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

Customs Appeal No. 86216 of 2020

(Arising out of Order-in-Original CAO No. 22/CAC/CC(G)/PS/CBS(Adj.) dated 28.08.2020 passed by Commissioner of Customs (General), New Custom House, Mumbai.)

Atlantic Customs Brokers **.....Appellants**
(CB License No. 11/1981)
B/401, Vishal Apartment
Sir M.V. Road, Andheri (East)
Mumbai-400069

VERSUS

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

Appearance:

Shri D.H. Nadkarni alongwith Shri R.D. Khanchandani, Advocates for the Appellants
Shri Ram 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/87098/2023

Date of Hearing: 06.07.2023
Date of Decision: 06.11.2023

PER : M.M. PARTHIBAN

This appeal has been filed by M/s Atlantic Customs Brokers (herein after, referred to as 'the appellants'), holders of Customs Broker License No.11/1981 assailing Order-in-Original CAO No. 22/CAC/CC(G)/PS/CBS (Adj.) dated 28.08.2020 (herein after, referred to as 'the impugned order') passed by the learned Commissioner of Customs (General), New Custom House, Ballard Estate, Mumbai-1.

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 Regulation 7(2) of Customs Brokers Licensing Regulations (CBLR), 2018. A specific information was received by Customs Air Preventive Unit (APU) of R&I Division of the office of the Principal Commissioner of

Customs (Preventive), New Custom House, Mumbai on 04.03.2017 regarding mis-declaration of description of goods and its value in import of 'Button Tips' covered under MAWB No.21756155842 and HAWB No. TSI 1702084 dated 01.03.2017 by M/s V.B. Exports, Bhayander-East, Thane for which corresponding Bill of Entry (B/E) No. 8726253 dated 01.03.2017 was filed by one Customs Broker M/s P.Cawasji & Co. (CB License No.11/319). Accordingly, the imported goods were subjected to detailed examination by a chartered engineer M/s. Gattini & Co. and representative samples were drawn on 07.03.2017 for ascertaining the composition of the goods. The test report dated 10.03.2017 indicated that the main ingredient of the imported goods namely 'Button Tips' are "Tugsten-W" which is a rare metal having higher economic value. The chartered engineer's report also suggested that the minimum average price of imported goods, purchased in bulk, would be US $35 per Kg. indicating that there is undervaluation of imported goods as the said minimum average price of Tungsten is 7.7 times more of the declared value of imported goods. During investigation, the Customs APU, R&I found that similar consignment of the same importer covered under MAWB No. 217-56155875 and HAWB No.TSI 1703004 is arriving near future at the same customs port and thus those goods were also examined on 11.04.2017 and similar modus of mis-declaration and under valuation was found in such imports. Further examination of past imports by the said importer by Customs APU, R&I Division revealed that they had imported 14 such consignments by declaring the goods as 'Button Tips' and cleared the same out of Customs under Risk Management System (RMS) facilitation. Besides, the present imports covered under two MAWBs/HAWBs referred above, in respect of the past imports, 9 B/Es were filed by Customs Broker M/s P.Cawasji & Co.; another 3 B/Es were filed by S.V.Shipping (CB License No.11/905) and the rest of 2 B/Es were filed by the appellants CB - Atlantic Customs Brokers. Upon completion of above investigation by Customs APU, R&I Division, appropriate Show Cause Notice (SCN) vide F. No. SD/INT/APU/ 05/2016-17 & SD/INT/APU/MISC-14/2016-17 dated 27.09.2017 was issued proposing demand of differential duty of Customs on seized goods covered under present imports as well as on the past imports from the importer/IEC holder under Section 28 of the Customs Act, 1962 along with applicable interest; confiscation of imported goods under present imports; imposition of penalty on importer, commission agent under Sections 112(a), 114A, 14AA *ibid* and imposition of penalty for failure to fulfill obligations under CBLR, 2013/2018 on the three Customs Brokers under Section 112(a), 114AA *ibid*.

2.2. On the basis of such offence report/letter SCN received from Customs APU, R&I Division, Mumbai, the jurisdictional Commissioner of Customs (General), Mumbai-I had concluded that there is a prima facie case against the appellants for having contravened Regulations 10 (a), 10(d), 10(f) and 10(n) of CBLR, 2018. Accordingly, the said Commissioner of Customs, had suspended the CB license of the appellants under CBLR, 2018 vide Order No. 21/2018-19 dated 30.05.2018; further he had issued a SCN No.10/2018-19 dated 30.05.2018 to the appellants for initiating inquiry proceedings under Regulations 17 of CBLR, 2018, against violations of CBLR, 2018 due to failure of the appellants to comply with Regulations 10 (a), 10(d), 10(f) and 10(n) of CBLR, 2018 and to appear before the Inquiry Authority. Further, an Inquiry officer was appointed by jurisdictional Commissioner for the purpose of Inquiry proceedings vide Order dated 30.05.2018. However, as he could not complete the said inquiry, one another officer was appointed subsequently as Inquiry Officer vide order dated 08.01.2019 which was received by the said inquiry officer on 06.05.2019. Upon completion of the inquiry, a report was submitted on 14.11.2019, and the Commissioner of Customs (General), Mumbai-I, being the licensing authority under Regulations 14 *ibid* had passed the impugned order dated 28.08.2020 for revoking CB License of the appellants and, at the same time, forfeited the entire amount of security deposit and imposed penalty of Rs.50,000/- on the appellants. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

3.1. Learned Advocate for the appellants contends that the impugned order has not taken into account the inquiry report wherein out of four charges leveled against the appellants, in three charges the case has been dropped in favour of the appellants and in one charge due to signature mismatch, the inquiry officer had held the said charges as proved. However, without holding *de novo* inquiry or giving reasons for disagreement with the inquiry findings, the case was decided by the Commissioner of Customs against them. They claimed that the conclusion arrived at by the Commissioner of Customs stating that the whole purpose of obtaining proper authorization by the appellants CB from the importer was failed, the signature in such authorization letter did not tally with the GATT value declaration required for valuation as per Section 14; the appellants had failed to declare the clear description of imported goods; they had obtained all the documents relating to imports from logistics operators acting as intermediary; they did not meet

the importer and did not conduct proper verification of KYC documents are factually incorrect. He submits that each of the above allegations of violation of Regulations 10(a), 10(d), 10(f) and 10(n) *ibid*, have been countered by them. In respect of Regulation 10(a), learned Advocate stated that it is a matter of record that the appellants had taken a written letter of authority dated 15.05.2016 from the importer along with KYC documents and shipment documents. They state that obtaining documents for import/export from logistic companies who are acting as agents of importer/exporter is acceptable practice in international trade and the same has been held by the Tribunal as being not barred by the provisions of CBLR/CHALR. He further submitted that the client of the appellants was a regular importer clearing the goods from Customs in the past; they were not having any prior knowledge of under-valuation or mis-declaration; there is no independent evidence of signature mis-match in the documents rather it is only a opinion of S/Shri Sunil Murlidhar Kalbhor former employee of CB firm M/s. S.V. Shipping and Naresh Jay Kumar Udeshi, Proprietor of the appellants CB. Hence they claimed that there is no violation of the obligations cast on the appellants under CBLR, 2018. They also pleaded that the appellants CB's license was suspended on 30.05.2018 and they are out of business for more than 5 years and their employees have lost their livelihood. Further, the department has also failed to complete the inquiry proceedings within the specified time limit and hence they claimed that on the grounds of delay alone this case is liable to be set aside.

3.2. In support of their grounds the appellants cited the following decisions:

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

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

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

(iv) Delta Logistics Vs. Union of India – 2012 (286) E.L.T. 517 (Bom.)

In view of the above, they requested that impugned order be set aside and consequential relief be granted to them.

4. Learned Authorised Representative (AR) reiterated the findings made by the Commissioner of Customs (General) in the impugned order and submitted that each of the violation under sub-regulations (a), (d), (f) and (n) of Regulation 10 of CBLR, 2018 has been examined in detail by the Commissioner. The appellants CB got all the documents for import from one Sunil Kalbhor who is neither IEC holder nor importer's representative; they never verified the authenticity of KYC documents; had they cross checked or had they conducted verification at their level, by calling over phone or by meeting the IEC holder, then they could have easily made out that the IEC holder is not the actual importer of the goods. Thus, learned AR justified the action of 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. It is further stated by him that the delay in completing the CBLR proceedings were on account of unavoidable administrative reasons.

5. Heard both sides and perused the case records. We have also considered the additional written submissions given in the form of paper book by learned Advocates 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 as mentioned in the impugned order are Regulations 10(a), 10(d), 10(f) and 10(n) of CBLR, 2018, and hence there are four distinct charges framed against the appellant. Though in the initial Inquiry Report dated 14.11.2019 major three charges are concluded as 'not proved' by the Inquiry Officer, and sub-regulation 10(d) alone as 'proved', the impugned order has been issued by holding that all the said four sub-regulations 10(a), 10(d), 10(f) and 10(n) of CBLR, 2018, have been violated by the appellants CB. We do not find any mention of Disagreement Memo having been issued to the appellants for proceeding against them, for taking a different stand contrary to the findings of the inquiry report in respect of the charges held as 'not proved', in the impugned order. However, we find that the Commissioner of Customs (General) had taken into consideration the written submission made by the appellants vide their letter dated 11.07.2020 and the record of oral submission made at the time of personal hearing on 30.07.2020, for

considering the charges of violations against them, in respect of inquiry report having concluded as 'not proved', before passing the impugned order. 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 -*
> *(a) obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;*
> *…*
>
> *(d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;*
> *…*
>
> *(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;*
>
> *…*
>
> *(n) verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;"*

6.3. We find that the Commissioner of Customs on the basis of the conclusions arrived in the impugned order, that the appellants CB did not meet the importer/IEC holder; that the signature of importer in GATT valuation declaration did not tally with that of the signature on the authority letter issued to the appellants, defeating the whole purpose of obtaining authorization for authenticating that the appellants CB are acting on behalf of genuine importer; that the appellants had obtained all documents through a logistics operator as intermediary and failed to act in a vigilance manner leading to failure to perform their duties as CB efficiently, has held that the CB had violated the provisions of Regulation 10(a), 10(d) and 10(f) *ibid*. Similarly, on the account of the appellants CB had limited knowledge regarding valuation of imported goods; and that they did not take any effort

to ascertain the genuineness of the importer through authentic and reliable means as per CBLR, 2018, had held that the appellants CB had violated Regulations 10(n) *ibid*. It is also stated in the impugned order that the delay in conclusion of inquiry proceedings had occurred due to unavoidable administrative reasons and it cannot be fatal to outcome of inquiry and it cannot neutralize the acts of omission and commission of already committed by the appellants CB.

7.1. We find from the factual matrix of the case, that the imports covered under two Bills of Entry (B/Es) are B/E No. 6447009 dated 22.08.2016 and No. 6515140 dated 27.08.2016, in respect of which action under CBLR, 2018 has been taken against the appellants. As regards the first B/E dated 22.08.2016 is concerned, the imported goods was declared by the appellants on the basis of commercial invoice for imported goods No.ULT/191055 dated 18.08.2016 issued by M/s Upper Leader Limited, Hong Kong to the importer M/s V/B. Exports, Thane that was given by the importer, wherein the description of the goods was mentioned as "Button Tips Size: 16.8 X 28 (Grade:YG7, 8200 Pcs.)" with the unit price being declared as "USD $4.55". Accordingly, the appellants had declared the description of the imported goods and value in the bill of entry exactly matching with the details as given in the invoice supplied by the importer. Similarly, in respect of the second B/E dated 27.08.2016, the appellants had declared the description of the goods as "Button Tips Bore well Parts Size: 16.8 * 28 *.88" with the unit price being declared as "USD $5.00" as per commercial invoice No. ULT/191056 dated 20.08.2016. From the above factual details, we find that the appellants CB had declared the description of the imported goods and value in the aforesaid two B/Es exactly matching with the details as given in the invoices supplied by the importer. Further, the appellants were not aware of the under valuation of the imported goods as there was no such issue in the past imports of their client, and they were regular importer in the customs port.

7.2. It is also a fact that the Customs APU, R&I Division had come to a reasonable belief that the imported goods are of higher economic value due to the presence of Tungsten and the value declared is not commensurate with the average market price of the goods only during examination of subsequent imports in another B/E No. 8726253 dated 01.03.2017 filed by a different Customs Broker i.e., M/s P.Cawasji & Co. (CB License No.11/319).

Further, it is only when the test report dated 10.03.2017 in respect of imported goods was made available to the department, then the Customs APU, R&I Division came to the conclusion about under valuation and mis-declaration of the description of imported goods and conducted a detailed inquiry of past imports. We find that this particular fact itself brings out clearly that the examination of the imported goods at a much later date, i.e., after about seven months of the import in the two B/Es under consideration in this case, alone could provide reasonable cause for action under the Customs Act, 1962 against the importer and other connected persons involved in the case, including the three Customs Brokers. The action taken under CBLR, 2018 against the appellants CB is a follow up/ further action taken consequent to the customs offence case made out in SCN dated 27.09.2017, and thus the present proceedings are only for the violations under the specific sub-regulations under CBLR, 2018. It is not the case of the Revenue that the 'Button Tips" classified under customs tariff item 8207 90 90 was mis-declared under different classification than the one for 'Tungsten carbide tips' classifiable under customs tariff item 8209 00 10, in order to undervalue the imported goods. Further, any allegation of mis-declaration of imported goods in terms of its 'description' and 'value' could only be established, if the declaration in the Bill of entry has been different from the commercial invoice or other supporting documents. It is noticed from the factual details of the present case, that the declaration made in the Bills of Entry is the same as that is provided in the Commercial invoices, and in the absence of any document to prove the claim of mis-declaration, it is difficult to fasten such liability on the appellants CB.

7.3. From the above, we find that appellants have duly filed the bill of entry as per the documents given by the importer and they were not aware of the mis-declaration of description/value of the imported goods. In the instant case, the mis-declaration was found by the department only on the basis of specific information received by the Customs APU, R&I Division on 04.03.2017, i.e., after more than 6 months from the date of clearance of goods by the appellants and upon conducting physical examination of goods on 07.03.2017 which were imported subsequently, upon receipt of test report, 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 such mis-declaration was not known to the appellants, the non-compliance by the importer of declaring the alleged incorrect value

of imported goods, could not have been brought to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs by the appellants, as the Appraising group itself got a reasonable belief of incorrect value only after examination of goods and obtaining test report of samples in subsequent imports. Thus, we are of the considered view that the violation of Regulation 10(d) *ibid*, as concluded in the impugned order is not sustainable.

8.1. Further, in order to examine on the aspect of valuation of imported goods, and whether the appellants had failed to exercise any due diligence or not, the legal requirement as per the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 made there under could be perused in detail. The extract of the above legal provisions are as follows:

"Section 14. Valuation of goods. -
(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:……"

"Rule 11. Declaration by the importer . -
(1) The importer or his agent shall furnish -
(a) a declaration disclosing full and accurate details relating to the value of imported goods; and
(b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.

(2) Nothing contained in these rules shall be construed as restricting or calling into question the right of the proper officer of customs to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.

(3) The provisions of the Customs Act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

Rule 3. Determination of the method of valuation . -
(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that -
(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -

(i) are imposed or required by law or by the public authorities in India; or
(ii) limit the geographical area in which the goods may be resold; or
(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;
(iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.**"**

8.2. From the above, we find that the appellants CB has declared the value of imported goods as given in the commercial invoices, which is the transaction value. Further, submitting the declaration form (GATT valuation declaration) in terms of Rule 11 above, is primarily the responsibility of the importer and in case of proper authorization being given by them, then by the agent of the importer. In the present case, it is not in dispute that there was any such mis-declaration in the GATT value declaration form or in the value particulars declared in the bill of entry as compared to the commercial invoice. Further, any exercise in re-determination of value other than the transaction value has to be adopted step-by-step on the basis Rule 3 *ibid*, and after rejection of transaction value as per Rule 12 *ibid*. We do not find any such evidence or fact indicating that there was a mis-declaration of value and the value was re-determined as per the above legal provisions. There is only a mention that the valuation report dated 19.04.2017 received from the Chartered Engineer had suggested that the minimum average price for Button Tips when purchased in bulk was ascertained as USD $35 Per Kg. which was about 7.7 times higher than the declared value of USD $4.55 for

subject goods. We find that such an allegation made at the initial stage of issuing show cause notice and later at the findings stage in the impugned order requires factual details or evidence in the form of documents, to state that there is mis-declaration in the value and the same is attributable to the appellants CB, in order to invoke the violation of due-diligence having not been undertaken by the appellants in verification of value of imported goods. We find that there is no such evidence and on the contrary the declaration made in the bill of entry corresponds to the value declared in the commercial invoice. Thus, we are of the considered view that the conclusion arrived by the Commissioner of Customs (General) on this valuation issue in the impugned order is not supported by any evidence or factual detail, and thus the impugned order stating that the appellants have violated Regulation 10(d) *ibid* is also not sustainable.

9. Learned Commissioner of Customs (General) had come to the conclusion that the CB had violated the provision of Regulation 10(f) *ibid,* as the appellants had '*never met the importer/IEC holder, which indicated that they withheld the information contained orders, instructions or public notices relating to clearance of cargo from the importer of the goods, which led to the duty evasion in the said case'*. Even for an argument sake, if it is accepted that the appellants had not met the importer/IEC holder in person, it is not clear how such an act would automatically would tantamount to non-supply of information relating to Customs law & procedures to the importer for compliance purpose. It is always open to the Customs Broker to list out the legal, procedural requirements of Customs law and ensure its compliance by the importer. There is no correlation that meeting of an importer by Customs Broker would *per se* enable compliance or on the contrary not meeting the importer by the Customs Broker would mean withholding of compliance information from the importer. In the absence of any specific evidential document or factual record to state that the information contained in any specific orders, instructions or public notices issued by Customs have been withheld by the appellants, it is not feasible to sustain such a charge on the appellants and thus the conclusion arrived at by the Commissioner of Customs (General) without any basis of documents or facts, in the impugned order with respect to Regulation 10(f) *ibid*, is not sustainable.

10.1. We find from the records, that the appellants CB had obtained the KYC documents from the importer vide their letter dated 15.05.2016 and verified the existence of the importer through the certificate of Importer-Exporter Code issued by the Ministry of Commerce, DGFT indicating the name of the importer along with address, name of the partner; letter of Bank of India certifying the current account held by importer with their bank and Permanent Account Number (PAN) card of the importer. However, the Commissioner of Customs had concluded in the impugned order that the appellants CB has not been careful and not diligent in undertaking the KYC of the background of importer and accepted documents.

10.2. 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, the extract of the relevant paragraph is as given below:

*"**(iv) Know Your Customs (KYC) norms for identification of clients by CHAs:***
*6. In the context of increasing number of offences involving various modus-operandi such as misuse of export promotion schemes, fraudulent availment of export incentives and duty evasion by bogus IEC holders etc., it has been decided by the Board to put in place the "Know Your Customer (KYC)" guidelines for CHAs so that they are not used intentionally or unintentionally by importers/exporters who indulge in fraudulent activities. Accordingly, Regulation 13 of CHALR, 2004, has been suitably amended to provide that certain obligations on the CHAs to verify the antecedent, correctness of Import Export Code (IEC) Number, identity of his client and the functioning of his client in the declared address by using reliable, independent, authentic documents, data or information. In this regard, a detailed guideline on the list of documents to be verified and obtained from the client/customer is enclosed in the Annexure. It would also be obligatory for the client/customer to furnish to the CHA, a photograph of himself/herself in the case of an individual and those of the authorised signatory in respect of other forms of organizations such as company/trusts etc., and **any two of the listed documents** in the annexure.*

No	Form of organisation	Features to be verified	Documents to be obtained
1	Individual	(i) Legal name and any other names used (ii) Present and Permanent address, in full, complete and correct.	(i) Passport (ii) PAN card (iii) Voter's Identity card (iv) Driving licence (v) Bank account statement (vi) Ration card *Note :* Any two of the documents listed above, which provides client/customer information to the satisfaction of the CHA will suffice."

We find that the above CBIC circular clearly explains the provision of CBLR/CHA Regulations which require the Customs Brokers to verify the

antecedents, correctness of Import Export Court (IEC) Number, identity of his client and the functioning of his client in the declared address by using reliable, independent, authentic documents, data and information. The said guidelines provide for the list of documents that is required to be verified and that are to be obtained from the client importer/exporter. it is also provided that any two documents of among such specified documents is sufficient for fulfilling the obligation prescribed under Regulation 10(n) of CBLR, 2018. We find that in the present case, the appellants CB had obtained the KYC documents and submitted the same to the Customs Department. Thus, we do not find any legal basis for upholding of the alleged violation of Regulation 10(n) *ibid* by the appellants in the impugned order on the above issue.

10.3. We find that in the case of *M/s Perfect Cargo & Logistics Vs. Commissioner of Customs (Airport & General), New Delhi* 2021 (376) E.L.T. 649 (Tri. - Del.), 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 Commissioner noticed in the impugned order that any two documents could be obtained. The appellant had submitted two documents and this fact has also been stated in paragraph 27(a) of the order. It was obligatory on the part of the Commissioner to have mentioned the documents and discussed the same but all that has been stated in the impugned order is that having gone through the submissions of the Customs Broker, it is found that there is no force in the submissions. The finding recorded by the Commissioner that the required documents were not submitted is, therefore, factually incorrect.*
>
> *35. The Commissioner, therefore, committed an error in holding that the appellant failed to ensure due compliance of the provisions of Regulation 10(n) of the Licensing Regulations."*

10.4. Further, we also find that the Hon'ble High Court of Delhi has held in the case of *Kunal Travels (Cargo) Vs. 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 over valuation or under valuation 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."*

10.5. 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*.

11. We also find that as regards the timelines to be followed in the entire process of adjudication of the suspension/revocation of CB license under CBLR, 2018 by Customs authorities, the Hon'ble High Court of Bombay has laid down certain guidelines for its interpretation in the case of *Principal Commissioner of Customs (General), Mumbai Vs. Unison Clearing P Ltd.,* 2018 (361) E.L.T. 321. The relevant portion of the judgement in the above case 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 time limit contained in Regulation 20 cannot be construed to be mandatory and is held to be directory. As it is already observed above that though the time line framed in the Regulation need to be rigidly applied, fairness would demand that when such time limit is crossed, the period subsequently consumed for completing the inquiry should be justified by giving reasons and the causes on account of which the time limit was not adhered to. This would ensure that the inquiry proceedings which are initiated are completed expeditiously, are not prolonged and some checks and balances must be ensured. One step by which the unnecessary delays can be curbed is recording of reasons for the delay or non-adherence to this time limit by the Officer conducting the inquiry and making him accountable for not adhering to the time schedule. These reasons can then be tested to derive a conclusion whether the deviation from the time line prescribed in the Regulation, is "reasonable". This is the only way by which the provisions contained in Regulation 20 can be effectively implemented in the interest of both parties, namely, the Revenue and the Customs House Agent."

12. In the instant case, the alleged offence in importation of goods took place in respect of Bills of Entry dated 22.08.2016 and 27.08.2016 which was reported by a SCN/offence report dated 27.09.2017 and on that basis the jurisdictional Commissioner had suspended CB license of the appellants under Regulation 16(1) of *ibid*, with immediate effect vide Order No. 21/2018-19 dated 30.05.2018. Simultaneously, SCN No.10/2018-19 dated 30.05.2018 was issued to the appellants for initiating inquiry proceedings against violations of CBLR, 2018 due to failure of the appellants to comply with Regulations 10(a), 10(d), 10(f) and 10(n) *ibid*. Upon completion of the inquiry, vide Inquiry report submitted on 14.11.2019, and having not agreed to the said report, the Commissioner of Customs (General), Mumbai, being the licensing authority under Regulations 14 of CBLR, 2018 had passed the impugned order dated 28.08.2020. The above timelines indicate that the suspension was continued during the inquiry proceedings for about 27 months. Normally, immediate suspension action prior to conduct of regular inquiry is taken considering the serious violations of CBLR, 2018 by the

action of the Customs broker. Otherwise, the regulations provide for conducting regular inquiry, while license of Customs broker is in operation, for taking a decision on the suspension or revocation of the license. If the entire process of suspension proceedings is unduly delayed, then the very purpose of prescribing specific time limits in relation to conduct of inquiry proceedings is nullified and to such extent the actions of the authorities is not really sanctioned by law. We also find that the Customs broker has already suffered a lot, as they were out of his normal business for almost 5 years and 5 months as of now. 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 business for about five years is more than sufficient to mitigate the case of violations or contraventions of CBLR, 2018.

13. From the records of the case, we find that there is definitely delay in adjudication and that for the import transaction that occurred in August, 2016, the order of revocation of appellant's CB license has been passed on 28.08.2020. Revenue is unable to explain why there was such a long delay in taking action against appellants, when the information about under valuation of import through Customs APU, R&I Division was received vide SCN dated 27.09.2017. There are no reasons recorded in detail justifying the delay in passing the impugned order by the learned Commissioner except a mention of 'unavoidable administrative delay'. In terms of the 'Link Officer system' followed under the CBIC's HR policy in respect of administration, if one particular officer being 'inquiry officer' or 'jurisdictional review/licensing authority', is not available for completion of inquiry proceedings, then under the above arrangement, different officer who is a 'link officer' could take up the duties as authorised on him. In this case, we find that at the time of issue of SCN under CBLR, 2018, the inquiry officer was appointed. However, he did not complete the inquiry proceedings, and the Commissioner of Customs (General) appointed another officer on 08.01.2019 who submitted the inquiry report dated 14.11.2019. 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 Commissioner of Customs within 90 days of receipt of inquiry report was neither followed nor given credence to. It appears that the specific reasons thereof having been not specified and that even for argument sake,

if it had existed; then the same having not been explained as cause for undue delay, and thus the inordinate delay shown on account of 'administrative reasons' in the background of the above detailed discussion, cannot be accepted as reasonable grounds in terms of the test laid down by the Hon'ble High Court of Bombay.

14.1. The records of the case indicate that the appellants had obtained a written authorization letter dated 15.05.2016 from the importer M/s V.B. Imports, Thane mentioning that they authorize the appellants for clearance of import/export consignment on their behalf from Customs JNPT/Nhava Sheva/Mumbai. The importers also gave a declaration that they would be responsible for any discrepancy or mis-declaration found in their documents or goods, in the said authorization letter to the appellants. The letter also enclosed self-certified copies of Import Export Code Number (IEC) of importer, KYC documents and shipment documents. The conclusion of the Commissioner of Customs (General) in respect of sub-regulation 10(a) *ibid* is on the basis of the statement dated 20.05.2017 given by Shri Naresh Jay Kumar Udeshi, Proprietor of appellants CB firm, which state that *on being shown the GATT declaration annexed with the docket of B/E No.6447009 dated 22.08.2006 he stated that the signature of the importer in the GATT value declaration did not tally with that in the authorization letter obtained by the appellants*. Thus, on this basis the Commissioner of Customs (General) had held that the authorization is null and void, thereby violating the obligation under sub-regulation 10(a) *ibid*. It is also on record that Shri Soni Bipin Damodar Jinadra, IEC holder of M/s V.B. Exports, Thane had let out his IEC to various persons such as S/Shri. Mohan Singh Fartiyal alias Mannu Bhai, Deepak Sharma, for monetary benefits. However, these facts were brought to fore only during detailed investigation of the case conducted subsequently by the Customs APU, R&I Division. Hence, at the relevant time of imports under two B/Es, the appellants were not aware of this.

14.2. In this regard, the appellants had relied upon the order of the Tribunal in the case of *K.S.Sawant & Co.*(supra) for accepting the documents through logistics operator M/s. Yog Logistics who had acted as a intermediary in this case. The relevant paragraph of the said order is extracted below:

> *"5.1 From the records, it is clear that the business in respect of the client M/s. Advanced Micronics Devices Ltd., was brought in by Shri Sunil Chitnis, who claims himself to be a sub-agent of the appellant CHA. The statements of Shri Badrinath and Shri Sunil Chitnis amply proves this fact. The question is, merely because the appellant procured the business through an*

intermediary who is not his employee, can it be said that he has sub-let or transferred the business to intermediary. The Tribunal in the case of Commissioner of Customs v. Chhaganlal Mohanlal & Co. Ltd. [2006 (203) E.L.T. 435 (Tri. - Mum.)], held that if the Customs clearance has been done through intermediary and business was got through intermediary, the same is not barred by the provisions of CHALR, 2004 and it cannot be stated that the appellant has sub-let or transferred his licence. In the case of Krishan Kumar Sharma v. Commissioner of Customs, New Delhi reported in 2000 (122) E.L.T. 581 (Tri.), this Tribunal held that the mere fact of bills raised on the intermediary cannot be held against the CHA firm to prove that the CHA licence was sub-let or transferred. Therefore, in the light of the judgments cited above, the charge of violation of Regulation 12 is not established. As regards the violation of Regulation 13(a), the adjudicating authority himself has observed that the "I have no doubt to say that the CHA might have obtained the authorisation but it is surely not from the importer. Therefore, the authorisation submitted is not a valid one". This finding is based on a presumption. Obtaining an authorisation from the importer does not mean that the same should be obtained directly; so long as the concerned import documents were signed by the importer, it amounts to authorisation by the importer and, therefore, it cannot be said that there has been a violation of Regulation 13(a). … The question now is whether revocation of licence is warranted for such a violation. In our view, the punishment should be commensurate with the gravity of the offence. Revocation is an extreme step and a harsh punishment, which is not warranted for violation of Regulation 13(b). Accordingly, we are of the view that forfeiture of security tendered by the appellant CHA is sufficient punishment and revocation is not warranted. Accordingly, we set aside the order of the revocation and direct the Commissioner of Customs (General) to restore the CHA licence subject to the forfeiture of entire security amount tendered by the CHA."

We also find that the Directorate General of Foreign Trade (DGFT), in its Policy Circular No.6 (RE-2013)/ 2009-2014 dated 16.09.2013 had clarified that use of IEC by the person other than IEC holder himself is a violation of Section 7 of the Foreign Trade (Development and Regulation) Act, 1992 (FTDR) and Rule 12 of Foreign Trade (Regulation) Rules, 1993 and would attract action under Section 8 and 11 of FTDR Act, except in case importers or exporters who are exempted from obtaining IEC and who use permanent (common) IEC Numbers under Para 2.8 of Handbook of Procedure, Vol.1, 2009-14. Thus, in harmonious reading of the above order of the Tribunal in accepting the documents from the importer directly or through intermediary and at the same time ensuring that the IEC is not being misused by any person other than IEC holder, we are of the considered view that the responsibility of a Customs Broker is to play a crucial role in protecting the interest of Revenue and at the same time he is expected to facilitate expeditious clearance of import/export cargo by complying with all legal requirements.

14.3. Furthermore, in order to appreciate the importance of the role of Customs Broker/Custom House Agent and the timely action which could prevent the export 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."*

14.4 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, particularly when the import documents were obtained from the importer through an intermediary logistics operator in ensuring that all documents are genuine, the signatures affixed in the documents given by the importer are also genuine and that these are not fake or fabricated. Thus, to this extent we find that the appellants CB are found to have not complied with the requirement of sub-regulation 10(a) and thus imposition of penalty for failure in not being proactive for fulfilling of regulation 10(a) of CBLR, 2018 alone, is appropriate and justifiable.

15. In view of the foregoing discussions, we do not find any merits in the impugned order passed by the learned Commissioner of Customs (General), Mumbai in revoking the license of the appellants; for forfeiture of security deposit; and for imposition of penalty, inasmuch as there is no violation of regulations 10(d), 10(f) and 10(n) *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 sub-regulation 10(a) *ibid*, particularly when they have received the documents from importer through intermediary logistics operator, 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.

16. Therefore, by modifying the impugned order to the extent as indicated above at para 15, we allow the appeal in favour of the appellants.

(Order pronounced in open court on 06.11.2023)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha