

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

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86955 of 2021

(Arising out of Order-in-Original CAO No. 72/CAC/PCC(G)/PS/CBS Adj. dated 15.02.2021 passed by the Principal Commissioner of Customs (General), Mumbai Zone-I, Mumbai)

M. K. Enterprises

.... Appellants

C.B. No.11/893
Satyam Heights, A/102, Plot No.194, Sector-10,
Near Highway break Hotel, Kharghar
Navi Mumbai – 412210.

Versus

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

New Custom House, Ballard Estate, Mumbai - 400001

Appearance:

Shri Ashwani Kr Prabhakar, Advocate for the Appellant

Shri Ashwini Kumar, 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/85003/2024

Date of Hearing: 31.08.2023

Date of Decision: 01.01.2024

Per: M.M. Parthiban

This is an appeal filed by M/s M. K. Enterprises, Navi Mumbai (herein after, referred to as 'the appellants' for short) assailing the Order-in-Original CAO No. 72/CAC/PCC(G)/PS/CBS Adj. dated 15.02.2021 (referred to as 'the impugned order') passed by the learned Principal Commissioner of Customs (General), Mumbai Zone-I, Mumbai.

2. In the impugned order the learned Principal Commissioner of Customs (General), Mumbai in exercise of powers conferred upon him under Regulation 17 (7) of the Customs Brokers Licensing Regulations, 2018 (CBLR) had revoked the CB license issued to the

appellants for acting as a Customs Broker under the above regulations *ibid*, besides imposition of penalty and forfeiture of entire security deposit furnished by the appellants. Being aggrieved against the impugned order, the appellant filed this appeal before the Tribunal.

3.1 The brief facts of the case are that appellants had been issued with a Customs Broker (CB) license No. 11/893 granted by jurisdictional Principal Commissioner of Customs (General), Mumbai, under Regulation 7(2) *ibid*. An offence report dated 23.06.2019 was received from Central Intelligence Unit (CIU) of Jawaharlal Nehru Custom House, Nhava Sheva (JNCH) stating that they were investigating a case of import of toys by two importers for whom the Bills of Entry have been filed by the appellants CB. Customs authorities have found that there was mis-declaration of imported goods and the importers are found to be fake. The appellants, on behalf of the importer M/s Pemex Enterprises, had filed the Bill of Entry (B/E) No.8090120 dated 17.09.2018, in which the customs authorities have conducted 100% examination and found undeclared cosmetics were concealed and there was mis-declaration in terms of quantity, description etc. Further, in one another import consignment for which the appellants CB had filed the B/E No.8090119 dated 17.09.2018, for the importer M/s Nagresh Overseas, the imported goods on examination were found to be mostly electronic toys contrary to the declared description of 'non-electronic toys', which attract higher duty (IGST) and were non-compliant with the provisions of DGFT Notification No.44(RE-2000)/1997-2002 dated 24.11.2000. Based on the above, the jurisdictional Principal Commissioner of Customs (General), Mumbai had immediately suspended the appellants' CB license vide Order No. 22/2019-20 dated 02.07.2019. After giving post decisional hearing the suspension of the CB license of the appellants was continued vide Order No.33/2019-20 dated 17.07.2019. Subsequently show cause notice No.19/2019-20 dated 14.08.2019 was issued for the act of omission and commission of CB, leading to contravention of Regulations 10(d), 10(e) and 10(n) of the Customs Brokers Licensing Regulations, 2018 (CBLR). The enquiry report was submitted on 30.10.2019, concluding that the customs broker firm had contravened all the aforesaid Regulations of CBLR, 2018. Accordingly, the Commissioner of

Customs (General) had revoked the CB license No. 11/893, which had been issued to the appellants for acting as a Customs Broker under CBLR, besides imposition of penalty and forfeiture of entire security deposit furnished by the appellants vide the impugned order dated 15.02.2021.

3.2 Learned Advocate appearing for the appellants submitted that the appellants had not violated any of the Regulations under CBLR. In respect of Regulation 10(d) and 10(e), he stated that the appellants had exercised due diligence regarding the information to be declared in respect of imported goods. The subject bills of entry were filed on the basis of documents received from the importers and there was no mis-declaration with respect to description of goods. However, the appellants were not aware of the cargo concealed in the declared goods. Thus he claimed that the appellants have not violated Regulation 10(d) and 10(e). In respect of the KYC verification of the importer, he submitted that the employee of the appellants Shri Abhijit Suresh Bhosale had verified the address of the importers. Hence, the Advocate pleaded that there was no violation of Regulations 10(d), 10(e) and 10(n) of CBLR, by the appellants and the impugned order be set aside.

4. Learned Authorised Representative (AR) appearing for the Revenue reiterated the findings recorded in the impugned order. He stated that the import of toys is governed by the notification No.44(RE-2000) dated 12.06.2019 issued by the Director General of Foreign Trade (DGFT). There was mis-declaration of imported goods, as the physical examination of imported goods showed that mostly these were electronic toys attracting higher IGST; further undeclared cosmetics were also found in the imported goods. In this context, he stated that the appellants did not exercise due diligence, to identify and to bring the mis-declaration to the knowledge of Customs. As both the importers were non-existent, and that the appellants CB was aware of the fact that the importers were operating from different address, but he did not bring the same to the knowledge of customs authorities. In view of the above, the learned AR submitted that the impugned order is legally sustainable in the appeal filed by the appellants may be dismissed.

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 Advocate for the appellants as well as Authorised Representative for the Revenue.

6.1 On perusal of the records, it transpires that an investigation was conducted by CIU, JNCH both in respect of the importers M/s Pemex Enterprises and M/s Nagresh Overseas and by physically examining the imported goods. During the visit of CIU investigation team at the declared address of the importer M/s Pemex Enterprises, the local shopkeepers could not locate the address. Further, the Maharashtra State Electricity Distribution Company had provided the factual detail that the Electricity connection No. given as KYC document is mismatching with the declared billing unit address. Similarly, in respect of importer M/s Nagresh Overseas, the postal authorities deputed one Public Relation Inspector Postal for verification of the declared address and they found that someone else by name Smt Jankibai Ramchandra Ambekar was staying in that address for the last 40 years and she had given a statement that that place is only used for residential purpose and she had not given any documents of such property for business purposes. Thus, it is seen that in the case of M/s Pemex Enterprises though the KYC documents were accepted firstly at time of first time import at JNCH, it is only upon conduct of detailed investigation it was proved that the importers in the present case are presently non-existent. In the case of M/s Nagresh Overseas, even though it is claimed that the importer has not been operating from that place, the statement given by the owner of the house Smt. Jankibai Ramchandra Ambekar, before the CIU investigation officers on 04.04.2019 state that in the declared premises herself, son, daughter and son-in-law, her grandson were staying for the past 40 years. Shri Nagesh Shyamsundar Malik, proprietor of the said importer, is her son-in-law and he was staying with them in the said address five years ago; however she had given any documents of this address to open any business entity. Thus, it cannot be entirely stated that the address of the importer was fake.

6.2 We also find from the records that separate action for confiscation of imported goods, imposition of penalty on the importers

and the appellants CB had been taken under the Customs Act, 1962 in respect of violations involving illegal import by mis-declaration and for evasion of customs duty by issue of show cause proceedings. Thus, the present case is only in respect of violations on the conduct of the appellants as CB and their non-fulfillment of the obligations under CBLR.

6.3 In view of the above factual details, we are of the considered view that the appellants have not been involved as a customs broker in the violation of mis-declaration of description and non-declaration of details on the packages of imported goods in the aforesaid import transaction in B/E No.8090119 and No.8090120 both dated 21.02.2022. Thus, there cannot be a case for taking action against violations of CBLR, for the mis-declaration caused by the importers. Hence, the impugned order does not sustain on grounds of factual matrix of the case as detailed therein.

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

"Regulation 10. Obligations of Customs Broker: -

A Customs Broker shall -

...

(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;

...

xxx xxx xxx xxx

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

xxx xxx xxx xxx

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

8.1 In respect of the obligation under Regulation 10(d) and 10(e), the learned Principal Commissioner had placed reliance on the fact that the appellants CB had failed to ascertain the nature of the goods from the importer; they did not comply with the provisions of DGFT Notification No.44(RE-2000)/1997-2002 dated 24.11.2000; failed to sensitize the importers to follow all the provisions of the Customs Act, 1962 and other prevailing laws in verifying the credentials of the importers. Thus, in the impugned order it was concluded that the appellants CB had attended to their obligations rather in a casual manner and they made no efforts to impart correct information regarding various legal processes to be followed in import of goods and on payment of applicable import duties. Thus, he concluded that the appellants have violated Regulations 10(d) and 10(e) *ibid*.

8.2 In this regard, we find that as per Regulation 10(d) *ibid*, the information/records that are required to be verified for its correctness in filing the check list for Bill of Entry and the details in respect of which the importer client may be advised for compliance by the appellants CB are contained in invoice, packing list etc., The learned Advocate contended that appellants have filed the Bill of Entry on the basis of the data given to them and there was no mis-declaration in these documents. The factual matrix of the case indicate that it is the case of concealment of undeclared goods and mis-declaration of 'electronic toys' on which applicable additional duty of Customs/IGST payable at a higher rate, by declaring the same as 'toys' attracting lesser IGST rate. The above facts brings out clearly the role of importer in such mis-declaration, and in the absence of any import documents such as invoice and packing list etc., being different from the declaration made in the Bill of Entry, the same cannot be attributable to the appellants CB.

8.3 The modus operandi identified in this case brings out clearly the role of importer, and Shri Jamail Ahmed Shaikh, Proprietor of M/s Pemex Enterprises and Shri Nagesh Shyamsundar Malik, proprietor of M/s Nagresh Overseas, as the key players in such mis-declaration; further the appellants CB were not aware of the fraud committed by the importers or other persons. In view of the aforesaid factual

position, we are unable to find force in the legality of the conclusion arrived at the impugned order holding that the appellants have violated the Regulations 10(d) and 10(e) *ibid*.

8.4 We also find that our above views are also concurred in the order of the Hon'ble High Court of Delhi in the case of *M/s Kunal Travels (Cargo) Vs. Commissioner of Customs (I&G), IGI Airport, New Delhi* reported in 2017 (354) E.L.T. 447 (Del.), holding that the appellants CB is not an officer of Customs who would have an expertise to identify mis-declaration in respect of imported/export goods. The relevant portion of the above order is extracted below:

"12. Clause (e) of the aforesaid Regulation requires exercise of due diligence by the CHA regarding such information which he may give to his client with reference to any work related to clearance of cargo. Clause (l) requires that all documents submitted, such as bills of entry and shipping bills delivered etc. reflect the name of the importer/ exporter and the name of the CHA prominently at the top of such documents. The aforesaid clauses do not obligate the CHA to look into such information which may be made available to it from the exporter/ importer. The CHA is not an inspector to weigh the genuineness of the transaction. It is a processing agent of documents with respect to clearance of goods through customs house and in that process only such authorized personnel of the CHA can enter the customs house area. What is noteworthy is that the IE Code of the exporter M/s H.M. Impex was mentioned in the shipping bills, this itself reflects that before the grant of said IE Code, the background check of the said importer/ exporter had been undertaken by the customs authorities, therefore, there was no doubt about the identity of the said exporter. It would be far too onerous to expect the CHA to inquire into and verify the genuineness of the IE Code given to it by a client for each import/ export transaction. When such code is mentioned, there is a presumption that an appropriate background check in this regard i.e. KYC etc. would have been done by the customs authorities. There is nothing on record to show that the appellant had knowledge that the goods mentioned in the shipping bills did not reflect the truth of the consignment sought to be exported. In the absence of such knowledge, there cannot be any mens rea attributed to the appellant or its proprietor. Whatever may be the value of the goods, in the present case, simply because upon inspection of the goods they did not corroborate with what was declared in the shipping bills, cannot be deemed as mis-declaration by the CHA because the said document was filed on the basis of information provided to it by M/s H.M. Impex, which had already been granted an IE Code by the DGFT. The grant of the IE Code presupposes a verification of facts etc. made in such application with respect to the concern or entity. If the grant of such IE Code to a non-existent entity at the address WZ-156, Madipur, New Delhi - 63

is in doubt, then for such erroneous grant of the IE Code, the appellant cannot be faulted. The IE Code is the proof of locus standi of the exporter. The CHA is not expected to do a background check of the exporter/client who approaches it for facilitation services in export and imports. Regulation 13(e) of the CHALR 2004 requires the CHA to: "exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage" (emphasis supplied). The CHAs due diligence is for information that he may give to its client and not necessarily to do a background check of either the client or of the consignment. Documents prepared or filed by a CHA are on the basis of instructions/documents received from its client/importer/exporter. Furnishing of wrong or incorrect information cannot be attributed to the CHA if it was innocently filed in the belief and faith that its client has furnished correct information and veritable documents. The mis-declaration would be attributable to the client if wrong information were deliberately supplied to the CHA. Hence there could be no guilt, wrong, fault or penalty on the appellant apropos the contents of the shipping bills..."

9.1 We further find from the records, that the appellants have verified the existence of the importer through the certificate of Importer-Exporter Code issued by the Ministry of Commerce, DGFT indicating the name of the importer along with address, name of the proprietor; Permanent Account Number (PAN) card of the proprietor; GST Registration Certificate GST REG-06 indicating the GST Registration No. and address of the principal place of business having been verified by jurisdictional VAT/Sales Tax authorities; Aadhaar Card of the proprietor, Driving license, Ration Card etc.

9.2 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 Note : Any two of the documents listed above, which provides client/customer information to the satisfaction of the CHA will suffice.”

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 10(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.

9.3 We also find that in the case of *M/s Perfect Cargo & Logistics Vs. 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. The relevant paragraphs in the said order is extracted below:

"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 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 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 Commissioner that the required documents were not submitted is, therefore, factually incorrect.

35. *The 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."*

Thus, on the factual matrix as well as on the basis of the decision taken by the Tribunal, we do not find any legal basis for upholding of the alleged violation of Regulation 10(n) CBLR, 2018 by the appellants in the impugned order on the above issue.

10. We further find from the records, that the appellants CB have verified the existence of the importer through their employee Shri Abhijit Suresh Bhosale that the said importers are functioning from the declared addresses. However, the investigation conducted in respect of the existence of one of the importer M/s Pemex Enterprises revealed that no such address exists and the importers are fictitious. The electricity bill submitted as a document for KYC verification, itself is incorrect as the unit address in the bill is relating to Washi O&M sub-division and the actual address in the Maharashtra State Electricity Distribution Company database for the relevant electricity bill relates to some other unit at Kalyan CC sub-division, thus clearly proving that there was apparent mis-match in the documents and the appellants had not even verified the documents, the details of which is available in the public domain to confirm the genuineness of documents handled by them in respect of the impugned imports. Thus, on the factual matrix, we also find that the appellants CB besides obtaining the requisite documents should have been more careful as a prudent Customs Broker to have conducted cross verification to ascertain the genuine nature of such documents, to avoid any illegality. Thus, the appellants CB has failed to fulfill the

obligations under Regulation 10(n) *ibid* to a limited extent as discussed above. Accordingly, we are of the considered view that to this limited extent, the appellants CB are liable for penal action under CBLR, 2018.

11. We having taken into account the various facts and evidences in the present case, also appreciate the importance of the role of Customs Broker/Custom House Agent and the timely action which could prevent the frauds being committed by unscrupulous persons/ importers/ exporters taking the gullible CBs/CHAs, by relying on the judgement of the Hon'ble Supreme Court in affirming the decision of the Co-ordinate Bench of this Tribunal in the case of *Commissioner of Customs Vs. K.M. Ganatra & Co.* in Civil Appeal No.2940 of 2008 reported in 2016 (332) E.L.T. 15 (S.C.). The relevant paragraph of the said judgement is extracted below:

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

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

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

In view of the above discussions and on the basis of the judgement of the Hon'ble Court in the case of K.M. Ganatra supra, we find that the appellants should have been more prudent in their obligation as Customs Broker for exercising due diligence when they were handling new clients and involving imported goods which has

been prescribed with certain legal requirements such as declaration of mandatory details on the package etc. notified by DGFT, to rule out the possibility of mis-declaration, concealment, as in the present case. Thus, we deem it appropriate that the appellants are imposed with a penalty of Rs.20,000/- under Regulation 18 *ibid*.

12. In view of the above and on the basis of our discussions, detailed analysis and the findings recorded in paragraphs 7 to 11 above, and on the basis of various decisions taken by the coordinate benches of the Tribunal and higher judicial forums on the adherence to obligations prescribed under CBLR, 2018, it is factually incorrect to state that the appellants had for their acts of omission and commission in dealing with importers in mis-declaration of imported goods have failed to adhere to the responsibilities expected in terms of Regulations 10(d), 10(e) and 10(n) of CBLR, 2018. Thus, we find that the conclusions arrived at by the Principal Commissioner in the impugned order is contrary to the factual position and thus it is not legally sustainable.

13. In view of the foregoing discussions, we modify the impugned order by setting aside the same in respect of revocation of CB license of the appellants and for forfeiture of security deposit as there was no violation of Regulations 10(d), 10(e) and 10(n) of CBLR, 2018. Further, by modifying the order of penalty, we impose a penalty of Rs.20,000/- on the appellants under Regulation 18 *ibid*.

(Order pronounced in open court on 01.01.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)