CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Customs Appeal No. 86964 of 2022

(Arising out of Order-in-Original CAO No. 37/CAC/PCC(G)/SJ/CBS Adj dated 03.08.2022 passed by the Principle Commissioner of Customs (General), Mumbai.)

M/s. Interglobe Shipping Logistics ....Appellant
003/19, Sonam Classic CHS Ltd.,
Phase-XI, New Golden Nest,
Bhayandar (E), Thane – 401 105

VERSUS

Pr. Commissioner of Customs, (General) ....Respondent
Mumbai Zone-I
New Customs House,
Ballard Estate, Mumbai – 400 001

APPERANCE:

Shri N.D. George, Advocate for the Appellant

Shri S.K. Hatangadi, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85553/2023

Date of Hearing: 01.02.2023
Date of Decision: 01.02.2023

PER: DR. SUVENDU KUMAR PATI

Legality of revocation of Customs Broker licence including forfeiture of security amount under Regulation 14 of the Customs Broker Licensing Regulation, 2018 (CBLR) as well as imposition of penalty of Rs.50,000/- under Regulation 18 of CBLR, even after absolution of liabilities in the inquiry report is assailed in this appeal.

2. Facts of the case, in brief, is that Appellant is a Customs Broker who was charged with violation of Regulation 10(d) and 10(n) of the CBLR, 2018 after DRI, Kolkata intercepted some live consignment of black-paper imported by allegedly a fake importer M/s. Bruno Exports through Nhava Sheva, Mumbai using advance authorisation. Its licence was suspended, inquiry was conducted in which charges framed against the Appellant CB for violation of Regulation 10(d) and 10(n) were not proved but dis-agreeing with the said agreement, learned Principle Commissioner of Customs (Gen.), Mumbai Customs Zone-I carried out proceeding against the Appellant and through an adjudication order, confirmed both the charges and passed order against the Appellant as noted above. Legality of the said order is assailed by the Customs Broker before this Forum under Section 19 of the CBLR, 2018.

3. We have heard the submissions from both the sides and perused the case record. In citing judicial decisions in the case of *The principal Commissioner of Customs,(General) verses Mehul & Co reported in 2022(5) TMI 30-Bombay High Court, Principal, Commissioner of Customs (General), Mumbai versus Unison Clearing P. Ltd. reported in 2018 (361) E.LT 321 (Bom.), Hon'ble High Court of Bombay in the case of Commissioner of Customs (General), Mumbai versus Rajan Virji & Co. reported in 2012 (283) E.LT 354 (Bom.), Manilal Patel Clearing Forwarding P Ltd versus Commissions of Customs (Gen.), Mumbai reported in 2013 (294) E.L.T 472 (Tri. Mumbai), Sarosh Nagarwala versus Commissioner of Customs*

(Export), Nhava Sheva reported in 2017 (358) E.LT 542 (Tri. - Mumbai), Commissioner of Customs versus Him Logistics Pvt. Ltd. reported in 2017 (348) E.LT 625 (Del.), Thawerdas Wadhoomal versus Commissioner of Customs (General), Mumbai reported in 2008 (221) E.LT 252 (Tri. - Mumbai), APS Freight & Travels Pvt Ltd. versus Commissioner of Customs (General), New Delhi reported in 2016 (344) E.LT 602 (Tri.- Del.), Poonia & Brothers versus Commissioner of Customs (Preventive), Jaipur reported in 2019 (370) E.L.T 1074 (Tri. - Del.), Shasta Freight Services Pvt. Ltd versus Pr. Commissioner of Customs., Hyderabad reported in 2019 (368) E.LT 41 (Telangana), Pr. Commissioner of Customs versus Shasta Freight Service Pvt. Ltd. reported in 2022 (381) E.LT 436 (S.C.), learned Counsel for the Appellant Mr. N.D. George argued about non-completion of inquiry within the stipulated time frame of 90 days and its resultant effect as well as denial of opportunity of cross examination of principal witnesses to the Appellant while learned Authorised Representative for the Respondent-Department Mr. S.K. Hatangadi supported the reasoning and rationality of the order passed by the Principal Commissioner of Customs (General) and sought for no interference by the Tribunal in the order passed by the Principal Commissioner of Customs (General).

4. On perusal of the entire proceeding with reference to the procedure mentioned in the CBLR for revocation of licence and imposition of penalty, we are constrained to note that the entire proceeding conducted by the Principal Commissioner of Customs

(General) was irregular and unsupported by any legal provision for the reason that after serving show-cause notice on dated 25.11.2021 to the Appellant, causing and completing inquiry by 21.03.2022 concerning legality of suspension of licence made on 07.09.2021 which was admittedly done beyond 90 days without any justifiable excuse, he had issued a disagreement memo to the inquiry in which the charges were not proved despite the fact that Regulation 17(6)&(7) had not contemplated such a mechanism. In this connection it is worthwhile to reproduce both para 6 & 7 of Regulation 16 of CBLR, 2018:

> *"(6) The Principal Commissioner or Commissioner of Customs shall furnish to the Customs Broker a copy of the report of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, <u>and shall require the Customs Broker to submit,</u> within the specified period not being less than thirty days, <u>any representation that he may wish to make **against** the said report</u>.*
>
> *(7) The Principal Commissioner or Commissioner of Customs shall, <u>after considering the report of the inquiry and the representation thereon</u>, 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."*

(underlined to emphasise)

5. As could be noticed, in the instant case the report of inquiry was not furnished to the Appellant seeking his response in compliance to para 6 of Regulation 17 apparently for the reason that the report was not against the Appellant. However, in complete disregard of the report and in the absence of a representation from the Appellant Customs Broker, the Commissioner had prepared a dis-agreement memo instead of passing an order revoking the suspension of the licence or, in the worst scenario, confirming the revocation of licence itself, in compliance to para 7 though before such revocation order Appellant was noticed to submit his response. However, a close reading of para 7 of the Regulation 17 would clearly indicate that the Commissioner was only empowered to consider the inquiry report and representation of the Customs Broker, if made **against** such report. To bring more clarity to this provision, it may be said that only when the report is against the Customs Broker, his representation is to be considered against the adverse report before passing any order and it has never empowered the Principal Commissioner of Customs (General) or the Commissioner of Customs to proceed against the Customs Broker even when the inquiry report, prepared after taking evidence and recording findings against the offence report containing summary of investigation and *prima facie* framing of charge into the acts of omission and commission by the Customs Broker, if any. It is needless to mention here that inquiry involves a judicial process in which evidence is weighed and that stands in a much higher footing than investigation conducted primarily for collection of evidence to make out the offence. This

being the dictate of law, we are of the considered view that the Principal Commissioner of Customs (General) had exceeded his jurisdiction in proceeding against the Customs Broker, despite charges being not established in the inquiry report. Hence the order.

THE ORDER

6. The appeal is allowed and the order passed by the Principle Commissioner of Customs (General), Mumbai *vide* Order-in-Original CAO No. 37/CAC/PCC(G)/SJ/CBS Adj dated 03.08.2022 is hereby set aside. The licence of Customs Broker is restored back to him. Accordingly, penalty is set aside and order of forfeiture of security deposit is nullified, with consequential relief, if any.

(Operative portion of the order pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

Prasad