

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH : MUMBAI

Customs Appeal No. 88496 of 2018

(Arising out of Order-in-Original CAO No. 42/CAC/PCC(G)/SKD/CBS (Admn.) dated 27.02.2018 passed by Principal Commissioner of Customs (General), New Custom House, Mumbai.)

Durga Clearing Private Limited
(CB License No. 11/962)
Ami House, 256, Perin Nariman Street
Bazar Gate, Fort, Mumbai-400001

.....Appellants

VERSUS

**Principal Commissioner of Customs (General),
Mumbai**
New Custom House, Ballard Estate,
Mumbai-400 001.

.....Respondent

Appearance:

Shri Mohit Raval a/w Shri Mihir Mehta, Advocates for the Appellants
Shri S.K. Hatangadi, Authorized 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/87146/2023

Date of Hearing: 11.07.2023

Date of Decision: 10.11.2023

PER : M.M. PARTHIBAN

This appeal has been filed by M/s Durga Clearing Private Limited (herein after, referred to as 'the appellants'), holders of Customs Broker License No. 11/962 assailing Order-in-Original CAO No. 42/CAC/PCC(G)/SKD/CBS (Admn.) dated 27.02.2018 (herein after, referred to as 'the impugned order') passed by the learned Principal Commissioner of Customs (General), New Custom House, Ballard Estate, Mumbai-I.

2.1. Briefly stated, the facts of the case are that the appellants herein is a Customs Broker (CB) holding a regular CB license issued by the Mumbai Customs under Regulation 7(2) of Customs Brokers Licensing Regulations (CBLR), 2013. A specific intelligence was developed by Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit (MZU), Mumbai regarding under-valuation of goods in import of furniture, lighting fixtures, wood treatment chemicals, resins, varnishes, lacquers etc., by two persons

through mis-use of various Import-Export Codes (IECs) by taking these on lease/rent from the IEC holders illegally for the purpose of duty evasion. The said intelligence developed by DRI indicated that Shri Purav Mehta, Partner of M/s Shreeji Trading Co. & M/s Shreeji Lighting LLP and Shri Pratik Mehta, Partner of M/s Clear and Opaque were involved in under valuation of imported goods by using dummy IEC importers to avoid duty evasion and by operating behind the scene, they were supplying all documents such as invoices of overseas supplier, packing list, bill of lading and obtaining the goods through their own transport/logistics company with the assistance of Shri Lalit Mange, Director of appellants CB. The total duty evasion by this modus operandi was estimated by DRI to be around Rs.11 crore. A preliminary offence report of DRI, MZU was received by the Principal Commissioner (General), Mumbai on 13.06.2011 vide DRI's Letter F. No. DRI/MZU/F/16/2012/7069 dated 10.6.2013 followed by a detailed report/letter in F. No. DRI/MZU/F/16/2012-13/7069 dated 12.12.2013, wherein it was informed about the involvement of appellants CB in the under-valuation of goods.

2.2. On the basis of such offence report/letter received from DRI, MZU, Mumbai, the jurisdictional Principal Commissioner of Customs (General), Mumbai-I had concluded that there is a prima facie case against the appellants for having contravened Regulations 11(a), 11(d), 11(e), 11(m) and 11(n) of CBLR, 2013. Accordingly, he had immediately suspended the CB license of the appellants under Regulation 19 of *ibid*, vide Order No. 43/2013 dated 19.12.2013; and such suspension was continued vide Order No. 45/2013 dated 13.01.2014; further the department had initiated show cause notice dated 11.02.2014 for initiating inquiry proceedings under Regulation 20 *ibid*, against violations of CBLR as above. However, as no inquiry proceedings have been effectively conducted within the prescribed time as per CBLR by the Inquiry Authority, the appellants have filed an appeal against the suspension order of their CB License before this Tribunal, in the first round of litigation, vide Customs Appeal No.85343 of 2014. Upon hearing both sides, the Co-ordinate Bench of the Tribunal had passed an Order No. A/2035/15/CB dated 08.07.2015 allowing the appeal of the appellants CB, by setting aside the suspension of CB License in Order No.43/2013 dated 19.12.2013; and continuation of such suspension in Order No.45/2013 dated 13.01.2014 by holding that none of the time limits

prescribed in CBLR has been followed. However, the department was given liberty to continue inquiry proceedings.

2.3. Subsequently, the Principal Commissioner of Customs (General), Mumbai-I had replaced the Inquiry Officer (IO) with a new officer and the IO held personal hearings on 01.12.2015, 26.02.2016, conducted examination of evidences of witnesses on 30.03.2016 and cross examination of witnesses on 27.05.2016. Upon completion of the inquiry, a report was submitted on 28.11.2016 concluding that all charges framed against the appellants have been proved. Accordingly, the Principal Commissioner of Customs (General), Mumbai, being the licensing authority had passed the impugned order dated 27.02.2018 under Regulations 20(7) and 18 *ibid*, for revoking CB License of the appellants and for forfeiture of entire amount of security deposit. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

3.1. Learned Advocate for the appellants contends that each of the allegations of violation Regulations 11(a), 11(d), 11(e), 11(m) and 11(n) of CBLR, 2013 have been countered by them. In respect of Regulation 11(a), learned Advocate stated that the appellants had obtained the required authorization from the IEC holders for the purpose of clearance of goods and these along with all documents for import were received through S/Shri Purav Mehta and Pratik Mehta, since it is these two persons who had introduced these IEC holders to the appellants; payment for various services provided by the appellants were received through banking channels and these were also submitted to Customs during investigation. Thus, learned Advocate pleaded that the appellants have not violated the provisions of Regulation 11(a) *ibid*. In support of the same they relied on the decision of the Hon'ble High Court of Kerala in *R.Mohandas Vs. Commissioner of Customs, Cochin* 2016 (336) E.L.T. 399 (Ker.). In respect of Regulation 11(d), 11(e) *ibid*, they claimed that all the declarations in the various Bills of Entry (B/Es) were made on the basis of documents given by the importers, and the appellants were neither aware of the undervaluation of goods nor the fact that the IEC holders were proxy importers; they claimed that the appellants were no manner connected with the violations of the Customs law as the alleged documents regarding undervaluation etc. were recovered only from the office/residential premises of the said S/Shri Purav Mehta and Pratik Mehta and not from the appellants CB. They also stated that the

appellants had discharged their duties as CB diligently and there is no delay or lack of efficiency in clearance, handling and delivery of imported goods; the total amounts received as consideration for their services included freight charges, customs duty which were paid by the appellants on behalf of the importer as reimbursement expenses, out of pocket expenses and they had obtained and verified all KYC documents, thus they claimed they did not contravene the Regulations 11 (m) and 11(n) *ibid*.

3.2. In respect of non-compliance to the time lines laid down in the regulations for various actions under inquiry proceedings, they claimed that the Tribunal had already set aside the suspension orders issued earlier by the Commissioner vide Order No. 43/2013 dated 19.12.2013; and Order No. 45/2013 dated 13.01.2014. Further, in the appeal filed by the department before the Hon'ble High Court of Mumbai in Customs Appeal No.41 of 2016 in the appellant's own case, the Hon'ble Court had held vide order dated 28.08.2017 that considering the enormous delay involved in their case the order of suspension cannot be continued and upheld the order of the Tribunal by dismissing the appeal filed by the department. In arriving at the impugned order, they submitted that there were three major delays in the inquiry proceedings viz., 243 days delay in issue of the Show Cause Notice after receipt of offence report on 14.03.2013; 473 days delay in submission of inquiry report from the first date of personal hearing on 10.03.2014 and delay of 180 days in serving the copy of inquiry/ investigation report to the appellants for submitting their response to the licensing authority/Principal Commissioner of Customs. As there was gross delay in the conclusion of inquiry proceedings for which there is no explanation, without prejudice their submission on merits, they stated that on the ground of non-adherence with the time limits, the impugned order is liable to be set aside. In support of the same they relied on the judgement of the Hon'ble Supreme Court in *Baidynath Ayurved bhavan Ltd. Vs. Collector of Central Excise, Allahabad* 2004 (165) E.L.T. 494 (S.C). In view of the above, they requested that impugned order be set aside and consequential relief be granted to them.

4. Learned Authorised Representative (AR) reiterated the findings made by the Principal Commissioner of Customs (General) in the impugned order and submitted that each of the violation under sub-regulations (a), (d), (e), (m) and (n) of Regulation 11 *ibid*, has been examined in detail by the Principal Commissioner. The appellants CB got all the documents for import

from S/Shri Purav Mehta and Pratik Mehta who are neither IEC holders nor importers or their representative; they never verified the authenticity of KYC documents; had they cross checked or had they conducted verification at their level, then they could have easily made out that the IEC holders are not the actual importer of the goods. Rather, the appellants were helping the proxy importers S/Shri Purav Mehta and Pratik Mehta and never met the IEC holders. Learned AR pointed out that it has also been admitted by Shri Lalit Mange, Director of appellants CB that he was well aware of the proxy nature of the imports by misuse of IECs and they had knowingly dealt with unauthorised persons acting as proxy importers and aided in clearance of under-valued goods. Thus, learned AR justified the action of Principal Commissioner of Customs (General) in revocation of the appellant's CB license and forfeiture of security deposit in the impugned order and stated that the same is sustainable in law. It is further stated by him that the impugned order viewed that the timelines specified in CBLR are directory in nature and not a mandatory factor. The delay in completing the CBLR proceedings was partly on account of failure on the part of the appellants to appear for personal hearing and due to their seeking of adjournments.

5. Heard both sides and perused the case records. We have also considered the additional written submissions given in the form of paper books by learned Advocates for the appellants as well as Authorised Representative for the Revenue.

6.1. The issue involved herein is to decide whether the appellant Customs Broker has fulfilled all his obligations as required under CBLR, 2013 or not. The specific sub-regulations which were violated by the appellants are Regulations 11 (a), 11(d), 11(e), 11(m) and 11(n) *ibid*, and hence there are five distinct charges framed against the appellants. Though suspension orders No. 43/2013 dated 19.12.2013 and No. 45/2013 dated 13.01.2014 were set aside by the Tribunal, on the basis of inordinate delay and the fact that none of the time limits prescribed in the CBLR had been followed by the Customs authorities in this case, as they were given liberty, to continue with the regular inquiry proceedings under CBLR, we are looking into the issues covered in the impugned order comprehensively. We also find that the impugned order dated 27.02.2018 has been passed by the Principal Commissioner of Customs (General) after taking into consideration the written submissions made by the appellants vide their letters dated

22.09.2017 and 13.10.2017 and the record of oral submission made at the time of personal hearing on 10.10.2017, for considering the charges of violations against them, before passing the impugned order. Further, the Tribunal in its order dated 08.07.2015 had granted liberty to the Customs Authority to continue inquiry proceedings as envisaged under CBLR, 2013. Thus, we are of the considered view that sufficient and reasonable opportunity was given to the appellants before passing an order, in respect of charges framed against them and there is no infirmity of the impugned order in not following the principles of natural justice in this regard.

6.2 We find that the Regulation 11 of CBLR, 2013, provide for the obligations that a Customs Broker is expected to be fulfilled during their transaction with Customs in connection with import and export of goods. These are as follows:

"Regulation 11. Obligations of Customs Broker: -

A Customs Broker shall -

(a) obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

...

(d) advise his client to comply with the provisions of the Act 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;

...

(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;

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

6.3. We find that the Principal Commissioner of Customs had come to the conclusion that the various statements recorded during the investigation in terms of the legal provisions of Section 108 of the Customs Act, 1962 which have been used as evidence against the appellants to the extent of omissions and commissions on their part for contravention of Regulations 11 (a), 11(d), 11(e), 11(m) and 11(n) *ibid*, have not been retracted by the

concerned. Thus, he had taken the view that these remain as substantive evidence to hold that the appellants are liable for the violations of non-compliance with aforesaid Regulation 11 (a), 11(d), 11(e), 11(m) and 11(n) of CBLR, 2013. In respect of delay in completion of inquiry proceedings, without adhering to the timelines given under the CBLR, he had relied upon the judgement of the Hon'ble High Court of Bombay in the case of *Principal Commissioner of Customs (General), Mumbai Vs. Unison Clearing P Ltd.*, 2018 (361) E.L.T. 321 for concluding that time factor under CBLR is directory in nature and not a mandatory factor.

7.1. We find from the factual matrix of the case, that the imports in respect of furniture, lighting fixtures, wood treatment chemicals, resins, varnishes, lacquers etc., by various importers such as M/s Shreeji Trading Company, M/s Shreeji Lighting LLP, M/s Niti Traders, M/s Clear & Opaque, M/s Reds & Blues, for which Bills of Entry were filed by the appellants as Customs Broker. The investigation conducted by DRI, MZU indicated that S/Shri Purav Mehta and Pratik Mehta in connivance with various persons had obtained IECs of such importers from respective IEC holders on rental basis and misused the IEC-commercial entity for under-valuation of imported goods in the name of other persons to evade the customs duty. As evidenced from the statement dated 18.03.2013 given by Shri Lalit Mange, Director of appellants CB that the documents relating to imported goods in respect of M/s Niti Traders and M/s Reds & Blues have been sent by S/Shri Purav Mehta and Pratik Mehta and that the imported goods were directly sent to them instead of being handed over to the IEC holders; that he had also admitted that he knew the fact that Shri Purav Mehta is the actual owner and importer of goods imported in the name of M/s Niti Traders, while Shri Pratik Mehta is the real owner and importer of the goods imported in the name of M/s Reds & Blues. However, as per the DRI report, searches were carried out at the premises of M/s Shreeji Trading Co., M/s Clear & Opaque and residential premises of S/Shri Purav Mehta and Pratik Mehta which had led to the recovery of incriminating documents such as parallel set of invoices and telegraphic transfer of remittances, indicating undervaluation of imported goods. Further, in the various B/Es filed by the appellants on behalf of various importers, the proper description of the imported goods and its value has been indicated as per the documents given to them by the importers. It is not the case of Revenue, that the value of imported goods indicated in the B/Es were different from the one indicated in the commercial

invoices submitted to the Customs at the time of filing of B/Es. The facts indicate that S/Shri Purav Mehta and Pratik Mehta, who were the behind the scene operators in this case were involved in preparation of parallel set of invoices and illegal transfer of remittances, paving way for under valuation of imported goods. This is duly supported by the DRI's report that incriminating documents including the parallel invoices of higher value and documents for illegal remittances were recovered only from the premises of S/Shri Purav Mehta and Pratik Mehta. Thus, it is clear that these two persons were alone are involved in under-valuation of goods resulting in duty evasion.

7.2. From the above factual details, we find that the appellants CB had declared the description of the imported goods and value in the various B/Es for aforesaid imports as given in the invoices supplied by the respective importers. Further, the appellants were not aware of the under valuation of the imported goods as there was no evidence to the claim of the department that the appellants knew about undervaluation and further all incriminating documents were recovered only from the two persons namely S/Shri Purav Mehta and Pratik Mehta. Even at the time of clearance of goods for various importers in the past, the Customs assessing group and the Commissionerate did not find out any discrepancy in valuation or any mis-declaration. To illustrate, in respect of import of furniture, the department had prescribed certain guidelines to bring uniform practice of valuation assessment in all Customs formations, based on a study conducted by the Directorate General of Valuation, CBEC, Mumbai vide valuation Guideline no. 2/2008 dated 20.06.2008. These guidelines issued by Customs dated 13.08.2008 provide for laying down the specific factors of furniture such as material composition, design, quality, brand, finish, ornamentation, specification, usage etc., to be taken into account by the Customs authorities to arrive at a fair valuation of imported goods. In such a scenario, it is difficult to accept that Customs authorities did not check valuation of goods at the time of import and had allowed the under valuation of imported furniture in this case unnoticed, which was later identified by DRI. It is also on record that the values declared by the importer were further loaded for enhancing the assessable value for the purpose of customs duty. For eg., In B/E No. 9170404 dated 03.01.2013 for import of 38 items of furniture by M/s Niti Traders, the value had been enhanced by 520%. It is only on the basis of DRI, MZU investigation that the whole case

of S/Shri Purav Mehta and Pratik Mehta, misusing the IECs and fabricating parallel invoices for under valuation of imported goods were brought to the fore. We find that these facts clearly brings out the role of S/Shri Purav Mehta and Pratik Mehta who were the master mind behind the violations under the Customs Act, 1962 along with the IEC holders/importers and other connected persons involved in the case, including the appellants Customs Broker. The action taken under CBLR, 2013 against the appellants CB is a follow up/ further action taken consequent to the customs offence case made out by DRI, MZU, and thus the present proceedings are only for the violations under the specific sub-regulations under CBLR, 2013. It is not the case of the Revenue that the description of the imported goods or classification of such goods under customs tariff was mis-declared in order to undervalue these imported goods. Further, any allegation of mis-declaration of imported goods in terms of its 'description' or 'value' could only be established, if the declaration in the Bill of entry has been different from the commercial invoice or other supporting documents. It is noticed from the factual details of the present case, that the declaration made in the Bills of Entry is the same as that is provided in the Commercial invoices, and the value declared as per invoices were fabricated by S/Shri Purav Mehta and Pratik Mehta by preparing parallel set of invoices, which could be detected only upon developing specific intelligence by DRI, MZU, subsequent to clearance of such goods. In the absence of any document to prove the claim of mis-declaration of value at the time of import, it is difficult to fasten such liability on the appellants CB.

7.3. From the above, we find that appellants have duly filed the bill of entry as per the documents given by the importers and they were not aware of the mis-declaration of description/value of the imported goods. In the instant case, the mis-declaration was found by the department only on the basis of specific intelligence developed by DRI, MZU and concluded in their preliminary report dated 13.06.2011, and hence the appellants CB cannot be found fault for the reason that they did not advise their client importer to comply with the provisions of the Act. Further, as such mis-declaration was not known to the appellants, the non-compliance by the importer of declaring the alleged incorrect value of imported goods, could not have been brought to the notice of the Deputy Commissioner of Customs (DC) or Assistant Commissioner of Customs (AC) by the appellants. Thus, we are of

the considered view that the violation of Regulation 11(d) *ibid*, as concluded in the impugned order is not sustainable.

8.1. Further, in order to examine on the aspect of valuation of imported goods, and whether the appellants had failed to exercise any due diligence or not, the legal requirement as per the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 made there under could be perused in detail. The extract of the above legal provisions are as follows:

"Section 14. Valuation of goods. -

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:....."

"Rule 11. Declaration by the importer . -

(1) The importer or his agent shall furnish -

- (a) a declaration disclosing full and accurate details relating to the value of imported goods; and
- (b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.

(2) Nothing contained in these rules shall be construed as restricting or calling into question the right of the proper officer of customs to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.

(3) The provisions of the Customs Act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

Rule 3. Determination of the method of valuation . -

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that -

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -

- (i) are imposed or required by law or by the public authorities in India; or
- (ii) limit the geographical area in which the goods may be resold; or
- (iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9."

8.2. From the above, we find that the appellants CB has declared the value of imported goods as given in the commercial invoices, which is the transaction value. Further, submitting the declaration form (GATT valuation declaration) in terms of Rule 11 above, is primarily the responsibility of the importer and in case of proper authorization being given by them, then by the agent of the importer. In the present case, it is not in dispute that there was any such mis-declaration in the GATT value declaration form or in the value particulars declared in the bill of entry as compared to the commercial invoice. Further, any exercise in re-determination of value other than the transaction value has to be adopted step-by-step on the basis Rule 3 *ibid*, and after rejection of transaction value as per Rule 12 *ibid*. We do not find any such evidence or fact indicating that there was a mis-declaration of value at the time of imports and the value was re-determined as per the above legal provisions. There is definitely a mention that the parallel invoices which are incriminating in nature for subject goods were found out during the search proceedings conducted at the premises of S/Shri Purav Mehta and Pratik Mehta. However, at the same time it is also on record that neither the customs authority at the time of import nor the appellants were aware of such under-valuation. Thus, we are of the considered view that the conclusion arrived by the Principal Commissioner of Customs (General) on this valuation issue in the impugned order is not supported by any evidence

or factual detail, to fasten the liability for such under valuation on the part of the appellants CB and thus the impugned order stating that the appellants have violated Regulation 11(d) *ibid* is also not sustainable.

9.1. Learned Principal Commissioner of Customs (General) had come to the conclusion that the CB had violated the provision of Regulation 11(e) *ibid*, as established in the inquiry proceedings that the appellants had never met the importers/IEC holders, and had only interacted with S/Shri Purav Mehta and Pratik Mehta, who are the proxy importers for clearance of imported cargo, which led to the duty evasion in the said case. Further, they did not inform the fact of proxy importers to the DC/AC of Customs.

9.2. In the absence of any specific evidential document or factual record it cannot be stated that the information on under valuation have been withheld by the appellants, and more specifically under this issue of under valuation was brought on record only when the search operation of DRI, MZU was conducted at the premises of S/Shri Purav Mehta and Pratik Mehta resulting in recovery of parallel invoices and telegraphic transfer of foreign remittances. Thus, it is not feasible to sustain such a charge on the appellants that they did not exercise due diligence to impart correct information to their clients and thus the conclusion arrived at by the Principal Commissioner of Customs (General) is without any basis of documents or facts, in the impugned order with respect to Regulation 11(e) *ibid*, is not sustainable.

10.1. In the inquiry proceedings, as the appellants had involved in import of goods which were under valued on the basis of fabricated and manipulated invoices and the declaration with respect to values in the B/Es being incorrect leading to short payment of duty on account of undervaluation, it was concluded by the Principal Commissioner of Customs (General) that such omission and commission of such action by the appellants is indicative of rank inefficiency in the discharge of their duties as Customs Broker and therefore they have violated Regulation 11(m) *ibid*.

10.2. From the plain reading of the requirements under Regulation 11(m) *ibid*, it is clear that there should be some grounds of inefficiency or unavoidable delay in clearance of the imported goods. We find neither, is there is any such claim of undue delay nor any demonstration of inefficiency

in clearance of goods by the appellants. Thus, we do not find any merits on the grounds and the conclusion arrived on this point by the Principal Commissioner of Customs (General) in the impugned order. Thus, the conclusion that the appellants have violated Regulation 11(m) *ibid* is not sustainable.

11.1 We find from the records, that the appellants CB had obtained the KYC documents from the importer M/s Reds & Blues vide their authorization letter dated 05.06.2012 and verified the existence of the importer through the Certificate of Registration dated 04.04.2005 issued by the Sales Tax Department, Government of Maharashtra indicating the name along with address, name of the partners; and Permanent Account Number (PAN) card of the importer. Similarly, they had obtained the KYC documents from the importer M/s Niti Traders vide their authorization letter dated 11.06.2012 and verified the existence of the importer through the Ration Card issued by the Controller of Rationing, Government of Maharashtra indicating the name and address; and Senior Citizens Identity card of the importer. However, the inquiry proceedings had concluded in the impugned order that the appellants CB has not been careful and not diligent in undertaking the KYC of the background of importer and accepted documents. Further, they facilitated delivery of imported goods to the godowns of M/s Shreeji Trading Co., and M/s Clear and Opaque who are unauthorized persons, instead of being delivered to the IEC holders, in whose name the import documents were filed.

11.2. In this regard, we find that CBIC had issued instructions in implementing the KYC norms for verification of identity, existence of the importer/exporter by Customs Broker in Circular No. 9/2010-Customs dated 08.04.2010, the extract of the relevant paragraph is as given below:

"(iv) Know Your Customs (KYC) norms for identification of clients by CHAs:

6. In the context of increasing number of offences involving various modus-operandi such as misuse of export promotion schemes, fraudulent availment of export incentives and duty evasion by bogus IEC holders etc., it has been decided by the Board to put in place the "Know Your Customer (KYC)" guidelines for CHAs so that they are not used intentionally or unintentionally by importers/exporters who indulge in fraudulent activities. Accordingly, Regulation 13 of CHALR, 2004, has been suitably amended to provide that certain obligations on the CHAs to verify the antecedent, correctness of Import Export Code (IEC) Number, identity of his client and the functioning of his client in the declared address by using reliable, independent, authentic documents, data or information. In this regard, a detailed guideline on the list

of documents to be verified and obtained from the client/customer is enclosed in the Annexure. It would also be obligatory for the client/customer to furnish to the CHA, a photograph of himself/herself in the case of an individual and those of the authorised signatory in respect of other forms of organizations such as company/trusts etc., and **any two of the listed documents** in the annexure.

No	Form of organisation	Features to be verified	Documents to be obtained
1	Individual	(i) Legal name and any other names used (ii) Present and Permanent address, in full, complete and correct.	(i) Passport (ii) PAN card (iii) Voter's Identity card (iv) Driving licence (v) Bank account statement (vi) Ration card <i>Note : Any two of the documents listed above, which provides client/customer information to the satisfaction of the CHA will suffice."</i>

We find that the above CBIC circular clearly explains the provision of CBLR/CHA Regulations which require the Customs Brokers to verify the antecedents, correctness of Import Export Court (IEC) Number, identity of his client and the functioning of his client in the declared address by using reliable, independent, authentic documents, data and information. The said guidelines provide for the list of documents that is required to be verified and that are to be obtained from the client importer/exporter. It is also provided that any two documents of among such specified documents is sufficient for fulfilling the obligation prescribed under Regulation 11(n) of CBLR, 2018. We find that in the present case, the appellants CB had obtained the KYC documents and submitted the same to the Customs Department. Thus, we do not find any legal basis for upholding of the alleged violation of Regulation 11(n) *ibid* by the appellants in the impugned order on the above issue.

11.3. We find that in the case of *M/s Perfect Cargo & Logistics Vs. Principal Commissioner of Customs (Airport & General), New Delhi 2021 (376) E.L.T. 649 (Tri. - Del.)*, the Tribunal had decided the issue of KYC verification of the importer/exporter by the Customs broker and the requirements specified in the CBLR, 2018.

"34. The basic requirement of Regulation 10(n) is that the Customs Broker should verify the identity of the client and functioning of the client at the declared address by using, reliable, independent, authentic documents, data or information. For this purpose, a detailed guideline on the list of documents to be verified and obtained from the client is contained in the Annexure to the Circular dated April 8, 2010. It has also been mentioned in the aforesaid Circular that any of the two listed documents in the Annexure would suffice. The Principal Commissioner noticed in the impugned order

that any two documents could be obtained. The appellant had submitted two documents and this fact has also been stated in paragraph 27(a) of the order. It was obligatory on the part of the Principal Commissioner to have mentioned the documents and discussed the same but all that has been stated in the impugned order is that having gone through the submissions of the Customs Broker, it is found that there is no force in the submissions. The finding recorded by the Principal Commissioner that the required documents were not submitted is, therefore, factually incorrect.

35. The Principal Commissioner, therefore, committed an error in holding that the appellant failed to ensure due compliance of the provisions of Regulation 10(n) of the Licensing Regulations."

11.4. Further, we also find that the Hon'ble High Court of Delhi has held in the case of *Kunal Travels (Cargo) Vs. Principal Commissioner of Customs (I&G), IGI Airport, New Delhi* reported in 2017 (354) E.L.T. 447 (Del.), the appellants CB is not an officer of Customs who would have an expertise to identify over valuation or under valuation of goods. The relevant portion of the said judgement is extracted below:

"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..... 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."

11.5. From the above, we also find that the above orders of the Tribunal and higher judicial forum are in support of our considered views in this case in respect of the compliance with respect to Regulation 11(n) *ibid*.

12.1. We also find that as regards the timelines to be followed in the entire process of adjudication of the suspension/revocation of CB license under CBLR, 2013/CBLR, 2018 by Customs authorities, the Hon'ble High Court of Bombay has laid down certain guidelines for its interpretation in the case of *Principal Commissioner of Customs (General), Mumbai Vs. Unison Clearing P Ltd.*, 2018 (361) E.L.T. 321. The relevant portion of the judgement in the above case is extracted below:

"The whole purpose of the CBLR-2013 being to frame a time line so that undue delay in the proceedings can be avoided, and the balance will have to be struck between the strict adherence to the said time schedule to such an extent that even a day's delay would prove to be fatal and render the entire action invalid and on the other hand, to grant such a discretion to the revenue to continue the said action of suspension of licence for an indefinite period depriving the Customs brokers of their right to carry on business on

the basis of the licence, on a spacious ground that the charges levelled against him are being enquired into. Neither of these two extreme situations are ideal and balance will have to be struck by construing that the time limit for completion of inquiry for revoking the licence or imposing the penalty and keeping the licence under suspension should be "Reasonable period", depending on the facts and circumstances of each case. There cannot be any absolute principle, which can be laid down to determine as what would be reasonable period but it would be dependent on the facts and circumstances of each case since on one hand, the purpose of prescription of the time limit by the Regulation is to cast a duty on the Revenue Authorities to act within the time frame since it adversely affects the interest of the licensee and on the other hand the licensee should not be permitted to take an advantage of some delay at the instance of the Revenue, which is beyond its control since the revenue administration needs to be granted certain concessions which may be on account of administrative exigencies, and the department working at different levels through different persons. The principles of fairness and equity demands that when there is deviation from the time schedule prescribed in the Regulation, the Revenue enumerates the reasons and attributes them to an officer dealing with it and also accounts for every stage at which the delay occurs. Every endeavour should be made to adhere to the time schedule but in exceptional circumstances, which are beyond the control of the revenue if the time schedule is not adhered to, an accountability be fastened on the Revenue, to cite reasons why the time schedule was not adhered to, and then leave the decision to the adjudicating authority to examine whether the explanation offered is reasonable or reflects casual attitude on behalf of the Revenue. This is the only way how the Regulation can be made effective and worthy of its existence so as to safeguard the interest of the Customs house agent, who is in a position of the delinquent and faces an inquiry somehow similar to an inquiry in disciplinary proceedings on one hand and the revenue in the capacity of the administration on the other hand.

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."

12.2. In the instant case, the alleged offence in importation of goods took place in respect of imports which was reported by an Preliminary offence report dated 13.06.2011 of DRI, MZU and on that basis the jurisdictional

Principal Commissioner had suspended CB license of the appellants under Regulation 19(1) of *ibid*, with immediate effect vide Order No. 43/2013 dated 19.12.2013 and the suspension was continued vide Order No.45/2013 dated 13.01.2014. Simultaneously, inquiry proceedings against the appellants for violations of CBLR, 2013 due to failure of the appellants to comply with Regulations 11(a), 11(d), 11(e), 11(m) and 11(n) *ibid*. Upon completion of the inquiry, vide Inquiry report submitted on 28.11.2016, and the Principal Commissioner of Customs (General), Mumbai, being the licensing authority under Regulations 20 of CBLR, 2013 had passed the impugned order dated 27.02.2018. The above timelines indicate that the suspension was continued during the inquiry proceedings for about 18 months till the same was set aside by the Order of this Tribunal dated 08/07/2015. Normally, immediate suspension action prior to conduct of regular inquiry is taken considering the serious violations of CBLR, 2013 by the action of the Customs broker. Otherwise, the regulations provide for conducting regular inquiry, while license of Customs broker is in operation, for taking a decision on the suspension or revocation of the license. If the entire process of suspension proceedings is unduly delayed, then the very purpose of prescribing specific time limits in relation to conduct of inquiry proceedings is nullified and to such extent the actions of the authorities is not really sanctioned by law. We also find that the Customs broker has already suffered a lot, as they were out of his normal business for almost 5 years and 9 months from the date of the Impugned order. It is also noted that the livelihood of Customs broker and the employees is dependent upon the functioning of Customs broker's business. The punishment suffered by being out of Customs broker's business for long period of 7 years and 3 months in total is more than sufficient to mitigate the case of violations or contraventions of CBLR, 2013.

13.1. From the records of the case, we find that there is definitely delay in adjudication and that for the import transactions for which the offence was detected in 2011, the order of revocation of appellant's CB license has been passed on 27.02.2018. Revenue is unable to explain why there was such a long delay in taking action against appellants, when the information about under valuation of import through DRI, MZU was received vide offence report dated 10.06.2013. There are no reasons recorded in detail justifying the delay in passing the impugned order by the learned Principal Commissioner except that in para 25.1 of the impugned order it is stated

that out of 14 different dates for personal hearing opportunities were offered to the appellants in inquiry proceedings, and only in 5 days, the proceedings could be conducted and this had caused delay.

13.2. In this case, we find that the inquiry proceedings itself was initiated in March, 2014. Though notices for preliminary hearings were issued by the Inquiry Officer, as the same could not progress further, and he did not complete the inquiry proceedings, the Principal Commissioner of Customs (General) appointed another officer on 25.06.2015 who submitted the inquiry report dated 28.11.2016. The prescribed time under CBLR for timely completion of inquiry proceedings right from the beginning i.e., issue of SCN within a period of 90 days from the date of receipt of offence report, submission of inquiry report within 90 days of issue of SCN, passing of order by the Principal Commissioner of Customs within 90 days of receipt of inquiry report was neither followed nor given credence to. The inordinate delay in the inquiry proceedings in this case has not been properly explained in the impugned order; the only reason given for delay or non conformity to the time limits under CBLR, is that the timelines prescribed are only directory in nature and not mandatory. We are of the view that such a reasoning given by learned Principal Commissioner of Customs (General), particularly in the background of the earlier round of litigation before this Tribunal and further appeal by the department litigating before the Hon'ble High Court of Bombay being dismissed, and refusal to follow the timelines required for completion of inquiry proceedings under CBLR, barring exceptional circumstances, cannot be accepted as 'reasonable grounds' which had caused delay in terms of the test laid down by the Hon'ble High Court of Bombay in the case of *Unison Clearing Pvt. Ltd. (supra)*.

14.1. The records of the case indicate that the appellants had obtained a written authorization letters from M/s Reds & Blues vide their authorization letter dated 05.06.2012 and from M/s Niti Traders vide their authorization letter dated 11.06.2012. The conclusion of the Principal Commissioner of Customs (General) in respect of sub-regulation 11(a) *ibid* is on the basis of the statement dated 18.03.2013 given by Shri Lalit Mange, Director of appellants CB firm, wherein he has stated that they had obtained all the documents in respect of imports through S/Shri Purav Mehta and Pratik Mehta and has only dealt with them. Further, he was aware that these two were the real owners importing the goods using the IECs of respective IEC

holders by taking the commercial entity for lease/ rent. Thus, on this basis the inquiry proceedings had held that the authorization is null and void, thereby violating the obligation under sub-regulation 11(a) *ibid*. It is also on record in the statement given during investigation by Shri Obaidur Rehman Shaikh, IEC holder of M/s Reds & Blues, where he had stated that he had let out his IEC to Shri Pratik Mehta, Partner of M/s Clear & Opaque, for monetary benefits; similarly, Shri Umesh Jayantilal Ghelani, IEC holder of M/s Niti Traders, had also given the statement that he had lent his IEC to Shri Purav Mehta, Partner of M/s Shreeji Trading Company, from June. 2012 for import of furniture for monetary consideration. However, these facts were brought to fore only during detailed investigation of the case conducted subsequently by the DRI, MZU. Hence, at the relevant time of imports, the appellants were not aware of this.

14.2. In this regard, the Tribunal in the case of *K.S. Sawant & Co.*(supra) had held accepting the documents through logistics operator is not barred by CBLR. The relevant paragraph of the said order is extracted below:

"5.1 From the records, it is clear that the business in respect of the client M/s. Advanced Micronics Devices Ltd., was brought in by Shri Sunil Chitnis, who claims himself to be a sub-agent of the appellant CHA. The statements of Shri Badrinath and Shri Sunil Chitnis amply proves this fact. The question is, merely because the appellant procured the business through an intermediary who is not his employee, can it be said that he has sub-let or transferred the business to intermediary. The Tribunal in the case of Principal Commissioner of Customs v. Chhaganlal Mohanlal & Co. Ltd. [2006 (203) E.L.T. 435 (Tri. - Mum.)], held that if the Customs clearance has been done through intermediary and business was got through intermediary, the same is not barred by the provisions of CHALR, 2004 and it cannot be stated that the appellant has sub-let or transferred his licence. In the case of Krishan Kumar Sharma v. Principal Commissioner of Customs, New Delhi reported in 2000 (122) E.L.T. 581 (Tri.), this Tribunal held that the mere fact of bills raised on the intermediary cannot be held against the CHA firm to prove that the CHA licence was sub-let or transferred. Therefore, in the light of the judgments cited above, the charge of violation of Regulation 12 is not established. As regards the violation of Regulation 13(a), the adjudicating authority himself has observed that the "I have no doubt to say that the CHA might have obtained the authorisation but it is surely not from the importer. Therefore, the authorisation submitted is not a valid one". This finding is based on a presumption. Obtaining an authorisation from the importer does not mean that the same should be obtained directly; so long as the concerned import documents were signed by the importer, it amounts to authorisation by the importer and, therefore, it cannot be said that there has been a violation of Regulation 13(a). ... The question now is whether revocation of licence is warranted for such a violation. In our view, the punishment should be commensurate with the gravity of the offence. Revocation is an extreme step and a harsh punishment, which is not warranted for violation of Regulation 13(b). Accordingly, we are of the view

that forfeiture of security tendered by the appellant CHA is sufficient punishment and revocation is not warranted. Accordingly, we set aside the order of the revocation and direct the Principal Commissioner of Customs (General) to restore the CHA licence subject to the forfeiture of entire security amount tendered by the CHA."

We also find that the Directorate General of Foreign Trade (DGFT), in its Policy Circular No.6 (RE-2013)/ 2009-2014 dated 16.09.2013 had clarified in the context of some of the importers/exporters who were effecting imports/exports by using IECs issued to others, which is a complete violation of the provisions of Foreign Trade Policy, by clarifying that use of IEC by the person other than IEC holder himself is a violation of Section 7 of the Foreign Trade (Development and Regulation) Act, 1992 (FTDR) and Rule 12 of Foreign Trade (Regulation) Rules, 1993. Accordingly, it was specifically stated in the said Circular that such misuse of IECs of other persons, would attract action under Section 8 and 11 of FTDR Act, except in case importers or exporters who are exempted from obtaining IEC and who use permanent (common) IEC Numbers under Para 2.8 of Handbook of Procedure, Vol.1, 2009-14. Thus, in harmonious reading of the above order of the Tribunal in accepting the documents from the importer directly or through intermediary and at the same time ensuring that the IEC is not being misused by any person other than IEC holder, we are of the considered view that the responsibility of a Customs Broker is to play a crucial role in protecting the interest of Revenue and at the same time he is expected to facilitate expeditious clearance of import/export cargo by complying with all legal requirements.

14.3. 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 *Principal 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. Principal 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.”

14.4 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, particularly when the import documents were obtained from the importers through an intermediary in ensuring that all documents relating to imports are genuine, the KYC documents given by the importer are also genuine and that these are not fake or fabricated. Thus, to this extent we find that the appellants CB are found to have not complied with the requirement of sub-regulation 11(a) and thus forfeiture of security deposit for failure in not being proactive for fulfilling of regulation 11(a) of CBLR, 2013 alone, 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 11(d), 11(e), 11(m) and 11(n) *ibid*, 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 11(a) *ibid*, particularly when they have received the documents from importer through intermediary, we find that it is justifiable to forfeit the entire security deposit given by 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 10.11.2023)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha