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

Appeal No. C/ 85612/2021

(Arising out of Order-in-Appeal CAO No. 83/CAC/PCC(G)/PS/CBS dated 25.02.2021 passed by Principal Commissioner of Customs (General), New Custom House, Mumbai.)

M/s Ashtavinayak Inference LLP **.....Appellant**
302, Vaity Apartment, Chafekar Bandhu Marg,
Opp. ITI College, Mulund (East), Mumbai-400081

VERSUS

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

Appearance:

Shri Prashant Patankar, Consultant for the Appellant
Shri S. B. Hantangadi, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87478/2023

Date of Hearing: 15.11.2022
Date of Decision: 08.05.2023

PER : S.K. MOHANTY

The appellant herein, M/s Ashtavinayak Inference LLP, holders of Customs Broker (CB) License No.11/2203 has assailed the Order-in-Original No.83/CAC/PCC(G)/PS/CBS(Adj.) dated 25.02.2021 (for short, referred to as 'the impugned order'), passed by the learned Principal Commissioner of Customs (General), New Custom House, Ballard Estate, Mumbai-1.

2.1. Briefly stated, the facts of the case are that the appellant is a Customs Broker (CB)/Custom House Agent (CHA), holding a regular CB license issued by the Mumbai Customs under Regulation 7(2) of Customs Brokers Licensing Regulations (CBLR), 2018. In an investigation initiated by Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit, it was found that one importer M/s Omega Enterprises, Thane had imported 'Vitamin C' of Chinese origin by mis-declaring the same as 'Citric acid Monohydrate' in order to avoid payment of anti-dumping duty leviable on Vitamin-C. In connection with such anti-dumping duty evasion vide Bill of Entry No.3945642 dated 05.07.2019, the DRI, Mumbai had noticed that the appellant's CB was involved with certain violations of CBLR, 2018 and the same was informed to the respondent Principal Commissioner of Customs (General), New Custom House, Mumbai-I by sending an offence report dated 26.11.2019.

2.2. On the basis of such offence report received from DRI, Mumbai, the jurisdictional Principal Commissioner of Customs (General), Mumbai-I had concluded that there is a prima facie case against the appellant for having contravened Regulations 10(b), 10(d), 10(e), 10(m) and 10(n) of CBLR, 2018. Accordingly, the said Principal Commissioner of Customs, had suspended CB license of the appellants under Regulation 16(1) of CBLR, 2018, with immediate effect vide Order No. 70/2019-20 dated 30.12.2019. Further, after giving a post-decisional opportunity of personal hearing to the appellants on 29.01.2020, the said Pr. Commissioner of Customs, continued the suspension order pending inquiry into the role of CHA under Regulations 22 of CBLR, 2018, by issue of Order No.86/2019-20 dated 17.02.2020.

2.3. It is found that consequent to the above, a show cause notice dated 29.06.2020 was issued to the appellants for initiating inquiry proceedings against various violations of CBLR, 2018 and to appear before the Inquiry Authority. Further, it is also found that upon completion of the inquiry, a report was submitted on 02.11.2020, and the Principal Commissioner of Customs (General), Mumbai-I, being the licensing authority under Regulations 14 of CBLR, 2018 had passed the impugned order dated 25.07.2021 for revoking CHA License No. 11/2203 of the appellants and, at the same time, forfeited the entire amount of security deposit, while ordering for surrender of original license as well as all the "F", "G" & "H" cards issued therein to the appellants. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

3.1. Learned Counsel for appellant contended that the impugned order is mere reproduction of the inquiry report, cryptic and is a non-speaking order. He further contends that the Principal Commissioner of Customs (General) has held that the violations of CBLR, 2018 leveled against appellant CB are proved for the reasons that the appellant CB did not know who the actual importer (IEC holder) was and he did not verify the credential of the IEC holder; he did not had any contact with the IEC holder, he did not make any attempt to verify the antecedents, correctness of actual IEC number, despite clearing one consignment of same importer in the past during May, 2019. Further it was also contended that the

Principal Commissioner of Customs (General) has not appreciated that the responsibility for making the declarations in the bill of entry, mentioning of correct description and value of the imported goods rests with the importer; and as such, the Customs broker is not required to go into the authenticity of the declarations made by the importer and a job of the Customs broker is confined to the submission of the documents as given by the importer. Also, the importer i.e., the beneficial owner has not disowned the imports or the declarations made in the bill of entry. Hence, it has been claimed on behalf of the appellants that there is no relevancy of the fact that the Customs broker did not personally interact with the importer/IEC holder or through an intermediary, and the same had caused the violations under CBLR, 2018.

3.2. In support of such contentions, the learned counsel for the appellant has relied upon the following decisions rendered by the judicial forums:

(i) Commissioner of Customs, Tuticorin Vs. Moriks Shipping & Trading (P) Ltd. 2015 (317) E.L.T. 3 (Mad.)

(ii) Perfect Cargo & Logistics Vs. Commissioner of Customs (Airport & General), New Delhi 2021 (376) E.L.T. 649 (Tri. - Del.)

(iii) Parekh Logistics Pvt. Ltd., Vs. Commissioner of Customs, Pune 2017 (347) E.L.T. 657

3.3. Learned Counsel for the appellant also submitted at the end that the Customs broker license is under suspension from 30.12.2019, and it is affecting the livelihood of the Customs broker, their 11 employees and their families who are dependent on this business and they are facing serious financial hardship, irreparable harm and loss. In view of the above, he prayed for setting aside the impugned order, with consequential relief to the appellant.

4. The learned AR reiterated the findings made by the Principal Commissioner of Customs (General) in the impugned order and forcefully submitted that each of the violation under sub-regulations (d), (e), (m) and (n) of Regulation 10 of CBLR, 2018 have been examined in detail in the inquiry report and the same have also been examined by the Principal Commissioner. Thus, he has justified the action of the 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. In support of such submissions, the learned AR has relied upon the following judgments:

(i) Ramarao Cargo Lines Pvt. Ltd. Vs. Commissioner of Customs (General), Mumbai in Customs Appeal No.86114 of 2020, CESTAT-Mumbai

(ii) M/s V.Arjoon Vs. Pr. Commissioner of Customs, Mumbai in Customs Appeal No.86041 of 2020, CESTAT-Mumbai

(iii) Mahavir Logistics Vs Pr. Commissioner of Customs (General), Mumbai in Customs Appeal No.85932 of 2020, CESTAT-Mumbai

(iv) Principal Commissioner of Customs (General), Mumbai Vs. Unison Clearing P Ltd., 2018 (361) E.L.T. 321

5. Heard both sides and perused the case records.

5.1. The issue involved in this appeal for consideration by the Tribunal, is as to whether, the appellant Customs broker has fulfilled all his obligations as required under sub-regulations of CBLR, 2018 or not. The specific Regulations which were violated by the appellant as mentioned in the impugned order are Regulations 10(d), 10(e), 10(m) and 10(n) of CBLR, 2018, and hence there are four distinct charges framed against the appellant and upon determination of these charges as proved, the impugned order has sustained the charges, proposed in the SCN.

5.2 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 -
(a) obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

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

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

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

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

(n) verify correctness of Importer Exporter Code (IEC)number, Goods and Services Tax Identification Number (GSTIN), identity of his client and

functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;
……

(q) co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees.

5.3. We also find that the Principal Commissioner of Customs on the basis that as the appellant Customs broker did not make any effort in ascertaining the identity of the IEC holder or the beneficial importer, and as there was no communication/ interaction between the Customs broker and the IEC holder, concluded that the appellant customs broker had not verified the antecedents of the IEC holder, and he was in hand-in-glove with the perpetrators of the fraud and had thus concluded that the appellants had violated Regulation 10(d), (e), (m) and (n) of CBLR 2018. We also note that in respect of the charges framed against the appellants for violation of Regulation 10(b), the inquiry authority had found that the appellant customs broker had handled the clearance work through authorized employee and there is no evidence to the contrary and hence it is concluded by him that this charge is not proved. On this basis, the Principal Commissioner of Customs also had dropped the charges framed against the appellants.

6.1. We find from the facts of the case, that the bill of entry for imported goods was declared by the appellant customs broker on the basis of import documents that was given by the importer. Accordingly, the appellants had declared the description of the imported goods as 'Citric Acid Monohydrate'. Subsequently, during physical examination of imported goods by DRI, it was found that the imported goods contained 809 bags of crystalline substance and 1191 bags of white powdery substance, each bag weighing 25 kgs. each. It is on record that the appellants also presented themselves during the physical examination of the imported goods by DRI. The chemical test report conducted on the samples by the Dy. Chief Chemist, Nhava Sheva Customs revealed that the crystalline substance found to be conforming to the characteristics of Citric Acid, which are declared goods; however, the powdery substance did not conform to the characteristics of Citric Acid. Further test of some substance by M/s Geochem (Rajkot) Pvt. Ltd., it was found to confirm the parameters of Ascorbic Acid (Vitamin C). Further, the appellants were not aware of the imported goods contained any declared goods. We find that this particular fact itself brings out clearly that the alleged misdeclaration of the imported goods could only be established through chemical testing, and in the absence of any document, it is difficult to fasten such liability on the appellants.

6.2. From the above, we find that appellants have duly filed the bill of entry as per the documents given by the importer and they were not aware of the misdeclaration of goods. In the instant case, the mis-declaration was found by the department after physical examination and chemical testing of the goods, and hence the appellant Customs Broker cannot be found fault that he did not advise his client to comply with the provisions of the Act. Further, as such mis-declaration was not known to the appellants, the non-compliance by the importer of declaring the correct description, could not have been brought to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

6.3. We find from the records, that the appellant had verified the existence of the importer through the certificate of IEC issued by the Ministry of Commerce, indicating the name of the importer along with address, name of the proprietor, registration certificate for GST issued by the competent tax authority. The IEC was issued after verification of the principal place of business of the importer. Besides the above, the appellant had also submitted the authorization letter from the bank, confirming the signature of the proprietor of the importer, maintenance of current account held with Bank of Maharashtra, Khadakpada branch, Kalyan and PAN card of the proprietor.

6.4. 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 which is as below:

Extract of CBIC Circular No.9/2010-Customs dated 08.04.2010

*"**(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 provisions contained in the Regulation, which are required to be followed by the Customs Brokers. Such requirements include verification of the antecedents, 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 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 has also been provided that any two documents, among such specified documents, would be considered as sufficient compliance, for fulfilling the obligations prescribed under Regulation 10(n) of CBLR, 2018. We find that in the present case, the Customs broker 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 CBLR, 2018 by the appellants, as confirmed in the impugned order on such issue.

6.5. We find that in an identical case, the Hon'ble Madras High Court, in the case of Commissioner of Customs, Tuticorin Vs. Moriks Shipping & Trading (P) Ltd. 2015 (317) E.L.T. 3 (Mad.), has taken a view that the Customs broker cannot be penalized for the misdeclaration of the goods, when such misdeclaration was brought out to the fore on the basis of chemical analysis of the goods. The relevant portion of the judgement is extracted below:

"*6. Even at the very outset, it is evident from the order of the Tribunal that the goods were examined by the Customs Department in its laboratory, and analysis revealed that the goods were common salt instead of Organic Dye*

> *Intermediate G-Salt, as declared. Such being the case, this Court is baffled to note how penalty can be levied on the CHA. When the Department itself, only on the basis of the chemical analysis, was able to ascertain that the goods attempted to be exported was not common salt, how can a CHA be expected to know of the exact nature of the product at sight. In the above stated scenario, this Court has no hesitation to hold that the Commissioner (Appeals) and the Tribunal's reasoning for setting aside the penalty imposed on the CHA is fully justified.*
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> *7. Further, the case of Satish Gupta (supra) relied on by the learned counsel for the appellant, does not apply to the facts of the present case. That is a case in which there is a clear finding that the CHA had knowledge and was aware of the nature of goods. In the present case, we find that the CHA does not bear knowledge about the nature of goods and there is no material to infer so.*
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> *8. In such view of the matter, this Court finds no reason to take a view different from the one taken by the Tribunal and, therefore, this appeal is liable to be dismissed. Accordingly, the substantial question of law is answered against the Revenue and in favour of the 1st respondent.*
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> *9. Finding no merits warranting interference with the order of the Tribunal, the appeal is dismissed. However, there shall be no order as to costs."*

6.6. We find that in the case of M/s Perfect Cargo & Logistics Vs. Commissioner of Customs (Airport & General), New Delhi - 2021 (376) E.L.T. 649 (Tri. - Del.), this Tribunal has decided the issue of KYC verification of the importer/exporter by the Customs broker and the requirements specified in the CBLR, 2018. Relevant portion of the order is quoted below:

> ***"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 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 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 Commissioner that the required documents were not submitted is, therefore, factually incorrect.*
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> ***35.*** *The 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."*

6.7 We also notice that in the case of illegal export of 'muriate of potash' under the guise of 'sodium chloride', this Tribunal in the case of Parekh Cargo Logistics Pvt. Ltd. Vs. Commissioner of Customs, Pune - 2017 (347) E.L.T. 657 (Tri. - Mumbai), has examined the charges leveled against the customs broker and determined the issue as to the appropriateness of the punishment to be imposed on the customs broker. The relevant paragraphs in the order are extracted herein below:

> *"10. An agent is in business and can hardly be blamed for executing jobs for clients on certain reasonable references. It is alleged that this business came through a suspended customs house agent and, considering their palpable mutual interest in each other, expecting the appellant to carry out fool-proof verification and ascertainment is not a reasonable one. That the exporter was not a new entrant into the field is admitted in the record of proceedings. The scam of exporting 'muriate of potash' had apparently been going on for some time and it is hardly within the competence of an agent to unearth it or carry on a crusade against it; more so, when seasoned officers of customs were unable to do so. We see from the records that only three consignments were handled by the appellant and, that too, only in relation to filing of documents of 'factory sealed' containers. No evidence is forthcoming to establish that the appellant, in its capacity as an agent, was privy to the contents of the container.*
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> *11. We are, therefore, inclined to follow the ratio of the decision of this Tribunal in re K.S. Sawant & Co. that:*
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>> *"5.1 … … … … 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 Commissioner of Customs (General) to restore the CHA licence subject to the forfeiture of entire security amount tendered by the CHA."*
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> *12. For the above reasons, we believe that the ends of justice will be met by forfeiture of the security deposit. We set aside the revocation of licence of the appellant and allow the appeal to that extent."*

6.8 The law with regard to the Customs Broker's license, as per the authoritative pronouncements, cited by the learned Authorised Representative, are to be effect that unless there is positive involvement of the Customs broker or if the action/ omission on the part of Customs broker had led to defrauding of the Government revenue and if that was within his knowledge, imposition of harsh penalty by invoking the license is uncalled for and cannot be sustained and justified. The relevant portion of the judgements is extracted below:

(i) Ramarao Cargo Lines Pvt. Ltd. Vs. Commissioner of Customs (General), Mumbai in Customs Appeal No.86114 of 2020, CESTAT-Mumbai

> *"14. Even though we have agreed with the findings in the impugned that there are contravention of the Regulations discussed as above by the appellant Customs Broker, but no evidence is brought on record establishing the*

involvement of or in the knowledge of the appellant Custom Broker the attempt to export the crystalline white powder suspected to be 'Pseudo Ephedrine' by the exporter concealing the same in the declared export cargo namely, Chow-Chow (vegetables). In these circumstances imposition of harsh penalty by revoking the license of the appellant is not warranted and hence deserves to be set aside. The common principle laid down in the aforecited judgments is unless there is a positive involvement of the Customs Broker or the acts or omissions leading to defrauding the Revenue is within his knowledge, imposition of harsh penalty by revoking the license is uncalled for and cannot be sustained and justified. This Tribunal recently in N.T. Ramarao and Co. v. Commissioner of Customs, Chennai (supra) expressed a somewhat similar view. Simultaneously, we are of the opinion that the procedure laid down under various Regulations of CBLR, 2013 cannot be considered as mere technical one and its breach be taken lightly without punishment/penalty. Therefore, considering overall circumstances of the case, we are of the view that to meet the ends of justice, imposition of penalty of Rs. 50,000/- and forfeiture of security deposit directed in the Order be upheld and the same is accordingly confirmed.

15. In the result, the impugned order is modified to the extent of setting aside the direction of revocation of license under Regulation 18 of the CBLR, 2013; the imposition of penalty and forfeiture of security deposit and imposition of penalty of Rs. 50,000/-as directed is upheld."

(ii) M/s V.Arjoon Vs. Pr. Commissioner of Customs, Mumbai in Customs Appeal No.86041 of 2020, CESTAT-Mumbai

"13. In the instant case, the alleged offence took place in 2015 and the custom broker licence was suspended in 2019 after a period of four years. Normally, a punitive action like suspension is to be taken immediately, if the same is taken after four years, the sanctity of the same is vitiated. We also find that the custom broker has already suffered a lot. The livelihood of the custom broker and the employees dependent upon is at stake. Even if one concludes only on the basis of contradictory statement of the director of exporter, that the custom broker had initial knowledge of the actual port of discharge to be different from the port of discharge declared in the shipping bills, the punishment suffered by him for two years is enough to mitigate his violation or contravention of Regulation 11D of CBLR 2013 (now Regulation 10D of 2018). We have also gone through the various case laws cited by the appellants, we find that this Tribunal was consistently holding though the custom broker is cast upon the responsibility, the mitigation of the same would lie in imposition of penalty and forfeiture of the security deposit and revocation of licence which is agreeably a very harsh punishment, which is not warranted in such circumstances. Therefore, we are of the considered opinion the interest of justice will be met if the revocation of custom broker licence is set aside while upholding the order inasmuch as forfeiture of security deposit and imposition of penalty are concerned.

14. The appeal no. C/86041/ is accordingly partly allowed by setting aside the impugned order as far as the revocation of custom broker licence is concerned."

(iii) Mahavir Logistics Vs Pr. Commissioner of Customs (General), Mumbai in Customs Appeal No.85932 of 2020, CESTAT-Mumbai

"8. In view of the facts and circumstances supra, we find ourselves in agreement with the appellant that the detriments invoked against them are highly disproportionate. We also take note that the licencing authority, after considering the nature and extent of contributory negligence on the part of M/s. Mahavir Logistics, did find it appropriate to revoke the suspension ordered on 19th February, 2018 by order dated 26th April, 2018. For not having insisted

upon contact with the importer on record, revocation of licence and, that too, for first breach is, indeed, drastic. We find that the ends of justice would be served by confirming the forfeiture of security deposit and the imposition of penalty of Rs. 50,000/- while setting aside the revocation of the customs broker licence."

6.9. 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, 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 are 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."*

6.10. In the instant case, the alleged offence in importation of goods took place in July 2019 and the Customs broker license was suspended in December 2019, and the suspension was continued during the inquiry proceedings and the customs broker license was revoked in February 2021, after a lapse of about 19 months. Normally, immediate suspension action prior to conduct of regular inquiry, is taken considering the serious violations of CBLR, 2018 by the action of the Customs broker. Otherwise, the regulations provide for conducting regular inquiry, while license of Customs broker is in operation, for taking a decision on the suspension or revocation of the license. If the entire process of suspension proceedings are unduly delayed, then the very purpose of prescribing specific time limits in relation to conduct of inquiry proceedings is nullified and to such 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 he was out of his normal business for almost 2 years. It is also noted that the livelihood of Customs broker and the employees is dependent upon the functioning of Customs brokers business. Even if one concludes only on the basis of statements made by the IEC holder and the beneficial importer, the Customs broker had no knowledge of the concealment of undeclared goods along with the declared goods. The punishment suffered by being out of Customs broker business for about two years is enough to mitigate case of violations or contraventions of CBLR, 2018. We have also gone through the various case law cited by the appellants and the Revenue. We find that this Tribunal is consistently holding the view that though the Customs broker is cast upon the responsibilities as laid down in the CBLR, the mitigation of the same would lie in imposition of penalty and forfeiture of security deposit and revocation of license, which is clearly a very harsh punishment, is not warranted in such circumstances. Therefore, we are of the considered opinion that the interest of justice would be met, if the revocation of Customs broker license is set aside while upholding the order in as much as forfeiture of security deposit and imposition of penalty is concerned.

7. This appeal is accordingly party allowed by setting aside the impugned order as regards the revocation of Customs broker license is concerned. However, the action for imposition of penalty and for forfeiture of the security deposit by the Principal Commissioner of Customs (General) in the impugned order is upheld.

8. The appeal is disposed of in above terms.

(Order pronounced in the open court on 08.05.2023)

(C J MATHEW) **MEMBER (TECHNICAL)**	**(S. K. MOHANTY)** **MEMBER (JUDICIAL)**

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