

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

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86735 of 2021

(Arising out of Order-in-Original CAO No. 14/CAC/PCC(G)/PS/CBS(Adj) dated 31.05.2021 passed by Principal Commissioner of Customs (General), New Custom House, Mumbai.)

Suswashis Clearing and Forwarding Agency

.....Appellants

(CB License No. 11/2156)
Shree Guru Dutta Complex CHS Ltd., HO.104,
Plot No.44,45 & 46, Sector 8A, Airoli,
Navi Mumbai – 400 708.

VERSUS

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

.....Respondent

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

Appearance:

Shri Ashwini Kumar, Advocate for the Appellants

Shri S.K. Hatangadi, Authorized Representative for the Respondent

CORAM:

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

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85082/2024

Date of Hearing: 21.08.2023

Date of Decision: 16.02.2024

PER : M.M. PARTHIBAN

This appeal has been filed by M/s Suswashis Clearing and Forwarding Agency (herein after, referred to as 'the appellants'), holders of Customs Broker License No. 11/2156 assailing Order-in-Original CAO No. 14/CAC/PCC(G)/PS/CBS(Adj) dated 31.05.2021 (herein after, referred to as 'the impugned order') passed by the learned Principal Commissioner of Customs (General), New Custom House, Ballard Estate, Mumbai-I.

2.1. Briefly stated, the facts of the case are that the appellants herein is a Customs Broker (CB) holding a regular CB license issued by the Mumbai Customs under Regulation 7(2) of Customs Brokers Licensing Regulations

(CBLR), 2018. On the basis of specific information that two import consignments of assorted dietary supplements are being attempted to be cleared by mis-declaring the description of the imported goods in the Bills of Entry (B/Es), the officers of Central Intelligence Unit of the Air Cargo Complex, Mumbai Zone – III (CIU-ACC) conducted physical examination of the imported goods covered under B/E No. 4681237 dated 28.08.2019 and B/E No.4741606 dated 03.09.2019, under Panchanama proceedings dated 19.09.2019 and 20.09.2019. The said goods were imported by M/s S.S. & Sons, Khargar and the B/Es were filed for home consumption clearance by the appellants CB. Upon examination of the imported goods it was revealed that as against the declared description of 'piping fittings' and 'machine parts dropper, healds weaving looming machine spare parts', the actual goods that was found available were 'assorted workout/pre-workout dietary supplements'. Hence, there was mis-declaration in import of goods in order to evade payment of customs duty.

2.2. On the basis of such offence report/letter dated 17.10.2019 received from CIU-ACC, 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(b), 10(d), 10(e), 10(m) and 10(n) of CBLR, 2018. Accordingly, they had immediately suspended the CB license of the appellants under Regulation 16 *ibid*, vide Order No. 59/2019-20 dated 13.11.2019; and such suspension was continued vide Order No. 88/2021-22 dated 06.03.2020; further the department had initiated show cause proceedings by issue of notice dated 21.05.2020 for initiating inquiry proceedings under Regulation 17 *ibid*, against violations of CBLR as above.

2.3. Upon completion of the inquiry, a report dated 08.12.2020 was submitted by the Inquiry Authority concluding that part of charges framed against the appellants for violation of Regulations 10(b), 10(d) and 10(n) of CBLR, 2018 have been 'proved' and the rest of the charges vide Regulation 10(a), 10(e), 10(m) *ibid* stands as 'Not proved'. Accordingly, the Principal Commissioner of Customs (General), Mumbai, being the licensing authority had issued a Disagreement Memo dated 12.02.2021 for not accepting the conclusions arrived at in the Inquiry Report in dropping the charges against the appellants in respect of Regulations 10(a), 10(c) and 10(m) *ibid* and asking the appellants to explain their stand. Subsequently, the learned Principal Commissioner of Customs (General) had passed the impugned

order dated 31.05.2021 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 on the appellants. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

3.1. Learned Advocate for the appellants contends that all the allegations of violation of Regulations 10(a), 10(b), 10(d), 10(e), 10(m) and 10(n) of CBLR, 2018 have been countered by them. In respect of aforesaid charges for violation of various Regulations of CBLR, learned Advocate stated that the appellants had received the documents through one clearing and forwarding agent, and the B/Es were filed on the basis of documents given by the importer; he claimed that the appellants CB cannot be held liable for verification of premises or correctness of particulars given in various statutory documents; Shri Nitin Sridharpraso Godiyal, the person who was mandated for examination of imported cargo was an employee of appellants and the intimation to that effect was given to Customs authorities, however on account of his sudden illness, Shri Laxmi Narayan Mishra, employee of M/s Space Age Logistics had assisted in examination of the cargo and he was holding valid 'H' card. Further, he stated that the appellants CB did not had any prior knowledge about the misdeclaration of the imported goods by the importer, for advising them against the same; they had duly verified the existence of the importer through the statutory documents in the manner prescribed under CBLR. Furthermore, he stated that based on their submissions, the inquiry authority had dropped the charges against the appellants in respect of Regulations 10(a), 10(e), 10(m) of CBLR, 2018. Thus he claimed that the appellants did not contravene these Regulations *ibid*.

3.2. In support of their stand, the learned Advocate had relied upon the following decisions of the Tribunal and the judgement of the Hon'ble High Court of Delhi, in the respective cases mentioned below:

(i) *Parvath Shipping Agency Vs. Commissioner of Customs (Gen.)*, Mumbai - 2017 (357) E.L.T. 296 (Tri.-Mumbai)

(ii) *Bright Clearing & Carriere Pvt. Limited Vs. Commissioner of Customs (Airport and General)*, Delhi - Final Order No.51083-51084/2022

(iii) *Sainath Clearing Agency Vs. Commissioner of Customs (General)*, Mumbai - 2011 (269) E.L.T. 106 (Tri.-Mumbai)

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

(v) *Exim Cargo Services Vs. Commissioner of Customs (General)* - 2019 (368) E.L.T. 1024 (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 (a), (b), (d), (e), (m) and (n) of Regulation 10 *ibid*, has been examined in detail by the Principal Commissioner. The appellants CB got all the documents for import from Shri Laxmi Narayan Mishra, employee of M/s Space Age Logistics, who is neither IEC holder nor importer or their representative; they never verified the authenticity of KYC documents; had did not cross checked or conducted proper verification of existence of importer at their level. Rather, the appellants CB were helping the proxy importer and never met the IEC holder. 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. We have heard both sides and perused the case records.

6.1. The issue involved herein is to decide whether the appellant Customs Broker has fulfilled all his obligations as required under CBLR, 2018 or not. The specific sub-regulations which were alleged to have been violated by the appellants are Regulations 10(a), 10(b), 10(d), 10(e), 10(m) and 10(n) *ibid*, and hence there are six distinct charges framed against the appellants. We find that the Regulation 10 of CBLR, 2018, provide for the obligations that a Customs Broker is expected to fulfill during their transaction with Customs in connection with import and export of goods. These are as follows:

"Regulation 10. Obligations of Customs Broker: -

A Customs Broker shall -

(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;

(b) transact business in the Customs Station either personally or through an authorised employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

...

(d) advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

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

...

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

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

6.2. We find that the Principal Commissioner of Customs had come to the conclusion that the appellants CB had violated the above stated sub-regulations (a), (b), (d), (e), (m) and (n) of Regulation 10 *ibid* as they had engaged in the job of clearance of imported consignment by receiving the documents from an employee of logistics company who is unauthorized person and not obtained the same from the importer; they did not have any interaction with the IEC holder/importer; they allowed unauthorized persons for handling customs clearance work for them; they also did not properly verify the KYC documents, as the IEC holder/importer did not exist in the declared address as brought out in the investigation; further they facilitated evasion of payment of legitimate customs duty and bypassing of mandatory FSSAI clearances to be obtained by the importer; and attempted to clear the goods without examination in an illegal manner. Besides the above omissions and commissions, the statements recorded during the investigation from various persons involved in the offence in terms of Section 108 of the Customs Act, 1962, which have been used as evidence against the appellants for contravention of various Regulations of 10 *ibid*, also prove that the appellants have facilitated and indulged in perpetuating the fraud on government exchequer. Thus, the adjudicating authority had passed the impugned order confirming all the allegations of violation of above Regulations of CBLR, 2018.

7.1 We would now take up for examination each of the above stated alleged violations of CBLR, 2018, one by one, sequentially as follows. In respect of Regulation 10(a) the adjudicating authority had found that the appellants CB did not obtain an authorisation from the IEC holder but obtained the same from one Shri Laxmi Narayan Mishra, who is an employee of M/s Space Age Logistics and proprietor of M/s Exim World Wide; and thus he concluded that the whole purpose of obtaining an authorisation was defeated as the appellants CB did not interact with the genuine importer and made themselves unaware about the goods to be cleared on behalf of the client. Hence she concluded that the appellants CB have violated Regulation 10(a) *ibid*.

7.2. From the facts of the case and the voluntary statements given by various persons during investigation of the case, it is seen that Shri Sachin S Shinde, 'F' card holder and proprietor of the appellants CB had obtained the import documents for the impugned goods covered under the present imports from one Shri Laxmi Narayan Mishra, employee of M/s Space Age Logistics and proprietor of M/s Exim World Wide. The importer M/s S.S. and Sons, is a proprietorship firm and Shri Hashim Mahmood Qureshi is the proprietor of the said firm; he had offered his IEC to his family friend Shri Naseer Ameer Khan, who used to handle all import related transactions. Shri Laxmi Narayan Mishra, had in his voluntary statement given under Section 108 *ibid*, had stated that he got the original invoice from said Shri Naseer Ameer Khan and changed the description of the goods in original invoice from 'pre workout supplement' to 'piping fittings' in a cyber cafe located at Ghatkopar.

7.3 In the B/E No.4681237 dated 28.08.2019 filed in respect of the impugned goods as 'piping fittings', the relevant invoice has been indicated as No. FTX2019/05 dated 28.05.2019 and the transport document i.e., Master Airway Bill as MAWB No. 15760347453 dated 23.08.2019. We find that the said invoice No. FTX2019/05 dated 28.05.2019 issued by M/s Fast Track Express, Jamaica, New York, specify the description of the goods as 'piping fittings'. However, in the MAWB No. 15760347453 dated 23.08.2019 covering transportation of imported goods in this case, it is indicated that the said goods are of the general description as 'GENERAL CARGO-Nitroflex' being sent from JFK (John F. Kennedy International Airport) of New York to Mumbai CSM International Airport through Doha international Airport by

Qatar Airlines. Similarly, in respect of the imported goods under B/E No. 4741606 dated 03.09.2019 filed in respect of the impugned goods as 'machine parts (dropper)' and 'machine parts (heallds)', the relevant invoice has been indicated as No. PI10484 dated 19.08.2019 and the transport document i.e., Master Airway Bill as MAWB No. 02029260243 dated 23.08.2019. We find that the said invoice No. PI10484 dated 19.08.2019 issued by M/s Avador Business Group Inc., New York, specify the description of the goods in the same way as it is given in the B/E. However, in the MAWB No. 02029260243 dated 23.08.2019 covering transportation of imported goods in this case, it is indicated that the said goods are of the description as 'BLACKSTONE' being sent from Dulles International airport of Washington DC to Mumbai CSM International Airport through by Lufthansa Airlines. From the above factual details, we find that the appellants CB had declared the description of the imported goods in both the B/Es for aforesaid imports as given in the invoices supplied by the importer. Further, from the processing of Bill of Entry for assessment and clearance of the imported goods, it appears that a query was raised in respect of B/E No.4681237 dated 28.08.2019, asking the importer/appellant CB to follow the instructions issued in Public Notice No. 21/2010 applicable for first time import and to submit catalogue/literature; to this query, the importer/CB had submitted the previous bills of entry No.4098688 dated 17.07.2019 and No. 3999602 dated 10.07.2019 for import of goods which have been cleared from customs. Accordingly, the customs authorities have finalised the assessment of goods upon which applicable import duties were paid by the importer, and the goods were examined, and out of charge was given for clearance out of customs control on 18.09.2019. Similarly, in respect of B/E No. 4741606 dated 03.09.2019, the customs officer while assessing the goods have raised a query that the importer/CB should 'Put up value evidence and first time import documents'; to this query, the importer/CB had submitted the previous bills of entry as above, in which loading of value upto Rs.650/- per kg. was accepted. Accordingly, in this case too, the customs authorities had finalised the assessment on 07.09.2019.

7.4 From the above facts, it is clearly proved that in both the B/Es filed by the appellants CB on behalf of the importer, had declared the proper description of the imported goods and its value has been indicated as per the documents given to them by the importer. In fact, the various query raised by the customs officer raising any doubt in compliance, value of the

goods has been satisfactorily explained and the goods have been assessed to customs duty. It is not the case of Revenue, that the description, value particulars of imported goods indicated in the B/Es were different from the one indicated in the commercial invoices submitted to the Customs at the time of filing of B/Es. The facts indicate that Shri Laxmi Narayan Mishra, who had fabricated the description of the invoice in this case was actually involved in preparation of parallel fabricated invoice with incorrect description and connected violations in respect of imported goods. This is duly supported by the statement given by him. Thus, it is clear that Shri Laxmi Narayan Mishra along with Shri Naseer Ameer Khan, who was operating the IEC on behalf of the importer M/s S.S. and Sons and Shri Hashim Mahmood Qureshi, the proprietor, are alone responsible for the mis-declaration of the goods. Thus, we find that these two persons alone are involved in mis-declaration of imported goods resulting in duty evasion.

7.5 We are also perplexed to note that the MAWB being the basic document for carriage of goods by air, in respect of both the B/Es by mention of the imported goods as 'GENERAL CARGO-Nitroflex' and 'BLACKSTONE', have sufficiently indicated that there is a variation in the description of the imported goods between the one as declared by the importer in the B/Es and the other as mentioned in the documents giving title of goods for the airlines for its receipt from airport of loading for onward transportation to airport of unloading. In fact, these details form the basis for filing the Import General Manifest as is required to be filed by the person-in-charge of an aircraft entering into India under Section 30 *ibid* read with relevant regulations framed thereunder. It is of common knowledge that 'Nitroflex' and 'Blackstone' are the popular brands of 'workout/pre-workout dietary supplements'. Thus, what could be concluded from the above facts is that either the customs officers making assessment of the imported goods in the above case as well as the appellants have ignored this mis-declaration apparent on record or after noticing it they had colluded with the importers in clearing the mis-declared goods in an illegal manner.

7.6 We also find that on the above issue of accepting documents from person other than importer, the Tribunal in the case of *K.S. Sawant & Co.*(*supra*) had already held that accepting the documents through logistics operator is not barred by CBLR. The relevant paragraph of the said order is extracted below:

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

7.7 We also find that the Directorate General of Foreign Trade (DGFT), in its Policy Circular No.6 (RE-2013)/ 2009-2014 dated 16.09.2013 had clarified in the context of some of the importers/exporters who were effecting imports/exports by using IECs issued to others, which is a complete violation of the provisions of Foreign Trade Policy, by clarifying that use of IEC by the person other than IEC holder himself is a violation of Section 7 of the Foreign Trade (Development and Regulation) Act, 1992 (FTDR) and Rule 12 of Foreign Trade (Regulation) Rules, 1993. Accordingly, it was specifically stated in the said Circular that such misuse of IECs of other persons, would attract action under Section 8 and 11 of FTDR Act, except in case importers or exporters who are exempted from obtaining IEC and who use permanent (common) IEC Numbers under Para 2.8 of Handbook of Procedure, Vol.1, 2009-14. It is a fact that in the present case, the

importer/IEC holder Shri Hashim Mahmood Qureshi had allowed his IEC to be operated by some other person i.e. Shri Naseer Ameer Khan. Thus, in harmonious reading of the above order of the Tribunal in accepting the documents from the importer directly or through intermediary and at the same time ensuring that the IEC is not being misused by any person other than IEC holder, we are of the considered view that the responsibility of a Customs Broker is to play a crucial role in protecting the interest of Revenue and at the same time he is expected to facilitate expeditious clearance of import/export cargo by complying with all legal requirements. In the backdrop of the factual matrix of the present case, we find that there are no strong grounds to hold that the appellant CB has violated the Regulation 10(a) *ibid*, only on the ground that they had accepted the documents indirectly from the importer through the logistics service provider. However, as the mis-declaration is apparent in the documents relating to import submitted along with the Letter of Authority given to the appellants, to the extent of mis-match in the description of the goods in MAWB and invoices, the appellants CB should have been more careful in scrutiny of the authority letter dated 28.08.2019 given to them along with import documents particularly when these were received from person other than importer who is in logistic trade, in the light of above DGFT's policy circular dated 16.09.2013..

8.1 The learned Principal Commissioner of Customs had held that the appellants CB had violated Regulation 10(b) *ibid* by allowing S/Shri Nitin Sridharpraso Godiyal and Laxmi Narayan Mishra for clearance of the imported goods without proper authorisation. In this regard we find that Regulation 13 of CBLR, 2018 and CBIC Circular No.9/2010-Customs dated 08.04.2010 provide that a CHA/CB may employ any person who shall have a minimum educational qualification of 10+2 School education. However, appointment of such person shall be made only after obtaining approval of the Deputy Commissioner/Assistant Commissioner (DC/AC) designated by the Commissioner of Customs, who shall take into consideration the antecedents and character of the person as provided in regulation 19(2) of CHALR, 2004/13(4) of CBLR, 2018. In this regard, Board has decided that the DC/AC concerned, may ensure that individuals involved in any fraudulent activity (i.e., individuals suspended or blacklisted or denied permission to work in any section of the Custom House) shall not be allowed to be employed by a CHA/CB for transacting business with Customs. Necessary

undertaking in this regard may also have to be taken by the CHA/CB at the time of submission of application giving details of the person who are proposed to be employed by them. Further, CHALR, 2004/ CBLR, 2018 do not provide for any restriction on the number of persons that a CHA/CB can employ, as it would depend upon the workload and requirements of a CHA/CB. However, under the regulation 19(3) of CHALR, 2004/13(5) of CBLR, 2018, any person employed by CHA is required to appear through an examination conducted by DC/AC designated or a Committee of officers to ascertain the adequacy of the knowledge of such persons about the provisions of the Customs Act, 1962 before they are granted 'G' Card. Hence, the said circular reiterated that it is only those persons who have qualified themselves in the examination conducted under regulation 19(3)/13(5) and who have been authorized by CHA/CB alone are allowed to sign the declarations filed before Customs for transacting the work at any Custom station. Those persons who have not qualified in the examination but who are still in employment with CHA/CB are being given 'H' card for assisting the CHA/CB in his work. However, the Commissioner of Customs in a Custom House / Station shall undertake an annual review of such 'H' Cardholders with each CHA to ensure that discredited individuals are not being allowed to work as 'H' Cardholders.

8.2 From the plain reading of the above provisions of the regulations and CBIC Circular, we find that these do not place any bar on the employees of CB who could assist them. In fact, we find that proviso to Regulation 6(8) of CBLR 2018, provide for relaxation from the requirement of knowledge of English not being made compulsory in respect of person deputed to work extensively in the docks/examination area, and the knowledge of Hindi shall be considered as desirable qualification. In the present case, Shri Nitin Sridharpraso Godiyal, employee of appellants CB and Shri Laxmi Narayan Mishra, 'H' Card holder have assisted the appellants CB in clearance of the goods from the examination shed/ACC. However, as the said Shri Nitin Sridharpraso Godiyal was not doing well on the date of examination on 18.09.2019, he had in turn asked Shri Laxmi Narayan Mishra to handle examination and for taking delivery of the goods on obtaining out of charge from Customs. Shri Laxmi Narayan Mishra, being a 'H' Card holder, though not in regular employment of the appellants, had attended the clearance work. Thus, to this extent the conclusion arrived at by the learned Commissioner of Customs that unauthorized persons have handled the

clearance work leading to violation of Regulation 10(b) *ibid* is contrary to the facts and thus the same is not sustainable.

9.1 From the factual matrix of the case, we find that the appellants CB had declared the description of the imported goods and other details in both the B/Es for aforesaid imports as given in the invoices supplied by the importer. Further, the appellants were not aware of the mis-declaration of the imported goods as there was no evidence to the claim of the department that the appellants knew about mis-declaration and further all incriminating documents were recovered only from Shri Naseer Amir Khan, who is claimed to be the beneficial owner of imported goods. Even at the time of clearance of goods for both these imports and the imports made in the past, the Customs assessing group and the Commissionerate did not find out any discrepancy in valuation or any mis-declaration. It is only on the basis of investigation conducted by Central Intelligence Unit of the ACC, that the whole case of IEC holder Shri Hashim Mahmood Qureshi and Shri Naseer Amir Khan, along with Shri Laxmi Narayan Mishra, misusing the IEC and fabricating parallel invoices for mis-declaration of imported goods were brought to the fore. We find that these facts clearly bring out the role of S/Shri Shri Naseer Amir Khan and Shri Laxmi Narayan Mishra who were the master mind behind the violations under the Customs Act, 1962 along with the IEC holder and other connected persons involved in the case. The action taken under CBLR, 2018 against the appellants CB is a follow up/further action taken consequent to the customs offence case made out by CIU-ACC, and thus the present proceedings are only for the violations under the specific sub-regulations under CBLR, 2018. Though it appears that the case of the Revenue is that the description of the imported goods was mis-declared in the B/Es in order to evade import duty on these imported goods, the same cannot sustain particularly when these B/Es were assessed by Customs authorities after raising query and scrutiny of the documents. Thus, it is a case of fabrication of documents like invoice, in order to mis-declare the imported goods, which have not been detected either at the time of assessment or at the time of examination, but detected due to CIU-ACC's intelligence and preventive action. Further, any allegation of mis-declaration of imported goods in terms of its 'description' or 'value' could only be established, if the declaration in the Bill of entry has been different from the commercial invoice or other supporting documents. It is noticed from the factual details of the present case, that the declaration made in the Bills of

Entry is the same as that is provided in the Commercial invoices, and the description declared as per invoices were fabricated by Shri Laxmi Narayan Mishra by preparing parallel set of invoices, which could not be detected even by the customs authorities at the time of assessment or at the time of clearance of the goods. In the absence of any document to prove the claim of mis-declaration of goods, it is difficult to fasten such liability on the appellants CB.

9.2 In the instant case, the mis-declaration was found by the department only on the basis of specific intelligence developed by CIU, ACC, and hence the appellants CB cannot be found fault for the reason that they did not advise their client importer to comply with the provisions of the Act. Further, the voluntary statement given by Shri Laxmi Narayan Mishra on 27.09.2019 before Customs investigation authorities clearly show that such mis-declaration was not known to the appellants CB. Thus, there is no possibility for the appellants CB to bring to the notice of the Deputy Commissioner of Customs (DC) or Assistant Commissioner of Customs (AC) about the mis-declaration of imported goods. Thus, we are of the considered view that the violation of Regulation 10(d) *ibid*, as concluded in the impugned order is not sustainable.

10.1 Learned Principal Commissioner of Customs (General) had come to the conclusion that the CB had violated the provision of Regulation 10(e) *ibid*, on the ground that the appellants had never met the importer/IEC holder, and had only interacted with Shri Laxmi Narayan Mishra, who is the logistics operator, which led to the duty evasion in the said case. Further, she held that the appellants had knowledge of the fraud committed by the importer and did not inform the importer to comply with mandatory FSSAI clearance.

10.2 As discussed above in paragraph 9.1, which brings out the fact that the appellants CB was not aware of the mis-declaration, and in the absence of any specific evidential document or factual record to prove the same, it cannot be stated that the information on mis-declaration of imported goods have been withheld by the appellants; and more specifically, when the Bills of Entry covering the imported goods have been duly assessed after providing additional documents of past clearances and such mis-declaration was brought on record only when the investigation of CIU, ACC was initiated

on the basis of specific intelligence. Thus, it is not feasible to sustain such a charge on the appellants that they did not exercise due diligence to impart correct information to their client importer and thus the conclusion arrived at by the Principal Commissioner of Customs (General) is without any basis of documents or facts, and thus the impugned order with respect to Regulation 10(e) *ibid*, is not sustainable.

11.1 In the inquiry proceedings, the learned Principal Commissioner had concluded that as the appellants CB had full knowledge and found to have involved in import of goods which were mis-declared on the basis of fabricated and manipulated invoices leading to loss to the Government revenue and they did not act in a vigilant manner and performed their duties efficiently, and thus she concluded that such action by the appellants is indicative of grave inefficiency in the discharge of their duties as Customs Broker and therefore they have violated Regulation 10(m) *ibid*.

11.2 From the plain reading of the requirements under Regulation 10(m) *ibid*, it is clear that there should be some grounds of inefficiency or unavoidable delay in clearance of the imported goods. We find neither, is there is any such claim of undue delay nor any demonstration of inefficiency in clearance of goods by the appellants. In respect of imported goods covered under B/E No. 4681237 dated 28.08.2019, the reply to the query of customs appraising/assessment officer was provided on 03.09.2019, import duty was paid on 05.09.2019 and out of charge was given by the Customs authorities on 18.09.2019; similarly, in respect of imported goods covered under B/E No.4741606 dated 03.09.2019, for the query of customs appraising/assessment officer, the requisite reply was given on 07.09.2019. The above facts do not indicate any ground for delay in clearance of the goods or inefficiency in handling their duties by the appellants CB. Thus, we do not find any merits on the grounds and the conclusion arrived on this point by the Principal Commissioner of Customs (General) in the impugned order. Thus, the conclusion that the appellants have violated Regulation 11(m) *ibid* is not sustainable.

12.1 We find from the records, that the appellants CB had obtained the KYC documents from the importer M/s S.S. and Sons vide their authorization letter dated 28.08.2019 and verified the existence of the importer through the Certificate of Importer-Exporter Code dated 08.04.2019 issued by the

Additional Director General of Foreign Trade, Ministry of Commerce and Industry, Government of India indicating the name along with address, name of the proprietor; Permanent Account Number (PAN) card of the proprietor/importer; Banker's certification of maintaining current account by the importer/IEC and verification of the signature of the proprietor; and the GST Registration Certificate issued on 27.03.2019 by the Superintendent, GST Department of Raigad. However, the inquiry proceedings had concluded in the impugned order that the appellants CB has not made any serious attempt to verify the antecedents, correctness of actual IEC, identity of his client and functioning of his client at the declared address and accepted documents indirectly from a logistics operator Shri Laxmi Narayan Mishra.

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

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

*6. In the context of increasing number of offences involving various modus-operandi such as misuse of export promotion schemes, fraudulent avilment of export incentives and duty evasion by bogus IEC holders etc., it has been decided by the Board to put in place the "Know Your Customer (KYC)" guidelines for CHAs so that they are not used intentionally or unintentionally by importers/exporters who indulge in fraudulent activities. Accordingly, Regulation 13 of CHALR, 2004, has been suitably amended to provide that certain obligations on the CHAs to verify the antecedent, correctness of Import Export Code (IEC) Number, identity of his client and the functioning of his client in the declared address by using reliable, independent, authentic documents, data or information. In this regard, a detailed guideline on the list of documents to be verified and obtained from the client/customer is enclosed in the Annexure. It would also be obligatory for the client/customer to furnish to the CHA, a photograph of himself/herself in the case of an individual and those of the authorised signatory in respect of other forms of organizations such as company/trusts etc., and **any two of the listed documents** in the annexure.*

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

We find that the above CBIC circular clearly explains the provision of CBLR/CHA Regulations which require the Customs Brokers to verify the antecedents, correctness of Import Export Court (IEC) Number, identity of his client and the functioning of his client in the declared address by using reliable, independent, authentic documents, data and information. The said guidelines provide for the list of documents that is required to be verified and that are to be obtained from the client importer/exporter. It is also provided that any two documents of among such specified documents is sufficient for fulfilling the obligation prescribed under Regulation 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 on the above issue.

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

"34. The basic requirement of Regulation 10(n) is that the Customs Broker should verify the identity of the client and functioning of the client at the declared address by using, reliable, independent, authentic documents, data or information. For this purpose, a detailed guideline on the list of documents to be verified and obtained from the client is contained in the Annexure to the Circular dated April 8, 2010. It has also been mentioned in the aforesaid Circular that any of the two listed documents in the Annexure would suffice. The Principal Commissioner noticed in the impugned order that any two documents could be obtained. The appellant had submitted two documents and this fact has also been stated in paragraph 27(a) of the order. It was obligatory on the part of the Principal Commissioner to have mentioned the documents and discussed the same but all that has been stated in the impugned order is that having gone through the submissions of the Customs Broker, it is found that there is no force in the submissions. The finding recorded by the Principal Commissioner that the required documents were not submitted is, therefore, factually incorrect.

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

12.4 Further, we also find that the Hon'ble High Court of Delhi has held in the case of *Kunal Travels (Cargo) Vs. Principal Commissioner of Customs (I&G), IGI Airport, New Delhi* reported in 2017 (354) E.L.T. 447 (Del.), the

appellants CB is not an officer of Customs who would have an expertise to identify 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."

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

13.1 Besides the above analysis and discussions of the specific violations of CBLR, 2018, as raised in the inquiry proceedings, it is also necessary to appreciate the role or the position of the CHA /CB and whether any of his actions in clearance of the goods, omission or commission had caused directly or indirectly any violations in respect of imported goods, in this case. Furthermore, in order to appreciate the importance of the role of Customs Broker/Custom House Agent and the timely action which could prevent the import/export frauds, we rely on the judgement of the Hon'ble Supreme Court in affirming the decision of the Co-ordinate Bench of this Tribunal in the case of *Principal Commissioner of Customs Vs. K.M. Ganatra & Co.* in Civil Appeal No.2940 of 2008 reported in 2016 (332) E.L.T. 15 (S.C.). The relevant paragraph of the said judgement is extracted below:

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

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

without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations....."

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

13.2 Similarly, in the case of Sri Kamakshi Agency Vs Commissioner of Customs, Madras-2001 (129) ELT 29, the High Court of Madras, had taken the following views. The extract of the relevant para is given below:

"...the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as Custom House Agent, it is seen that while Custom House Agent should be in a position to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an agent for carrying on certain illegal activities of any of the persons, who avail his services as Custom House Agent. In such circumstances, the person playing the role of Custom House Agent has got greater responsibility. The very prescription that one should be conversant with various procedures, including the offences under the Customs Act to act as a Custom House Agent would show that, while acting as Custom House Agent, he should not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as a CHA by taking advantage of the access to the department. The grant of licence to a person to act as Custom House Agent is to some extent to assist the department with the various procedures such as scrutinising the various documents to be presented in the course of transaction of business for entry and exit of conveyance or the import or export of the goods. In such circumstances, great confidence is reposed in a Custom House Agent. Any misuse of such position by the Custom House Agent will have far reaching consequences in the transaction of business by the Custom House officials."

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 CB could have been proactive in fulfilling their obligation as Customs Broker for exercising due diligence, particularly when the import documents were obtained from the importers through an intermediary in ensuring that all documents relating to imports are genuine and that these are not fake or fabricated. As discussed in detail in paragraphs 7.3 to 7.7 above, the mis-match in the general description of the goods given in the MAWB and invoices could have immediately alerted the appellants CB to inquire into the same with the importer about its correctness, before accepting the authorisation for handling the customs clearance work of such imported goods. However, they have failed to do such an action, which show

that they did not scrutinize the documents presented to them by the importer before filing the Bills of Entry. Thus, to this extent we find that the appellants CB are found to have not complied with the requirement of sub-regulation 10(a) *ibid* and thus imposition of penalty to this extent, for failure in not being proactive for fulfilling of regulation 10(a) of CBLR, 2013 alone, is appropriate and justifiable.

15. In view of the foregoing discussions, we do not find any merits in the impugned order passed by the learned Principal Commissioner of Customs (General), Mumbai in revoking the license of the appellants; for forfeiture of security deposit and imposition of penalty, inasmuch as there is no violation of regulations 10(b), 10(d), 10(e), 10(m) and 10(n) *ibid*, and the findings in the impugned order is contrary to the facts on record. However, in view of the failure of the appellants to have acted in a proactive manner in fulfillment of the obligations under sub-regulation 10(a) *ibid*, particularly when they have received the documents from importer through intermediary, we find that it is justifiable to impose a penalty of Rs.10,000/-, which would be reasonable and would be in line with the judgement of the Hon'ble Supreme Court in the case of *K.M. Ganatra* (supra), in bringing out the importance of crucial role played by a Customs Broker.

16. Therefore, by modifying the impugned order to the extent as indicated above at para 15, we allow the appeal in favour of the appellants.

(Order pronounced in open court on 16.02.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)