

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
REGIONAL BENCH AT HYDERABAD**

Division Bench – Court No. – I

**Customs Appeal No. 30471 of 2024**

(Arising out of Order-in-Original No. VIZ-CUSTOM-000-COM-09-2024-25 dt.16.08.2024  
passed by Principal Commissioner of Customs, Visakhapatnam)

**Rich Mark Shipping and Logistics Pvt Ltd**

D.No.31-33-121/1, Presidency Towers, Assam Gardens,  
Neelamma Vepachettu, Visakhapatnam, AP – 53 0020

**.....Appellant***VERSUS***Principal Commissioner of Customs  
Visakhapatnam - CUS**

4<sup>th</sup> Floor, Customs House, Port Area,  
Visakhapatnam, Andhra Pradesh – 530 035

**.....Respondent****Appearance**

Shri Dr. L. Venkateswara Rao, Advocate for the Appellant.  
Shri A. Rangadham, AR for the Respondent.

**Coram:**

**HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)**  
**HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)**

**FINAL ORDER No. A/30011/2025****Date of Hearing: 13.12.2024****Date of Decision: 16.01.2025****[Order per: A.K. JYOTISHI]**

M/s Rich Mark Shipping and Logistics Pvt Ltd., (hereinafter referred to as the Appellant) are in appeal against the OIO dt.16.08.2024 (impugned order) passed by the Principal Commissioner of Customs, Visakhapatnam. The Adjudicating Authority, vide the impugned order, has, inter alia, revoked the Customs Broker License No. 02/2011 issued to the appellant under Regulation 14 of Customs Brokers Licensing Regulations, 2018 (CBLR) for contravening the provisions of Regulation 10(d) & 10(e) and also imposed penalty of Rs.50,000/- as well as forfeiture of security deposit under relevant provisions of CBLR.

2. The brief facts of the case are that the appellants are Customs Broker having Customs Broker License No. 02/2011. It was noticed by the

department that the appellant, acting as an importer, had imported a consignment, vide Bill of Entry No.5008577 dt.11.03.2023, where the goods were declared as 'Dried Dates Grade-3', whereas on examination, it was revealed that 'Areca Nut' was also concealed among the bags of 'dried dates'. Therefore, in view of the said mis-declaration and follow up investigation, department felt that there was an attempt to smuggle which attracted various penal provisions including confiscation of the contravening goods for which a SCN was issued to the appellant, acting as an importer for the said consignment. However, since in this case while the importer was the appellant, acting as importer, the Custom Broker for the said import was also the appellant, acting as customs broker and therefore, separate proceeding was contemplated under CBLR, 2018 against them. After due process, a SCN dt.13.03.2024 was issued to the appellant proposing, inter alia, revocation of license in terms of regulation 14. The SCN was adjudicated by the Commissioner vide Order dt.16.08.2024. The appellants are in appeal against the said impugned order.

3. Learned Advocate for the appellant has, inter alia, submitted that the said revocation of license is bad in law on various counts including, inter alia, non-adherence to the procedure prescribed under CBLR, 2018, as also not having sufficient grounds to sustain their charges of violation under regulation 10(d) & 10(e) of CBLR. He has submitted that as per provision of regulation 10(d), there is an obligation cast on the Custom Broker to advise his client to comply with the provisions of the Act and in case of non-compliance, he shall bring the matter to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. As per the allegation in the enquiry report of Deputy Commissioner cum Enquiry Officer, it was held that Custom Broker failed to bring (i) discrepancies in the dates of commercial invoice and purchase order (ii) that as per Bill of Lading No. DXBCB23001240, the date of containers on board is 20.03.2023 whereas, as per Phytosanitary inspection certificate of the consignment, it is 21.03.2023 and (iii) on verifying the investigation report along with RUD submitted by the SIIB, a copy of email dt.21.08.2023 was found from the supplier for the above points in favour of the appellant, which, however, was not considered sustainable by department. Therefore, he concluded that Custom Broker had failed to properly advise their client regarding rules and regulations of Customs Act and other allied Acts. Learned Advocate submits

that the said averment by the enquiry officer is not correct, wherein, the discrepancies pointed out by the department have already been duly clarified by the supplier of the goods, as under:-

- a) The dates on the purchase order and the invoice should be vice-versa. The date should be read as 06.02.2023 for invoice and the purchase order date should be 03.02.2023. The mishap happened as the remittance is still pending against the said invoice and is the reason why the error in dates has been made by their accounts department.
  - b) That the export containers were fumigated on 12.02.2023 and were kept in storage for 72 hours as per the international fumigation Rules; the containers were checked again by the fumigation department on 16.02.2023 for rechecking of the goods. The same report was forwarded to the Phytosanitary department on 17.02.2023. As it was Friday and the Govt. offices work only up to 12PM, it was not possible for them to complete the other formalities on the same day. The export containers were loaded on 20.02.2023 and all the reports and the Bill of Lading copy was forwarded to the Phytosanitary department on 21.02.2023 and they issued the certificate on 22.02.2023. The supplier vide letter dt.21.08.2023, therefore, clarified that even though the samples were tested prior to shipment of containers, due to continuous holidays the report was issued subsequently.
4. He also clarified that the content of the letter dt.21.08.2023 has never been disputed by the department as mentioned at Para 31 of SCN dt.06.03.2023 and the department has also accepted the submission of the supplier as well as the submission of the importer that no payment was made in respect of Bill of Entry No.5008577 dt.11.03.2023. He further submits that department was at liberty to crosscheck and conduct overseas investigation if they had any doubt about the genuineness of the averment made by the overseas supplier or about the authenticity of the documents itself. He has further submitted that the alleged discrepancy in the dates of invoice and purchase order as well as phytosanitary certificate, which were also duly explained, has otherwise no bearing on the valuation, declaration

of the impugned goods, etc., Therefore, the alleged violation of regulation 10(d) of CBLR is not sustainable on these grounds.

5. Similarly, in respect of department's allegation of violation of regulation 10(e) of CBLR, that the custom broker should have exercised due diligence to ascertain correctness of any information which he imparts to the client and since he has failed in his obligation, therefore, they have violated the provision of regulation 10(e) of CBLR. According to the learned Advocate, the provision of regulation 10(e) casts an obligation on custom broker/appellant to exercise due diligence in communicating correct information to a client with reference to any work related to clearance of cargo and since there is nothing in the SCN dt.13.03.2024 that the said appellant had imparted any wrong information to the importer, the said regulation 10(e) is also not applicable. The department has not pointed out as to what due diligence he has not exercised in imparting any information to his client i.e., the appellant, in the capacity of importer. He has relied on various case laws as under in support of his contention that allegation of non-compliance of regulation 10(e) of CBLR is not sustainable.

- a) MK Enterprises Vs Pr. CC (Gen.), Mumbai [2024 (1) TMI 98 – CESTAT Mumbai]
- b) Trinity International Forwarders Vs CC (Prev.), Jaipur [2024 (17) CENTAX 314 (Tri-Del)]
- c) MK Shah & Co Vs CC (Airport & ACC) [2023 (2) CENTAX 34 (Tri-Cal)]
- d) Kunal Travels (Cargo) Vs CC (I & G), IGI Airport, New Delhi [2017 (3) TMI 1494 – Delhi]

6. Learned Advocate further submits that there are catena of judgments wherein it has been held by the Tribunal that the charges under regulation 10(d) & 10(e) cannot be made against custom broker since custom broker operates on the basis of documents supplied to him and does not physically see goods before their receipt in the custom area. As custom broker cannot detect overvaluation and mis-classification from the documents supplied by its clients without examination of goods, charge of violation of regulations 10(d) & 10(e) of CBLR would not be tenable.

7. Another major argument taken for non tenability of the impugned order is that there has been non-adherence to the time line stipulated under

regulations 16(1), 16(2) & 17(1) of CBLR, 2018 read with CBEC Circular No. 09/2010 dt.08.04.2010. Therefore, on this count itself, the order is required to be set aside. He has relied on various judgments as under in support of this contention:-

- a) Leo Cargo Service Vs CC (Airport & Gen.), New Delhi [2022 (382) ELT 30 (Del)]
- b) Pragati Overseas Agency Vs CC (Airport & Admn), Kolkata [2018 (363) ELT 169 (Tri-Kolkata)]
- c) HSN Shipping Vs CC, Chennai [2020 (372) ELT 689 (Madras)]
- d) CC (Gen.) Vs Atharva Global Logistics [2016 (338) ELT 682 (Del)]
- e) Rishad Shipping & Clearing Agency Ltd Vs CCE & CGS, Indore [2022 (1) ELT 315 – Tribunal Delhi]
- f) KTR Logistics Pvt Ltd Vs CC, Chennai [2020 (371) ELT 685 (Mad)]

8. He further clarifies that even going by the department, the mandatory nature of time line stipulated under CBLR, 2018 has already been accepted by the Principal Commissioner of Customs during the proceedings and therefore, there should not be any doubt regarding its mandatory compliance and since in this case this time line has not been adhered to, the impugned order is required to be set aside. He further states that even though in his statement Mr. K.V. Sampath Kumar, Managing Director of the appellant company, in his capacity as customs broker, has accepted the failure of compliance with regulations 10(d) & 10(e) of CBLR, 2018, the said assertion is not admitted and in fact, disputed, as the same is contrary to the evidence on record and without any corroborative evidence. He also relies on the stand taken by the Adjudicating Authority with regard to the prosecution against Mr. K.V. Sampath Kumar, wherein, the department, while conceding that the threshold limit is above Rs. 2 Crores for launching of prosecution, which is met in this case, had conceded that the nature as well as the quality of evidence collected in the subject case may not be sufficient to establish the case beyond reasonable doubt. Accordingly, the department submitted that they are not going to launch prosecution against Shri K.V. Sampath Kumar and requested for closure of the subject.

