

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Customs Appeal No.40401 and 40402 of 2021

(Arising out of Order-in-Appeal Seaport C. Cus. II No. 109 & 110/2021 dated 9.3.2021 passed by the Commissioner of Customs (Appeals – II), Chennai)

Shri Hari Prabhu

Managing Director M/s. Raj Bros Shipping Pvt. Ltd.
No. 64/23, Jeevarathinam Salai
Tondiarpet, Chennai – 600 081.

And

Shri M. Thirumalai Thiyagarajan

Director M/s. Raj Bros Shipping Pvt. Ltd.
No. 64/23, Jeevarathinam Salai
Tondiarpet, Chennai – 600 081.

Appellants

Vs.

Commissioner of Customs

Chennai II Commissionerate
Custom House, 60, Rajaji Salai
Chennai – 600 001.

Respondent

APPEARANCE:

Shri N. Viswanathan, Advocate for the Appellant
Ms. Ganeshram Anandalakshmi, Superintendent (AR) for the Respondent

Along with

Customs Appeal No.40064 and 40065 of 2022

(Arising out of Order-in-Appeal Seaport C. Cus. II No. 16 & 17/2022 dated 4.1.2022 passed by the Commissioner of Customs (Appeals – II), Chennai)

Ms. J. Lakshmi

Director M/s. Southern Clearing & Forwarding Agencies Pvt. Ltd.
Old No. 13, New No. 25, II Floor, Krishnan Kovil Street
Mannady, Chennai – 600 001.

And

**M/s. Southern Clearing & Forwarding
Agencies Pvt. Ltd.**

Old No. 13, New No. 25, II Floor, Krishnan Kovil Street
Mannady, Chennai – 600 001.

Appellants

Vs.

Commissioner of Customs

Chennai II Commissionerate
Custom House, 60, Rajaji Salai
Chennai – 600 001.

Respondent

APPEARANCE:

Shri Derrick Sam, Advocate for the Appellant
Ms. K. Komathi, ADC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Final Order Nos. **40012-40015 / 2023**

Date of Hearing : 20.01.2023

Date of Decision: 25.01.2023

The issues involved in all these four appeals emanate out of the same Order in Original and the issues being connected they were heard together and are disposed of by this common order.

2. Brief facts are that the Bill of Entry No. 2548937 dated 21.7.2017 was filed by Customs broker M/s. Southern Clearing and Forwarding Agencies Pvt. Ltd. (Appellant in C/40065/2021) on behalf of the importer M/s. A.K. Imports and Exports for the clearance of goods declared as men's shoes, car handling accessories, porcelain tiles, hardware tools, baby car etc. supplied by one M/s. Shenzhen Mosland Trading Co. Ltd. and the assessable value declared was Rs.8.65 lakhs. On specific intelligence, the SIIB officers examined the goods on 27.7.2017 and 28.7.2017 and found in the container many undeclared items in the nature of thread seal tape, LED lights, LED display, watches of various brands containing assorted models, PCBs, electric scooter, fried ice-cream machine, garments etc. As the goods were found to be grossly misdeclared, they were detained for further investigation. During the investigation, it came to the notice of the department that the container was removed from the Continental

Warehousing Corporation (NS) Ltd. (hereinafter referred to as Continental II CFS) by using forged documents.

3. Show Cause Notices were issued to various parties including the appellants herein for alleged illegal removal of the container using forged documents from the customs area. After due process of law, the Original Authority vide the Order in Original dated 28.9.2019 ordered for confiscation of the goods listed as per Annexure I for the value of Rs.13,92,476/-. An option was given to the importer, M/s. A.K. Imports and Exports to redeem the goods on payment of redemption fine of Rs.1.50 lakhs. The Adjudicating Authority ordered for absolute confiscation of the goods covered in Annexure II for the value of Rs.1,78,257/- on the ground of violation of IPR Rules / BIS Rules. The goods listed in Annexure III valued at Rs.39,62,618/- was also ordered to be confiscated with an option to the importer to redeem the same on payment of redemption fine of Rs. 4 lakhs.

4. The Adjudicating Authority also imposed penalties on various parties. A penalty of Rs.10 lakhs was imposed on Shri Hari Prabhu (Appellant in C/40102/2021) under sec. 112(a) and penalty of Rs. 20 lakhs was imposed under sec. 114AA of the Customs Act, 1962. The adjudicating authority imposed a penalty of Rs. 10 lakhs on Thirumalai Thiagarajan (appellant in Appeal No. C/40401/2021) under sec. 112(a) of the Customs Act, 1962 and penalty of Rs.10 lakhs under sec. 114AA. Penalty of Rs. 2 lakhs was imposed on Southern Clearing and Forwarding Pvt. Ltd. (appellant in Appeal No. C/40065/2022) who is a Customs Broker who dealt with the fling of Bill of Entry. Penalty of Rs. One lakh was also imposed on Mrs. J. Lakshmi, Director and Authorized

Signatory of the Customs Broker firm (appellant in Appeal No. C/40064/2022).

5. Against the above order and the penalties imposed, the appellants filed appeals before the Commissioner (Appeals) who vide the order impugned herein dismissed the appeals. Hence the appellants are now before the Tribunal.

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6. The learned counsel Shri N. Viswanathan appeared and argued for the appellants (Shri Hari Prabhu and Shri Thirumalai Thiyagarajan). The learned counsel asserted that the appellants had no connection with the goods imported or in filing the Bill of Entry. The appellants have been implicated alleging that they have forged the documents for clearance of the goods and handed over such documents for removing the container illegally from the CFS area. The authorities below have merely relied on the statements given by various persons to falsely implicate the appellants. There is no direct evidence or documentary evidence to prove that the appellants have played any role in forging the Out of Charge (OOC) or illegally removing the container. The department has relied on the statement of co-noticee Shri M.D. Karthikeyan who is said to have deposed that the appellant handed over the documents for clearance. As per the statement of Shri M.D. Karthikeyan, it is seen stated that he is running a clearance firm and that the appellant had earlier given him the document of one M/s. Sky and Sea Exports since their customs broker license was under investigation. That they had given the appellant 145 import documents during the period July to November 2016 and paid Rs.2,000/- per bill and Rs.8,000/- for undertaking examination work. Shri Karthikeyan in

turn contacted the services of one Shri Shiva Ambica Clearing and Forwarding Pvt. Ltd. which is a customs broker and paid Rs.1,000/- per bill. The learned counsel argued that though Karthikeyan named various companies for whom he had done clearance related work, it did not figure out the above M/s. A.K. Imports and Exports involved in this case. Shri Karthikeyan further has stated that Shri Mahesh who worked with Karthikeyan does all mail and other related work. He also identified Karthikeyan from the photographs. It was stated by Shri Karthikeyan that Shri Hari Prabhu had asked him to take one import delivery for which documents were collected by Mahesh from one Ramesh on behalf of Hari Prabhu on 23.10.2017. Further that Shri Mahesh and one Prabhu (Prabhakar) went to Continental II CFS and took delivery of the container and handed over to the transporter arranged by Mahesh. Shri Karthikeyan had given details of taking illegal delivery of various containers under six bills of entry including the impugned bill of entry. He had given statement that the appellant Shri Hari Prabhu had asked him to take delivery of the container and arranged transportation through Mahesh. On the basis of such statement, the appellant has been brought into the picture alleging illegal removal of the container from CFS and forging documents for the purpose of clearance of the goods.

