**IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI**

APPEAL NO: C/86254/2017

[Arising out of Order-in-Original No: 40/CAC/PCC(G)/BB/CBS dated 06/03/2017 passed by the Commissioner of Customs (General), Mumbai.]

Merchant & Sons ...***Appellant***

versus

Commissioner of Customs (General)
Mumbai ***...Respondent***

Appearance:

Shri N.D. George, Advocate for appellant

Ms. Trupti Chauhan, Assistant Commissioner (AR) for respondent

Date of hearing	**19/03/2018**
Date of pronouncement	**19/03/2018**

CORAM

Hon'ble Shri M V Ravindran, Member (Judicial)

ORDER NO: A/86148 / 2018

This appeal is directed Order-in-Original No: 40/CAC/PCC(G)/BB/CBS dated 06/03/2017 passed by the Commissioner of Customs (General), Mumbai.

2. Heard both the sides and perused the records.

3. On perusal of the records, I find that the appeal is directed against imposition of penalty of ₹ 50,000 on the appellant under Regulation 20(7) and 18 of Customs Brokers Licensing Regulations (CBLR), 2013 2013. On perusal of the records, it transpires that the customs authorities detected the case of illegal export of suspected 'ephedrine hydrochloride' a controlled substance under NDPS Act in two consignments concealed in ladies purses and wallets. The investigations were initiated after seizure of the said controlled substance at Johannesburg airport. On detailed investigation it was concluded that a case is made out against the appellant herein, who were the customs broker on the ground that they were aware of the seizure of the drugs at Johannesburg airport but did not inform the customs immediately. The enquiry officer has held that the appellant was aware of the seizure of the drugs at Johannesburg but did not inform the customs authorities immediately and enquiry report was put up before the adjudicating authority. The adjudicating authority, after recording the same, held that he does not find the offence grave enough so as to order for Customs Brokers License revocation. He only sought to impose penalty under Customs Brokers Licensing Regulations (CBLR), 2013 as appropriate punishment.

4. It has to be noted that the first appellate authority has clearly recorded that investigation has not brought forth any clinching evidence to show that the appellant herein who is a customs broker

was aware of the concealment of controlled substance or abetted the exporter in the concealment. On such categorical finding in my view, the penalty imposed by the adjudicating authority is not in consonance with the law. Accordingly, in the absence of any evidence to show that there was active involvement of the appellant in concealment of controlled substance in its export consignment, I find that the penalty imposed on the appellant is unwarranted.

5. The penalty imposed is set aside and the appeal allowed. .

(Pronounced in Court)

(M V Ravindran)
***Member (Judicial*)**

as/*