

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

Customs Appeal No. 87827 of 2022

(Arising out of Order-in-Original CAO No. 45/CAC/PCC(G)/SJ/CBS dated 23.09.2022 passed by Principal Commissioner of Customs (General), New Custom House, Mumbai.)

Shlok Logistics Private Limited

(CB License No. 11/2262)
Sukharta Niwas, House No.55, Kamath Village
Post Kihim, Taluka Alibagh, Raigad-402208

.....Appellants

VERSUS

**Principal Commissioner of Customs (General),
Mumbai**

New Custom House, Ballard Estate,
Mumbai-400 001.

.....Respondent

Appearance:

Shri Ranjeet Singh, Advocates for the Appellants

Shri D.S. Mann, 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/87255/2023

Date of Hearing: 18.08.2023

Date of Decision: 18.12.2023

PER : M.M. PARTHIBAN

This appeal has been filed by M/s Shlok Logistics Private Limited (herein after, referred to as 'the appellants'), holders of Customs Broker License No. 11/2262 assailing Order-in-Original CAO No. 45/CAC/PCC(G)/SJ/CBS dated 23.09.2022 (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), 2018. Acting on a specific intelligence the Directorate of Revenue Intelligence, Kolkata Zonal Unit (DRI KZU), Kolkata had intercepted one live consignment of Black Pepper imported by M/s Bruno Exports through Nhava Sheva port using Advance Authorization for duty free import which were diverted in the local market illegally instead of using the same imported goods for manufacture of export goods, by misuse of duty exemption benefits availed through such Advance Authorization. Further investigation by DRI KZU revealed that a syndicate was involved in such modus operandi and they had imported 'black pepper' and 'dry dates' of total value of Rs.4.75 crore in the past using the above modus operandi by misuse of duty free Advance Authorization scheme and diverted the same in the local market causing huge revenue loss to the government exchequer. On the basis of such investigation conducted by DRI KZU, investigation report dated 30.06.2021 was sent to the jurisdictional Customs authorities for taking necessary action under CBLR, by informing about the involvement of appellants CB in the clearance of such illegal import of goods under above modus operandi.

2.2. On the basis of such offence report/letter received from DRI KZU, Kolkata, 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 10(d) and 10(n) of CBLR, 2018. Accordingly, he had immediately suspended the CB license of the appellants under Regulation 16(1) *ibid*, vide Order No. 20/2021-22 dated 07.09.2021; and such suspension was continued vide Order No. 27/2021-22 dated 22.10.2021; further the department had initiated show cause proceedings by issue of notice dated 26.10.2021 for initiating inquiry proceedings under Regulation 17 *ibid*, against violations of CBLR as above.

2.3. Upon completion of the inquiry proceedings, an inquiry report dated 22.07.2022 was submitted concluding that both charges framed against the appellants CB have been proved. Accordingly, the Principal Commissioner of

Customs (General), Mumbai, being the licensing authority had passed the impugned order dated 23.09.2022 under Regulations 17(7) and 18 *ibid*, for revoking CB License of the appellants and for forfeiture of entire amount of security deposit, besides imposition of penalty of Rs.50,000/- on the appellants. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

3.1. Learned Advocate for the appellants contends that both the allegations of violation of Regulations 10(d) and 10(n) of CBLR, 2018 have been countered by them. In respect of Regulation 10(d), learned Advocate stated that all the declarations in the ex-bond Bills of Entry (B/Es) were made on the basis of documents given by the importers, and the appellants were neither aware of the likely diversion of imported 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 diversion into domestic market etc. were happened subsequent to the customs clearance and these are not in the knowledge of the appellants CB. Further, he stated that there was no mis-declaration or any suppression in clearance of imported goods noticed by the department at the time of assessment of B/Es, examination and grant of customs out of charge. He stated that any action taken by importer in respect of imported goods leading to any violation, subsequent to customs clearance of the goods, should be the responsibility of importer, and the appellants are nowhere at fault on this account. He also stated that the appellants had discharged their duties as CB diligently and during the lock down period, as an abundant caution had also made a video call with the partner of importer firm Shri Rohan Kumar to confirm that they were operating from the declared address; thus they claimed they did not contravene the Regulations 10 (d) and 10(n) *ibid*.

3.2. In support of their stand, the learned Advocate relied upon the decisions of the Tribunal in the case of *HIM Logistics Pvt. Ltd. Vs. Commissioner of Customs, New Delhi* reported in 2016 (338) E.L.T. 725 (Tri.-Del.).

4. Learned Authorised Representative (AR) reiterated the findings made by the Principal Commissioner of Customs (General) in the impugned order and submitted that both the violation under sub-regulations (d) and (n) of Regulation 10 *ibid*, has been examined in detail by the Principal Commissioner. The appellants CB got all the documents for import from Shri.Tushar Pokharkar, a freight forwarder, who is neither IEC holder nor importer 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 Shri Rohan Kumar is not the actual importer of the goods. Rather, the appellants were helping the proxy importer and never met the actual owner of importer/IEC holder. Learned AR pointed out that it has also been admitted by Shri Sadgun Ram Kathe, Director of appellants CB that he had knowingly dealt with unauthorised persons acting as proxy importers and aided in import of illegal diversion of goods. Thus, learned AR justified the action of Principal Commissioner of Customs (General) in revocation of the appellant's CB license, imposition of penalty 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. There is no inordinate delay and even such slight delay in completing the CBLR proceedings was on account of administrative reasons.

5. Heard both sides and perused the case records. We have also considered the additional written submissions given in the form of paper book by learned Advocate 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 10 (d) and 10(n) *ibid*, and hence there are two distinct charges framed against the appellants. We also find that the impugned order dated 23.09.2022 has been passed by the Principal Commissioner of Customs (General) after taking into consideration the written submissions made by the appellants and the record of oral submission made at the time of

personal hearing on 29.08.2022, for considering the charges of violations against them, before passing the impugned order. 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 10 of CBLR, 2018, provide for the obligations that a Customs Broker is expected to fulfill during their transaction with Customs in connection with import and export of goods. These are as follows:

"Regulation 10. Obligations of Customs Broker: -

A Customs Broker shall -

...

(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;

...

(n) verify correctness of Importer Exporter Code (IEC) number, Good 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;"

6.3. We find that the Principal Commissioner of Customs had come to the conclusion that the statements recorded during the investigation from Shri Sadgun Ram Kathe, Director and F-Card holder of the appellants CB, 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 10(d) and 10(n) *ibid*, have been deliberate act of negligence, and these not been retracted by him. The Director and F-Card holder of the appellants CB admitted that they had filed the B/Es on the basis of scanned photo copy of the documents without obtaining the original documents, which was under the custody of Shri Tushar Pokharkar, intermediary in the said transaction. Further, the adjudicating authority had concluded that the appellants CB did

not make any serious efforts to verify the antecedents of the clients; had only made a *whatsapp* call to their clients which is not a substitute for an authentic way to verify the details of the importer. 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 10 (d) and 10(n) of CBLR, 2018.

7.1. We find from the factual matrix of the case, that the imports for which the appellants CB have filed the B/Es relate to two Ex-bond clearance of imported goods viz., B/E No.9288137 dated 23.10.2020 in respect of goods warehoused vide B/E No.8961729 dated 26.09.2020 and B/E No. 9288431 dated 23.10.2020 in respect of goods warehoused vide B/E No.8962168 dated 26.09.2020. Thus, it is the case of imported goods having been firstly cleared from customs control for warehousing the same in the customs bonded area. Subsequently, those goods which have been stored in the customs bonded warehoused were cleared by filing the ex-bond Bills of entry by the appellants CB in terms of Section 68 *ibid*. The legal provisions under Section 72 *ibid* provide for taking necessary action by the department in case of any contravention in removal of goods from warehouse is noticed, against the owner of goods. We also find that it is not the case of Revenue, that there was any mis-declaration at the time of customs clearance of ex-bond B/Es, for taking action against importer. Hence, it is clear till the imported goods were delivered to the appellants from ex-bonding of B/E, there was no violation and the act of importer in diversion of the goods, had arisen after the customs clearance process of the warehoused goods was completed. Thus, it is clear that the importers alone were involved in misuse of imported goods, by diverting the same for unauthorized purpose, after its clearance from customs control, resulting in duty evasion.

7.2. Further, from the above factual details, we also find that the appellants CB had declared the description of the imported goods and other details in the two B/Es for aforesaid imports as given in the invoices and documents given by the importer. Further, the appellants were not aware of the purported diversion of the imported goods as there was no evidence at the time of customs clearance of ex-bond B/Es for the same. Even at the time of customs clearance of goods in both the cases, the Customs assessing group

and the concerned Customs Bond officers and section dealing with ex-bond clearances in the jurisdictional Customs Commissionerate did not find out any discrepancy. It is only on the basis of DRI, KZU investigation that the whole case of S/Shri Vipin Kumar, Rohan Kumar and Ms Anjali, acting as a syndicate in respect of the said violations under the Customs Act, 1962, were identified. The action taken under CBLR, 2018 against the appellants CB is a follow up action taken consequent to the customs offence case made out by DRI, KZU, and thus the present proceedings are only for the violations under the specific sub-regulations under CBLR, 2018. It is not the case of the Revenue that the diversion of the imported goods was planned and executed by the appellants CB. In the absence of any document to prove such a claim for diversion of imported goods from the appellant CB's end, it is difficult to fasten such liability on the appellants CB.

7.3. From the above, we find that appellants have duly filed the ex-bond bills of entry as per the documents given by the importers and they were not aware of the purported diversion of the imported goods. In the instant case, the violations was found by the department only on the basis of specific intelligence developed by DRI, KZU and communicated in their offence report dated 30.06.2021, much later after the clearance of ex-bond warehoused goods, 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 the purported diversion of imported goods was not known to the appellants, the non-compliance by the importer of license/Advance Authorisation conditions in respect 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 CB. Thus, we are of the considered view that the violation of Regulation 10(d) *ibid*, as concluded in the impugned order is not sustainable.

8.1 Learned Principal Commissioner of Customs (General) had come to the conclusion that the appellants CB had violated the provision of Regulation 10(n) *ibid*, as established in the inquiry proceedings and on the basis that the appellants had never met the importers/IEC holders, and had only interacted with Shri Tushar Pokharkar, who is not representative of the importer and had filed the documents on the basis scanned photocopies

without original documents. Thus he concluded that the appellants CB did not make any serious efforts to verify the antecedents, correctness of actual IEC Number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information for want of business through intermediary. Therefore, the learned Principal Commissioner of Customs had concluded that the appellants have failed to discharge their obligations cast on him under Regulation 10(n) *ibid*.

8.2 We find from the records, that the appellants CB had obtained their authorization to act as a Customs House Agent/Broker for the purpose of clearance of import/export consignments as well as the KYC documents from the importer M/s Bruno Exports, Delhi vide their authorization letter dated 20.10.2020. Further, they had verified the existence of the importer through the Certificate of Importer-Exporter Code dated 19.09.2019 issued by the Zonal Director General of Foreign Trade, Ministry of Commerce and Industry, Government of India indicating the name along with address, name of the partner; Permanent Account Number (PAN) card of the partners/importer and the GST Registration Certificate issued on 21.09.2019. Further, the appellants claimed that Shri Sadgun Ram Kathe, Director of appellants CB had personally contacted the partner Shri Rohan Kumar during his visits to Delhi by producing copies of tickets for travel by him, which the learned Principal Commissioner had turned down on the ground that the same does not serve as an evidence to establish that they had met the partner of importer firm. Thus, he 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 through the intermediary.

9. 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
3	Partnership firm	(i) Legal name (ii) Permanent address, in full, complete and correct. (iii) Name of all partners and their addresses, in full complete and correct. (iv) telephone, fax number, e-mail address of the firm and partners	(i) Registration certificate, if registered (ii) Partnership deed (iii) Power of Attorney granted to a partner or an employee of the firm to transact business on its behalf (iv) Any officially valid document identifying the partners and the person holding the Power of Attorney and their addresses (v) Telephone bill in the name of firm/ partners

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 13(o)/10(n) of CHALR, 2004/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 10(n) *ibid* by the appellants in the impugned order on the above issue.

10.1 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."

10.2. We also find that in the case of *M/s HIM Logistics Private Limited (Supra)*, 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. The relevant portion of the said order is extracted below:

"9. We find that the impugned order did not make out a sustainable case for revocation of licence. In the case of Setwin Shipping Agency v. CC (General), Mumbai - 2010 (250) E.L.T. 141 (Tri.-Mumbai), the Tribunal

held that there is no requirement for the CHA to verify physically the premises of importer/exporter. The Tribunal also observed that it is a settled law that the punishment has to be commensurate and proportionate to the offence committed...."

11. 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 Inspector of Customs who would have an expertise to weigh the genuineness of the transaction. 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."

12. 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 10(n) *ibid*.

13.1. 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."

13.2. In the instant case, the alleged offence in importation of goods took place in respect of ex-bond clearance of imports which was reported by an offence report dated 30.06.2021 of DRI, KZU and on that basis the jurisdictional Principal Commissioner had suspended CB license of the appellants under Regulation 16(1) of *ibid*, with immediate effect, vide Order No. 20/2021-22 dated 07.09.2021; and such suspension was continued vide Order No. 27/2021-22 dated 22.10.2021. Simultaneously, inquiry proceedings against the appellants for violations of CBLR, 2018 due to failure of the appellants to comply with Regulations 10(d) and 10(n) *ibid* was initiated by issue of SCN dated 26.10.2021. Upon completion of the inquiry, vide Inquiry report submitted on 22.07.2022, and the Principal Commissioner of Customs (General), Mumbai, being the licensing authority under Regulations 17 of CBLR, 2018 had passed the impugned order dated 23.09.2022. The above timelines indicate that the suspension was continued during the inquiry proceedings for about 12 months till the completion of inquiry proceedings and revocation of CB license by the impugned order.

13.3. From the records of the case, we find that the order of revocation of appellant's CB license has been passed on 23.09.2022 i.e., about 14 months and 23 days from the date of offence report. Though the time lines indicated in the CBLR, 2018 provide for completion of the inquiry proceedings, if calculated from the date of receipt of offence report, would require such an order under Regulation 17(7) *ibid* to be issued within 270 days, we find that

there is no case for inordinate delay as the adjudication was done within a reasonable period of time.

13.4. In this case, we find that immediate suspension was resorted to and inquiry proceedings were initiated. Though notice for inquiry was issued on 26.10.2021, the inquiry could be completed and the inquiry report could be completed on 22.07.2022. There is certain amount of delay in the above processes of inquiry proceedings. However, the learned Principal Commissioner of Customs (General), had duly followed the timelines required for completion of inquiry proceedings under CBLR, within two months of submission of inquiry report, had finally issued the adjudication order under Regulation 17(7) while the timelines prescribe a normal time of 90 days from submission of Inquiry report. This it can be accepted that there was '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)*. Further, we do not find that there exists any case for inordinate delay in conclusion of the inquiry proceedings in the impugned order.

14.1. The records of the case also indicate that the appellants had obtained a written authorization letter and KYC documents from M/s Bruno Exports, Delhi vide their authorization letter dated 20.10.2020. However, the same were obtained through Shri Tushar Pokharkar, an intermediary whom Shri Sadgun Ram Kathe, Director of appellants CB knew by face for long time; but without obtaining the original copy of documents allowing to be retained by him. The DRI, KZU investigation also pointed out that one Shri Vipin Kumar, was the actual owner of the importer firm M/s Bruno Exports, Delhi and the partners Shri Rohan Kumar and Ms. Anjali, were only dummy partners who only use to sign some papers given by said Shri Vipin Kumar and they knew nothing about the functioning and business of M/s Bruno Exports, Delhi nor they attended to the office or work at the importer's office premises.

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."

14.3. 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.

14.4. 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.”

14.5. 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 10(n) and thus imposition of penalty in not being proactive for fulfilling of regulation 10(n) 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 CB license of the appellants; and for forfeiture of entire security deposit, inasmuch as there is no violation of Regulation 10(d) of the CBLR, 2018, 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 Regulation 10(n) *ibid*, particularly when they had received the

documents from importer through intermediary, we find that it is justifiable to impose a penalty of Rs.10,000/-, 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 18.12.2023)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha