

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Customs Appeal No.75545 of 2021

(Arising out of Order-in-Original No.01/CBLR/2021 dated 22.04.2021 passed by Commissioner of Customs (Preventive), Patna.)

**Navin Kumar, Customs Broker
(AHRPK3711ACH001)**

(Near Indian Customs Office, Main Road, Raxaul, Motihari, East Champaran-845305)

...Appellant

VERSUS

Commissioner of Customs (Preventive), Patna

.....Respondent

(Central Revenue Building, Birchand Patel Path, Patna-800001.)

APPEARANCE

Shri Arijit Chakraborty, Advocate for the Appellant (s)

Shri A.K.Singh, Authorized Representative for the Respondent (s)

**CORAM: HON'BLE SHRI P.K. CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI RAJU, MEMBER(TECHNICAL)**

FINAL ORDER NO. 75248 / 2022

DATE OF HEARING : 16 November 2021

DATE OF DECISION : 22 April 2022

P.K. CHOUDHARY :

Appellant is in appeal under Regulation 19 of CBLR, 2018¹ read with Section 129A of CA'62² against Order No. 01/ CBLR/ 2021 dated 22.04.2021³ passed by the Commissioner of Customs (Prev.), Patna thereby revoking the CB ⁴ License No. 01/ CHA/ 2007 (AHRPK3711ACH001) of the appellant/ CB under Regulation 14 and Regulation 17 of CBLR, 2018.

2. Brief facts:

¹Customs Brokers Licensing Regulations, 2018

²Customs Act, 1962

³Impugned Order

⁴Customs Broker

2.1. On the basis of an e-mail dated 17.08.2020 from the Joint Director, Directorate General of Analytics and Risk Management⁵, the respondent vide Order dated 18.09.2020 suspended the CB license of the appellant u/r. 16(1) of CBLR, 2018 upon the allegation that the appellant/ CB while handling 365 consignments of 63 'untraceable exporters', who have been identified as 'risky exporters' for their involvement in IGST refund frauds by the DGARM, failed to comply with obligations u/r. 10(n) of CBLR, 2018.

2.2. After an opportunity of post decisional hearing, vide Order dated 13.10.2020, the respondent directed continuance of the suspension of license of CB pending inquiry u/r. 17 of CBLR, 2018 and thereafter, notice dated 02.11.2020 was issued to the appellant/ CB u/r. 17 contemplating the inquiry proceeding before the Deputy Commissioner of Customs⁶, Land Customs Station/ICP, Raxaul proposing revocation of license; forfeiture of security deposit; and/or imposition of penalty u/r. 14 and 18 of CBLR, 2018 for violation of Reg. 10(a), 10(n) & 10(p) of CBLR, 2018.

2.3. The Inquiry Officer vide Inquiry Report dated 27.01.2021 held that there is violation of Reg. 10(a), 10(n) & 10(p) of CBLR, 2018 by CB since out of 63 exporters, he submitted authorization & KYC⁷ for 55 only; he verified the existence and functioning of such exporters through websites of various Government Authority and not physically and during inquiry, letters issued to 41 such exporters were 'returned' by postal authority & 12 such exporters did not respond; and, he did not maintain basic documents for past five years as required under the law. On the basis of such Inquiry Report, the impugned Order has been passed by the respondent.

3. Submission on behalf of appellant/ CB:

3.1. Ld. Advocate appearing on behalf of the appellant/ CB submitted, *inter alia*, that from paragraph 8⁸ of the Inquiry Report dated 27.01.2021 it would be evident that out of total 63 exporters,

⁵DGARM

⁶Inquiry Officer

⁷Know Your Client

⁸Page 79 of appeal

KYC declaration and authorization letters were submitted for 55 exporters under letters dated 01.12.2020 and 22.01.2021 by the CB. Further, PAN Card and Aadhaar Card of 19 exporters, GST registration and IEC of 16 exporters and Rent Agreement of one exporter was also submitted, which is not in dispute. The allegation that the letters issued to the exporters, came back with different remarks by the postal authority, cannot be attributed upon the CB since admittedly all the exporters at the relevant point of time were holding valid IEC issued by the Ministry of Commerce and Industries. He relied upon the decision of the Tribunal in the case of *Perfect Cargo and Logistics v. C.C.(Airport & General), New Delhi*⁹ to argue that issuance of valid IEC to the exporters itself pre-supposes verification of existence and functioning of the exporter as held by the Hon'ble High Court of Delhi in the case of *Kunal Travels (Cargo) v. Commissioner*¹⁰. Further reliance is placed in the decision of the Tribunal in the case of *Skytrain Services v. Commr. of Cus. (Airport & General), New Delhi*¹¹. As such, there can't be any allegation of violation of Reg. 10(a) and/or 10(n) of CBLR, 2018.

3.2. It is further submitted on behalf of the appellant that the entire case is based upon the e-mail dated 17.08.2020 of DGARM as referred at para 10¹² under the heading "Findings" of the Inquiry Report dated 27.01.2021 and thereafter only the CB was asked to produce documents w.r.t. the exporters for whom job of Customs clearance were undertaken long back and for that reason only, all the documents could not be traced out or submitted. The exports were never questioned by the Proper Officer/s of Customs at the relevant point of time of export/s or even at any later stage. The appellant being authorized CB had successfully and diligently discharged his job during such export/s. At a belated stage, on the basis of report of DGARM, proceeding against the CB and revocation of his license, which is only source of bread and butter and livelihood for all employees and their

⁹ 376-ELT-649

¹⁰ 354-ELT-447

¹¹ 369-ELT-1739

¹² Pg. 84 of Appeal

respective families, is extreme harsh and highhanded. The appellant CB had an unblemished record prior to the present proceeding. The allegation of violation of Reg. 10(p) of CBLR, 2018 cannot lead to the extreme punishment under the statute and takes away the rights of life, livelihood and trade & commerce of a citizen of India as guaranteed under the Constitution of India. In other words, the revocation of CB License in the present case is extremely disproportionate to the alleged violation. He relied upon the decision of this Tribunal in the case of *GSP Shipping & Logistics Agency v. Commr. of Cus. (Airport & Administration), Kolkata*¹³. He further relies upon the decisions of co-ordinate benches of this Tribunal in the cases of *N.T.Rama Rao & Co. v. Commissioner of Customs, Chennai-VIII*¹⁴ and *Sadanand Chaudhary v. Commissioner of Customs (G), New Delhi*¹⁵ on the issue and prayed for setting aside of the order of revocation of license.

4. Submissions on behalf of department/ respondent:

4.1. *Per contra*, it is submitted by the Ld. Authorized Representative on behalf of the department/ respondent that the CB has admittedly failed to produce all the KYC/ Authorization from each of the 63 exporters for whom he had undertaken the job of CB, in spite of several opportunities granted by the Inquiry Officer. The Inquiry Officer in his Report dated 27.01.2021 has categorically held that out of 63 exporters, KYC documents for 55 exporters could only be submitted by the CB¹⁶ and out of such 55 exporters, letters/ notices issued by the department has been returned by the postal authority for 41 exporters¹⁷ which shows that the CB has failed to discharge his obligations properly under Reg. 10(a) and 10(n) of CBLR, 2018. Further, non maintenance of proper documents by CB is apparent from

¹³376-ELT-527

¹⁴371-ELT-789

¹⁵363-ELT-1018

¹⁶Ref. para 15 of Inquiry Report dated 27.01.2021

¹⁷Ref. para 16 of Inquiry report dated 27.01.2021

the statement dated 21.01.2021 of the CB before the Inquiry Officer and the same amounts to violation of Reg. 10(p) of the CBLR, 2018¹⁸.

4.2. It is further submitted that the violation of any obligation by the CB in course of business is serious in nature and for that only the legislation has been framed keeping in view the safeguard of Government Revenue. Much reliance has been placed upon CB during clearances of import/ export consignments by the Customs Authority. One of such reliance is to know the antecedents, existence and functioning of the importer/ exporter so that the Government Revenue is not lost even at a later stage. In the present case, the inability on the part of CB in production of KYC documents for 8 exporters who are in the alert list of 'risky exporters' of DGARM itself shows that the CB has failed to discharge his obligations. The revocation of license is authorized under Reg. 14(b) and 17(7) of CBLR, 2018 and the Commissioner has rightly exercised his discretion which this Tribunal should not interfered with.

5. After hearing both the parties and going through the relevant documents placed before us, we find that the license of the appellant CB has been revoked by the respondent Commissioner upon the allegation that the CB has failed to produce KYC documents, as required under the Circular No. 9/2010 – Cus dated 08.04.2010, amended vide Circular No. 7/2015 – Cus dated 12.02.2015 & 13/2016 – Cus dated 26.04.2016, with respect to 8 exporters out of 63 exporters (marked as 'risky exporters' by DGARM) for whom the CB had undertaken the job of clearances. Such non production of documents has been held by the Commissioner as violation of Reg. 10(a), 10(n) & 10(p) of the CBLR, 2018 in consonance with the Inquiry Report dated 27.01.2021 from the Inquiry Officer/ Deputy Commissioner. The issue involved in the present appeal is whether such order of revocation of CB license is proper and reasonable in law.

5.1. We find that admittedly, the CB had undertaken the job of clearances of export consignments of 63 exporters who have been

¹⁸Ref. para 17 of the Inquiry Report dated 27.01.2021

found to be 'risky exporters' by DGARM. During the course of inquiry under CBLR, 2018, the CB has failed to produce KYC of 8 of such exporters. It is mandatory on the part of a CB to obtain KYC and authorization from each of his client prior to undertake the job of Customs clearance. It is also obligatory on the part of CB to verify such KYC documents by using reliable and independent sources. In absence of documents w.r.t. 8 exporters, we are afraid how such verifications could be made by the CB at the relevant point of time!

5.2. It is equally true that neither at the time of exports nor even thereafter, the exports of any of such exporters were taken into any dispute by the Customs authority. In absence of valid IEC, no exporter could have undertaken the export and CB could also not been able to undertake the job of processing of documents of exports before the Proper Officer of Customs. As such, it is evident that the exporters were holding valid IEC at the relevant time of exports and the CB has also brought into record the status of IEC and GSTIN of the exporters, as available from the official website of DGFT and GST authority wherefrom it is evident that each of such exporters were holding valid and active IEC and GSTIN at the relevant time. Return of Letters/ Notices issued by the Inquiry Officer, by the postal authority, is an incident at much belated stage and cannot be attributed to the obligation of CB since after completion of export successfully, it is not the obligation of a CB to keep track of his client/ exporter. There is no such obligation of CB under the CBLR, 2018. On the contrary, issuance of valid and active IEC and GSTIN by the Ministry of Commerce & Industry and the Ministry of Finance respectively to an entity presupposes its existence and activity. It is settled position of law that such verification of validity of IEC and GSTIN by the CB from the official website of the respective Ministry amounts to discharge of their obligations.

5.3. We find that the Hon'ble High Court of Delhi in the case of *Kunal Travels (Cargo)*, *supra*, has 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. 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).”

The same view has been followed by the Tribunal in the case of *Perfect Cargo & Logistics, supra*, by holding that-

“27. It is clear from the aforesaid decision of the Delhi High Court that there is no obligation on the Customs House Agent to look into the information made available by the importer/exporter. The Customs House Agent is merely a processing agent of documents with respect to clearance of goods through Customs House and he is not an inspector to weigh the genuineness of the transaction. When the Importer/Exporter Code Number was provided and before this code was issued a background check of the said importer/exporter is undertaken by the Customs Authority, there should be no doubt about the identity of the said exporter. It would be too onerous to expect a Customs House Agent to inquire into what is stated in the documents when there is a

presumption that an appropriate background check is done by the Customs Authorities. In fact, the grant of Importer/Exporter Code Number is a proof regarding verification of facts and if the grant of such a code number to an entity at the address mentioned is in doubt, then for such erroneous grant of the Importer/Exporter Code Number, the Appellant cannot be faulted."

As such, it is well settled position in law that the CB cannot be held responsible for untraceability of his client at a later stage when his client i.e. importer/ exporter was holding valid and active IEC and GSTIN at the relevant time of import/ export.

5.4. In the present case before us, the exports were completed and the Proper Officer of Customs never questioned the exports. The exporters were holding valid IEC, which is also not in dispute. Later, on recommendation of DGARM, when the letters/ notices were issued to the exporters, the same either returned or the exporters did not respond. Such a fact cannot lead to the violation of Regulation 10(a) and/or 10(n) of CBLR, 2018 on the part of CB since CB had no obligation to ensure existence and functioning of the said exporters even after completion of the exports. It is not a case where during undertaking a job of clearance of a live shipping bill by the CB, the exporter could not be traced out. Exporter being independent businessman, have always the privilege to shift his business or address at any point of time upon which the CB cannot have any control.

5.5. So far as violation of Regulation 10(p) of CBLR, 2018 is concern, we find that admittedly, the CB failed to maintain the documents and accounts of his jobs in an appropriate and proper manner for five years as required under the law. We, as such, uphold the findings of the Commissioner in this regard.

5.6. Coming to the rationality and reasonability of order of revocation of license, we find that the CB had maintained an unblemished record prior to the present case and there is no such allegation that due to non maintenance of proper record and accounts by the CB, the

Government has faced any loss of revenue. This makes the offence of CB bit less serious in nature. Regulation 14 and 17(7) of CBLR, 2018 provides as under:

Regulation 14. Revocation of licence or imposition of penalty. —

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

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

Regulation 17. Procedure for revoking license or imposing penalty.—

.....

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

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

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

We further find that Regulation 18 of the Regulations also provide for imposition of penalty as follows:

Regulation 18. Penalty.— (1) *The Principal Commissioner or Commissioner of Customs may impose penalty not exceeding fifty thousand rupees on a Customs Broker or F-card holder who contravenes any provisions of these regulations or who fails to comply with any provision of these regulations.*

(2) *The Deputy Commissioner or an Assistant Commissioner of Customs may impose penalty not exceeding ten thousand rupees on a G-card holder who contravenes any provisions of these regulations in connection with the proceedings against the Customs Broker.*

(3) *The imposition of penalty or any action taken under these regulations shall be without prejudice to the action that may be taken against the Customs Broker or F-card holder or G-card holder under the provisions of the Customs Act, 1962 (52 of 1962) or any other law for the time being in force.*

As such, for contravention of any provision or obligation under the Regulations, the CB can be visited with imposition of penalty not exceeding Rs. 50,000/- or his license may be revoked with a forfeiture of whole or part of security deposit. When the legislation provides for different penal consequences for same violation/ contravention of provisions of the Regulations, it is obvious that the degree of offence shall be the sole basis of application of penal consequence upon the offender. The adjudicator/ Commissioner is expected to apply the proportionality of punishment and not to resort to the extreme

punishment of revocation of license in each and every case mechanically. The discretion vested upon the Commissioner, is required to be exercised in judicious and rational manner as held by the Hon'ble High Court of Delhi in the case of *Ashiana Cargo Services v. Commissioner of Customs (I&G)*¹⁹ as follows:

*“8. The issue before the Court is the proportionality of the penalty awarded in this case. The CHA Regulations prescribe two penalties : suspension of the license for a particular period of time, and revocation of the license, such that it irretrievably loses its currency. Once the Commissioner reaches a decision, the CESTAT, and this Court, would not ordinarily interfere with the award of punishment, denuding the disciplinary power of the designated authority. That said, the course of action taken by the Commissioner of Customs must depend on the gravity and nature of the infraction by the CHA, and thus, the punishment must be proportional to the violation. Given the civil consequences of revocation for the CHA, read in the background of its freedom under Article 19(1)(g), this principle of law is undisputed. Casting some clarity on the meaning of proportionality, especially at the second appellate stage, the Supreme Court in *Management of Coimbatore District Central Co-operative Bank v. Secretary, Coimbatore District Central Co-operative Bank Employees Association and Anr.*, (2007) 4 SCC 669, held as under :*

“18. ‘Proportionality’ is a principle where the Court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise the elaboration of a rule of permissible priorities.”

*In the context of revocation of a CHA license, this ordering or priorities, or the proportionality doctrine, was considered recently by the Andhra Pradesh High Court in *Commissioner of Customs and Central Excise v.**

¹⁹ 302-ELT-161

H.B. Cargo Services, [2011 \(268\) E.L.T. 448](#) (A.P.) in the following terms :

“12.....For minor infraction, or infractions which are not of a serious nature, an order of suspension may suffice. On the contrary, when revocation is directed it has to be only in cases where the infraction is of a serious nature warranting exemplary action on the part of the authorities for, otherwise, two types of actions would not have been provided for. Primarily it is for the Commissioner to decide as to which of the actions would be appropriate but, while choosing any one of the two modes, the Commissioner has to consider all relevant aspects, and draw a balance sheet of the gravity of the infraction and the mitigating circumstances. The difference in approach for consideration of cases warranting revocation or suspension has to be borne in mind while dealing with individual cases. The proportionality question is of great significance as action is under a fiscal statute, and may ultimately lead to a civil death.”

9. The consequences of revocation being serious, the proportionality doctrine must inform the Commissioner’s analysis. This is also the exercise the Court must undertake, though with a measure of deference towards the Commissioner’s conclusions.”

5.7. This Tribunal in the case of *GSP Shipping & Logistics Agency, supra*, held as under-

“9. Looking into the circumstances of the case where it is not the case of the department that the importer is either absconding nor traceable, the omission on the part of the Customs Broker becomes a bit less serious. Shri Abid Ali has presented himself as the importer and signed all the documents. He has also submitted himself before the authorities for questioning, recording of statement and investigation. Under the circumstances, we hold that though there was lapse on the part of the Customs Broker, the same has not caused the commission of offence by the importer. Therefore, we find that the Customs Broker erred inasmuch as non-verifying the antecedents of the importer. However,

we find that the punishment meted out to the Customs Broker should be commensurate with such omission. It is a settled law that penalty should be proportionate to the offence committed. It would be too harsh to revoke the license of the Customs Broker and to leave the right to livelihood of the Customs Broker as well as his employees to the wind. We find that the fact that the Customs Broker's license was suspended/revoked for a considerable period also needs to be taken into account.

10. *We find that Tribunal in the case of Him Logistics Pvt. Ltd. v. CC, New Delhi - [2016 \(338\) E.L.T. 725](#) (Tri. - Del.), held that -*

9. *We find that the impugned order did not make out a sustainable case for revocation of license. In the case of Setwin Shipping Agency v. CC (General), Mumbai - [2010 \(250\) E.L.T. 141](#) (Tri. - Mumbai), the Tribunal held that there is no requirement for the CHA to verify physically the premises of importer/exporter. The Tribunal also observed that it is a settled law that the punishment has to be commensurate and proportionate to the offence committed. In the present case, we notice that the punishment of revocation is not justifiable even if it is to be admitted that physical verification of the importer's premises could have avoided the filing of the bill of entry by the appellant. Even in such a situation, the violation in respect of the cargo viz. the non-declaration of the RSP on the auto parts, a debatable point of interpretation, cannot be held against the appellant to result in the revocation of their license. Here, it is to be noted that the bill of entry was filed after the detention of the goods for inquiry by the DRI Officers and request for physical verification of the cargo before assessment has been made in the form of first check bill of entry. We find that the impugned order passed on dis-agreement with the inquiry report has not brought out clear sustainable ground for such extreme action of revocation of license. Violation of CBLR, 2013 has not been brought out as all the points have been elaborately discussed in the inquiry report and no sustainable ground for differing with the same could be made out.*

11. Similarly, in the case of *R.S.R. Forwarders v. CC, New Delhi* - [2018 \(364\) E.L.T. 541](#) (Tri. - Delhi) held that -

10. The role of the CHA in the Customs procedures is significant. The CHA is expected to safeguard the interest of exporter of the goods as well as the Customs. The adjudicating authority, in his detailed findings, have concluded that the appellant is guilty of violation of various regulations of CBLR, 2013. But, in the facts and circumstances of the case, we are of the view that even though the appellant is guilty, the violations are not so grave as to justify the revocation of the customs license. We are of the view that ends of justice will be met with the forfeiture of security deposit of Rs. 75,000/- and in addition imposition of penalty of Rs. 50,000/-.

12. We also find that Tribunal in the case of *Sadanand Chaudhary v. CC, New Delhi* - [2018 \(363\) E.L.T. 1018](#) (Tri. - Del.) held that -

4. It is seen from the record that the appellant had filed Bill of Entry dated 20-1-2017 declaring the goods as "Vinyl coated paper clip (Made of Iron)" but the same was found to be Measuring Tape of 'Zebra' brand. The adjudicating authority has held that the appellant is guilty of violations of Regulation 11(a), (b) and (d) of the CBLR. From the record, we find that the appellant had filed import documents with the Customs Department without carrying out the verification of KYC, but on the basis of the documents obtained from Smt. Rambha Gupta who was not the importer of the said consignment. It is further seen that he has allowed the imported consignment to be cleared not by authorised agent but Smt. Rambha Gupta herself. He has also failed to advice his client about proper knowledge of Customs Act including the BIS certification import of the items i.e. Measuring Tape of 'Zebra' brand. Customs department has found serious misdeclaration on the part of the importer and the appellant has also facilitated such misdeclaration and attempted to clear the goods which has violated the provisions of the Customs Act, Foreign Trade Regulation Act and also the provision of Legal Metrology Act, 2009.

5. In the facts and circumstances of the case, we are of the

view that for violation of CBLR, 2013 which stands established during the enquiry proceedings, the revocation of the Customs Broker License is too harsh a punishment and hence, revocation is set aside. We uphold the forfeiture of the security deposit as well as penalty of Rs. 50,000/- imposed by the adjudicating authority on Sh. Sadanand Chaudhary.

13. We further find that Tribunal in the case of Customs Appeal No. 21036 of 2019 Sri Manjunatha Cargo Pvt. Ltd. v. CC, Bangalore, held that -

6.2 Further we find that in the impugned order, the Commissioner has held that the appellant has not directly interacted with the IEC holders and is guilty of violation of Regulation 17(d) of CBLR, 2013. This finding is factually incorrect because in the statements of Mr. Mohammad Yusuf Siddique, G-Card holder and Power of Attorney of the appellant at Mumbai, he has stated in his statement dated 25-5-2017 that he had interacted with the IEC holders. Further we find that as per the Commissioner, the appellant has not brought to the knowledge of the Department that IEC holders have lent their IECs to other persons. We find that there is no evidence on record brought by the Department to show that the appellant had knowledge regarding the lending of IEC. Further we find that the lending of IEC is not an offence under the Customs Act, 1962 as held in various decisions cited supra. As far as allegation against the appellant that he had not verified the antecedents of IEC holders, we find that as per Regulation, the Customs Broker is to verify the correctness of IEC number, identity of client and functioning of them at the declared address using reliable, independent, authentic documents data or information. Further physical inspection of the premises of the importer or exporter is not required under the law as well as under the Board's Circular No. 9/2010-Cus., dated 8-4-2010. In the present case, the appellant had obtained copies of PAN card, Aadhaar Card, GST registration certificate, IEC certificate from all the three exporters concerned. Further we find that in the case of G.N.D. Cargo Movers cited supra, the Division Bench of the Tribunal had held in paras 5 & 6

as under :-

5. We further note that Regulation 11(e) requires the Customs House Agent to exercise due diligence to ascertain the correctness of any information which he imparts to clients with reference to work relating to clearance of cargo/baggage. Merely because the importer have accepted their mistake of misdeclaration of brand and quantity and have shown their willingness to pay differential duty, fine and penalty, it cannot be concluded that Customs Broker did not exercise due diligence to ascertain correctness of the information. If the said fact only is relevant for holding against the Customer Broker, then in each and every case of misdeclaration by the importer, it can be concluded that Customs Broker did not suitably informed his clients. There has to be some evidence on record to show that either the Customs Broker was aware of such mis-declaration and suppressed the same with a mala fide mind or he has taken efforts to get the goods cleared from the Customs on the basis of wrong declaration made by him or has connived with the importer so as to aid and abet the wrong declaration.

6. Similarly, for the violation of Regulation 11(n), the adjudicating authority has observed that the Customs Broker did not verify the antecedents, correctness of the IEC number, identity of his client and the declared address etc. We again find no merit in the charge of the Revenue inasmuch as that IEC number has been found to be correct as also the address of the importer. Further, all the importers have joined in the investigations and have given their statements. In such a scenario, it cannot be said that the Customs Broker has not adhered to KYC norms.”

5.8. In the present case, as held hereinbefore, that there was no violation of Regulation 10(a) or 10(n) of CBLR, 2018. For the violation of Regulation 10(p), which also has not been *prejudicial* to the interest of Revenue, revocation of the license is extreme and cannot be considered as proportionate to the offence committed. Moreover,

the appellant is a licensed CB since 15.05.2007²⁰ and there is/ was no complaint against him during his tenure of job as CB upto September, 2020 when his license was put to suspension vide Order dated 18.09.2020²¹ by the Commissioner under Regulation 16(1) of CBLR, 2018 in the present case. Since 18.09.2020, the appellant is under suspension and as such, without any job, which itself is punishment enough. The respondent Commissioner though at the impugned Order dated 22.04.2021 has ordered for revocation of the License of CB, did not forfeit any part of the security, which is also bad in law inasmuch as the provision of Regulation 14 *ibid* provides for both the consequence with an 'and' as conjunctive. The order of revocation of the CB License in the present set of facts and circumstance is, thus, not only mechanical and highhanded but also seriously disproportionate and liable to be set aside.

5.9. However, since we have held *supra* that the appellant/ CB has admittedly failed to discharge his obligations under Regulation 10(p) of CBLR, 2018 in appropriate manner, the CB should not get off scot-free. We find from record that the notice dated 02.11.2020 under Regulation 17 of CBLR, 2018 at its para 9²² had duly asked the CB to show cause "*as to why the Customs Broker License issued to them should not be revoked and/or their security deposit should not be forfeited and/or penalty should not be imposed under Regulation 14 and 18 of CBLR, 2018*" and as such, the appellant/ Cb had all the opportunities to defend all such propositions made against them. Considering all the facts and circumstance of the present case and the position of law noted hereinbefore, we are of the considered opinion that the ends of justice would meet by setting aside the order of revocation of CB License No. 01/ CHA/ 2007 (AHRPK3711ACH001) of the appellant and simultaneously by imposing penalty of Rs. 50, 000/- upon the appellant/ CB under Regulation 18 of the CBLR, 2018 and

²⁰ Annexure I at pg. 22 to Appeal

²¹ Annexure II at pg. 23-24 to Appeal

²² Pg. 46 of Appeal

with a caution upon the CB to maintain appropriate records and accounts henceforth.

6. We, accordingly, modify the impugned order by setting aside the revocation of the CB License of the appellant and imposing penalty of Rs. 50, 000/- upon the appellant/ CB under Regulation 18 of the CBLR, 2018. The appellant is directed to deposit the amount of penalty immediately as a condition for restoration of his CB License and the Commissioner/ respondent is directed to restore the CB License of the appellant immediately on compliance of the above by the appellant.

In result, the appeal is allowed in part.

(Order pronounced in the open court on 22 April 2022.)

Sd/

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/

(RAJU)
MEMBER (TECHNICAL)