CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85156 of 2024

(Arising out of Order-in-Original CAO No. 49/CAC/PCC(G)/SJ/CBS-Adj dated 23.11.2023 passed by Principal Commissioner of Customs (General), New Custom House, Mumbai.)

Husain Kasam Mukadam & Sons **.....Appellants**
(CB License No. 11/194)
1st Floor, Room No.12, Shree Krishna Bhavan,
89, P. D' Mello Road
Mumbai – 400 009.

VERSUS

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

Appearance:

Shri D.H. Nadkarni, Advocate for the Appellants
Shri Ranjan 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/85756/2024

Date of Hearing: 16.04.2024
Date of Decision: 05.08.2024

PER : M.M. PARTHIBAN

This appeal has been filed by M/s Husain Kasam Mukadam & Sons, Mumbai (herein after, referred to as 'the appellants' for short) assailing the Order-in-Original CAO No. 49/CAC/PCC(G)/SJ/CBS-Adj dated 23.11.2023 (referred to as 'the impugned order') passed by learned Principal Commissioner of Customs (General), New Custom House, Ballard Estate, Mumbai-I.

2.1 In the impugned order, the learned Principal Commissioner of Customs (General), Mumbai in exercise of powers conferred upon him under Regulation 17 (7) of the Customs Brokers Licensing Regulations, 2018 (CBLR) had passed an order for revocation of the CB license issued to the appellants for acting as a Customs Broker under Regulation 14 *ibid* and for forfeiture of entire security deposit furnished by the appellants, on the condition that such order shall come into effect, in case of any contrary decision is taken by higher appellate authority on the Order-in-Original CAO No. 64/CAC/PCC(G)/SJ/CBS Adj. dated 30.12.2022, providing for suspension of CB license and forfeiture of security deposit, which had already been passed by him. Besides this, in the impugned order he had also imposed a penalty on the appellants under Regulation 18 *ibid*.

2.2 Briefly stated, the facts of the case are that the appellants herein is a Customs Broker (CB) holding a regular CB license issued by the Mumbai Customs under Regulation 7(2) of Customs Brokers Licensing Regulations (CBLR), 2018. On the basis of specific information received by Customs officers of Special Intelligence & Investigation Branch-Imports [SIIB(I)], that certain bogus IEC holders are mis-declaring the import of Mortar and are also heavily undervaluing such imported 'Mortar', have initiated investigation against such imports. Accordingly, a live consignment of imports under Bill of Entry (B/E) No. 6357327 dated 22.11.2021 was examined under panchanama proceedings on 27.11.2021. Simultaneous searches were also conducted on various premises of importers and CBs and statements were also recorded from the persons concerned with these imports. The appellants were one such CB who had filed four B/Es for the importer M/s Shri Ninai Enterprises and another nine B/Es for importer Shri Laxmi Enterprises in the past involving such mis-declaration and under valuation in respect of post imports. From the investigation conducted by the SIIB(I) and offence reports dated 05.05.2022 and 22.07.2022 received from those customs investigation authorities, 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(e), 10(n), 10(q) and 13(3), 13(4), 13(7) and 13(12) of CBLR, 2018. Accordingly, they had initiated show cause proceedings by issue of notice No. 13/2022-23 dated 08.07.2022 for initiating inquiry proceedings under Regulation 17 *ibid*, against violations of CBLR as above.

2.3 Upon completion of the inquiry, a report dated07.08.2023was submitted by the Inquiry Authority concluding that all charges framed against the appellants for violation of Regulations 10(e), 10(n), 10(q) of CBLR, 2018 have been 'not proved' and charges against Regulations 13(3), 13(4), 13(7) and 13(12) of CBLR, 2018 are held to be 'proved'. Accordingly, the Principal Commissioner of Customs (General), Mumbai, being the licensing authority had issued a disagreement memo dated 03.10.2023 and passed the impugned order dated 24.11.2023 under Regulations 17(7), 14 and 18 *ibid,* for deemed revocation of CB License of the appellants and for forfeiture of entire amount of security deposit upon revival of the CB license already revoked by him by any higher appellate authorities, 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(e), 10(n), 10(q), 13(3), 13(4), 13(7) and 13(12) of CBLR, 2018 have been countered by them and inquiry authority himself has dropped the proceedings against violation of Regulations 10(e), 10(n), 10(q) ibid as not proved. One of the main arguments advanced by the Learned Advocate against the impugned order dated 24.11.2023, is that the time limit set out for inquiry and revocation of the license had not been followed, inasmuch as the inquiry officer though appointed on 08.07.2022 had taken about 13 months to submit his report on 07.08.2023, whereas the Regulations provide for 90 days period from the date of issue of notice. Thus, he stated that the inquiry was in gross violation of time limit prescribed under the Regulations and it cannot be said that such delay is reasonable in terms of the judgement delivered by the Hon'ble High Court of Bombay in *Principal Commissioner of Customs Vs. Unison Clearing P. Ltd.– 2018 (361) E.L.T. 321 (BOM).*

3.2 On the factual matrix of the case, learned Advocate submitted that in this case, the dispute relates to imports during December, 2018 to August, 2021, when the appellants firm was managed by Shri Shahbaz Abdul Rahman Dalvi and his spouse Smt. Rashida Abdul Rahman Dalvi, both being partners in the appellants CB firm. As the said Shri Shahbaz Abdul Rahman Dalvi had deceased on 10.10.2019, his son Shri Abdul Rahman Dalvi was inducted as partner of the appellants' firm. In terms of Regulation 12 ibid, the appellants CB firm was allowed to continue to operate on the basis of G-card holder Shri Majid Patel, employed by the appellants firm for two years vide Customs Notice No.177/2019-20 dated 04.11.2019. During the disputed period the intermediary Shri Sambhaji R Bhosale had brought the import work connected with import of Mortar. As there was sudden vacuum in their business firm after the demise of Shri Shahbaz Abdul Rahman Dalvi, it was a difficult time for the appellants in handling their business. Shri Abdul Rahman Dalvi was only an overall in-charge of the business of the appellants CB as her mother Smt. Rashida Abdul Rahman Dalvi, Partner of appellants CB firm, was of 75 years old; and he is not working as an employee looking after the customs clearance work; during the material time he was still preparing for Rule 6 ibid examination. The customs clearance work of the appellants was managed by G-card/F-card holders and senior employees. Thus, the Advocate submitted that there is no violation of Regulation 13(3) and 13(4) *ibid*. He further submitted that Shri Sambhaji R Bhosale is an intermediary who was bringing import work to the appellants CB and was not an employee of the appellants, and hence there was no violation in respect of Regulations 13(7) and 13(12) *ibid*.

3.3 Learned Advocate further submitted that the appellants CB firm had conducted all KYC verification through digital mode but have never met the importer; further all the documents verified by them through digital mode have proved to be genuine and is not forged; thus, not meeting the importer personally and procuring the documents through intermediary cannot form the grounds for alleged violation of Regulations 10(e) and 10(n) ibid. He further submitted that Shri Abdul Rahman Dalvi had co-operated with the customs investigation authorities and have given his voluntary statement on 29.11.2021; the allegation of violation against Regulation 10(q) ibid was accordingly dropped in the impugned order at paragraph 14.6, but inadvertently he confirmed the same allegation at paragraph 16 of the impugned order, thus resulting in apparent contradiction.

3.4 Further, learned Advocate stated that the appellants CB did not had any prior knowledge about the fact that the importer is going to mis-declare or undervalue the goods; they had received the documents through logistics middle men Shri Sambhaji R Bhosale, who knew the importer and they did not directly got the documents from the importers, and they had duly verified the existence of the importers through the statutory documents in the manner prescribed under CBLR. He further stated that for the acts of misdeeds done by the importers, the appellants CB cannot be held liable.

Thus, he claimed that the appellants did not contravene any of the Regulations *ibid*.

3.5 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 Bombay, in the respective cases mentioned below:

(i) *K.S. Sawant & Co. Vs. Commissioner of Customs (General), Mumbai*- 2012 (284) E.L.T. 363 (Tri.-Mumbai)

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

(iii) *Setwin Shipping Agency* Vs. *Commissioner of Customs (General), Mumbai*- 2010 (250) E.L.T. 141 (Tri.-Mumbai)

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

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 (e), (n) and (q) of Regulation 10 *ibid*, has been examined in detail by the Principal Commissioner. The appellants CB got all the documents for import from Shri Sambhaji R Bhosale, who is neither IEC holder nor importer or their representative; they never verified the authenticity of KYC documents properly and did not cross check or conducted proper verification of existence of importer at their level. Thus, learned AR justified the action of Principal Commissioner of Customs (General) in deemed revocation of the appellant's CB license, imposition of penalty and forfeiture of security deposit in the impugned order and stated that the same is sustainable in law.

5. We have heard both sides and perused the case records.

6.1 The issue involved herein is to decide whether the appellant Customs Broker has fulfilled all his obligations as required under CBLR, 2018or not. The specific sub-regulations which were alleged to have been violated by the appellants are Regulations 10(e), 10(n), 10(q), 13(3), 13(4), 13(7)and 13(12) of CBLR, 2018, and hence there are seven distinct charges framed against the appellants. We find that the Regulation 10*ibid*, 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.

Similarly, Regulation 13 *ibid* provide for engagement or employment of persons by a customs broker. These regulations are extracted and given below as follows:

"Regulation 10. Obligations of Customs Broker: -

A Customs Broker shall -

…

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

…

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

…

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

"Regulation 13. Engagement or employment of persons: -

(1) A person who has qualified the examination referred to in regulation 6 may engage himself in the work relating to the clearance of goods through customs on behalf of a firm or a company licensed under these regulations.

…

(3) A Customs Broker may, having regard to the volume of business transacted by him, employ any number of persons other than an F card holder to assist him after verifying their antecedents and identity at the declared address by using reliable, independent, authentic documents, data or information:

***Provided** that such an employed person shall possess the Aadhaar number issued to him and that the minimum educational qualification of such persons so employed shall be 10+2, or equivalent.*

(4) Employment of a person referred to in sub-regulation (3) shall be made only after obtaining the approval of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, who shall in granting approval, take into consideration the antecedents and any other information pertaining to the character of such person.

…

(6) Notwithstanding anything contained in sub-regulation (5), a G card holder who is employed under a Customs Broker may, on his employment under any other Customs Broker, with the approval or no objection of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, be exempted from passing of such examination.

(7) A Customs Broker shall authorise only such employee who has been issued a photo identity card in Form F or Form G as the case may be to sign the declaration on the bills of entry, shipping bills, annexure thereof or any other document generated in connection with the proceedings under the Act or the rules or regulations made thereunder.

(8) Where the Customs Broker has authorised any person employed by him in accordance with sub-regulation (7) to sign documents relating to his business on his behalf, he shall file with the Deputy Commissioner of Customs or Assistant Commissioner of Customs of each Customs Station, as the case maybe, a written authority in this behalf and give prompt notice in writing if such authorisation is modified or withdrawn.

(11) Any change in the persons issued a F card or G card or H card and actually engaged in the work in the Customs Station on behalf of a licensee firm or company shall be communicated forthwith by the firm or the company, as the case may be, to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, and no new person other than 'F', 'G' or 'H' card holders, shall be allowed to work in the Customs Station as a duly authorised employee on behalf of that firm or company.

(12) The Customs Broker shall exercise such supervision as may be necessary to ensure proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment."

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 (e), (n) and (q) of Regulation 10 ibid as they did not have any interaction with the IEC holder/importer; they did not meet the importer personally and had without the knowledge of the importer acquired the documents through the middle man; and they also did not properly verify the KYC documents, as the IEC holder/importer did not exist in the declared address as brought out in the investigation, which prove that they were not careful and not diligent in undertaking the KYC verification by using reliable and independent information. Further, in respect of violations against Regulations 13(3), 13(4), 13(7) and 13(12) ibid, the learned Principal Commissioner had held that approval for employment of Shri Abdul Rahman Dalvi in the appellants CB firm was not obtained from the Deputy Commissioner of Customs nor any photo identity card was issued to him in form H, G, or F, and thus he was handling the activities of appellants CB firm unauthorizedly. Further, Shri Sambhaji R Bhosale who was not an employee of appellants CB, but a middle man acting at the behest of the importer Shri Shiv Narayan Saxena, was making all the payment through his business companies for clearance of imported goods and was allowed to operate and file the documents by the appellants CB. Thus, learned Principal Commissioner had concluded that Shri Sambhaji R Bhosale and Shri Abdul Rahman Dalvi have acted in an unauthorized manner an illegally, while processing the B/Es and conducting day to day activities of CB firm, respectively, have violated the regulations and failed to fulfill the obligations under Regulations 13(3), 13(4), 13(7) and 13(12) *ibid*. Thus, the adjudicating authority had passed the impugned order confirming all the allegations of violation of above Regulations of CBLR, 2018.

7.1 Before we examine the allegations of violation of various Regulations under CBLR against the appellants, firstly we would like to examine the specific impugned order dated 23.11.2023 passed by the learned Principal Commissioner of Customs (General) to see whether it is in compliance with the legal provisions. This is for the reason that when the CB license of the appellants CB was already revoked and the entire security deposit has also been already forfeited earlier vide Order-in-Original No. 64/CAC/PCC(G)/ SJ/CBS-Adj. dated 30.12.2022 by the very same authority, for which an appeal has also been filed by the appellants and the same is pending disposal before this Tribunal, can there be another order for the same effect be passed as per Customs statute. In this regard, we find that Regulations 17 *ibid* provide for the detailed procedure in conduct of regular inquiry against the CB in terms of CBLR, 2018. The extract of the same is given below:

> *"**Regulation 17. Procedure for revoking license or imposing penalty** : -*
>
> *(1) The Principal Commissioner or Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the license or impose penalty requiring the said Customs Broker to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Customs Broker desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.*
>
> *(2) The Commissioner of Customs may, on receipt of the written statement from the Customs Broker, or where no such statement has been received within the time-limit specified in the notice referred to in sub-regulation (1), direct the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, to inquire into the grounds which are not admitted by the Customs Broker.*
>
> *(3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case maybe, shall, in the course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings, and he may also put any question to any person tendering evidence for or against the Customs Broker, for the purpose of ascertaining the correct position.*
>
> *(4) **The Customs Broker shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings**, and where the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines permission to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing.*

(5) At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall prepare a report of the inquiry and after recording his findings thereon submit the report within a period of ninety days from the date of issue of a notice under sub-regulation (1).

(6) The Principal Commissioner or Commissioner of Customs shall furnish to the Customs Broker a copy of the report of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, and shall require the Customs Broker to submit, within the specified period not being less than thirty days, any representation that he may wish to make against the said report.

(7) The Principal Commissioner or Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs Broker, ***pass such orders as he deems fit either revoking the suspension of the license or revoking the license of the Customs Broker*** *within ninety days from the date of submission of the report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, under sub-regulation (5):*

> ***Provided*** *that no order for revoking the license shall be passed unless an opportunity is given to the Customs Broker to be heard in person by the Principal Commissioner of Customs or Commissioner of Customs, as the case maybe.*

(8) Where in the proceedings under these regulations, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, comes to a conclusion that the F card holder is guilty of grounds specified in regulation 14 or incapacitated in the meaning of the said regulation, then the Principal Commissioner of Customs or Commissioner of Customs may pass an order imposing penalty as provided in regulation 18:

> ***Provided*** *that where an order is passed against an F card holder, he shall surrender the photo identity card issued in Form F forthwith to the Deputy Commissioner of Customs or Assistant Commissioner of Customs.*

(9) Where in an offence report, charges have been framed against an F card holder in addition to the Customs Broker who has been issued a license under regulation 7, then procedure prescribed in regulations 16 and 17 shall be followed mutatis mutandis in so far as the prescribed procedure is relevant to the F card holder:

