CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86403 of 2019

(Arising out of Order-in-Original CAO No. 59/CAC/CC(G)/RC/CBS(Adj.) dated 28.03.2019 passed by the Commissioner of Customs (General), Mumbai Zone-I and remanded by Hon'ble Bombay High Court vide order dated 27.08.2021 in Custom Appeal (L) No.3447 of 2020)

Srinivas Clearing & Shipping (I) Pvt. Ltd. **.... Appellants**
C.B. No.11/171 – Palkiwala Building,
296, Shahid Bhagat Singh Marg, Fort
Mumbai – 400 001

Versus

Commissioner of Customs (General) **.... Respondent**
Mumbai
New Custom House, Ballard Estate,
Mumbai - 400001

Appearance:

Ms. Pooja Reddy, Advocate for the Appellant

Shri Sai Krishna Hatangadi, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85005/2024

Date of Hearing: 04.07.2023

Date of Decision: 03.01.2024

Per: M.M. PARTHIBAN

This is an appeal filed by M/s Srinivas Clearing & Shipping (I) Private Limited (herein after, referred to as 'the appellants') assailing the Order-in-Original CAO No. 59/CAC/CC(G)/RC/CBS(Adj.) dated 28.03.2019 (referred to as 'impugned order') passed by the learned Commissioner of Customs (General), Mumbai Zone-I. Earlier, the Tribunal had passed a Final Order No. A/87405/2019 dated 21.11.2019 in allowing the appeal filed by the appellants by holding that *there is nothing on record to arrive that the appellant 'G' Card–holder, who was investigated for his key role in the conspiracy to smuggle 'red sanders' out of India, was concerned with the activities for which appellant herein was licensed; the allegedly nefarious activities of such a pass-holder, although obtained through the licensed customs broker, cannot be visited upon the broker in the absence of a link between the two in the context of established misdemeanor.* Accordingly, by following the principles laid down by the Hon'ble High Court of Bombay in the *Unison Clearing P Ltd.,* the Tribunal held that the case does not merit continued revocation of the Customs Broker (CB) license, and ordered the CB license to be restored. The department had preferred an appeal against the above order of the Tribunal before the Hon'ble High Court of Bombay in Custom Appeal No. (L) No.3447 of 2020, in which the Hon'ble High Court of Bombay vide its Order dated 27.08.2021 had ordered the following:

> *"2. The appeal has been admitted by this Court on 22nd October 2020 on the following substantial questions of law:*
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> > *'a) whether, on the facts and in the circumstances of the case, the important delay in completion of proceeding for revocation of license vitiates the Order-in-Original dated 28.03.2019 first by the Commissioner of Customs (General)?*
> >
> > *b) Whether on the facts and in the circumstances of the case, the CESTAT was right in holding that there is no link between the smuggling of red sanders by Shri Vijay Poojary with the activities permitted the Respondent herein was licensed?'*
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> *xx xx xx xx*
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> *33. With respect to the first question, we observe that the CESTAT as referred to the decision in the case of Principal Commissioner of Customs (General), Mumbai Vs. Unison Clearing P. Ltd. (supra) to give a finding that the delay in commencement of the proceedings for revocation of license does not command itself is indicative of proper understanding of responsibility and that the delay in commencement of the proceedings for revocation of license was not justifiable. It has also observed that there is an implicit responsibility on the part of the competent authority to adhere to the time lines with acceptable justification for delays, if any. The Tribunal has referred to that although the suspension was withdrawn on 11th January, 2017, another 15 days had elapsed for inquiry proceedings to commence and, thereafter there was a lapse of more than six months in completion of inquiry and a further lapse of the more than two months in revocation of the license, whereas*

the incident has its origin in November 2015. We first observe that Tribunal has only dealt with delay in commencement of the proceedings but nowhere dealt with submissions on delay in conclusion of proceedings. We also observe that the Tribunal has failed to consider the submissions of timelines as canvassed by the parties nor the explanation for delay furnished by the Revenue. In any event, we are unable to agree with the CESTAT's interpretation as from a plain reading of the decision in the case of Principal Commissioner of Customs (General), Mumbai Vs. Unison Clearing P. Ltd. (supra), where after considering the provisions of CBLR in detail as well as Customs Act, the background, object and the scheme of the CBLR in particular Regulation 20, this Court had concluded that timelines contained in Regulation 20 cannot be construed to be mandatory but are directory. This conclusion was arrived at by this court after deliberations on various Supreme Court decisions and jurisprudence on the subject……

34. The Tribunal completely erred in ignoring the true import and misread the binding decision of this court. We observe that the Tribunal has failed to consider the detailed submissions as sought to be made out on behalf of the parties and without even dealing with the detailed explanation as well as the necessary facts, allowed the appeal of Respondent. In our view, the Tribunal ought to have discussed each of the submissions before coming to any conclusion.

xx xx xx xx

41. In our view, reliance by the CESTAT on the decision in the case of Principal Commissioner of Customs (General), Mumbai Vs. Unison Clearing P. Ltd. (supra) to restore the license of the Respondent is completely misplaced and a complete non-application of mind.

42. In accordance with the above discussion, we are of the view that the findings of the Tribunal are unsustainable and the matter is required to be sent back for reconsideration by the Appellate Authority taking into account all the aspects to arrive at a proper decision. We, therefore, set aside the order of the Tribunal dated 21st November, 2019. The matter is remanded back to the CESTAT for fresh adjudication.

43. The Appeal is accordingly disposed in the above terms. No order as to costs."

2. In the impugned order the learned Commissioner of Customs (General), in exercise of powers conferred upon him under Regulation 17 (7) of the Customs Brokers Licensing Regulations, 2018 (CBLR) had revoked the CB license issued to the appellants for acting as a Customs Broker under the above regulations ibid, besides imposition of penalty of Rs.50,000/- and forfeiture of entire security deposit furnished by the appellants. Being aggrieved against the impugned order, the appellants had earlier filed an appeal before the Tribunal.

3.1 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. A specific intelligence was developed by Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit (MZU), Mumbai regarding smuggling of red sanders for illegal export out of the country in an export consignment in container No. DRYU 2306380 to Jebel Ali port on the basis of forged documents at Jawaharlal Nehru Customs House (JNCH). The said intelligence developed by DRI also indicated that the shipment was handled by a shipping agent namely M/s. Emirates Shipping Agencies (India) Private Limited (ESA), and the freight booking for the above export consignment was done by M/s. Krrish Corporation, Pune (KCP). In pursuance of the said intelligence, the container No. DRYU 2306380, when it was about to be exported, was called back to Allcargo Logistics Container Fright Station (CFS) functioning under JNCH for 100% examination on the export goods. During physical examination of the said container under panchanama proceedings on 27.11.2015, it was found that as against the declared goods as "Fabric Glue", the actual export cargo was found to be 7.800 MTs of wooden logs of red sanders, which is a prohibited item for export under Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES) totally valued at Rs.3.12 crore. Accordingly, the said goods were seized being liable for confiscation under Section 113(d), 113(f), 113(g), 113(h), 113(k), 115(2) ibid, read with Section 50 ibid and read with Section 11 of Foreign Trade (Development & Regulation) Act, 1992 and Rule 14 (2) of Foreign Trade (Regulation) Rules, besides being liable for penalty under Section 114(i) and 114AA ibid. The investigation proposed for search of the premises of the exporter-KCP revealed that no such business entity or address was found to be existent in the given address. Preliminary enquiry conducted in the operations division of ESA, revealed that the freight booking for the said export consignment was done by one person namely Shri Vijay Poojary, who is also a Freight Forwarder and a customs broker by profession operating those business entity in the name of M/s Marine Trans India Private Limited and M/s Srinivas Clearing and Shipping

India Private Limited (SC&SIPL). Further investigation of the case with ESA (through Shri Shivdas Ramesh Tandel, Deputy Manager) revealed that the said Shri Vijay Poojary is a good friend and close associate of Shri Harshavardhan Hegde, Managing Director of ESA, and on his directions, he had facilitated booking of containers for Shri Vijay Poojary without any KYC verification of the business entity which is sending the request for containers in which the export goods are to be stuffed and transported out of the country. He had also assisted Shri Vijay Poojary in a similar manner recently for export of goods by M/s R.N. Laboratories Private Limited, SEZ Diamond Park, Sachin, Surat for container No. DRYU 2315571 and several export consignments in the past. DRI MZU investigation revealed that Shri Vijay Poojary, Director of SC&SIPL is involved in export of prohibited goods by using dummy/fake IEC holders as exporters to avoid detection of smuggling and by operating behind the scene, and fabricating all documents such as invoices of exporter, packing list, bill of lading and obtaining the prohibited goods through his own business accomplices. The total smuggling by this modus operandi in the past exports were estimated by DRI to be of 120 MTs totally valued at Rs.48 crore. An offence report of DRI, MZU vide their letter F. No. DRI/MZU/C/ Inv-111/2015 dated 16.05.2016 was received by Principal Commissioner of Customs (General), Mumbai, wherein it was informed about the involvement of appellants CB in the smuggling of prohibited goods; and that a detention order has been issued under COFEPOSA Act, 1974 for preventive detention against said Shri Vijay Poojary on 21.03.2016 and that he is presently absconding.

3.2 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 10(a), 10(e), 10(j), 10(k) and 10(n) of CBLR, 2018 [earlier 11(a), 11(e), 11(j), 11(k) and 11(n) of CBLR, 2013]. Accordingly, he had immediately suspended the CB license of the appellants under Regulation 16(1) *ibid* [earlier 19(1) of CBLR, 2013], vide Order No. 13/2016-17 dated 10.06.2016 issued on 24.06.2016; and such suspension was continued vide Order No. 17/2016-17 dated 14.07.2016 pending inquiry proceedings. The appellants had filed an appeal against the said suspension order dated 14.07.2016 before the Tribunal, who vide Order No. A/85309/17/B dated 11.01.2017, had ordered that the same is unsustainable as the Tribunal is of the view that the lower authorities may not be able to complete the proceedings within the stipulated period of 270 days, and held that the said Order dated 14.07.2016 of the lower authority is unsustainable only on the ground that the lower authorities have not issued any show cause notice to date from the date of confirmation of suspension of CB license. Further, on submission of the appellant, in an miscellaneous application filed before the Tribunal, stating that that the Department has not still implemented the final order dated 11.01.2017 passed by the Tribunal, it had directed the respondent Commissioner to implement the said final order and report compliance report the bench on 29.01.2018 by issue of Order No. I/2/18 dated 15.01.2018. On the basis of the directions given by the Tribunal, the CB license of appellants was restored by the Department vide Notice No.234/2017-18 dated 24.01.2018. Further, show cause notice dated 14.05.2018 was also issued for initiating inquiry proceedings under Regulation 20 *ibid*, against violations of CBLR as above.

3.3 Subsequently, during the inquiry proceedings conducted by the Inquiry Officer, he gave personal hearing opportunities to the appellants on 09.07.2018, 17.07.2018, 23.07.2018, 27.07.2018, 02.08.2018, 08.08.2018, 13.08.2018, 14.08.2018, 23.08.2018, 24.08.2018 and also conducted examination of evidences of witnesses and cross examination of witnesses by the Advocate representing the appellants on 27.08.2018, 30.08.2018, 12.09.2018. Upon completion of the inquiry, a report was submitted on 30.10.2018 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 28.03.2019 under Regulations 17 (7) and 18 *ibid,* for revoking CB License of the appellants and for forfeiture of entire amount of security deposit and imposition of penalty.

3.4 In the first round of litigation, the Tribunal had passed a Final Order No. A/87405/2019 dated 21.11.2019. The Department, being aggrieved by the said order of the Tribunal, had filed an Appeal before the Hon'ble High Court of Bombay in Customs Appeal (L) No.3447 of 2020. While admitting the appeal filed by the Department, the Hon'ble High Court vide its Order dated 22.10.2020 had stayed the operation of the Tribunal's order dated 21.11.2019. Subsequently the Hon'ble High Court of Bombay had passed its final judgement in the above case. Presently on the basis of the final judgement of the Hon'ble High Court of Bombay pronounced on 27.08.2021, remanding back the case to the Tribunal, this appeal is being taken up for fresh adjudication.

4.1. Learned Advocate for the appellants contends that there was an unexplainable delay in the issuance of an inquiry notice of 638 days; there is no mention of any reasons for the delay in the inquiry report and in issue of the impugned order. Thus, by placing reliance on the judgement of the Hon'ble High Court of Bombay, this stated that the timelines have not been followed by the Department and therefore the entire inquiry proceedings are required to be set aside. Further, the learned Advocate had stated that the appellants were never the authorised customs broker in the case on hand and therefore never played any role in facilitating clearances for alleged illegal export of Red Sanders. The learned advocate also stated that the customs broker license has been issued in the name of private limited company by submitting a copy of license No. 11/171 issued in the name of CHA/CB-M/s Srinivas Clearing & Shipping (I) Private Limited.

4.2. 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. 13/2016-17 dated 10.06.2016. In arriving at the impugned order, they submitted that there were major delays in the inquiry proceedings viz., 18 months delay in issue of the Show Cause/Inquiry Notice after receipt of offence report on 16.05.2016; 37 days delay in submission of inquiry report. 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 view of the above, they requested that impugned order be set aside and consequential relief be granted to them.

5. 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), (e), (j), (k) and (n) of Regulation 10 *ibid*, has been examined in detail by the Principal Commissioner. The appellants CB is a private limited company, in which 99.9% of the shares is held by its director Shri Vijay Poojary, who is also a “G” card holder. The said Shri Vijay Poojary had fabricated the export documents without using the name of his from for circumventing the legal provisions, for smuggling of Red Sanders, the export of which is prohibited under the Foreign Trade Policy as it is an item of CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora). The learned AR also stated that said Shri Vijay Poojary is an habitual offender and was held under preventive detention under COFEPOSA in 2006, in the present case. In view of his role as a mastermind and the key conspirator in smuggling of Red Sanders with the aid of his accomplices, by defrauding the government through fabrication of documents, the learned AR stated that it is a fit case for revocation of the customs broker license, imposition of penalty and forfeiture of security deposit. 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 opportunities given to them and due to their seeking of adjournments.

6. The facts of the case in brief has already been explained in the previous paragraphs no. 3.1 to 3.4, above.

7. We have heard both sides and have gone through the records of the case. 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. Further, we have also carefully perused the judgement of the Hon'ble High Court of Bombay in remanding the case back to the Tribunal for afresh adjudication of the case.

8. From the perusal of the records and factual matrix of the case, it is seen that the Department had initiated independent action against the appellants under CBLR, 2018 on the basis of DRI's investigation report dated 16.05.2016 about alleged irregularities on the part of CHA/CB and freight forwarders as they aided and assisted illegal export of prohibited goods. Accordingly, the jurisdictional Principal Commissioner suspended the CB license under Regulation 16(1) of CBLR, 2018 [earlier 19(1) of CBLR, 2013] on 10.06.2016. Subsequently, after giving a post-decisional hearing the jurisdictional Principal Commissioner continued the suspension by issue of an order No.17/2016-17 dated 13.07.2016. Further, regular inquiry proceedings were initiated under Regulation 17(1) ibid [earlier 20(1) of CBLR, 2013], by issue of show cause notice No.11/2018-19 dated 14.05.2018, specifying the grounds on which the appellants have alleged to have been violated CBLR, 2018. In conclusion of these proceedings, the impugned order was passed by the jurisdictional Principal Commissioner revoking the Customs Broker license granted to the appellants for the failure on the part of appellants to fulfill the obligations cast on them under Regulations 10(a), 10(e), 10(j), 10(k) and 10(n) of CBLR, 2018 [earlier 11(a), 11(e), 11(j), 11(k) and 11(n) of CBLR, 2013] and also imposed penalty of Rs.50,000/- besides forfeiture of entire security deposit.

8.1 In order to examine the above issues, and the divergent stand taken by both the parties, we would like to firstly examine the facts contained in the DRI investigation and the allegations specifically framed against the appellants for having violated the CBLR ibid. From the findings of the Principal Commissioner in impugned order dated 28.03.2019, the following facts have been specifically recorded about the role of appellants in the investigation report. The extract of the same is given below:

> *"25. … During the investigations, CB Director Shri. Vijay Poojary in his statement recorded under section 108 of Customs Act, 1962 on 09.12.2015 has admitted that he got acquainted with Shri Badshah Malik while both were lodged in Mumbai Central Prison in earlier cases of violations of the provisions of the Customs Act, 1962; that Shri Badshah Malik has offered him payment of Rs.75 Lakhs per container for arranging such shipments; that in the year 2014 he had approached Shri Harshvardhan Hegde, Managing Director of M/s Emirates Shipping Agencies (India) Pvt. Ltd. with a request to arrange for freight booking of containers that were to be used for shipping wooden logs of Red Sanders to Middle East Asia; that due to his financial hardship, Shri Harshvardhan Hegde had agreed and arranged for freight booking for 18 containers in which Red Sanders were stuffed for shipment to Middle East Asia on behalf of Shri Badshah Malik; that having realized the prohibition of such exports, he had used the names of bogus forms for framed booking; that he had used his personal equation with Shri Harshvardhan Hegde for making freight booking in the names of such bogus forms; for providing the said the services Shri Badshah Malik had been paying him an amount of Rs.75 Lakhs per container, which he was sharing with Shri Harshvardhan Hegde and another accomplice; that subsequent to detection of the case by DRI, he had met Harshvardhan Hegde and requested him not to reveal his name dealing inquiries. Both Shri. Vijay Poojary and Shri Badshah Malik were arrested on 09.12.2015 under the provisions of Section 104 of the Customs Act, 1962 on account of the involvement in smuggling activities that are punishable under section 135(1) of the Customs Act, 1962.*
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> *26. Further investigations carried out with the Exporters whose names were misused by Shri. Vijay Poojary for preparing documents revealed that all the documents required for customs clearance for export of goods viz. Bill of Lading, Shipping Bill, Form-13, Invoices, Packing List were forged in respect of all 17 shipments in the names of M/s R.N. Laboratories (7 Nos.), M/s Repro India Ltd. (6 Nos.), and M/s Banco Products (I) Ltd. (4 Nos.). statements of key employees of M/s Srinivas Clearing & shipping (India) Pvt. Ltd. revealed that booking of freight for all the 18 consignments was done by Shri. Vijay Poojary in benami names by making cash payments. Employees of the firm further admitted that they had destroyed the export documents such as Invoice, Packing List, Shipping Bill etc., post shipment of the said consignments on the directions of Shri. Vijay Poojary.*
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> *27. Examination of the present consignment revealed that the container was containing 7.8 MTs of Red Sanders valued at Rs. 3.12 Crores. The estimated quantity of Red Sanders that have been smuggled out in past seventeen consignments booked by Shri. Vijay Poojary by using bogus names of Freight Forwarders as well as*

shippers works out to 120 MTs valued at Rs.48 crores. DRI has also reported that Shri. Vijay Poojary was earlier detained under COFEPOSA Act, 1974 under PSA-1205/18(1)/SPL-3(A) dated 17.02.2006 during the period 17.02.2006 to 20.10.2006 a new case investigated by DRI, MZU (F. No. MZU/D/PSA-12/2005 – M/s Rama Creations and others) related to fraudulent exports of garments and for obtaining undue benefits under the DEPB Scheme. Consequently, his CHA license No.11/171 which was issued in the name of Kunverji Dharshi & Sons was suspended vide Order No.41/ 2005 dated 14.09.2005 by Commissioner of Customs (General). The license was revoked by The Commissioner of Customs (General) vide his order dated 06.11.2012.

27.1 There is no denying that the CB has a history of being an offender and is thus as a chronic offender his continuation in business world would be detrimental to the national security, Govt. Revenue in the environmental crimes such as export of red sanders which is violative of International Convention such as CITES, 1973 (the Convention on International Trade in Endangered Species of wild Fauna and Flora) which are major, serious and heinous crimes having both national and international ramifications. In past also Shri. Vijay Poojary has been detained under COFEPOSA Act, 1974. He has himself admitted his role in the smuggling of red sanders and the CB in this case is involved beyond doubt in the serious economic, tax-related and environment crimes. I am of the considered opinion that the inquiry report is based on the correct application of mind and appreciation of the facts and circumstances of the case. The Director of the CB company Shri. Vijay Poojary, is king pin and the key conspirator and the perpetrator of the crime of exporting red-sanders and deserves stringent possible punishment under CBLR, 2013 (now CBLR,2018) and the same has been proved beyond doubt by the Inquiry officer in his report and I completely agree with the findings of the Inquiry officer, as detailed in his report submitted on 14.11.2018."

The above findings clearly point out that the appellants CB were found to be involved in the export fraud relating to smuggling of prohibited Red Sanders.

8.2 Further, the legal provisions contained in the Customs Act, 1962 in respect of import/export of goods provide for making an entry giving the details of goods that are imported/exported by an importer/exporter and the attendant liabilities for any omission or commission in respect of any violations of the said Act. The extract of the relevant provisions of the Act and Regulations are given below:

*"**Section 46. Entry of goods on importation. -***
(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by

presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed :….

Section 50. Entry of goods for exportation. -

(1) The exporter of any goods shall make entry thereof by presenting electronically on the customs automated system to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export [3] [in such form and manner as maybe prescribed:
…..

Section 146. Licence for customs brokers-

(1) No person shall carry on business as a customs broker relating to the entry or departure of a conveyance or the import or export of goods at any customs station unless such person holds a licence granted in this behalf in accordance with the regulations…….”

Customs Brokers Licensing Regulations, 2018 (CBLR)

2. Definitions.— (1) In these regulations, unless the context otherwise requires, …….
….

(d)"Customs Broker " means a person licensed under these regulations to act as an agent on behalf of the importer or an exporter for purposes of transaction of any business relating to the entry or departure of conveyances or the import or export of goods at any Customs Station including audit;

…..

(g)"F card holder" means a person who has passed the examination referred to in regulation 6 and has been issued a photo identity card in Form F;

(h)"G card holder" means a person who has passed the examination referred to in regulation 13 and has been issued a photo identity card in Form G;

(i)"H card holder" means a person who has not passed the examination referred to in regulation 13 and has been issued a photo identity card in Form H;

5. Conditions to be fulfilled by the applicants.—

(1) The applicant for a license to act as a Customs Broker in a Customs Station, shall before applying to the Principal Commissioner of Customs or Commissioner of Customs, meet the following conditions that: —

(a) he is a citizen of India;

(b) he is a person of sound mind;

(c) he is not adjudicated as insolvent;

(d) he holds an Aadhaar number;

(e) he holds a valid PAN card;

(f) he has not been penalised for any offence under the Act, the Central Excise Act, 1944 (1 of 1944), the Finance Act, 1994(32 of 1994), the Central Goods and Services Act, 2017 (12 of 2017) and Integrated Goods and Services Tax Act, 2017 (13 of 2017);

(g) he has neither been convicted by a competent court for an offence nor any criminal proceeding is pending against him in any court of law;

(h) an individual applicant or in case the applicant is a firm, its partner or in the case of a company, its director or an authorised employee who may handle the Customs work shall —

(i) be a graduate from a recognized University; and

(ii) possess a professional degree such as Masters or equivalent degree in Accounting, Finance or Management, CA/CS/MBA/ LLM/ACMA/FCMA or Diploma in Customs Clearance work from any Institutes or University recognised by the Government or is having at least two years' experience in transacting Customs Broker work as G-Card holder;

xx xx xx xx xx

6.Examination of the applicant. —

(1) An applicant, who satisfies the requirements of regulation 5, shall be required to appear for a written (preferably online) as well as oral examination conducted by the Directorate General of Performance Management:

Provided that an applicant who has already passed the examination referred to in regulation 9 of the Custom House Agents Licensing Regulation, 1984 or regulation 8 of the Custom House Agents Licensing Regulation, 2004 or regulation 6 of the Customs Brokers Licensing Regulations, 2013 shall not be required to appear for any further examination.

(2) The written examination shall be conducted on specified dates in the month of January of each year for which intimation shall be sent individually to applicants in advance before the date of examination and the result of the said examination shall be declared by end of May each year.

(3) The applicant who is declared successful in the written examination shall be called for an oral examination on specified dates in the month of June of each year, the result of which shall be declared in the month of July of each year.

(4)The applicant shall be required to clear both the written examination as well as corresponding oral examination.

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(7) The examination may include questions on the following:

(a) preparation of various kinds of bills of entry, bills of export, shipping bills, and other clearance documents;

(b) arrival entry and clearance of vessels;

(c) tariff classification and rates of duty;

(d) determination of value of imported and export goods;

(e) conversion of currency;

(f) nature and description of documents to be filed with various kinds of bills of entry, shipping bills and other clearance documents;

(g) procedure for assessment and payment of duty including refund of duty paid;

(h) examination of goods at Customs Stations;

(i) prohibitions on import and export;

(j) bonding procedure and clearance from bond;

(k) re-importation and conditions for free re-entry;

(l) drawback and export promotion schemes including the Special Economic Zone scheme;

(m) offences under the Act;

(n) provisions of the allied Acts including the Central Goods and Services Act, 2017 (12 of 2017) and section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Indian Explosives Act, 1884 (4 of 1884), the Destructive Insects and Pests Act 1914 (2 of 1914),the Dangerous Drugs Act, 1930 (2 of 1930), the Drugs and Cosmetics Act, 1940 (23 of 1940), the Central Excise Act, 1944 (1 of 1944), the Copy Right Act, 1957 (14 of 1957), the Trade and Merchandise Marks Act 1958 (43 of 1958),the Arms Act 1959 (54 of 1959), the Patents Act, 1970 (39 of 1970), the Narcotics Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Environment (Protection) Act, 1986 (29 of 1986), the Foreign Trade (Development and Regulations) Act, 1992 (22 of 1992), the Foreign Exchange Management Act, 1999 (42 of 1999), the Design Act, 2000 (16 of 2000) and the Food Safety and Standard Act, 2006 (No. 34 of 2006) and other laws for the time being in force applicable to EXIM trade and the rules and regulations made under these Acts in so far as they are relevant to clearance of goods through Customs;

(o) provisions of the Prevention of Corruption Act, 1988 (49 of 1998);

(p) procedure for appeal and revision applications under the Act; and

(q) online filing of electronic bills of entry and shipping bills vide the Indian Customs and Central Excise Electronic Commerce or Electronic data interchange gateway (ICEGATE)and Indian Customs Electronic data Interchange System (ICES).

(r) knowledge of regulations, rules, notifications, etc. under the Customs Act and other Allied Acts.

(8) The Principal Commissioner of Customs or Commissioner of Customs shall satisfy himself that the individual applicant or in cases where applicant is a firm or company, its partner or Director or authorised employees who may be engaged for handling the customs work shall possess satisfactory knowledge of English and the local language of the Customs Station:

Provided that in case of a person deputed to work extensively in the docks, knowledge of English shall not be compulsory and knowledge of Hindi shall be considered as desirable qualification.

xx xx xx xx xx

13. Engagement or employment of persons.—

(1) A person who has qualified the examination referred to in regulation 6 may engage himself in the work relating to the clearance of goods through customs on behalf of a firm or a company licensed under these regulations.

(2) A Customs broker who has been issued a license under sub-regulation (2) of regulation 7 shall be issued a photo-identity card in Form F by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be:
Provided that in the case of the license issued under clause (b) of sub-regulation (2)of regulation 7, the photo-identity card in Form F shall be issued to the person or persons who has actually passed the examination referred to in regulation 6
….

(*5)The person referred to in sub-regulation (3) shall, within four attempts from the date of his appointment, pass a written examination conducted by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, and the examination shall be such as to ascertain the adequacy of knowledge of such person regarding the provisions of the Act subject to which goods and baggage are cleared through Customs and the person shall, on passing the examination, be issued a photo-identity card in Form G by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be.*

(6) Notwithstanding anything contained in sub-regulation (5), a G card holder who is employed under a Customs Broker may, on his employment under any other Customs Broker, with the approval or no objection of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, be exempted from passing of such examination.

(7) A Customs Broker shall authorise only such employee who has been issued a photo identity card in Form F or Form G as the case may be to sign the declaration on the bills of entry, shipping bills, annexure thereof or any other document generated in connection with the proceedings under the Act or the rules or regulations made thereunder.

> *(8) Where the Customs Broker has authorised any person employed by him in accordance with sub-regulation (7) to sign documents relating to his business on his behalf, he shall file with the Deputy Commissioner of Customs or Assistant Commissioner of Customs of each Customs Station, as the case may be, a written authority in this behalf and give prompt notice in writing if such authorisation is modified or withdrawn."*

In view of the specific provisions under section 146 ibid, and the definition of 'customs broker' under CBLR, 2018, in case of any violations of the Customs Act, 1962 read with any other law for the time being in force, and the rules and regulations made thereunder, besides the importer/exporter, the concerned customs broker who file the documents as an agent of the importer/exporter is also liable for action under the Act of 1962. The CBLR specifically provide for the individual person who intends to act as CB, shall make an application; and that such applicant in case of firm, shall be filed by its partner; and in case of a company, shall be filed by its director or an authorised employee. These applicants are required to pass the examination, both oral and written, in order to demonstrate that they have sufficient knowledge of the Laws of Customs and other allied laws governing the international trade, import and export, domestic legislations relating to compliance to various prohibitions, environmental protection, import/export restrictions, conformity with the quality and standards, financial/foreign exchange compliances in relation to enforcement of customs law and allied Acts concerning import/export of goods. The above requirements under CBLR clearly brings out the role of a Customs Broker who files the documents on behalf of the exporter, shall examine all aspects of the transaction to rule out that the export of goods are not in violation of any of the Acts, Rules or Regulations.

8.3 Thus, the above independent system of checks of documents before the same is filed in the form of checklist for shipping bill, require the 'F' or 'G' cadre holder to sign the declaration of shipping bill subscribing the truth of its contents after examining each of the aspect in detail for undertaking the responsibility of furnishing current information in the customs declaration/shipping bill. In the present case, the persons involved in the export fraud including Shri. Vijay Poojary and his accomplices, employees have adopted a modus of fabricating the documents, business entity of exporter, so that in the event of detection by the Department, they would be able to escape from the clutches of law. The findings in the impugned order clearly prove that Shri. Vijay Poojary who is a director and a majority shareholder of the appellants CB M/s Srinivas Clearing & Shipping (I) Private Limited, had played an active role in devising the entire modus for smuggling of Red sanders, a prohibited item for export along with one Shri Badshah Malik. But for the detailed investigation conducted by DRI, by the purposive avoidance of use of the name of CB for filing of the export documents, Shri. Vijay Poojary, director of the appellant's CB would have escaped from the clutches of law. However, the detailed investigation by DRI as reflected in the findings of the learned Pr. Commissioner in the impugned order clearly bring out the role of appellants CB, in the export fraud.

8.4. The detailed investigation by DRI also shows that in the present consignment covered by container No. DRYU 2306380 covering export goods to Jebel Ali port, the actual export goods were found to be of 7.80MTs of Red Sanders which are prohibited goods. Further, we also find that this is not an isolated incident of mis-declaration but of a planned smuggling of prohibited goods, not once but in the past seventeen containers quantified in total as 120MTs valued at Rs.48Crore.

8.5. The various statements given under Section 108 ibid by the persons involved in the export fraud before DRI investigation officers also revealed that the appellants CB had played major role in the smuggling of Red Sanders. To illustrate, Shri Shivdas Ramesh Tandel, Deputy Manager (Operations) of the shipping agent M/s Emirates Shipping Agencies (India) Pvt. Ltd. in his statement dated 27/28.11.2015 had stated he attended the work of documentation and online submission of IGMs/EGMs to Customs authorities. He knew Shri Vijay Poojary, Director of appellants CB as a friend Shri Harshavardhan Hegde, Managing Director of the same shipping agency in which he is working; on the specific directions of said Shri Harshavardhan Hegde, M.D. he facilitated smooth operations/ clearance of export containers for Shri Vijay Poojary; he had prepared the ‘Via loading request’ as the request of Shri Vijay Poojary, for changing the vessel of export container from *MV Esperanza* to *MV Diaporos* and later emailed for change of port of destination from Khorfakkan, UAE to Jebel Ali, UAE; he had even sent the request for de-manifesting the export container to the terminal operator and got it de-manifested on the directions of Shri Vijay Poojary, having got alerted that the said container was put on hold by Customs investigation agency; he had deleted all call records and messages from his mobile as per the directions of Shri Vijay Poojary.

8.6 Similarly, Shri Harshavardhan Hegde, Managing Director of shipping agent M/s Emirates Shipping Agencies (India) Pvt. Ltd. had also given voluntary statement dated 28.11.2015, stating that he knew Shri Vijay Poojary from 2001 and he had handled more than 200 export containers through their shipping agent company; upon knowing that the export container has been put on hold by investigation agency, Shri Vijay Poojary had asked him to change the vessel of the said container, which appears to be clear manipulation to avoid detection by such investigation agencies. Later in his subsequent statement given on 30.11.2015, he had stated that when he was in discussion with their Chief Financial Officer visiting from Delhi on 28.11.2015, who had come to specifically to meet after the seizure of Red Sanders by DRI in container No. DRYU 23063080, he was called by one Advocate Anish Desai and later when he met him at the address given by him, he found that the office cabin was having the name place of Shri C.Subba Reddy and he had asked him regarding the questions DRI had asked him and the answers given by him. After 10 minutes Shri Vijay Poojary also entered the cabin and they had told him that he need not worry about this incident and they would handle everything. However, later upon meeting the Advocate Shri Chetan Anand, engaged by their shipping agent company, he had advised him to reveal everything to DRI investigation and thus he informed all the facts relating to the seizure of the container No. DRYU 2306380 and all the containers that were booked by Shri Vijay Poojary, in the past.

8.7 The records of the case also indicate that DRI investigation of various exports conducted in the past by the appellants CB firm through Shri Vijay Poojari, the Director, had adopted a common modus operandi of the following: (i) in most of the BLs the commodity was declared as 'Fabric glue' (ii) the consignors in all the B/Ls were some unit in Surat SEZ and (iii) the consignee were mostly some General Trading firm based in the UAE. It was also revealed by the statement of Shri Shri Harshavardhan Hegde, that M/s Pidilite Industries was a client of the appellants CB's freight forwarding company M/s Srinivas International run by Shri Vijay Poojary and thus he was well aware of the product specifications' like weight, description, pricing, etc. which had come to his aid in preparation of forged export documents by using the description 'Fabric Glue'.

8.8 DRI investigation also proved that a representative sample of the wooden log, drawn under panchanama dated 27.11.2015 from the impugned export consignment was forwarded to the Institute of Wood Science & Technology, Bengaluru vide letter F.No. DRI/MZU/ C/INT-III/2015 dated 30.12.2015 for ascertaining its identity. As per reply dated 12.02.2016 received from RO, Wood Properties and Engineered Wood Division, Institute of Wood Science & Technology, Bangalore, it was confirmed that the said representative sample of wood was of Red Sanders (Pterocarpus Santalinus), which is a prohibited item for export from India.

8.9 The records of the case also reveal that when the offence report from DRI was received by the jurisdictional Pr. Commissioner on 16.05.2016, the said Shri Vijay Poojary was absconding. Meanwhile, intelligence was received by DRI that on 09.12.2015, the said Vijay Poojary would come to meet his accomplice Shri Badshah Majid Malik, who was his close associate in the smuggling of Red Sanders, at Starbucks Coffee, Bandra-Kurla Complex, Mumbai. A discreet watch was kept at the said location and the said S/Shri Vijay (Subbanna) Poojary and Badshah Majid Malik were identified while they were in a meeting and their voluntary statements under Section 108 of the Customs Act, 1962 under summons proceedings. On enquiry by DRI officers, Shri Vijay Poojary informed that he had come there to meet

Shri Badshah Majid Malik who was his associate and master mind in the smuggling racket of Red Sanders. The said Badshah Malik had asked him to arrange freight booking for shipments of wooden logs to be shipped to the Middle-East Asia; on his further questioning, Shri Badshah Malik confided that the wooden logs would be of Red Sanders and that the shipment would have to be made very carefully without disclosing the actual identity of the goods as export of Red Sanders was not allowed; in return for tactful handling of such shipments Shri Badshah Malik offered him an amount of Rs. 75 lakhs per container load. The description of goods and the names of the consignors and consignee for such consignments were provided to him by Shri Badshah Malik by way of Whatsapp messages on his mobile phone number 9920030007; the same were forwarded by him to one person by name Shri Noor Mohammed @ Noora, a resident of Vikhroli (East), Mumbai; he got acquainted with Noor Mohammed sometime in April 2014 and had known Shri Noor as a person who owned few trailers and who specialized in stuffing of export containers at discreet locations around Navi Mumbai. The said Shri Noor claimed that he had known lots of shut down factories around Navi Mumbai, where he could arrange for stuffing of any type of consignment in a very discreet manner; besides, Shri Noor was well versed with preparation of export documents, accordingly, he assigned the following tasks to Shri Noor Mohammed the job of preparation of documents for those export consignments, taking delivery of empty trailers from the empty container yard, stuffing of the container with wooden logs of Red Sanders provided by Shri Badshah Malik, and transporting the loaded containers to the port for shipment; for the said job he offered Shri Noor Mohammed @ Mani Rs.20 lakhs per container.

8.10 The detailed investigation conducted by DRI revealed that Shri Vijay Poojary had booked freight for 18 containers through Emirates Shipping Agencies (India) Pvt. Ltd for shipment of Red Sanders on behalf of Shri Badshah Malik; those 18 containers included the consignment of Red Sanders which was under seizure in the present case; the freight & other charges for the above 18 containers were paid by him to M/s ESAIPL in cash which was delivered in their

Andheri office by his employee Shri Baburao, who also used to collect the final Bill of Lading; Shri Badshah Malik used to provide him the name and address of the person based in Dubai to whom the final Bill of Lading used to be couriered by him; he had thrown his Laptop, used by him for sending e-mails for the above said freight bookings, into the Vashi creek along with his i-Phone Plus and i-Phone 4S mobile phones after the seizure of the consignment of Red Sanders by DRI and post the arrest of Shri Harshavardhan Hegde as he had got scared; he had received money only for 17 consignments out of the 18 containers for which he had done freight booking ad shipment for Shri Badshah Malik, as the last consignment was caught by DRI.

8.11 The DRI investigation further revealed that the appellants CB M/s SC&SIPL (CHA/CB no. 11/171) through its Director Shri Vijay (Subbanna) Poojary, had rendered services of their employees for filing of forged documents for illegal export and got the export consignments of Red Sanders cleared by mis-declaring them as "Fabric Glue/Assorted Acrylic colours/Radiators". The company's Director had also floated factious business entities as freight forwarders, exporters to facilitate such illegal export.

8.12 We also find from the CHA/CB license No.11/171 issued by the jurisdictional Commissioner of Customs, being the licensing authority that initially the CHA/CB firm was in the name of M/s Kunverji Dharshi & Sons, which was later renamed/reconstituted as M/s Srinivas Clearing & Shipping (India) Pvt. Ltd. and the same was endorsed in their CHA/CB license on 12.08.2009. At that time the said Shri Vijay Poojary became as Working Director from his earlier position as non-working partner. With subsequent changes, the said Shri Vijay Poojary took entire control of the appellants CB as he was holding 99.9% of shareholding of the appellants company. These facts goes on to prove that with the entire control of the appellants CB firm, the act of illegal export of Red Sanders was orchestrated by Shri Vijay Poojary along with his accomplices.

9. From the analysis of the foregoing evidences, we are of the considered view that the appellants have committed the export fraud

of exporting prohibited Red Sanders along with other connected persons.

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

"Regulation 10. Obligations of Customs Broker: -

A Customs Broker shall -

xxx xxx xxx xxx

(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;

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

(j) not refuse access to, conceal, remove or destroy the whole or any part of any book, paper or other record, relating to his transactions as a Customs Broker which is sought or may be sought by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be;

(k) maintain up to date records such as bill of entry, shipping bill, transhipment application, etc., all correspondence, other papers relating to his business as Customs Broker and accounts including financial transactions in an orderly and itemised manner as may be specified by the Principal Commissioner of Customs or Commissioner of Customs or the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

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;"

11. In respect of Regulations ibid, it is on record in the impugned order at paragraph No. 26 that the CB forged all documents concerning the export in the present consignment and all earlier 17 past consignments. The detailed investigation conducted by DRI had revealed that in respect of past consignments in which by adopting

similar modus, smuggling of red Sanders were exported, one container was detained by customs authorities at port of Jebel Ali; similarly one another container had been lying uncleared at Ajman port. Further in respect of verification with the Development Commissioner, SEZ, Vadodara, it was revealed that the purported shipping bills shown as generated in SEZ were fake, inasmuch as these had never been generated from their SEZ office. Similarly verification with the Development Commissioner, SEZ, Surat, in respect of past containers was also reported by them, that the export goods were not manufactured by impugned units, shown as exporters in the respective shipping bills. The above facts clearly prove that the appellants CB have violated the obligations that are required to be complied under Regulation 10(a), 10(e), 10(n) of CBLR, 2018. Further, the employees the appellants CB firm have admitted that they had destroyed the export documents such as Invoice, Packing List, Shipping Bill etc., post shipment of the said consignments on the directions of Shri. Vijay Poojary. These facts goes to prove that the appellants CB had also violated the requirements of Regulation 10(j) and 10(k) of CBLR, 2018.

12. We further find that in respect of delay in suspension proceedings of customs broker license, the Hon’ble High Court of Bombay in the case of *Principal Commissioner of Customs (General), Mumbai Vs. Unison Clearing P. Ltd., reported in 2012 (361) E.L.T. 321 (BOM – HC)* have elaborately discussed the issue and came to a conclusion that the only way to effectively implement the provisions in the interest of both the parties is that the reasons for delay can then be tested to derive a conclusion whether the deviation from the time line prescribed in the Regulation, is "reasonable" or ‘not’. The relevant paragraph of the judgement is extracted below:

> *“15. In view of the aforesaid discussion, the time-limit contained in Regulation 20 cannot be construed to be mandatory and is held to be directory. As it is already observed above that though the time line framed in the Regulation need to be rigidly applied, fairness would demand that when such time limit is crossed, the period subsequently consumed for completing the inquiry should be justified by giving reasons and the causes on account of which the time-limit was not adhered to. This would ensure that the inquiry proceedings which are initiated are completed expeditiously, are not prolonged and some checks and balances must be ensured. One*

> *step by which the unnecessary delays can be curbed is recording of reasons for the delay or non-adherence to this time-limit by the Officer conducting the inquiry and making him accountable for not adhering to the time schedule. These reasons can then be tested to derive a conclusion whether the deviation from the time line prescribed in the Regulation, is "reasonable". This is the only way by which the provisions contained in Regulation 20 can be effectively implemented in the interest of both parties, namely, the Revenue and the Customs House Agent."*

13.1 From the records of the case, we find that there is definitely delay in adjudication and that for the export transactions occurred in November, 2015, the order of revocation of appellant's customs broker license has been passed on 28.03.2019. Though Revenue has not explained why there was such a long delay of 3 years and 2 months in taking action against appellants, when the information about fraudulent exports was received on 16.05.2016. Though the first order-in-original revoking immediate suspension, was passed on 10.06.2016, action against the appellants under CHALR/CBLR vide Show Cause Notice was issued on 14.05.2018. The impugned order has been passed after almost nine months from the date of issue of SCN. In this regard we find that the appellants had filed an appeal before the Tribunal against the order dated 10.06.2016, which was disposed by the Final Order of the Tribunal dated 11.01.2017. Further, during the inquiry proceedings ten opportunities for personal hearing on different dates have been given and three more opportunities for cross examination was given to the appellants CB. They were also agitated by the departmental action and the prolonged delay in inquiry proceedings was partly contributed by the appellants CB with a number of personal hearings to be given to them. Thus there was reasonable cause for delay in inquiry proceedings. Therefore, we are of the view that even though no detailed reasons were recorded in detail justifying the delay in passing the impugned order by the learned Principal Commissioner, there were reasonable grounds for alleged delay, in terms of the test laid down by the Hon'ble High Court of Bombay.

13.2 Furthermore, in order to appreciate the importance of the role of Customs Broker/Custom House Agent and the timely action which could prevent the export frauds, we rely on the judgement of the

Hon'ble Supreme Court in affirming the decision of the Co-ordinate Bench of this Tribunal in the case of *Commissioner of Customs Vs. K.M. Ganatra & Co.* in Civil Appeal No.2940 of 2008 reported in 2016 (332) E.L.T. 15 (S.C.). The relevant paragraph of the said judgement is extracted below:

> *"**15.** In this regard, Ms. Mohana, learned senior counsel for the appellant, has placed reliance on the decision in Noble Agency v. Commissioner of Customs, Mumbai 2002 (142) E.L.T. 84 (Tri. - Mumbai) wherein a Division Bench of the CEGAT, West Zonal Bench, Mumbai has observed:-*
>
> > *"The CHA occupies a very important position in the Customs House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations….."*
>
> *We approve the aforesaid observations of the CEGAT, West Zonal Bench, Mumbai and unhesitatingly hold that this misconduct has to be seriously viewed."*

14. 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 did not fulfill their obligation as a Customs Broker for exercising due diligence in terms of the various obligations given to them. The facts brought out in the DRI investigation and the findings in the impugned order, clearly demonstrate that when the documents relating to the export goods were fabricated and declared goods of 'Fabric glue/carpets' was substituted with prohibited 'Red Sanders', a clear attempt to smuggle the goods in an illegal manner in violation of the Customs Act, 1962 and Foreign Trade Policy have been orchestrated by the appellants CB. Thus, we find that revocation of CB license, imposition of penalty and forfeiture of security deposit by the learned Principal Commissioner on account of the appellants' failure in not fulfilling of

Regulations (a), (e), (j), (k) and (n) of Regulation 10 *ibid* CBLR, 2018 is appropriate and justifiable.

15. In view of the foregoing discussions, we do not find any infirmity 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 the violations had arisen on account of alleged nefarious activities of 'G' card pass holder who is a director of the appellants CB.

16. Therefore, we do not find any reason for interfering with the impugned order, and accordingly dismiss the appeal filed by the appellants.

(Order pronounced in open court on 03.01.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha