



प्रधानआयुक्त, सीमाशुल्क (सामान्य) का कार्यालय
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
(GENERAL),
नवीन सीमाशुल्क भवन,बेलाई इस्टेट, मुंबई- 400 001.
NEW CUSTOM HOUSE, BALLARD ESTATE, MUMBAI – 400 001.

संचिका सं./F. No.- GEN/CB/7/2024-CBS

आदेश दिनांक/Date of Order: 25.06.2024

CAO No. 20/CAC/PCC(G)/SJ/Adj-CBS

जारी दिनांक/Date of issue: 25.06.2024

संख्या:

DIN : 20240679OC000000AF37

द्वारा जारी : **सुनील जैन**
प्रधान आयुक्त, सीमाशुल्क(सामान्य)
मुंबई -400 001

Issued By : Sunil Jain
Pr. Commissioner of Customs (Gen.),
Mumbai – 400 001.

ORDER-IN-ORIGINAL मूल आदेश

ध्यान दीजिए/ N.B. :

1. यह प्रति उस व्यक्ति को निजी उपयोग हेतु निःशुल्क प्रदान की जाती है, जिसे यह जारी की जा रही है।
This copy is granted free of charge for the private use of the person to whom it is issued.
2. इस आदेश के विरुद्ध अपील माँगे गए राशी के **7.5%** के भुगतान पर सीमाशुल्क अधिनियम, 1962 की धारा 129A(1B)(i) के संबंधमें सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण में स्वीकार्य है, जहाँ शुल्क या शुल्क एवं जुर्माना विवादित हों, या जुर्माना, जहाँ सिर्फ जुर्माना ही विवादित हो।यह अपील इस आदेश के संप्रेषण की तारीख के तीन महीने के अंदर दायर की जाएगी। यह अपील सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण (कार्यविधि) नियमावली, १९८२, के प्रावधानों के अंतर्गत, यथोत्खंडपीठ में स्वीकार्य है।
An appeal against this order lies with the Customs, Central Excise and Service Tax Appellate Tribunal in terms of section 129A(1B)(i) of the Customs Act, 1962 on payment of **7.5%** of the amount demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. It shall be filed within three months from the date of communication of this order. The appeal lies with the appropriate bench of the Customs, Central Excise and Service Tax Appellate as per the applicable provisions of Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.
3. यह सूचित किया जाता है की इस आदेश के अमल में आते ही,न्याय निर्णयन अधिकारी का अधिकार क्षेत्र समाप्त होता है और सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण, पश्चिम क्षेत्री यखंडपीठ, के M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai के संदर्भ में जारी आदेश क्रमांक A/86617-86619/2018 दिनांक 31.05.2018 के अनुसार न्यायिक आदेश तदोउ प्रांत न्याय निर्णयन अधिकारी ' *functus officio* 'बन जाता है
It is informed that the jurisdiction of the Adjudicating Authority stands alienated with the conclusion of the present adjudication order and the Adjudicating Authority attains the status of '*functus officio*' as held by Hon'ble CESTAT, Mumbai in its decision in the case of M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai vide Order No. A/86617-86619/2018 dated 31.05.2018.

4. यदि एक ही प्रकरण में उसी पक्षकार के विरुद्ध कई कारण बताओ नोटिस लगाकर आदेश पारित किया जाता है तो प्रत्येक प्रकरण में अलग अपील दायर की जाए।

In case where an order is passed by bunching several show cause notices on an identical issue against the same party, separate appeal may be filed in each case.

5. यह अपील फॉर्म C.A.-3 में दायर की जानी चाहिए जो कि सीमाशुल्क (अपीलस) नियमावली, १९८२ के नियम 6 के तहत निर्धारित है एवं उसी नियमावली के नियम 3 के उपनियम 2 में उल्लेखित व्यक्ति द्वारा हस्ताक्षरित एवं सत्यापित की जाएगी।

The Appeal should be filed in Form C.A.-3 prescribed under Rule 6 of the Customs (Appeals) Rules, 1982 and shall be signed and verified by the person specified in sub-rule 2 of rule 3 rules ibid.

6. (i) यदि प्रतिवादित आदेश, जिसके विरुद्ध अपील की गई है, में शुल्क एवं मांगे गए ब्याजबलगाएगए जुर्माने की राशि रु. पाँच लाख या इस से कम होतो रु. 1000/-, (ii) यदि यह राशि रु. पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न होतो रु. 5000/- एवं (iii) यदि यह राशि रु. पचास लाख से अधिक होतो रु. 10000/- के शुल्क का भुगतान क्रॉसड बैंक ड्राफ्ट के माध्यम से अधिकरण की खंडपीठ के सहायक पंजीयक के पक्ष में जिस स्थान पर खंडपीठ स्थित है, के किसी भी राष्ट्रीय क्रत बैंक की शाखा में किया जाए एवं डिमांड ड्राफ्ट अपील के साथ संलग्न किया जाए।

A fee of (i) Rs. 1000/- in case where the amount of duty and interest demanded and the penalty imposed in the impugned order appealed against is Rupees Five Lakhs or less, (ii) Rs. 5000/- in case where such amount exceeds Rupees Five Lakhs but not exceeding Rupees Fifty Lakhs and (iii) Rs. 10000/- in case where such amount exceeds Rupees Fifty Lakhs, is required to be paid through a crossed bank draft in favour of the Assistant registrar of the Bench of the Tribunal on a branch of any nationalized bank located at the place where the bench is situated and demand draft shall be attached to the Appeal.

7. अपील की एक प्रति में कोर्ट फी अधिनियम, 1870 की अनुसूची मद 6 के तहत निर्धारित रु. 50 का कोर्ट फी स्टैम्प लगा होना चाहिए एवं इसके साथ संलग्न इस आदेश की उक्त प्रति में रु. 50 का कोर्ट फी स्टैम्प लगा होना चाहिए।

Once copy of the Appeal should bear a Court Fee Stamp of Rs. 50 and said copy of this order attached therein should bear a Court Fee Stamp of Rs. 50 as prescribed under Schedule item 6 of the Court Fee Act, 1870, as amended.

Brief Facts of the Case:

M/s. Swastik Global Logistics (PAN No. AUYPK3834A) (here-in-after referred to as the Customs Broker/CB) is holder of Customs Broker Licence No. 11/2394 issued by the Principal Commissioner of Customs, Mumbai under Regulation 7(1) of CBLR 2013 (now Regulation 7(2) of CBLR 2018) and having address at 4/29, B Anjirwadi Ladkabai Nanji Chawl, Dr. Mascarenhas Mazgaon, Mumbai-400010.

2. An Offence Report in the form of letter dated 08.11.2023 was received from Addl. Commissioner of Customs (G), JNCH regarding goods imported vide Bill of Entry No. 8482285 dated 26.10.2023 filed by the CB M/s. Swastik Global Logistics on behalf of the importer M/s. Kind Hearted International Trade Pvt Ltd.

3. In the said Bill of Entry, the goods were declared as "BOOK SAFE LOCKER" classified under CTH 48192090 and were attempted to be imported without valid Paper Import Monitoring System (PIMS) Registration Certificate.

4. The subject Bill of Entry was RMS facilitated. During assessment, the RMS officer raised the query to upload PIMS. The importer uploaded PIMS in E-sanchit (vide IRN no 2023103000132752). In the said PIMS Registration Certificate, registration date was 25.10.2023 and the goods had been allowed inward entry on 27.10.2023.

5. Therefore, the subject import appeared to be in violation of DGFT Notification No 11/2015-2020 dated 25.05.2022, according to which the importer can apply for registration not earlier than 75th day and not later than 5th day before the expected date of arrival of import consignment.

6. During the course of investigation, statement of Shri Rohit Vasant Kharmale, G card holder of CB M/s. Swastik Global Logistics, was recorded by CIU/JNCH under Section 108 of the Customs Act 1962 on 07.11.2023, wherein he inter-alia stated that:

- a) The CB was well aware that the goods in the Bill of Entry No. 8482285 dated 26.10.2023 were subject to compulsory registration under Paper Import Monitoring System (PIMS) under chapter 48 of ITC(HS), 2022, Schedule I (Import Policy).
- b) They were also aware of the timelines required for PIMS registration.
- c) The delay in registration was due to payment gateway issue but they do not have any proof of the same.
- d) They were of the view that goods having assessable value below Rs. 10,000/- should be exempt from PIMS registration under Circular No 45/2015-20 dated 23.01.2023 but on being shown the copy of said

Circular, he admitted that the goods should be in sample form for availing the exemption and that subject goods were not in sample form.

7. From perusal of the offence report, it appears that the CB has failed to properly advise their client M/s. Kind Hearted International Trade Pvt Ltd. in respect of Import policy of Paper and Incorporation of policy condition in Chapter 48 of ITC (HS), 2022, Schedule-I (Import Policy). Further, the fact of this non-compliance was not brought by the CB to the notice of the Deputy Commissioner/Docks Officers. Therefore, it appears that the CB has violated the provisions of Regulation 10(d) of CBLR, 2018.

Regulation 10 (d) of the CBLR, 2018:- "A Customs broker shall 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;"

8. **SHOW CAUSE NOTICE:**

M/s. Swastik Global Logistics (11/2394) was issued a Show Cause Notice (SCN) No. 33/2023-24 dated 16.01.2024 by the Principal Commissioner of Customs (General), NCH, Mumbai, Zone-I asking them to show cause as to why the licence bearing no. 11/2394 issued to them should not be revoked and security deposited should not be forfeited and/or penalty should not be imposed upon them under Regulation 14 read with 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018 as elaborated in the Show Cause Notice.

Further, they were directed to appear for a personal hearing and to produce proof of evidence/documents if any, in their defense to Shri R.G. Kuwatkar, Asst. Commissioner of Customs who was appointed an inquiry officer to conduct inquiry under regulation 17 of CBLR, 2018.

9. **INQUIRY REPORT**

Inquiry Officer submitted Inquiry Report dated 05.04.2024, wherein, the charge against the CB M/s. Swastik Global Logistics (11/2394) i.e. violation of Regulation 10(d) of the CBLR, 2018 was held as 'Not proved'

9.1 **Details of Personal Hearing**

Inquiry officer submitted that in pursuance of the issued SCN, IO granted CB M/s. Swastik Global Logistics an opportunity through personal hearing fixed on 13.02.2024 to submit their reply in their defence. The CB presented their submission on 24.01.2024 & 26.02.2024.

9.2 COMMENTS OF THE INQUIRY OFFICER :-

The Inquiry officer in his Inquiry Report dated 05.04.2024 observed 2 issues for determination:

- i) Whether CB failed to properly advise his client in respect of Import policy of Paper and incorporation of policy condition in chapter 48 of ITC (HS), 2022 Schedule-I (Import Policy).
- ii) Whether the fact of this non-compliance was not brought by the CB to the notice of Docks Officers.

During analysis of the above mentioned issues, the IO stated that Shri Rohit Vasant Kharmale, G card holder of CB M/s. Swastik Global Logistics in his statement has stated that they were well aware that the goods in the Bill of Entry No. 8482285 dated 26.10.2023 were subject to compulsory registration under Paper Import Monitoring System (PIMS) under chapter 48 of ITC(HS), 2022, Schedule I (Import Policy) and also aware of the timelines required for PIMS registration. But, the statement of the importer was not available so the IO allowed cross-examination of the importer under Regulation 17(4) of the CBLR, 2018.

Observations from Cross-examination:

- a) During Cross-examination of the importer Shri Naveen Mangtani, he stated that they had submitted the requested information at the PIMS site for obtaining the registration and the registration was delayed due to payment problem and no person from the CB was involved in the registration or payment process.
- b) The importer on being asked whether the CB advised him that registration has to be obtained in specified period of 75 days to 5 days before the arrival of vessel, the importer replied that he was well aware of the same and he did not need any advice from the CB in this regard.
- c) The importer on being asked whether he informed the CB regarding delay in PIMS registration, he stated that they informed CB about the same at the time of handing over of documents and at the same time he also provided a copy of PIMS registration to the CB.

G-card holder of the CB firm was also cross-examined by C K Chaturvedi, consultant of the CB, wherein he replied that he never informed the importer regarding exemption for goods of value less than 10,000/-

From the above mentioned facts of cross-examination, the inquiry officer observed that the importer was well aware of the facts that it was compulsory to register under PIMS and the registration has to be obtained in specified period

of 75 days to 5 days prior to arrival of the vessel. Further, importer himself completed the registration process and did not take CB's advise and G-card holder of the CB did not advice importer regarding exemption for goods of value less than 10,000/-. Therefore, **IO is of the view that the CB did not fail to advice his client in respect of Import policy of Paper and incorporation of policy condition in chapter 48 of ITC (HS), 2022 Schedule-I (Import Policy).**

While analysing the fact whether non-compliance was not brought by the CB to the notice of Docks Officers, IO observed that importer had already obtained mandatory PIMS registration prior to engaging CB's services and in the said PIMS certificate, registration date was mentioned as 25.10.2023 and the goods had been allowed inward entry on 27.10.2023. Further, IO observed that the RMS officer raised query to upload PIMS, and then the said PIMS certificate was uploaded after the query. The CB in his submission stated that due to oversight, the said certificate could not be uploaded and there was no ill-intention behind non-compliance of the same. IO is of the view that non-compliance was not brought to the notice of docks officer by the CB on their own but only after query was raised but this non-compliance was also on the part of the importer, hence reply of the query was complied by the CB.

Further, IO concluded his report on the basis of the cross-examination of the importer and Shri Rohit (G-card holder of the CB), that the importer had already obtained PIMS registration before engaging the services of the CB. Since, the CB was not involved in the process of registration, failure on part of CB to advice the importer could not be substantiated. IO stated that no evidence has been brought on record against charged CB in the SCN under CBLR-2018 in support of failure of the CB in properly advising their client M/s. Kind Hearted International Trade Pvt. Ltd. **Hence, IO held the charges of violation of regulation 10(d) of the CBLR, 2018 as "Not Proved."**

10. Disagreement Memo:

The said Inquiry report was not accepted by the competent authority and a disagreement memo dated 24.04.2024 was issued.

Ground of disagreement memo: The comments of the Inquiry Officer regarding bringing of non-compliance to the notice of authorities do not appear to be acceptable. It has been clearly brought out in the Inquiry Report that the CB was made aware of the delay in registration by the importer. Therefore, it appears that the CB did not upload the PIMS registration along with the Bill of Entry to avoid scrutiny, which is indicative of guilty mind. Further, the CB in response to the query raised chose to upload the PIMS registration without bringing the fact of delay in registration to the notice of Docks officers.

11. Personal Hearing & Written Submission of the CB:

A personal hearing was granted to Customs Broker on 27.05.2024. Shri C K Chaturvedi, Consultant of the CB firm appeared for personal hearing and submitted written submission dated 22.05.2024 and re-iterated the submissions made therein. The CB submitted the following in his written submission dated 22.05.2024:

- a) The fact of not uploading the PIMS certificate was an inadvertent error on the part of our employee who is uploading the documents in e-sanchit while filing the Bill of Entry and not a deliberate attempt to avoid scrutiny.
- b) The importer was well aware of the mandatory requirement of PIMS registration and did not require any advice from us in this regard.
- c) The importer had complied with the mandatory requirement of PIMS registration and the PIMS Certificate was promptly presented to the proper officer when the same was asked for before the clearance of the goods.
- d) The delay in obtaining the registration was evident from the certificate itself and our only error was that we did not specifically mention about the delay in registration to the concerned officer believing that the concerned officer would take note of the same from the certificate since he had raised the query to submit the certificate.
- e) The importer has complied with the mandatory requirement of obtaining the PIMS registration and in case the delay in registration is considered as non-compliance, it is our belief that since the PIMS registration certificate had been presented to the proper officer before the clearance of the goods. The allegation of not bringing the noncompliance to the notice of Assistant/Deputy Commissioner of Customs should not be held to be sustainable.
- f) Further, during the PH the CB stated that the expected date of arrival of the goods was mentioned as 07.11.2023. On this basis, they found that the PIMS registration certificate was correct and therefore there is no fault of the CB.

12. DISCUSSION AND FINDINGS:-

I have gone through the record of the case, offence report dated 08.11.2023, the Show Cause Notice dated 16.01.2024, and Inquiry Report dated 05.04.2024, Oral and written submission of CB dated 27.05.2024 presented during personal hearing.

12.1 Para no 3 & 4 of the offence is reproduced below:

3. CB M/s Swastik Global Logistics while recording their statement dated 07.11.2023(Copy enclosed) has confirmed that they are well aware of the condition of PIMS compliance for applying registration not earlier than 75th Day and not later than 5th day before the expected date of arrival of Import consignment. CB has inter-alia accepted that as per the Circular 45/2015-20 dated 23.01.2023, PIMS regulation is required even after the assessable value is less than Rs 10,000/-. The condition of PIMS exemption is only valid in case of sample goods and where assessable value is less than 10,000/-.

4. As per the Customs Brokers Licensing Regulations, 2018, regulation 10(c) i.e Obligations of Customs Broker states following-

(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;

Since the Customs Broker has neither advised the Importer nor informed DC/AC for above non-compliance of PIMS regulation despite knowing the factual position of DIMS in such cases , therefore it appears that CB has violated the Customs Brokers Licensing Regulations, 2018.

In para no. 5 of the offence report, it has been proposed to initiate action under regulation 10(d) of CBLR, 2018. Accordingly, the SCN dated 16.01.2024 was issued wherein it has been alleged that the CB has violated the regulation 10(d) of the CBLR, 2018.

The Inquiry Officer vide inquiry report dated 05.04.2024 held the charge of violation of Regulation 10(d) of the CBLR, 2018 as 'Not proved'. However, said Inquiry report was not accepted and a disagreement memo was issued on dated 24.04.2024.

12.2 I find that the B/E was filed for clearance of 32 items but the import of item no 1& 2 of the said B/E i.e "Book Safe Locker" (classified under RITC 48192090) is permitted subject to compulsory registration under PIMS mandated vide DGFT notification no 11/2015-20 dated 25.05.2022. As per the said notification, the importer can apply for registration not earlier than 75th day and not later than 5th day before the expected date of arrival of import consignment.

The importer obtained PIMS registration on 25.10.2023 and before filing the B/E, informed the CB about the delay in obtaining the PIMS registration. The CB filed the B/E and did not upload the PIMS registration in e-sanchit. **The CB uploaded the PIMS registration only after the RMS officer raised query.** I find that the CB in his statement dated 07.11.2023 stated that as

per their knowledge, the assessable value of the goods i.e. item jno 1 & 2 of B/E is Rs 5875/- which is less than 10,000/- therefore they were of the view that since assessable value is less than 10,000/-, this consignment should be free from requirement of compulsory registration under PIMS.

However, when shown the DGFT Policy Circular No 45/2015-20 dated 23.01.2023 wherein it is clarified and mentioned in FAQs that for exemption from PIMS, the goods should be in sample form with assessable value less than Rs. 10,000/- and since the impugned goods were not in sample form, the CB accepted the requirement of obtained PIMS.

12.3 After going through the cross-examination of the importer Shri Naveen Mangtani (as mentioned above in para 9.2), I observe that the importer was well-versed with the conditions/regulations in import of goods under RITC 48192000 and he completed the required PIMS registration by himself and did not seek CB's guidance and stated that no advice was sought from the CB regarding registration process of PIMS and he also stated that neither such advise was provided by the CB. The importer completed registration process required under PIMS and provided all the documents to the CB for further processing and filing of the BE. However, The CB processed the documents and filed B/E 8482285 dtd 26.10.2023 but in spite of having the possession of the PIMS registration with themselves, the CB did not upload it as required for such import.

12.4 For better understanding of regulation 10(d) of CBLR, 2018, we are splitting CB's responsibility in 2 parts:

- a) To advise his client the provisions of the act, allied acts and its rules and regulations.
- b) In case of non-compliance, bring the matter to the notice of the DC/AC of customs

Since, the importer in his cross-examination has admitted that he was fully aware of the PIMS registration and he completed registration process himself and informed the CB about the delay. Hence, the CB's submission that importer was aware of requirement of PIMS and did not require any advice from CB appears valid and therefore, I find that in such situation where the importer knew about the compliance requirement, the question of CB again advising him becomes irrelevant and therefore, the CB can not be faulted on this account.

Now matter to examine before me is whether the CB informed the non-compliance to the DC/AC of customs as per the other part of regulation 10(d) as mentioned above.

12.5 Before discussing the above further, I'd like to mention following events sequentially:

- The importer got confirmation of his goods vide B/L No. KMTCNB07308021 dated 07.10.2023.
- The importer obtained PIMS registration dated 25.10.2023 with expected date of import on 07.11.2023
- The CB filed BE on 26.10.2023
- The goods were allowed entry inward on 27.10.2023

“Bill of Lading” is a legal document that is issued by a carrier to the shipper. It contains details about which goods are being shipped, where the shipment is coming from and going to, as well as details of the shipper, carrier, and consignee.

Since the date of the B/L is 07.10.2023, which means the importer got confirmation about the imported goods on 07.10.2023 itself. He had plenty of time to get the registration under PIMS. After completing the registration under PIMS, the importer provided all the import related documents to CB on 25.10.2023 to file the B/E and also informed the CB regarding delay in obtaining registration.

Further, on being informed by the importer about the delay in obtaining PIMS registration, it was the duty of the custom broker to take care of the interests of both the client and the Revenue and inform the non-compliance to the Assistant Commissioner or Deputy Commissioner. Since, PIMS is the most important document for clearance of goods under CTH 48192000, the CB can not ignore the verification of such document and in this case where PIMS registration was not complying the conditions as mandated in DGFT notification, it was the CB's responsibility to inform this non-compliance to the Dy. commissioner of Customs. Therefore, I find that CB failed to bring the non-compliance (fact of delaying in obtaining the PIMS registration) to the notice of the DC/AC of customs.

Further, I observe that the CB in his submission dated 22.05.2024 has stated that the delay in obtaining the registration was evident from the certificate itself and our only error was that we did not specifically mention about the delay in registration to the concerned officer. I find that when the CB was aware of the fact that there was delay in obtaining the registration, they should have brought the fact to the notice of Dy. or Asst. Commissioner of Customs but CB failed to do the same. Thus the CB has failed to perform due obligations as mandated under regulation 10(d) of CBLR, 2018.

12.6 From the above facts & submissions, I am of the considered view that though the CB had no need to advise the importer regarding requirement of PIMS registration certificate (as he himself was aware of the same), the CB did not upload the same on E-sanchit for whatever reasons and neither informed the customs authority that the obtained PIMS registration is later than 5th day before the expected date of arrival of goods which is in violation of DGFT notification 11/2015-20 dated 22.05.2022. Hence, CB failed to fulfil their responsibilities as mentioned under regulation 10(d) of CBLR, 2018.

12.7 In view of the above, **I hold that the CB has violated the provisions of Regulation 10(d) of the CBLR, 2018** to the extent of not bringing the matter (delaying in obtaining the PIMS registration & non-uploading of the same on e-sanchit) to the notice of Dy. Commissioner of Customs.

12.8 While deciding the matter, I rely upon the judgment of Hon'ble CESTAT, New Delhi in the case of **M/s Skh Freight Logistics Pvt. Ltd. Versus Commissioner of Customs, (Airport & General) New Delhi 2023 (11) TMI 270** - wherein though the matter was different yet the ratio of judgement can be applied to the present case. In this case, Hon'ble CESTAT, New Delhi has held (relevant portion) that *"Since the custom broker is responsible for all acts and means of his employees during their employment as per Regulation 13 (12) of CBLR of 2018, it was mandatory for the appellant to advise the exporter to comply with the provisions of the Customs Act, else to have brought to the notice of the Dy. Commissioner Customs about the non-compliance. But neither the appellant nor his G card holder has ever brought the impugned fraud to the notice of the competent authorities - there are no reason to differ from the findings arrived at against the appellant.*

12.9 Further, I find that in this case, CB did not violate the regulation intentionally but in recent decision of this Tribunal in the case of **M/s Falcon India (Customs Broker) Vs. Commissioner of Customs, (Airport and General) New Delhi** in Customs Appeal No. 50934 of 2021 dated 21.03.2022, it has been observed that *Violations even without intent are sufficient to take action against the appellant* . Further, it has been held that (relevant portion):

"33.. It is expected to advise the client to follow the laws and if the client is not complying, it is obligated under the Regulations to report to the Assistant Commissioner or Deputy Commissioner. Fulfilling such obligations is a necessary condition for the CB licence and it cannot be termed as 'spying for the department' as argued by the appellant before us. At any rate, once violation is noticed, it is not for the Tribunal to interfere with the

punishment meted out by the disciplinary authority, viz., the Commissioner unless it shocks our conscience. In this case, it does not."

12.10 While deciding the matter, I rely upon case law of **M/S. D.S. Cargo Agency Versus Commissioner of Customs, New Delhi (2021 (3) TMI 1164 - CESTAT New Delhi** had opined that (relevant portion) *"The appellant has admitted that despite the discrepancies in the documents of these importers, the CHA /appellant opted to not to bring the same to the notice of the competent Customs officers with the sole motive to safeguard his business with these importers. This admission of appellant is sufficient for us to hold the violation of regulation 10(d) & 10(e) on part of the appellant. The said violation has been pleaded as inadvertent and unintentional mistake but this amounts to rather conspiring into commission of the offence of evasion of duty by illegally diverting goods from Customs warehouse to domestic market.*

Once there is acknowledged and admitted violation of CBLR Regulations, the Revenue has the option to follow the discipline governing the Customs House Agents and as such, the Commissioner of Customs is empowered to revoke the license of Customs House Agent and also to forfeit his security if such agent fails to comply with the provisions of Regulation or gets involved in the Act which would amount to mis-conduct/ offence under the Act."

13. Before arriving at the punishment to be meted out for the above said violations, it is necessary to go through the established legal doctrine of proportionately of punishment. The following case laws are required to be considered in this regard.

13.1 In the CESTAT, Principal Bench, New Delhi High [COURT NO. IV] Dr. Rachna Gupta, Member (J) and Shri P.V. Subba Rao, Member (T) [2024 (387) E.L.T. 190 (Tri. - Del.)]

In the case of **DURGA LINK LOGISTICS (PVT.) LTD. Versus COMMISSIONER OF CUSTOMS (AIRPORT AND GENERAL), NEW DELHI** Final Order No. 51507/2023, dated 7-11-2023 in Appeal No. C/51791/2022-[DB]

10. *From the findings as arrived above, we are of the view that though the appellant is held guilty of the violations under Regulations 10(a), 10(b) and 10(e) but these are not so grave as to justify the revocation of the customs license. These violations are observed to be the consequence of negligence on part of the appellant custom broker. Depriving him of his livelihood is held to be disproportionate in the light of given findings. Hence, we are of the opinion that ends of justice would be met if the order*

of forfeiting security deposit and imposing penalty is upheld and as far as the order of revocation of license is concerned, the same be set aside. We draw our support from the decision of this Tribunal in the case of R.S.R. Forwarders v. Commissioner of Customs, New Delhi reported as 2018 (364) E.L.T. 541 (Tri. - Del.) and also from the decision of N.T. Rama Rao & Co. v. Commissioner of Customs, Chennai VIII reported as 2020 (371) E.L.T. 789 (Tri. - Chennai). In the light of the above discussion, the order under challenge stands modified to the above discussed extent. The appeal resultantly stands partly allowed.

13.2 Hon'ble High Court of Delhi in the case of SMS LOGISTICS Versus COMMISSIONER OF CUSTOMS (GENERAL), NEW CUSTOMS HOUSE, NEW DELHI in Appeal No. CUSAA No. 212 of 2019, decided on 12-9-2023 [2024 (387) E.L.T. 157 (Del.)], in Para 41 to 47, has held as follows :

“41. It is relevant to bear in mind that the proceedings under CBLR are in essence disciplinary proceedings to ensure compliance with the statutory provisions. It is essential that the Customs Department has full confidence in the Customs Broker and can proceed on the basis that he has discharged his obligations faithfully and with due diligence. Therefore, the punitive measure imposed by the Department is normally not required to be interfered with. However, in cases where it is found that the measure imposed is disproportionately excessive, the order of punishment would require to be interfered with.

42. The Supreme Court has in a number of decisions interfered with the punitive measures on the ground of the same being disproportionate. In *Management of the Federation of Indian Chambers of Commerce and Industry v. Their Workmen* [AIR 1972 SC 763], the Supreme Court considered a case where the services of an employee were terminated on the allegation that he had issued legal notices to the appellant and to the International Chamber of Commerce, which had allegedly brought discredit to the reputation of the appellant. In this context, the Supreme Court observed that *“the federation had made a mountain out of a mole hill and made a trivial matter into one involving loss of its prestige and reputation”*. The Court upheld the decision of ‘reinstating’ the

employees. Similarly, in *Hind Construction and Engineering Co. Ltd. v. Their Workmen* [AIR 1965 SC 917], workmen were dismissed as the workmen were absent on a particular date treating the same to be a holiday. The Court held that no reasonable employer would impose the extreme punishment of dismissal. In *Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Association & Anr.* [(2007) 4 SCC 669], the Supreme Court noted the earlier decisions and had observed that “it is clear that our legal system also has accepted the doctrine of proportionality”. The Court observed as under :

“17...One of such modes of exercising power, known to law is the “doctrine of proportionality”.

18. “Proportionality” is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise - the elaboration of a rule of permissible priorities.

19. de Smith states that “proportionality” involves “balancing test” and “necessity test”. Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative. [Judicial Review of Administrative Action (1995), pp. 601-05, para 13.085; see also Wade & Forsyth : Administrative Law (2005), p. 366.]

20. In Halsbury’s Laws of England (4th Edn.), Reissue, Vol. 1(1), pp. 144-45, para 78, it is stated :

“The court will quash exercise of discretionary powers in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts are wholly out of

proportion to the relevant misconduct. The principle of proportionality is well-established in European law, and will be applied by English courts where European law is enforceable in the domestic courts. The principle of proportionality is still at a stage of development in English law; lack of proportionality is not usually treated as a separate ground for review in English law, but is regarded as one indication of manifest unreasonableness.” ”

43. It is relevant to note that CBLR, 2013 provides for various punitive measures including levy of penalty under Regulation 22, if it is found that the custom broker has contravened the provisions of the said Regulations. Regulation 18 of the CBLR, 2013 enables the Commissioner of Customs to revoke the Customs Broker's License and order forfeiture of the security (in part or in whole) or impose a penalty not exceeding ` 50,000/-. CBLR, 2018, which has since replaced CBLR, 2013 also contains similar provisions. There is a range of punishment that can be imposed by the Commissioner of Customs and it is not necessary that every contravention of the Regulations be visited with the extreme punishment or revocation of license, which in effect would deprive the custom broker of his livelihood.

44. As noted above, the Commissioner has discretion in imposing an appropriate measure of punishment. Coupled with this power is a duty to exercise this discretion to ensure that the punishment imposed is commensurate with the custom broker's contravention of his obligations.

45. It is also well-settled that the Court in exercise of judicial review would normally not interfere with the quantum of punishment and do so only if it is found that it shocks one's conscience (See : *State of U.P. v. Sheo Shanker Lal Srivastava & Others* [(2006) 3 SCC 276]. It is also trite law that Article 14 of the Constitution of India strikes at the arbitrariness because an action, that is, arbitrary must necessarily involve negation of

equality (See : *Andhra Pradesh Dairy Development Corporation Federation v. B. Narasimha Reddy & Others* [(2011) 9 SCC 286].

46. In the oft quoted decision in *Associated Provincial Picture Houses v. Wednesbury Corporation* [[1948] 1 KB 223], the Court had observed as under :

“It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word “unreasonable” in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting “unreasonably.”

47. In *Indian Railway Construction Co. Ltd. v. Ajay Kumar* [(2003) 4 SCC 579], the Supreme Court had referred to the decision of *Wednesbury Corporation* (supra) and held as under :-

“18. Therefore, to arrive at a decision on “reasonableness” the court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a *bona fide* one.”

13.3 Delhi High Court has in case of **Ashiana Cargo Services**[2014 (302) ELT 161 (DEL)] held as follows:

“11. Viewing these cases, in the background of the proportionality doctrine, it becomes clear that the presence of an aggravating factor is important to justify

the penalty of revocation. While matters of discipline lie with the Commissioner, whose best judgment should not second-guessed, any administrative order must demonstrate an ordering of priorities, or an appreciation of the aggravating (or mitigating) circumstances. In this case, the Commissioner and the CESTAT (majority) hold that —there is no finding nor any allegation to the effect that the appellant was aware of the misuse of the said G cards, but do not give adequate, if any weight, to this crucial factor. There is no finding of any mala fide on the part of the appellant, such that the trust operating between a CHA and the Customs Authorities (as a matter of law, and of fact) can be said to have been violated, or be irretrievably lost for the future operation of the license. In effect, thus, the proportionality doctrine has escaped the analysis.

12. Learned Senior Standing Counsel for the Customs has stressed that the infraction in this case is not a routine matter, but rather, illegal smuggling of narcotics by the G card users. However, given the factual finding that the CHA was not aware of the misuse of the G cards (and thus, also unaware of the contents being smuggled), no additional blame can be heaped upon the CHA on that count alone. Rather, the only proved infraction on record is of the issuance of G cards to nonemployees, as opposed to the active facilitation of any infraction, or any other violation of the CHA Regulations, whether gross or otherwise. Neither have any such allegations been raised as to the past conduct of the appellant, from the time the license was granted in January, 1996. Equally, it is important to note that the appellant has - as of today - been unable to work the license for 8 years, and thus been penalized in this manner. This is not to say that the trust operating between the Customs Authorities and the CHA is to be taken lightly, or that violations of the CHA Regulations should not be dealt with sternly. A penalty must be imposed. At the same time, the penalty must - as in any ordered system - be proportional to the violation. Just as the law abhors impunity for infractions, it cautions

against a disproportionate penalty. Neither extreme is to be encouraged. In this case, in view of the absence of any mens rea, the violation concerns the provision of G cards to two individuals and that alone. A penalty of revocation of license for this contravention of the CHA Regulations unjustly restricts the appellant's ability to engage in the business of the CHA for his entire lifetime. As importantly, it skews the proportionality doctrine, substantially lowering the bar for revocation as a permissible penalty, especially given the dire civil consequences that follow. On the other hand, the minority Opinion of the CESTAT, delivered by the Judicial Member, correctly appreciates the balance of relevant factors, i.e. knowledge/mensrea, gravity of the infraction, the stringency of the penalty of revocation, the fact that the appellant has already been unable to work his license for a period of 6 years (now 8 years), and accordingly sets aside the order of the Commissioner dated 24-1-2005."

13.4 In the case of **Setwin Shipping Agency v. CC (General), Mumbai - 2010 (250) E.L.T. 141 (Tri.-Mumbai),**

The Tribunal held that there is no requirement for the CHA to verify physically the premises of importer/exporter. **The Tribunal also observed that it is a settled law that the punishment has to be commensurate and proportionate to the offence committed.** In the present case, we notice that the punishment of revocation is not justifiable even if it is to be admitted that physical verification of the importer's premises could have avoided the filing of the bill of entry by the appellant. Even in such a situation, the violation in respect of the cargo viz. the non-declaration of the RSP on the auto parts, a debatable point of interpretation, cannot be held against the appellant to result in the revocation of their licence. Here, it is to be noted that the bill of entry was filed after the detention of the goods for inquiry by the DRI Officers and request for physical verification of the cargo before assessment has been made in the form of first check bill of entry. We find that the impugned order passed on dis-agreement

with the inquiry report has not brought out clear sustainable ground for such extreme action of revocation of licence. Violation of CBLR, 2013 has not been brought out as all the points have been elaborately discussed in the inquiry report and no sustainable ground for differing with the same could be made out.

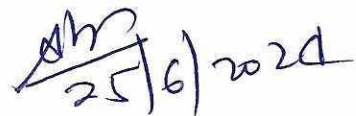
14. In view of the fact that CB has violated regulation 10(d) to the extent that he has not informed the Dy. Commissioner about delay in obtaining the PIMS registration, I hold that the CB has not fulfilled the obligation under regulation 10(d) of CBLR, 2018. But keeping in view the established principle of proportionality of punishment as established by above mentioned judgements, this act and conduct does not warrant the imposition of extreme penalty of revocation of custom broker licence depriving them of their livelihood. But certainly this conduct of the CB warrants, imposition of penalty and forfeiture of security deposit. Accordingly, I pass the following order.

ORDER

15. I, Principal Commissioner of Customs (General), in exercise of the power conferred upon me under Regulation 17(7) of the CBLR, 2018, pass the following order:

- (i) I hereby impose penalty of Rs. 50,000 /- (Rupees Fifty Thousand Rupees only) on CB M/s. Swastik Global Logistics (CB no. 11/2394) under Regulation 18 of the CBLR, 2018.
- (ii) I hereby order for forfeiture of entire amount of security deposit furnished by CB under Regulation 14 of the CBLR, 2018.

This order is passed without prejudice to any other action which may be taken or purported to be taken against the Customs Broker and their employees under the Customs Act, 1962, or any other act for the time being in force in the Union of India.



(SUNIL JAIN)

Principal Commissioner of Customs (General)
Mumbai Zone-I

To,
M/s. Swastik Global Logistics,
(PAN: AUYPK3834A),
4/29, B Anjirwadi Ladhkabal Nanji Chawl,
Dr. Mascarenhas Mazgaon,
Mumbai-400010

Copy to,

1. The Pr. Chief Commissioner/Chief Commissioner of Customs, Mumbai I, II, III Zone.
2. All Pr. Commissioners/Commissioners of Customs, Mumbai I, II, III Zone
3. DRI, MZU, Mumbai.
4. SIIB(X), ACC, Sahar, Mumbai
5. CIU's of NCH, ACC & JNCH
6. EDI of NCH, ACC & JNCH
7. ACC (Admn), Mumbai with a request to circulate among all departments.
8. JNCH (Admn) with a request to circulate among all concerned.
9. Cash Department, NCH, Mumbai.
10. Notice Board
11. Office Copy
12. Guard File (Admin)