IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing: 28/08/2018
Date of Pronouncement: 01/02/2019

Appeal No. C/51629/2018-DB

[Arising out of Order-in-Original No. 25/MK/ POLICY/ 2018 dated 23/05/2018passed by COMMISSIONER of Customs (AIRPORT & GENERAL), NEW DELHI CUSTOMS HOUSE]

HLPL Global Logistic Pvt. Ltd **Appellant**

Vs.

CC, New Delhi **Respondent**

Appearance
Ms. Priya Dershi, Advocate for the appellant
Mr. R .K. Manjhi, DR for the respondent

CORAM: **Hon'ble Mr. ANIL CHOUDHARY, Member (Judicial)**
Hon'ble Mr BIJAY KUMAR, Member (Technical)

Final Order: 50145/2019

Per Bijay Kumar

1. The present appeal is directed against the Order-in-Original No. 25/MK/Policy/2018 dated 23/05/2018, vide which the appellant's CHA licence being No. R-49/2012 has been revoked along with forfeiture of the whole amount of security deposit of Rs. 75,000.

2. Brief fact of the case is that the appellant is a holder of CHA licence No. R/49/2012 (PAN No. AACCH 9816N) issued by the Commissioner of

Customs (I & G), New Delhi, under Regulation 9(1) of CHALR(Custom House Licensing Regulation), 2004, which was superseded by CBLR (Customs Brokers Licence Regulation, 2013), vide Notification No. 65/2013 dated 21/06/2013, which was valid up to 31/10/2022.

3. Acting on the intelligence, from DRI that (Department of Revenue Intelligence) that the appellant had used Chapter 3 transferable duty credit scrips for debiting the customs duty, which were not issued by the DGFT and were fake and also the hard copy of the said duty scrips were not produced to the Customs Officer for debiting, before the clearance of consignment for which these scrips had been used. It was also gathered by the DRI that the some people had created credit amount in the EDI system at ICD, Tuglakabad on the basis of these exhausted licences issued by the DGFT in a fraudulent manner. These duty scrips/licence/ advance authorisation at the strength of which various consignments of imports were cleared, where initially registered at different ports like Cochin Port, Tuticorin Port and elsewhere and were already utilised, in full and thus living no balance. The intelligence also indicated that these very duty scrips were got re-registered in EDI system at ICD ,Tuglakabad under the same scheme with same ICE code particulars for the same value or even for the inflated value by a fraudulent method.

4. During the investigation it was revealed that the licences were used by the appellant, as a customs broker, who **got debited** the Customs duties by utilising the alleged forged, 12 duty scrips/ licences by re-registering the same at ICD, Tuglakabad. It was also revealed during the enquiry that the appellant through M/s Him Logistic Pvt. Ltd. (another customs broker) in which Shri Ashok Sharma, is found to be engaged in trading of these forged duty credit scrips as per the impugned order, and this fact of trading of licences were also admitted by the officials of the appellant. It also appeared that the two CHAs have sold these licences to the importer and used them for clearance of their imported goods which were not issued by the DGFT in a real sense. It was also noticed that the CHAs have failed the verify the details these licences and also did not produce the hard copies in contravention of the various notifications under which these licences have been issued. It was also alleged that the appellant had used these duty paying scrips by purchasing themselves and using them for the payment of customs duty on behalf of the various importers, who were their clients, without their express consent and knowledge. Not only that, it was also found that the appellant and the importers made payments for such forged duty credit scrips/ licences to some Kolkata based firm but the consideration, money was transferred in their Hyderabad, Chennai, Surat, Mumbai accounts in the name of M/s Raj Impex, Kolkata in the ING Bias Bank account located at Hyderabad. Similarly in case of Rakesh Industries, Kolkata payment was made in Axis Bank Chennai account, Sun Rise Global Ltd. Kolkata, the payment had been made in the Indusind Bank account at Chennai, M/s Reva Trading Company, Kolkata, Axis Bank Account at Surat, M/s Shadow

Corporation, Kolkata having payment made in Indusind Bank Chennai. Modak Impex, Kolkata having account in Axis Bank, Nariman point, Mumbai and Maruti Enterprises , Kolkata, to Axis Bank account at Chennai.

5. Therefore, there appeared to be a mis-match between the business place of transferors and account used for the transfer of money. Inquiry was also conducted by DRI, Kolkata of the aforesaid companies, which were found to be non-existent at given address. The investigations also revealed that an amount of Rs, 80,45,037/- had been debited from the account of M/s Him Logistics Pvt. Ltd. for purchase of these fake licences, which were utilised by M/s S K Enterprises, New Delhi, M/s Chaman Lal & Sons, New Delhi and M/s Jackson Trading Company. During the course of inquiry statements of the various persons were recorded alleged to be involved in these fraudulent utilisation of various duty paying scrips. It was further revealed that the forged Focus Market Scheme licence No. 51 0339374 dated 23/11/2012, was utilised by M/s S K Enterprises, New Delhi against the duty liability in respect of import made by them. The statements of Shri Manav Malik, partner of M/s S K Enterprises, was recorded on 29/03/2016, under Section 108 Customs Act, 1962 (for short ‘ Customs Act’), wherein among the other things he stated that the firm was established in year 2012, along with his wife Mrs. Neha Malik as its partner, however, she had no active role in the business of M/s S K Enterprises; that they have imported various type of fabrics from China though ICD, Tuglakabad, and ICD, Patpardganj; that they usually paid their duty online through the banking portal and by utilising licences like MSFPS and VKGUI. On being asked about the above license

dated 27/12/2017, he deposed that they have purchased the same through CHA M/s Him Logistic Pvt. Ltd. and for which they have raised debit note on them for the equivalent amount and which was paid to them through cheques/ RTGF/NEFT, it was also informed by him that the details should be available with Shri Ashok Sharma, Director of the M/s Him Logistics Pvt. Ltd. Similarly, the investigation in respect of licences utilised for M/s Jackson Trading Company was conducted which lead to the finding that the nine forged licences were utilised valued at Rs. 1,48,53,698/- towards the payment of Customs duty for their import, covered by 64 Bills of Entry through ICD, Tuglakabad and New Delhi and Air Cargo Complex, New Delhi. In statement of Shri Puneet Mahendru, proprietor of M/s Chaman Lal & Sons, stated that he was not having any knowledge about the import or export made in the name of the firm and that he was also not aware of the activities, which were being looked after by his uncle , Shri Rajesh Chhabra, who advised him to open the firm and told that he would be importing the goods from China; that he also informed him that he would be a sum of Rs. 5000/- to 7000/- per month; that due to financial hardship he agreed for the same in the year 2011 and incorporated the firm. Shri Mahendru also stated that Shri Rajesh Chhabra and Shri Prakash Sharma, Director of M/s Him Logistics Pvt Ltd. are behind the procurement, of forged licence/ duty scrips and their utilisation for the clearance of imported goods. It was also categorically stated by him that Mr. Prakash Sharma, Director of M/s Him Logistics used to come to his office to deliver him the money for further deposit in the bank account of the said firm, which was being used for making payment against the customs duty at the time of clearance of imported goods. On being asked about the licence used against the payment of customs duty, he stated that he did not had any knowledge about the same, though Shri Rajesh Chhabra and Shri Prakash Sharma and Shri Ashok Sharma, the brother of Shri Prakash Sharma, could throw light on these aspects. It was also informed by him that the various other firms were also incorporated by Shri Rajesh Chhabra, on the advice of Shri Prakash Sharma which were being used for import of various items paying duty and utilising forged scrips.

6. In his statement Shri Rajesh Chhabra, deposed that one licence broker, namely, Shri Arvind Jha used to do activities in the said firm and that he only advised him to open firm for the same he (Arvind Jha) would be paid would be Rs. 5,000/- to Rs. 7000/- per month and for which he agreed and open bank account in the Indusind Bank, Ashok Vihar, and that he never transferred any money from the said bank in India as well as in abroad. On being asked about the opening of firm by his nephew Shri Puneet Mahndru, he agreed to same and said that he was acting as per the advice given to him by one Shri Prakash Sharma (CHA). In the statement Shri Chhabra categorically stated that the entire activity of import of the items and payment duty was being handled by Shri Prakash Sharma for his firm i.e. M/s Him Logistics Pvt. Ltd. Further in statement dated 30/06/2016, Shri Rajesh Chhabra stated that the M/s Jackson Trading Company and Elide Internationals were also incorporated by him and the documents for import were being handled by Shri Prakash Sharma of M/s Him Logistics, including the management of various documents IEC number for the consideration of

Rs. 5,000/- per container. He further stated that he never dealt directly with Shri Lalit Jain for procurement of licences/ duty scrips and he never heard about him and the dealing was only made by Shri Prakash Sharma. He also deposed that all the money deposited in the bank account in Punjab National Bank in Azadpur, Indusind Bank, Ashok Vihar, New Delhi used to be deposited by Shri Prakash Sharma through his employee from time to time and was also getting his (Rajesh Chhabra) signature on the cheques whenever it was required.

7. In the statement Shri Ashok Sharma, Director of the appellant company, which was recorded on 21/03/2016, under Section 108 of Customs Act, he deposed that he was a 'G Card' holder for the customs clearance which was issued by the New Customs House New Delhi which was subsequently converted into 'F Card'. Thereafter, he incorporated another company, that is the appellant, along with Shri Tarun Sharma. On being asked about the debiting of duty amount using the forged scrips he stated that licences which had been utilised towards discharging of import duty were issued for the specified port and were required to be registered at designated port, and thereafter a unique registration number with date used to be generated by the system by the current customs house. On being asked that about the licence/ scrips and their registration number date and also the amount to be used in discharging of customs duty, he stated that respective importer used to provide them the **details of various duty credit scrips**; that he agreed that sometimes some importers requested him to arrange licences or recommend the person from whom licence to be purchased; that on being asked about

the licence no mentioned in the adjudication order and a Show Cause Notice he stated that these have been used by many importers towards discharge of duty liability and he undertook to provide details thereof in due course; that on being asked he stated that he dealt with one Mr. Lalit Jain who had been trading these licences and used to made payment to him in some cases; that on being asked the explain the same he stated that M/s Jackson Trading Company and M/s. Chaman Lal & Song used to be controlled by Shri Rakesh Chhabra and used to deal directly with Shri Lalit Jain with respect of imports made by their companies. Further Shri Ashok Sharma also stated that he was working with the M/s M.S. Cargo till 2018; that when he passed examined for ‘ G card’ he joined M/s Him Logistics Pvt. Ltd. and thereafter in year 2012 he passed examination meant for ‘ F card’ holder and incorporated another company, namely, M/s HLPL Global Logistics, in which he is one of the Director till date; that in both CHA firms, M/s Him Logistics Pvt. Ltd. and M/s HLPL Global Logistic Ltd. he is the Director along with Shri Tarun Sharma, who is the other Director of HLPL Logistic i.e. the appellant; “that on being asked about the debiting of the duty under the various duty paying scrips issued by DGFT, he stated that as the same was transferable he used to utilised them towards discharging of import duty by importers; that on being asked as to who had been giving such licences for duty payment he categorically stated that it was the importer who used to provide them the details of the duty credit scrips towards the discharge of customs duty liability that sometimes some of the importers requested him to arrange licences and the same was being done by him through one licence brokers, namely, Mr. Lalit Jain; that on being asked to explained as to whether he used to give the payment for such scrips directly through Lalit Jain or the importer used to give the same he stated that it was depending upon the request of importer and sometimes he also used to pay the amount to the licence broker and subsequently the payment was have made to them by the respective importers through debit notes; that on being asked about the procedure and documentation for purchase of licence/ duty credit scrips , he stated that they used to get the licence number and date of registration from the office of Shri Lalit Jain and that he used to get the same debited by customs and in such cases no hard copies were presented for manual debiting of the duty free scrips as prescribed under Notifications; that he further stated that there was no system of manual debiting in place at ICD, Tuglakabad, and also at in other ports as well; that on being asked regarding the physical copy of licences from importers or agent including Shri Lalit Jain, he stated that he had not got registration of these licences at ICD, Tuglakabad, that the details these licences could be provided by Shri Lalit Jain; "that on being asked he stated that all these licences were obtained by the appellant through M/s Him Logistics Pvt. Ltd. which in turn obtained the same through the licence broker, Shri Lalit Jain.

8. Thereafter, a detailed investigation was conducted by DRI, based on the information supplied by the various persons whose statements were recorded and found that the appellant used to be involved in the procurement of licences along with other CHA firm wherein, Shri Ashok Sharma, is also one of the director. Most of their clients/importer stated that the appellant has used these forged duty paid scrips without taking consent from them. From

the above it appeared that M/s Him Logistics and the appellant have not been authorized by the various importer for payment of duty through these scrips and thus violated the provisions of Customs House Agent Licence Regulation 2004 and Customs Broker licensing Regulation, 2013.

9. Based on the findings of the Investigation, the Show Cause Notice No. 21/KB/POLICY/2017 dated 17/08/2017, was issued to the appellant for alleged contravention of Regulations 11(d) and 11(e) of CBLR, 2013. In terms of Regulation 20(1) of the CBLR, the Deputy Commissioner was appointed as inquiry officer who submitted his report on 14/11/2017,. However, the appellant filed the Writ Petition (C) 10181 (2017) against the said inquiry report before the Hon’ble High Court of Delhi. Hon’ble High Court vide its order dated 17.04.2017 quashed the order with direction that a fresh enquiry be conducted and be submitted by 15th March 2018.

10. Accordingly, the inquiry was conducted afresh on 08/03/2018 and after considering the various statements made by the appellant the inquiry officer held that “ in view of above, I find that M/s HLPL Global Logistics, 2151/3D, new Patel Nagar, New Delhi-10008, has not complied with the provisions of SECTION 11(d) and Section 11(e) of CBLR, 2013, and utilized forged credit scrips in clearance of imported goods. They have not done due diligence while utilization such forged scrips. Therefore, the CB M/s HLPL Global Logistic Pvt. Ltd, is liable for action under CBLR , 2013.

11. The said inquiry report was also furnished to the appellant with a direction to appear before the Ld. Adjudicating Authority before the final order was to be passed under CBLR, 2013. In response to inquiry report, the appellant also submitted additional submissions to commissioner on the various grounds.

12. In reply it was contended the statement recorded under Section 108 of Customs Act of witnesses could not be relied upon as evident under Section 20(3) and 20(4) of the Regulation and reliance was placed on the judgment by Hon'ble Cestat in case of **Thakkar Shiping Agency vs. Collector of Customs, Bombay, [1994(69) ELT (90) (TRI),]** wherein it was as under;

> ***For the purpose of holding inquiry under the Regulations, specific procedure has been provided for in Regulation 23. When specific procedure is provided for, the general procedure provided for, for holding adjudication proceedings under the Customs Act, would not stand attracted.***

13. Further reliance was also placed on the decision of Hon'ble High Court of Delhi in case of **Jasjeet Singh Marwaha vs Union of India [2009(239) ELT 407(Del)],** wherein it is held that the Section of Customs Act is to be relied upon under CHA Regulation only on the condition when the statement is true, voluntary and un-retracted. In this case, the inquiry officer relied upon the statements of other persons recorded under Section 108 of Customs Act without permitting the cross examination and thus in violation of requirement of clause(4) of Regulation 22 of CHALR, 2004.

14.Further, it was also submitted that the statement recorded under Section 108 of Customs Act is to be relied upon in the proceedings under CBLR then the other party has vested right to cross examined the person whose statement is being relied upon placing reliance on Hon'ble High Court Judge in case of **M/s Him Logistic Pvt. Ltd. vs. Principal Commissioner of Customs, [2016 (336) ELT 15 (Del)].** and of **M/s J K Cigarette Ltd. vs. Collector of Central Excise[2001(242)ELT 149(Del)]**. Therefore, it was submitted that the inquiry officer denied the cross examination of the persons whose statement had been relied upon in the proceeding, is a clear violation of the regulation and also of Principle of Natural Justice. It was also submitted that the inquiry officer did not provide information and documents asked by the appellant for proper and effective defence of the charges against them and also their reply was only interim one. The appellant requested for certain information as per their letter dated 12/01/2018, but nothing was heard from the inquiry officer on this request. However, after lapse of 35 days, three dates for personal hearing i.e. 23/02/2018, 26/02/2028 or 28/02/2018, was fixed by the enquiry officer vide letter dated 19/02/2018. The inquiry officer did not provide the information asked by the appellant in spite of their request vide letter date 22/02/2018 and 23/02/2018. The request of cross examination of Shri Punit Mahendru, son of late Shri Puneet Mahendru proprietor of Chaman Lal & Sons and Shri Rajesh Chabhra son of late Shri Jagdish partner of M/s PEE ARR Enterprises was denied. Therefore, the entire proceeding got vitiated relying on the decision of Hon'ble High Court in case of **M/s Him Logistic Pvt. Ltd vs. Principal Commissioner of Customs [2016 (336) ELT 15.** It is also contended the order was passed after 35 days and fixing the three dates for personal hearing in single letter in violation of Principle of Natural Justice relying on the following judgments;

(i) **Power Link System Pvt. Ltd. vs. Commissioner of Central Excise reported in [2017 (50) STR 150(Tri-Chand.)]**

(ii) **IPC Packing Company Pvt. Ltd. vs. Chief Commissioner of ICD Bang [2017(6) GSTL 256(Kar.)]**

(iii) **Regent Overseas Pvt. Ltd. vs. Union of India [2017(6) GSTL (15) (GUJ)**

(iv) **Reliance Industries Ltd. vs. Commissioner of Customs, Chennai,-IV [2017 (357) ELT 865 (Tri-Chennai)]**

15. It was submitted that fixing three dates for personal hearing in single letter is against the provisions of Section 122(A) of the Customs Act and the Principle of Natural Justice was thus violated in this case.

16. On the basis of above the appellant submitted they were engaged in trading of duty credit scrips /licence mentioned in the Show Cause Notice. The appellant and M/s Him Logistic Pvt. Ltd. are separate legal entities and importer were aware to the fact that duty credit scrips has been traded by M/s Him Logistic. They have issued credit note for them of equivalent amount and the importer paid the said amount through cheques/RTGS. It was also submitted that based on the statements of various person as indicated above which is clear that the appellant has not violated any of the instruction received from the jurisdictional Commissioner.

17.It was also submitted that the debiting of licence in EDI system is very complex process and which cannot be done without the intervention of the Customs officer at the various level as the officer are holder of SSOID(Single sign on identification). For this reliance was placed on the judgment on Hon'ble Kolkata High Court in case of **Commissioner of Customs,(Preventive) West Bengal vs. Over Land Agency [2006 (204) ELT 554(Cal)] .**

18.It was also submitted that the appellant and Shri Prakash and Shri Ashok Sharma are separate entities and hence for the act of M/s Him Logistic Pvt Ltd and Shri Prakash Sharma the appellant cannot be penalized placing reliance on the same fact in case of **M/s Him Logistic Pvt Ltd.vs Commissioner of Customs, New Delhi [2015 (335) ELT(797).** Further the appellant relied upon the decision of **Kunal Travels(Cargo) vs. CC(I & G), IGI Airport, New Delhi [2017 (354) ELT 447 (Del)]** wherein it is held as under;

> ***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.*

19. In view above the submissions and binding precedents it was submitted that they did not failed in complying with the Regulation 11(d) and 11(e) of CBLR, 2013 and therefore, not liable for revocation of licence as held in the impugned order.

20. The appellant also filed additional submission vide their letter dated 24/04/2018, which was more or less reiterated the facts as mentioned above.

21. Ld. Commissioner decided the case against the appellant after giving personal hearing as per Regulation of CBLR.

22. Heard, Ld Advocate on behalf of the appellant and Ld. DR on behalf of the Revenue.

23. We find that Ld. Commissioner has not dealt with the submissions made by the appellant and followed the enquiry report in this case. It is evident from the records of the case that the appellants have obtained the duty free licence from M/s Him Logistics Pvt. Ltd. or through a broker Mr. Lalit Jain and utilised the same towards the payment of Customs duty for the consignment imported by their client. It was held in the inquiry report the appellant was responsible for utilisation of forged duty scrips for the payment of customs duty, and therefore, not observed due diligence in conducting their business as per the provisions of CBLR. In this regard, we find that free duty licences/ duty credit scrips have been registered at the various customs port other than ICD and available on EDI system. As per the procedure prescribed under EDI system, it is not possible for the appellant to temper with the data/ information contained in the EDI system which is foolproof and secured system is prescribed not by one or two but by five officers of the customs including the Joint and Additional Commissioner. In this regard, we place our reliance on the decision of Hon'ble High Court in Writ Petition No. CRL 1338/2018 which is reproduced as under;

> " *31. In the order dated 9th June 2016 of the Commissioner of Customs (General), the modus operandi of the EDI System is noted as under:*
>
> *"55.2In this regard, I observe that ICD TKD Export Commissionerate, New Delhi, the concerned Customs formation, is working under EDI system. As per procedure of registration of script/ license in EDI system, genuineness of scrip can be ascertained while it is registered in EDI system and once it has been registered in EDI system and duty has been debited with the said scrip, there may not be any reason to*

doubt about the genuineness of the said scrip. I, further find that ICD, TKD Export, New Delhi being an EDI Port, details of registered scripts are available in EDI system and debit of duty has to be made on the EDI system only, which appear to be verifiable on the system directly. As genuineness of scrip could have been ascertained at the time of registration of script in EDI system I, further, observe that in present case, as per preliminary investigation, done till now, the said CB has not been found involved in trading of CB license. I, therefore, observe that the omission/contravention, if any, on the part of CB in such a scenario does not prima facie appear to be grave enough to continue suspension of their CB license."

32. The said order further noted that the imports in question were made in the year 2012. Since the matter was more than 3 years old and also considering that the allegations of not producing original scripts by the CBs to Customs at the time of clearance of import consignment may not be prime-facie considered such a grave offence, it was concluded that the continuation of suspension was not warranted. The said order of the Commissioner of Customs (General) refers to the statement made by Mr Ramesh Chadha, proprietor of M/s Kirti Cargo where he spoke of utilization of the scripts for payment of customs duty in the Bills of Entry filed on behalf of M/s Shyama Corporation. He stated that "the details were provided by Mr Divakar Sharma, his G-Card holder". This aspect of the matter does not find mention in the grounds of detention in case of the Detenue.

33. In view of the above order of the Commissioner of Customs, it becomes clear that it is not a simple case where the Detenue could have just hacked into the EDI System of Customs and tampered with the details the licenses, as is alleged. Unless the officers of the Customs Department were themselves involved, which angle is still under investigation, it is difficult to accept that the Detenue was the *one who was involved in the racket of tampering with the licenses. Further, co-accused Mr Vinod Kumar Pathror is still said to be a PO.*

24. Then the appellant cannot be held to be liable for penal action under CBLR. It is also alleged that the appellant has not followed the KYC norms and failed to verify the details about the duty scrips, which were utilised for the purpose of payment of customs duty from the DGFT site. In this regard, we find that the appellant as CHA is only required to verify the KYC norms as per the documents made available to him. And there is no requirement of physically verifying business or residential premises of the importers which also included the fraudulent obtaining of Licence/ duty credit scrips. We place our reliance on the decision of Hon'ble this Tribunal in case of **M/s Him Logistics Pvt. Ltd. vs. Commissioner of Customs, New Delhi [2016(3318) ELT (725)(Tri-Del)].** We also find that the Ld. Commissioner has not addressed to the various contentions made by the appellant regarding the non-observance of procedures required for conducting the inquiry as per the CBLR and also the Principle of Natural Justice. The inquiry officer has denied the right to cross examination to the appellant which is not negotiable under the Regulation and also various decisions of the higher judicial fora including the Supreme Court, the High Courts and the Tribunals. Similarly, giving three personal hearing vide the same letter while adjudicating the dispute is wrong and against the principle of natural justice. The vital rights that of cross examination and three personal hearing through single letter is not legal. The proceeding is thus vitiated, which out to have been considered by the Ld. Commissioner, while passing the impugned order.

25. We find that the appellant has asked for making available of certain documents/statements which they felt that would prove their innocence and would be in their favour, which was not been considered by the inquiry officer. Ld. Commissioner has thus failed to observe the procedure as prescribed under CBLR and followed the order of inquiry officer which is not legal and proper due to the various infirmities discussed above.

26. In view of above, we are of the considered opinion that the impugned order suffers inherent legal infirmities and liable to be set aside.

27. Accordingly, we set aside the impugned order and allow the appeal with consequential benefit if any.

(Pronounced in open court on 01/02/2019)

(Anil Choudhary)	**(Bijay Kumar)**
Member (Judicial)	**Member (Technical)**

Tejo