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

Customs Appeal No. 85002 of 2023

(Arising out of Order-in-Original CAO No. 53/CAC/PCC(G)/SJ/CBS Adj dated 25.11.2022 passed by Principal Commissioner of Customs (General), New Custom House, Mumbai.)

Frontier Shipping Agencies Pvt. Ltd. .....**Appellants**
(CB License No. 11/1004)
C-205, Great Eastern Garden, LBS Road
Kanjurmarg(W), Mumbai-400078.

VERSUS

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

Appearance:

Shri N.D. George, Advocate 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/87461/2023

Date of Hearing: 04.05.2023
Date of Decision: 04.05.2023

PER : M.M. PARTHIBAN

This appeal has been filed by M/s Frontier Shipping Agencies Private Limited, Mumbai (herein after, referred to as 'the appellants'), holders of Customs Broker License No. 11/1004 assailing Order-in-Original CAO No. 53/CAC/ PCC(G)/SJ/CBS Adj dated 25.11.2022 (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 No. 11/1004 issued by the Mumbai Customs under Regulation 8 of Custom House Agents Licensing Regulations (CHALR), 1984 [now 7(2) of Customs Brokers Licensing Regulations (CBLR), 2018]. An offence report dated 26.02.2022 was received from the Commissioner of Customs, Jawaharlal Nehru Custom House (JNCH), informing that on the basis of information received from National Targeting Centre for Cargo (NCTC), the Special Intelligence & Investigation Branch (SIIB) of JNCH was investigating mis-declaration of goods by two importers namely M/s Saifee Glass LLP and M/s DK International, for whom Bill of Entry (B/E) No.7328015 dated 02.02.2022 and B/E No.7338443 dated 03.02.2022, respectively, has been filed by the appellants Customs Broker. However, the appellants were unaware about the whereabouts of importer as the imported goods were found to have been out of charged and were already taken out of the CFS, without the knowledge of appellants CB and they were not able to provide the details of vehicles in which the imported goods were cleared.

2.2. On the basis of such offence report received from SIIB, JNCH, 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(d), 10(n) and 10(q) of CBLR, 2018. Accordingly, he had immediately suspended the CB license of the appellants under Regulation 16(1) *ibid*, vide Order No. 02/2022-23 dated 01.04.2022; and such suspension was continued vide Order No. 07/2022-23 dated 11.05.2022 pending conduct of regular inquiry proceedings; further the department had initiated show cause proceedings by issue of notice No. 08/ 2022-23 dated 26.05.2022 for initiating inquiry proceedings under Regulation 17 *ibid*, in respect of violations of CBLR as mentioned above.

2.3. Upon completion of the inquiry proceedings, an inquiry report dated 24.08.2022 was submitted concluding that both charges for violations against sub-regulations 10(d) and 10(q) of CBLR, 2018 framed against the appellants CB have been proved; while the charge against violation of sub-regulation 10(n) ibid was not proved. On the above, the Principal Commissioner of Customs had issued a Disagreement Memo dated 01.11.2022 indicating the grounds on which he opines that regulation 10(n) has been violated by the appellants and asking the appellants to defend their stand by giving written submission against the said disagreement memo. After perusal of the appellants' written reply dated 10.11.2022 and upon providing a personal hearing through virtual mode on 11.11.2022, the Principal Commissioner of Customs (General), Mumbai, being the licensing authority had passed the impugned order dated 25.11.2022 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 and asking them to surrender the original CB license issued to them along with all 'F', 'G' and 'H' identity cards issued to them. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

3.1. Learned Advocate for the appellants contends that all the allegations of violation of Regulations 10(d), 10(n) and 10(q) of CBLR, 2018 have been countered by them in detailed manner in their appeal papers filed by them. In respect of Regulation 10(d), he stated that all the declarations in the B/E were made on the basis of documents given by the importers, and the appellants were neither aware of the mis-declaration of imported goods in terms of its description, contents etc.; they claimed that the appellants were no manner connected with the violations of the Customs law in misdeclaration of the imported goods, as the declarations were made as per the invoice and packing list, on the basis of which the imported goods were assessed and given out of charge by the Customs authorities at JNCH Custom House. He also stated that the appellants had discharged their duties as CB diligently in receipt of documents and in filing of declarations in respect of imported goods, verified the KYC documents as per legal requirement and had co-operated with SIIB investigation and Customs authorities, immediately when they were called over phone on 04.02.2022 and also subsequently during their investigation; they even presented the importer and the representative of the supplier abroad on 11.02.2022 and 14.02.2022 to assist in the investigation of this case. Thus they claimed they did not contravene the Regulations 10 (d), 10(n) and 10(q) *ibid*.

3.2. In support of their stand, the learned Advocate relied upon the following orders of the Tribunal and judgement of the Hon'ble High Court of Delhi in the case of *Kunal Travels (Cargo)* as given below:

(i) *HIM Logistics Pvt. Ltd. Vs. Commissioner of Customs, New Delhi* - 2016 (338) E.L.T. 725 (Tri.-Del.).

(ii) *Kunal Travels (Cargo) Vs. Principal Commissioner of Customs (I&G), IGI Airport, New Delhi* - 2017 (354) E.L.T. 447 (Del.)

(iii) *Thawerdas Wadhoomal Vs. Commissioner of Customs (General), Mumbai* – 2008 (221) E.L.T. 252 (Tri.-Mumbai)

(iv) *APS Freight & Travels Ltd. Vs. Commissioner of Customs (General), New Delhi* - 2016 (344) E.L.T. 602 (Tri.-Del.)

(v) *Poonia & Brothers Vs. Commissioner of Customs (Preventive), Jaipur* - 2019 (370) E.L.T. 1074 (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 all the violations under sub-regulations (d), (n) and (q) of Regulation 10 *ibid*, has been examined in detail by the Principal Commissioner. The appellants CB did not declare the complete details of the imported goods. The CB got all the documents for import in respect of M/s D.K. International from one Shri. Dhiraj, who is not the proprietor; they never verified the authenticity of KYC documents; and the appellants CB were unaware of the examination, delivery of the imported goods and the location of the goods after its clearance. 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.

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 alleged to have been violated by the appellants are Regulations 10 (d), 10(n) and 10(q) *ibid*, and hence there are three distinct charges framed against the appellants. We also find that the impugned order dated 25.11.2022 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 11.11.2022, 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. The specific sub-regulations which are alleged to have been violated by the appellants CB 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;*
>
> *...*
>
> *(q) co-operate with the Customs authorities, and shall join investigations promptly in the event of an inquiry against them or their employees;"*

6.3. We find that the Principal Commissioner of Customs had come to the conclusion that in respect of one importer M/s D.K. International, the appellants CB had obtained the documents for import from one Shri Dhiraj, who is the cousin of Shri Kishore, proprietor of import firm. Thus, they did not bring the matter of dealing with a person not connected with IEC holder to Customs authorities. In respect of another importer M/s Saifee Glass LLP, the appellants CB did not advise their clients properly. The appellants CB did not make any genuine or substantive efforts to verify the identity and functioning of their clients. The CB was not present during the examination of the imported goods and did not know about the delivery of the goods, and these goods could not be traced because of their non-cooperation with Customs investigation. The above omissions and commissions on the part of the appellants CB have thus lead to the contravention of Regulations 10(d), 10(n) and 10(q) *ibid*. Thus, he had taken the view that the appellants are liable for the violations of non-compliance with aforesaid Regulation 10 (d), 10(n) and 10(q) of CBLR, 2018.

7.1. We find from the factual matrix of the case, that the appellants CB had filed two B/Es relating to two importers. In respect of one of the importers M/s D.K. International, it is stated by SIIB (Import), JNCH Customs authorities that National Customs Targeting Centre (NCTC), Mumbai had forwarded an information at 05.06 PM on 04.02.2022 to them informing about a suspected mis-declaration of imported goods in B/E No.7338443 dated 03.02.2022, which has been filed by the appellants CB. In the said B/E, the declared imported goods were 'Palm Oil Acid' classifiable under Chapter 38. Accordingly SIIB, JNCH customs authorities had started necessary investigation immediately. However, they found that the imported goods were already out of charged and were taken out of the CFS, and the appellants CB were unaware of such clearance of the imported goods. In the impugned order, the learned Principal Commissioner of Customs had given a finding that since the appellants CB were unaware about the out of charge and delivery of the goods from CFS, and since they were not present during the examination of the imported goods, there was violation of the regulation 10(d) of CBLR, 2018 by the appellants. From the factual position about clearance of imported goods under B/E No. 7338443 dated 03.02.2022, as given in the Indian Customs Electronic Interchange Gateway (ICEGATE), the national portal of Customs, it is seen that imported goods covered under the above B/E No. 7338443 was examined by JNCH Customs authorities on 04.02.2022 at 15.30 Hrs. and was cleared out of customs control from the CFS on 04.02.2022 at 15.35 Hrs. The relevant extract of the said B/E as captured from ICEGATE is given below:

enquiry.icegate.gov.in/enquiryatices/BETrack_Ices_action

Shipping Bill
Customs Transit Declaration
Manual/Courier/Postal Shipping Bill
AIR IGM
SEA IGM
AIR CONSOL
ICD BL Status
SEZ BE Ack Status
SEZ SB Ack Status
Other Govt. Agencies

Related Links
-www.cbic.gov.in
-www.aces.gov.in
-www.nacen.gov.in
-www.ltu.gov.in
-www.finmin.nic.in
-www.ices.nic.in/Ices
-www.indiantradeportal.in

LOCATION	BILL OF ENTRY NO	BILL OF ENTRY DATE
NHAVA SHEVA SEA (INNSA1)	7338443	03/02/2022

BE Details

IEC	TOT VAL	TYP	CHA Number	FIRST CHECK	PRIOR BE	SEC48
AEIPI1254G	1421396.5	H	AAACF0854CCH001	N	N	N
APPRAISING GROUP	TOTAL ASSESSABLE VALUE	TOTAL PACKAGE	GROSS WEIGHT (Kg)	TOTAL DUTY (INR)	FINE PENALTY (INR)	WBE No.
2F	1435754	2	41900	398207	N.A.	N.A.

Current Status

APPRAISEMENT	CURRENT QUEUE	NO OF QUERY RAISED	NO OF QUERY REPLIED	REPLY DATE	REPLY STATUS	APPR DATE	ASSESS DATE	PAYMENT DATE	EXAM DATE	OOC DATE
Processed	N.A.	0	0	N.A.	NO	2022-2-3 13.48.22.0	2022-2-3 13.54.52.0	2022-2-3 0.0.0.0	2022-2-4 15.30.44.0	2022-2-4 15.35.24.0

Payment Details

CHALLAN No.	DUTY AMOUNT (INR)	FINE AMOUNT (INR)	INTEREST AMOUNT (INR)	PENAL AMOUNT (INR)	TOTAL DUTY (INR)	DUTY PAID (INR)	MODE OF PAYMENT
2038046559	398207	35000	0	0	433207.0	433207.0	EPAYMENT

Other Govt. Agencies Status

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7.2. Further, we find that the EDI print out of Part-V – Other compliances of the said B/E provide the examination order for the goods as follows:

> "*A. Examination Order:*
> *Inspect Lot. Open & Examine 100% as per RMS instructions A/S. Check marki (marks) of descp (description) and mkd (marked) wt (weight)/qty (quantity) as per invoice, packing list. Vfy (verify) GATT decl. vfy ADC NOC if selected by SWIFT. Follow RMS/ CCR Instr. or Target Instruction.*"

The entry in the Part-B of examination instructions under 'B1. PGA Examination instructions' is 'NIL' as there is no entry in those columns of the B/E and in respect of 'C-Compulsory Compliance' it is given as under:

> "C. *Compulsory Compliance:*
> *Mandatory Compliance Requirements Examination instructions (For notification) 050/2017 – 251 "vfy. Goods are of CTH 38231100, 38231200, 38231300, 38231900 or 382370"*

7.3 We further find that CBIC instructions vide Circular No.19/2020-Customs dated 13.04.2020, specifically provide as a part of Turant Customs to enable electronic communication of PDF based Final eOoC (electronic Out of Charge) copy of BoE and eGatepass to the importers/Customs Brokers, had introduced issue of final eOoC copy of BoE and eGatepass copy by email to the concerned Customs Broker and/or importer, if registered, once the Out of Charge is granted. The said circular also provide that the eGatepass copy will be used by the Gate Officer or the Custodian to allow physical exit of the imported goods from the Customs area. This electronic communication is also used in order to reduce interface between the Customs authorities and the importers/Customs Brokers and also do away with the requirement of taking bulky printouts from the Service Centre or maintenance of voluminous physical dockets in the Customs Houses. The copy of the said circular is reproduced below:

"Circular No. 19/2020-Customs

F. No. 450/26/2019-Cus IV
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Indirect Taxes & Customs)

New Delhi, Dated the 13th April, 2020

To,

All Principal Chief Commissioners/ Chief Commissioners of Customs/ Customs (Preventive),
All Principal Chief Commissioners/ Chief Commissioners of Customs & Central tax,
All Principal Commissioners/ Commissioners of Customs/ Customs (Preventive), All Principal Commissioners/ Commissioners of Customs & Central tax,

Madam/Sir,

Subject: Paperless Customs – Electronic Communication of PDF based Gatepass and OOC Copy of Bill of Entry to Custom Brokers/Importers – Reg.

In order to mitigate the unprecedented situation due to Covid-19 pandemic, CBIC has taken a number of measures to facilitate & expedite Customs clearance process making it more and more contact-less i.e. automated and online as well as paper-less. These measures include the facility to clear goods on the basis of a undertaking (not bond), acceptance of electronic Country of Origin certificate etc. These steps complement the earlier reforms unrolled as a part of Turant Customs such as online query module, eSanchit, web based goods registration, electronic processing of DGFT issued licenses, machine release of imported goods based on Customs Compliance Verification and electronic transmission of PDF based First copy of Bill of Entry (BoE) to Customs Brokers and registered importers.

2. *The aforementioned reforms combine to expedite Customs clearances and reduce the transaction cost. At the same time, Board notes that the specific measures that reduce interface between the Customs authorities and the importers/exporters/Customs Brokers are especially relevant in these challenging times, to tackle the scourge of Covid-19 pandemic. In this direction, Board has now decided to enable electronic communication of PDF based Final eOoC (electronic Out of Charge) copy of BoE and eGatepass to the importers/Customs Brokers. This electronic communication would reduce interface between the Customs authorities and the importers/Customs Brokers and also do away with the requirement of taking bulky printouts from the Service Centre or maintenance of voluminous physical dockets in the Customs Houses. The Final eOoC copy of BoE and eGatepass copy will be emailed to the concerned Customs Broker and/or importer, if registered, once the Out of Charge is granted. The eGatepass copy will be used by the Gate Officer or the Custodian to allow physical exit of the imported goods from the Customs area.*

3. *Salient features of the secure electronic communication of the Final eOoC copy of BoE and the eGatepass are as follows:*

I. <u>Final Out of Charge (eOoC) Copy of Bill of Entry:</u>

As of now, physical signing of the Final OoC copy of BoE is insisted upon at many Customs locations. This necessitates the importer/Customs Broker to take a paper printout from the Service Centre to be produced before the Customs officer. It has now been decided to do away with the paper printout of the Final OoC copy of BoE. Instead, DG Systems will enable a functionality to immediately email the PDF version of the Final eOoC copy of BoE generated after OoC to the Customs Broker and/or the importer, if registered. This Final eOoC copy of BoE will have the following features-

(i) *The PDF version will bear a digitally signed and encrypted QR code which can be scanned to verify the authenticity of the document using Mobile App ICETRAK. The QR code is tamper proof, which is digitally signed by CBIC to ensure the authenticity. Key details like BoE No., BoE Date, Duty, Package Details are available in the secured QR Code.*

(ii) *A version number is also embedded in the QR code which can be used to ascertain whether the document is indeed the latest version (in case of reassessment etc.). The same would be verifiable at ICEGATE Enquiry.*

II. e<u>Gatepass</u>

Currently, the physically signed Final OoC copy of BoE is being verified both by the Gate officer (Customs) as well as the Custodian before allowing the actual movement of the imported goods out of the Customs premises. This physical printout is now being replaced by the PDF eGatepass generated and electronically communicated to the importer/Customs Brokers with the following salient features:

(i) *eGatepass shall contain only the details referred to by the Custodian or the Gate officer to allow actual movement of goods – like details of IGM/Bill of Lading, Containers, packages etc.*

(ii) *There will be two types of QR codes (i) for entire eGatepass document, and (ii) for each container/package covered under the Gatepass. This will ensure that only those containers/package move out which are covered under the Gatepass document.*

(iii) *EDI OoC message shall continue to be sent to the Custodians who are registered on ICEGATE. Since all the Custodians are not connected to ICEGATE, therefore, EDI OoC message is not being transmitted electronically to such Custodians. Field formations are requested to ensure registration of all such custodians in ICEGATE as per the advisory of DG Systems so that the potential benefits of the new measures could be reaped across the entire Customs ecosystem.*

4. *The electronic communication of the Final eOoC copy of BoE and eGatepass copy is expected to bring immense benefits in terms of time and cost of compliance and reduction in interface for the trade, while providing enhanced security features for verification of authenticity and validity of the electronic documents. <u>This measure would be made effective from 15th April, 2020</u>.*

5. *It is requested that suitable Trade Notice/ Standing Order may be issued to guide the trade and industry. Difficulty, if any, faced in implementation of this Circular may be brought to the notice of Board immediately.*

Yours sincerely

Vineeta Sinha

(Vineeta Sinha)
OSD (Customs)"

Inasmuch as the B/E No. 7338443 dated 03.02.2022 indicate that applicable duty was paid by the importer on 03.02.2022 and customs examination of the goods having been completed on 04.02.2022 at 15.30 Hrs., in terms of extant CBIC Circular No.19/2020-Customs dated 13.04.2020, the customs officers in charge of the CFS where the imported goods were kept in custody, had allowed the goods to be cleared for home consumption by issue of eOoC. We therefore find that these facts clearly prove that in terms of Section 47(1) of the Customs Act, 1962 after satisfying themselves that the imported goods are not prohibited goods and that appropriate import duties have been paid in respect of such goods, the JNCH, Customs authorities have allowed clearance of imported goods from customs control to the importer.

7.4 We also note that the appellants CB had stated that on the request of the importer M/s D.K. International for obtaining delivery of imported goods on 04.02.2022, they had informed them that since their staff, who is having necessary customs pass, was already engaged in another work at FTWZ Arshiya, hence they would be able to give delivery of the goods only on 05.02.2022. However, upon receipt of telephone call from SIIB, JNCH on 04.02.2022, they had come to know that the importer had taken delivery of the goods without appellants CB’s assistance on their own, and immediately called up Shri Dhiraj, representative of importer and provided requisite details of the truck, driver, owner of the truck, address of the place of delivery to the SIIB, JNCH. Thus, we find that the appellants CB had provided all requisite details to the Customs investigation authorities. Further, it is evidentially clear that even when SIIB, JNCH customs authorities had received the information about mis-declaration in consignment vide B/E No. 7338443 dated 03.02.2022 on 04.02.2022 at 05.06 PM, the imported goods were already cleared from the customs control at 15.35 Hrs. i.e., 03.35 PM on the same day. Thus, it is clear that even if the SIIB, JNCH customs authorities wanted to stop the imported consignment, it would not have been possible to hold the same under their custody, as the imported goods have been already cleared out of customs control before receipt of the information from NCTC. In view of the above analysis of the chronological happening of the events and the fact that the clearance of imported goods have been provided by the JNCH customs authorities in charge of the CFS, in terms of the provisions of Customs Act, 1962 and in the absence of any specific the evidence on the part of appellants CB to have indulged in any violation, we do not find any merits in the findings of the learned Principal Commissioner of Customs in holding that there is a violation of Regulation 10(d) and 10(q) in the case of above imports.

8.1 In respect of import of goods by the second importer M/s Saifee Glass LLP, the appellants CB had filed B/E No. 7328015 dated 02.02.2022 declaring the description of the goods as 'Dish wash liquid, Floor cleaner, Sink pipe cleaner and Kitchen Chimney cleaner'. However, during the course of examination by customs authorities of SIIB, JNCH, the imported goods were actually found to be 'perfumes, cosmetics, shower gel and bath soaps' of various brands. The learned Principal Commissioner of Customs had given a finding that the appellants CB did not advice their client importer to declare the imported goods properly and thus the appellants had failed to comply with the requirement of obligations under Regulation 10(d) ibid. The address of the importer was not verified properly by the appellants, since during investigation by SIIB, JNCH customs, they were unable to identify the premises of the importer in order to conduct such proceedings. Thus the learned Principal Commissioner of Customs gave a finding that the charge against the appellants in respect of Regulation 10(n) ibid was proved. In this regard, the appellants CB had stated that they had filed the bill of entry as per the invoice and packing list given by the importer and they have verified the existence of importer as per KYC norms. On perusal of the B/E No. 7328015 dated 02.02.2022, we find that the declaration of imported goods have been made by the importer in respect of goods purchased vide invoice No. AC-INC/20220103 dated 03.01.2022, and all four items listed in the invoice match in terms of the description and other particulars in the said B/E. Thus, it appears that the appellants CB had prima facie declared the description of the goods in the B/E as per the particulars available in the invoice, packing list provided by the importer. Further, the appellants were not aware of the mis-declaration of the imported goods. In fact the actual description of the goods was known to the SIIB, JNCH customs authorities and the appellants only during the examination of the imported goods. Thus, it would not have been possible for the appellants to submit the complete details in respect of the imported goods. In the absence of any document to prove that the appellants CB had purposefully mis-declared the description or other details of imported goods, it is difficult to fasten the violation of

Regulation 10(d) of not advising their clients or informing the Customs Authorities in respect of the details that was not furnished by the importer at the time of filing of bill of entry. Thus, we are unable to find any grounds for concluding that the appellants had violated the obligations under Regulation 10(d) ibid.

8.2 We find from the records, that the appellants CB had obtained the KYC documents along with authorisation to act as customs broker for their imports from both the importers M/s DK International and M/s Saifee Glass LLP vide their letters dated 02.02.2022. We further find from the records, that the appellants have verified the existence of the importer M/s DK International, a proprietorship firm, through the certificate of Importer-Exporter Code issued by the Ministry of Commerce, DGFT dated 07.12.2021 indicating the name of the importer along with address, name of the proprietor; letter of HDFC bank certifying the Signature of the proprietor of the importer firm, the maintaining of bank account held by importer with their bank branch at Nerul, Mumbai and Registration Certificate dated 18.02.2021 issued by the GST authorities indicating the details of importer, principal place of business duly verified by the Sales Tax Officer, Nerul. Similarly, we find that in respect of the importer M/s Saifee Glass LLP, the appellants have verified the existence of the importer through the Certificate of Incorporation issued by the Ministry of Corporate Affairs, PAN number for the LLP and certificate of Registration Certificate dated 01.03.2018 issued by the GST authorities indicating the details of importer, principal place of business. Further, the inquiry proceedings had concluded that the appellants CB has not violated the Regulation 10(n) ibid inasmuch as there is no case of identity of importer such as IEC or other certificate being forged and there is no requirement of any physical verification of the address of the importer.

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

> *"**(iv) Know Your Customs (KYC) norms for identification of clients by CHAs:***
> *6. In the context of increasing number of offences involving various modus-operandi such as misuse of export promotion schemes, fraudulent availment of export incentives and duty evasion by bogus IEC holders etc., it has been decided by the Board to put in place the "Know Your Customer (KYC)"*

guidelines for CHAs so that they are not used intentionally or unintentionally by importers/exporters who indulge in fraudulent activities. Accordingly, Regulation 13 of CHALR, 2004, has been suitably amended to provide that certain obligations on the CHAs to verify the antecedent, correctness of Import Export Code (IEC) Number, identity of his client and the functioning of his client in the declared address by using reliable, independent, authentic documents, data or information. In this regard, a detailed guideline on the list of documents to be verified and obtained from the client/customer is enclosed in the Annexure. It would also be obligatory for the client/customer to furnish to the CHA, a photograph of himself/herself in the case of an individual and those of the authorised signatory in respect of other forms of organizations such as company/trusts etc., and ***any two of the listed documents*** *in the annexure.*

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

8.4. 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."*

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

> *"The CHA is not an inspector to weigh the genuineness of the transaction. It is a processing agent of documents with respect to clearance of goods through customs house and in that process only such authorized personnel of the CHA can enter the customs house area....... It would be far too onerous to expect the CHA to inquire into and verify the genuineness of the IE Code given to it by a client for each import/export transaction. When such code is mentioned, there is a presumption that an appropriate background check in this regard i.e. KYC etc. would have been done by the customs authorities."*

8.6. 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 Regulations 10(d) and 10(n) *ibid*.

9. From the facts of the case it is also found that the appellants had made themselves available for Customs SIIB JNCH investigation authorities on 04.02.2022, immediately upon receipt of their phone call and provided the details of importer and enabled Shri Dhiraj, importer's representative i.e., M/s D.K. International to talk to the customs officials; and gave the details of the truck, driver, owner of truck, the address of delivery of imported goods etc. Further, subsequently they also produced the Director of other importer M/s Saifee Glass LLP Shri Shabbir Kapasi and his China contact Shri Firoz before the JNCH, SIIB Customs investigation authorities on 11.02.2022 and on 14.02.2022. In view of the above compliance with respect to Regulation 10(q) *ibid* by the appellants and in cooperating with the investigation authorities, we find that there are no sufficient grounds to legally sustain the impugned order in upholding that Regulation 10(q) has been violated.

10. 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), 10(n) and 10(q) of the CBLR, 2018, and the findings in the impugned order is contrary to the facts on record.

11. In the result, we set aside the impugned order and allow the appeal in favour of the appellants.

(Operative portion of the order pronounced in court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha