

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI**

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86442 of 2021

(Arising out of Order-in-Original CAO No. 13/CAC/PCC(G)/PS/CBS/Adj. dated 28.05.2021 passed by the Pr. Commissioner of Customs (General), Mumbai Zone-I and remanded vide Hon'ble Bombay High Court order dated 30.06.2023 in Custom Appeal No.41 of 2022)

M/s. Ramesh Transport Company

.... Appellant

C.B. No.11/1018 – A-301, Devi Classic,
Balaji Mandir Marg, Off Tilak Road,
Ghatkopar (East), Mumbai – 400 077

Versus

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

New Custom House, Ballard Estate, Mumbai - 400001

Appearance:

Shri Hans Raj Garg, Consultant for the Appellant

Shri Ram Kumar, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86761/2023

Date of Hearing: 22.08.2023

Date of Decision: 04.10.2023

Per: M.M. PARTHIBAN

This is an appeal filed by M/s Ramesh Transport Company (herein after, referred to as 'the appellants') assailing the Order-in-Original CAO No. 13/CAC/PCC(G)/PS/CBS/Adj. dated 28.05.2021 (referred to as 'impugned order'). Earlier, the Tribunal has passed a Final Order No. A/85383/2022 dated 28.02.2022 in allowing the appeal filed by the appellants by holding that they are not in a position to sustain the impugned order. The department had preferred an appeal before the Hon'ble High Court of Bombay in Custom Appeal No.41 of 2022, in which the Hon'ble High Court of Bombay had ordered the following:

"2. On earlier occasion, this Court had admitted the present appeal on the following questions of law:

'a) whether the CESTAT was right in ignoring the finding in Order-in-Original whereby it is held that the Respondent has violated provisions of Regulations 10(d), (w) & (m) of Customs Broker License Regulations, 2018?

b) Whether in the facts and circumstances CESTAT was right in allowing Respondent's appeal relying on an order dated 25th November, 2020 passed by the Commissioner of Customs, Nagpur in the case of M/s. Hiren Transport being a case under investigation report dated 17th January, 2019?'

3. It is on the above background, we have heard the learned counsel for the parties finally on the present Appeal. We have perused the impugned order passed by the Tribunal and also the show-cause notice and Order-in-Original. Considering the facts and circumstances of the case, in the limited reasons, as set out in the impugned order, we are of the opinion that with all the issues arising in this proceedings including issue of question No.2, as noted by us above, requires reconsideration of the Tribunal. What we note from the order is that the Tribunal ought to have examine all the issues which had fallen for consideration in the Respondent's Appeal, and, the contentions, as raised by the Appellant in that regard, and, after examining such issues, and by recording appropriate reasons, the Appeal ought to have been adjudicated.

4. We accordingly, dispose of the Appeal by setting aside the impugned order and remanding the matter to the Tribunal by restoring the Appeal. All contention of the parties are expressly kept open. As the issue pertains to probably running of the business of the Respondent, and, which is stated to be the only source of livelihood, the Tribunal is directed to adjudicate the Respondent's Appeal as expeditiously as possible, and in any event within a period of three months from the parties appearing before the Tribunal. Let the parties appear before the Tribunal on 5th July, 2023 along with the copy of this order.

5. As the record and proceedings is with the Registry of this Court the same be immediately resend to the Registry of the Tribunal."

2. In the impugned order the learned Principal Commissioner of Customs (General), in exercise of powers conferred upon him under Regulation 17 (7) of the Customs Brokers Licensing Regulations, 2018 (CBLR) had revoked the CB license issued to the appellants for acting as a Customs Broker under the above regulations *ibid*, besides imposition of penalty and forfeiture of entire security deposit furnished by the appellants. Being aggrieved against the impugned order, the appellants have filed this appeal before the Tribunal.

3. The brief facts of the case are that an investigation report dated 17.01.2019 was received by the department from Serious Fraud Investigation Office (SFIO) of Ministry of Corporate Affairs, New Delhi in the matter of M/s ABC Cotspin Pvt. Limited (ABCCPL) in which an investigation was conducted under Section 212(1)(c) of the Companies Act, 2013. The said investigation was ordered based on the report of fraud in FMR 1 to Reserve Bank of India (RBI) by State Bank of India (SBI), Bank of Baroda (BoB) and Axis Bank Limited. These banks reported that ABCCPL committed fraud on them by availing export finance by submission of export bills without making exports. It is also reported that ABCCPL being a private limited company owned in majority and controlled by one Shri Ashish Jobanputra (AJ) as its Director, he was influencing the CHAs namely, M/s RSS Shipping P Limited (& its director) and M/s Kotak Multilink Logistix (Hardik Kotak) and the employees/directors of freight forwarding companies. They had entered into a criminal conspiracy with object to misrepresent before the banks to avail credit facilities. Shri Sanjeev Verma, Director of M/s RSS Shipping P Limited (RSSSPL) were doing CHA work under the authority of M/s Ramesh Transport Co., i.e., the appellants. Thus, the department alleged that appellants have handled exports in respect of RSSSPL and ABCCPL. Whereas the department alleged that appellants knowingly assisted the above ABCCPL and RSSSPL by providing false, fabricated documents as a part of export bills to the banks, separate proceedings under CBLR was initiated by jurisdictional Principal Commissioner on the appellants by immediate suspension of the Customs Broker's (CB) license of the appellants under Regulation 16(1) *ibid*, vide ex-parte Order No.36/2019-20 dated 27.08.2019. After giving a chance for oral and written submission by the appellants, the Principal Commissioner of Customs issued an order No.50/2019-20 dated 04.10.2019 for revocation of suspension of CB license pending inquiry under Regulation 17 *ibid*. Accordingly, necessary show cause notice dated 28.10.2019 was issued alleging charges of contravention of Regulations 10(d), 10(e) and 10(m) of CBLR, 2018 and a inquiry report in this regard was submitted on 18.12.2020. In deciding these allegations of charges, the impugned order has been passed by the learned Principal Commissioner of Customs (General) by invoking the

Customs Broker license granted to the appellants besides imposition of penalty of Rs.50,000/- and forfeiture of the entire amount of security deposit furnished to the Customs authorities.

4.1. Learned Counsel appearing for the appellants submitted that this case relates to the appellants having handled exports by filing check lists on the basis of documents submitted by the exporter-ABBCPL. The appellants were never a party of any larger export fraud, as they had handled the said exporter only once on 12.02.2015 by issue of 26 check lists in respect of export consignments. The allegation against the appellants that they have indulged in issue of check lists without knowing the fact that actual exports never happened and that they never verified the non-compliance of previous issued Bills of lading and continued to issue check lists, are contrary to the facts and documentary evidences inasmuch as the appellants never issued any Bill of Lading(B/L)/ Multimodal Transport Documents (MTDs) as these were got issued by RSSSPL. Further, as on 12.02.2015 there were no export shipments of the exporter ABCCPL pending to be completed. Further, the appellants had no role to play in the fraud committed against the banks by ABCCPL and hence he stated that there is no violation of any provisions of the Customs Act, 1962, by the appellants. Furthermore in the investigation conducted by DRI and CBI in the case, the appellants were never enquired into and they are not arraigned in the criminal proceedings in the special case No.26/2016 filed against the accused persons. There is no finding in the SFIO report or in the inquiry proceedings of Customs to claim that due to the 26 checklists issued by the appellants the fraud was facilitated. Thus, the Counsel claimed that all the allegations of violations of CBLR are thus unsubstantiated.

4.2. Further, learned Counsel also stated that the SFIO report clearly brought out that the entire fraud could have averted if the Bank officials had followed the guidelines issued by their banks and RBI in letter and spirit. Thus, he stated that question of complicity of the appellants in the fraud does not arise and the consequential action taken alleging violations of CBLR does not sustain. In this regard, he relied upon the following case laws: -

- (a) *Delta Infra logistics (Worldwide) Pvt. Ltd. Vs. C.C. Bangalore – 2019 (11) TMI 621– CESTAT Bangalore*
- (b) *Kunal Travels(Cargo) Ltd. Vs. Commissioner of Customs (Import & General) – 2017 (3) TMI1494-Delhi High Court*
- (c) *Rubal Logistics Pvt, Ltd. Vs. Commissioner of Customs (General) , New Delhi – 2019 (368) E.L.T. 1006 (Del.)*

5. Learned AR appearing for the Revenue reiterated the findings recorded in the impugned order. He further submitted that the appellants had no interaction with the exporter; they have processed the shipping bills without proper verification of exporters by using any reliable means, and never brought non-filing of shipping bills to the knowledge of Customs. Hence, he pleaded that the impugned order is sustainable in law.

6. We have heard both sides and have gone through the records of the case.

7. From the perusal of the records and factual matrix of the case, it is seen that the Department had initiated independent action against the appellants under CBLR, 2018 on the basis of SFIO investigation report dated 17.01.2019 about alleged irregularities on the part of CHAs/CBs and freight forwarders as they aided and assisted ABCCPL and Shri Ashish Jobanputra (AJ), Director of ABCCPL in fraudulent export credit availment without actual export of goods and by irregularly discounting export bills with banks based on check lists and the House BLs/MTDs without completing exports. Accordingly, the jurisdictional Principal Commissioner suspended the CB license under Regulation 16(1) of CBLR, 2018 on 27.08.2019. Subsequently, after giving a post-decisional hearing the jurisdictional Principal Commissioner revoked the suspension by issue of an order No.50/2019-20 dated 04.10.2019. Further, regular inquiry proceedings were initiated under Regulation 17(1) *ibid*, by issue of show cause notice No.29/2019-20 dated 28.10.2019, specifying the grounds on which the appellants have alleged to have been violated CBLR, 2018. In conclusion of these proceedings, the impugned order was passed by the jurisdictional Principal Commissioner revoking the Customs Broker license granted to the appellants for the failure on

the part of appellants to fulfill the obligations cast on them under Regulations 10(d), 10(e) and 10(m) of CBLR, 2018 and also imposed penalty of Rs.50,000/- besides forfeiture of entire security deposit.

8.1 In order to examine the above issues, and the divergent stand taken by both the parties, we would like to firstly examine the facts contained in the SFIO investigation report and the allegations specifically framed against the appellants for having violated the CBLR *ibid*. From the findings of the Principal Commissioner in her order dated 04.10.2019, the following facts have been specifically recorded about the role of appellants in the SFIO report. The extract of the same is given below:

"6.5. ... In this regard, I find from perusal of para 4.10.20, page 161 of the SFIO report which reveals that the Guidelines issued by the RBI entrust upon AD banks the onus of complying with the procedure for scrutiny of documents in handling the export documents on collection/negotiation/discount. The main point for clearance of merchandise for exports is the signature of customs officials and release of Shipping Bill (SB) for submission to AD Banks with LEO Date along with other documents. The Customs authorities have a portal 'ICEGATE' which indicates the status of the shipping bill i.e., whether the concerned SB number or Checklist number is allowed for export or purged in the computer system. Apart from the above, the bank officials and internal auditors are required to verify the status of the shipping bills at random to check the veracity of the SBs tendered along with the export documents.' In this regard, I further find from perusal of para 4.6.7. (page-58) banks negotiated and discounted the export bills on the basis of checklist alone in gross violation of the guidelines as discussed in para 4.10.20, page-161 of the SFIO Report above.

6.6. I also find from the SFIO that as per the guidelines of the RBI, it was incumbent upon Banks to accept only the Shipping Bills (authenticated by the Customs) evidencing physical exports. But it appears from the SFIO report that the banks accepted the checklists and MTDs/Bills of Lading issued by the concerned Freight Forwarders and Shipping Lines without receipt of the cargo in port warehouse/ship, vessel or export. The SFIO report further reveals that Banks did not verify the authenticity of the Shipping Bills despite having access to the customs data of Shipping Bills. Therefore, it also appears from the SFIO report that all such Shipping Bills i.e., exports bills for which exports had not taken place, were also discounted by the Banks.

6.7. In view of the above, it appears to be the banks who failed to adhere to the guidelines as enumerated above at para 4.10.20, page-161 while extending credits/ discounting export bills to the exporter. The CB has also referred and relied upon the statement of

Shri Sanjeev Varma of RSS (refers 4.10.11, page-145 of the SFIO report) whereby he stated that the CB M/s Ramesh Transport Co. did not know about the fraud done by ABCCPL. The CB submitted that misuse of the Checklist and the Bills of Lading was not within their knowledge. Therefore, it appears that the CB cannot be held liable for any act of omission or commission of any other persons (Freight Forwarders/Shipping companies/Banks) who issued Bills of lading/MTD without receipt of the Merchandise/Cargo for export in port warehouses. I also observe from the SFIO report that there appears to be no allegation of any customs fraud like fraudulent claim of any export incentives or evasion of customs duty or violation of any of the provisions of the Customs Act."

The above findings clearly point out that the appellants CB were not found to be involved in any fraud relating to Customs Act or export benefits.

8.2 Further, the extant instructions issued by the Reserve Bank of India in the form of Master Circular dated No.10/2011-12 dated 01.07.2011 (and updated periodically) to All category of Authorised Dealer Banks in respect of export of goods and services from India and in order to ensure that such exports are allowed in compliance with the Foreign Exchange Management Act, 1999, *inter alia*, state as follows:

"Master Circular on Export of Goods and Services

Export of Goods and Services from India is allowed in terms of clause (a) of sub-section (1) and sub-section (3) of Section 7 of the Foreign Exchange Management Act 1999 (42 of 1999), read with Notification No. G.S.R. 381(E) dated May 3, 2000 viz. Foreign Exchange Management (Current Account) Rules, 2000, as amended from time to time.

*2. This **Master Circular** consolidates the existing instructions on the subject of "Export of Goods and Services from India" at one place. The list of underlying circulars/notifications consolidated in this Master Circular is furnished in Appendix.*

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PART – 3

C. Operational Guidelines for AD Category – I banks

C.1 Citing of Specific Identification Numbers

(i) In all applications / correspondence with the Reserve Bank, the specific identification number as available on the GR, PP and SOFTEX forms should invariably be cited.

(ii) In the case of declarations made on SDF form, the port code number and shipping bill number should be cited.

C.2 GR/SDF/PP/SOFTEX procedure

In terms of Regulation 6 of Foreign Exchange Management (Export of Goods and Services) Regulations, 2000 notified vide Notification No. FEMA.23/2000-

RB dated 3rd May 2000, as amended from time to time export declaration forms should be disposed of as under:

C.3 (A) GR forms

- i. *GR forms should be completed by the exporter in duplicate and both the copies submitted to the Customs at the port of shipment along with the shipping bill.*
- ii. *Customs will give their running serial number on both the copies after admitting the corresponding shipping bill. The Customs serial number will have ten numerals denoting the code number of the port of shipment, the calendar year and a six- digit running serial number.*
- iii. *Customs will certify the value declared by the exporter on both the copies of the GR form at the space earmarked and will also record the assessed value.*
- iv. *They will then return the duplicate copy of the form to the exporter and retain the original for transmission to the Reserve Bank.*
- v. *Exporters should submit the duplicate copy of the GR form again to Customs along with the cargo to be shipped.*
- vi. *After examination of the goods and certifying the quantity passed for shipment on the duplicate copy, Customs will return it to the exporter for submission to the AD Category – I banks for negotiation or collection of export bills.*
- vii. *Within 21 days from the date of export, exporter should lodge the duplicate copy together with relative shipping documents and an extra copy of the invoice with the AD Category – I banks named in the GR form.*
- viii. *After the documents have been negotiated / sent for collection, the AD Category – I banks should report the transaction to the Reserve Bank in statement ENC under cover of appropriate R-Supplementary Return.*
- ix. *The duplicate copy of the form together with a copy of invoice etc. shall be retained by the AD Category – I banks and may not be submitted to the Reserve Bank.*
- x. *In the case of exports made under deferred credit arrangement or to joint ventures abroad against equity participation or under rupee credit agreement, the number and date of the Reserve Bank approval and/or number and date of the relative RBI circular should be recorded at the appropriate place on the GR form.*
- xi. *Where Duplicate copy of GR form is misplaced or lost, AD Category – I banks may accept another copy of duplicate GR form duly certified by Customs.*

Note: *At present, GR Forms [to be completed in duplicate for export otherwise than by Post including export of software in physical form i.e. magnetic tapes / discs and paper media] can be obtained by the exporters from the Regional Offices of the Reserve Bank. As part of simplifying the procedures, GR Forms are now made available on-line on the Reserve Bank's website www.rbi.org.in."*

The above instructions clearly brings out the role of exporter to submit the GR forms to the Customs and only after examination of the export goods and certification of the goods exported by Customs, the Banks are allowed for negotiation or collection of export bills. In the case before us, the Banks have without verification of the shipping bills and GR forms have allowed the credit facilities to the exporter ABCCPL on the basis of check lists, even before the goods are actually exported out of the country. Further, RBI have also provided for a Caution list of exporters who do not repatriate their sale proceeds to be earned from their

exports in time through an Export Data Processing and Monitoring System. Thus, irrespective of the appellants not informing the Customs about the non production of export goods, the above independent system of checks and data base would have brought to the fore, the export fraud committed by the exporter ABCCPL. Thus, we are of the considered view that the appellants have not caused any violation or in any way connected with the export fraud committed by the exporter ABCCPL and other connected persons.

9. In order to further examine the specific Regulations which are alleged to have been violated by the appellants, we have examined these individually on the basis of factual matrix of the case as follows. The relevant part of the CBLR, 2018 dealing with the obligations of the Customs Broker is extracted below:

"Regulation 10. Obligations of Customs Broker: -

A Customs Broker shall -

xxx xxx xxx xxx

(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;

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(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;

xxx xxx xxx xxx

(n) verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;"

10. In respect of Regulations *ibid*, it is on record in the impugned order at paragraph No. 18 that the CB never met the exporter and thus the CB had not given any advice to his clients. Further, Shri Sanjeev Varma, Director of M/s RSS Shipping P Ltd., (RSSSPL) had stated in his written statements (cited at para 4.10.11 of SFIO report) that they were doing CHA work under the oral authority of Mr. Ramesh Mange, Owner of M/s Ramesh Transport Co.; RSSSPL used to get invoice from ABCCPL and make the shipping bill data and send a copy of the checklist to ABCCPL by e-mail. Further, RSSSPL also used to

forward the checklist to the office of Ramesh Transport Co. for uploading the same on the ICEGATE of Customs Department, which they (appellants) use to do from their office. Then, ABCCPL used to contact them (RSSSPL) for getting the Bill of Lading for the check lists handed over to them. RSSSPL used to handover the check lists and invoice to Seamax Logistics Limited (Freight forwarder) for preparation of the House BL/MTD which were sent to ABCCPL, and these were ultimately presented to the banks by ABCCL for availing export credit. However, it is stated in these statements that the appellants M/s Ramesh Transport Co. did not know about the fraud done by ABCCPL. Thus it is clear that ABCCPL, RSSSPL and Seamax Logistics Ltd., are responsible for the exports which did not happen and the BLs were wrongly stamped as "shipped on Board" by these persons for obtaining irregular export credit from the banks. In respect of exports, a check list is generated for the data entry made relating to exports on the basis of invoice, packing list etc. and after verification of the correctness of the data, the check list is submitted to the Customs for generating Shipping Bill No. and for further processing by Customs. The various steps involved in Customs processing are (i) appraising of shipping bill, (ii) export duty/cess payment, (iii) examination of goods and (iv) giving Let Export Order, (v) Loading of goods into the vessel and (vi) allowing shipment for export, (vii) filing of Export General Manifest and (viii) payment of drawback/export incentives. As the shipping bills for export could be involving export goods from factories, 100% EOU units/EPZs etc., or goods which are stuffed in export containers that are self-sealed or factory stuffed in the presence of departmental officers and depending upon the country to which exporter, export incentives claimed, different levels of examination norms have been prescribed by CBIC. In case any of the shipping bill for which export goods is not presented for examination within 15 days from the date of its filing, then such shipping bills are purged from the Customs EDI System. From the above facts and customs procedure involved in export of goods, it could be reasonably concluded that there was no specific issue for the appellants to advise the exporter, as their role was limited to filing of shipping bills. However, we also note that once 26 check lists in respect of export consignments have been filed

generating 26 shipping bills on a single day, and when the exporter has not sent the goods for examination, the problem of why such export had not taken place could have been checked up by the appellants Customs Broker and the fact of this could have been at least been informed to the Customs. This possibly could have alerted the Customs to check about the exporter, their activities and would have also enabled them for taking appropriate action. Thus, we are of the considered view that though there is no violation of regulation 10(d), a proactive role of the appellants as a prudent customs broker could have enabled such illegal act of export by ABCCPL to have been identified by Customs or other government enforcement organizations early.

11. In respect of the obligation under Regulation 10(e), the learned Principal Commissioner had placed reliance on the inquiry report findings that the CB failed to verify the credentials of the exporter; acted orally on the instructions of RSSSPL and CB did not restrict the Freight forwarder or exporter for wrong doing in the export fraud. Thus, the learned Principal Commissioner had concluded that the appellants had violated Regulation 10(e) *ibid*. In this regard, we find that as per Regulation 10(e) *ibid*, the information/records that are required to be verified for its correctness in filing the check list for shipping bill are invoice, packing list etc., The appellants have accordingly filed the shipping bills on the basis of the data given to them by the exporter and such details entered were also verified by the exporter. Further, it is not the case of Revenue that in the information submitted in the shipping bills there was any mis-declaration. It is the case of export goods not brought to Customs for completing the physical export and the appellants were not aware of the fraud committed by the exporter or other persons. In view of the aforesaid factual position, we are unable to find force in the legality of the conclusion arrived at the impugned order holding that the appellants have violated the Regulation 10(e). We also find that our above views are also concurred in the order of the Hon'ble High Court of Delhi in the case of *M/s Kunal Travels (Cargo)*, *supra*. The relevant portion of the above order is extracted below:

"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 mis-declaration 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 mis-declaration 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..."

12. In respect of the Regulation 10(m), in the impugned order the Principal Commissioner had concluded that the appellants have violated the said Regulation, on the ground that they were not aware that the check lists was used by the exporter ABCCPL for discounting with the banks, and the appellants indulged in the practice of issue of check lists and continued this practice despite knowing the fact that actual exports were not happening, that they never verified the non-completion of exports for previously issued House Bills of Lading/MTDs rather they continued to issue check lists for fresh invoices. It is a fact admitted by both sides and evidently on record that only 26 shipping bills were filed, that too only once on 12.02.2015. It is also a fact duly reflected at para 4.10.11 of SFIO report that in the statement of Shri Sanjeev Varma, Director of M/s RSS Shipping P Ltd., (RSSSPL), he had stated that RSSSPL used to forward the checklist to the office of Ramesh Transport Co. for uploading the same on the ICEGATE of Customs Department, which they (appellants) use to do from their office. However, the appellants M/s Ramesh Transport Co. did not know about the fraud done by ABCCPL. From the above facts of the case, it is clear that the CB cannot be held responsible in cases where they have verified the documents and on that basis filed the shipping bills. It is factually incorrect to state that the appellants had continuously filed shipping bills as mentioned in the inquiry report and impugned order. Thus, we find that the conclusion arrived at by the Principal Commissioner in the impugned order is contrary to the factual position and thus it is not legally sustainable.

13. We further find that in respect of delay in suspension proceedings of customs broker license, the Hon'ble High Court of Bombay in the case of *Principal Commissioner of Customs (General), Mumbai Vs. Unison Clearing P. Ltd.*, reported in 2012 (361) E.L.T. 321 (BOM - HC) have elaborately discussed the issue and came to a conclusion that the only way to effectively implement the provisions in the interest of both the parties is that the reasons for delay can then be

tested to derive a conclusion whether the deviation from the time line prescribed in the Regulation, is "reasonable" or 'not'. The relevant paragraph of the judgement is extracted below:

"15. In view of the aforesaid discussion, the time-limit contained in Regulation 20 cannot be construed to be mandatory and is held to be directory. As it is already observed above that though the time line framed in the Regulation need to be rigidly applied, fairness would demand that when such time limit is crossed, the period subsequently consumed for completing the inquiry should be justified by giving reasons and the causes on account of which the time-limit was not adhered to. This would ensure that the inquiry proceedings which are initiated are completed expeditiously, are not prolonged and some checks and balances must be ensured. One step by which the unnecessary delays can be curbed is recording of reasons for the delay or non-adherence to this time-limit by the Officer conducting the inquiry and making him accountable for not adhering to the time schedule. These reasons can then be tested to derive a conclusion whether the deviation from the time line prescribed in the Regulation, is "reasonable". This is the only way by which the provisions contained in Regulation 20 can be effectively implemented in the interest of both parties, namely, the Revenue and the Customs House Agent."

14. From the records of the case, we find that there is definitely delay in adjudication and that for the export transactions occurred in February, 2015, the order of revocation of appellant's customs broker license has been passed on 28.05.2021. Revenue is unable to explain why there was such a long delay of 6 years in taking action against appellants, when the information about fraudulent exports was received on 17.01.2019. Though the first order-in-original revoking immediate suspension, was passed on 04.10.2019, action against the appellants under CHALR/CBLR vide Show Cause Notice was issue on 28.10.2019. The impugned order has been passed after nineteen months from the date of issue of SCN. There are no reasons recorded in detail justifying the delay in passing the impugned order by the learned Principal Commissioner. Even if an explanation that could be offered by the department for the delay in show cause proceedings and passing the impugned order is due to COVID and unspecified administrative reasons, the same cannot be accepted as reasonable grounds in terms of the test laid down by the Hon'ble High Court of Bombay.

15. Furthermore, in order to appreciate the importance of the role of Customs Broker/Custom House Agent and the timely action which could prevent the export frauds, we rely on the judgement of the Hon'ble Supreme Court in affirming the decision of the Co-ordinate Bench of this Tribunal in the case of *Commissioner of Customs Vs. K.M. Ganatra & Co.* in Civil Appeal No.2940 of 2008 reported in 2016 (332) E.L.T. 15 (S.C.). The relevant paragraph of the said judgement is extracted below:

"15. In this regard, Ms. Mohana, learned senior counsel for the appellant, has placed reliance on the decision in Noble Agency v. Commissioner of Customs, Mumbai 2002 (142) E.L.T. 84 (Tri. - Mumbai) wherein a Division Bench of the CEGAT, West Zonal Bench, Mumbai has observed:-

"The CHA occupies a very important position in the Customs House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations....."

We approve the aforesaid observations of the CEGAT, West Zonal Bench, Mumbai and unhesitatingly hold that this misconduct has to be seriously viewed."

In view of the above discussions and on the basis of the judgement of the Hon'ble Supreme Court in the case of *K.M. Ganatra* (supra), we find that the appellants could have been proactive in fulfilling their obligation as Customs Broker for exercising due diligence, when the exports goods were not brought to Customs within 15 days time, by bringing it to the notice of the Customs department about the non-compliances in export transactions of ABCCPL. Thus, to this extent we find that imposition of penalty for failure in not being proactive for fulfilling of regulation 10(d) of CBLR, 2018 is appropriate and justifiable.

15. In view of the foregoing discussions, we do not find any merits in the impugned order passed by the learned Principal Commissioner of Customs (General), Mumbai in revoking the license of the appellants and for forfeiture of security deposit, inasmuch as there is no violation of regulations 10(d), 10(e) and 10(m) and the findings in the impugned order is contrary to the facts on record. However, in view of the failure of the appellants to have acted in a proactive manner in fulfillment of the obligation under sub-regulation 10(d), we find that it is justifiable to impose a penalty of Rs.20,000/- against the appellants, which would be reasonable and would be in line with the judgement of the Hon'ble Supreme Court in the case of K.M. Ganatra (supra), in bringing out the importance of crucial role played by a Customs Broker.

16. Therefore, by modifying the impugned order to the extent as indicated above at para 15, we allow the appeal in favour of the appellants.

(Order pronounced in open court on 04.10.2023)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha