CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. III
(E-HEARING)

Customs Appeal No. 50490 of 2019

(Arising out of Order-in-Original No. 07/MK/POLICY/2019 dated 04.02.2019 passed by the Commissioner of Customs (Airport & General), New Delhi)

M/s R.P. Cargo Handling Services **Appellant**
(Through its proprietor Mr. Rajat Prabhakar)
A-8/C, 2nd Floor,
Room No. 12, Vishwakaram Colony,
M.B. Road, New Delhi-11004.

VERSUS

Commissioner of Customs (Airport & General) Respondent
New Custom House, Near IGI Airport,
New Delhi-110037.

Appearance

Shri Priyadarshi Manish, Advocate – for the Appellant.

Shri Nagendra Yadav, Authorized Representative – for the Respondent

CORAM :

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 04/01/2024
Date of Decision: 02/02/2024

Final Order No. 50160/2024

Binu Tamta

Challenge in the present appeal is to the Order-in-Original No. 07/MK/POLICY/2019 dated 04.02.2019 whereby the revocation of the Customs Broker License, forfeiture of security deposit of Rs. 5 lakhs and penalty of Rs. 50,000/- was affirmed.

2. The appellant a Customs Broker is holding a License, which is valid up to 01.09.2026. Investigation was initiated against M/s Leo Cargo Services Pvt. Ltd., M/s D.S. Cargo Agency and M/s R.P. Cargo Handling Services. On the basis of investigation report dated

10.05.2018 (received on 18.05.2018) forwarded from DRI, HQs. for initiating proceedings against the appellant and others respectively, on the allegation that Shri Ramesh Wadhera and Shri Sanjeev Maggu were engaged in evasion of customs duty by way of diverting the goods stored in customs bonded warehouse into the domestic market without payment of customs duty. It was further revealed that the documents were forged/fabricated to show re-export warehoused goods. For this purpose, Shri Ramesh Wadhera and Shri Sanjeev Maggu created dummy firms and obtained IEC in their names, the details whereof are:

(i) M/s Accturists Overseas (OPC) Pvt. Ltd.

(ii) M/s Spark Exports

(iii) M/s Shree Shyam Enterprises

(iv) M/s Horrens Exim

During the course of investigation, statement of Shri Rajat Prabhakar, CHA, M/s R.P. Cargo Handling Services was recorded on 25.07.2017, wherein he admitted that he had filed the papers for 16 consignments for two importers i.e. M/s Accturist Overseas (OPC) Pvt. Ltd., New Delhi and M/s Sparx Exports, New Delhi, that he had not physically verified the premises of M/s Accturist Overseas OPC Pvt. Ltd., New Delhi and M/s Sparx Exports, New Delhi, however in order to verify the existence of their premises he had sent a letter by speed post, asking for submitting their KYC documents; that in response to the said letter M/s Sparx Exports, New Delhi had submitted their documents but M/s Accturist Overseas OPC Pvt. Ltd. did not respond to it; that he received the KYC documents in respect of both above mentioned firms through

Shri Sanjeev Maggu; that as per his understanding Shri Sanjeev Maggu was the actual controller of both above said firms; that he was working first time as Custom Broker and had received the work of above said firms after making so much effort, therefore, he thought that if he would raise questions about discrepancies of the above said firms, the clearance work of these firms would be done by some other Customs Broker, that he did not charge exorbitant charges to take benefit of the said discrepancies; that he was under the bona fide belief that nothing wrong could be done in the case of Warehousing Bonds but later on he came to know that Shri Sanjeev Maggu was a Customs Broker himself and he was carrying out clearance work of the above mentioned firms through him just to clear the goods that were imported under Warehouse Bonds in the local market by showing re-export to other foreign countries; that Shri Sanjeev Maggu was doing that just to evade his identity; that once he raised his concern to Shri Sanjeev Maggu and in response of which he threatened him to stop his payment which he was to receive from him and also threatened to give the work to some other Customs Broker; that Shri Sanjeev Maggu also threatened him dare not to contact Customs Authorities so he kept his mouth shut; that his mistake may please be condoned as that was not intentional.

3. Statement dated 19.08.2017 of Shri Lalit Dogra, proprietor and IEC holder of M/s Accturist Overseas (OPC) Pvt. Ltd. was recorded wherein he inter alia, stated that he was informed by Shri Sanjeev Maggu that a firm would be opened in his name and that he will be paid Rs. 15,000/- per month; that Shri Sanjeev Maggu

had informed him that he would forge documents in which the name would be Shri Lalit Dogra but the photograph would be of some other person; that Shri Sanjeev Maggu told him to accompany Shri Samar Arora to Lakshmi Vilas Bank, Ashok Vihar to help in opening the account of M/s Sparx Exports and represent himself as Shri Rahul Sharma; that he was also told by Shri Sanjeev Maggu that Shri Ramesh Wadhera was the financer behind this scheme. Accordingly, show cause notice dated 10.08.2018 was issued to the appellant for contravening the provisions of Regulation 10(b), 10(d), 10(e) and 10(n) of the Customs Broker Licensing Regulations (CBLR, 2018). In terms of Regulation 17(1) of CBLR, 2018 inquiry officer was appointed who submitted his report dated 16.11.2018 whereby he dropped the charges against the appellant. However, the adjudicating authority based his disagreement note dated 30.11.2018 against the inquiry officer. On adjudication, vide order dated 04.02.2019 the license of the appellant has been revoked under Regulation 17 of CBLR along with forfeiture of the security deposit and imposition of fine of Rs. 50 lakhs.

4. The appellant challenged the order dated 4.2.2019 before this Tribunal, which was disposed of vide order dated 26.4.2019 and the appeal was allowed on a preliminary objection that the notice under regulation 20 of CBLR was required to be received by the Customs broker within 90 days of the receipt of the offence report and since in the present case, it was beyond the said period, the show cause notice was barred by limitation. The department challenged the order of this Tribunal in Customs Appeal No.

223/2019 before the Delhi High Court, where the issue was decided in favour of the department that the Commissioner was only required to issue notice within the period of 90 days as it is not the requirement under Regulation 20 of CBLR, 2018 to serve a notice to the party within a period of 90 days from the date of receipt of the offence report. Accordingly, vide order dated 2.3.2023, the matter was remanded back to the Tribunal to decide the appeal on merits. Hence the appeal is listed before us.

5. We have heard both the parties at length and have perused the records of the case.

6. The learned counsel for the appellant had raised preliminary objection that show cause notice is barred by limitation and the same stands concluded by the judgment of the Delhi High Court. On merits, the learned counsel submitted that the appellant had transacted business either personally or through employees of the firm. Shri Sanjeev Maggu had never dealt with the customs authority on behalf of the Customs Broker and hence there is no violation of Regulation 10(b). According to him, the actual offence had occurred at the time of clearance of the goods from the warehouse and for which act neither the appellant was involved nor he performed any work in connection there with. Thus there is no link between the offence and the duty/obligation assigned on the CHA and, therefore, there is no violation of Regulation 10(d). The learned counsel further submitted that the appellant had conducted the transaction with due diligence and explained the process that he received the KYC documents from the importer and verified it from the respective sources. They have checked the IEC number

of the website of the DGFT and found the same to be correct. The learned counsel relied on several judgments in support of the submissions that CHA is not supposed to look into the details of genuineness of the importer once the IEC number is produced by the importer. He argued that physical verification of the official premises or the residential premises of the importer is not required, though by way of abundant caution he had sent letters through speed post at the given address of the importers for submitting the requisite documents and which was responded thereto.

7. The learned Authorized Representative for the Revenue reiterated the findings of the adjudicating authority and submitted that as per statement dated 25.07.2017, the appellant had admitted that he knew that Shri Sanjeev Maggo is the actual owner but he never informed the department of this fact and thereby he connived with Shri Sanjeev Maggu in the fraud caused to the government exchequer and thereby violated the provisions of Regulation 10(d). Similarly, the appellant failed to exercise due diligence to ascertain the correctness of the information which resulted in contravention of Regulation 10(e). He further relied on the statement dated 19.08.2017 of Shri Lalit Dogra, dummy proprietor of M/s Accturist Overseas, which clearly shows that Shri Sanjeev Maggu opened the firm in his name and promised to pay him Rs. 15,000/- per month and also informed him that Shri Sanjeev Maggu would forge his photograph, in his KYC i.e. voter id. The appellant having failed to notice the discrepancy in the KYC document contravened the provisions of Regulation 10(n) of CBLR, 2018. In nutshell, he submitted that the appellant did not take

authorization and KYC details from the concerned importers and failed to verify the correctness of the IEC, GSTIN, identity of his client and functioning of his client at the declared address by using reliable and independent data or information it was mandatory as per Regulation 10(n). He relied on the decision of this Tribunal in the case of **D.S. Cargo Agency Vs. Commissioner of Customs, New Delhi – 2021 (376) ETL 724** where the revocation of the Customs Broker License was upheld in similar circumstances.

8. Before adverting to the merits of the matter, it is relevant to note that the decision of the Tribunal in **D.S. Cargo** (supra) was challenged before the Delhi High Court in (CUSAA No. 2/2022) and vide judgment dated 25.09.2023 the appeal has been decided in favour of the Customs Broker by setting aside the revocation of the license and forfeiture of the security deposit. From the impugned order here, we find that the department had initiated proceedings both against M/s D.S. Cargo and M/s R. P. Cargo, the appellant herein as their services were utilised by Sh. Ramesh Wadhera and Sh. Sanjeev Maggu by opening importer companies in the name of other persons. Therefore, the case of the appellant as well that of DS Cargo had arisen from the same modus-operandi, where the public warehouses were used for diversion of the warehoused goods in the domestic market without payment of customs duty. The importer firms involved in the two cases are also the same.

9. The allegations raised in both the cases is identical that importer firms were actually controlled and operated by Shri Ramesh Wadhera and Shri Sanjeev Maggu and the imported goods meant for re-export stored at public bonded warehouses were

diverted into the domestic markets without payment of the customs duty which caused loss to the government exchequer. On that basis, the Customs broker had been charged for violation of the provisions of Regulation 10(b), 10(d), 10(e) and 10(n) of CBLR, 2018. Having given our anxious consideration to the decision of the Delhi High Court in D S Cargo, we are of the view that the same is squarely applicable to the present case and we would therefore like to quote in extenso the paragraphs of the decision in D S Cargo as under :

> **"Regulation 10(b) of CBLR, 2018 read with 11(b) of CBLR, 2013**
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> "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.
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> 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.
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> 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.
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> 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.
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> 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.
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> 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.
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> 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.

<u>Regulation 10(e)</u> 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)."
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> (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.
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> 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."**

10. From the submissions made by the Revenue it appears that they have not pressed on the violation of the provisions of Regulation 10(b) of CBLR, 2018. Also from the records, we find that Shri Sanjeev Maggu never acted on behalf of the appellant (Customs Broker) but acted on behalf of the importer. The appellant either himself or through his employees transacted with the Customs authority for clearance of the goods. Thus, there is no violation of Regulation 10(b) of CBLR, 2018. On the basis of the statement of the appellant dated 25.07.2017, the allegations levelled by the Revenue in nutshell are that the appellant knew that Sh. Sanjeev Maggu is the actual owner but he never informed this fact to the department and thus he connived with Shri Sanjeev Maggu in the fraud. The fraud alleged here is of diverting the goods from the warehouse instead of re-exporting, which had occurred after the role of the appellant had come to an end as the goods had reached the customs bonded warehouse. Hence the appellant cannot be linked to the fraud and the same cannot be stretched to contravention of the provisions of the Regulations. We find from the records of the case that the appellant in order to

verify the existence of the premises of the two importer firms had sent letters by speed post asking them to submit the requisite documents and in response thereto he received the KYC documents. It has been repeatedly held that it is not the legal requirement to physically verify the business premises or the residential premises of the importer, i.e., **M/s Setwin Shipping Agency Vs. Commissioner of Customs (General) Mumbai 2010 (250) ELT, 141 (Tri.-Mum), M/s Him Logistics Pvt. Ltd. vs. Commissioner of Customs 2016 (338) ELT, 725 (Tri.-Del.) and Commissioner of Customs Vs. Yogesh Kumar, 2017 (349) ELT 12 (Del.).** The fact that the appellant had sent the letter by speed post at the given address and M/s Spark Exports had responded and the KYC documents were submitted by both the importers shows that the appellant had fulfilled the obligation under the Regulations. The appellant verified the IEC number from the site of the DGFT and personally met Sh. Lalit Dogra and Sh. Samar Arora, proprietors of the two firms. As noted above, the High Court in **Kunal Travels** (supra) held that grant of IEC Code presupposes a verification of facts etc. made in such application with respect to the concern or entity.

11. We also find that in the inquiry report, the findings of the inquiry officer were in favour of the appellant on the basis of the reasoning which is now accepted by the High Court in D S Cargo. We may quote the observations of the inquiry officer as under:

> " They performed their work in the capacity of Customs Broker upto warehousing of the goods. The importer had never admitted that they have committed this fraud with the help of M/s R P Cargo and they have taken assistance in clearance of warehoused goods. There is no link between the

offence and the duty assigned on CHA / Customs Broker." It was therefore, concluded :

> "I find that M/s R. P. Cargo, the customs broker has not violated the provisions of Regulations 10(b), 10 (d), 10(e) & 10(n) of CBLR, 2018 read with 11(b), 11 (d), 11(e) & 11(n) of CBLR, 2013."

The case of the appellant is on a better footing since in the case of **D.S. Cargo,** the Inquiry Officer recorded the finding that the allegation made in the show cause notice are proved against the appellant and recommended action.

12. On the issue of proportionality of imposing the punishment, we are again guided by the decision of the Delhi High Court in **D.S. Cargo** (supra) where the Court took note of the fact that the revocation of the license came into effect on 4.2.2019 and more than 4 1/2 years had lapsed which itself is a severe punishment and will serve as a reprimand to the appellant to conduct its affairs with more alacrity, the same order needs to be maintained. In the present case also, the order of revocation came into effect on 4.2.2019 and almost more than five years have lapsed since the appellant has been out of work on that account and which is a sufficient punishment for him to be cautious in future. In the facts of the present case, the punishment by way of revocation of license and forfeiture of security deposit is too harsh.

13. The decision of the High Court in **D.S. Cargo** (supra) clarifying that the illegal actions of the importer firms subsequent to the clearance of the cargo from the Customs Station do not attract the violation on the part of the Customs Broker is binding on us and we do not find any reason to differ from the same as the controversy had arisen in the same set of facts in both the

cases. Hence the impugned order upholding the revocation of the license and also the forfeiture of the security amount is set aside, however the penalty imposed is upheld. The impugned order is modified to that extent. Accordingly, the appeal is partly allowed.

(Pronounced in open Court on 2nd February, 2024)

(Binu Tamta*)*
Member (Judicial)

(P.V. Subba Rao)
Member (Technical)

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