> ***Provided*** *that where any action is contemplated against a G card holder alone under these regulations, then instead of authority referred to in sub-regulation (8), a Deputy Commissioner or Assistant Commissioner rank officer shall pass such order as mentioned in the said sub-regulation along with debarring such G card holder from transacting the business under these regulations for a period of six months from such order.*
>
> ***Provided*** *further that where an order is passed against a G card holder, then he shall surrender the photo identity card issued in Form G forthwith to the Deputy Commissioner of Customs or Assistant Commissioner of Customs.*
>
> ***Explanation . -*** *Offence report for the purposes of this regulation means a summary of investigation and prima facie framing of charges into the allegation of acts of commission or omission of the Customs Broker or a F card holder or a G card holder, as the case may be, under these regulations thereunder which would render him unfit to transact business under these regulations."*

7.2 Plain reading of the above legal provisions of CBLR state in clear terms that the inquiry proceedings have to be followed as per the procedure prescribed in the Regulation 17 *ibid.* The following are the various steps involved therein in passing an order under Section 17 inquiry proceedings:

(i) Issue of Show Cause Notice to a CB against whom action has been proposed under CBLR

(ii) On the basis of written reply submitted by the CB, determine the grounds which have been accepted by him and those which have not been admitted by the CB, and appoint an Inquiry Officer to inquire into such grounds which are not admitted

(iii) Inquiry officer to take into account all necessary evidence, oral or documentary for ascertaining the correct position

(iv) Opportunity for cross-examination of the persons examined in support of the evidence against the CB

(v) Preparation of the inquiry report containing the findings of the inquiry officer

(vi) Obtaining written representation from the CB, if he wish to submit any grounds against the inquiry report

(vii) Principal Commissioner of Customs to consider the inquiry report, CB's representation and provide an opportunity of personal hearing before passing an adjudication order on the inquiry proceedings

(viii) Specific penalties against 'F' card holder, in case the Principal Commissioner comes to a conclusion for such imposition, duly following the procedure as above.

The specific sub-regulation (7) of Regulation 17 ibid, provides the legal authority for the Principal Commissioner/Commissioner of Customs to pass such orders as he deems fit, either revoking the suspension of the license or revoking the license of the Customs Broker within ninety days from the date of submission of the inquiry report. Thus, it is very clear that if a CB license is operational, then the said order can be passed to the effect that it can be revoked or allowed to continue without revocation; or, if the CB license is already suspended immediately without inquiry under the Regulations 16(1) *ibid*, then the same can be further revoked in continuation of such suspension or the said suspension itself can be revoked. Further, such order under Regulation 17(7) *ibid*, has to be specific and is feasible to be implemented on the date of the issue of such an order. There is no express legal provision, for revocation of a CB license, that is already revoked by an earlier order issued under Regulation 17(7) *ibid*. In other words, there can be only one order for revocation of the CB license, as it purport to cancel the existing CB license. It is also to be noted that there is no legal provision under Regulation 17(7) *ibid*, for issue of an order as 'deemed revocation of

CB license' to take into effect on a future date, in case the earlier order of the same authority is set aside in any appellate forum, immediately with effect from such order of the appellate authority. It is a fact that on the date of passing of the impugned order 23.11.2023, the earlier order of the Principal Commissioner suspending the appellants was in effect and on appeal by the appellants, the Tribunal had passed an order in respect of the Order-in-Original No. 64/CAC/PCC(G)/ SJ/CBS-Adj. dated 30.12.2022 in the earlier case of the appellants only on 29.11.2023. In view of the above analysis of the legal provision under Regulation 17(7) *ibid* and on the facts of the case, we find that there is no legal provision for passing the impugned order and therefore on this ground alone, the impugned order is liable to be set aside.

7.3 Further, sub-regulation (1) of Regulation 17 *ibid* also states in clear terms that the appellants CB shall be served with a show cause notice stating the grounds on which it is proposed to revoke the license or impose penalty against the Customs Broker. In this regard, we find that the SCN dated 08.07.2022 issued in this case, propose to revoke the license and for forfeiture of security deposit and/or for imposition of penalty. From the facts of the case, it is clear that the license No.11/194 issued to the appellants CB was already revoked by the Order-in-Original No.64/CAC/PCC(G)/ SJ/CBS Adj. dated 30.12.2022. Thus, the proposal made in the SCN dated 08.07.2022 is *abinitio void* and thus the SCN itself is not legally sustainable.

8.1 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(e) ibid the adjudicating authority had found that the appellants CB did not contact the actual proprietor of the importer firm i.e., with the IEC holder Shri Santosh R Bhosale and it was his brother Shri Sambhaji R Bhosale, forwarding agent who used to bring all import work despite not having any authority letter from IEC holder to the appellants; and that the appellants CB never met the importers personally. Thus, he concluded that it showed that the appellants had very lack luster approach to handle import documents and thus the appellants CB have violated Regulation 10(e) *ibid*.

8.2 From the facts of the case and the voluntary statements given by various persons during investigation of the case, it is seen that the appellants CB firm had Shri Shahbaz Abdul Rehman Dalvi as the proprietor and he was handling the customs work as authorized person till his death on 10.10.2019 and after that as approved by Customs authorities, the appellants were allowed to conduct their business on the basis of G-card holder & employee of the appellants CB firm and later a F-card holder employee was approved as authorized signatory of the appellants CB. It is fact on record that appellants CB had obtained the import documents for the impugned goods covered under various B/Es from one Shri Sambhaji R Bhosale, forwarding agent/ intermediary, who had known Shri Santosh R Bhosale, being his younger brother and IEC holder &proprietor of importer firm M/s Ninai Enterprises; and the importer firm M/s Laxmi Enterprises through Shri Shiv Narayan Saxena, proprietor of M/s Asian Machine Tools and his known accomplice in the import export trade.

8.3 The impugned goods in which under-valuation and mis-declaration were alleged have been imported through thirteen B/Es during the December, 2018 to August, 2021 and the Customs investigation for the past imports was initiated based on a live B/E 6357327 dated 22.11.2021. Thereafter, search of the premises of the importers, appellants were conducted and voluntary statements from various persons were recorded on 29.11.2021. However, subsequently Shri Abdul Rehman Dalvi, partner of the appellants CB was called for participating in the investigation only on 29.11.2021 for recording his statement under Section 108 of the Customs Act, 1962. Further, the allegation against the importer is that they attempted to mis-declare the description and under valuation of imported goods. Further, it is on record that for such mis-declaration and undervaluation of imported goods separate action under the provisions of the Customs Act, 1962 was taken for demand of differential duty and for imposition of penalty against the importers, besides the appellants CB firm vide SCN dated 18.05.2022. Thus, it is seen that alleged mis-declaration and undervaluation is solely on account of the action taken by the importer, by providing incorrect information in respect of imported goods. There is no role of Customs Broker in the above activities of the importer. Further in respect of the imports that have taken place in March, 2018 to August, 2021 necessary investigation was initiated in November, 2021, but the offence report against the appellants CB was received only on 05.05.2022 and 22.07.2022. Thus, there is no ground for such delayed action by the department, particularly when there is no role for the appellants CB in the activities of the importer and the reasons for undue delay have also not been explained anywhere in the impugned order.

8.4 We also find that on the above issue, 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."*

In the absence of any document to prove the claim of mis-declaration and under valuation of import goods on the part of the appellants, the findings given by the learned Principal Commissioner of Customs in the impugned order that the appellants has failed to exercise due diligence to ascertain the correctness of information is difficult to prove for fastening such liability on the appellants CB for holding them responsible for violation of Regulation 10(e) *ibid*.

9.1 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 importers/IEC holder, and they were not careful and diligent in undertaking the KYC verification process about the background of importers. We find from the records, that the appellants CB had obtained the KYC documents from the importers and verified the existence of the importers through digital mode viz., Certificate of Importer-Exporter Code issued by the Additional Director General of Foreign Trade, Ministry of Commerce and Industry, Government of India; signature and account verification from bank. The inquiry authority had also accepted the same and dropped the charges against this violation in his inquiry report.

9.2 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, and verification of any two documents among specified documents is sufficient for fulfilling the obligation prescribed under Regulation 10(n) of CBLR, 2018. Thus, we do not find any legal basis for upholding the alleged violation of Regulation 10(n) *ibid* by the appellants in the impugned order.

9.3 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."*

9.4 Further, we also find that the Hon'ble High Court of Delhi has held in the case of *Kunal Travels (Cargo) Vs. Principal Commissioner of Customs (I&G), IGI Airport, New Delhi* reported in 2017 (354) E.L.T. 447 (Del.), the appellants CB is not an officer of Customs who would have an expertise to identify mis-declaration of goods. The relevant portion of the said judgement is extracted below:

> *"The CHA is not an inspector to weigh the genuineness of the transaction. It is a processing agent of documents with respect to clearance of goods through customs house and in that process only such authorized personnel of the CHA can enter the customs house area....... It would be far too onerous to expect the CHA to inquire into and verify the genuineness of the IE Code given to it by a client for each import/export transaction. When such code is mentioned, there is a presumption that an appropriate background check in this regard i.e. KYC etc. would have been done by the customs authorities."*

9.5 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 that the appellants have fulfilled in respect of the compliance with respect to Regulation 10(n) *ibid*.

10. As regards alleged violation of Regulation 10(q) *ibid*, it is interesting to note that learned Principal Commissioner had examined the issue and had held that the appellants had not violated the said Regulation 10(q) *ibid*, though inadvertently he has mentioned the regulation as '10(n)' instead of '10(q)'. However, in the order he has simply confirmed the violation by stating that the appellants CB had failed to discharge his duties cast upon him *inter alia* Regulation 10(q) *ibid*. Further, both sides have not brought to our knowledge of any corrigendum issued in this respect or in general of the impugned order. The extract of relevant portion of the impugned order is given below:

> ***"14.3*** *For the sake of brevity, I refrain from reproducing the facts of the case which have already been discussed above. I, now examine the charges in the SCN sequentially.*

14.4 With regard to violation of Regulation 10(e) of CBLR, 2018:-
The regulations 10(e) of CBLR, 2018 reads as: a Customs Broker shall 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;

xx xx xx xx

In view of the above, I am of the considered view that the CB failed to exercise due diligence to ascertain the correctness of information in respect ***of fraudulent exported goods*** *and was also not in position to impart any* ***information to the exporter*** *with reference to any work related to clearance of cargo or baggage. Therefore, I hold that the CB has violated the provisions of Regulation 10(e) of the CBLR, 2018.*

14.5 With regard to violation of Regulation 10(n) CBLR, 2018:-

xx xx xx xx

From the above facts and circumstances, I am of the considered view that the CB in the present case showed an act of carelessness which resulted in fraudulent activities. Therefore, I hold that the CB has violated the provisions of Regulation 10(n) of the CBLR, 2018.

14.6 With regard to violation of Regulation 10(q) of CBLR, 2018:-

xx xx xx xx

The IO in his report dated 07.08.2023 has stated that Shri Abdul Rehman Dalvi, son of the deceased working partner, though not authorised card holder, had appeared before the investigating officer to give his statement promptly hence, there is no apparent non-cooperation in the investigation on the part of CB. IO hold that charge of violation of 10(q) of CBLR 2018 is not proved.

From facts of the case, I could not notice any instance of non cooperation on part of CB and hence I inclined to agree with findings of IO.

Therefore, I hold that the CB has not violated the provisions of Regulation ***10(n)*** *of the CBLR, 2018.*

xx xx xx xx

16. *I hold that the proof of charges in inquiry are acceptable and tenable based on the available evidence, the facts and circumstances of the case, which certainly warrant penal action against the CB. Therefore, for their acts of omission and commission, CB M/s Husain Kasam Mukadam & Sons (CB Lic no. 11/194) is held liable and guilty for violating the provisions of CBLR, 2018 as mentioned above, I hold that the* ***CB has failed to discharge his duties cast upon him with respect to Regulation*** *10(e), 10(n),****10(q),*** *13(3), 13(4), 13(7) and 13(12) of CBLR, 2018 and is liable for penal action. Accordingly, I pass the following order.*

xx xx xx xx”

We are unable appreciate the manner in which the impugned order has been passed with above glaring errors apparent on the face of it. It is also a fact on record that the SCN in this case was issued on 08.07.2022; thus, as the licensing authority, the learned Principal Commissioner was aware of the ongoing inquiry proceedings in this case, even though the inquiry report was yet to be submitted, when he passed the earlier order dated 30.12.2022, on the same appellants against one another SCN dated 23.06.2022 on which inquiry report thereon was submitted on 30.09.2022. Thus, in terms of Regulation 17 ibid, the learned Principal Commissioner could have waited for the entire inquiry proceedings to be completed involving two separate proceedings and then pass necessary orders as provided in the CBLR. However, it is seen that despite the CB license already under suspension as on date of passing the impugned order, again one another deemed suspension to take effect from a future event and date was prescribed and even here neither the prescribed time lines for completion of inquiry proceedings were followed nor reasonable explanation offered for the delay in conclusion of CBLR proceedings. As we have already observed at paragraph 7.1 and 7.2 above, there is no legal provision under CBLR for taking such action by the licensing authority. The above casual manner of handling the customs broking license matters by the authorities below do not instill confidence with us to state that CBLR is properly implemented for the purpose for which it has been framed for carrying out the provisions of Section 146 of the Customs Act, 1962. Hence, on this account too, the impugned order is not legally sustainable.

11. In respect of the allegation against Regulations 13(3), 13(4), 13(7) and 13(12) *ibid*, learned Principal Commissioner had found that Shri Sambhaji R Bhosale have acted in an unauthorized manner an illegally in filing, processing the B/Es and Shri Abdul Rahman Dalvi in conducting the day to day activities of CB firm. Hence, he concluded that the appellants have violated the regulations and failed to fulfill the obligations under the said Regulations. In this regard, we find that that the appellants CB firm, after the demise of the proprietor had obtained the permission of the Deputy Commissioner of Customs, CB section, New Custom House vide Notice No.177/2019-20 dated 04.11.2019 for transacting business through their employee cum G-card holder Shri Majid Patel; and later also obtained approval of the Assistant Commissioner of Customs, Customs Broker Section, New Custom House vide Notice No. 156/2020-21 dated 17.01.2022 for appointing a F category employee Shri Abdul Malik Abubakar Surty as authorised signatory for their CB firm, in order to conduct the business of

customs broker in compliance with CBLR, 2018. However, we also note that besides receiving the documents through intermediary, which has been permitted in view of the order of the Tribunal in the case of K.S. Sawant & Co. (supra), the said intermediary i.e., it was alleged that Shri Sambhaji R Bhosale, who is not an employee of the appellants CB firm, was allowed to file the documents with the customs without proper authority and in an unauthorised manner. However, as the AC/DC of Customs in-charge of the Customs Broker Section, New Customs House themselves have approved the persons nominated by the appellants as authorised signatory for transacting business with customs in the above Public notices confirming that those two persons are duly authorised to transact with customs, and in the absence of any proof for such allegation, we are unable to accept the findings arrived at by the learned Principal Commissioner in the impugned order that the documents were handled in unauthorized manner.

12. In view of the foregoing discussions, we do not find any merits in the impugned order passed by the learned Principal Commissioner of Customs (General), Mumbai in deemed revocation of the CB license of the appellants; for forfeiture of security deposit second time and for imposition of penalty, inasmuch as there is no violation of regulations 10(e), 10(n), 10(q) and 13(3), 13(4), 13(7) and 13(12) *ibid*, and the findings in the impugned order is contrary to the facts on record. Further, the impugned order is not sustainable as it has been issued in violation of Regulation 17(7) *ibid*.

13. Therefore, by setting aside the impugned order dated 23.11.2023, we allow the appeal in favour of the appellants.

(Order pronounced in open court on 05.08.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha