



सीमा शुल्क के आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS
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GEN/CB /246/2024-CBS-O/o COMM-R-CUS-PUNE

मूल आदेश संख्या/Order-In- Original No. PUNE-CUSTOMS-000-COMMR-05/2024-25

1978

श्री यशोधन वनगे

आयुक्त, पुणे सीमा शुल्क

Passed by: Shri Yashodhan Wanage
Commissioner, Pune Customs

आदेश की तारीख: 12.07.2024

आदेश जारी करने की तारीख 12.07.2024

Date of Order: 12.07.2024

Date of Issue: 12.07.2024

विशेष सूचना: -

१. आदेश की यह प्रति जिस व्यक्ति के नाम से जारी की जा रही है, उन्हें यह व्यक्तिगत उपयोग के लिए निःशुल्क दी जा रही है।

1. This copy is granted free of charge for the private use of the person to whom it is issued.

२. इस आदेश से व्यथित/ असहमत कोई भी व्यक्ति आयुक्त, अपील, पुणे (अपील-द्वितीय, पुणे जोन), तीसरी मंजिल 'एफ' विंग, आईसीई हाउस, 41-ए ससून रोड, पुणे 411 001 को अपील कर सकता है। अपील, इस आदेश की प्रति व्यक्तिगत रूप से प्राप्त होने की तारीख से अथवा पार्टी को डाक द्वारा इसकी प्रति प्राप्त होने की तारीख से साठ दिन की अवधि के भीतर दायर/ प्रस्तुत की जानी चाहिए। अपील के साथ निम्नलिखित कागजात होने चाहिए: -

क - जिस आदेश के विरुद्ध अपील प्रस्तुत की जा रही है उस आदेश की 4 प्रतियाँ तथा अपील की 4 प्रतियाँ।

ख - अपील याचिका चार प्रतियों के सेट में दायर की जानी चाहिए और प्रत्येक प्रति के साथ अपील पर निर्भर सभी अनुलग्नकों को जोड़ा जाए।

ग - हालाँकि, इस अपील याचिका की केवल एक प्रति पर निम्नानुसार कोर्ट फी स्टैम्प लगाना जरूरी है -

(i) यदि विषयवस्तु की मूल्यराशि रूपए 50/- अथवा उससे कम है तो रूपए 0.65 का कोर्ट फी स्टैम्प

(ii) यदि मूल्यराशि रूपए 50/- से अधिक है तो रूपए 1.00/- का कोर्ट फी स्टैम्प

2. Any person aggrieved by this order may prefer an appeal to the Commissioner, Appeal, Pune (Appeal-II, Pune Zone), 3rd Floor 'F' Wing, ICE House, 41-A Sassoon Road, Pune 411001. The appeal must be filed within 60 days from the date of personal service or of the date of receipt by post by the party. It must be accompanied by:

(a) Four copies of the appeal together with four copies of the order appealed against.

(b) The appeal petition should be filed in a set of four copies and each copy will have to be completed with all annexure relied upon in the appeal.

(c) However, only one copy of this appeal petition must bear court fee stamps as under:

(i) If the amount value of the subject matter is fifty or less than fifty - Rs.0.65.

(ii) If such amount of value exceeds fifty- Rs.1.00

3. वित्त अधिनियम (संख्या 2), 2014 द्वारा प्रतिस्थापित, केंद्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35 और/या सीमा शुल्क अधिनियम, 1962 की धारा 129ई, जैसा भी मामला हो, के अधीन जहाँ शुल्क अथवा शुल्क तथा दंड दोनों में विवाद हो अथवा दंड जहाँ केवल दंड पर विवाद हो, वहाँ माँगे गए शुल्क के 7.5 प्रतिशत की अदायगी पर आयुक्त (अपील) के समक्ष इस आदेश के विरुद्ध अपील दायर की जा सकती है।

3. An appeal against this order shall lie before the Commissioner (Appeals) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, as provided under Section 35F of the Central Excise Act, 1944 and/or Section 129E of the Customs Act, 1962, as the case may be, as substituted vide Finance Act (No.2), 2014.

संबंधित पार्टी का नाम-

M/s Lucky Clearing Agency,
59, Goa Street, Dr. Sunderlal Bahl Path,
31, Kakal Building, 2nd Floor,
Fort, Mumbai - 400001

BRIEF FACTS OF THE CASE: -

M/s. Lucky Clearing Agency (Partnership, having PAN No. AABFL1239R), office premises at 59, Goa Street, Dr. Sunderlal Bahl Path, 31, Kakal Building, 2nd Floor, Fort, Mumbai-400001 (hereinafter referred to as 'the Customs Broker/CB/Applicant') is the holder of a Customs Broker License bearing No. PN/R/26/1998 issued by Pune Customs under Regulation 7 of CBLR, 2018. The validity of the license held by M/s. Lucky Clearing Agency is lifetime and Shri Chetan K. Mehta & Shri Narayan H. Kharayat are the partners of M/s. Lucky Clearing Agency. The CB is also transacting their business in other Customs stations such as Mumbai Customs, Mundra Customs and Kandla Customs as per Regulation 7(3) of CBLR, 2018.

2. On the regular course of examination, one import consignment covered under Bill of Entry No. 8795836 dated 16.11.2023 filed by importer Ajay Malik (IEC-HKGPM3853J) through the Customs broker M/s. Lucky Clearing Agency was examined by the officers of Import Shed, ACC, Mumbai which resulted into the recovery of total weighing 7857 gms. of flowering or fruiting tops of the cannabis plant purported to be Ganja/Marijuana and the same was seized under Section 42 of NDPS Act, 1985. The estimated value of the seized ganja/marijuana in the grey market is around Rs. 1.96 crores.

3.1. During the investigation, on 18.11.2023, the statement of Mr. Narayan Kharayat, Partner and G-Card holder of M/s. Lucky Clearing Agency, Mr. Madhav H. Kharayat and Mr. Subhash Tambe were recorded under section 67 of the NDPS Act. Simultaneously, on 18.11.2023, search was undertaken at the office of the CB M/s. Lucky Clearing Agency and at the delivery address provided by the importer.

3.2. On 21.11.2023, the statements of Mr. Narayan Kharayat, Partner and G-Card holder of M/s. Lucky Clearing Agency and Mr. Chetan Mehta, F-Card holder of M/s. Lucky Clearing Agency were recorded under Section 67 of the NDPS Act. While recording the statements of Mr. Narayan Kharayat, it was found that the above-said importer Ajay Malik (IEC-HKGPM3853J) is linked to the other importer firms namely M/s Smart Moves Overseas (IEC-ELRPR0106Q) and M/s Airan Trading (IEC-EUUPA6089C) in relation to import of the seized Ganja/Marijuana.

3.3. On 22.11.2023 search was conducted addressed mentioned in the invoice of M/s Airan Trading (Unit F-6, 1st Floor, Prabhadevi Industrial Estate, Prabhadevi Mumbai 400025) related to the importer and it was found that no such firms exist on the address.

As the IEC, GST addresses of the above-stated three importers/firms mentioned in Delhi, accordingly, Delhi Customs (Preventive) were asked to search the addresses of the above-mentioned three importers by issuing a letter. On 01.12.2023, e-mail was received from Delhi Customs by the investigating agency stating that the all three importers are not existent/not operational in the addresses.

4.1. During the investigation, the statement of Mr. Narayan Kharayat, Partner and G-Card holder of M/s. Lucky Clearing Agency was recorded on 25.11.2023 under section 67 of the NDPS Act in which he inter-alia stated that he filed the above-said Bill of Entry No.8795836 dated 16.11.2023 on behalf of M/s. Ajay Malik/Malik Enterprises without authority letter from the importer; he failed to do the KYC verification of the documents of M/s. Ajay Malik/Malik Enterprises; he himself paid the customs duty & other charges for the above-mentioned Bill of Entry No. 8795836 from bank account of M/s. Lucky Clearing Agency; he knew about the non-existence of the address related to the importer provided by the person named Mr. Sourav Raha; he told his staff to upload the wrong Textile Committee report for the Bill of Entry No. 8795836 dated 16.11.2023 on behalf of M/s Ajay Malik/Malik Enterprises; he failed to ascertain the genuineness of the client in respect of M/s Ajay Malik/Malik Enterprises; he knew that the address mentioned in the invoice and the IEC were different; he told his staff to deliver the goods at the address on roadside parking area other than the actual address mentioned in the invoice.

4.2. Further, during the analysis of Call Data Record of the mobile no.6307658945 of Mr. Sourav Raha (beneficiary owner), it was noticed that Mr. Narayan H. Kharayat, Partner & G-Card holder of M/s Lucky Clearing Agency is the main person to be in contact with Mr. Sourav Raha and also the last person to be in contact with Mr. Sourav Raha. It appeared that Mr. Narayan H. Kharayat informed Mr. Sourav Raha about the seizure of narcotic drugs after which the mobile number of Mr. Sourav Raha was switched off.

4.3. On the basis of above-mentioned facts, it appeared that Mr. Narayan H Kharayat, Partner and G-Card holder of M/s. Lucky Clearing Agency was involved in the import of the contraband and had contravened the provisions of Section 8(c) & Section 23(b) of the NDPS Act, 1985. The above facts also stated that Shri Narayan Kharayat deliberately submitted the wrong documents to the customs authority at different instance of this case and hence contravened the provisions of Section 35 of the NDPS Act, 1985.

In view of the above, Mr. Narayan H Kharayat, Partner & G-Card holder of M/s. Lucky Clearing Agency was placed under arrest on 25.11.2023 for offence punishable under sections 8(c) r/w 23(b) of the NDPS Act.

5.1. In the instant case, as per the offence report, it appeared that Mr. Narayan Kharayat, Partner and G-Card holder of M/s. Lucky Clearing Agency in his statement dated 25.11.2023 accepted that he had filed the above-said Bill of Entry No.8795836 dated 16.11.2023 on behalf of M/s. Ajay Malik/Malik Enterprises without an authority letter from the importer. Thus, it appeared that the CB had violated Regulation 10(a) of the CBLR, 2018, which reads as below:

"10(a) obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;"

5.2. Further, as per the offence report it appeared that this is a case of illegal import of restricted/prohibited items i.e. Ganja/Marijuana which is restricted/prohibited as per Sections 8(c) r/w 23(b) of the NDPS Act, 1985. Further, it also appeared that the CB firm had filed the above-said Bill of Entry in connivance with the importer by concealing the ganja/marijuana and had aided & abetted in the wrongdoings of the importer. It was the responsibility of the CB M/s. Lucky Clearing Agency, Pune to advise his client to comply with the provisions of the Act 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. Thus it appeared that CB had failed to advise their client to comply with the provisions of the Customs Act, 1962 and had thereby violated Regulation 10(d) of the CBLR, 2018, which reads as below:

10(d) "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;"

5.3. Further, a lot of trust is kept in the Customs Broker by the Government and to ensure the appropriate discharge of such trusts, the relevant regulations were framed. As per the offense report, Mr. Narayan H Kharayat, Partner & G-Card holder of the Customs Broker Firm M/s. Lucky Clearing Agency in his statement dated 25.11.2023 accepted that he failed to ascertain the genuineness of the client in respect of M/s Ajay Malik/Malik Enterprises. It appeared that the Customs Broker had not done their work with utmost efficiency. Hence, it also appeared that the CB had failed to exercise due diligence to the correctness of information in respect of the fraudulent importer, otherwise, they could have not attempted to import of these goods. Therefore, it appeared that CB had violated Regulation 10 (e) of CBLR, 2018 which reads as under:

10(e) "A Customs broker shall 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"

5.4. Further, as per the offence report it appeared that Mr. Narayan Kharayat, Partner and G-Card holder of M/s Lucky Clearing Agency in his statement dated 25.11.2023 accepted that he had filed the above-said Bill of Entry No.8795836 dated 16.11.2023 on behalf of M/s. Ajay Malik/Malik Enterprises without authority letter from the importer; failed to do the KYC verification of the documents of M/s. Ajay Malik/Malik Enterprises; paid the customs duty & other charges for the above-mentioned Bill of Entry No. 8795836 from bank account of M/s. Lucky Clearing Agency; told his staff to upload the wrong Textile Committee report for the Bill of Entry No. 8795836 dated 16.11.2023 on behalf of M/s Ajay Malik/Malik Enterprises; knew about the non-existence of the address related to the importer provided by the person named Mr. Sourav Raha; knew that the address mentioned in the invoice and the IEC were different. Therefore, it appeared that CB had violated Regulation 10(n) of CBLR, 2018 which reads as under:

10(n) "verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;"

6. The evidence on record indicates that the CB was working in a seriously negligent manner and was in violation of the obligations cast upon them under the CBLR, 2018. A Customs Broker occupies a very important position in the Customs House and is supposed to safeguard the interests of both the importers and the Customs department. A lot of trusts are kept in CB by the Government Agencies, but by their acts of omission and commission it appeared that the said CB had violated Regulation 10(a), 10(d), 10(e) & 10(n) of the Customs Brokers Licensing Regulations, 2018 and rendered himself for penal action under Regulations 14, 17 & 18 of the CBLR, 2018.

7. Accordingly, the CB license no. PN/R/26/1998 (PAN No.-AABFL1239R) was suspended vide Order No. 01/2024 dated 08.05.2024. Subsequently, the Suspension of the CHA license was revoked vide Order No. 03/2024 dated 27.05.2024 as per Regulation 16(2) of the CBLR, after giving the CB PH opportunity on 22.05.2024.

SHOW CAUSE NOTICE ISSUED ON 03.06.2024: -

8. In view of the above, a Show Cause Notice No. 02/2024-25 dated 03.06.2024 was issued for alleging *inter-alia* violation of Regulation 10(a), 10(d), 10(e) and 10(n) of the Customs Broker Licensing Regulations, 2018 and as per provision of Regulation 17(1) of CBLR, 2018, the CB M/s Lucky Clearing Agency was hereby called upon to show cause, as to why:

- (i) the Customs Broker license bearing no. **PN/R/26/1998** issued to them should not be revoked and security deposit should not be forfeited under Regulation 14 read with 17 & 18 of the CBLR, 2018.
- (ii) 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 Paras above of this show cause notice within 30 days from the date of issue of this notice.

Smt. Archana K. Kulkarni, Assistant Commissioner, Pune Customs was appointed as an Inquiry Officer to conduct inquiry into the case under Regulation 17 of the CBLR, 2018. In this connection, the CB M/s Lucky Clearing Agency was given an opportunity to represent their case. Accordingly, Personal Hearing in the matter was held on 12.06.2024 and they also submitted their written SCN reply.

DEFENSE AND SUBMISSIONS MADE BY THE CUSTOMS BROKER BEFORE IO: -

9. Mr. Narayan Kharayat, Partner and G-Card holder of M/s. Lucky Clearing Agency attended the personal hearing on 12.06.2024. During the hearing, he submitted a written submission and reiterated the same. Further, it was also submitted by him that he had telephonically called the importer on 16.11.2023 to submit the Authorization Letter; the importer informed him that he was out of town and would submit the same by the next day via e-mail, when he reached Delhi. However, the importer did not contact the applicant and after 06.30 PM the mobile no. of the importer was not reachable. Due to this, the applicant had not taken the Authorization Letter from the Importer. Further, the applicant submitted that he has an unblemished career of over 27 years in the clearing business. In addition, he also submitted that 06 employees are working under him; there is no other means of livelihood with him and no sources of income and all the family members of him and other employees depend upon his business and his business work. Further, he requested to take a lenient view and drop the proceedings against him. Further, they had submitted their written submission as well as oral, during the personal hearing on 12.06.2024 inter alia submitted that:-

- Upon the receipt of the Order no. 01/2024 suspending the license of the Applicant, the Applicant submitted a detailed reply mentioning the grounds on merits and the Hon'ble Commissioner of Customs Shri Yashodhan Wanage rightly revoked the suspension of license vide Order no. 03/2024 dated 27.05.2024.
- With respect to para 1 of the Show Cause Notice No. 02/2024-25, the contents thereof are true and correct. The fact is that the Applicant is a Custom House Agent whose role is a license holding individual that helps exporters and importers with their shipments at the customs station. The Applicant has an unblemished career of over 27 years in the clearing business.
- With respect to paras 2, 3.1 and 3.2 of the Show Cause Notice No. 02/2024-25, the contents thereof are a matter of record of investigating agency. The Applicant strictly denied having knowledge about the grey market value of the seized material and further denied the links between the importers; the said facts may have been unearthed by the investigating agency during its investigation. Despite the contentions, the Applicant had co-operated with the investigation agency as and when called upon, prior to his arrest and had continued afterwards. The SIIB issued summons to the Applicant Mr. Narayan Kharayat under section 67 of NDPS Act on 18.11.2023 to appear in person on 20.11.2023 and provided evidence, produced documents related to goods imported vide B/E no. 8795836, Bank Account details and AADHAR, PAN details. The Applicant complied with the summons, provided all the documents and co-operated with the investigation. The Respondent again issued a summons dated 21.11.2023 to the Applicant u/s. 67 of NDPS Act to appear in person on 22.11.2023 for enquiry, the Applicant complied and remained present and co-operated with the investigation. The Respondent on 23.11.2023 again issued a summons to the Applicant to remain present before him on 24.11.2023 for enquiry with related to goods imported vide B/E no. 8795836. The Applicant again co-operated and appeared before the agency when he was arrested and taken into custody for the offences under section 8(c), 23(b) and 35 of the NDPS Act, 1985. The Applicant was produced in remand on 25.11.2023 before the Ld. Metropolitan Magistrate's 33rd Sunday Court, Esplanade, Mumbai. The Prosecution filed a Remand Application seeking Judicial Custody of the Application for 14 days. The Ld. Metropolitan Magistrate was pleased to grant the Judicial Custody and remanded the Applicant upto 1st December, 2023. The Hon'ble Commissioner of Customs has rightly pointed out in para 12 of the order 03/2024 that, *"The case of the prosecution is based on vague incoherent facts. There is no prima facie case made out against the CB"* Furthermore, in para 13, the Hon'ble Commissioner found force in the citations relied upon by the Applicant and held that the suspension of license is not warranted in the subject case.
- With respect to para 3.3 of the Show Cause Notice No. 02/2024-25, the Applicant is not concerned and/or aware of the course of investigation of the SIIB Agency and the emails as exchanged by and between SIIB and Delhi Customs.

- With respect to para 4.1 and 4.3 of the Show Cause Notice No. 02/2024-25, the Applicant strictly denied the contents thereof. The investigating agency had raised identical allegations in the hearing of the Bail Application of the Applicant. The Hon'ble NDPS Court had dealt with the said allegations and found no prima facie case as against the Applicant and enlarged him on bail. The Applicant heavily relied on the judgement passed by the Hon'ble Delhi High Court in the case of *Naman Gupta vs. Commissioner of Customs Airport* [WP (C)15808/2022]; the Hon'ble Delhi High Court in the case of *Commissioner of Customs (General) Vs. KVS Cargo* [2019(365) ELT 395]; *M/s KVS Cargo dated 09.10.2018* in Customs Appeal No. 159/2018; the Hon'ble Delhi High Court in case of *M/s ICS Cargo dated 13.10.2023* in Customs Appeal No. 51/2023. The Hon'ble Commissioner of Customs in his order dated 27.05.2024 had also found force in the citations as relied upon by the Applicant and rightly revoked the suspension of their license vide the said order dated 27.05.2024.
- With respect to para 5.1 and 5.2 of the Show Cause Notice No. 02/2024-25, the Applicant strictly denied that he had violated regulations of the CBLR, 2018. The fact is that on 03.11.2023, the importer Mr. Sourav Raha again approached the Applicant for clearance of another Shipment of Cotton T-shirts (same commodity). The Importer this time approached the applicant for booking from Thailand as well as clearing. The Applicant informed him of the relevant charges, but the Importer's Shipper did not hand over the consignment to the Applicant's agent based in Thailand and did not contact again regarding booking. And instead appointed M/s Bhagwat Group for the same on paying higher charges. Once the Shipment arrived in India he once again sent the Invoice, Packing List, Airway Bill Copy and sent the contact information of local forwarder M/s Bhagwat Group on the Applicant's email ID CHA1113@gmail.com. And accordingly the Applicant's employee Mr. Subhash Tambe uploaded the documents on the portal WWW.ICEGATE.GOV.IN, but this time, the Bill of Entry could not be generated due to an error code in the validity of GST. The same was communicated to the importer and applicant informed him to return the consignment back to Thailand through the same forwarder. The importer was silent for a week's time and then again approached the Applicant with IEC, GST, PAN and Bank AD code from one of his other company i.e. M/s Malik Enterprises and requested the Applicant to clear the consignment. The Airway Bill was changed by M/s Bhagwat Group from Smart Moves to M/s Malik Enterprises upon receiving instructions from the importer. (Airway Bill is like a bearer cheque which cannot be changed without the consent of Shipper and Importer). It is pertinent to note that, M/s Bhagwat Group was the Freight Forwarder for the importer and in direct contact with the importer. M/s Bhagwat Group sent a specific Email to the Applicant instructing them to upload the documents from M/s Malik Enterprises as per the changed Airway Bill which was also sent by them. The employees of the Applicant uploaded the documents as provided and a Bill of Entry was successfully generated and assigned for physical examination. The Respondent Agency had failed and neglected to hold M/s Bhagwat Group as the prime suspect in facilitation of the said importer and made the applicant a scapegoat and easy target.
- With respect to para 5.3 of the Show Cause Notice No. 02/2024-25, the Applicant strictly denied that he had violated regulations of the CBLR, 2018. The Applicant stated that there is no doubt that an obligation has been cast on the CHA/CB under the CBLR so as to ensure the documents as required for the purposes of enabling the import are forwarded to the Customs. The Importer established a clear and genuine character to the Applicant's Agency by giving genuine documents for the first shipment and it was cleared smoothly without any problems. The Applicant stated that it was a well-planned conspiracy by the importer, to defraud the Government. The manner in which he indulged in fraudulently fabricating the documents and on the basis thereof he managed to obtain bogus PAN card, IEC code from DGFT and on that basis he opened a Bank Account. Neither the Income Tax Department verified the genuineness of the election voter card before issuing the PAN card nor DGFT while issuing the IEC code raised any objections on the authenticity of the documents. Even the Bank officials before opening the bank account did not verify the documents or the identity of Sourav Raha and/or Ajay Malik. In this scenario to attribute any responsibility on the CHA to have verified the authenticity of these documents or the identity of the exporter seems to be unfeasible. It is absolutely impossible for a CHA who is not even a public servant to act with such diligence that he could ascertain the veracity of the documents which even the departmental authorities could not ascertain and unearth the importer's modus operandi. The Applicant most humbly submitted that it was a pre-planned modus operandi which the importer had adopted could not have been detected in

the ordinary course.

- With respect to para 5.4 of the Show Cause Notice No. 02/2024-25, the Applicant strictly denied that he had violated regulations of the CBLR, 2018. So far as, the allegation that, the Applicant himself paid custom duty and other charges, the Applicant had provided with relevant bank statements showing the entries that the importer transferred the exact custom's fee first, and then the Applicant paid the customs duty from his account. The fact is that the importer Mr. Sourav Raha, like before, on 17.11.2023 again deposited a sum of Rs. 1,41,500/- in 3 parts i.e. Rs. 47,500/- Rs. 48,000 and Rs. 44,000/- which is reflected in his bank statement. And after the receipt of which the Applicant paid the customs duty from his account of Rs. 1,04,206/- which includes customs duty and Bill of entry late filing penalty along with Rs. 18,000/- MIPL custodian charges of Rs. 18,000/-.
- With respect to para 6 of the Show Cause Notice No. 02/2024-25, the Applicant strictly denied that he had violated the regulations of the CBLR, 2018. The Hon'ble Commissioner of Customs in para 15 of his order dated 27.05.2024 has rightly observed *"15. In view of the above findings, the principle of proportionality of punishment and considering the livelihood of CB and their employees, I find that the submissions made by the CB are acceptable to the extent of not continuing suspension pending further inquiry proceedings as per CBLR, 2018. There are certain allegations of commissions and omissions on the part of the CB brought out in para 11, but they are not grave enough to continue the suspension of CB especially when seen against the arguments advanced by the CB."*

The Hon'ble Commissioner in his order dated 27.05.2024 had also found force in the citations as relied upon by the Applicant and rightly revoked the suspension of his license vide the said order dated 27.05.2024.

- The applicant has no criminal antecedents and he is not a habitual offender. He has a clean record for more than 27 years in the functioning of M/s Lucky Clearing Agency. The applicant submitted that, the Applicant is an innocent person and is not involved in any activity or offence alleged by the competent authority and had been falsely implicated on circumstantial instances in the present case.
- The Applicant stated that, he had no personal or pecuniary interest in the impugned imports and that the imports were not for any other personal benefit of the Applicant. The Respondent found no evidence as that of placement of purchase order by the Applicant and of foreign remittances in favour of the Applicant etc. which might prove the alleged connivance of the Applicant.
- The applicant further stated that, the case of Respondent is based on vague and incoherent facts; The applicant further submitted that, there is no prima facie case made out against the applicant as alleged by the prosecuting Agency; Furthermore, the prosecution had failed to point out the motive of the present applicant, there was no motive of the present applicant to commit the said crime; The applicant further stated that, the present applicant was being made a scapegoat in the present matter and the Investigating Agency had only apprehended the present applicant on allegations which are very bleak and have circumstantial value and cannot be relied upon by your good self.
- The applicant further stated that, the sections levelled by the Investigating Agency against the present applicant are not applicable as the present applicant is only a Custom House Agent, he is neither the user, nor the consignee, nor the importer, he's merely a facilitator who also happens to be a victim of the importer's dubious plan. The Agency recovered flowering or fruiting tops of cannabis plant purported to be Ganja/Marijuana weighing 7857 gms. and the same was seized. The said quantity is an intermediate quantity and not a commercial quantity, therefore the rigors of section 37 are not attracted.
- It is submitted that the Applicant had conducted his due diligence and submitted the copy of the Email by M/s Bhagwat Group to their console agent who instructed to act as per the

changed House Airway Bill from M/s Smart Moves to M/s Malik Enterprises and do delivery order as per the same. The Agency refused to take the same on record. Further, the Applicant also lodged a Police Complaint against the Importer and the Freight Forwarder Bhagwat Group who are the real perpetrators, for their involvement and connivance in trapping this Applicant; the same was also submitted to the Agency/Respondent.

- The Applicant heavily relied on the citations of the case of *Naman Gupta vs. Commissioner of Customs Airport [WP (C)15808/2022]*, *Kunal Travels (Cargo) vs. Commissioner of Customs (Import & General) New Customs House, IGI Airport New Delhi [2017 SCC OnLine Del 7683]*, *Commissioner of Customs (General) vs. KVS Cargo [2019(365) ELT 395]*, *M/s KVS Cargo dated 09.10.2018 in Customs Appeal No. 159/2018*, *M/s ICS Cargo dated 13/10/2023 in Customs Appeal No. 51/2023*.

THE APPLICANT THEREFORE, PRAYED THAT:

- a. The Hon'ble Assistant Commissioner of Customs/Inquiry Officer may be graciously pleased to quash and set aside the above show cause notice issued under order no. 02/2024-25 and allow the present applicant to continue his license by levying any conditions as the Hon'ble Commissioner may deem fit and proper.
- b. The Applicant also undertakes to co-operate in the investigations in connection with F. NO. SIIB(I)/Gen-05/2023-24/ACC investigated by the officials of Special Investigation and Intelligence Branch (SIIB), Import, ACC, Mumbai Customs Zone III;
- c. Any such other order as the Hon'ble Commissioner may deem fit and proper be granted.

FINDINGS OF THE INQUIRY OFFICER: -

10. Vide the Inquiry Report dated 25.06.2024, the Inquiry Officer furnished the following findings: -

"12. I have carefully perused all the available records of the case, the Offence Report dated 07.03.2024 issued by the SIIB (I), ACC, Mumbai, the submissions dated 20.05.2024 made by the CB before the Commissioner of Customs as well as the Show Cause Notice No. 02/2024-25 dated 03.06.2024 issued by the Commissioner of Customs, Pune and submissions made by the CB before me during the PH held on 12.06.2024. The present inquiry against the charged Customs Broker is limited to ascertain whether the Customs Broker has violated any of the provisions, mentioned in Customs Brokers Licensing Regulations (CBLR), 2018, by any act or omission. On perusal of the Show Cause Notice 02/2024-25 dated 03.06.2024, it is observed that the CB has been alleged to have violated the provisions of Regulation 10(a), Regulation 10(d), Regulation 10(e) and Regulation 10(n) of the Customs Brokers Licensing Regulations (CBLR), 2018.

13. I observed that the case is that, during the regular course of examination, one import consignment covered under Bill of Entry No. 8795836 dated 16.11.2023 by importer Ajay Malik (IECHKGPM3853) through the Customs broker M/s. Lucky Clearing Agency was examined under panchanama dated 17.11.2023/18.11.2023 by the officers of Import Shed, ACC, Mumbai which resulted into recovery of total weighing 7857 gms. of flowering or fruiting tops of the cannabis plant purported to be Ganja/Marijuana and the same was seized under the provision of the NDPS Act. On 18.11.2023, statement of Mr Narayan Kharayat, Partner and G-Card holder of M/s. Lucky clearing agent, Mr. Madhav H. Kharayat and Mr. Subhash Tambe were recorded under section 67 of the NDPS Act. On 18.11.2023, search was undertaken at the office of the CB M/s. Lucky Clearing Agency and at the delivery address provided by the importer. Then, summonses were issued on 18.11.2023 to Shri Chetan Mehta, F-card holder of M/s. Lucky Clearing Agency, Narayan Kharayat and to Ms. Prajakta Jadav clerk/operator from Freight Forwarder Bhagwat Group Corporation, Navi Mumbai under section 67 of the NDPS Act. Delhi Customs were asked to search

addresses of the importers by issuing letter. On 01.12.2023, mail was received from Delhi Customs by investigating agency stating that all addresses of three importers are not associated with the importers and are occupied by other persons.

14. On 25.11.2023, the CB made a statement inter alia stating that he filed Bill of Entry No.8795836 dated 16.11.2023 on behalf of M/s. Ajay Malik/ Malik Enterprises without authority letter from the importer and he failed to do the KYC verification of the documents of the importer. The CB himself paid customs duty and other charges for the said Bill from bank account of M/s. Lucky Clearing Agency and he knew about non-existence of address provided by the person named Mr. Sourav Raha. He uploaded wrong Textile Committee Report through staff for the said bill. He failed to identify the genuineness of the client. He knew that the address mentioned in the invoice and IEC were different. He told his staff to deliver the goods at the address other than that mentioned in the invoice. Hence, the CB was placed under arrest on 25.11.2023 for offence punishable under sections 8(c) r/w 23(b) of the NDPS Act.

15.1. Further, I also observed the submissions made by the CB that, initially, Mr. Sourav Raha, proprietor of Smart Moves Overseas booked a consignment of T-shirts to be cleared in the name of Smart Moves Overseas and appointed the applicant for the customs clearing purpose. On 07.10.2023, the importer had deposited amount of Rs.69,500/- in the bank. After the receipt of the said amount, the applicant paid customs duty from his account of Rs.49,841/- and other charges. Upon instructions of the importer, delivery was handed over to their representative at Kalbadevi and acknowledgment was received on the delivery challan. By pointing out this transaction, the applicant has attempted to show bona-fide way of his dealings with the clients. He further contended that the Airway Bill was changed by M/s. Bhagwat Group from Smart Moves to M/s. Malik Enterprises upon receiving instructions from the importer. Thereafter, the importer Mr. Sourav Raha again approached the Applicant for clearance of another Shipment of Cotton T-shirts (same commodity). The Importer this time approached the applicant for booking from Thailand as well as clearing. The Applicant informed him of the relevant charges, but the Importer's Shipper did not hand over the consignment to the Applicant's agent based in Thailand and did not contact again regarding booking. And instead appointed M/s Bhagwat Group for the same on paying higher charges. Once the Shipment arrived in India he once again sent the Invoice, Packing List, Airway Bill Copy and sent the contact information of local forwarder M/s Bhagwat Group on the Applicant's email ID CHA1113@gmail.com. And accordingly the Applicant's employee Mr. Subhash Tambe uploaded the documents on the portal WWW.ICEGATE.GOV.IN, but this time, the Bill of entry could not be generated due to an error code in the validity of GST. The same was communicated to the importer and applicant informed him to return the consignment back to Thailand through the same forwarder. The importer was silent for a week's time and then again approached the Applicant with IEC, GST, PAN and Bank AD code from one of his other company i.e. M/s Malik Enterprises and requested the Applicant to clear the consignment. The Airway Bill was changed by M/s Bhagwat Group from Smart Moves to M/s Malik Enterprises upon receiving instructions from the importer. (Airway Bill is like a bearer cheque which cannot be changed without the consent of Shipper and Importer). It is pertinent to note that, M/s Bhagwat Group was the Freight Forwarder for the importer and in direct contact with the importer. M/s Bhagwat Group sent a specific Email to the Applicant instructing them to upload the documents from M/s Malik Enterprises as per the changed Airway Bill which was also sent by them. The employees of the Applicant uploaded the documents as provided and a Bill of Entry was successfully generated and assigned for physical examination. The Respondent Agency has failed and neglected to hold M/s Bhagwat Group as the prime suspect in facilitation of the said importer and made the applicant a scapegoat and easy target.

15.2. Further, the Applicant states that there is no doubt that an obligation has been cast on the CHA/CB under the CBLR so as to ensure the documents as required for the purposes of enabling the import are forwarded to the Customs. The Importer established a clear and genuine character to the Applicant's Agency by giving genuine documents for the first shipment and it was cleared smoothly without any problems. After narrating all these details, the CB contended that he has no criminal antecedents and he is not a habitual offender. He has a clean record for more than 27 years in the functioning of M/s. Lucky Clearing Agency. The CB is an innocent person and is not involved in any activity or offense alleged by the competent authority and he has been

falsely implicated on circumstantial instances in the present case. The Applicant states that it is a well-planned conspiracy by the importer, to defraud the Government. The manner in which he indulged in fraudulently fabricating the documents and on the basis thereof he managed to obtain bogus PAN card, IEC code from DGFT and on that basis he opened a Bank Account. Neither the Income Tax Department verified the genuineness of the election voter card before issuing the PAN card nor DGFT while issuing the IEC code raise any objections on the authenticity of the documents. Even the Bank officials before opening the bank account did not verify the documents or the identity of Sourav Raha and/or Ajay Malik. In this scenario to attribute any responsibility on the CHA to have verified the authenticity of these documents or the identity of the exporter seems to be unfeasible. It is absolutely impossible for a CHA who is not even a public servant to act with such diligence that he could ascertain the veracity of the documents which even the departmental authorities could not ascertain and unearth the importer's modus operandi. The Applicant most humbly submits that it is a pre-planned modus operandi which the importer had adopted could not have been detected in the ordinary course.

16. I find force in the case laws relied upon by the CB in the instant matter, namely:

- a. **Hon'ble Delhi High Court in the case of Kunal Travels Cargo vs. Commissioner of Customs (Import & General) New Customs House, IGI Airport New Delhi [2017 SCC On Line Del 7683]:-**

"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 CHA's 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 mis-declaration 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).

20. It was thus evident from the legal position as enunciated in *Kunal Travels (supra)*, Customs Broker is entitled to proceed on the basis that IEC has come to be generated in favour of the exporter after appropriate background check having been conducted by the customs authorities. The further details that may have been captured and form part of IEC Registration of an importer are aspects which have to be verified by the customs authorities themselves. Moreover, it is also not the case of the Department that IEC, GSTIN, PAN & Authorized Dealer Code of the exporters were not genuine. In the aforesaid backdrop the Court in *Kunal Travels (supra)* held that the obligation of the CHA under Section 13 (e) of the CHALR, 2004 cannot be stretched to it being obliged to undertake a further background check of the client. As such, as a Customs Broker, the petitioner cannot be held liable because exporters were not traceable, after the issuance of 'Let Export Orders' and export of the goods out of the country.

-21. In our considered opinion, the Commissioner of Customs erred in accepting the findings of the Inquiry Officer regards the failure of Customs Broker to comply with the provisions of Regulation 10(d), 10 (m), 10 (n) & 10 (q) of the CBLR, 2018.

22. The Writ Petition shall stand allowed. The impugned order dated 29.06.2022, insofar as, it revokes the CB License of the petitioner and levies penalty upon the petitioner shall stand quashed and set aside.

b. Hon'ble Delhi High Court in the case of Commissioner of Customs (General) vs. KVS Cargo [2019(365) ELT 395]:-

"Para 3. In this regard the Court notices that both the authorities - the Commissioner as well as CESTAT appeared to have imposed almost impossibly high standards upon the CB holder who is expected to not only verify the correctness of the documents with reference to the publicly available material what also carry out independent investigation. No doubt, the CB holder acts as an interface between the Customs Authorities and facilitates the task of a consignee / importer, yet to such an independent agent - who is not a public servant or in any way connected with the Customs Department to act as a public trustee, is beyond what is contemplated."

17. I also find force that, the CB M/s. Lucky Clearing Agency has been functioning as a Customs Broker for more than 27 years without having statedly caused any prejudice to the interests of Revenue. He has no criminal antecedents and he is not a habitual offender. He has a statedly clean record for more than 27 years in the functioning of M/s. Lucky Clearing Agency. This is the first such instance in the past 27 years, where doubt has been raised about their work."

CONCLUSION OF THE INQUIRY REPORT BY THE INQUIRY OFFICER:-

11. Vide the Inquiry Report dated 25.06.2024, the Inquiry Officer furnished the following conclusions: -

"18. From the discussions and findings as mentioned above. I conclude the findings as under:-

- (i) I observe that the CB M/s. Lucky Clearing Agency had filed the above-said Bill of Entry No.8795836 dated 16.11.2023 on behalf of M/s. Ajay Malik/ Malik Enterprises without an authority letter from the importer. Thus, I hold that the CB has violated Regulation 10(a) of the CBLR, 2018;
- (ii) In respect of allegation of violation of Regulation 10(d) of the CBLR, 2018, I observe that the Importer established a clear and genuine character to the Applicant's Agency by giving genuine documents for the first shipment and it was cleared smoothly without any problems. Thereafter, the importer again approached the Applicant for clearance of this shipment. It is a well-planned conspiracy by the importer, to defraud the Government. Further, the CB had co-operated with the investigation agency as and when called upon,

prior to his arrest and has continued afterward.

Further, I rely on the **order of the Hon'ble CESTAT, Mumbai in the matter of Priya Hemant Bandarkar Vs. Pr. Commissioner of Customs (General), Mumbai reported vide 2024 (4) TMI 875 - CESTAT Mumbai**. As per the cited order, when the CB is not aware of the smuggling activity of the importers, he has no role in the smuggling activity. Further, in such cases, there is no possibility for the CB to bring it to the notice of the Deputy Commissioner of Customs (DC) or Assistant Commissioner of Customs (AC) about the misdeclaration of imported goods involving smuggling. The relevant part of the same is reproduced hereunder:

Violation of Regulation 10(d) ibid - HELD THAT:- In the instant case, the smuggling of gold in imported consignment was found by the department only on the basis of specific investigation conducted by the DRI authorities, and it was a case of concealment of gold in the declared imported goods. It is also a fact that there was no misdeclaration in any of the documents or in the imported goods. Hence, the appellants CB cannot be found fault for the reason that they did not advise their client importer to comply with the provisions of the Act. **The act of smuggling is a conspiracy created by the smuggling syndicate in which there was no role of appellants CB. Further, the voluntary statement given by Ms. Priya Hemant Bandarkar, Proprietor of the appellants CB firm on 04.04.2019 clearly show that such smuggling activity in the imported consignment was not known to the appellants CB. Thus, there is no possibility for the appellants CB to bring it to the notice of the Deputy Commissioner of Customs (DC) or Assistant Commissioner of Customs (AC) about the misdeclaration of imported goods involving smuggling of gold - the violation of Regulation 10(d) ibid, as concluded in the impugned order is not sustainable.**

In view of the above, it appears that the CB M/s. Lucky Clearing Agency has no prior information about the illegal import of restricted/prohibited items i.e. Ganja/Marijuana which is restricted/prohibited as per Sections 8(c) r/w 23(b) of the NDPS Act, 1985. Further, it also appears that the CB had not connived with the importer by concealing the ganja/marijuana and had not aided & abetted in the wrongdoings of the importer. Thus, I hold that the CB has not violated Regulation 10(d) of the CBLR, 2018;

- (iii) From plain reading of Regulation 10(e) of the CBLR, 2018 it can be seen that this regulation does not obligate the CHA/CB to look into such information which may be made available to them by the importer/exporter. Further, I find that nothing adverse has come on record to allege that the CB M/s. Lucky Clearing Agency had/did not 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. Hence, I hold that the CB has not violated Regulation 10(e) of the CBLR, 2018;
- (iv) It is pertinent to mention here that the CB acts as an interface between Customs authorities and the trade viz. importer/exporter. The Regulation 10(n) of the CBLR, 2018 obligates him to "verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;". In the present case, I observe that the CB has failed to verify the genuineness of the functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. Thus, I find that the CB M/s. Lucky Clearing Agency has violated Regulation 10(n) of the CBLR, 2018."

12. The inquiry report dated 25.06.2024 on the alleged irregularities by the CB was prepared by the Inquiry Officer. A copy of the above report was sent to the CB on 27.06.2024 as per Regulation 17(6) of the CBLR, 2018. Accordingly, the CB M/s Lucky Clearing Agency was given an opportunity to represent their case to the Commissioner of Customs, Pune.

RECORDS OF PERSONAL HEARING: -

13. Mr. Narayan Kharayat, Partner and G-Card holder of M/s. Lucky Clearing Agency had attended the PH on 03.07.2024. During the hearing, he submitted a written submission and reiterated the same. In addition, he also reiterated the submissions dated 12.06.2024 made before the Inquiry Officer. Further, he submitted that he had telephonically called the importer on 16.11.2023 to submit the Authorization Letter, the importer informed him that he was out of town and would submit the same by the next day via e-mail when he reached Delhi. However, the importer had not submitted the same and had not contacted to the applicant and after 06.30 PM

the mobile no. of the importer was not reachable. Due to this, the applicant had not taken the Authorization Letter from the Importer. Further, the applicant submitted that he has an unblemished career of over 27 years in the clearing business. In addition, he also submitted that 06 employees are working under him; there is no other means of livelihood with him and no sources of income and all the family members of him and other employees depend upon his business and his business work. Further, he requested to take a lenient view and drop the proceedings against him.

SUBMISSIONS OF CUSTOMS BROKER: -

14. The charged Customs Broker M/s. Lucky Clearing Agency (CB No.-11/1113), in their written submissions as well as oral, during the personal hearing on 03.07.2024 inter alia submitted that:

- With respect to the findings in para 18(i) of the inquiry report holding the applicant in violation of Regulation 10(a) of the CBLR, 2018, the applicant wishes to clarify his submissions by stating that the Importer approached M/s Bhagwat Group for the booking from Thailand as well as clearing on paying higher charges. Once the Shipment arrived in India, he once again sent the Invoice, Packing List, Airway Bill Copy and sent the contact information of local forwarder M/s Bhagwat Group on the Applicant's email ID CHA1113@gmail.com. Accordingly, the Applicant's employee Mr. Subhash Tambe uploaded the documents on the portal WWW.ICEGATE.GOV.IN, but this time, the Bill of entry could not be generated due to an error code in the validity of GST. The same was communicated to the importer and the applicant informed him to return the consignment back to Thailand through the same forwarder. The importer was silent for a week's time and then again approached the Applicant with IEC, GST, PAN and Bank AD code from one of his other companies i.e. M/s Malik Enterprises and requested the Applicant to clear the consignment. The Airway Bill was changed by M/S Bhagwat Group from Smart Moves to M/S Malik Enterprises upon receiving instructions from the importer. M/s Bhagwat Group is the prime suspect in the facilitation of the said importer and made the applicant a scapegoat and easy target. It is pertinent to note that, M/s Bhagwat Group was the Freight Forwarder for the importer and in direct contact with the importer. M/s Bhagwat Group sent a specific Email to the Applicant instructing them to upload the documents from M/S Malik Enterprises as per the changed Airway Bill which was also sent by them.
- With respect to the findings in para 18 (iv) of the inquiry report holding the applicant in violation of Regulation 10(n) of the CBLR, 2018, the applicant wishes to clarify his submissions by stating that there is no doubt that an obligation has been cast on the CHA/CB under the CBLR so as to ensure the documents as required for the purposes of enabling the import are forwarded to the Customs. In fact, they are the link between the importer and the Customs department therefore has an important and responsible role to play while providing their services. The Applicant stated that it was a well-planned conspiracy by the importer to defraud the Government. The manner in which he indulged in fraudulently fabricating the documents and on the basis thereof he managed to obtain bogus PAN card, IEC code from DGFT and on that basis he opened a Bank Account. Neither the Income Tax Department verified the genuineness of the election voter card before issuing the PAN card nor DGFT while issuing the IEC code raised any objections on the authenticity of the documents. Even the Bank officials before opening the bank account did not verify the documents or the identity of Sourav Raha and/or Ajay Malik. In this scenario to attribute any responsibility on the CHA to have verified the authenticity of these documents or the identity of the exporter seems to be unfeasible. It is absolutely impossible for a CHA who is not even a public servant to act with such diligence that he could ascertain the veracity of the documents which even the departmental authorities could not ascertain and unearth the importer's modus operandi. The Applicant most humbly submitted that it was a pre-planned modus operandi which the importer had adopted that could not have been detected in the ordinary course. The Applicant is placing heavy reliance upon on the judgement passed by the Customs Excise & Service Tax

Appellate Tribunal New Delhi in *World Line Cargo Movers Vs. Commissioner of Customs, (Airport & General), NCH, IGI, Airport, New Delhi* (in addition to previously cited judgments) which mentioned therein that,

"11. Regulation 10(n) requires the Customs Broker to verify the identity of the client using reliable, independent, authentic documents, data or information. In other words, he should know who the client is and the client cannot be some fictitious person. As per the Regulation, this identity can be established by independent, reliable, authentic: a) documents; b) data; or c) information. Any of these methods can be employed by the Customs Broker to verify the identity of its client. It is not necessary that the CB appellant has to only conduct a physical verification or launch an investigation. So long as the CB can find documents which are independent, reliable and authentic to establish the identity of his client, this obligation is fulfilled. In addition, under Regulation 10(n) the Customs Broker is required to verify the functioning of the client at the declared address using reliable, independent, authentic documents, data or information. This responsibility, again, can be fulfilled using documents or data or information so long as they are reliable, independent and authentic. Nothing in this clause requires the 10 C/51779/2021 Customs Broker to physically go to the premises of the client to ensure that they are functioning at the premises. We find that both the GSTIN as well as the IEC indicates the address of the client. This in itself is independent data to verify the correctness of the identity/address of the client. We also note that there is nothing on record to show that either of these documents were fake or forged. Therefore, once verification of the address is complete as discussed above, the responsibility cast on the appellant under Regulation 10(n) stands fulfilled."

In this regard, we note that the Principal Bench of this Tribunal in the case of M/s Mauli Worldwide Logistics vs Commissioner of Customs (Airport & General) [2022-TIOL-603-CESTAT-DEL] held as follows:

"31. The responsibility of the Customs Broker under Regulation 10(n) does not include keeping a continuous surveillance on the client to ensure that he continues to operate from that address and has not changed his operations. Therefore, once verification of the address is complete, as discussed in the above paragraph, if the client moves to a new premises and does not inform the authorities or does not get his documents amended, such act or omission of the client cannot be held against the Customs Broker. 32. We, therefore, find that the Customs Broker has not failed in discharging his responsibilities under Regulation 10(n). The impugned order is not correct in concluding that the Customs Broker has violated Regulation 10(n) because the exporters were found to not exist during subsequent verification by the officers."

12. We also note that in a recent judgement of the High Court of Delhi in the case of Naman Gupta vs. Commissioner of Customs Airport [W (C)15808/2022] held as follows:-

"20. It is thus evident from the legal position as enunciated in Kunal Travels (supra), Customs Broker is entitled to proceed on the basis that IEC has come to be generated in favour of the exporter after appropriate background check having been conducted by the customs authorities. The further details that may have been captured and form part of IEC Registration of an importer are aspects which have to be verified by the customs authorities themselves. Moreover, it is also not the case of the Department that IEC, GSTIN, PAN & Authorized Dealer Code of the exporters were not genuine. In the aforesaid backdrop the Court in Kunal Travels (supra) held that the obligation of the CHA under Section 13 (e) of the CHALR, 2004 cannot be stretched to it being obliged to undertake a further background check of the client. As such, as a Customs Broker, the petitioner cannot be held liable because exporters were not traceable, after the issuance of 'Let Export Orders' and export of the goods out of the country. "

Further, the CB also relied on his previous reply.

DISCUSSION AND FINDINGS: -

15. I have carefully gone through the entire case proceedings of the Show Cause Notice issued on 03.06.2024 and the inquiry report dated 25.06.2024 submitted by the Assistant Commissioner, Pune Customs and all the written submissions made by the Customs Broker.

16. Issues before me for decision are as follows:

- i) Whether there are violations of Regulations 10(a), 10(d), 10(e) and 10(n) of the CBLR, 2018 on the part of the Customs Broker M/s Lucky Clearing Agency.
- ii) Whether the CB License is required to be revoked, or the security deposit be forfeited or any penalty to be imposed or otherwise.

17. In reply to the said SCN & Inquiry report, I observe that the CB had filed the said Bill of Entry of the present consignment based on the documents provided to them by the importer. The CB submitted that the Importer established a clear and genuine character to the Applicant's Agency by giving genuine documents for the first shipment and it was cleared smoothly without any problems. The CB further submitted that it was a well-planned conspiracy by the importer, to defraud the Government. The CB also submitted that they were not involved in any activity that appeared or was found to be in violation of the laws of the land in respect of the subject import consignment or another export-import consignment of the past. They further submitted that they had fully cooperated in the investigation conducted by the investigating agency as & when required. They mentioned that they have been engaged in Customs Clearance for long years & so far no allegations had been levelled on them and they have a clean antecedent. I find merit in the submission of the CB to the extent that they were not aware of the concealment (Ganja/Marijuana) in the said consignment or any mis-declaration. The Inquiry report also does not find any role of the CB in mis-declaration of the goods.

In view of the above, I find that there is no evidence on record to establish involvement of the CB in the mis-declaration of the goods declared in the said Bill of Entry. The CB had filed the said Bill of Entry on the basis of documents provided to them by the importer. There is no evidence to show the complicity of CB in the smuggling of said goods i.e. Ganja/Marijuana.

18.1. It was alleged against the CB that they had violated the provisions of Regulation 10(a) of the CBLR, 2018 which are reproduced herein below:

"10(a) obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;"

In respect of the above-alleged charges, I carefully perused the submissions made by the CB as mentioned in the above Para 9 and Para 14. In this connection, I observe that the CB M/s. Lucky Clearing Agency had filed the above-said Bill of Entry No. 8795836 dated 16.11.2023 on behalf of M/s. Ajay Malik/Malik Enterprises without an authority letter from the importer. The Inquiry Report also held that the CB had violated Regulation 10(a) of the CBLR, 2018. In view of the above, I also find that the CB had failed to comply with the provisions of Regulation 10(a) of the CBLR, 2018.

18.2. Further, it was also alleged that CB had failed to advise their client to comply with the provisions of the Customs Act, 1962 and had thereby violated Regulation 10(d) of the CBLR, 2018, which reads as below:

10(d) "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;"

In respect of the above-alleged charges, I carefully perused the submissions made by the CB as mentioned in the above Para 9. I find that the CB had complied with Regulation 10(d) of the CBLR, 2018 and statedly advised the importer to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof. The allegation of mis-declaration of the said imported goods cannot be made against them as they filed the import documents only on the basis of the documents furnished by the importer. The CB was not supposedly aware of the concealment (Ganja/Marijuana) in the said consignment or any mis-declaration.

In this connection, I rely on the order of the Hon'ble CESTAT, Mumbai in the matter of *Priya Hemant Bandarkar Vs. Pr. Commissioner of Customs (General), Mumbai reported vide 2024 (4) TMI 875 - CESTAT Mumbai*. As per the cited order, when the CB is not aware of the smuggling activity of the importers, he has no role in the smuggling activity. Further, in such cases, there is no possibility for the CB to bring it to the notice of the Deputy Commissioner of Customs (DC) or Assistant Commissioner of Customs (AC) about the mis-declaration of imported goods involving smuggling. The relevant part of the same is reproduced hereunder:

Violation of Regulation 10(d) ibid - HELD THAT:- In the instant case, the smuggling of gold in imported consignment was found by the department only on the basis of specific investigation conducted by the DRI authorities, and it was a case of concealment of gold in the declared imported goods. It is also a fact that there was no misdeclaration in any of the documents or in the imported goods. Hence, the appellants CB cannot be found fault for the reason that they did not advise their client importer to comply with the provisions of the Act. The act of smuggling is a conspiracy created by the smuggling syndicate in which there was no role of appellants CB. Further, the voluntary statement given by Ms. Priya Hemant Bandarkar, Proprietor of the appellants CB firm on 04.04.2019 clearly show that such smuggling activity in the imported consignment was not known to the appellants CB. Thus, there is no possibility for the appellants CB to bring it to the notice of the Deputy Commissioner of Customs (DC) or Assistant Commissioner of Customs (AC) about the misdeclaration of imported goods involving smuggling of gold - the violation of Regulation 10(d) ibid, as concluded in the impugned order is not sustainable.

I find that the ratio of the above judgements is squarely applicable in the present case. I find that the charges of connivance of Customs Broker without producing any corroborative evidence, cannot sustain in law. Further, it appears that the CB M/s. Lucky Clearing Agency has no prior information about the illegal import of restricted/prohibited items i.e. Ganja/Marijuana which is restricted/prohibited as per Sections 8(c) r/w 23(b) of the NDPS Act, 1985. Further, it also appears that the CB had not connived with the importer by concealing the ganja/marijuana and had not aided & abetted in the wrongdoings of the importer. The same observations are also made in the Inquiry Report. In view of the above, I find that violations of the provisions of 10(d) of the CBLR, 2018 are not established against the CB.

18.3. Further, It was alleged against the CB that they had violated the provisions of Regulation 10(e) of the CBLR, 2018 which are reproduced herein below: -

10(e) "A Customs broker shall 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;"

In respect of the above-alleged charges, I carefully perused the submissions made by the CB as mentioned in the above Para 9. In this connection, I rely on the order of *Hon'ble Delhi High Court in the case of Kunal Travels Cargo vs. Commissioner of Customs (Import & General) New Customs House, IGI Airport New Delhi [2017 SCC On Line Del 7683] & Hon'ble Delhi High Court in the case of Commissioner of Customs (General) vs. KVS Cargo [2019(365) ELT 395]*, which were submitted by the CB in their submission, mentioned at Para 9. I find that the ratio of the above judgments is squarely applicable in the present case. Further, from plain reading of Regulation

10(e) of the CBLR, 2018 it can be seen that this regulation does not obligate the CHA/CB to look into such information which may be made available to them by the importer/exporter. Further, I find that nothing adverse has come on record to allege that the CB M/s. Lucky Clearing Agency had/did not 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. The same observations are also made in the Inquiry Report. In view of the above, I find that violations of the provisions of 10(e) of the CBLR, 2018 are not established against the CB.

18.4. It was alleged against the CB that they had violated the provisions of Regulations 10(n) of the CBLR, 2018. In respect of the above-alleged charges, I carefully perused the submissions made by the CB as mentioned in the above-mentioned Para 9 and Para 14. In this connection, it is pertinent to mention here that the CB acts as an interface between Customs authorities and the trade viz. importer/exporter. The Regulation 10(n) of the CBLR, 2018 obligates him to *"verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information"*. In the present case, I observe that the CB has failed to verify the genuineness of the functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. The same observations are also made in the Inquiry Report. Thus, I find that the CB M/s. Lucky Clearing Agency has violated Regulation 10(n) of the CBLR, 2018.

19. I find force in the following Case Laws as these are applicable to the case under discussion:

- a) Hon'ble CESTAT, New Delhi in the matter of *M/s FREIGHT LOGISTICS VERSUS COMMISSIONER OF CUSTOMS (AIRPORT & GENERAL) NEW CUSTOM HOUSE, NEW DELHI AND COMMISSIONER OF CUSTOMS (AIRPORT & GENERAL) COMMISSIONERATE, NEW CUSTOM HOUSE, NEW DELHI VERSUS M/S FREIGHT LOGISTICS*, reported as *Customs Appeal No. 50944 of 2021 & Customs Appeal No. 51839 of 2021, Order dated 02.02.2024* stating -

"Levy of penalty on Customs Broker - Forfeiture of the security deposit - Role of the employee of the CB - illegal export of prohibited goods - allegations pertaining to Regulation 10(a), 10(e) and 10(n) of CBLR, 2018 - Doctrine of proportionality - HELD THAT:- There appears to be no doubt that fraud has been committed by manipulating the documents to enable the illegal export of prohibited goods but there is no evidence to say that the appellant connived or was aware of the modus-operandi. However, it cannot be ignore that by virtue of a license granted under the Regulations, a customs broker is eligible and entitle to carry on the work of clearance of goods for import and export. As laid down in various decisions, CHA occupies a very important position in the Customs House. He is supposed to safeguard the interests of both the importers and the Customs and therefore a lot of trust is kept in CHA by the importers or exporters as well as by the NOBLE AGENCY VERSUS COMMISSIONER OF CUSTOMS, MUMBAI [2002 (2) TMI 171 - CEGAT, MUMBAI]. Therefore, the appellant when he admits that he did not verify the address of the exporting company as they were in Amritsar and also did not raise any query for non production of the authorization from the exporter company had violated the obligations cast on a customs broker under the Regulations.

Considering the extent of violation that can be attributed to the appellant and the fact noted by the Commissioner that active role was played by Shri Kumod Kumar Choudhary, employee of the CB and role of CB has not come out anywhere in the investigation as also CB has taken immediate action against the employee, applying the doctrine of proportionality the forfeiture of security deposit is far beyond proportion and imposition of penalty of Rs. 50,000/- is sufficient.

The impugned order is modified to the extent that forfeiture of the security deposit needs to be set aside and only the order whereby the penalty has been imposed is affirmed - appeal allowed in part.

Revocation of Customs Broker License - Revenue appeal for not revoking the License - Held that:- We do not find that the appellant had any knowledge that illegal exports were attempted or there was any active or passive facilitation on the part of the appellant. There was no finding of any mala fide on the part of CHA such that trust operating between CHA and customs authorities was violated or irritably lost for future operation of the license.

- Revenue appeal dismissed.

- b) **Hon'ble CESTAT, Chennai in the matter of M/s. SOUPARNIKA SHIPPING SERVICES VERSUS PRINCIPAL COMMISSIONER OF CUSTOMS, CHENNAI VIII COMMISSIONERATE reported as Customs Appeal No. 40199 of 2020 Customs Appeal No. 40248 of 2020, FINAL ORDER Nos. 40019-40020 / 2024 dated 05.01.2024 stating -**

*"Revocation of Customs Broker License - forfeiture of security interest - levy of penalty - Smuggling of Cigarettes - contraband Cigarettes were found concealed behind the declared goods - violation of provisions of Regulations 10 (b), 10(d), 10(e) and 10(n) of the CBLR, 2018 - enquiry report was not communicated to the appellant - violation of principles of natural justice - **HELD THAT:-** On going through the enquiry report and the impugned order and also various statements recorded from the persons connected including Shri K.V. Prabhakaran, proprietor of the Customs Broker - Though enquiry report has absolved the Customs Broker from all the charges levelled against him, the reasons were not accepted, the enquiry report was not communicated to the appellant, violating the principles of natural justice.*

The Hon'ble High Court of Delhi in the case of KUNAL TRAVELS (CARGO) VERSUS COMMISSIONER OF CUSTOMS (IMPORT & GENERAL) NEW CUSTOMS HOUSE, IGI AIRPORT, NEW DELHI [2017 (3) TMI 1494 - DELHI HIGH COURT] has held that Customs House Agents are only processing agent of documents for clearance of goods through Customs House. They are not inspectors to weigh genuineness of transaction, and there is no obligation to look into information from exporter/importer. It is onerous to expect CHA to inquire into and verify genuineness of IE Code given by client for each import/export transaction. When such code is mentioned, there is a presumption that appropriate background check in this regard would have been done by Customs authorities. In absence of knowledge that goods mentioned in shipping bills did not reflect truth of consignment sought to be exported, CHA or its proprietor cannot be attributed with mens rea - If goods did not corroborate with declaration in shipping bills, it cannot be deemed to be the mis-declaration by CHA.

In the case of M/S. ASHIANA CARGO SERVICES VERSUS COMMISSIONER OF CUSTOMS (I&G) [2014 (3) TMI 562 - DELHI HIGH COURT], the Hon'ble High Court of Delhi has held that revocation of CHA license is justified only in cases of aggravating factors that allow infraction to be labelled as grave. Though it is not possible to make exhaustive list of such aggravating factors, precedent cases show that revocation of licence has been upheld where there was an element of active facilitation of infraction, i.e., a finding of mens rea, or a gross and flagrant violation of CHA Regulations.

The Customs Broker license was suspended vide F.No. R-498/CHA dated 15.07.2019, thus, more than four years passed since the time of suspension. In the case of KS. SAWANT & CO. VERSUS COMMISSIONER OF CUSTOMS (GENERAL), MUMBAI [2013 (12) TMI 119 - CESTAT, MUMBAI], it was held that mere signing of documents by a CHA would not prove that the clearances were undertaken by the CHA and punishment for the same could not be revocation of license of the CHA as that would be extreme and harsh.

The revocation of Customs Brokers License is too harsh a punishment which is bound to affect the livelihood of the Customs Broker and his employees and by taking into consideration that the Customs Broker License was suspended on 15.07.2019 and thus more than four years' time elapsed since, thus, the revocation is set aside - the Customs authority are directed to issue / revive the Customs Brokers License as the Broker was out of Business for more than four years which is enough punishment for the lapses on his part.

As the security deposit was confiscated, ordering for its confiscation again cannot be sustained. However, imposition of a penalty of Rs.50,000/- under Regulation 18(1) of CBLR, 2018 cannot be termed as excessive. As such, the penalty of Rs.50,000/- imposed is upheld.

Appeal allowed in part."


20. In view of the above, I pass the following order: -

ORDER

21. I, the Commissioner of Customs, Pune, in exercise of the power conferred under the Customs Broker Licensing Regulations, 2018, hereby order as follows:

- (i) I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand only) upon the CB firm under Regulation 18(1) of the CBLR, 2018 for contravening provisions of 10(a) & 10(n) of the CBLR, 2018.
- (ii) I drop the charges of violation of contravening provisions of 10(d) and 10(e) of the CBLR, 2018 initiated vide Show Cause Notice No. 02/2024-25 dated 03.06.2024.
- (iii) In view of the nature of the violations, I do not revoke the license of the CB i.e. M/s Lucky Clearing Agency.

22. This order is being issued without prejudice to any other action that may be taken against the Customs Broker or any other person(s) firm(s) etc. under the provisions of the Customs Act, 1962, and Rules/Regulations framed there under or any other law for the time being in force.


(YASHODHAN WANAGE)
Commissioner of Customs
Pune

To,
M/s Lucky Clearing Agency,
59, Goa Street, Dr. Sunderlal Bahl Path,
31, Kakal Building, 2nd Floor,
Fort, Mumbai - 400001.

Copy to:

- 1. The Chief Commissioner, Pune Zone.
- 2. The Pr. Commissioner of Customs (General), New Custom House, Ballard Estate, Mumbai-400001.
- 3. All A.Cs/D.Cs incharge of ICD/CFS under the jurisdiction of Pune, Customs.
- 4. EDI Section, NCH, Mumbai.
- 5. Office Copy.
- 6. Master File.

