2023:DHC:6993

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on: 11th September, 2023*
Date of Decision: 25.09.2023

\+ CUSAA 2/2022

D S CARGO AGENCY ..... Appellant
Through: Mohd. Faraz Anees, Mr. Ajay Kumar, Advs.

versus

COMMISSIONER OF CUSTOMS ..... Respondent
Through: Ms. Anushree Narain, SC

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The Appellant has filed the present appeal under Section 130A of the Customs Act, 1962 (hereafter '**the Act'**), impugning an order dated 26.03.2021 (Final Order No. C/A/51174/2021-CU [DB] – hereafter '**the impugned order'**) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereafter '**the Tribunal'**) in Customs Appeal No. 50618/2019.

2. The Appellant had filed the aforementioned appeal before the learned Tribunal impugning the order-in-original dated 04.02.2019 passed by the Commissioner of Customs, (Airport and General), New Delhi (hereafter '**the Commissioner**'). In terms of the said order dated 04.02.2019, the

Commissioner had (i) revoked the Appellant's Customs Broker License (CHA License No. R-12/DEL/CUS/2009 - hereafter '**the CB License**'); (ii) directed forfeiture of the security deposit of ₹ 75,000/- furnished by the Appellant; and (iii) imposed a penalty of ₹ 50,000/- on the Appellant.

3. The question that arises for consideration before this Court is that whether the Appellant, under Customs Brokers Licensing Regulations, 2018 (hereafter '**the CBLR, 2018**') read with Customs Brokers Licensing Regulations, 2013 (hereafter '**the CBLR, 2013**'), is liable for reporting an offence committed in relation to goods stored in the bonded warehouse, after the same have been imported and the professional role of the Customs Broker in clearance of the goods had ended.

4. The aforesaid question arises for consideration in this appeal in the following context:

4.1. The Appellant is a proprietorship firm of Mr. Diva Kant Jha, who was a Customs Broker and at the material time was holding the CB License, which was then valid up to 09.03.2019. The said license was issued under Regulation 9(1) of Customs House Agent Licensing Regulations, 2004 (hereafter '**CHALR, 2004**').

4.2. The Appellant, in normal course of trade, was authorized by (i) M/s Accturists Overseas (OPC) Pvt. Ltd., (ii) M/s Spark Exports, and (iii) M/s Horrens Exim (collectively referred to as '**importer firms**') for import of goods. The Appellant on the basis of documents received from the said entities, carried out KYC for the said firms.

4.3. The Appellant thereafter on various dates between 25.04.2017 to 15.06.2017, filed nine (9) bills of entry pertaining to M/s Accturists

Overseas (OPC) Pvt. Ltd, five (5) bills of entry pertaining to M/s Spark Exports and two (2) bills of entry pertaining to M/s Horrens Exim.

4.4. All of the aforesaid nineteen (19) bills of entry (hereafter '**B/E**') were warehousing bill of entry under Section 59 of the Act and were filed at various ports. Out of the nineteen (19) B/Es filed by the Appellant, three (3) B/Es were pending clearance at ICD, Tughlakabad, Delhi, at the relevant time.

4.5. It is the case of the Appellant that he had met an individual namely Mr. Lalit Dongra on behalf of M/s Accturists Overseas (OPC) Pvt. Ltd. and all enquiries regarding filing of B/Es were made by one Mr. Sanjeev Maggu, who held himself out as the Chief Manager of all the three (3) importer firms.

4.6. On 14.07.2017, the Directorate of Revenue Intelligence (hereafter '**DRI**') received information that the said importer firms were evading customs duty by diverting the imported goods stored in the customs bonded warehouse, into domestic market without payment of applicable custom duty. It was also informed that forged documents have been relied upon by the said importer firms to show the re-export of the warehoused goods. Pursuant thereto, searches were conducted and statements of various persons including the proprietor of the Appellant i.e., Mr. Diva Kant Jha, was recorded by DRI on 14.07.2017 under Section 108 of the Act.

4.7. The DRI thereafter forwarded its investigation report dated 10.05.2018 in this matter to the Commissioner. In view of the report, a show cause notice dated 10.08.2018 (hereafter '**SCN**') was issued to the Appellant stating that the Appellant had failed to perform its various obligations under the CBLR, 2018 read with the CBLR, 2013; and had acted in contravention

thereof. The SCN further proposed revocation of the license, forfeiture of security and imposition of penalty.

4.8. Subsequently, an Inquiry Officer was appointed, who conducted the inquiry and submitted an inquiry report dated 06.11.2018 recording his finding that the allegations made in the SCN are proved against the Appellant and recommended action.

4.9. That on receipt of the Inquiry Report, the Appellant submitted its reply dated 28.01.2019 stating that there is no violation of the provisions of CBLR 2018 read with CBLR 2013. The Commissioner however, did not accept the Appellant's contention and passed the order-in-original dated 04.02.2019, revoking the Appellant's CB license, forfeiting the security deposit of ₹ 75,000/- as well as imposing a penalty of ₹ 50,000/-.

4.10. The Appellant thereafter filed the Customs Appeal bearing No. 50618/2019 against the said order dated 04.02.2019 passed by the Commissioner before the learned Tribunal. However, the learned Tribunal vide its impugned order dated 26.03.2021 confirmed the order-in-original dated 04.02.2019 passed by the Commissioner and held that the Appellant herein has violated Regulation Nos. 10(b), 10(d), 10(e) and 10(n) of CBLR, 2018 read with Regulation Nos. 11(b), 11(d), 11(e) and 11(n) of CBLR, 2013.

5. The Appellant has impugned the order dated 26.03.2021 passed by the learned Tribunal, *inter alia*, on the ground of limitation and on the ground that the Appellant had not violated any Regulations under CBLR, 2018 read with CBLR, 2013, since, the offence in relation to the goods had occurred after the same had been cleared from the Customs Station and the professional role of the Appellant in the clearance of goods had come to an

end. In addition, the Appellant has also raised a question with respect to the proportionality of the punitive measures imposed on him.

6. At the outset, it is pertinent to note that the issue of limitation does not survive for consideration as it is covered against the Appellant in terms of the judgment dated 02.03.2023 passed by a Coordinate Bench of this Court in CUSAA 223/2019, titled as '*Commissioner of Customs (Airport & General) v. M/s R.P. Cargo Handling Services*'. In this regard, the order dated 06.03.2023 passed in this appeal may be referred to.

Contentions of the Appellant

7. The learned counsel for the Appellant states that the only evidence relied upon for arriving at the impugned findings against the Appellant is the statement of its proprietor, Mr. Diva Kant Jha, recorded by DRI on 14.07.2017 and more specifically the statement made with respect to the question no. 8 therein. He states that in the answer given to the said question no.8, the Appellant has not admitted to any wrong doing. He states that the Appellant had no knowledge of the intent of the accused to divert the goods into the domestic market, contrary to the terms of the import.

7.1. He states that the illegality committed by the importer firms admittedly occurred after the role of the Appellant had come to an end. He states that the imported goods were diverted into the domestic market after the same had reached the customs bonded warehouse and the Appellant's role had ended prior to this stage. He states that the Appellant admittedly had no role in the falsification of the documents submitted by the accused showing re-export of the said goods. He states that the Appellant had no role to play in the diversion of the goods and there is admittedly, no allegation

that the Appellant had any prior knowledge of the said intentions of the importer firms or that he has abetted in the aforesaid act of diversion.

7.2. He states that the punitive measure of revocation of the Appellant's CB License is disproportionate in the facts and circumstances of this case.

Contentions of the Respondent

8. In reply, the learned counsel for the Respondent states that in view of the inculpatory admissions made by Mr. Diva Kant Jha i.e., proprietor of Appellant in his statement record before the DRI on 14.07.2017, the violation of the obligations cast upon him under the CBLR, 2018 read with CBLR, 2013 stands proved.

8.1. She states that the failure of the Appellant to obtain the requisite KYC documents and/or verify the documents made available to him by the importer firms is a clear violation of the mandatory obligations under the CBLR, 2018 read with CBLR, 2013.

8.2. The Respondent has filed written submissions dated 11.09.2023 and submitted that in view of the concurrent opinions of the Commissioner and the learned Tribunal, no interference is warranted in this appeal. She states that the punishment handed down to the Appellant is proportionate and just, in view of the gravity of the case.

Analysis and findings

9. This Court has considered the submissions of the counsel for the parties and perused the record.

10. At the outset, it would be pertinent to refer to the relevant sub-regulations of Regulation 10 of the CBLR, 2018 and Regulation 11 of the CBLR, 2013 referenced by the Commissioner in the order-in-original dated 04.02.2019. The same are set out below:

CBLR, 2013

"Regulation 11. Obligations of Customs Broker. - A Customs Broker shall -

(b) transact business in the Customs Station either personally or through an employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

xxx xxx xxx

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;

xxx xxx xxx

(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;

xxx xxx xxx

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

CBLR, 2018

Regulation 10. Obligations of Customs Broker. — A Customs Broker shall —

xxx xxx xxx

(b) transact business in the Customs Station either ***personally*** *or* ***through an authorised employee*** *duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;*

xxx xxx xxx

(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;*

(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;*

xxx xxx xxx

(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;"*

(Emphasis Supplied)

Regulation 10(b) of CBLR, 2018 read with 11(b) of CBLR, 2013

11. The Commissioner has held the Appellant guilty of contravention of this Regulation on the finding that the Appellant herein has admitted that Mr. Sanjeev Maggu used to perform various functions pertaining to these importer firms such as bond approval from the New Custom House, New Delhi. The Commissioner held that the Appellant had become aware that the importer firms were dummy firms being (illegally) run by Mr. Ramesh Wadhera in connivance with Sh. Sanjeev Maggu and yet he allowed Sh. Sanjeev Maggu to transact business with Customs authorities; and this act and omission of the Appellant was in contravention of this Regulation.

11.1. The Tribunal while upholding the said finding of the Commissioner opined that the said Regulation has been contravened since Mr. Sanjeev Maggu transacted business at the Customs Station despite not being the authorized representative either of the importer firms or the Appellant herein.

12. In the facts of this case admittedly, Mr. Sanjeev Maggu never acted on behalf of the Appellant but was acting only on behalf of the importer firms. There is no material placed on record to show that Mr. Sanjeev Maggu ever acted on behalf of the Appellant at the Customs Station.

12.1. On a plain textual reading of the Regulation, it is apparent that a Customs Broker is required to transact the business at the Customs Station either personally or through his/her authorized employee. In the facts of this case, there is no material on record to indicate/suggest that the Appellant had not carried out the work of filing the B/Es either personally or through his authorized employee.

12.2. The finding of the Commissioner and the learned Tribunal that Mr. Sanjeev Maggu was not authorized to act on behalf of the importer firms

cannot form the basis of holding the Appellant guilty of violation of this Regulation. In the facts of this case, the sine qua non for attracting Regulation 10(b) of CBLR, 2018 is not present and the impugned order invoking the said Regulation is erroneous.

12.3. Therefore, in the opinion of this Court there has been no violation of Regulation 10(b) of CBLR, 2018 read with 11(b) of CBLR, 2013 and the learned Tribunal erred in holding that Mr. Sanjeev Maggu acted on behalf of the Appellant at the Customs Station.

Regulation 10(d) of CBLR, 2018 read with 11(d) of CBLR, 2013.

13. The Commissioner held that the Appellant had contravened this Regulation in view of his reply to question no. 8 in the statement recorded before the DRI on 14.07.2017, since he failed to advice the importer firms to comply with the provisions of the Act as regards re-export of the warehoused goods. The Commissioner further held that the Appellant contravened this Regulation by failing to report the wrongdoings of the importer firms to the Customs authorities after learning about their illegal actions in diverting the goods into the domestic market.

13.1. The learned Tribunal as well upheld the findings of the Commissioner in view of the answer of the Appellant to question no. 8 in the statement recorded before the DRI on 14.07.2017 and opined that the Appellant failed to seek clarification from the importer firms as regards the re-exports.

14. As per Section 146 of the Act, the role of a custom agent is related to the business of entry or departure of goods at any Customs Station. The obligation of the Appellant in the facts of this case was to facilitate clearance of goods for warehousing, at the Customs Station and no further. Therefore, the duty of the Appellant as a Customs Broker came to an end once the

imported goods, after its clearance from the Customs Station, reached the public bonded warehouse.

14.1. The Appellant, admittedly was not charged with any responsibility for clearance of the goods from the public bonded warehouse for the purpose of re-export.

14.2. The imported goods meant for the re-export were stored at the public bonded warehouses and the illegality by the importer firms was committed when the said goods were diverted by them into the domestic market without payment of the applicable custom duty. It is stated by the Respondent that the said importer firms filed fabricated documents to falsely show the re-export of the goods. However, admittedly, the Appellant herein had no role to play at this stage when the false documents of re-export were filed by the importer firms with the Customs authorities.

14.3. In the facts of this case, it has come on record that the persons controlling the importer firms acted on their own accord when they conspired to defraud the revenue; there is no allegation that they were acting on the aid or advice of the Appellant. There is admittedly no allegation against the Appellant that he abetted the diversion of the imported goods.

14.4. The proprietor of Appellant, in reply to question no. 8 in the statement recorded by DRI on 14.07.2017, stated that he 'subsequently' learnt that the goods which had been imported for re-export were being sold in the domestic market. In this statement there is no admission that the Appellant was aware at the time of the filing of the warehousing bill of entry with the Customs Station that the importer firms intended to divert the imported goods into the domestic market.

14.5. In the aforesaid facts, the findings of the Commissioner and the learned Tribunal to the effect that the Appellant failed to advice the importer firms with respect to their obligation on re-export of the goods is unjustified as the Appellant was not responsible for the discharge of said obligation by the importer firms.

15. In the opinion of this Court, the Appellant cannot be held guilty of contravention of this Regulation on account of the personal acts and omissions of the importer firms.

15.1. The Appellant specifically raised a contention before the Commissioner that he cannot be held liable for the illegal acts of the importer firms subsequent to the clearance of the goods from the Customs Station; however, this issue has neither been answered by the Commissioner nor analyzed by the learned Tribunal.

15.2. The Supreme Court in the case of ***Collector of Customs, Cochin v. Trivandrum Rubber Works Ltd., Chacki, (1999) 2 SCC 553,*** held that a Customs Broker is an agent for only limited purpose of arranging release of goods and once the goods are cleared, he has no further function and he is not liable for any duty, liability or other actions, which are required to be initiated only against the importer. The relevant portion of the aforesaid judgment reads as under:

> *"8. In the present case, notice has been given under Section 28 to the owner/importer as a person chargeable to duty. The notice must, therefore, be served on the owner/importer.* ***A service on the clearing agent of the owner/importer long after the clearing agent has ceased to deal with the goods in question under the Customs Act, cannot be treated as valid service of notice on the owner/importer****.*
>
> *9. Learned counsel for the appellant relied upon Section 229 of the Contract Act, 1872 under which any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the*

> *principal and third parties, have the same legal consequences as if it had been given to or obtained by the principal.* ***A contract between the importer and his clearing agent, however, is a special contract under which a clearing agent is authorised to perform various functions under the Customs Act for the purpose of clearing the goods from the Customs. Once he has discharged all his duties and functions as such agent and the goods in question have been cleared and delivered to the importer/owner, his work as a clearing agent in respect of the goods ordinarily comes to an end****. Any notice served on him thereafter in respect of goods already cleared cannot be construed as a notice given in the course of business of clearing the goods concerned, transacted by him for the principal."*
>
> (Emphasis Supplied)

15.3. The obligation of the Customs Broker under this Regulation has to be read in the context of the duties discharged by him/her under Section 146 of the Act. There is no duty imposed on the Customs Broker under the parent Act to report commission of acts or omissions of its principal, which are in violation of the provisions of the Act.

Since the CBLR, 2018 have been made under Section 146(2) of the Act and are intended to regulate the grant of license to a Customs Broker, the scope of this Regulation cannot be enlarged to read into it a general duty to report violations of the provisions of the Act by his/her clients which come to his/her knowledge after his/her professional role has come to an end.

15.4. The Customs Broker acts under the CBLR, 2018, and his/her function under the license is only to transact any business relating to entry or departure of conveyances or the import or export of goods at any Customs Station. Therefore, in the facts of this case, the duty to report non-compliance under this Regulation can only be confined to reporting the non-compliances of the declaration signed by the Customs Broker and the importer while presenting the bills of entry to the Customs authorities,

which come to his attention after submitting the bills of entry. For instance, if the Customs Broker finds out that the documents filed by the importer with the Bill of Entry are forged, he/she would be required to apprise this fact to the Customs authorities. Further, the obligation of the Customs Broker to not file documents, which to his knowledge are incorrect does not require any reiteration.

15.5. In the opinion of this Court, the Appellant is not liable for reporting an offence committed by the importer firms in relation to goods stored in the public bonded warehouse after the professional role of Customs Broker in the clearance of goods has ended and no such responsibility of reporting offences can be read into Regulation 10(d) of CBLR, 2018. The obligation of the Appellant to bring the issue of non-compliance to the Customs authorities can only be confined to documents submitted by the Customs Broker himself/herself for the clearance of the goods from the Customs Station at the time of entry or departure. In the facts of this case there is no finding that there was any error or discrepancy in the warehousing bill of entry submitted by the Appellant at the Customs Station.

15.6. Therefore, in the facts of this case, in the opinion of this Court there has been no violation of Regulation 10(d) of CBLR, 2018 read with 11(d) of CBLR, 2013.

15.7. The question framed at paragraph no. 3, is accordingly, answered in the aforesaid terms.

Regulation 10(e) of CBLR, 2018 read with 11(e) of CBLR, 2013.

16. In the facts of this case, this Court is of the opinion that there has been no violation of Regulation 10(e) of CBLR, 2018 read with Regulation 11(e) of CBLR, 2013. The Commissioner held that the Appellant by dealing with

Sh. Sanjeev Maggu on behalf of the importer firms in clearance of the cargo, failed to exercise due diligence and thereby causing loss to the revenue. The learned Tribunal referred to the answer given by the Appellant to question no. 8 in the statement dated 14.07.2017 to uphold this finding of the Commissioner.

16.1. The said Regulation casts a duty on the Customs Broker to exercise due diligence in communicating correct information to a client with reference to any work related to clearance of cargo. The said Regulation has no concern/application with the acts or omissions of the importer firms itself. **(Re: *Kunal Travels (Cargo) v. Commissioner of Customs (Import & General), 2017 SCC OnLine Del 7683)***

17. There is no finding in the order of the Commissioner that the Appellant had given any incorrect information to the importer firms in the process adopted for the clearance of the goods at the Customs Station or in any manner abetted the importer firms in the diversion of the goods from the public bonded warehouse to the domestic market. In the opinion of this Court, the findings of the Commissioner and the learned Tribunal do not furnish any ground for alleging contravention of this Regulation. The illegal actions of the importer firms subsequent to the clearance of the cargo from the Customs Station do not attract the violation of Regulation 10(e) of CBLR, 2018 read with Regulation 11(e) of CBLR, 2013, by the Appellant.

Regulation 10(n) of CBLR, 2018 read with 11(n) of CBLR, 2013.

18. The aforesaid Regulation requires the Customs Broker to verify the identity of his client, which includes the identification documents as well as the information provided by the client.

18.1. The Commissioner and the learned Tribunal have held that the Appellant failed to verify the identity of the importer firms and the antecedents of Mr. Sanjeev Maggu with whom the Appellant had dealt with and exchanged the documents for filing before the Customs Station. The Commissioner concluded that since the KYC documents provided by the importer firms were forged, an early detection by Customs Broker could have prevented the evasion of customs duty.

18.2. The Appellant has stated that he relied upon the result of verification of the original Importer Exporter Code (hereafter '**IEC**'), which were mandatorily supplied on the functional address of the importer. It is stated that the IEC number was duly verified by the Appellant from the website of Directorate General of Foreign Trade (hereafter '**DGFT**') and found the same to be valid. The IEC number was standing in the name of the importer firms and the physical addresses mentioned therein duly matched with the declared address furnished by the importer firms. The said fact of valid IEC has not been disputed by the Respondent.

18.3. In this regard, it would be relevant to refer to the judgment of a Coordinate Bench of this Court in ***Kunal Travels (Cargo)*** (supra), wherein this Court held that when an importer firm holds an IEC, there is a presumption attached that the KYC of the importer by physical verification of the address would have been done by the Customs authorities. The relevant portion of the judgment in ***Kunal Travels (Cargo)*** (supra) reads as under:

> *"12. Clause (e) of the aforesaid Regulation requires exercise of due diligence by the CHA regarding such information which he may give to his client with reference to any work related to clearance of cargo. Clause (l) requires that all documents submitted, such as bills of entry*

and shipping bills delivered etc. reflect the name of the importer/exporter and the name of the CHA prominently at the top of such documents. The aforesaid clauses do not obligate the CHA to look into such information which may be made available to it from the exporter/importer. 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. ***What is noteworthy is that the IE Code of the exporter M/s. H.M. Impex was mentioned in the shipping bills, this itself reflects that before the grant of said IE Code, the background check of the said importer/exporter had been undertaken by the customs authorities, therefore, there was no doubt about the identity of the said exporter. 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.*** *There is nothing on record to show that the appellant had knowledge that the goods mentioned in the shipping bills did not reflect the truth of the consignment sought to be exported. In the absence of such knowledge, there cannot be any mens rea attributed to the appellant or its proprietor. Whatever may be the value of the goods, in the present case, simply because upon inspection of the goods they did not corroborate with what was declared in the shipping bills, cannot be deemed as mis-declaration by the CHA because the said document was filed on the basis of information provided to it by M/s. H.M. Impex, which had already been granted an IE Code by the DGFT.* ***The grant of the IE Code presupposes a verification of facts etc. made in such application with respect to the concern or entity.*** *If the grant of such IE Code to a non-existent entity at the address WZ-156, Madipur, New Delhi - 63 is in doubt, then for such erroneous grant of the IE Code, the appellant cannot be faulted. The IE Code is the proof of locus standi of the exporter. The CHA is not expected to do a background check of the exporter/client who approaches it for facilitation services in export and imports. Regulation 13(e) of the CHALR 2004 requires the CHA to:"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" (emphasis supplied). The CHAs due diligence is for information that he may give to its client and not necessarily to do a background check of either the client or of the consignment. Documents prepared or filed by a CHA are on the basis of instructions/documents received from its client/importer/exporter. Furnishing of wrong or incorrect information*

> *cannot be attributed to the CHA if it was innocently filed in the belief and faith that its client has furnished correct information and veritable documents. The misdeclaration would be attributable to the client if wrong information were deliberately supplied to the CHA. Hence there could be no guilt, wrong, fault or penalty on the appellant apropos the contents of the shipping bills. Apropos any doubt about the issuance of the IE Code to M/s. H.S. Impex, it was for the respondents to take appropriate action. Furthermore, the inquiry report revealed that there was no delay in processing the documents by the appellant under Regulation 13(n).”*

(Emphasis supplied)

18.4. The Appellant has stated that there is no dispute that importer firms exist and they have participated in the investigation conducted by DRI. It is stated that the fact that these firms are dummy firms which are controlled by third parties was a fact which was not within the knowledge of the Appellant while he was initially dealing with the said firms for clearance of cargo; and was a fact which came to his knowledge subsequently after the goods had already been cleared by the Customs Station.

18.5. Appellant also states that the reliance placed by the Commissioner on the statement of Mr. Lalit Dongra is not justified since the Aadhar Card which is alleged to have been forged has not been placed on record.

19. A perusal of the written submissions filed by the Respondent would show that the Respondents have found the Appellant ‘negligent’ in verifying the KYC documents of the importer firms as he failed to obtain the requisite KYC documents and/or verify the documents made available to him by the importer firms.

20. This Court has perused the record. In the facts of this case, there is no allegation of impersonation in the name of importer firms. The finding of DRI is that these importer firms were not being run and operated by the persons in whose name the importer firms were incorporated. The allegation

is not that these firms are fictitious and do not exist. The finding is that these firms are being run and remotely controlled by Mr. Sanjeev Maggu and Mr. Ramesh Wadhera. The Regulation requires the Customs Broker to verify the identity of the client (i.e., importer firms) and in the facts of this case since the clients (i.e., importer firms) exist as is evident from the functionality of the IEC (as discussed above), it is not possible to hold that there has been a blatant violation of this Regulation, which would justify the revocation of CB license.

20.1. A perusal of the written submission filed by the Respondent on 11.09.2023 reveals that the Respondent has raised factual contentions and made allegations against the Appellant which are not borne out from the impugned orders. There is an attempt to embellish the allegations against the Appellant. It has been stated that the Appellant had knowledge 'before hand' that the importer firms were dummy firms and was aware of this fact even prior to removal of the goods from custom bonded warehouses. This Court finds that there is no such finding against the Appellant in the orders of the Commissioner or the learned Tribunal and the same is also not evident from the statement dated 14.07.2017, which is the sole document relied against the Appellant; and therefore, this submission of the Respondent is not borne out from the record.

Proportionality of the punishment handed down to the Petitioner

21. This Court however takes note that the Appellant was unable to provide the KYC records of the importer firms to DRI and Customs authorities despite undertaking to do so in reply to question no. 3 in its statement dated 14.07.2017 and thereby raising an inference of lapse in

collecting the KYC documents. This fact has also been highlighted by the Respondent in the written submissions dated 11.09.2023.

21.1. In the opinion of this Court in view of the judgment of ***Kunal Travels*** (supra), the said inaction of the Appellant cannot justify the imposition of the maximum punishment of revocation of the license. There is no finding against the Appellant that he in any manner connived with the importer firms or abetted the said firms in their wrongful actions in diverting the goods to the domestic market without payment of customs duty, which led to the loss to the revenue. There is no finding that the Appellant earned extra commission for the assignment for clearance of imported goods from the Customs Station or has partaken in the illegitimate gains made by the importer firms.

21.2. In this regard, it would be instructive to refer to the Division Bench of this Court in ***Ashiana Cargo Servies v. Commissioner of Customs (I & G) 2014 (302) E.L.T. 161 (Del)***

> *"…. 10. Beginning with the facts, there is virtually no dispute. There is a concurrent finding of fact by the Commissioner and the CESTAT that the appellant did not have knowledge that the illegal exports were effected using the G cards given to VK's employees. There was no active or passive facilitation by the appellant in that sense. Undoubtedly, the provision of the G cards to non-employees itself violated the CHA Regulations. This is an admitted fact, but it is not the Revenue's argument (nor is it the reasoning adopted by the Commissioner or the CESTAT) that this violation in itself is sufficiently grave so as to justify the extreme measure of revocation. Not any and every infraction of the CHA Regulations, either under Regulation 13 ("Obligations of CHA") or elsewhere, leads to the revocation of license; rather, in line with a proportionality analysis, only grave and serious violations justify revocation. In other cases, suspension for an adequate period of time (resulting in loss of business and income) suffices, both as a punishment for the infraction and as a deterrent to future violations. For the punishment to be proportional to the violation, revocation of the license under Rule 20(1) can only be justified in the presence of aggravating factors that allow the infraction to be labeled*

> *grave. It would be inadvisable, even if possible, to provide an exhaustive list of such aggravating factors, but a review of case law throws some light on this aspect. In cases where revocation of license has been upheld (1.e. the cases relied upon by the Revenue), there has been an element of active facilitation of the infraction, i.e., a finding of mens rea, or a gross and flagrant violation of the CHA Regulations. In Sri. Kamakshi Agency (supra), the licensee stopped working the license, but rather, for remuneration, permitted his Power of Attorney to work the license, thus in effect transferring the license for money. As the CESTAT noted,"*
>
> (Emphasis Supplied)

22. In the facts of this case, the revocation of the license came into effect on 04.02.2019 and a period of more than 4 ½ years has already lapsed. The revocation of the license which is in operation since 2019 i.e., almost 4 ½ years is itself a severe punishment and will serve as a reprimand to the Appellant to conduct its affairs with more alacrity. A penalty of revocation of license for failing to collect the KYC forms unjustly restricts the Appellant's ability to undertake the business CHA for the entire life. Thus, keeping in view the proportionality doctrine and keeping in view that the Appellant has already been unable to work for 4½ years, this Court is therefore of the opinion that the impugned order of the learned Tribunal as well as the order-in-original dated 04.02.2019 to the extent that it revokes the Appellant's license and forfeits the security deposit is liable to be set aside.

23. The impugned order of the learned Tribunal as well as the order-in-original dated 04.02.2019 to the extent it imposes penalty of ₹ 50,000/- is upheld.

24. Since the tenure of the license expired on 09.03.2019, the Appellant will be at liberty to apply for the grant of a new license and if such an application is made, the same will be considered under the extant regulations.

25. The question framed at paragraph no.3 is answered in favour of the Appellant. The appeal is allowed in the aforesaid terms. Pending applications, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA, J

YASHWANT VARMA, J

SEPTEMBER 25, 2023/hp

Click here to check corrigendum, if any