CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>WEST ZONAL BENCH :MUMBAI</u>

Customs Appeal No. 86893 of 2021

(Arising out of Order-in-Original CAO No. 97/CAC/PCC(G)/SJD/CBS(Adj) dated 18.10.2021 passed by Principal Commissioner of Customs (General), New Custom House, Mumbai.)

Seaking Clearing Private Limited **.....Appellants**
(CB License No.11/471)
1, 3, 4, 5, Sutar Pakhadi, Sahar Village
Andheri (East), Mumbai-400099.

VERSUS

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

<u>Appearance:</u>

Shri Chirag Shetty, Advocate for the Appellants
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/87475/2023

Date of Hearing: 19.07.2023
Date of Decision: 19.07.2023

PER :M.M. PARTHIBAN

This appeal has been filed by M/s Seaking Clearing Private Limited (herein after, referred to as 'the appellants'), holders of Customs Broker License No.11/471 assailing Order-in-Original CAO No. 97/CAC/PCC(G)/ SJD/CBS(Adj) dated 18.10.2021 (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 erstwhile Regulation 10 of Customs House Agents Licensing Regulations, 1984 (CHALR) and now Regulation 7(2) of Customs Brokers Licensing Regulations (CBLR), 2018. In pursuance of specific information received by Directorate of Revenue Intelligence (DRI), Bangalore Zonal Unit (BZU), regarding customs duty evasion i.e., safeguard duty leviable under Notification No.01/2018-Customs (SG) dated 30.07.2018 on import of 'solar cells assembled as solar modules/panels' falling under Customs Tariff Item (CTI) 8541 4011 being evaded by certain importers during its import at Nhava Sheva port, but the same is duly paid when such goods were imported at Inland Container Depot, Whitefield, Bangalore, necessary investigation was initiated by DRI. During investigation it was revealed that one M/s Nano Science and Ozone Technologies Pvt. Ltd., a trader of Copper Indium Gallium Selenide (CIGM) solar modules is importing the solar modules by declaring these as 'thin film CIGS PV module (solar module)' and classifying the goods under CTI 8541 4090, for which safeguard duty is not applicable. Accordingly, DRI conducted search proceedings at the premises of importer on 03.07.2019 and 08.07.2019 and recorded statements from the importer and Customs Broker. DRI investigation further revealed that in respect of imports by M/s Nano Science and Ozone Technologies Pvt. Ltd., the appellants CB had prepared check list including the classification of imported goods under specific CTI, assessable value for filing Bills of Entry (B/E) on the basis of documents received from M/s Dart Global Logistics Pvt. Ltd.; though initially safeguard duty was indicated in the check list, on the directions of M/s Dart Global logistics vide e-mail dated 24.12.2018, they had changed the classification under CTH 8541 4090 for clearance of imported goods without payment of safeguard duty; the appellants CB did not directly interact with the importer M/s Nano science or any of their representative. Based on the above details in the form of preliminary offence report action under CBLR was initiated by the jurisdictional Principal Commissioner of Customs (General), New Custom House, Mumbai. Subsequently, DRI, BZU also informed to the Principal Commissioner (General), Mumbai on 28.05.2020 vide Letter F. No.DRI/BZU/S-IV/ENQ-22(INT-03)/2019/134 dated 28.05.2020, about the involvement of appellants CB in the customs duty evasion of imported goods.

2.2. On the basis of such offence report/preliminary details received from DRI, BZU, Bangalore, the jurisdictional Principal Commissioner of Customs (General), Mumbai-I had concluded that there is a prima facie case against the appellants for having contravened Regulations 10(d), 10(e), 10(f), 10(m) and 10(n) of CBLR, 2018. Accordingly, he had immediately suspended the CB license of the appellants under Regulation 16(1) of *ibid*, vide Order

No. 07/2020-21 dated 04.08.2019; and such suspension was revoked vide Order No. 20/2020-21 dated 25.09.2020; further the department had initiated show cause notice dated 08.10.2020 for initiating inquiry proceedings under Regulation 14 ibid read with 17 and 18 *ibid*, against violations of CBLR as above.

2.3. Subsequently, the Principal Commissioner of Customs (General), Mumbai-I had appointed the Inquiry Officer (IO) vide letter dated 05.03.2021 and the IO held personal hearings on 15.04.2021, 16.05.2021. Upon completion of the inquiry, a report was submitted on 04.06.2021 concluding that all charges framed against the appellants have been proved. Accordingly, the Principal Commissioner of Customs (General), Mumbai, being the licensing authority had passed the impugned order dated 18.10.2021 under Regulations 14, 17(7) and 18 *ibid,* for revoking CB License of the appellants, for forfeiture of entire amount of security deposit and for imposition of penalty on the appellants CB. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

3.1. Learned Advocate for the appellants contends that each of the allegations of violation Regulations 10(d), 10(e), 10(f), 10(m) and 10(n) of CBLR, 2018 have been countered by them. In respect of Regulations 10(d), 10(e) and 10(f) ibid, learned Advocate stated that the appellants had at the first instance prepared the check list for filing the B/E by classifying the imported goods under CTI 8541 4011 and quantifying the safeguard duty payable; however, it is only at the insistence of the importer through their agent M/s Dart Global Logistics Pvt. Ltd., they had filed the B/Es for the importer on the basis of earlier B/E No. 8029776 dated 30.12.2016 classifying the solar modules under CTI 8541 4090. Therefore, he claimed that the appellants CB had acted with a *bona fide* intent and on the directions of the importer. Further, he stated that the appellants had no basis to doubt the classification, especially when the importer had undertaken such imports earlier under the classification adopted by him and imported goods have also been cleared by the Nhava Sheva customs authorities. Hence, there was no occasion for the appellants to bring the same to the knowledge of customs authorities.

3.2 Further, learned Advocate also claimed that all the declarations in the various Bills of Entry (B/Es) were made on the basis of documents given by the importers, and the appellants CB having informed the importer on the right classification and the change in classification has been specifically directed by them; they claimed that the appellants were no manner connected with the violations of the Customs law and there is no proof submitted by the department to establish that the appellants played an active role of an abettor in aiding the importer to clear the goods without payment of safeguard duty. They also stated that the appellants had discharged their duties as CB diligently and there is no delay or lack of efficiency in clearance, handling and delivery of imported goods; and they had obtained and verified all KYC documents, thus they claimed they did not contravene the Regulations 10 (m) and 10(n) *ibid*.

3.3 In respect of non-compliance to the time lines laid down in the regulations for various actions under inquiry proceedings, they relied upon the judgement of Hon'ble High Court of Mumbai in Unison Clearing case, to state that the limitation prescribed under Regulation 17 has not been appreciated by the adjudicating authority. As there was gross delay in the conclusion of inquiry proceedings for which there is no explanation, without prejudice their submission on merits, they stated that on the ground of non-adherence with the time limits, the impugned order is liable to be set aside. In view of the above, they requested that impugned order be set aside and consequential relief be granted to them. In support of their stand, they relied upon the following case laws:

(i) *Manjunath Shipping Pvt. Ltd. Vs. Commissioner of Customs, Bangalore* - 2019 (369) E.L.T. 1010 (Tri. Bang.)
(ii) *Dakor Clearing & Shipping P. Ltd. Vs.Commissioner of Customs (General), Mumbai* - 2015 (326) E.L.T. 178 (Tri. Mum.)
(iii) *Principal Commissioner of Customs (General), Mumbai Vs. Unison Clearing P. Ltd.* - 2018 (361) E.L.T. 321 (Bom.)
(iv) *Sadanand Chaudhary Vs. Commissioner of Customs (General), New Delhi* - 2018 (363) E.L.T. 1018 (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 each of the violation under sub-regulations (d),(e), (f), (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 M/s Dart Global Logistics Pvt. Ltd. who are neither IEC holder nor

importer or their representative. Rather, the appellants were helping the importer by adopting the classification suitable to the importer and by not adopting the correct classification of the imported goods by use of their knowledge of customs laws and work experience they failed to comply with the obligations cast upon them under CBLR. Learned AR pointed out that it has also been admitted by Shri Jetil Rajgopal Thottuputa, Director of appellants CB was well aware that the importers are liable to pay safeguard duty. Thus, learned AR justified the action of Principal Commissioner of Customs (General) in revocation of the appellant's CB license, forfeiture of security deposit and imposition of penalty in the impugned order and stated that the same is sustainable in law. It is further stated by him that the impugned order viewed that the timelines specified in CBLR are directory in nature and not a mandatory factor.

5. Heard both sides and perused the case records. We have also considered the additional written submissions given in the form of paper books by learned Advocates for the appellants as well as Authorised Representative for the Revenue.

6.1. The issue involved herein is to decide whether the appellant Customs Broker has fulfilled all his obligations as required under CBLR, 2018 or not. The specific sub-regulations which were violated by the appellants are Regulations 10(d), 10(e), 10 (f), 10(m) and 10(n) *ibid*, and hence there are five distinct charges framed against the appellants. Though suspension order No. 07/2020-21 dated 04.08.2020 was initially revoked by issue of Order No.20/2020-21 dated 25.09.2020, upon completion of inquiry proceedings the Principal Commissioner of Customs (General) after taking into consideration the inquiry report dated 04.06.2021, the written submissions made by the appellants and the record of oral submission made at the time of personal hearing on 20.08.2021, for considering the charges of violations against them, before passing the impugned order. Thus, we are of the considered view that sufficient and reasonable opportunity was given to the appellants before passing an order, in respect of charges framed against them and there is no infirmity of the impugned order in not following the principles of natural justice in this regard.

6.2 We find that the Regulation 10 of CBLR, 2018, provide for the obligations that a Customs Broker is expected to 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 -*
>
> *(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;*
>
> *(f) not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information;*
> *...*
>
> *(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, Goods and Service 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;"*

6.3. We find that the Principal Commissioner of Customs had come to the conclusion that the various charges framed are confirmed in agreeing with the findings of the inquiry authority as the specific omissions and commissions on the part of appellants for contravention of Regulations 10(d), 10(e), 10 (f), 10(m) and 10(n) *ibid*, have enabled the importers to evade payment of safeguard duty. In respect of delay in completion of inquiry proceedings, without adhering to the timelines gives under the CBLR, he had relied upon the judgement of the Hon'ble High Court of Bombay in the case of *Principal Commissioner of Customs (General), Mumbai Vs. Unison Clearing P Ltd.,* 2018 (361) E.L.T. 321 for concluding that time factor under CBLR is directory in nature and not a mandatory factor; and the delay was caused due to unavoidable administrative reasons.

7.1. We find from the factual matrix of the case, that the imports in respect of solar panels for which Bills of Entry No. 9402242 dated 25.12.2018 and No. 9546679 dated 07.01.2019 were filed by the appellants as Customs Broker, was preceded with the appellants CB seeking from the importer, through their agent M/s Dart global logistics, all requisite basic documents such as commercial invoice, packing list, freight invoice, insurance amount, catalogue, end use letter, authority letter for CB in handling the imports with customs, KYC forms, copy of IEC, PAN card, GST, AD code, Aadhaar card, electricity bill etc. vide appellant's e-mail dated 11.12.2018. Further, the appellants CB had prepared the check list for Job No. IMP/001098/18 dated 21.12.2018, by classifying the import goods supplied by M/s Eterbright Solar corporation, Taiwan under CTI 8541 4011 for which appropriate safeguard to be paid was also calculated besides other duties of customs payable by the importer. Since, there was a specific e-mail reply dated 21.12.2018 from the importer directing the appellants to file the B/E as per their previous imports with different classification, the appellants CB had filed the import documents as per such directions of the importer. Thus, from the above factual details, we find that the appellants CB had declared the description of the imported goods and customs classification in the B/Es for aforesaid imports as per their understanding of the customs laws and have rightly indicated the requirement of payment of safeguard duty on the imported solar panels. However, since the importer had insisted for filing under different classification, they had changed the declarations as per the directions of the importer.

7.2. We further find that the Ministry of Finance had imposed safeguard duty in respect of "solar cells, whether or not assembled in modules or panels" falling under CTI 8541 4011 at specified rates by issue of Notification No.01/2018-Customs (SG) dated 30.07.2018. It is also provided in the notification that such safeguard duty is being imposed on the basis of final findings of the Directorate General of Trade Remedies (DGTR) dated 16.07.2018 and such safeguard duty would not apply to developing countries notified under Notification No.19/2016-Customs (N.T.) dated 05.02.2016, except import of subject goods from China PR and Malaysia, the same was incorporated in the said Customs Safeguard notification dated 30.07.2018. Further, we also find that the final findings of DGTR issued vide notification dated 16.07.2018, specifically recommend for imposition of safeguard duty on solar cells from China PR and Malaysia, even though in the initiation/consideration stage the subject goods imported into India from various countries including China PR, Malaysia, Singapore and Taiwan were examined. Over and above these intricacies in determination of applicability of safeguard duty on subject imports, the Central Board of Indirect Taxes and Customs (CBIC) vide Instruction No.08/2018 dated 06.04.2018 had issued certain clarification on the classification of solar panel/module imported in three different methods under CTH 8541, CTH 8501 on the basis of declaration from importer to specify the kind of diode with which the imported solar panel is equipped, for its proper classification. Further, by issue of another instructions No.12/2018-Customs dated 13.08.2018, the Ministry also stated that in compliance with interim directions issued by the Hon'ble High Court of Orissa in Writ Petition (Civil) No. 12817 of 2018, it has been decided not to insist on payment of safeguard duty, for the time being, in terms of the said Notification No.1/2018-Customs (SG) dated 30.07.2018. Accordingly, the said instructions directed the departmental authorities to assess the import of solar cells provisionally on furnishing of simple letter of undertaking/bond by the importer. Further, the Ministry of Finance had also issued one another instruction No.14/2018-Customs dated 13.09.2018, whereby the instructions No.12 was withdrawn as in the meantime SLP (C) No.24009-10/2018 was filed in the matter before the Hon'ble Supreme Court and the interim order dated 23.07.2018 passed by the Hon'ble Orissa High Court and further proceedings thereon has been stayed by the Hon'ble Apex Court. Further, the departmental authorities were asked to finalise the provisional assessments and to collect the safeguard duty as per notification dated 30.07.2018. Thus, by viewing from this perspective, even at the time of clearance of goods, despite the various instructions of the Ministry on the subject import of solar panels, the Customs assessing group and the departmental authorities of the Commissionerate did not find out any discrepancy in non-payment of safeguard duty in the present imports for which the appellants CB filed the B/Es. Hence, in the above factual matrix of the case where the departmental officers were also grappling with contentious issue of classification of solar panels and consequent levy of safeguard duty in terms of Notification dated 30.07.2018, it is difficult to fasten the liability for non-payment of safeguard on the part of the appellants CB, despite the fact that they having pointed out the same to the importer at the very beginning of preparation of the check list for the subject imports.

7.3. From the above, we find that appellants have duly filed the bill of entry as per the documents given by the importers and after informing the importer about the correct classification of the imported goods and applicable safeguard duty thereon. In the instant case, the non-payment of safeguard was found by the department only on the basis of specific intelligence developed by DRI, BZU when similar imports took place at

Bangalore for which the importer had paid the safeguard duty, 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, as the classification of imported goods was in doubt during the relevant point of time, the appellants CB could not have brought it to the notice of the Deputy Commissioner of Customs (DC) or Assistant Commissioner of Customs (AC). Thus, we are of the considered view that the violation of Regulation 10(d) *ibid*, as concluded in the impugned order is not sustainable.

7.4 Further, as the Hon'ble Supreme Court had held in the case of *Northern Plastic Limited Vs. Collector of Customs & Central Excise* reported in *1998 (101) E.L.T. 549 (S.C.)* holding that the declaration of the description of goods given correctly and fully in the Bill of Entry/classification declaration laying claim to some exemption was in the nature of a claim made on the basis of the belief entertained by the appellant and therefore, cannot be said to be a mis-declaration for the purpose of Customs Act. On the basis of our analysis in paragraphs 7.1 to 7.3 and on the basis of above judgement of Hon'ble Supreme Court, we are of the considered view that the conclusion arrived by the Principal Commissioner of Customs (General) on this issue in the impugned order is not supported by any evidence or factual detail, to fasten the liability for such non-payment of safeguard duty on the part of the appellants CB and thus the impugned order stating that the appellants have violated Regulation 10(d) *ibid* is not sustainable.

8.1. Learned Principal Commissioner of Customs (General) had come to the conclusion that the CB had violated the provision of Regulation 10(e) *ibid,* as established in the inquiry proceedings that the appellants had not at all interacted with the importer and thus did not exercise due diligence in ascertaining the correctness of any information which they impart to a client. From the records we find that the appellants CB had interacted with Dart Global Logistics (Pvt.) Limited, Bangalore whose name appears as the 'Agent at port of discharge/Domestic routing instructions' in the Combined Bill of Lading No. WTXG8120296 issued by the shipper M/s Worldwide Logistics Co. Ltd., for the impugned goods shipped from Taiwan to Nhava Sheva port, India. Thus, it clearly proves that the persons with whom the appellants CB had interacted for filing the B/E and other declarations has the official capacity of being an agent of the importer at the port of discharge. Thus, the appellants CB cannot be found fault in dealing with unauthorized persons for clearance of imported cargo.

8.2. In the absence of any specific evidential document or factual record it cannot be stated that the information on misclassification for non-payment of safeguard duty have been withheld by the appellants, and more specifically under peculiar circumstances where both classification and imposition of safeguard duty on imported solar cells were in doubt and differing clarifications have been issued for not insisting of payment of safeguard duty initially and subsequently to collect the same. 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 clients and thus the conclusion arrived at by the Principal Commissioner of Customs (General) is without any basis of documents or facts, in the impugned order with respect to Regulation 10(e) *ibid*, is not sustainable.

9.1. The learned Principal Commissioner of Customs by relying on the report of the inquiry officer had agreed with the findings that the appellants CB withheld the information contained in orders, instructions or public notices relating to clearance of cargo from the importer of the goods which had led to the duty evasion in the said case. From the facts of the case, it is very clear that firstly whether the imported solar panels from Taiwan attracted safeguard duty or not, itself was doubtful in the minds of the departmental authorities and hence even at the time of assessment and clearance of the goods, despite specific instructions of the Ministry, the customs officers in charge for clearance of the goods at Nhava Sheva port had not objected to such claim for non-payment of safeguard duty. In fact, the action on the part of the appellants CB in indicating the payment of safeguard duty in the check list sent to the importer and obtaining the type of diode in the form of 'Statement of Compliance' from importer for submission to the customs authorities, confirms that the appellants did comply with the Public Notice No.113 of 2018 of July, 2018 issued by the Office of the Commissioner of Customs (NS-V), Mumbai Zone-II, Nhava Sheva wherein the instructions of the Ministry on classification of solar modules were informed to the trade. Hence, we find that there are no strong grounds to sustain the allegation of violation of Regulations 10(f) ibid, in this case.

9.2 The learned Principal Commissioner of Customs by relying on the report of the inquiry officer had agreed with the findings that the appellants CB was aware that the import cargo was sensitive as it was attracting safeguard duty and the appellants have not exercised due diligence in handling such cargo, thereby deliberately facilitating the clearance of goods without payment of safeguard duty, instead of stopping the loss to the government revenue. As explained above, the factual position of the case indicates that the imposition of safeguard duty on solar panels was under dispute before the judicial forums and only on account of the fact that the Hon'ble Supreme Court entertained the department's SLP and stayed the order of the Hon'ble High Court of Orissa, necessary instructions were issued to the departmental authorities for collecting the safeguard duty in terms of the notification dated30.07.2018. Hence, we find that even at the time of assessment and clearance of the goods, despite specific instructions of the Ministry, the customs officers in charge for clearance of the goods at Nhava Sheva port had not objected to such claim for non-payment of safeguard duty. It is only on the basis of DRI investigation, the consequential action for demand of safeguard duty and action on the appellants CB was undertaken. Further, there is no complaint from the importer or any other departmental authorities that there was delay or inefficiency in handling the import transactions with Customs. Hence, the conclusion arrived at by the Principal Commissioner of Customs (General) that such omission and commission on the part of the appellants is indicative of inefficiency in the discharge of their duties as Customs Broker and therefore they have violated Regulation 11(m) *ibid* has no legal basis or supported by any factual evidence.

9.3 From the plain reading of the requirements under Regulation 11(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 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 10(m) *ibid* is not sustainable.

10.1 We find from the records, that the appellants CB had obtained the KYC documents from the importer through their Agent at port of discharge namely M/s Dart Global Logistics (Pvt.) Limited, Bangalore vide their e-mail dated 21.12.2018. The above verification by the appellants CB ensured that they fulfilled their responsibility for duly verifying the existence of the importer through the Certificate of Registration with Government of India in GST REG-06 form indicating the GST Identification Number issued on 29.06.2018 indicating the name along with address; Certificate of Importer-Exporter Code (IEC) issued by the Ministry of Commerce & Industry, Office of Joint Director General of Foreign Trade, Bangalore indicating the name and address of the importer; and Permanent Account Number (PAN) card of the importer. However, the learned Principal Commissioner of Customs had concluded in the impugned order that the appellants CB never directly interacted with any representatives of the importer and thus it is clear that the appellants CB have failed to verify the identity, antecedent and address etc. of their client as they did not verify the address of their importer. Thus, he concluded that the appellants CB have not been careful and diligent in undertaking KYC verification and thus violated Regulation 10(n) *ibid*.

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	(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

		and correct.	information to the satisfaction of the CHA will suffice.”
2	Company	(i) Name of the company (ii) principal place of business (iii) mailing address of the company (iv) telephone, fax number, e-mail address.	(i) Certificate of incorporation (ii) Memorandum of Association (iii) Articles of Association (iv) Power of Attorney granted to its managers, officers or employees to transact business on its behalf (v) Copy of PAN allotment letter (vi) Copy of telephone bill.

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 11(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-classification or over/under valuation 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 11(n) *ibid*.

11.1. We also find that as regards the timelines to be followed in the entire process of adjudication of the suspension/revocation of CB license under CBLR, 2013/CBLR, 2018 by Customs authorities, the Hon'ble High Court of Bombay has laid down certain guidelines for its interpretation in the case of *Principal Commissioner of Customs (General), Mumbai Vs. Unison Clearing P Ltd.,* 2018 (361) E.L.T. 321. The relevant portion of the judgement in the above case is extracted below:

"The whole purpose of the CBLR-2013 being to frame a time line so that undue delay in the proceedings can be avoided, and the balance will have to be struck between the strict adherence to the said time schedule to such an extent that even a day's delay would prove to be fatal and render the entire action invalid and on the other hand, to grant such a discretion to the revenue to continue the said action of suspension of licence for an indefinite period depriving the Customs brokers of their right to carry on business on the basis of the licence, on a spacious ground that the charges levelled against him are being enquired into. Neither of these two extreme situations are ideal and balance will have to be struck by construing that the time limit for completion of inquiry for revoking the licence or imposing the penalty and keeping the licence under suspension should be "Reasonable period",

depending on the facts and circumstances of each case. There cannot be any absolute principle, which can be laid down to determine as what would be reasonable period but it would be dependent on the facts and circumstances of each case since on one hand, the purpose of prescription of the time limit by the Regulation is to cast a duty on the Revenue Authorities to act within the time frame since it adversely affects the interest of the licensee and on the other hand the licensee should not be permitted to take an advantage of some delay at the instance of the Revenue, which is beyond its control since the revenue administration needs to be granted certain concessions which may be on account of administrative exigencies, and the department working at different levels through different persons. The principles of fairness and equity demands that when there is deviation from the time schedule prescribed in the Regulation, the Revenue enumerates the reasons and attributes them to an officer dealing with it and also accounts for every stage at which the delay occurs. Every endeavour should be made to adhere to the time schedule but in exceptional circumstances, which are beyond the control of the revenue if the time schedule is not adhered to, an accountability be fastened on the Revenue, to cite reasons why the time schedule was not adhered to, and then leave the decision to the adjudicating authority to examine whether the explanation offered is reasonable or reflects casual attitude on behalf of the Revenue. This is the only way how the Regulation can be made effective and worthy of its existence so as to safeguard the interest of the Customs house agent, who is in a position of the delinquent and faces an inquiry somehow similar to an inquiry in disciplinary proceedings on one hand and the revenue in the capacity of the administration on the other hand.

*15**.** In view of the aforesaid discussion, the time limit contained in Regulation 20 cannot be construed to be mandatory and is held to be directory. As it is already observed above that though the time line framed in the Regulation need to be rigidly applied, fairness would demand that when such time limit is crossed, the period subsequently consumed for completing the inquiry should be justified by giving reasons and the causes on account of which the time limit was not adhered to. This would ensure that the inquiry proceedings which are initiated are completed expeditiously, are not prolonged and some checks and balances must be ensured. One step by which the unnecessary delays can be curbed is recording of reasons for the delay or non-adherence to this time limit by the Officer conducting the inquiry and making him accountable for not adhering to the time schedule. These reasons can then be tested to derive a conclusion whether the deviation from the time line prescribed in the Regulation, is "reasonable". This is the only way by which the provisions contained in Regulation 20 can be effectively implemented in the interest of both parties, namely, the Revenue and the Customs House Agent."*

11.2. In the instant case, the alleged offence in importation of goods took place in respect of imports which was reported by a Preliminary offence reporting of the details to the jurisdictional Principal Commissioner by DRI, BZU and on that basis the jurisdictional Principal Commissioner had suspended CB license of the appellants under Regulation 16(1) of *ibid*, with immediate effect vide Order No. 07/2020-21 dated 04.08.2019 and the suspension was subsequently revoked after giving the post decisional hearing on 10.08.2020 vide Order No.20/2020-21 dated 25.09.2020. Simultaneously, inquiry proceedings against the appellants for violations of CBLR, 2018 due to failure of the appellants to comply with Regulations 10(d), 10(e), 10(f), 10(m) and 10(n) *ibid* was initiated vide issue of SCN dated 08.10.2020. Upon completion of the inquiry, vide Inquiry report submitted on 04.06.2021, the Principal Commissioner of Customs (General), Mumbai, being the licensing authority under Regulations 17(7) of CBLR, 2018had passed the impugned order dated 18.10.2021. It is a fact that is recorded in paragraph 2 of the impugned order that the information in the form of letter dated 28.05.2020 from DRI, BZU for initiating action against the appellants CB was received by the jurisdictional customs authorities, which formed the basis for their action under CBLR. The extract of the same is as follows:

> *"2. Whereas a letter F. No. DRI/BZU/S-IV/ENQ-22(INT-03)/2019/134 dated 28.05.2020 was received from DRI, Bangalore Zonal Unit proposing to initiate action against the Customs Broker M/s Seaking Clearing Pvt. Ltd. as the officers of Directorate of Revenue Intelligence, Bangalore Zonal Unit, Bangalore (herein after referred to as DRI) investigated that M/s Nano Science and Ozone Technologies Pvt. Ltd. (hereinafter referred to as M/s Nano Science) were importing "Solar Cells assembled as Solar Modules/Panels" from Taiwan without payment of applicable Safeguard Duty…..Therefore, action against the said CB was initiated by this office as per the Regulations of CBLR, 2018."*

From the above fact, it is clear that the offence report for initiating action by jurisdictional Customs as required under Regulations 17(1) ibid appeared to have been received after its issue date i.e., on or after 28.05.2020. However, in the present case, the immediate suspension of the appellants CB was done on 04.08.2019. Hence, the facts of the case indicate that there are apparent contradictions in the action taken by the jurisdictional Principal Commissioner of Customs. Further, the facts as above also indicate that the timelines prescribed under the regulations providing for time limits within which it is required for completion of regular inquiry, while license of Customs broker is in operation, for taking a decision on the suspension or revocation of the license etc. have not been complied with even though the Principal Commissioner of Customs had passed the order within the prescribed time from the date of submission of Inquiry report, though such report is much delayed. If the entire process of suspension proceedings is unduly delayed, taking into account the date of suspension on 04.08.2019, then the time taken of about two years indicate that the very purpose of prescribing specific time limits in relation to conduct of inquiry proceedings is nullified and to that extent the actions of the authorities is not really sanctioned by law. We also find that the Customs broker has already suffered a lot, as they were out of his normal business during such period that their license was suspended. It is also noted that the livelihood of Customs broker and the employees is dependent upon the functioning of Customs broker's business. The punishment suffered by being out of Customs broker's business for long period of is more than sufficient to mitigate the case of violations or contraventions of CBLR, 2018.

12.1. From the records of the case, we find that there is definitely delay in conduct of inquiry proceedings and that too for the import transactions for which the offence was detected in July, 2019, the order of revocation of appellant's CB license has been passed on 04.08.2019. Revenue is unable to explain why there was such a hurried action and on what basis when they themselves acknowledge that the offence report in the form of DRI, BZU's letter 28.05.2020 is the basis for initiating action against the appellants CB. There are no reasons recorded in detail justifying the delay in conduct of inquiry proceedings by the learned Principal Commissioner except that in para 9 of the impugned order it is stated that the delay has occurred in issuance of show cause notice owing to unavoidable administrative reasons such as transfer and posting of Inquiry officer, but such delay cannot be fatal to outcome of injury and cannot neutralize the actions of omission and commission already committed by the CB.

12.2 In this case, we find that the immediate suspension of appellants CB license was done on 04.08.2019 and the inquiry proceedings were initiated by issue of SCN on 08.10.2020. The prescribed time under CBLR for timely completion of inquiry proceedings right from the beginning i.e., issue of SCN within a period of 90 days from the date of receipt of offence report, submission of inquiry report within 90 days of issue of SCN, passing of order by the Principal Commissioner of Customs within 90 days of receipt of inquiry report was neither followed nor given credence to. The inordinate delay in the inquiry proceedings in this case has not been properly explained in the impugned order; the only reason given for delay or non conformity to the time limits under CBLR, is that the timelines prescribed are only directory in nature and not mandatory. We are of the view that such a reasoning given by learned Principal Commissioner of Customs (General), particularly in the background of the earlier round of litigation before this Tribunal and further appeal by the department litigating before the Hon'ble High Court of Bombay being dismissed, and refusal to follow the timelines required for completion of inquiry proceedings under CBLR, barring exceptional circumstances, cannot be accepted as 'reasonable grounds' which had caused delay in terms of the test laid down by the Hon'ble High Court of Bombay in the case of *Unison Clearing Pvt. Ltd.(supra).*

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 license of the appellants; and for forfeiture of security deposit, inasmuch as there is no violation of regulations 10(d), 10(e), 10(f), 10(m) and 10(n) *ibid*, and the findings in the impugned order is contrary to the facts on record.

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

(Order pronounced in open court on 19.07.2023)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha