CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85200 of 2023

(Arising out of Order-in-Original CAO No. 86/CAC/PCC(G)/SJ/CBS Adj dated 12.12.2022 passed by Principal Commissioner of Customs (General), New Custom House, Mumbai.)

Sainath Clearing and Shipping Company **.....Appellants**
(CB License No. 11/397)
No.301, Foundation Tower, Plot No.20,
Sector 11, CBD Belapur,
Navi Mumbai – 400 614.

VERSUS

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

Appearance:

Shri Chirag Shetty, Advocate & Shri Prashant Kuban, Consultant for the Appellant
Shri Ram Kumar, Authorized Representative for the Respondent

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

FINAL ORDER NO. A/87463/2023

Date of Hearing: 09.08.2023
Date of Decision: 09.08.2023

PER : M.M. PARTHIBAN

This appeal has been filed by M/s Sainath Clearing and Shipping Company (herein after, referred to as 'the appellants'), holders of Customs Broker License No. 11/397 assailing Order-in-Original CAO No. 86/CAC/PCC(G)/SJ/CBS Adj dated 12.12.2022 (herein after, referred to as 'the impugned order') passed by the learned Principal Commissioner of Customs (General), New Custom House, Ballard Estate, Mumbai-I.

2.1. Briefly stated, the facts of the case are that the appellants herein is a Customs Broker (CB) holding a regular CB license issued by the Mumbai Customs under Regulation 10(1) of the Customs Houses Agents Licensing

Regulations (CHALR), 1984, now Regulation 7(2) of Customs Brokers Licensing Regulations (CBLR), 2018.

2.2 On the basis of interim investigation report dated 01.02.2022 from Central Intelligence Unit, Jawaharlal Nehru Customs House, Mumbai (CIU-JNCH) stating that they had conducted physical examination of the imported goods covered under B/E No. 6351237 dated 22.11.2021, under Panchanama proceedings dated 22.11.2021, in which the Customs authorities had found that the description and quantity of imported goods were not found to be matching with the declaration filed by the importer through the appellants CB for 38 pallets containing 46 items. The said goods were imported by M/s Griffin Corporation, Delhi and the B/E were filed for warehousing clearance by the appellants CB. Detailed statements were recorded from various persons viz., Shri Jitentra Pawar, partner of appellants CB; Shri Pradip H. Ghule, representative of importer; Shri Anshu Aneja, proprietor of importer; Shri Shankar Singaram, Vice President of the shipping and forwarding agent, during the course of investigation by Customs authorities. On these basis the Customs authorities have come to the conclusion that there was mis-declaration in import of goods in order to evade payment of customs duty and the appellants CB has violated the provisions of CBLR, 2018.

2.3. On the basis of such offence report/letter received from CIU-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(a), 10(d), 10(e) and 10(n) of CBLR, 2018. Accordingly, they had immediately suspended the CB license of the appellants under Regulation 16 *ibid*, vide Order No. 06/2022-23 dated 06.05.2022; and such suspension was continued vide Order No. 12/2022-23 dated 10.06.2022; further the department had initiated show cause proceedings by issue of notice No. 15/2022-23 dated 25.07.2022 for initiating inquiry proceedings under Regulation 17 *ibid*, against violations of CBLR as above.

2.4. Upon completion of the inquiry, a report dated 07.11.2022 was submitted by the Inquiry Authority concluding that all charges framed against the appellants for violation of Regulations 10(a), 10(d), 10(e) and 10(n) of CBLR, 2018 have been 'proved'. Accordingly, the Principal Commissioner of Customs (General), Mumbai, being the licensing authority had passed the impugned order dated 12.12.2022 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 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(d), 10(e) and 10(n) of CBLR, 2018 have been countered in the appeal papers filed 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 logistics service provider Shri Pradeep H Ghule of M/s Yuvraj Enterprises, and the B/E was filed only for warehousing for verification on first check basis, only on the basis of documents given by the importers and after having telephonic conversation with the proprietor Shri Anshu Aneja; he claimed that the appellants CB had verified the address of the importer by sending them a courier communication to the declared address and hence they cannot be held liable for improper verification of premises or correctness of particulars given in various statutory documents. 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 the CB did not know that the imported container was marked as 'suspicious' through scanning of the same by CSD customs authorities. 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) *Santogen Textile Mills Ltd. Vs. Commissioner of Central Excise, Navi Mumbai* - 2017 (347) E.L.T. 581 (Tri.-Mumbai)

(ii) *R.P. Industries Vs. Commissioner of, Ahmedabad* - 1996 (82) E.L.T. 129 (Tri.-Mumbai)

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), (d), (e) 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 Pradeep H Ghule of M/s Yuvraj Enterprises, who is neither IEC holder nor importer or their representative; they never verified the authenticity of KYC documents; they did not cross check 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(d), 10(e) and 10(n) *ibid*, and hence there are four 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 be fulfilled 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;

…

(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;

…

(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), (d), (e) 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 service provider who is unauthorized person and not obtained the same from the importer; they did not have any interaction with the IEC holder/importer; they also did not properly verify the KYC documents, as the appellants CB did not know or interact with IEC holder/importer; further they facilitated evasion of payment of legitimate customs duty and attempted to clear the goods by fabrication of documents 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 logistics service provider Shri Pradeep H Ghule of M/s Yuvraj Enterprises; 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 he 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 Anshu Aneja, Proprietor and IEC holder of the importer firm M/s Griffin Corporation, Delhi had imported one shipment of imported goods covered with Bill of lading No.THKG5637209 dated 21.09.2021 in container No. OOCU 8205749. In this regard, vide letter dated 06.12.2021, Shri Anshu Aneja, proprietor of importer firm had claimed that he had placed the order for home cleaning equipment and fittings; but later he came to know through shipper that goods have been wrongly stuffed in the container and that the said container has also been put on hold by CIU-JNCH customs authorities for examination. Since, due to hold up of this container and in order to avoid heavy demurrage charges and possible detention by CFS/custodian, they had sought the permission of JNCH Customs authorities for shifting the imported goods to any public or private warehouse. However, in the statement dated 08.12.2021 given before the investigation authorities, the importer had stated that he had already cancelled the order placed on the foreign supplier directly through telephonic conversation. He also stated that he did not know Shri Pradeep H Ghule and all the documents relating to the import such as letter head of Griffin Corporation, his signature and stamp does not belong to them and were also forged.

7.3 It is a fact that the appellants CB did not obtain the documents relating to the import of goods in this case directly from the IEC holder, but obtained the same from one logistics service provider Shri Pradeep H Ghule of M/s Yuvraj Enterprises. Further, it is also a fact from the statement recorded by customs investigation authorities of Shri Shankar Singaram, Vice President of the shipping & forwarding agent M/s Toll Global Forwarding India Pvt. Ltd. vide his statement dated 25.01.2022, that they contacted the importer M/s Griffin Corporation, Delhi for obtaining the KYC documents on their e-mail provided in Bill of lading No.THKG5637209 dated 21.09.2021 covering the imported goods, and they got a reply from Shri Anshu Aneja, Proprietor that he was travelling and would revert back. However, there was no reply from importer for almost three weeks; subsequently on 22.10.2021, one Shri Vijay Mail calling from M/s Griffin Corporation, Delhi had called and gave details of KYC documents and other relevant details relating to import consignment such as IEC, GST registration, Aadhaar Card of Shri Anshu Aneja, Proprietor of importer firm M/s Griffin Corporation.

7.4 In the B/E No. 6351237 dated 22.11.2021 filed in respect of the impugned goods declaring the description of the imported goods, the relevant invoice has been indicated as No. SEL-EX-20210921 dated 21.09.2021 and the transport document i.e., Bill of Lading as No. THKG5637209 dated 21.09.2021. We find that the said invoice No. SEL-EX-20210921 dated 21.09.2021 issued by M/s Sunrise Enterprises Limited, Hong Kong specify the description of 46 different types of goods including 5852 Nos. of 'photo frames' which was claimed to have been ordered by the importer. Besides this, the other items imported include garments, scarf, plates, mugs, dinner sets, door mats, designer ceiling fans, shoes, tyre shine and car fridges. Hence, it does not appear to be the case where the goods ordered by the importer was entirely different from the one received, but contained other goods besides the 'photo frames'. Hence, we find that the claim made by the importer, that he had cancelled the order with overseas supplier directly over telephonic conversation due to dispatch of items different from the one ordered by him, is not supported by any documents and are contrary to the facts.

7.5 Further, from the processing of Bill of Entry for assessment and clearance of the imported goods, it is seen that the imported goods were taken up firstly for examination on 'first check' basis, prior to confirmation of self-assessment or re-assessment by customs authorities. The imported goods were under customs control for initiating appropriate action on the part of the importer and other persons involved in any mis-declaration or evasion of duty. Hence, there does not appear any case for mis-declaration occurred on account of the KYC, import documents having been received by the appellants CB from logistics service provider instead of obtaining the same directly from the importer in this case.

7.6 From the above facts, it is clearly proved that in both the B/E filed by the appellants CB on behalf of the importer, they had declared the proper description of the imported goods, quantity and its value as has been indicated in the invoice and packing list given to them by the importer. It is not the case of Revenue, that the description, quantity, value particulars of imported goods indicated in the B/E was different from the one indicated in the commercial invoice submitted to the Customs at the time of filing of B/E. The facts indicate that the claim of Shri Anshu Aneja, Proprietor and IEC holder of the importer firm M/s Griffin Corporation that the order placed by him was cancelled does not find support, as the imported goods have been handed over to the shipping company from the port of loading at Hong Kong, had all the way transported and arrived the port of destination, then thereafter the same was informed by the shipping agent M/s Toll Global Forwarding India Pvt. Ltd., to Shri Anshu Aneja, Proprietor, who had also responded him back. Further, the importer had requested the customs authorities vide their letter dated 06.12.2021 for shifting the goods to warehouse, in order to avoid demurrage and detention charges.

Thus, it is clear that the importer was very much aware of the arrival of the imported consignment when the same was informed by the shipping and clearing agent on the basis of the Bill of Lading and that it was put on hold by CIU-JNCH customs authorities. Further, when there is no mis-declaration between the details of invoice and details furnished in the bill of entry, the appellants CB are not responsible for any mis-declaration of the goods. Thus, we find that the importer alone is involved in mis-declaration of imported goods resulting in duty evasion, as they have entered into business transaction with the exporter at Hong Kong, and the appellants CB are not responsible for any mis-declaration.

7.7 We also find that on the above issue of receiving documents from logistics person by a CB, 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."*

7.8 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.

8.1 The learned Principal Commissioner of Customs (General) had stated that the appellants CB did not meet the importer and forged the documents, thus providing of proper advice to their clients was not there in his mind and thus he concluded that the appellants CB have violated Regulation 10(d) ibid. From the factual details discussed above, we find that the appellants CB had declared the description of the imported goods and value in both the B/Es for aforesaid imports as given in the invoice, packing list supplied by the importer. Further, the appellants were not aware of any mis-declaration of the imported goods or wrong supply by the exporter. Even at the time of filing the Bill of Entry, the appellants CB had filed the B/E on 'first check' basis i.e., to firstly examine the goods and make assessment, for warehousing the same, which would in any case would remove any discrepancy in valuation or any mis-declaration, by way of proper re-assessment. Further, the department could always take appropriate action against the persons involved who were behind the violations under the Customs Act, 1962 in the case. The action taken under CBLR, 2018 against the appellants CB is only a follow up/further action taken consequent to the customs offence case made out by CIU, JNCH, and thus the present proceedings are only for the violations under the specific sub-regulations under CBLR, 2018. It is not the case of the Revenue that the description of the imported goods or classification of such goods under customs tariff was mis-declared in order to undervalue these imported goods. 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. In the absence of any document to prove the claim of mis-declaration of goods, it is difficult to fasten such liability of failure to advice their client or to inform the department about any non-compliance on the appellants CB.

8.2 In the instant case, the mis-declaration was found by the department only on the basis of investigation conducted by CIU, JNCH, 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 Jitendra Pawar on 08.12.2021 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.

9.1 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 did not exercise due diligence in imparting information to his client, as he had never met the importer/IEC holder, and had only interacted with the logistics service provider.

9.2 As discussed above in paragraph 8.1 above bringing 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 Bill of Entry covering the imported goods have been sought for on 'first check' basis for examination before assessment and such mis-declaration was brought on record only when the investigation of CIU, JNCH was initiated. 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. Thus, the charge with respect to Regulation 10(e) *ibid*, is not sustainable.

10.1 We find from the records, that the appellants CB had obtained the KYC documents from the importer M/s Griffin Corporation vide their authorization letter dated 12.11.2021 and verified the existence of the importer through the Certificate of Importer-Exporter Code issued by the Additional Director General of Foreign Trade, Ministry of Commerce and Industry, Government of India; Aadhaar card of the proprietor/importer; Banker's certification of maintaining current account by the importer/IEC and verification of the signature of the proprietor by ICICI Bank, Ashok Vihar, Delhi; and the GST Registration Certificate issued on 25.06.2021 by the Sales Tax Officer, Ward 65, Delhi indicating the name of proprietor, place of business. 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 service provider.

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

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

We find that the above CBIC circular clearly explains the provision of CBLR/CHA Regulations which require the Customs Brokers to verify the antecedents, correctness of Import Export Court (IEC) Number, identity of his client and the functioning of his client in the declared address by using reliable, independent, authentic documents, data and information. The said guidelines provide for the list of documents that is required to be verified and that are to be obtained from the client importer/exporter. it is also provided that any two documents of among such specified documents is sufficient for fulfilling the obligation prescribed under Regulation 10(n) of CBLR, 2018. We find that in the present case, the appellants CB had obtained the KYC documents and submitted the same to the Customs Department. Thus, we do not find any legal basis for upholding of the alleged violation of Regulation 10(n) *ibid* by the appellants in the impugned order on the above issue.

10.3 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."*

10.4 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."*

10.5 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 10(n) *ibid*.

11.1 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."*

11.2 In the case before us, the imported goods have been sought by the appellants CB to be assessed on first check basis, i.e., firstly for examination of the imported goods in order to confirm the self-assessment done by the importer or for re-assessment of the goods as may be found by the customs upon examination of the goods. Hence, in our considered view that the appellants CB had taken reasonable care to ensure firstly examination of the goods, so that even if there was any mis-declaration, the same would come to the fore. Thus, there appears to be no ground to invoke any allegation of failure on the part of appellants CB in non-fulfillment of their obligations to attract the ratio of the decision provide in the judgement of the Hon'ble Supreme Court in the case of *K.M. Ganatra* (supra), Thus, we do not find any ground on which the appellants CB could be held to have not complied with the requirements of CBLR, 2018.

12. 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(a), 10(d), 10(e) and 10(n) *ibid*, and the findings in the impugned order is contrary to the facts on record.

13. Therefore, by setting aside the impugned order dated 12.12.2022, we allow the appeal in favour of the appellants.

(Operative portion of the order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha