

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

REGIONAL BENCH - COURT No. I

Customs Appeal No. 86792 of 2023

(Arising out of Order-in-Original CAO No. 09/CAC/PCC(G)/SJ/CBS-Adj dated 12.05.2023 passed by Principal Commissioner of Customs (General), New Custom House, Mumbai.)

Akbarali Mohemedali Mukadam

.....Appellants

(CB License No. 11/112)
1st Floor, Room No.2, 30-34 Fazal Manzil,
Sutal Chawl
Mumbai – 400 002.

VERSUS

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

.....Respondent

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

APPEARANCE:

Shri R.K. Tomar, Advocate for the Appellants

Shri Krishna Murari Azad, 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/87428/2024

Date of Hearing: 06.08.2024

Date of Decision: 05.12.2024

PER : M.M. PARTHIBAN

This appeal has been filed by M/s Akbarali Mohemedali Mukadam, Mumbai holding Customs Broker License No. 11/112 (herein after, referred to as 'the appellants' for short) assailing the Order-in-Original CAO No. 09/CAC/PCC(G)/SJ/CBS-Adj dated 12.05.2023(referred to as 'the impugned order') passed by learned Principal Commissioner of Customs (General), New Custom House, Ballard Estate, Mumbai-I.

2.1. Briefly stated, the facts of the case are that the appellants herein is a Customs Broker (CB) holding a regular CB license issued by the Mumbai Customs under erstwhile Regulation 10 of Customs House Agents Licensing Regulations, 1984 (CHALR) and now Regulation 7(2) of Customs Brokers Licensing Regulations (CBLR), 2018. In pursuance of specific intelligence

received by Nhava Sheva Preventive Unit (NSPU), R&I division of Principal Commissioner of Customs(Preventive), regarding customs duty evasion in import consignment covered in Container No.CLHU8380450 lying in Seabird CFS was put on hold and further investigation were carried out. It was found that the import consignment was imported by M/s Empara Multiventures Private Limited vide Bill of Entry (B/E) No. 2640242 dated 05.02.2021. The goods declared in the said B/E was 232500 pieces of 'back cover' (mobile accessories) with a declared value of Rs.6,00,548/-. During the course of examination under panchnama proceedings on 12.02.2021, it was found that the said imported consignment contained 2,80,000 pieces of 'tempered glass screen' of value re-determined as Rs.8,23,608/-. Therefore, the department had concluded that there was a gross mis-declaration of description and quantity of goods, in the import consignment for which the B/E was filed through the appellants CB, and had initiated further investigation. Further, it was also found that in one more import consignment under B/E No. 2697872 dated 09.02.2021, it was filed by some unauthorized person to whom the appellants CB had handed over the dongle for monetary consideration.

2.2. On the basis of offence report received from NSPU/R&I on 22.07.2021, 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 1(4), 10(d), 10(e), 10(n) and 13(12) of CBLR, 2018. Accordingly, he had immediately suspended the CB license of the appellants under Regulation 16(1) of *ibid*, vide Order No. 17/2021-22 dated 27.08.2021; and such suspension was continued vide Order No. 26/2021-22 dated 12.10.2021; further the department had issued show cause notice No.22/2021-22 dated 22.10.2021 for initiating inquiry proceedings under Regulation 14 *ibid* read with Regulations 17 and 18 *ibid*, against violations of CBLR.

2.3. Subsequently, the Principal Commissioner of Customs (General), Mumbai-I had appointed the Inquiry Officer (IO) and the IO held personal hearing on 08.12.2021. Upon completion of the inquiry, a report was submitted on 29.01.2023 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 12.05.2023 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 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 all the allegations of violation of Regulations 1(4), 10(d), 10(e), 10(n) and 13(12) of CBLR, 2018 have been countered by them. The appellants CB was getting their clients through Shri Ibrahim Hirani who was doing marketing job for them, and thus he was keeping record of payments received from the importers/exporters. Therefore, it is submitted by him that it is incorrect to state that there was sub-letting of the CB license by the appellants CB to the said Shri Ibrahim Hirani.

3.2 Learned Advocate further submitted that the appellants CB firm had not given any wrong advice to their clients. They conducted all KYC verification through digital mode but due to COVID it was impossible for them to visit the importer personally for getting verification. Thus, he claimed that 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*.

3.3 Further, learned Advocate stated that the appellants CB did not have any prior knowledge about the fact that the importer is going to mis-declare the description and quantity of the goods; they had received the documents through middle men Shri Ibrahim Hirani, who knew the importer, 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*.

3.4 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) *Bajaj Enterprises Vs. Commissioner of Customs (General)*, Mumbai - 2017 (347) E.L.T. 675 (Tri.-Mumbai)

(iii) *Accurate Clearing & Shipping Agency Vs. Commissioner of Customs* 2015 (319)E.L.T. 531 (Tri.-Bang.)

(iv) *Parvath Shipping Agency Vs. Commissioner of Customs (General), Mumbai* - 2017 (357) E.L.T. 296 (Tri.-Mumbai)

(v) *Him Logistics Pvt. Ltd. Vs. Commissioner of Customs, New Delhi* - 2016 (338) E.L.T. 725 (Tri.-Del.)

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

(vii) *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 (d), (e), (n) of Regulation 10 *ibid*, Regulations 1(4) and 13(12) of CBLR, 2018 has been examined in detail by the Principal Commissioner. The appellants CB got all the documents for import from Shri Ibrahim Hirani, who is neither IEC holder nor importer or their representative; he was unauthorizedly having the CB's dongle and the appellants CB never verified the authenticity of KYC documents properly and did not cross check or conduct proper verification of existence of importer at their level. Thus, learned AR justified the action of Principal Commissioner of Customs (General) in revocation of the 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, 2018 or not. The specific sub-regulations which were alleged to have been violated by the appellants are Regulations 1(4), 10(d), 10(e), 10(n) and 13(12) of CBLR, 2018, and hence there are certain distinct charges framed against the appellants in the present case. We find that the Regulation 10 *ibid*, provide for the obligations that a Customs Broker is expected to fulfill during their transaction with Customs in connection with import and/or export of goods. These regulations are extracted and given below as follows:

Customs Brokers Licensing Regulations, 2018

"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;

...

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

...

Section 1 (4) *Every license granted or renewed under these regulations shall be deemed to have been granted or renewed in favour of the licensee, and no license shall be sold or otherwise transferred.*

13. Engagement or employment of persons.—

...

(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 (d), (e) and (n) of Regulation 10 *ibid* as they failed to advise the importer properly on the need to comply with the provisions of the Customs Act; they did not exercise due diligence and report of any non-compliance by the importer, to the DC/AC for necessary action. Further, he found that the appellants CB did not conduct proper KYC verification of exporters; allowed unauthorized persons to handle their customs broking business using the dongle/access for filing documents. Thus, the learned Principal Commissioner of Customs being the adjudicating authority had passed the impugned order confirming all the allegations of violation of above Regulations of CBLR, 2018.

7.1 We find from the factual matrix of the case, that the imports in respect of Tempered glass screen protector for which B/E No. 2640242 dated 05.02.2021 and No. 2697872 dated 09.02.2021 were filed by the appellants as Customs Broker, was preceded with the appellants CB seeking from the importer, through their logistics intermediary M/s Ibrahim Hirani, all

requisite basic documents such as commercial invoice, packing list, authority letter and other relevant documents for KYC verification in handling the imports with customs. Further, there is no case of mis-declaration with respect to the documents submitted along with the B/Es, and such mis-declaration were identified by Customs, only upon physical examination of the goods. From the above, we find that appellants have duly filed the bill of entry as per the documents given by the importers and hence the appellants CB cannot be found fault for the reason that they did not advise their client importer to comply with the provisions of the Act. Further, as the contents inside the container was not known to the appellants CB, they could not have brought it to the notice of the Deputy Commissioner of Customs (DC) or Assistant Commissioner of Customs (AC). Thus, we are of the considered view that the violation of Regulation 10(d) *ibid*, as concluded in the impugned order is not supported by any facts or evidence.

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

8.1. Learned Principal Commissioner of Customs (General) had come to the conclusion that the CB had violated the provision of Regulation 10(e) *ibid*, as established in the inquiry proceedings that the appellants had not at all interacted with the importer and thus did not exercise due diligence in ascertaining the correctness of any information which they impart to a client. From the records we find that the appellants CB had only interacted through logistics intermediary Shri Ibrahim Hirani who is the proprietor of M/s Shams Logistics and M/s Aarefa Associates. Thus, it clearly proves that the persons with whom the appellants CB had interacted for filing the B/E and other

declarations has the official capacity of being a logistics agent of the importer for handling the discharge of cargo at the port. Thus, the appellants CB cannot be found fault in dealing with unauthorized persons for clearance of imported cargo. For the above reasons, the alleged violation of Regulations 1(4) *ibid* which apply for sale of license and 13(2) *ibid*, which is applicable for employees of Customs broker are relevant to the facts of the case.

8.2. In the absence of any specific evidential document or factual record, it cannot be stated that the appellants had prior knowledge about mis-declaration of description, quantity of imported goods by the importer, and these have been withheld by the appellants. Thus, it is not feasible to sustain such a charge on the appellants, that they did not exercise due diligence to impart correct information to their clients and thus the conclusion arrived at by the Principal Commissioner of Customs (General) is without any basis of documents or facts, in the impugned order with respect to Regulation 10(e) *ibid*, is not sustainable. However, on the limited aspect of the dongle of the appellants CB, which enables one to file the checklist for B/E online, having been given to unauthorized persons for filing of the B/Es, there is definitely violation to the above extent by the appellants CB, for which they are liable for action under CBLR, 2018.

9.1 We find from the records, that the appellants CB had obtained the KYC documents from the importer through their logistics agent at port of discharge through Shri Ibrahim Hirani of M/s Shams Logistics. The above verification by the appellants CB ensured that they fulfilled their responsibility for duly verifying the existence of the importer through the various documents evidencing the existence of business operation of the importer. However, the learned Principal Commissioner of Customs had concluded in the impugned order that the appellants CB never directly interacted with any representatives of the importer and thus it is clear that the appellants CB have failed to verify the identity, antecedent and address etc. of their client as they did not verify the address of their importer. Thus, he concluded that the appellants CB have not been careful and diligent in undertaking KYC verification and thus violated Regulation 10(n) *ibid*.

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 in respect of the compliance with respect to Regulation 10(n) *ibid*.

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

"The whole purpose of the CBLR-2013 being to frame a time line so that undue delay in the proceedings can be avoided, and the balance will have to be struck between the strict adherence to the said time schedule to such an extent that even a day's delay would prove to be fatal and render the entire action invalid and on the other hand, to grant such a discretion to the revenue to continue the said action of suspension of licence for an indefinite period depriving the Customs brokers of their right to carry on business on the basis of the licence, on a spacious ground that the charges levelled against him are being enquired into. Neither of these two extreme situations are ideal and balance will have to be struck by construing that the time limit for completion of inquiry for revoking the licence or imposing the penalty and keeping the licence under suspension should be "Reasonable period", depending on the facts and circumstances of each case. There cannot be any absolute principle, which can be laid down to determine as what would be reasonable period but it would be dependent on the facts and circumstances of each case since on one hand, the purpose of prescription of the time limit by the Regulation is to cast a duty on the Revenue Authorities to act within the time frame since it adversely affects the interest of the licensee and on the other hand the licensee should not be permitted to take an advantage of some delay at the instance of the Revenue, which is beyond its control since the revenue administration needs to be granted certain concessions which may be on account of administrative exigencies, and the department working at different levels through different persons. The principles of fairness and equity demands that when there is deviation from the time schedule prescribed in the Regulation, the Revenue enumerates the reasons and attributes them to an officer dealing with it and also accounts for every stage at which the delay occurs. Every endeavour should be made to adhere to the time schedule but in exceptional circumstances, which are beyond the control of the revenue if the time schedule is not adhered to, an accountability be fastened on the Revenue, to cite reasons why the time schedule was not adhered to, and then leave the decision to the adjudicating authority to examine whether the explanation offered is reasonable or reflects casual attitude on behalf of the Revenue. This is the only way how the Regulation can be made effective and worthy of its existence so as to safeguard the interest of the Customs house agent, who is in a position of the delinquent and faces an inquiry somehow similar to an inquiry in disciplinary proceedings on one hand and the revenue in the capacity of the administration on the other hand.

15. In view of the aforesaid discussion, the timelimit 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 timelimit 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 timelimit 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."

10.2 In the instant case, the alleged offence in importation of goods took place in respect of imports which was reported by a offence report of the details to the jurisdictional Principal Commissioner by NSPU/R&I on 10.02.2021 and on that basis the jurisdictional Principal Commissioner had suspended CB license of the appellants under Regulation 16(1) of *ibid*, with immediate effect vide Order dated 27.08.2021 and the suspension was subsequently continued after giving the post decisional hearing vide Order dated 12.10.2021. Simultaneously, inquiry proceedings against the appellants for violations of CBLR, 2018 due to failure of the appellants to comply with Regulations was initiated vide issue of SCN dated 22.10.2021. Upon completion of the inquiry, vide Inquiry report submitted on 29.01.2023, the Principal Commissioner of Customs (General), Mumbai, being the licensing authority under Regulations 17(7) of CBLR, 2018 had passed the impugned order dated 12.05.2023. Thus, from the date of receipt of offence report, it had taken nearly two years and three months for finalization of the action under CBLR, 2018. Further, the facts as above also indicate that the timelines prescribed under the regulations providing for time limits within which it is required for completion of regular inquiry, for taking a decision on the suspension or revocation of the license etc. have not been complied with even though the Principal Commissioner of Customs had passed the order within the prescribed time from the date of submission of Inquiry report, though such report is much delayed. If the entire process of suspension proceedings is unduly delayed, taking into account the date of suspension on 27.08.2021, then the time taken of about twenty months indicate that the very purpose of prescribing specific time limits in relation to conduct of inquiry proceedings is nullified and to that extent the actions of

the authorities is not really sanctioned by law. We also find that the Customs broker has already suffered a lot, as they were out of his normal business during such period that their license was suspended. It is also noted that the livelihood of Customs broker and the employees is dependent upon the functioning of Customs broker's business. The punishment suffered by being out of Customs broker's business for long period of is more than sufficient to mitigate the case of violations or contraventions of CBLR, 2018.

10.3 From the records of the case, we find that there is definitely delay in conduct of inquiry proceedings and that too for the import transactions for which the offence was detected in February, 2021, the order of revocation of appellant's CB license has been passed on 12.05.2023. The learned Principal Commissioner explained that the delay is on account of the inquiry proceedings in which the appellants CB had taken time to give their written submissions, but such delay cannot be fatal to outcome of inquiry and cannot neutralize the actions of omission and commission already committed by the CB.

10.4 The prescribed time under CBLR for timely completion of inquiry proceedings right from the beginning i.e., issue of SCN within a period of 90 days from the date of receipt of offence report, submission of inquiry report within 90 days of issue of SCN, passing of order by the Principal Commissioner of Customs within 90 days of receipt of inquiry report was neither followed nor given credence to. The inordinate delay in the inquiry proceedings in this case has not been properly explained in the impugned order; and the learned Principal Commissioner had put the entire blame on the appellants CB. We are of the view that such a reasoning given by learned Principal Commissioner of Customs (General), particularly in the background of the facts that the inquiry authority had gave a personal hearing on 08.12.2021 to the appellants and he had issued further letters dated 09.03.2022, 15.06.2022, 25.08.2022 and 27.10.2022 for obtaining additional written submissions in order provide his inquiry report dated 29.01.2023, cannot be accepted as 'reasonable grounds' which had caused delay in terms of the test laid down by the Hon'ble High Court of Bombay in the case of *Unison Clearing Pvt. Ltd.(supra)*.

11. In view of the foregoing discussions, we modify the impugned order by setting aside the same in respect of revocation of CB license of the appellants and for forfeiture of security deposit as there was no violation of Regulations 1(4), 10(d), 10(n) and 13(12) of CBLR, 2018 of CBLR, 2018.

Further, by modifying the impugned order for imposition of penalty, we impose a penalty of Rs.5,000/- on the appellants for violation of Regulation 10(e) ibid on account of their failure to handle documents exercising due diligence, in filing import declarations.

12. In the result, the appeal is partly allowed.

(Order pronounced in the open Court on 05.12.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)