9. On the other hand, the department has, apart from reiterating the observations and findings in the impugned order, submitted that a lot of

trust and responsibility is placed on the custom broker and if there is breach of trust then the consequences have to be followed in terms of CBLR, 2018. They have relied on the following case laws:-

- a) Sriaanshu Logistics through Proprietor Vs CC (Gen.) [2024 (3) TMI 706 – Delhi HC]
- b) Noble Agency Vs CC, Mumbai [2002 (2) TMI 171 – CEGAT, Mumbai]

10. Further, they have also submitted that time lines prescribed under CBLR are not mandatory in nature, as held in catena of judgments and therefore, if there has been any violation on this count, that alone would not be sufficient to negate the findings of the Adjudicating Authority leading to revocation of license. They have relied, inter alia, on the following case laws:-

- a) Prl CC (Gen.), Mumbai Vs Unison Clearing Pvt Ltd & Ors [2018 (4) TMI 1053 – Bombay HC]
- b) Chairman LIC of India & Ors Vs A Masilamani [2012 (11) TMI 1083 – SC]
- c) Burleigh International Vs CC (Import of General) [2014 (5) TMI 1105 – Delhi HC]
- d) M/s Bose Enterprise & Anr Vs Union of India & Ors [2011 (3) TMI 1608 – Calcutta HC]
- e) UOI Vs RS Saini [1991 (3) TMI 391 – SC]
- f) M/s Rubal Logistics Pvt Ltd Vs CC (Gen.) [2019 (6) TMI 1230 – CESTAT New Delhi]

11. He also submits that suspension of license of appellant, as custom broker and imposition of penalty on appellant, as importer will not lead to double jeopardy relying on the judgment of Hon'ble Madhya Pradesh High Court in the case of Thameem Ansari Vs State of Madhya Pradesh [2020 (3) TMI 900 – Madhya Pradesh HC], wherein, it was held that when there are two distinct offences made up of different ingredients, embargo under Article 20(2) or Section 26 of General Clauses Act, 1897 has no application, though the offences may have overlapping features.

12. Heard both sides and perused the records.

13. In the present appeal, the action under CBLR has been proposed against the appellant in their capacity as custom broker, who was engaged in clearing Bills of Entry for M/s Rich Mark Shipping & Logistics Pvt Ltd, in the capacity as importer. It is an admitted fact that on examination of the container there was gross mis-declaration vis-à-vis in the Bills of Entry filed by the appellant on behalf of the importer. It is also an admitted position that based on investigations conducted by the department, one SCN was issued to the appellant in their capacity as importer for the alleged violations under the Customs Act proposing, inter alia, confiscation of goods and imposition of penalty, etc. Additionally, a separate action was initiated for suspension and subsequent revocation of license granted to the appellant in their capacity as custom broker. While, the proceedings in respect of SCN issued to the appellant in their capacity as importer has been concluded and the Adjudicating Authority has already confiscated the goods and imposed the penalty, etc., and appellant, as importer, has reportedly gone in appeal, the proceedings initiated under CBLR has culminated in revocation of license as well as imposition of penalty and forfeiture of security deposit, which is the subject matter of this appeal.

14. It has to be clearly understood that the appellant is having two different and distinct roles. One, as an importer for the said consignment, which was detected by the officers and subsequently, after due process, the alleged contravening goods were confiscated and two, as a custom broker, who had carried out the duty as custom broker in relation to the said import. The violation under the Customs Act by the importer and violation of CBLR provisions by the custom broker are two distinct proceedings, which are to be decided based on the relevant applicable facts and relevant evidence despite some overlapping facts and therefore, the decision in respect of one SCN issued under different Act cannot be relied upon for deciding the case in relation to separate proceedings under different Act/Regulation. In fact, that is why these two SCNs and proceedings are to be kept separate without intermixing, as a decision of one cannot be relied upon in another proceeding, though relevant facts may be referred to. It is noted that SCN dt.06.03.2024 issued to the appellant, acting as imported, has also been relied upon in the present SCN. With this distinction, we now proceed to examine the charges leveled against the appellant and the impugned order, whereby the license has been revoked.

15. On going through the SCN, it is obvious that the SCN dt.13.03.2024 has been issued in the backdrop of case made by the department in relation to detection of contravening goods covered under Bill of Entry No.5008577 dt.11.03.2023 and for which a separate SCN dt.06.03.2024 for invoking various section of the Customs Act has been issued. In the backdrop of the same factual matrix, another proceeding was initiated against the appellant under CBLR, 2018. The facts, in brief, are that a note dt.21.03.2023 was sent to Custom Broker Section, Customs House, Visakhapatnam informing about incident of illegal import of 'Areca Nuts' in the guise of 'Dried Dates' by the appellant for further necessary action as deemed fit and the Principal Commissioner of Customs on being satisfied immediately suspended the customs broker license vide Order dt.24.03.2023. Subsequently, in accordance with the procedure in terms of regulation 16(2) of CBLR an opportunity was extended to the appellant for personal hearing. However, the appellant neither appeared nor sent any submissions and instead sought certain postponement. However, keeping in view the prescribed time schedule, which is required to be followed with respect to suspension of license as per regulation 16(2), an exparte continuation of suspension order was issued on 11.04.2023. Being aggrieved, the appellant went to the Hon'ble High Court of Andhra Pradesh and in terms of the order, another date of personal hearing was fixed on 10.08.2023 and after hearing the case, continuation of suspension order was issued on 06.10.2023.

16. Thereafter, following detailed procedure and also considering the Enquiry report of the Enquiry officer, the Adjudicating Authority has come to the conclusion that there has not been any default in the time line prescribed for concluding the proceedings under CBLR for suspension or revocation of license and also that there is clear violation of provisions under said regulations 10(d) & 10(e) of CBLR, 2018. Therefore, in the factual matrix, as discussed above, the following two issues are required to be decided:-

- a) Whether, in the given facts of the case, there has been any breach of time line prescribed under CBLR, 2018 for suspension or revocation of license granted under CBLR.
- b) Whether, in the given facts of the case, there is any breach of the provisions under regulations 10(d) & 10(e) of CBRL, 2018.

(a) Whether, in the given facts of the case, there has been any breach of time line prescribed under CBLR, 2018 for suspension or revocation of license granted under CBLR:-

17. A custom broker is regulated by Customs Brokers Licensing Regulations, 2018, which has been issued vide Notification No.41/2018 dt.14.05.2018 in exercise of powers by the CBEC under Section 146(2) of the Customs Act. The regulations, inter alia, provides for regulating affairs of customs brokers including appointment, grant of license, period of validity of license, etc. Regulation 10 provides for certain obligations, which the custom broker shall be bound to follow or comply with. These regulations, inter alia, provides for obligation under 10(d) & 10(e), which are the allegations in the SCN and the breach of which is the basis for revocation of license. For ease of reference regulations 10(d) & 10(e) of CBLR are reproduced below:-

*10. Obligations of Customs Broker – A Customs Broker shall –*

*(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;*

*(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;*

18. Therefore, it can be seen that out of 17 obligations, the department has alleged only two violations against the appellant or in other words, they have not been found to have violated any other obligations vis-à-vis the consignment in respect of which they acted as a custom broker.

19. There is a provision of revocation of license or imposition of penalty under Section 14 of CBLR wherein 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:-

- 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.

20. Similarly, a license can be suspended in terms of provisions under Section 16 of the regulations. Under Section 16(1) of CBLR, there could be an immediate action for suspension on, prima facie, belief of violation, whereas, in terms of Section 16(2), the same suspension order can either be continued or it can be revoked within 15 days from the date of hearing granted to the customs broker, which has to be accorded within 15 days of such suspension.

21. In so far as the procedure for revocation of license or imposition of penalty is concerned, the detailed procedure along with time line has been specified in Section 17 of the regulations.

22. As per Section 17(1), the Principal Commissioner or Commissioner of Customs is required to issue a notice in writing to the customs broker within a period of 90 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. Further, by way of explanation to this sub-clause, the "offence report" means a summary of investigation and prima facie framing of charges into the allegation of acts of commission or omission of the customs broker under these regulations which would render him unfit to transact business under these regulations.

23. In the backdrop of these statutory provisions, it has to be analyzed as to which document is to be treated as offence report for the purpose of computing 90 days under Section 17(1). It is seen that in terms of a note issued vide F.No.S22/04/2023-SIIB PT.I dt.21.03.2023, a provisional suspension order dt.24.03.2023 was issued to the customs broker in exercise of the powers conferred under regulation 16(1) by suspending the customs broker license with immediate effect, being fully satisfied that the

customs broker had, prima facie, not fulfilled their obligation as laid down under regulation 10(d) & 10(e) of CBLR, 2018. Therefore, what is obvious is that the suspension order dt.24.03.2023 was issued in exercise of powers under regulation 16(1) relying on the note dt.21.03.2023. Since this suspension order clearly brings out the grounds on which the said suspension was carried out, therefore, it is obvious that for the purpose of section 17(1), the date of receipt of offence report, in the given factual matrix, would be 21.03.2023 and not what the Adjudicating Authority has held in Para 31 to 35 of the impugned order. He has examined the note dt.21.03.2023 and observed that there were no charges framed against the appellant in the said note and therefore, he has taken the investigation report received by the customs broker section from SIIB on 27.02.2024 as the date of receipt of offence report and therefore, held that there has not been any delay in issuing the notice dt.13.03.2024.

24. In this regard, we have perused the suspension order dt.11.04.2023 vide which Commissioner, in exercise of his power under Section 16(2), has continued the suspension averring that he was fully satisfied that customs broker has, prima facie, not fulfilled their obligation as laid down in regulations 10(d) & 10(e) of CBLR. However, as cited supra, in Para 7 of the impugned order, it is clearly indicated that suspension order dt.24.03.2023 was issued after being fully satisfied that the customs broker has, prima facie, not fulfilled their obligation as laid down in regulations 10(d) & 10(e). Therefore, the question is while the Adjudicating Authority feels that there is nothing in the offence report to consider it as "offence report" for the purpose of regulation 17(1), it is not forthcoming as to how within two days of the said note, the suspension order was issued alleging violation of only 10(d) & 10(e) when there are 17 obligations, which the customs broker is obliged to follow. In fact, even for the continuation of the suspension under regulation 16(2), the same breach of regulations 10(d) & 10(e) has been relied upon. Thus, there was enough material for the department to consider the offence and framing of charges and therefore, there is much force in the argument of the appellant that note dt.21.03.2023 is the offence report in terms of explanation to Section 17. Admittedly, the SCN has been issued clearly beyond 90 days as stipulated under the provisions. Admittedly, department all along while issuing suspension order or extension order was considering these time lines as sacrosanct and insisting that the proceedings

are required to be carried out within time line. Para 9 of suspension letter dt.11.04.2023 and Para 10 of extension of suspension letter dt.06.10.2023 under regulation 16(2), clearly manifests that time line provided was treated as mandatory time limit. The exception was made to overlook this mandatory time line only in view of Order of Hon'ble Telangana High Court passed in Writ Petition No.12562 of 2023, and another suspension order was passed under regulation 16(2) on 06.10.2023. Therefore, on this count, they cannot now take a stand that it is not a mandatory time line and it is only directory time line.

25. In this regard, the appellants have mainly contended that in view of statutory provisions, it is an undisputed fact that SCN has been issued only on 13.03.2024, whereas the offence report was received, vide note dt.21.03.2023. For the reasons discussed, we find in the context that the date of receipt of note is to be treated as date of receipt of offence report and therefore, there is a delay of more than 90 days in issuing SCN. It is also admitted fact that violation of regulations 10(d) and 10(e) was clearly indicated in the first suspension order dt.24.03.2023 and the same has continued even in the suspension order dt.11.04.2023 & 06.10.2023, SCN and even in the final order. No additional charges or violations have been brought on record. Further, even after receipt of so called "investigation report", which is being referred to as "Offence report" by the Adjudicating Authority to justify meeting the time line, no new charges were leveled. Since the violation of regulations 10(d) & 10(e) was, prima facie, found to be invokable in the light of note dt.21.03.2023 itself, which gave details of case against the appellant, as importer, and no further charges or violation could be fastened on them as customs broker, the assertion of department that it would not constitute an "offence report" is not correct. Incidentally, this "investigation report" is not a relied upon document to the SCN for calculating time limit. It is also felt that there is no provision for "provisional suspension" in CBLR, 2018 and only a suspension issued under regulation 16(1) can be further extended under regulation 16(2) of CBLR. It is also to be noted that in terms of provisio to regulation 16(2), further procedure is to be regulated by regulation 17, which, ultimately, would culminate in either suspension order getting revoked or license getting revoked.

26. We have also perused the case laws relied upon by the appellant. In the case of HSN Shipping Vs CC, Chennai (supra), Hon'ble High Court relied upon the decision of Division Bench of High Court in the case of Santon Shipping Services Vs CC, found that the SCN issued beyond 90 days was not maintainable and therefore quashed. In the case of CC (Gen.) Vs Atharva Global Logistics (supra), Hon'ble High Court held that SCN has to be issued within 90 days. The Coordinate Bench at Delhi in the case of Rishad Shipping & Clearing Agency Ltd Vs CCE & CGS, Indore (supra), also held time line as mandatory after examining conflicting decisions of various High Courts and Tribunals. At Para 36, it was observed that there are two sets of decisions, where the Delhi High Court and Madras High Court have held that time limit prescribed for issuance of notice within 90 days from the date of receipt of offence report is mandatory in nature and the Bombay High Court and Kolkata High Court have held that issuance of notice within stipulated time limit is not mandatory but directory in nature. This Tribunal has also considered the judgment in the case of Principal CC (Gen.), Mumbai Vs Unison Clearing Pvt Ltd & Ors (supra) and OTA Fallons Forwarders Pvt Ltd Vs Union of India [2018 (362) ELT 947 (Cal.)]. In fact, at Para 42, the Tribunal examined as to how to deal with the situation where there are conflicting decisions of Hon'ble High Courts and relied on the Five Member Larger Bench decision of the Tribunal in the case of Collector of Central Excise, Chandigarh Vs Kashmir Conductors [1997 (96) ELT 257 (Tri)]. The observations at Para 42 is relevant and are reproduced below:-

*"42. The issue, therefore, is which set of decisions should be followed. Fortunately, this issue has been examined by a Larger Bench (Five Member Bench) of the Tribunal in Collector of Central Excise, Chandigarh v. Kashmir Conductors [1997 (96) E.L.T. 257 (Tri.)]. One issue that was addressed by the Larger Bench was what should be done when the Tribunal is faced with conflicting decisions of High Courts. The five member Larger Bench of the Tribunal held that if the jurisdictional High Court has taken a particular view on an interpretation or proposition of law, that view has to be followed, but if the jurisdictional High Court has not expressed any view in regard to the subject matter and there are conflicting views of other High Courts, then the Tribunal will be free to formulate its own view. The relevant paragraphs of the decision of the Larger Bench are reproduced below :-*

*"10 The question as to how the Tribunal should proceed in the face of conflicting decisions of High Courts has been considered in M/s. Atma Steels P. Ltd. and Others v. Collector of Central Excise, Chandigarh reported in 1984 (17) E.L.T. 331 wherein the Larger Bench consisting of five Members held that, in view of its All India jurisdiction and peculiar features, the Tribunal*

*cannot be held bound to the view of any one of the High Courts, but has the judicial freedom, to consider the conflicting views, reflected by different High Courts, and adopt the one considered more appropriate to the facts of a given case before the Tribunal. The Tribunal also indicated that this should be so, irrespective of the fact whether one particular assessee was within the jurisdiction of a specified High Court or the original adjudicating authority was located there. The judgment of the Apex Court in the case of M/s. East India Commercial Co. Ltd. v. Collector of Customs, Calcutta reported in 1983 (13) E.L.T. 1342 (S.C.) was brought to the notice of the Larger Bench, but, was not adverted to sufficiently in the course of discussion. In the East India Commercial Co. case, one of the questions for consideration was whether the interpretation given by the Calcutta High Court to Section 167 of the Sea Customs Act, 1878 would be binding on authorities functioning within the jurisdiction of the High Court and the Supreme Court held that "it is implicit in the power of supervision conferred on a superior Tribunal that all the Tribunals subject to its supervision should conform to the law laid down by it & We, therefore, hold that the law declared by the highest Court in the State is binding on authorities or Tribunals under its superintendence & .". This decision has been followed by the Bombay High Court in CIT v. Godavaridevi Saraf reported in 1978 (2) E.L.T. (J 624).*

*10.1 In the case of U.P. Laminations v. Collector of Central Excise, Kanpur reported in 1988 (35) E.L.T. 398 (T), the Tribunal has followed the Supreme Court judgment in the case of East India Commercial Co. case and set aside the show cause notice issued against the appellants therein as it was in direct violation of the law laid down by the Allahabad High Court within whose jurisdiction both the manufacturer and the Collector of Central Excise were situated.*

*10.2 In a recent decision of the Tribunal in the case of Madura Coats v. CCE, Bangalore reported in 1996 (82) E.L.T. 512, it has been held that the decision of a particular High Court should certainly be followed by all authorities within the territorial jurisdiction of that High Court and that the authorities in another State are not bound to follow the views taken by a particular High Court in the absence of a decision by the jurisdictional High Court with regard to constitutionality of a provisions. The Tribunal has held that since the adjudication of vires of a provision of a statute or Notification is outside the jurisdiction of the Tribunal and the jurisdictional High Court i.e., the High Court having jurisdiction over the authority and the assessee, has not struck down the provision or Notification as ultra vires, the Tribunal has to follow the same and the assessee is entitled to take the stand that he is entitled to the benefit of the particular provision or Notification since the jurisdictional High Court has not struck it down, even though some other High Court may have done so. In case the conflict of decisions among High Courts does not relate to vires of any provision or Notification, it has been held that the Tribunal has to proceed in accordance with the decision in Atma Steels (P.) Ltd. in the light of the decision of Supreme Court in the East India Commercial Company case i.e. where the jurisdictional High Court has taken a particular view on interpretation or*

*proposition of law, that view has to be followed in cases within such jurisdiction. If the jurisdictional High Court has not expressed any view in regard to the subject matter and there is conflict of views among other High Courts, then the Tribunal will be free to formulate its own view in the light of Atma Steels (P.) Ltd. case; however, there is a decision of only one High Court in regard to disputed interpretation or proposition of law, the Tribunal is bound to follow that order since it is not at liberty to disregard the solitary High Court decision."*

27. Therefore, relying on the ratio of Rishad Shipping & Clearing Agency Ltd Vs CCE & CGS, Indore (supra), we note that since no decision on this issue from the jurisdictional High Court has been brought to our notice and that there are conflicting decisions of Hon'ble High Courts of Delhi, Madras, Calcutta & Bombay, this Tribunal will be free to formulate its own decision. Since in this case we have already found that department itself was describing the time line provided in CBLR as sacrosanct, hence we rely on the judgments of Hon'ble High Court of Delhi and Madras, wherein, it was held that time line prescribed in the CBLR is mandatory and since in the present appeal the SCN has been admittedly issued beyond 90 days, thus, on this count itself, the SCN is not tenable and subsequent revocation of license based on this SCN is also liable to be set aside. However, even though the order revoking the license is not sustainable on this ground itself, we also intend to examine the issue on the breach of provisions under regulations 10(d) & 10(e) as below.

(b) Whether, in the given facts of the case, there is any breach of the provisions under regulations 10(d) & 10(e) of CBRL, 2018:-

28. As can be seen from Regulation 10(d) supra, the customs broker is required to advise his client to comply with the provisions of the Act and in case of non-compliance, he is required to bring the matter to the notice of Deputy Commissioner of Assistant Commissioner of Customs. In this case, it is apparent that the client was the same appellant company but in the capacity of importer. Therefore, there is nothing on record that they had not advised their client about the statutory provisions. We observe that the appellant had, vide letter dt.23.08.2023 submitted letter dt.21.03.2023 issued by Noor Al Shawal General Trading LLC, whereby, the supplier had clarified the discrepancies noticed in the documents. We find that the reasons given by the supplier are quite plausible and there is no ground to dispute the veracity, thus, there are reasons this should not be accepted by

the department unless an independent enquiry by department would have revealed that these documents as fake or submission made therein were incorrect. There is nothing on record to that effect. On the contrary, the department has in fact, accepted that no payment has been made in respect of the goods imported under Bill of Entry No.5008577 dt.11.03.2023. Therefore, the charges leveled against the appellant under Regulation 10(d) are not tenable, in the facts of the case. Moreover, exactly what provisions of the Act or other allied Acts or Rules were not advised by the appellant to his client is also not forthcoming in the charges leveled against the appellant in the SCN. Therefore, unless there is a very clear ground about the charges leveled, the appellant would not get an opportunity to defend his case. For example, if it was regarding wrong classification or wrong valuation, there is nothing on record that he has advised anything to the contrary. The documents where mismatches have been noticed are in relation to the invoice dates, purchase order and phytosanitary certificate, etc., and such inconsistencies, even though explained later by the supplier, would not have been a cause for treating wrong advice to the client in relation to any of the provisions of the Act. We also observe that there is no allegation that the customs broker had submitted false or forged documents for clearance of the goods imported under Bill of Entry and that documents submitted by him were tampered with or suppressed by the customs broker before presentation to the customs authorities and there is nothing on record to show that the appellant, in their capacity as customs broker, were privy to the activity of alleged mis-declaration by the appellant, in the capacity of importer, except for a statement dt.17.08.2023 of Shri K.V. Sampath Kumar, Managing Director of appellant company, wherein, he has, inter alia, accepted his failure to comply with the provisions of Regulations 10(d) & 10(e). We find that while there are some questions addressed to Shri K.V. Sampath Kumar, Managing Director, relating to compliance with regulations of CBLR, he has given statement that he has failed to comply with the same but the said statement, to the extent it is applicable to the appellant, needs to be corroborated with other evidence, which is not forthcoming. We find that the entire SCN No.19/2023-24 dt.06.03.2024 along with RUDs has been relied upon in the SCN dt.13.03.2024. It is to be noted that the SCN dt.06.03.2024 is the detailed SCN to the appellant in relation to import of mis-declared areca nut, which is the subject matter of different proceeding

and hence no bearing as such on the proceedings under CBLR to the extent of alleged violations of obligations. Therefore, a general reliance on the entire SCN, without elaborating which parts were relied upon for establishing the breach of regulation 10(d) by the customs broker, would not be correct. Thus, the charges under regulation 10(d) are not sustainable.

29. Similarly, the provisions under regulation 10(e) is also very clear, which essentially provides for that the customs broker needs to exercise "due diligence" in communicating correct information to his client with reference to any work relating to clearance of cargo. Nothing in the SCN dt.13.03.2024 is showing as to what wrong information was provided by the appellant, in their capacity as customs broker to the appellant, acting as importer. Merely because they are the same company, it could not be presumed that everything which was known to the company, as importer was also known to the appellant, as customs broker, unless detailed evidence is brought on record. The plea by the appellant that after the examination of the goods, it was the customs broker who duly sought clarification from the supplier, vide email and in fact, got certain clarification dt.19.03.2023 & 20.03.2023 from the supplier indicating, inter alia, that they would like to apologize for the error in the above shipment and also informing that the goods which they had ordered in 2x40 ft. container were still lying in warehouse at Jabel Ali and the shipment, which is received by them was not meant for them and it was mistake of warehouse people for loading wrong cargo in the container. Thus, there is a clear trail of letter and emails showing that they had approached the supplier after noticing the discrepancy found after opening of the sealed container. Department has not disputed that these emails are fake and have only said that the letter dt.21.08.2023 appears to be an afterthought. Therefore, this would support the submission of the appellant that they had not only exercised due diligence but were also trying to ascertain the reasons for the discrepancy in relation to import made by the appellant/importer, where they were acting as customs broker also. Therefore, at the first opportunity itself the customs broker has in fact, tried to ascertain the correctness of information and had filed the Bill of Entry based on all the documents which were otherwise found to be genuine. This, in itself, would suffice that they had exercised reasonable due diligence. It is also to be noted that out of 17 obligations, the department would charge only on two counts i.e., 10(d) & 10(e) and

therefore, in respect of other obligations, they were not found to be non-compliant. Thus, to invoke 10(e) in this case without substantial evidence directly implicating them in positive manner in smuggling of goods, is not tenable.

30. Revenue is also relying on certain case laws in support that there is ground for invoking regulation 10(d) as well as 10(e) of CBLR. In the case of Sriaanshu Logistics through Proprietor Vs CC (Gen.) (supra), the facts are that the appellant themselves have admitted permitting use of their license to the third party for monthly remuneration which is not the case here and therefore, this decision is not applicable. In the case of Noble Agency Vs CC, Mumbai (supra), this cannot be relied as the facts are different from the present case. In the case of Commissioner of Customs Vs M/s K.M. Ganatra & Co. [2016 (2) TMI 478 – SC], the Hon'ble Supreme Court found that there has been number of violations by the respondent and as the factual matrix would expose it, it was a serious violation. This case again presupposes that there has been a serious violation by the customs broker, whereas, for the reasons already discussed in the foregoing paras, we do not find that those are substantiated. Department is also relying on the judgment in the case of M/s Rubal Logistics Pvt Ltd Vs CC (Gen.) (supra) in support that where the CHA themselves admit that there is lack of due diligence, the charges for imposition of penalty under regulation 10(e) would sustain. We have perused the orders and we find that in this case, though the proposal for revocation and forfeiture of security deposit were not upheld at the time of adjudication itself, penalty was imposed. Tribunal felt that customs broker was negligent in the given factual matrix and hence penalty was upheld. We do not find any negligence as such on the part of customs broker, amounting to lack of exercising due diligence and hence did not find merit on imposition of penalty. The appellants have also relied other judgments. What various tribunals have considered that in a given factual matrix, where there is a serious violation by the customs broker i.e., transferring of license to third party, impersonation filing of documents without authority of the exporter/importer, violation of other obligations including KYC, misuse of ID, etc., it was held to be in violations to the provisions under regulations 10(d) & 10(e) of CBLR. In this regard, we have already observed that none of these charges have been made or brought on record. Even at the cost of repetition, it is to be pointed out that non-compliance of the provisions

under CBLR alone has to be examined for the action under CBLR and evidence without implicating under Customs Act for breach of any explicit provisions under Customs Act cannot be relied upon by the authority to take action under CBLR provisions. If the appellants are also charged under Customs Act for the alleged misdeclared import, he will be dealt with in accordance with the provisions under the Customs Act in the proceedings relating to the improper import. It is also to be noted that while department has tried to highlight the role of customs broker in which department places trust and hence any breach has to be viewed seriously, we find that in terms of regulation 14, various grounds are there for revoking license including commission of misconduct i.e., regulation 14(c), but in the present case, it is obvious that department has relied only on regulation 14(b) by invoking regulations 10(d) & 10(e). Thus, when the grounds in SCN do not charge them with any misconduct or mistrust, etc., the same cannot be taken into account for the purpose of revocation of license, etc.

31. Therefore, we find that in view of detailed discussions relating to the factual matrix and relevant case laws relied by both sides, the impugned order dt.16.08.2024 is not sustainable on account of delay in issuing SCN as well as on account of non-substantiating the grounds for invoking regulations 10(d) & 10(e). Therefore, the impugned order revoking the license of the appellant as well as forfeiture of security deposit and imposition of penalty for violation of 10(d) and 10(e) of CBLR is set aside.

32. Accordingly, appeal allowed.

(Pronounced in the Open Court on 16.01.2025)

**(A.K. JYOTISHI)**  
**MEMBER (TECHNICAL)**

**(ANGAD PRASAD)**  
**MEMBER (JUDICIAL)**