

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

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87724 of 2022

(Arising out of Order-in-Original CAO No. 46/CAC/PCC(G)/SJ/CBS dated 23.09.2022 passed by Principal Commissioner of Customs (General), New Custom House, Mumbai.)

Priya Hemant Bandarkar

(CB License No. 11/2164)

R. No.2, Ramkumar Chawl

Chakala Road, Vile Parle (East)

Mumbai – 400 099.

.....Appellants

VERSUS

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

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

.....Respondent

Appearance:

Shri K.S. Mishra, Advocates 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/85415/2024

Date of Hearing: 20.12.2023

Date of Decision: 19.04.2024

PER : M.M. PARTHIBAN

This appeal has been filed by M/s Priya Hemant Bandarkar (herein after, referred to as 'the appellants'), holders of Customs Broker License No. 11/2164 assailing Order-in-Original CAO No. 46/CAC/PCC(G)/SJ/CBS dated 23.09.2022 (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 7(2) of Customs Brokers Licensing Regulations (CBLR), 2018. On the basis of specific intelligence received by Directorate of Revenue Intelligence (DRI), that gold would be smuggled in a consignment of medical equipment i.e., Air Nebulizer imported in the name of M/s Albela Traders vide Bill of Entry (B/E) No.2552585 dated 25.03.2019, the imported goods were detained and examined by DRI on 26.03.2019. During examination of the goods conducted by DRI in the presence of employer of appellants CB firm, it was found that gold was concealed in the transformers of the Air Nebulizers in the form of silver colour stamping plates. The recovery of 4562.79 grams of smuggled gold was seized by DRI under panchanama proceedings dated 26.03.2019.

2.2. On the above basis and offence report received from the Additional Director, DRI, Mumbai Zonal Unit dated 15.04.2019, 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(m) and 10(n) of CBLR, 2018. Accordingly, he had immediately suspended CB license of the appellants under Regulation 16 *ibid*, vide Order No. 14/2019-20 dated 15.05.2019; and such suspension was continued vide Order No. 29/2019-20-CBS dated 22.07.2019; further the department had initiated show cause proceedings by issue of notice No. 18/2019-20-CBS dated 09.08.2019 for initiating inquiry proceedings under Regulation 17 *ibid*, against violations of CBLR as above.

2.3. Upon completion of the inquiry, a report dated 20.06.2022 was submitted by the Inquiry Authority concluding that the appellants CB has failed to adhere to/abide by the provisions of Regulations 10(a), 10(d), 10(m) and 10(n) of CBLR, 2018. Accordingly, the Principal Commissioner of Customs (General), Mumbai, being the licensing authority had passed the impugned order dated 23.09.2022 under Regulations 17(7), 14 and 18 *ibid*, for revocation of 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(m) and 10(n) of CBLR, 2018

have been countered by them. The main argument advanced by the Learned Advocate against the impugned order dated 23.09.2022, is that the procedure set out for inquiry and revocation of the license had not been followed, inasmuch as the part of Relied Upon Documents were sought by the appellants have not been given to them. Further, he stated that the appellants CB did not had any prior knowledge about the fact that the importer is going to smuggle gold in the imported goods; they had received the documents through logistics middle men Shri Ravindra Sonar on behalf of importer M/s Albela Traders and not directly from the importer, and they had duly verified the existence of the importer through the statutory documents in the manner prescribed under CBLR. He further stated that for the acts of misdeeds done by the importer, the appellants CB cannot be held liable. 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) *K.S. Sawant & Co. Vs. Commissioner of Customs (Gen.), Mumbai* - 2012 (284) E.L.T. 363 (Tri.-Mumbai)

(ii) *Anax Air Services Pvt. Limited Vs. Commissioner of Customs (New Delhi* - Final Order No.50002/2022 – CESTAT, New Delhi

(iii) *Kunal Travels (Cargo) Vs. Commissioner of Customs (Import & General)* - 2017 (354) E.L.T. 447 (Del.)

(iv) *Him Logistics Pvt. Ltd. Vs. Commissioner of Customs, New Delhi* - 2016 (338) E.L.T. 725 (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 (a), (d), (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 Ravindra Sonar, who are neither IEC holder nor importer or their representative; they never verified the authenticity of KYC documents properly and had not cross checked or conducted proper verification of existence of importer at their level. Thus, learned AR justified the action of Principal Commissioner of Customs (General) in revocation of the appellants CB's 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(m) 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;

...

(m) shall 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), (d), (m) and (n) of Regulation 10 *ibid* as they did not verify the authorization letter given by importer and that they failed to check whether Shri Ravindra Sonar is an authorised representative of importer, they did not meet the importer personally and never had any interaction with the IEC holder/importer; and there is nothing on record to show that the appellants CB advised the importer or Shri Ravindra Sonar to comply with the provisions of law. The learned Principal Commissioner also came to the conclusion that there is lack of diligence and efficiency on the part of

appellants CB, by relying on the statement of Ms. Priya Hemant Bandarkar dated 04.04.2019 that she was aware that in the past, gold was smuggled into India in past import consignments; and they also did not properly verify the KYC documents with due diligence. 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 alleged violations of CBLR, 2018, one by one, as follows. In respect of Regulation 10(a) the adjudicating authority had found that the appellants CB accepted the documents from a third person viz. Shri Ravindra Sonar; they did not meet the importer and check whether the said Shri Ravindra Sonar is an authorised representative of the importer firm M/s Albela Traders and has power to authorize the appellants CB for filing the documents. 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 Ms. Priya Hemant Bandarkar, is a 'F' card holder and proprietor of the appellants CB. Shri Dattaram More, Manager of the appellants CB firm is an old acquaintance of the proprietor of the appellants, earlier working as freelance CHA, who had joined her in 2016 and used to look after the clearance of all import consignments of the appellants CB's clients and the day-to-day work, for which he was given a commission of 20% from the agency charges received by the appellants. Further, she did not attend the office work regularly. It is also reported in the inquiry report that DRI investigation revealed that one Shri Ahmed Mohamed Bedra@ Ajay had arranged for obtaining clearance of the imported consignment in the present case in the name of a third party IEC viz. M/s Albela Traders with the help of S/Shri Mahendra Kate, Ravindra Sonar. It is also revealed in the investigation that the said Shri Ahmed Mohamed Bedra had smuggled gold in the past nine such consignments, all B/Es cleared through the appellants as a customs broker.

7.3 The imported consignment in B/E No.2552585 dated 25.03.2019 consisted of 15 nos. of Air Nebulizers imported in the name of M/s Albela Traders, out of which in 6 nos. of Air Nebulizers, smuggled gold was found concealed in the transformers of the Air Nebulizers, in the form of silver colour stamping plates. Thus, while filing the B/E on the basis of documents

given by the importer's representative, there was no basis for the appellants CB to know that such an illegal act of smuggling was purported to be done by the importer. The DRI investigation findings reported in the inquiry report clearly brings out that there was a larger conspiracy by a syndicate of persons and Shri Dattaram More, Manager of the appellants CB firm was a part of it as he is known to Shri Ravindra Sonar. The above facts bring out clearly that the attempted smuggling of gold was on account of the conspiracy hatched by the above mentioned syndicate, and not on account of the receipt of documents from third party by the appellants;

7.4 Further, it is seen that alleged smuggling of gold had occurred due to concealment in 6 out of 15 Air Nebulizers, the fact of which was not in the knowledge of the appellants. It is also on record that only during the inquiry proceedings, DRI vide their letter dated 11.04.2022, had specifically furnished the copy of the statement recorded from Ms. Priya Hemant Bandarkar dated 04.04.2019. The said statement dated 04.04.2019 clearly brings out that she has been informed about the DRI's interception of the imported consignment covered in B/E No. No.2552585 dated 25.03.2019 wherein there was smuggling of gold, and she had answered to the questions asked by DRI. It is categorically stated by her at para 5, that she was not aware of any concealment of gold in the imported product i.e., Nebulizers covered by B/E No.2552585 dated 25.03.2019. However, in the same statement in para 4, reference mentioning that she is also aware that in the past, gold was smuggled into India in nine consignments imported in the name of M/s Albela Traders and S.S. Enterprises has no relevance, as her denial of the knowledge has been specifically recorded in the subsequent paragraph. The facts of DRI investigation recorded in the inquiry proceedings very clearly had brought out the role of a syndicate in the involvement of smuggling, in which there was only involvement of S/Shri Ahmed Mohamed Bedra@ Ajay, Mahendra Kate and Ravindra Sonar. Thus, neither the proprietor of the appellants CB nor any of its employees were involved in the said activity of smuggling. Hence, the facts of the case indicate that there is no role of Customs Broker in the above activities of the importer.

7.5 It is also on record, that the appellants CB had obtained a written authorization letter dated 24.01.2019 from the importer for handling customs related work of import customs clearance. It is nowhere brought out in the inquiry or impugned order that such authorization is improper. The impugned order has only questioned about the authenticity of Shri

Ravindra Sonar in representing the importer firm M/s Albela Traders, as he is an intermediary.

8.1 We also find that on the issue of accepting documents from intermediary, 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."

8.2 In the absence of any document to prove the claim of that the appellants had acted in an unauthorized manner in mis-declaration of the goods or in smuggling of the contraband, it is difficult for fastening such liability on the appellants CB for holding them responsible for violation of Regulation 10(a) *ibid*.

9. In the instant case, the smuggling of gold in imported consignment was found by the department only on the basis of specific investigation conducted by the DRI authorities, and it was a case of concealment of gold in the declared imported goods. It is also a fact that there was no mis-declaration in any of the documents or in the imported goods. 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. The act of smuggling is a conspiracy created by the smuggling syndicate in which there was no role of appellants CB. Further, the voluntary statement given by Ms. Priya Hemant Bandarkar, Proprietor of the appellants CB firm on 04.04.2019 clearly show that such smuggling activity in the imported consignment was not known to the appellants CB. Thus, there is no possibility for the appellants CB to bring it to the notice of the Deputy Commissioner of Customs (DC) or Assistant Commissioner of Customs (AC) about the mis-declaration of imported goods involving smuggling of gold. 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 Commissioner of Customs (General) had come to the conclusion that the appellants CB had violated the provision of Regulation 10(m) *ibid*, as the appellants were aware of the smuggling in nine consignments imported in the past and thus they lacked due diligence and efficiency. It is not the case of Revenue that in respect of the B/E No.2552585 dated 25.03.2019, the appellants CB had delayed payment of duty, not declared the required particulars in the B/E or delayed in processing of the B/E in an inefficient manner.

10.2 From the facts of the case it is indicated that right from the beginning of investigation, starting from the time detailed examination of the goods under panchnama proceedings by DRI on 26.03.2019, the appellants CB's representative was present and cooperated with investigation authorities. Further, voluntary statements were also given during the investigation by the partner Ms. Priya Hemant Bandarkar of appellants CB and S/Shri Umakant Pathak, Dattaram More, Manager/employee of the appellants CB. Further, there is no case of importer or any other person having complained about the inefficiency or delay in clearance of the imported goods by the appellants CB. In the DRI investigation report recorded in inquiry proceedings also it was brought out that the smuggling of gold has been orchestrated by a syndicate in which none of the appellants CB's employees

or proprietor is involved. Therefore, the conclusion arrived at by the learned Commissioner of Customs that the appellants have failed to discharge their obligations cast on him under Regulation 10(m) *ibid* is factually not supported by any evidence and thus it is not legally sustainable.

11.1 Learned Principal Commissioner of Customs (General) had come to the conclusion that the CB had violated the provision of Regulation 10(n) *ibid*, on the ground that the appellants had never met the importer/IEC holder, and they were not careful and diligent in undertaking the KYC verification process about the background of importer.

11.2 We find from the records, that the appellants CB had obtained the KYC documents from the importer's representative along with their authorization letter; the appellants CB had also submitted that they 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/exporter; signature and account verification letter from importer's Bank; GSTIN registration certificate, Udyog Aadhaar, Electricity Bill, IT returns etc. and submitted the same to the Customs authorities in terms of KYC verification process for first time importers as per the Public Notice No.112/2017 dated 31.08.2017. However, during the DRI investigation as recorded in the inquiry proceedings, it was clearly proved that Shri Tausif Mehboob Sayyed, IEC holder and who had signed in the authorization letter dated 24.01.2019 is a Tempo driver by profession; that he was earning a monthly salary of Rs.8000/-; that he did not have any firm in the name of M/s Albela Traders and he had not imported any consignment in the name of M/s Albela Traders. Thus, it may not be possible to come to a conclusion that by submitting various documents duly approved by various Government departments for the existence of the importer's business operations, whether the appellants CB has provided for sufficient compliance to the KYC norms as required under the CBLR, 2018, in the present case. Thus, we would like to further examine the facts of the case and relevant case laws cited by the appellants.

11.3 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, and verification of any two documents among 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 this basis.

11.4 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."

11.5 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."

11.6 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. Thus, in harmonious reading of the above orders of the Tribunal in accepting the documents from the importer directly or through intermediary; compliance with the KYC norms 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.

11.7 In this case, Shri Tausif Mehboob Sayyed, IEC holder and who had signed in the authorization letter dated 24.01.2019, had shown complete ignorance about the existence of import firm M/s Albela Traders and the import activity. However, the entire smuggling of gold activity under the imports made in the name of M/s Albela Traders, in the present consignment under B/E No.2552585 dated 25.03.2019 to the extent of 4562.79 grams of contraband gold of total value of Rs.1,50,57,207/- have been orchestrated by a syndicate of persons namely Shri Ahmed Mohamed Bedra@ Ajay with the help of S/Shri Mahendra Kate, Ravindra Sonar. Further, they had also involved in similar illegal activity in the past similar imported goods involving past nine consignments, for which the B/Es were filed by the appellants CB. Hence, it is not forthcoming how the appellants CB had ignored such deliberate action by the syndicate in handling the import documents for more than nine past occasions, which is indicative of lack of diligence and reliability in the KYC verification conducted by them.

12.1 Furthermore, in order to appreciate the importance of the role of Customs Broker/Custom House Agent and the timely action which could prevent the export frauds, we rely on the judgement of the Hon'ble Supreme Court in affirming the decision of the Co-ordinate Bench of this Tribunal in the case of *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."

12.2 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 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, the KYC documents given by the importer are also genuine and that these are not fake or fabricated. Thus, to this extent we find that the appellants CB are

found to have not complied with the requirement of sub-regulation 10(n) and thus imposition of penalty in not being proactive for fulfilling of regulation 10(n) of CBLR, 2013 alone, is appropriate and justifiable.

13. 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(a), 10(d) and 10(m) of the CBLR, 2018, 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 obligation under Regulation 10(n) *ibid*, particularly when they had 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.

14. Therefore, by modifying the impugned order to the extent as indicated above at para 13, we allow the appeal in favour of the appellants.

(Order pronounced in open court on 19.04.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)