

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Customs Appeal No.75048 of 2023

(Arising out of Order-in-Original No.KOL/CUS/AIRPORT/ADMN/02/2023 dated 10.01.2023 passed by Commissioner of Customs (Airport & ACC), Kolkata.)

M/s.India Transport & Travel Private Limited

(4, Fairly Place, 1st Floor, Room No.124, Kolkata-700001.)

...Appellant

VERSUS

Commissioner of Customs (Airport & ACC), Kolkata

.....Respondent

(Customs House, 15/1, Strand Road, Kolkata-700001.)

APPEARANCE

Shri Arijit Chakraborty, Advocate for the Appellant (s)

Shri S.Chakraborty, Authorized Representative for the Revenue

**CORAM:HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)**

FINAL ORDER NO. 75210/2023

DATE OF HEARING : 30 March 2023
DATE OF DECISION : 11 April 2023

Per : K. ANPAZHAKAN :

The Appellant is a Customs Broker (CB in short) having Licence No.I-3 (PAN : AAACI6569H), issued by the Ld.Commissioner of Customs (Airport & Administration), Kolkata with a validity up to 07.04.2026. The Appellant filed a Bill of Entry No.8902963 dated 31.05.2022 for warehousing of

the import consignment of M/s. Eastern Light Industries Pvt.Ltd. and opted for First Check i.e. 100% examination for the import consignment. After First Check on 07.06.2022 , the SIIB (Port) seized the import consignment on 17.06.2022 under Section 110(1) of the Customs Act, 1962 upon the allegation that the consignment of goods namely 'Data Processing Servers" falling under CTH 84714190 for which the warehousing Bill of Entry filed by the Appellant was not supported by valid documents as mandated under Para 2.31 of Foreign Trade Policy, 2015-2020 and non availability of certain NOC from MoEF and BIS Regulations. Accordingly, an investigation was initiated by SIIB (Port) and on completion of the investigation a Show Cause Notice No.KOL/CUS/ADC/PORT/Gr.VE/15/2022 dated 09.12.2022 was issued by the Ld.Addl. Commissioner of Customs Appraising Group – 5E(Port), Customs House, Kolkata. On 20.12.2022, the Appellant was issued a CB Order No.21/2022 dated 19.12.2022, wherein the Customs Broker License of the Appellant was suspended under Regulation 16(1) of CBLR, 2018 upon the allegation that the Appellants have violated Regulation 10(d), 10(e), 10(f) and 10(m) of CBLR, 2018 while discharging their duty with respect to the import consignment of M/s. Eastern Light Industries Pvt.Ltd. under Bill of Entry No.8902963 dated 31.05.2022.An Order-in-Original No.KOL/CUS/AIRPORT/ADMN/02/2023 dated 10.01.2023 was passed by the Ld.Commissioner of Customs (Airport & ACC), West Bengal, Kolkata, whereby the Ld.Commissioner has ordered for continuation of the suspension and initiated further proceeding under Regulation 17(1) of CBLR, 2018. Being aggrieved by and dissatisfied with the impugned Order dated 10.01.2023, the Appellant is before us.

2. The Appellant stated that the impugned order passed under Regulation 16(2) of CBLR, 2018 was not warranted as there was no necessity of initiating 'immediate action' under Regulation 16(1) of CBLR 2018. He stated that the imported consignment reached India on 23.02.2022 and the Bill of Entry for warehousing was filed on 31.05.2022. The SIIB (Port) seized the said consignment on

17.06.2022 on the ground of non-filing of valid documents along with the Bill of Entry. It was alleged that the Customs Broker had abetted the illegal attempt to import the 'restricted goods' namely second-hand 'Data Processing Servers' without having mandatory documents. The Appellant stated that the investigation has already been concluded by SIIB (Port) and a Show Cause Notice dated 09.12.2022 has already been issued. Hence 'immediate action' required as specified under Regulation 16(1) CBLR 2018 does not arise at this later stage. They further contented that suspension under Regulation 16 of CBLR 2018 is not a mandatory pre-condition for initiating action under Regulation 17 of CBLR 2018. Suspension of license of the Customs Broker as provided under Rule 16 (1) is necessary only in respect of appropriate cases where 'immediate action' is necessary. There cannot be any necessity of 'immediate action' after a period of ten months from the date of arrival of the imported consignment in India and a period of more than six months from the date of seizure of the impugned goods.

3. In support of his argument that no immediate action is warranted in this case to suspend the license, the Appellant cited the following decisions.

- 1) M.K. Saha & Company Vs. CC(Airport & Admn.), Kolkata
[2021 (376) E.L.T. 534 (Tri.-Kolkata)]
- 2) Rubee Air Freight Ltd. Vs. CC (Airport & Admn.), Kolkata
[2010 (257) E.L.T. 20 (Cal.)]
- 3) N.C. Singha & Sons Vs. Union of India
[1998 (104) E.L.T. 11 (Cal.)]

4. The Appellant further stated that that arranging the mandatory documents such as BIS Certificate, DGFT authorization and NOC from MOEF for the imported consignment were the responsibility of the importer. The Appellant came to know that the importer was not having the said documents and accordingly advised them that the imported goods cannot be cleared for home consumption. They advised them that to minimize demurrage charges, the goods may be warehoused and filed a warehousing Bill of Entry and opted for First Check.

Accordingly, they contended that they have not violated Regulations 10(d), 10(e), 10(f) and 10(m) of CBLR, 2018 as alleged in the notice.

5. The Authorized Representative for the Department stated that the Appellant was aware that second-hand goods were not permissible for import as they are 'restricted goods'. They require authorization from DGFT, NOC from MOEF and Registration with BIS. The Customs Broker has filed the warehousing Bill of Entry which is not permissible for second-hand goods, which are 'restricted goods'. The second hand goods imported falls under Shedule I of E Waste Management Rules 2016 meant for mandatory Extended Producer Responsibility(EPR). Hence, the goods so imported are allowable only against valid EPR Authorization. Accordingly, they argued that Customs Broker has violated the provisions of Regulation 10(d), 10(d), 10(f) and 10(m) of CBLR, 2018 and hence suspension of the license by the Department was in order. In support of his argument for immediate necessity to suspend the license, he cited the judgment dated 09.07.21, Citation No. 2022- (379) E.L.T.368 (Tri Del), of the CESTAT, New Delhi.

6. We heard both sides. We find that the import of second hand goods is 'restricted' and importable only against an authorization from DGFT. Also, Data Processing Servers are notified goods at Sl.No.15 of Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 (hereinafter referred as CRO, 2012) as amended from time to time and the import is 'restricted' and attracts mandatory BIS certification and import of unregistered/non compliant notified products as in CRO, 2012 as amended, is prohibited. As per para 2.13 of Foreign Trade Policy (2015-2020), regarding "Clearance of Goods from Customs against Authorization", the filing of Warehousing Bill of Entry, in case of 'Restricted goods' is not available. However, in the present case, the importer has imported the second hand goods and filed the Bill of Entry for Warehousing without having any valid authorization which violates the provisions of Para 2.13 of Foreign Trade Policy (2015-2020) as amended from time to time. It is the responsibility of the importer to have these documents at the time of importation of these 'restricted

goods'. The importer stated that they have applied for these documents. However, the fact remains that the importer was not having any of the above said mandatory documents at the time of filing of the said Bill of Entry. In that respect, there is a violation of the provisions of para 2.13 of [FTP \(2015-2020\)](#) and the CRO 2012.

7. We find that the Department has initiated action to suspend the Customs Broker licence under Rule 16(1) of CBLR, 2018 for contravention of the provisions of Regulation 10(d), 10(e), 10(f) and 10(m) of CBLR, 2018. We also find that the Inquiry proceedings as mentioned in Regulation 17 Of CBLR 2018 has already been initiated. Under these circumstances, the issue before us is whether immediate suspension of the Custom Broker license is warranted or not.

8. The Ld. Authorized Representative for the Department argued that the Customs Broker has not advised the importer properly regarding the import of second-hand 'Data Processing Servers', which are 'restricted goods'. The Customs Broker is aware of the DGFT Notification No.5/2015-2020 dated 07.05.2019, Electronic & Information Technology Goods (requirement for compulsory registration) Order 2012, BIS and EPR 2016 and they should have advised the importer properly before filing of the Bill of Entry. Hence, he argued that the suspension of the CB license was proper. The Customs Broker in their reply stated that they were aware of the above-said requirements and informed the importer verbally to obtain the above-said permissions. The Customs Broker stated that the Directors of the importing company were citizens of UK possessing a Master Degree in engineering. They were well aware of the requirements to import the old and used data processing servers and informed them that they were in the process of getting those permissions. However, as the mandatory required documents are not available, they advised the importer not to file the Bill of Entry for home consumption. Since they were incurring heavy demurrage, a decision was taken to file warehousing Bill of Entry to minimize the losses. Accordingly, they filed warehousing Bill of Entry and opted for 100%

examination. The Customs Broker further stated that they have properly advised the requirements before filing the Bill of Entry for second-hand machineries and instructed the importer to obtain the necessary documents. Since the importer was in the process of obtaining those documents, they have filed the warehousing Bill of Entry only to save demurrage. They were not aware that warehousing Bill of Entry cannot be filed in case of 'restricted items'. However, there was no intention on their part to wrongly advise their clients. In fact they only advised the importer to go for first check i.e. 100% examination. Thus, they contended that they have not violated any of the provisions CBLR 2018, as alleged in the Notice. They also argued that investigation in this case has already completed by SIIB (Port) and Show Cause Notice has also been issued. Hence, there is no urgent necessity to suspend the license at this stage.

9. We find that the Customs Broker License was suspended vide CB Order No.21/2022 dated 19.12.2022 as per Regulation 16 of CBLR, 2018. For the sake of easy reference, the Regulation 16 is reproduced below :-

"Regulation 16. Suspension of license. — (1) *Notwithstanding anything contained in regulation 14, the Principal Commissioner or Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the license of a Customs Broker where an enquiry against such Customs Broker is pending or contemplated :*

Provided that where the Principal Commissioner or Commissioner of Customs may deem fit for reasons to be recorded in writing, he may suspend the license for a specified number of Customs Stations.

(2) Where a license is suspended under sub-regulation (1), the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, shall, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs Broker whose license is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be,

within fifteen days from the date of hearing granted to the Customs Broker :

Provided that in case the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, passes an order for continuing the suspension, further procedure thereafter shall be as provided in regulation 17."

10. It is observed that Regulation 16(1) provides for suspension of license of the Customs Broker where an inquiry against them is pending or contemplated. It is required only in 'appropriate cases' where 'immediate action' is necessary. Thus, we find that suspension of CB license is not a mandatory requirement in all cases. Suspension of CB license is resorted only in cases where 'immediate action' is warranted. In their submissions, the Appellants stated that in this case the investigation has already been completed and there is no urgent necessity to suspend the license of the Customs Broker. In support of their argument, the Appellant has cited the decision of the Hon'ble Calcutta High Court's in the case of Rubeer Air Freight Ltd. v. CC (Airport & Administration), Kolkata [2010 (257) E.L.T. 20 (Cal.)] wherein it has been held that immediate suspension of the license of Customs Broker is not warranted when the goods were found to be 'restricted goods' on examination. Relevant portion of the order is reproduced below :-

"2. *The power of the Commissioner of Customs to suspend a Customs House Agent's Licence has been questioned. This Court, however, is of the prima facie view that power to suspend Customs House Agent's Licence does exist and in appropriate cases, where there is immediate necessity of issuing an order of suspension, the requisites of Regulation 22 need not be complied with.*

3. *The power to suspend a licence is, however, drastic and entails irreversible civil consequences for the licensee. The power to suspend thus, ought to be exercised cautiously. Orders of suspension without prior opportunity of hearing might only be issued in exceptional cases,*

where having regard to the nature of the misconduct and/or offence alleged. It would not be expedient to allow the Customs House Agent concerned to enter the Customs area and transact business.

4. *In the instant case, a perusal of the order impugned reveals that the petitioner cleared consignments on behalf of the clients. A clearing agent is concerned with clearance of goods. A clearing agent, prima facie, cannot be penalised for any illegality and/or impropriety of the importer and/or exporter concerned, when there is no fault on the part of the clearing agent.*

5. *In this case, the impugned order shows that the goods imported were even assessed to duty. Later, however, the goods were opened and examined by officials of the Directorate of Revenue Intelligence, whereupon it was found that the importer had illegally imported goods, of which import was restricted, without the requisite permission/licence.*

6. *The customs authorities were of the view, and perhaps rightly, that the consignments were liable to confiscation. Even assuming that the consignments were liable to be confiscated, the question that arises is, whether the clearing agent can be faulted. A clearing agent cannot be proceeded against, nor its licence suspended in the absence of any culpability or fault on the part of the clearing agent.*

7. *In the impugned order, there is an allegation against the clearing agent of contravention of the applicable rules. The impugned order has apparently been issued having regard to alleged statements of the Managing Director of the petitioner No. 1, in course of investigation, to the effect that the petitioner No. 1 allowed one Papu who did not have the requisite licence, to file bills of lading and/or otherwise perform the functions required of the clearing agent.*

8. *The Managing Director of the petitioner No. 1 allegedly made a statement to the effect that he did not know the importer. One Papu used to bring documents such as invoices, packing lists and bills of lading and the petitioner stamped the same as per his declaration.*

9. *The petitioners have made a specific averment on oath that the consignment was cleared by the petitioner No. 1 through its authorized employee and Papu only remained present as the representative of the petitioner.*

10. *In course of hearing, it was submitted that the consignment was cleared by one Sri Tapas Kr. Mukherjee, an employee of the petitioner No. 1, who had duly cleared the G-pass examination and had a valid customs pass.*

11. *It is also difficult to understand how customs authorities could have allowed a wholly unauthorised person to clear consignment. The customs authorities could not have allowed the clearance unless an authorised representative of the clearing agent was present. The observation is, however, only a prima facie observation. In any case, the contravention alleged, prima facie, did not warrant immediate suspension.*

12. *Whether the petitioner No. 1 contravened the rules applicable to it or not is to be decided in compliance with the requisites of Regulations 20(1) and 22.*

13. *It is nobody's case that the petitioner No. 1 was not at all authorised to clear the goods on behalf of the importer. The fact that one Papu brought requisite shipping documents and gave instructions on the basis of which the petitioner No. 1 proceeded, is not really material, since no adverse influence can be drawn against the petitioners therefrom.*

14. *On the face of the impugned order, the allegation of transaction of business through an unauthorised person seems improbable for the reasons mentioned above. The observations are, however, only prima facie observations.*

15. *The fact remains that the nature of the allegations in the impugned order prima facie do not warrant immediate suspension of a clearing agent without opportunity of hearing."*

11. The Appellant has also relied upon the decision of this Tribunal in the case of M.K. Saha & Company Vs. Commissioner of Customs (Airport & Administration), Kolkata [2021 (376) E.L.T. 534 (Tri.-Kolkata)], wherein it has held as under:-

"9. We find that the power of suspension under Regulation 16 of CBLR, 2018 is to be exercised in appropriate cases where immediate action is necessary. It is well settled principle of law that only in appropriate cases where immediate action is necessary, suspension is required to be adhered to. In other words, suspension of CB licence cannot be exercised by the authority in a routine and mechanical manner. For invocation of Regulation 16 ibid, it is necessary for the authority to disclose the immediate necessity of exercising such power. In the present case, the alleged export consignments were procured during July, 2018 and the Shipping Bills were dated 8-8-2018 and 9-8-2018 respectively. The DRI Authority had intercepted and conducted 100% examination of goods on 21-8-2018. Thereafter, the investigation went on and apparently, the CB had duly participated in the investigation before the DRI Authority. After substantial period of time, on 18-2-2019, there was no 'immediate necessity' of suspension of the licence of the CB under Regulation 16 of CBLR, 2018. The Commissioner has also failed to adduce any reason of 'immediate necessity' of exercising power under Regulation 16 of CBLR, 2018 in the impugned order. The Hon'ble High Court of Calcutta in the case of Rubeer Air Freight Ltd. v. CC (Airport & Administration), Kolkata [[2010 \(257\) E.L.T. 20](#) (Cal.)] at Para 3 held that, "The power to suspend a licence is, however, drastic and entails irreversible civil consequences for the licensee. The power to suspend thus, ought to be exercised cautiously."

10. *In the case of N.C. Singha & Sons v. UOI [[1998 \(104\) E.L.T. 11](#) (Cal.)], the Hon'ble High Court, Calcutta has held that, "That order, in our opinion, is not sustainable because it does not spell out that any immediate action is required to be taken in the matter nor does the order on its face indicate that such action was indeed warranted."*
[Para 6]

11. Also, in the case of *East West Freight Carriers (P) Ltd. v. Collector of Customs, Madras* [[1995 \(77\) E.L.T. 79](#) (Mad.)] the Hon'ble High Court, Madras has held that, "In the absence of any indication that there was application of mind by the Collector on the aspect as to whether immediate action was necessary, in my opinion, the impugned order cannot be sustained. The Collector gets jurisdiction to suspend that licence in cases where immediate action is necessary." [Para 9]

12. Though Customs House Agents Licensing Regulations, 1984 has been subsequently superseded by the Customs House Agents Licensing Regulations, 2004 and further vide Customs Brokers Licensing Regulations, 2013 and now Customs Brokers Licensing Regulations, 2018 is in effect, the power of suspension of licence of CHA/CB remains the same with additional provision of post-decisional hearing and confirmation by the Commissioner. In other words, the prior ingredient of 'immediate necessity' of suspension of a CB licence remained in the provision at the wisdom of the legislation and hence, the ratio of the judgments referred supra are squarely applicable to the facts of the present case.

13. We find that in the present order also, the Commissioner has not applied his mind on the aspect as to whether immediate action was necessary and thus, on this ground alone the order of continuation of suspension of the CB licence of the appellant fails.

14. Reliance has been rightly placed by the appellant in the case of *International Cargo Agents v. Commissioner of Customs, Bangalore* [[2000 \(121\) E.L.T. 155](#) (Tribunal)] wherein in similar circumstances, a Coordinate Bench of this Tribunal has held as under :

"7 We have carefully considered these submissions and records of the . case and we find that there is great force in the submissions of Ld. Advocate for the following reasons :-

(1) Since the invoices, packing list as well as the Exchange Control copy of the Shipping Bill (on reverse) all containing the declared value were signed by the exporter himself, therefore, it cannot be logically concluded that the present appellant as an

agent of the exporter, was responsible for declaration of overvaluation, if any.

(2) There has been a delay of more than three months and five days in suspension of the CHA licence, which has not been explained in the order impugned. On a consideration of the plethora of decisions on this issue, noted above, we are of the considered opinion that the law is now well settled to the effect that the drastic provisions of suspension of a CHA licence under the Regulation 21(2) shall be used only when there is an immediate need for the same. It necessarily follows that if suspension is invoked after a long period of time, which in this case is over 95 days, then this by itself is demonstrative of the fact that there was no immediate necessity found.

(3) We also find from a perusal of the order impugned that except for mention of an earlier alleged infringement done by the appellant, there is no other grounds spelt-out therein which compelled the Ld. Commissioner to suspend the said licence. In this connection, we find that once the Tribunal vide final order noted above had absolved the appellant of all wrong doings by setting aside the order, again before the Tribunal the Commissionerate cannot take this as a precedential value by holding that appellant had in the past committed any gross irregularity. If this view is not taken, then the very purpose behind the adjudication of the issue by the Tribunal would be lost. Therefore, if this be so, then the present allegation can only be treated as vague.

(4) We are, therefore, of the considered opinion that since there has been abnormal delay in the issue of the order impugned from the date of cause of action, therefore following the ratio of the numerous decisions cited by both of the Hon'ble High Court of Calcutta & Madras as well as the Tribunal, we find that this delay in ordering suspension has fettered the issue and therefore the order impugned is liable to be set aside.

(5) We also find that the Tribunal in the case of *MVT International v. CC* as in [2000 \(117\) E.L.T. 258](#) (Tri.) = 2000 (36) RLT 799 (CEGAT) has held that over-invoicing is not an offence under Section 18(1)(a) of FERA, 1973 and therefore also not an offence under Section 11 of the Customs Act, 1962. In this decision, the Hon'ble Tribunal had also noted the decision of the Tribunal in the case of *Shilpi Exports v. CC* as in [1996 \(83\) E.L.T. 302](#) (T) which had not been interfered by the Hon'ble Apex Court on a Civil Appeal filed by Revenue as is reported in [1996 \(88\) E.L.T. A65](#). We are of the opinion that when such an over-invoicing does not lead to any penalty on the importers or confiscation of the goods being exported in the above decision, the suspension of a CHA licence in such an issue is not justified."

15. Moreover, apparently, the authorities have failed to complete the Regulation 17 proceeding within the time limit stipulated therein. The Hon'ble High Court, Calcutta has also found that the inquiry proceeding was completed without supplying relied upon documents to the CB and hence, the said inquiry report has been set aside by the Hon'ble High Court, Calcutta, as referred supra. On query, it is learnt that afresh inquiry proceeding is yet to be concluded by the newly appointed Inquiry Officer. In such scenario, the suspension of licence of appellant cannot be allowed to continue since the same has irreversible civil consequences on the appellant/CB.

16. In the above circumstance, we are on the considered opinion that there is no necessity to continue with the suspension of the CB licence any further. Justice may subserve and balance of convenience may be maintained by withdrawing suspension of the CB licence of the appellant and directing them to cooperate in the inquiry proceeding under Regulation 17 of CBLR, 2018. Hence, the proceeding of inquiry under Regulation 17 *ibid* shall continue in the case of the present appellant in accordance with law, but the authorities should not continue with the suspension of their licence.

17. We accordingly modify the impugned Order-in-Original dated 6-3-2019 by setting aside the suspension of the CB licence of the appellant only. The other part of the Order-in-Original relating to proceeding under Regulation 17 of CBLR, 2018 shall continue in accordance with law. The Commissioner of Customs (Airport & Administration), Kolkata shall issue necessary order/circular immediately allowing operation of the CB licence of the appellant."

12. In the case of N.C. Singha & Sons v. Union of India [1998 (104) E.L.T. 11 (Cal.)], the Hon'ble Calcutta High Court has held as under:-

"4. We have heard the learned Advocates for the parties and considered the rival contentions. Regulation 21(2) of 1984 Regulations read thus :

"21(2). Notwithstanding anything contained in sub-regulation (1), the Commissioner may in appropriate cases, where immediate action is necessary, suspend the licence of a Custom House Agent where an enquiry against such agent is pending or contemplated."

5. A perusal of the order dated 9th June, 1998 passed by the respondent No. 2 clearly suggests that the power under Regulation 21(2) was resorted to apparently without spelling out in the impugned order as to whether any immediate action was necessary so as to suspend the licence of the appellants with immediate effect. Undoubtedly a plain reading of the Regulation 21(2) clearly stipulates that the requirement to take immediate action is a *sini qua non* to the suspension of a licence under Regulation 21(2) because such suspension is not by way of any punishment, as is contemplated by Regulation 21(2), but is required to cater to a situation warranting immediate action. The purpose of resorting to immediate suspension of a licence because of some immediate action is to immediately stop the activities of the clearing agent so as to disable him from taking any further action in the matter since, under a particular situation and under some given set of circumstances, the requirement of immediate action may demand that the clearing agent may be immediately required to be prevented from working any further. The minimum that is required by the Commissioner to enable him to exercise such power

is the spelling out of the circumstances in the order warranting the need to take such immediate action and to actually say that immediate action is indeed required in the matter. What we see from the impugned order dated 9th June, 1998 is that the expression "immediate action" itself is missing. That apart, what we find from the preamble, recitals and facts stated in the order is that the circumstances did not warrant the taking of immediate action in terms of Regulation 21(2) of the 1984 Regulation.

6. *We stop short of saying any further or any more because the matter may again come up for consideration by the respondents. Our only concern, rather sole concern in this appeal is about the legality and validity of the suspension order in purported exercise of the power under Regulation 21(2). That order, in our opinion, is not sustainable because it does not spell out that any immediate action is required to be taken in the matter nor does the order on its face indicate that such action was indeed warranted."*

13. We find that the above said decisions cited by the Appellant supports their case . It is observed that the goods in question have been received in the Port area on 23.02.22 and the Customs Broker has filed the warehousing Bill of Entry on 31.05.22. The Customs Broker was issued the CB Order 19.12.22 and the same was confirmed on 10.01.23. It is observed that after filing of the warehousing Bill of Entry by the Customs Broker, the SIIB (Port) has initiated the investigation against the imported consignment and issued a Show Cause Notice dated 19.02.2022. Thus, we find that the investigation in this case has already completed and there is no urgent necessity warranting restriction on the Customs Broker. Immediate suspension of the Customs Broker is warranted when there is an apprehension that the CB may interfere in the investigation or tamper with any evidence which will be detrimental to the investigation. There is no such apprehension in this case, as the investigation has already been completed and Notice issued. Thus, there is no urgent necessity to suspend the license of the CB.

14. In their submission, the Appellant stated that they are working as Customs Broker since 1987 and they have an unblemished record for more than 35 years. They have advised the importer properly and they themselves opted for first check in this case. They have fully cooperated in the investigation and even after their full cooperation their Customs Broker license has been suspended. Such a deterrent action will affect the livelihood of several persons working in their company. They are not in a position to carry out their operations in the port area. Hence they requested for revocation of suspension which will allow them to operate and perform their clearing agency work.

15. We find that the clearing agent has filed the warehousing Bill of Entry, as the importer was not having the mandatory documents. Arranging the documents is the responsibility of the importer. We cannot find fault with the Customs Broker for not arranging the documents before importation of the second hand goods. As the mandatory documents could not be arranged in time, the Customs Broker has advised the importer to file Warehousing Bill of Entry to save demurrage charges. Even though warehousing is not permissible for second hand goods, they filed warehousing bill of entry only to minimize the loses and opted for First check. It is observed that they have opted for first check on their own and fully cooperated with the investigation by the SIIB (Port). After completion of the investigation, the Show Cause Notice has also been issued. We observe that suspension of the license at this stage will have serious implication on the livelihood of many employees working in the organization. Since the investigation has already been completed and Notice issued to the importer, we observe that there is no urgent necessity warranting suspension of the license. The enquiry proposed under Regulation 17 of CBLR, 2018 can go on even without suspension of the license. After completion of the enquiry, the Competent Authority will decide whether revocation of license is warranted or not in this case.

We are not going into the merits of the case as to whether the CB has violated Regulations 10(d), 10(e), 10(f) and 10(m) of CBLR, 2018 or

not, as alleged in the notice. That decision will be taken by the competent authority after completion of the Inquiry proceedings.

17. In view of the above discussion we hold that the suspension of the licence is not warranted in this case, at this stage, after completion of the investigation and issue of Show Cause Notice. Accordingly, we set aside the impugned order suspending the licence and allow the Appeal.

(Order pronounced in the open court on 11 April 2023.)

Sd/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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