

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

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87643 of 2023

(Arising out of Order-in-Original No. 44/CAC/PCC(G)/SJ/CBS-Adj dated 19.10.2023 passed by the Principal Commissioner of Customs (General), Mumbai)

Mac Transoceanic Private Limited

.... Appellants

CB License No. 11/2661

B-40, Ashoka Complex, Sector-18, Vashi

Navi Mumbai - - 400 705

Versus

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

New Custom House,

Ballard Estate,

Mumbai – 400 001

Appearance:

Shri Hari Radhakrishnan, Advocate for the Appellant

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/85804/2024

Date of Hearing: 17.04.2024

Date of Decision: 26.08.2024

PER: M.M. PARTHIBAN

This appeal has been filed by M/s Mac Transoceanic Private Limited (herein after, referred to as 'the appellants'), holders of Customs Broker License No. 11/2661 assailing Order-in-Original CAO No. 44/CAC/PCC(G)/SJ/CBS/-Adj dated 19.10.2023 (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 are 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. A specific alert dated 11.10.2022 was received from

National Customs Targeting Centre (NCTC), informing the Customs Central Intelligence Unit (CIU) of the Jawaharlal Nehru Customs House (JNCH) that goods imported by M/s Giriraj Corporation (IEC AAFPP 0369P) vide into bond Bill of Entry (B/E/) No. 1016547 dated 14.09.2022 is likely to be cleared from the bonded premises at M/s Arshiya Ltd., Free Trade Warehousing Zone (FTWZ) vide ex-bond B/E No.2024008 dated 07.10.2022 for DTA clearance through container No. ZCSU 7510665, through the appellants CB involving gross mis-declaration of the imported goods. In pursuance of such alert, the CIU of JNCH officers conducted examination of the said imported goods after obtaining necessary permission from the Development Commissioner of Arshiya, FTWZ. During the examination of said imported goods, CIU of JNCH officers found that there is gross mis-declaration of the quantity, description and nature of the goods with an intent to evade the applicable customs duty. The modus operandi is that importer/appellants CB had declared different type of fabric in the B/E, wherein one type of fabric attract customs duty on weight basis and the other type attracting customs duty on unit of measurement basis were mis-declared; further, fabric involving lesser rate of duty was declared with more quantity and the quantity of those fabric attracting higher rate of duty was declared with less/nominal quantity; therefore, mis-declaration of quantity enabled depression of basic parameters on the basis of which duty is assessed enabling evasion of customs duty. However, on examination by CIU of JNCH officers, it was found that the fabric attracting higher rate of duty was found to be more in quantity and those fabric having lesser rate of duty was found to be lesser in number, which was exactly contradictory to the declarations made in the B/E, thereby confirming the intention of evasion of customs duty payable in respect of such goods. Further, the department also found that there 16 other consignments of fabrics, involving similar modus of duty evasion pending for clearance from Arshia, FTWZ for which DTA clearance B/Es have been filed by the appellants CB. All such consignments were examined and it was found by CIU of JNCH, that there were similar mis-declaration involving evasion of customs duty.

2.2. On the basis of investigation report dated 09.12.2022 relating to three different importers involving duty evasion of Rs.1,28,13,523/- by M/s Infinity Fabric Hub LLP, Rs. 80,70,713/- by M/s Dixon Healthcare Nutrients & Supplements Pvt. Ltd. And Rs. 54,21,139/- by M/s Giriraj Corporation,

by adopting the above-described *modus-operandi* of customs duty evasion for which all the B/Es were filed by the appellants CB, 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) and 10(e) of CBLR, 2018. Accordingly, he had immediately suspended the CB license of the appellants under Regulation 16(1) of *ibid*, vide Order No. 73/2022-23-CBS dated 27.01.2023; and such suspension was continued vide Order No. 79/2022-23 dated 28.02.2023; further the department had initiated show cause notice No. 40/2022-23 dated 09.03.2023 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) and the IO held personal hearings on 08.04.2023. Upon completion of the inquiry, a report was submitted on 23.08.2023 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 19.10.2023 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 of Rs.50,000/- 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 both the allegations of violation against Regulations 10(d) and 10(e) of CBLR, 2018 have been countered by them in the appeal papers filed by them. At the outset, learned Advocate submitted that the show-cause notice dated 09.03.2023 has been issued under CBLR, 2018 after the expiry of 90 days as the alleged offence occurred on 18.10.2022 and the offence report was later issued. The Inquiry Officer had conducted enquiry on 08.04.2023 and heard the representative of the appellants. However, no Inquiry Report was issued within the mandatory period of 90 days from the date of issuance of show cause notice as the Inquiry report was submitted on 23.08.2023. Further, the Inquiry Report dated 23.08.2023 was served on the appellants only on 01.09.2023. He submitted that the inquiry has been conducted and finalized beyond the 90 days' time limit specified under

Regular 17(5) of CBLR, 2018. Therefore, he pleaded that the proceedings are liable to be set aside on this ground alone.

3.2 In respect of Regulations 10(d) *ibid*, learned Advocate stated that the appellants Customs Broker can be held to be violating Regulation 10(d), only if it is established that he was aware about the attempt made by the importer to clear the goods by mis-declaration by undervaluation and that despite knowing this, he has abetted or colluded with the importer. In the present case, there is absolutely no evidence to conclude that the appellants Customs Broker had abetted and colluded with the importer to evade duty. In fifth sub-paragraph of paragraph 13.1 of the impugned order, the Commissioner has held that the appellant is sponsoring the importers to import the fabrics from M/s Arshiya Ltd., FTWZ and that the appellant is helping the importers in mis-declaring the goods. In this regard, he submitted that such a finding is absolutely without any basis. He stated that the agreement entered into between the appellants CB and M/s Arshiya Panwal Logistics Services Pvt. Ltd. clearly states that they are acting as a Customs Broker and have been authorized by importers viz., M/s Dixon Healthcare Nutrients & Supplement Pvt. Ltd., M/s Giriraj Corporation and M/s Infinity Fabric Hub LLP to carryout various transactions in India including Customs clearance, handling, transportation, warehousing etc., though the agreement loosely states in clause (A) that the appellants are engaged in the business of fabric product, including resale in DTA, the actual fact is that the appellants were only engaged in Customs clearance and allied services and the appellants are not at all engaging in sale of any fabric either for or on behalf of any person. He further stated that it is pertinent to note that the investigating officer has not brought out any document to establish that the appellants are engaged in sale of fabrics for or on behalf of any third party; no invoice or sale transaction in the appellants' name has been unearthed.

3.3 With regard to allegation that the appellants have failed to exercise due diligence to ascertain the correctness of the information that they were imparting to their client (importer) under Regulation 10(e) *ibid*, learned Advocate submitted that the role of the Customs Broker is to file the bill of entry/shipping bill based on the documents given to them by the Importer/Exporter. A Customs Broker is not expected to scrutinize or verify the genuineness of the details and documents given by the concerned importer or exporter. In the present case, he stated that the goods were

declared in the DTA bills of entry as per the instructions of the importers and the value of the goods also was declared as per the invoice issued by the importer. Therefore, he stated that the allegations raised on the violation of 10(e) of CBLR, has no legs to stand, in the absence of the any documentary evidence. He further submitted that the Inquiry Officer had stated in fifth sub-paragraph to paragraph No. 7.2 of the Inquiry Report that "*based on examination and testing of the samples by the Textile Committee, correct description of the goods along with the classification and quantity found during the examination, it is clear that the importers have grossly mis-declared the impugned goods in terms of description, composition and quantity.*" The very fact that the Department could arrive at a conclusion for finding of mis-declaration only after testing the samples, would further substantiate the case of the appellants that they were not aware about the mis-declaration just like the Department had come to know about the alleged act of mis-declaration only after the completion of investigation and testing of samples. Thus, he pleaded that there was no violation against Regulation 10(e) *ibid*.

3.4 The appellants have relied upon the following case laws:

- (i) *Kunal Travels (Cargo) Vs. CC, IGI Airport, New Delhi* - 2017 (354) E.L.T. 447 (Del. HC)
- (ii) *Bajaj Enterprises Vs. CC, Mumbai* - 2017 (347) E.L.T. 675 (Tri.-Mumbai)
- (iii) *GND Cargo Movers Vs. CC, New Delhi* - 2017 (357) E.L.T. 1184 (Tri.-Del)

In view of the above, learned Advocate prayed that the Hon'ble Tribunal may be pleased to set aside the impugned Order-in-Original dated 19.10.2023 and the appeal filed by the appellants may be allowed.

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) and (e) of Regulation 10 of CBLR, 2018 has been examined in detail by the Principal Commissioner. The appellants CB though have got all the documents for import from respective importers, rather, were helping the importers by adopting mis-declaration of quantity, description of goods in order to evade customs duty and by not adopting the correct declaration of the imported goods by use of their knowledge of customs laws and work experience, and thus have failed to comply with the obligations cast upon them under CBLR. Learned AR pointed out that the argument placed by

importers/CB stating that it is mistake in packing occurred at the suppliers' end is nothing but an afterthought, as such mistakes were found in all 16 other consignments, prove that it was pre-mediated act of the importers and the appellants CB. 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. Thus, he submitted that the impugned order is sustainable.

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 Advocate 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) and 10(e) *ibid*, and hence there are two distinct charges framed against the appellants. The immediate suspension of appellants CB license under Regulation 16(1) of *ibid* was issued vide Order No. 73/2022-23-CBS dated 27.01.2023; and after grant of post-decisional hearing, such suspension was continued vide Order No. 79/2022-23 dated 28.02.2023. Further, the department had issued show cause notice No.40/2022-23 dated 09.03.2023 for initiating inquiry proceedings under CBLR. Furthermore, the Principal Commissioner of Customs (General) after taking into consideration the inquiry report dated 23.08.2023, the written submissions made by the appellants vide reply letter dated 03.10.2023, e-mail reply dated 04.10.2023 and having given an opportunity for personal hearing of the appellants CB on 03.10.2023, and had also taken into account the record of oral submission made at the time of personal hearing for considering the charges of violations against them. 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;"

7.1 We find that the Principal Commissioner of Customs had come to the conclusion that 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) and 10(e) *ibid*, have enabled the importers to evade payment of total customs duty of Rs.2,63,05,375/-. 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.

7.2 We find from the factual matrix of the case, that there was a specific alert about the mis-declaration of imported goods by the National Customs Targeting Centre in one of the ex-bond B/E No.2024008 dated 07.10.2022 filed by the appellants CB in respect of the importer M/s Giriraj Corporation (IEC AAFPP 0369P) for DTA clearance through container No. ZCSU 7510665. These goods have been earlier imported through filing an into bond Bill of Entry (B/E/) No. 1016547 dated 14.09.2022 and was stored in Arshia FTWZ. The examination conducted by CIU of JNCH officers established that such mis-declaration of imported goods were found in description, quantity of the imported goods in a manner that would facilitate evasion of customs duty.

7.3 Further, such a mis-declaration was noticed in respect of rest of the sixteen other consignments relating to three importers from the same Arshia FTWZ facility, and the same was not brought to the notice of either the supplier or the customs department prior to their clearance for domestic consumption. Furthermore, there is no document or any evidence produced either by the importers or appellant CB, for their claim regarding wrong shipment prior to interception of the aforesaid consignments by the CIU of JNCH officers. Hence, the reasoning given by the importers and appellants CB that the mis-declaration of the imported goods in terms of description, quantity and nature of goods had happened due to the mistake of supplier abroad while packing the aforesaid consignments, and the same having not been corrected up to the time of its clearance from bonded premises does not lend credence to their argument as there was no supporting evidence and particularly when the alleged mistake in packing by supplier was not corrected till its clearance for domestic consumption after its bonding in Arshia FTWZ facility.

7.4 It is also a fact on record that during the search of the appellants CB premises on 29.11.2022, a Tri-Party Service Agreement between the appellants CB with M/s Arshiya Panvel Logistics Private Limited, a unit of M/s Arshiya Limited, Free Trade Warehousing Zone (FTWZ) and the importers was recovered. The extract of the said agreement is as follows:

"TRI PARTY SERVICE AGREEMENT"

THIS AGREEMENT ("Agreement") is made and executed on this 16th day of July, 2022:

BY AND BETWEEN

MAC TRANSOCEANIC PRIVATE LIMITED.....hereinafter referred to as the "Principal"...

AND

ARSHIYA PANVEL LOGISTICS SERVICES PRIVATE LIMITED.....hereinafter referred to as "Agent",....

Principal and Agent hereinafter shall be individually referred to as a "Party" and collectively referred to as the "Parties"

- (A) The Principal is inter alia engaged in the business of Fabric product including resale in the Domestic Tariff Area ("DTA") of India to its various Indian Buyers ("DTA Buyers") and also resale to its buyers outside India ("Overseas Buyers");*
- (B) The Principal has been authorized by (1) Dixon Healthcare Nutrients And Supplements Pvt. Ltd. (2) Giriraj Corporation (3) Infinity Fabric Hub LLP to carry out in India various transactions including customs*

clearances, handling, transportation, warehousing, import/export of cargo and such other related services as may be agreed upon between the parties vide Letter of Authority dated 21st July, 2022 annexed as Annexure 3;

- (C) *Pursuant to the agreement executed between the Agent and Arshiya Panvel FTWZ Services Private Limited (FTWZ Co-Developer), the Agent is a unit holder in Warehouse No.3 at Arshiya Free Trade & Warehousing Zone....., the Agent, is entitled to provide various warehousing and other services as authorized operations;*
- (D) *The Principal is desirous of appointing the Agent as its agent in India to carry out certain service activities for and on its behalf and the Agent is willing to be appointed as the Principal's non-exclusive agent, in India, for providing various service activities stated in Annexure – 2 ("Service Activities") out of the service activities enumerated in Annexure-1 ("Agent Services").*

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XXXX

XXXX

4.6. Declaration in respect of Specified Goods:

.....

In the event of any non-declaration or wrong or improper or incorrect or insufficient or mis-declaration of documents or mis-description in respect of any goods, the Principal shall be solely liable/responsible for any consequences, action, liability etc. and Agent shall not be liable in any manner for the same in any manner or in any capacity for such acts of the Principal. The Principal shall be liable to indemnify the Agent against all and every loss that may arise to the Agent on that account.

5. Prohibited Goods

Lewd, obscene, pornographic materials or goods with any surrogate description and other items prohibited and banned in India shall not be offered and or accepted for storage. All liabilities arising out of any non-declaration of mis-declaration of such goods shall be only to the account of the Principal as mentioned in the preceding clause and Agent shall not be liable or responsible in this regard in any manner or any account whatsoever.

XXXX

XXXX

XXXX

Annexure-1

COMPOSITE SERVICE ACTIVITIES CONSISTING OF FOLLOWING

(h) Weighment Service:

Weighment of Cargo under import/export of shipments;

(i) Value Optimisation Services:

Handling Services (Inbound and Outbound), Sorting, Customs Declaration (DTA to FTWZ), Customs Declaration (Port to FTWZ), Gate services, Receiving, Registration and Bonding Material, Customs Inspection Services, bar code, Bar code scanning, Labelling, packaging, lashing, unlashng, chocking, strapping services, kitting, Palletization services (includes standard wooden pallet), Shrink-wrapping, unitizing, Tally services for outbond/inbound shipment, Customs Permit, Courier

(Domestic and Overseas), QC, Carton change services, Partitioning, Machine and manpower for QC, Documentation etc.

(k) Custom House Agency Service:

Providing Custom Clearance service.

(q) Weighment/ Inspection:

i. Weighment of every cargo at the time of inbound or outbound shall necessarily be carried out for which standard charges shall be applicable
ii. In the event of any inspection of the cargo at the behest of customs or any other authority, the Principal shall be bound to pay for such additional services as per the standard commercial terms."

"Date: 21/07/2022

TO WHOMSOEVER IT MAY CONCERN

This is to certify that M/s Mac Transoceanic Pvt. Ltd. having its registered office...is the authorized logistics and supply chain representative of Dixon Healthcare Nutrients And Supplements Pvt. Ltd. and they have been authorized to do the following facility....."

"Date: 21/07/2022

TO WHOMSOEVER IT MAY CONCERN

This is to certify that M/s Mac Transoceanic Pvt. Ltd. having its registered office...is the authorized logistics and supply chain representative of Giriraj Corporation and they have been authorized to do the following facility....."

"Date: 21/07/2022

TO WHOMSOEVER IT MAY CONCERN

This is to certify that M/s Mac Transoceanic Pvt. Ltd. having its registered office...is the authorized logistics and supply chain representative of INFINITY FABRIC HUB LLP and they have been authorized to do the following facility....."

7.5 Plain reading of the above contract between the appellants CB with the Arshiya FTWZ co-developer along with the authority executed by three importers, clearly provides that such an arrangement is to facilitate the business of all the concerned parties. A number of value-added services, right from obtaining the imported goods from the port to the FTWZ, including all requisite services to enable such imported goods be made ready for its clearance to domestic market or for any export, is being undertaken by the appellants CB or through their agent. The specific clause of the agreement provides for entire responsibility in respect of any mis-declaration on the part of the appellants CB, as the principal, in terms of such an agreement dated 16.07.2022. Hence, the argument placed by the learned Advocate that the appellants only provided customs clearance

facility and allied services cannot be accepted as valid in the absence of any contrary evidence, inasmuch as the above tri party agreement clearly provides the scope of the various services provided therein and the responsibility is solely vested on the appellants CB.

7.6 Further, it is also on record in the inquiry report dated 23.08.2023 and at paragraph 13.1 of the impugned order dated 19.10.2023, that the appellants CB had provided the correct packing lists containing the details of the quantity of goods, as it was found during the examination by CIU of JNCH officers; however, despite having such correct packing lists for the imported goods, the same was not provided to the customs department while filing the DTA B/Es which had led to the gross mis-declaration in imports. Therefore, we are unable to accept that the appellants CB have filed the B/Es as per the documents provided by the importers, when they had the actual and correct packing list of imported goods in their possession.

7.7 From the above, we find that appellants have failed to file the bills of entry as per the correct documents given by the importers and available in their possession. They have also failed to inform the importers about the correct requirement of customs statute to properly declare the details of imported goods and for payment of applicable customs duty thereon, and hence the appellants CB is liable for their failure to advise their client importers to comply with the provisions of the Customs law. Further, if there was any doubt about the imported goods during the relevant point of time, from the time of its import to its storage in FTWZ under customs bond, then the appellants CB could have brought it to the notice of the Deputy Commissioner of Customs (DC) or Assistant Commissioner of Customs (AC), but they failed to do so. Thus, we are of the considered view that the violation of Regulation 10(d) *ibid*, as concluded in the impugned order is 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 it has been established in a parallel customs proceedings that the appellants CB had committed certain omission and commission for which they were imposed with a penalty of Rs.50,000/- under Section 112(a) of the Customs Act, 1962, in each of the import cases, while adjudication of the case by the Additional Commissioner of Customs, JNCH Customs.

Further, the learned Principal Commissioner of Customs (General) had found that the appellants CB had failed to file the B/Es properly as per the correct packing lists. Thus, he had concluded that the appellants CB are liable for violation of the Regulation 10(e) *ibid*.

8.2. The charges framed under the SCN dated 09.03.2023 are an independent proceeding under CBLR, 2018 for which the adjudicating authority is required to give specific findings on the basis of inquiry proceedings conducted as per Regulation 17 and 18 *ibid*. Further, with respect of the packing lists containing the correct description, quantity etc., the appellants CB did not impart any specific information to the importers, rather it is the case that such information was provided by the importers to the appellants. Thus, it is not feasible to sustain this charge on the appellants CB, that they did not exercise due diligence to impart correct information to their clients on the basis of an adjudication done in different proceedings. Therefore, we are of the view that conclusion arrived at by the Principal Commissioner of Customs (General) is without any basis of documents or facts, and the impugned order with respect to Regulation 10(e) *ibid*, and therefore it is not sustainable.

8.3 We find that the Hon'ble High Court of Delhi had 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.), that the appellants CB is not an officer of Customs who would have an expertise to identify mis-classification or over/under valuation of goods. However, the factual matrix of the present case are entirely different and the facts on record clearly demonstrate that the appellants CB had the detailed information regarding the correct packing lists of the imported material and the same was not adopted for filing the B/Es for clearance of imported goods and they also failed to inform the same to the customs authorities, until the mis-declaration was found by the CIU of JNCH officers during examination. Hence, the benefit of doubt cannot be given to the appellants CB and the above cited case law by the learned Advocate would not come to the rescue of the appellants CB in this case.

9.1 From the records of the case, we find that there is slight delay in issue of SCN, submission of inquiry report; however, the adjudication of the case and passing of the impugned order by the learned Principal Commissioner was completed within prescribed time from the submission

of inquiry report. Thus, we do not find the argument made by the learned Advocate by referring to various case laws for compliance with the time limits prescribed under the CBLR, 2018 was not followed as in the present case it cannot be said that there was inordinate delay and there was reasonable grounds in terms of the test laid down by the Hon'ble High Court of Bombay in the case of *Principal Commissioner of Customs (General), Mumbai Vs. Unison Clearing P Ltd.*, (supra) and there was no undue delay.

9.2 Furthermore, in order to appreciate the importance of the role of Customs Broker/Custom House Agent and the timely action which could prevent the customs duty evasion/frauds, we rely on the judgement of the Hon'ble Supreme Court in affirming the decision of the Co-ordinate Bench of this Tribunal in the case of *Commissioner of Customs Vs. K.M. Ganatra & Co.* in Civil Appeal No.2940 of 2008 reported in 2016 (332) E.L.T. 15 (S.C.). The relevant paragraph of the said judgement is extracted below:

"15. *In this regard, Ms. Mohana, learned senior counsel for the appellant, has placed reliance on the decision in Noble Agency v. Commissioner of Customs, Mumbai 2002 (142) E.L.T. 84 (Tri. - Mumbai) wherein a Division Bench of the CEGAT, West Zonal Bench, Mumbai has observed:-*

"The CHA occupies a very important position in the Customs House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations....."

We approve the aforesaid observations of the CEGAT, West Zonal Bench, Mumbai and unhesitatingly hold that this misconduct has to be seriously viewed."

In view of the above discussions and on the basis of the judgement of the Hon'ble Supreme Court in the case of *K.M. Ganatra (supra)*, we find that the appellants could have been proactive in fulfilling their obligation as Customs Broker for exercising due diligence, when the correct packing list providing detailed and correct description, quantity of imported exports goods were available with the appellants CB and the same was not brought to the notice of the Customs department. Thus, to this extent we find that imposition of penalty for failure in not being proactive for fulfilling of regulation 10(d) of CBLR, 2018 is appropriate and justifiable.

10. 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 regulation 10(e) *ibid* and the findings in the impugned order is contrary to the facts on record. However, in view of the failure of the appellants to have acted in a proactive manner in fulfillment of the obligation under regulation 10(d), we find that it is justifiable to impose a penalty of Rs.10,000/- against the appellants, which would be reasonable and would be in line with the judgement of the Hon'ble Supreme Court in the case of *K.M. Ganatra (supra)*, in bringing out the importance of crucial role played by a Customs Broker.

11. Therefore, by modifying the impugned order to the extent as indicated above at para 10, we allow the appeal in favour of the appellants.

(Order pronounced in court on 26.08.2024)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha