CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT No. I

Customs Appeal No. 86934 of 2024

(Arising out of Order-in-Original CAO No. 08/CAC/PCC(G)/SJ/CBS-Adj dated 02.05.2024 passed by Principal Commissioner of Customs (General), New Custom House, Mumbai.)

Palak Logistics Private Limited **.....Appellants**
Formerly known as M/s Popatlal Jetshi & Co.
(CB License No. 11/296)
808, Shelton Cubix, Plot No.87 ,
Sector 15, CBD Belapur
Navi Mumbai – 400 614.

VERSUS

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

AND

Customs Appeal No. 86935 of 2024

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

<u>Appearance:</u>

Shri Anil Balani, Advocate for the Appellants
Shri Ajay Kumar Srivastava, 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/85778-85779/2025

Date of Hearing: 15.01.2025
Date of Decision: 07.05.2025

PER : M.M. PARTHIBAN

These appeals have been filed by M/s Palak Logistics Private Limited, Mumbai (herein after, referred to as 'the appellants' for short) assailing the Order-in-Original CAO No. 08/CAC/PCC(G)/SJ/CBS-Adj dated 02.05.2024 and 11/CAC/PCC(G)/SJ/CBS-Adj dated 24.05.2024 (referred together as 'the impugned orders') passed by learned Principal Commissioner of Customs (General), New Custom House, Ballard Estate, Mumbai-I.

2.1 In the impugned order dated 24.05.2024, 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. This order is the result of adjudication process of Show Cause Notice (SCN) No. 36/2022-23 dated 28.02.2023, seeking action against the appellants CB. The impugned order dated 24.05.2024, has been passed 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. 08/CAC/PCC(G)/SJ/CBS Adj. dated 02.05.2024, 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*. Being aggrieved against the impugned order dated 02.05.2024, the appellants have filed an appeal being No. C/86934/2024 before the Tribunal.

2.2 While the order of the learned Principal Commissioner of Customs vide Order-in-Original No. 08/CAC/PCC(G)/SJ/CBS Adj. dated 02.05.2024 is in operation, in one another show cause proceedings, the impugned order dated 24.05.2024 has been passed by the learned Principal Commissioner 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; besides this, in the impugned order he had also imposed a penalty of Rs. 50,000/- on the appellants under Regulation 18 *ibid*. Being aggrieved against the impugned order dated 24.05.2024, the appellants have filed another appeal being No. C/86935/2024 before the Tribunal.

2.3 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. During an investigation conducted by Directorate of Revenue Intelligence, Mumbai Zonal Unit (DRI MZU), enquiry was held with the Consulate General of India, Dubai, UAE on overvaluation of export goods. In a reply letter dated 08.03.2018, it was reported by the said Consulate General that from scrutiny of the documents provided by Federal Customs Authority, Dubai, it appeared that the goods have been cleared with unit values much lower than what was declared to customs authorities in India at the time of export. On the basis of such specific information received from DRI, Mumbai by Customs officers of Special Intelligence & Investigation Branch-Exports [SIIB(X)], Air Cargo Complex carried out further investigation, and it was found that certain exporters are overvaluing the export goods in order to avail higher ineligible drawback. Hence, the department had initiated investigation against such exports done by M/s Hasu Impex, Mumbai; and M/s Hasu Gold, Mumbai. Accordingly, detailed investigation was conducted and it was found that there were a number of export consignments cleared under 49 Shipping Bills (S/Bs) during the period 2012-2016 by the said exporters, in which the export proceeds have not been realized involving mis-use of ineligible drawback for an amount of Rs.1,23,983/-. Therefore, statements were recorded from the persons concerned with these exports namely Shri Hasmukh Bhimraj Bagrecha, Proprietor of M/s Hasu Impex and two other firms viz., M/s Hasu Gold and M/s Hasu Exporters; and Shri Pankaj Keshavji Dharamshi, Director of the appellants CB. The said Shri Pankaj Keshavji Dharamshi, Director of the appellants CB in his voluntary statement dated 23.03.2022 had stated that their CB firm handled mainly import consignments; the aforesaid export consignments in respect of the said three exporters were handled by one Shri Atul. P. Thakkar, who was looking after the business of the CB firm, in its former name & style viz., M/s Popatlal Jetshi & Co. After his resignation from the firm on 04.01.2016, and having joined by M/s TICC Container Line (I) Pvt. Ltd., the export transactions of those exporters were not handled by the appellants. From the investigation conducted by the SIIB(X) and offence report in the form of SCN dated 15.11.2022 received from SIIB(X), the jurisdictional Principal Commissioner of Customs (General), Mumbai-I had concluded that there is a prima facie case against the appellants for having contravened Regulations 10(d), 10(e), 10(f) and 10(m) of CBLR, 2018. Accordingly, they had initiated show cause proceedings by issue of notice No. 36/2022-23 dated 28.02.2023 for initiating inquiry proceedings under Regulation 17 *ibid*, against violations of CBLR as above.

2.4 Upon completion of the inquiry, a report dated 12.07.2023 was submitted by the Inquiry Authority concluding that all charges framed against the appellants for violation of Regulations 10(d), 10(e), 10(f) and 10(m) of CBLR, 2018 have been held as 'Not proved'. However, the Principal Commissioner of Customs (General), Mumbai, had issued a disagreement memo dated 13.03.2024, against such an inquiry report. Further, the Principal Commissioner of Customs (General), Mumbai, being the licensing authority had conducted the adjudication of the case, by offering a personal hearing to the appellants on 10.05.2023 and passed the impugned order dated 24.05.2024 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, in case any higher appellate authorities give relief to the appellants, besides imposition of penalty on them. Feeling aggrieved with the impugned order, the appellants have preferred this appeal being No. C/86935/2024 before the Tribunal.

2.5 In parallel proceedings against the appellants in respect of similar exports by one another exporter M/s Hasi Gold, wherein the appellants CB had filed sixteen S/Bs during the period 2012-2014 in the past, alleging over valuation of export goods and resultant fraudulent availment of excess drawback of Rs. 1.74 lakhs, the jurisdictional Principal Commissioner of Customs (General), Mumbai-I had concluded that there is a *prima facie* case against the appellants for having contravened Regulations 10(d), 10(e), 10(f), and 10(m) of CBLR, 2018. Accordingly, they had initiated show cause proceedings by issue of notice No. 47/2022-23 dated 17.03.2023 for initiating inquiry proceedings under Regulation 17 *ibid*, against violations of CBLR as above.

2.6 Upon completion of the inquiry, a report dated 03.10.2023 was submitted by the Inquiry Authority concluding that all charges framed against the appellants for violation of Regulations 10(d), 10(e), 10(f) and 10(m) of CBLR, 2018 have been 'Not proved'. However, the Principal Commissioner of Customs (General), Mumbai, had issued a disagreement memo dated 13.03.2024, against such an inquiry report. Further, the Principal Commissioner of Customs (General), Mumbai, being the licensing authority had conducted the adjudication of the case, by offering a personal hearing to the appellants on 16.04.2024 and passed the impugned order dated 02.05.2024 under Regulations 17(7), 14 and 18 *ibid,* for revocation of CB License of the appellants and for forfeiture of entire amount of security deposit, besides imposition of penalty on the appellants. Feeling aggrieved with the impugned order, the appellants have also preferred this appeal being No. C/86934/2024 before the Tribunal.

3.1 Learned Advocate for the appellants contends that all the allegations of violation of Regulations 10(d), 10(e), 10(f) and 10(m) of CBLR, 2018 in both the cases have been countered by them. One of the main arguments advanced by the Learned Advocate against the impugned order dated 02.05.2024, is that learned Principal Commissioner himself had initially revoked the suspension ordered under Regulation 16(1) ibid vide Order dated 31.01.2023. He further stated that for all S/Bs, the appellants have filed the declarations as per the documents provided by the exporter; they do not have anything with respect to valuation of export goods. Further, all the exports in various S/Bs have been duly assessed by the Customs officers and Let Export Order permitting such exports were given for export out of the country under Section 51 of the Customs Act, 1962. Hence, there is no case made out by the Customs on the basis of the evidence collected from Dubai Customs authorities. In addition to this, he submitted that neither the value of the export goods have not been conducted in terms of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 nor any market inquiry was conducted to substantiate the claim of over valuation by the department.

3.2 Further, learned Advocate stated that the appellants CB did not have any prior knowledge about the fact that the exporter is going to mis-declare or overvalue the goods; they had filed the declarations for export under various S/Bs as per the documents received through the exporters. He further stated that for the acts of misdeeds done by the exporters, the appellants CB cannot be held liable. Thus, he claimed that the appellants did not contravene any of the Regulations *ibid*.

3.3 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 Delhi, in the respective cases mentioned below:

(i) *S.A. Dalal & Co. Vs. Commissioner of Customs (G), Mumbai* - 2017 (358) E.L.T. 366 (Tri. - Mumbai)

(ii) *Leo Cargo Services Vs. Commissioner of Customs, Airport & General, New Delhi* – 2022 (382) E.L.T. 30 (Del.)

(iii) *Manjunatha Cargo Pvt. Ltd.* Vs. *Commissioner of Customs, Bangalore* - 2021 (375) E.L.T. 245 (Tri.- Bang.)

(iv) *Ashapura Shipping Agency Vs. Commissioner of Customs, Mundra* - 2024 (389) E.L.T. 236 (Tri. - Ahmd.)

(v) *AB Paul & Company Vs. Principal Commissioner of Customs (General), Mumbai* – Final Order No. A/85907/2023 dated 02.06.2023

3.4 In view of the above reasons, learned Advocate pleaded that the case of violation by the appellants for overvaluation of export goods for cancellation of their CB license, in both cases is not sustainable.

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 Regulation 10 *ibid*, has been examined in detail by the Principal Commissioner. Thus, learned AR justified the action of Principal Commissioner of Customs (General) in deemed revocation of the appellant's CB license, as well as fresh revocation of the CB license in another case and for imposition of penalty, forfeiture of security deposit in the impugned orders and stated that the same are 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 10(d), 10(e), 10(f), and 10(m) of CBLR, 2018, and hence there are certain distinct charges framed against the appellants. 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 export of goods. These regulations are extracted and given below as follows:

"Regulation 10. Obligations of Customs Broker: -

A Customs Broker shall -

…

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

> *(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;*
>
> *(f) not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information;*
>
> *…*
>
> *(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;"*

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), (f) and (m) of Regulation 10 ibid as they did not advice the exporter properly on the need to file declaration as provided in Circular No. 16/2009-Customs dated 25.05.2009, since the exporters are not the manufacturer and no rebate of duty would be filed by them; they did not exercise due diligence and report about any non-compliance by the exporter, to the DC/AC for necessary action. Further, the learned Commissioner had found that the appellants CB failed to keep the exporter informed of the requirement of appropriate documentation for compliance while claiming drawback and acted in a very negligent and callous manner enabling the exporter to claim undue export benefits. Thus, the adjudicating authority had passed the impugned order confirming all the allegations of violation of the 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 24.05.2024 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. 08/CAC/PCC(G)/ SJ/CBS Adj. dated 02.05.2024, for which the appellants are at liberty to file an appeal before higher appellate authorities, whether, can there be another order for the same effect be passed by the same authority to nullify the appeal proceedings provided under the 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 must be followed as per the procedure prescribed in 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 to be imposed against 'F' card holder, in case the Principal Commissioner comes to a conclusion that there exists sufficient grounds 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, 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 purports 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' in order 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 24.05.2024, the earlier order of the Principal Commissioner suspending the appellants was in effect vide Order-in-Original No. 08/CAC/PCC(G)/SJ/CBS Adj. dated 02.05.2024 in the earlier case of the appellants. 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 on this ground alone the impugned order dated 24.05.2024 is liable to be set aside.

8.1 We find that the case of appellants CB in the present appeals arise from the same set of facts, as was dealt by the Co-ordinate Bench of the Tribunal in the case of *John K Mathew Vs. Principal Commissioner of Customs (General), Mumbai* - Customs Appeal No.87232 of 2023 decided vide Final Order No. 85750/2024 dated 05.08.2024. The issue of overvaluation of export goods based on the evidences of the report from Consulate General of India, Dubai etc., are exactly similar to the case already decided by this Tribunal in the above Case. In the above referred order, the Tribunal has held that the appellants CB cannot be fastened with the act of omission and commission in relation to a provision in the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 that intended empowering the Central Government to device a schedule of rates of drawback in view of engaging in computation of drawback on each incident of export. It was also held by this Tribunal, in that case, stating it clearly that the benefit, even if 'undue', derived by the exporter is not of such *gravitas* as to merit revocation of license to practice a profession and, more specifically, when the licensing authority itself appears to have discountenanced proper conjecture of the provision of law that supposedly made the impugned goods offending. Accordingly, the Tribunal had set aside the Order of the Principal Commissioner in suspending the appellant's CB license.

8.2 The relevant paragraphs in the said order are extracted and given below:

> *"2. M/s Beejay Clearing & Forwarding Agency, holder of 'customs broker' licence no. 11/707, was one among the many that came under scrutiny in investigation of value of shipments undertaken by several exporters who had allegedly secured 'drawback' in excess of eligibility by furnishing unconnected invoices with inflated prices obtained from 'bogus firms' of one Suhel Ansari. Insofar as the impugned proceeding is concerned, it was the dealings of the appellant with M/s Basar Jewels Pvt Ltd, on whose behalf export of goods during 2012-16 involving claim of ₹ 2,83,000 as drawback against six shipping bills had been handled, that triggered order of suspension on 30th December 2022 under regulation 16 of Customs Broker Licencing Regulations, 2018 which was, however, revoked after post-decisional hearing by order of 10th March 2023 though, oddly, only after issue of notice under regulation 17 of Customs Broker Licencing Regulations, 2018 on 9th March 2023 proposing action under regulation 14 and regulation 18 of Customs Broker Licencing Regulations, 2018. The lack of clarity on the part of the licencing authority about the client in connection with which breach of obligations on the part of 'customs broker' occurred does place the integrity of the final disposal now impugned before us in jeopardy and the strategy to rescue it from the brink by revocation of suspension in anticipation of challenge to proceedings does not, from manifest lack of clarity which is anathema to the seriousness of recourse to detriment empowered by the Customs Broker Licencing Regulations, 2018, advance the integrity of the process. The notice culminating in the impugned order is all about exports effected by M/s World Wide Export and the inference in the show cause notice from*
>
> > *'13. From the investigation it appears that it is unlikely that CB M/s Beejay Clearing and forwarding agency was unaware that he was receiving goods based on fictitious bills. Had the CB seen these documents relating to meeting the criteria to claim both types of Drawback and checked the correctness of relevant declaration, such fraudulent export could not have been possible. Therefore, under the fact and circumstances, the CB actively connived with exporters in claiming undue drawback and over valuing the export goods and mis-declaring in Shipping Bill,….'*
>
> *that the appellant herein was liable to be charged with breach of obligation in regulation 10(d), regulation 10(e), regulation 10(f), regulation 10(k) and regulation 10(n) of Customs Broker Licencing Regulations, 2018 has only brevity to commend it as statement of imputation of misconduct and by, thereby, also leaving it to the designated 'inquiry authority' to fill in the gaps, is contrary to the prerequisite of proceedings that, unlike recoveries of duties of customs which are episodic, prejudice continued practice of a profession. There is no allegation of 'non-export' of goods or 'misdescription of goods' or even that taxes indicated in the invoices had not been paid.*

3. The foundation of the proceedings, in which the appellant has ostensibly been fastened with such overwhelming role as to warrant termination of licence to practice a profession, is the handling of three shipping bills out of thirty one consignments involving claim of ₹3,31,000 as drawback on 'imitation jewellery' exported by M/s World Wide Export between 2012 and 2017 that relies upon statements of M/s Moize Ahmed Ali Angoothiwala, partner in the exporting entity, on modus operandi, the report from Consulate General of India (CGI), Dubai that Federal Customs Authority of United Arab Emirates intimated clearances there at lower values on import and the statement of one Suryabhan Eknath Dhurphate, proprietor of M/s Sanket Overseas and 'logistics provider', that cost and expense of export was, generally, only 35% of drawback with 65% available to them and exporter. The exporter whose consignments were handled by the appellant admitted to procuring goods from local 'karigars' against 'kaccha bills' for which invoice and packing bills were prepared and forwarded to 'custom broker' and 'forwarding agency' for completion of customs formalities but denied any relationship with the said Suhel Ansari as the said invoices had been received only indirectly through others while affirming that no one had physically verified their address. From these, it would appear that the cornerstone of the case against the appellant are reports portraying overvaluation and of non-verification of address of exporter……… The jeopardy to the proceedings, from not connecting those 'factual dots' in the proceedings of inquiry and before the licencing authority, appears to have been underestimated rather glaringly.

4. Normally, the offence in import or export leading to proceedings for termination of licence to practice a profession are not scrutinized by us but here a different set of circumstances presents itself. Exports of 2012-17 are impugned in investigations that was, initially, found to warrant recourse to 'suspension' in 2022 and in which investigations had been underway since 2015. The allegation of overvaluation is not so critical to these proceedings as it would have been in adjudication for confiscability of offending goods, denial of drawback arising therefrom and imposing of fiscal penalty but the other, and even more fundamental, allegation of export goods having been procured against invoices of persons other than suppliers as being, purportedly, contrary to rule 3 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 without bringing the normative into focus – essential for determination of breach – has made it a matter of concern to us. There is neither reference to the requirement of such invoice of supplier for processing of claim for drawback or of any machinery provision in chapter X of Customs Act, 1962 and any Rules framed by Central Government under delegated authority therein and nor, indeed, of defiant disregard of any direction to furnish such at the time of export. It would appear to us that the appellant was sought to be fastened with act of omission and commission in relation to a provision in the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 that intended empowering of the Central Government to devise a schedule of rates of drawback in lieu of engaging in computation of drawback on each incident of export and, in the framing of such delegation, emplacing caveat on eligibility of products manufactured from use of exempted goods. This is evident from the contents of the impugned rule which has been only selectively extracted to afford the impression that responsibility devolved on the 'customs broker' in relation to the impugned consignment. No evidence is forthcoming that goods procured by a merchant exporter are *ineligible for drawback or that only goods exported from factory of manufacture are eligible for drawback; such inference does horrible violence to the statutorily enacted contractual obligation of the State to reimburse drawback and to the delegated authority to draw up a 'schedule of rates of drawback' for sanction of claims without researching each. The framework of Central Excise Act, 1944 does not brook assumption for its own enforcement, let alone a process under Customs Act, 1962, that goods available in the marketplace are likely to have been cleared, or imported, without payment of appropriate duty; the onus devolves on the investigation agency to establish that duties had been evaded on the impugned goods and not by mere presumptive, and circumstantially contrived, supposition from a 'free floating' allegation.*

5. It is against this backdrop of insufficiency of imputation of breach of obligation, of contradiction in factual narration and of unsupported inference of nature of the impugned provision of Customs, Central Excise and Service Tax Drawback Rules, 1995 that the submissions of both sides must be examined. Even so, we may make bold enough to say that the benefit, even if 'undue', derived by the exporter is not of such gravitas as to merit revocation of licence to practice a profession and, more especially, when the licencing authority itself appears to have discountenanced proper conjecture of the provision of law that supposedly made the impugned goods offending……

6. We find that, insofar as the charges are concerned, the impugned order has put together unrelated facts and rendered findings that, consequently, are illogical and untenable. It is seen that the charge of not having advised the client to comply with Customs Act, 1962 and rules and regulations thereof is not founded on any allegation that advice sought had not been rendered and nor is there an allegation that 'customs broker' is expected to explain the entirety of the law to the client; either the allegation is vague or the obligation is vague with neither contingency furthering the case against the appellant. It is, probably, owing to this conceptual commotion that the licencing authority has proceeded to uphold the charge on the supposition that exporter could not have executed overvalued exports without collusion from the appellant. That bridging of supposition with breach of obligation is too far-fetched to accept. The easiest of misdeclaration to undertake is overvaluation of export goods for the requirement to repatriate export proceeds confers advantage of presumption of correctness of contracted value combined with incomparability of local prices; it would appear that unnecessary premium has been placed on the need of a fellow conspirator for such overvaluation to succeed. The conclusion in the impugned order has nothing to do with obligation and is also not founded on any fact on record. The charge of having breached regulation 10(d) of Customs Broker Licencing Regulations, 2018 has been inappropriately held to be proved.

7. Likewise, it is seen that allegation of breach of obligation to exercise due diligence in ascertainment of correctness of any information furnished to the client is not founded on any information sought for by the client and not from any accusation of the client that appellant had misinformed them. Instead we find a sweeping presumption that it was owing solely to having failed to ascertain correctness of information that client was emboldened to set out in this act of overvaluation. The licencing authority also appears to have misconstrued the nature of the obligation which is not about dissemination of *incorrect information but of failure to ascertain correctness of information which must, necessarily, be built upon information given, either of own volition or on request of client, that was not only not incorrect but communicated without taking steps to ascertain correctness thereof. The notice, inquiry report and impugned order are markedly lacking in such determination. Even as saving grace, there is no factual narration of any information that led to alleged overvaluation. Thus it is that regulation 10(e) of Customs Broker Licencing Regulations, 2018 has been incorrectly held as proved.*

8. The alleged breach of obligation to forbear from withholding information contained in any order, instruction or public notice from a client who is entitled to receive them has been established with the finding that details of local procurement said to be prescribed in circular no. 16/2009-Cus dated 25th May 2009 was in breach; however, this fact had not been set out in the notice issued to appellant. There is also no reference to the said circular in the report of the inquiry officer. It would, thus, appear that the inspiration which prompted the licencing authority to refer to this mandate was not tested by offering opportunity at any stage to explain irrelevance of its contents to 'free shipping bills' filed for exports by the appellant or to explain that it had indeed been provided. This is tantamount to introduction of evidence after conclusion of all proceedings in which appellant had participated and is, this, untenable basis for upholding the charge of having breached regulation 10(f) of Customs Broker Licencing Regulations, 2018.

9. The allegation that the appellant had failed to maintain records and accounts has been upheld on the findings that appellant had not responded to summons and had failed to furnish details called for. The contention of appellant right from the beginning had been that no summons had even been issued to them in connection with investigation into the exports of M/s World Wide Export and, at no stage, did the inquiry officer or the licencing authority ever counter this response with any record to the contrary. Indeed, as we have noted supra, it is moot if the suspension would have been revoked in such circumstances. In any case, this obligation does not pertain to response to summons or join in investigations. Moreover, as the appellant has pointed out, the regulation is studiously silent on the period for which the records are required to be preserved and the claim of the appellant that records were trashed has not been countered with any instruction requiring preservation beyond reasonable period. Furthermore, we do not find reference to any stipulation by the officer designated for the purpose in the said regulation which should have been the foundation of this allegation and it was merely the inability of the exporter to furnish detailed records that has been attributed to flawed performance of obligation by the appellant. It would appear that the intent of the obligation has been incorrectly appreciated by the licencing authority; the allegation of having breached regulation 10(k) of Customs Broker Licencing Regulations, 2018 does not sustain.

10. It has been alleged that the appellant had failed to carry out mandated antecedent checks and verification of the client and the finding of it having been proved is founded on a statement of the exporter that such verification had not been carried out. It was incumbent on the investigation to have confronted the appellant with this accusation but no attempt was made so to do. It is also surprising that after such elapse of time, the exporter was able to recall lack of physical verification even as he was unable to recollect details

> *of purchase channel. Not only does such selective remembrance lack verifiability but also relegates its acceptability to the periphery. In the context of limited benefits derived, and none at all in the consignments handled by the appellant, by the exporter and lack of any evidence of such negligence in the part of the appellant, we are unable to accept the conclusion of not having been diligent in antecedent verification. As we have already premised, it was much too late, and the stakes were much too little, for conducting any worthwhile investigation. To erect such a charge on such fragile foundations is sure recipe for it to fail to find favour. Thus, there is no basis for alleged contravention of regulation 10(n) of Customs Broker Licencing Regulations, 2018, as found in the impugned order, to be affirmed by us.*
>
> *11. The charges of breach of regulation 10 of Customs Broker Licencing Regulations, 2018 do not sustain. There is no case that the goods had not been exported or evidence even that the impugned goods had not been manufactured out of duty paid inputs. The drawback involved in all the exports during the said period by M/s World Wide Export is not of such high order as to warrant penalties and detriments that were heaped upon them in the impugned order and those handled by the appellant were not under any claim at all. In these circumstances, we find ourselves unable to uphold the impugned order which is set aside to allow the appeal."*

Therefore, in the present appeals before us too, the findings of the learned Principal Commissioner in respect of charges against Regulations 10(d), 10(e), 10(f) and 10(m) of CBLR, 2018 do not sustain, on the same analogy adopted by the Tribunal in the case referred above on similar exports.

9.1 We find that the Co-ordinate Bench of the Tribunal in the case of *S.A. Dalal & Co.* (supra) have dealt with similar issue of deemed revocation of CB/ CHA license, wherein it was held that such an order is *non est* in law. The relevant paragraph in the said order is extracted and given below:

> ***"4.*** *We find that the impugned order is non est order for the simple reason that the Commissioner of Customs (General), Mumbai, has recorded that the CHA licence of the appellant is already revoked by Order-in-Original No. 59/CAO/CC(G)/PKA/2013-14, dated 16-4-2013, and stated that this impugned order in this appeal or revocation will automatically become operative in the eventuality of the order dated 16-4-2013 being set aside by any appellate or higher judicial authority, as this order is being issued under independent separate proceedings. In our considered view, the impugned order is non est order inasmuch, order for revocation of licence cannot be in thin air. A CHA licence which is already revoked, cannot be again revoked subject to it being reinstated by higher authorities. In our view, this order of the adjudicating authority is not correct passed without any application of mind and needs to be set aside and we do so."*

9.2 We further find that Co-ordinate Bench of the Tribunal in the case of *Trinity International Forwarders Vs. Commissioner of Customs (Preventive), Jaipur* - (2024) 17 Centax 314 (Tri.-Del) have held customs broker has no locus standi in respect of transaction value of export goods, which is being negotiated by overseas buyer and Indian exporter. Therefore, it was held that the CB in that case is not violated the provisions of CBLR. The relevant paragraphs of the said order are extracted and given below:

> ***"7.*** *We have considered the submissions by both sides on this issue. The case of the Revenue is that the exporter over- invoiced exports to claim ineligible drawback. Drawback is a mechanism of reimbursing to the exporter, the taxes and duties which would have been paid or borne by the exporter on the finished goods as well as on the raw materials. Instead of calculating these taxes and duties each case, based on the average incidence of the taxes and duties on each type of goods, a drawback schedule is notified by the Government which indicates the drawback for each type of goods usually as a percentage of the Free on Board[7] value. For some goods, the rate could be on per piece basis and on some goods, the duty could be as a percentage of FOB with a value cap and in such cases even if the FOB value is higher, drawback will be paid only on that amount. The appellant had filed the Shipping Bills as per the documents provided to it by the exporter. According to the Revenue, by filing Shipping Bills with over-invoiced export values, the appellant violated Regulation 11(d). To consider this assertion of the Revenue, we examine the significance of the value in the export documents and who can determine it and if the appellant had any right to determine the value of the goods being exported.*
>
> ***8.*** *A perusal of the Section 2(2) of the Customs Act shows that the determination of value in the Bill of Entry or Shipping Bill is a part of assessment. It reads as follows:*
> *(2) "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to-*
>
> > *(a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;*
> >
> > *(b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;*
> >
> > *(c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;*
> > *(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;*
> >
> > *(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;*
> >
> > *(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,*

and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

9. *The value of the imported goods in the Bill of Entry is determined as per Section 14 of the Act read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007*[8] *. The value of export goods in the Shipping Bill is determined as per Section 14 read with Customs Valuation (Determination of Value of Export Goods) Rules, 2007. Section 14 states that for the purpose of Customs Tariff Act, 1975 (under which the rates of import and export duties are prescribed) or any other law for the time being in force, the value shall be the transaction value, i.e., the value actually paid or payable for import of the goods at the place of importation or export of the goods at the place of exportation subject to some conditions and Rules. In respect of imports, Rule 12 of the Import Valuation Rules authorizes the proper officer to reject the transaction value under certain circumstances and redetermine it based on the value of contemporaneous imports of identical goods (Rule 4), value of contemporaneous imports of similar goods (Rule 5), value arrived at through deductive method (Rule 7), etc. In cases of exports, the proper officer can, under certain circumstances, reject the transaction value under Rule 8 of the Export Valuation Rules and redetermine the value by comparison (Rule 4), through computation (Rule 5) or through a residual method (Rule 6).*

10. *It needs to be noted that when the officer rejects the transaction value and determines the value of the imported goods or export goods under the Rules, he re-determines the value to calculate duty under the Customs Act. He does not and he cannot change the transaction value (be it under FOB, CIF or C&F) which is the consideration paid or payable for the goods as between the importer and exporter. The officer is a stranger to the contract between the importer and exporter and has no locus standi to change the transaction value.*

11. *Thus, while the transaction value is decided between the exporter and importer, value for determining the duty under the Customs Act is a part of assessment. The power to assess including determining the value lies with the importer/exporter (self-assessment) or with the proper officer (re-assessment). The Customs Broker has neither any authority nor any responsibility to assess the value of the imported goods or export goods.*

12. *In all the Shipping Bills, exports were allowed by the Customs in the normal course. It is only the subsequent intelligence and investigations by the DRI which revealed the alleged over valuation of exports. The Customs Broker is neither authorized under the Act nor is obligated under the CBLR to re-determine the value of any goods. Transaction value (be it FOB, CIF or C&F) is a matter of negotiation between the overseas buyer and the Indian exporter. It is the consideration which is paid or payable to the Indian exporter by the overseas buyer. The Customs Broker is a stranger to this contract and has no locus standi with respect to the transaction value. Any value determined under the Customs Act is a part of assessment which is the prerogative of the importer/exporter (self-assessment) or the proper officer (re-assessment). The Customs Broker has neither any authority nor any power*

> *to determine or re-determine the value for customs purposes either. The Customs Broker also has no authority to inspect or examine the goods and so the possibility of the Customs Broker suspecting that the goods may have been over valued also does not arise."*

9.3 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.), have held that 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."*

9.4 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.

10. We are unable to appreciate the manner in which the impugned orders have been passed on the same appellants CB for two times, each time repeating the action of ordering revocation of the CB license, forfeiture of security deposit and imposition of penalty directing the appellants to surrender the license and other identity cards issued to the persons working with the appellants. It is also a fact on record that these two orders dated 02.05.2024 and 24.05.2024, had been passed within a period of 3 weeks interval, successively, offering personal hearing to the same appellants CB. These could only indicate that such orders have been passed in a very mechanical way, by the licensing authority. Further, the learned Principal Commissioner was aware of the ongoing inquiry proceedings in this case, when he was passing the order on 02.05.2024, as the first action of immediate suspension vide Order No.67/2022-23 dated 11.01.2023, and post-decisional hearing and passing an adjudication order vide Order No.72/2022-23 dated 31.01.2023 was common in both the impugned orders, as it is at that stage of initiating regular proceedings under CBLR, 2018 two different SCNs were issued on 28.02.2023 and 17.03.2023 for two different IECs of the same group of exporter M/s Hasi Gold/Hasi Impex for over valuation of exports. The inquiry report thereon was submitted on 03.10.2023 in respect of regular inquiry vide SCN dated

17.03.2023; and another inquiry report was submitted on 12.07.2023 in respect of regular inquiry vide SCN dated 28.02.2023. 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 had been already suspended, and later such suspension was revoked after giving the appellants post-decisional hearing, again one another deemed suspension to take effect from a future event and date was prescribed. As we have already observed at paragraphs 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 does 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 orders are not legally sustainable.

11. In view of the foregoing discussions, we do not find any merits in the impugned order 24.05.2024 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(d), 10(e), 10(f) and 10(m) of CBLR, 2018, and the findings in the impugned order is contrary to the facts on record. Further, the impugned order dated 02.05.2024 is not sustainable as it has failed to establish that the appellants CB have violated Regulations 10(d), 10(e), 10(f) and 10(m) *ibid* with supporting evidence or legal basis.

12. Therefore, by setting aside the impugned orders, we allow the appeals in favour of the appellants.

(Order pronounced in open court on 07.05.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha