disproportionate penalty. Neither extreme is to be encouraged. In this case, in view of the absence of any *mens rea*, the violation concerns the provision of G cards to two individuals and that alone. A penalty of revocation of license for this contravention of the CHA Regulations unjustly restricts the appellant's ability to engage in the business of the CHA for his entire lifetime. As importantly, it skews the proportionality doctrine, substantially lowering the bar for revocation as a permissible penalty, especially given the dire civil consequences that follow. On the other hand, the minority Opinion of the CESTAT, delivered by the Judicial Member, correctly appreciates the balance of relevant factors, i.e. knowledge/*mens rea*, gravity of the infraction, the stringency of the penalty of revocation, the fact that the appellant has already been unable to work his license for a period of 6 years (now 8 years), and accordingly sets aside the order of the Commissioner dated 24-1-2005..."

14. Any act to defraud presupposes the intention to obtain something fraudulently. In the present case, the appellant (through its proprietor) has all along contended that the documents were filed unauthorizedly by a person incompetent to

do so; it has not defended the action of Mr. Lalit Katoch; it claims ignorance and innocence of the contents of the consignment; it objects to the very filing of the two shipping bills by either Mr. Katoch or any person authorised on its behalf, hence there cannot be a presumption of its deliberate act/intention to defraud. There is no evidence of active facilitation of clearance of the consignment through customs by the appellant, hence, no *mens rea* can be inferred to defraud the government for obtaining duty drawback through a fraudulent transaction. Consequently, the appellant cannot be faulted or punished in the manner it has been.

15. In these circumstances, the revocation of the appellant's CHA license is unjustified and is accordingly, set aside. The revocation of license which is in operation since 2005 i.e. almost 12 years, is itself a severe punishment and could also serve as a reprimand to the CHA to conduct its affairs with more alacrity. In these circumstances, the forfeiture of the security amount and the imposed penalty of ` 1 lakh also is set aside. The said amount shall be credited to the appellant's account. If the tenure of the license has expired but is otherwise extendable, then upon the appellant's application such extension would be granted as per rules. However, if an application is to be made for grant of a new license, then such an application if made, would be considered under the extant Regulations. The appeals are disposed of with the above directions.

31. In view of the aforesaid decision of the Delhi High Court in **Kunal Travels**, we find that the findings that the appellant had violated Regulation 10(n) cannot be sustained.

CONCLUSION

32. In view of the above, we find that the findings in the impugned order that the appellant had violated Regulation 10(a), 10(d), 10(e) and 10(n) of CBLR is not correct. Consequently, the revocation of the Customs Brokers' licence

of the appellant, forfeiture of the security deposit and imposition of penalty on the appellant cannot be sustained.

33. The appeal is, accordingly, allowed and the impugned order is set aside. The appellant will be entitled to consequential relief.

(Order pronounced in open court on 12/12/2025.)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

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