7. The learned counsel submitted that Karthikeyan is also a co-noticee in the present case and the statement of a co-noticee cannot be relied upon to impose penalty without corroboration with other independent evidence. The learned counsel pointed out that though as per the records of the department, the container is said to have been removed on 29.9.2017 from CFS area, as per the statement given by

Karthikeyan, the appellant is said to have given the document for clearance to Karthikeyan only on 23.10.2017. This contradiction itself would show that the case put forward by the department is concocted one. When the container is said to have been removed in September 2017, the allegation that the appellant forged documents for removal of container and clearance of the goods on 23.10.2017 cannot sustain. The learned counsel pointed out that as per the statement of Shri Mahesh dated 11.1.2018, the details on which he took delivery of the containers and removed them from the CFS area has been given in a table. As per this table, the impugned container was removed from CFS area on 14.8.2017. This again contradicts the statement given by the co-accused Karthikeyan who has said that the container was removed on 23.10.2017.

8. The learned counsel added that the appellant Thirumalai Thiagarajan was not examined by the officers and none of the persons have alleged any involvement of the said appellant with regard to illegal removal of the containers. The appellant Thirumalai Thiagarajan has been implicated in the case without any shred of evidence.

9. It is stressed by the learned counsel that apart from the statement of Karthikeyan, there is no evidence to show that the appellant had any connection with the goods imported. The authorities below have released the goods to the actual importer who is M/s.A.K. Imports and Exports. There is no case of a fictitious importer or false IEC submitted for the purpose of import on the impugned goods.

10. Though the department alleges forgery of document, they have not sent the documents for expert opinion so as to establish whether

the documents presented for clearance of the goods was forged or not. The department has failed to prove that the appellant has any connection with such OOC documents. That therefore the penalty imposed under sec. 112(a) and 114AA deserves to be set aside.

11. The learned counsel for appellant relied upon the Final Order No. 40310 – 40311/2022 dated 24.8.2022 to argue that on similar set of facts with regard to illegal removal of container in respect of Bill of Entry dated 4.5.2017, the Tribunal had set aside the penalties. The decision of the Hon'ble High Court of Madras in the case of *Commissioner Vs. Sushil Kumar Kanodia* reported in 2015 (319) ELT A73 (Mad.) was relied upon by the learned counsel to support his argument that the statement of co-accused / co-noticee cannot be relied without being corroborated by other reliable evidence. The decision in the case of *Ram Lal Kataria Vs. Collector of Central Excise* reported in 1991 (53) ELT 33 (Tri. Kol.) was relied by the counsel to argue that the confession of a co-accused cannot be the sole criteria for holding the accused guilty unless corroborated by other independent evidence. He added that the Hon'ble Courts in different cases have held that however grave the suspicion may be, it cannot take the place of proof. The decision of the Tribunal in *Commissioner of Customs Vs. Sri Krishna Sound and Lights* reported in 2019 (370) ELT 594 was relied to argue that penalty under sec. 114AA cannot be imposed in regard to imports. He prayed that the appeals may be allowed.

12. The learned AR Ms. G. Anandalakshmi appeared and argued for the department. She submitted that the appellant Hari Prabhu vide his statement dated 19.3.2018 has deposed that he knew Mahesh, Ashok

Kumar Jain and Karthikeyan all of whom were involved in the activity of illegal removal of the containers and the clearance of goods. From their statements, it is clear that Hari Prabhu handed over the document through his staff Sri Ramesh which was collected by Sri Mahesh. Along with Mahesh one Prabhu (Prabhakar) went to Continental II CFS and took illegal delivery of the container and handed it over to the transporter. The appellant shri Hari Prabhu had forged the documents which were presented for clearance of the goods. The statement of Karthikeyan brings out the involvement of the appellant Shri Hari Prabhu. The learned AR urged that the evidence provided by the statement given by any person under sec. 108 of the Customs Act, 1962 is to be deemed as evidence given under the Indian Evidence Act and therefore can be relied. To support this argument, she relied upon the decision in the case of *Assistant Collector of Customs Vs. Duncan Agro Industries Ltd.* reported in 2000 (120) ELT 280 (SC) and the case of *Romesh Chandra Mehta Vs. State of West Bengal* reported in 1999 (110) ELT 324 (SC). In the case of *Bhana Khalpa Bhai Patel Vs. Assistant Collector of Customs* reported in 1997 (96) ELT 211 (SC), the Hon'ble Supreme Court held that statement made under section 108 of the Customs Act, 1962 even when retracted within six days are binding on the person to whom the statements are relevant as evidence. In the present case, the statement of various persons including Karthikeyan and Mahesh bring out the involvement of the appellant shri Hari Prabhu and Shri Thirumalai Thiayagarajan in the activity of illegal removal of the container from CFS area. Though the appellant feigns ignorance and knowledge about Karthikeyan and

Mahesh, the mobile call detail records of the appellant show that they know each other. She prayed that the appeals may be dismissed.

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13. The learned counsel Shri Derrick Sam appeared and argued for the appellants. He submitted that the appellant is a Customs Broker and had filed Bill of Entry on behalf of the importer. The only allegation against the appellant is that the appellant did not obtain the KYC documents directly from the importer. In fact, the appellant had obtained documents from importer through M/s. We Can Shipping and Logistics. The learned counsel urged that there is nothing under the Customs Broker Licensing Regulations 2013 which states that the Customs Broker has to obtain document from the importer directly. There is no allegation that the KYC documents submitted are not proper. The simple allegation is that the documents were not obtained directly from the importer M/s. A.K. Imports and Exports. The entire case has been set up on the basis that the goods have been misdeclared. The appellant who is a Customs Broker does not have any knowledge as to the nature of the goods inside the container. The documents are filed on the basis of the information / document given by the importer. When the KYC documents are proper, the penalty imposed on the appellant under sec. 112(a) alleging that appellant has abetted misdeclaration of goods cannot sustain. Further, the appellant Ms. J. Lakshmi has been implicated in the proceedings only because she is the Director and authorized signatory of the Customs Broker firm. There is no allegation that she was involved in any manner on importing alleged goods or removal of the container from the CFS station. It is to be noted that the goods which were confiscated as per

Annexure I and III were later cleared to the importer A.K. Imports and Exports on payment of redemption fine. Further, the reason for absolutely confiscating the goods in Annexure II is that the goods violated IPR and BIS Rules. The appellant who is a Customs Broker cannot be expected to know such details of the goods imported. He relied upon the decision in the case of *Poonia & Brothers Vs. Commissioner of Customs, Jaipur* reported in 2019 (370) ELT 1074 (Tri. Del.) to argue that the CBLR 2013 Regulations does not state that the Customs Broker is required to physically verify the details of the importer. The decision in the case of *Trade Wings Logistics India Pvt. Ltd. Vs. Commissioner of Customs, Chennai* reported in 2019 (370) ELT 510 (Tri. Chennai) was relied to argue that Customs Broker need not receive the documents directly from the importer. He prayed that the appeals may be allowed.

14. The learned AR Ms. K. Komathi appeared and argued for the department. She supported the findings in the impugned order. It is submitted by her that the alleged misdeclaration of imported goods would not have happened if the Customs Broker had received the documents directly from the importer. She prayed that the appeals may be dismissed.

15. Heard both sides.

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16. The adjudicating authority has imposed penalty of Rs.10 lakhs on Shri Hari Prabhu under sec. 112(a) of the Customs Act, 1962 and Rs.20 lakhs under sec. 114AA of the said Act. Very same penalties have been imposed on Shri Thirumalai Thiagarajan also. The penalties were upheld by the Commissioner (Appeals).

17. The allegation against these appellants as per the Show Cause

Notice is as under:-

XVII. Shri Hari Prabhu and Sri Thirumalai Thiagrajan of M/s. Raj Brothers created the forged out of charge (OOC) and Pass- out documents and handed over documents for clearance to Karthikeyan and told him to take delivery. Mr. Karthikeyan handed over these documents to Mr. Magesh along with Prabhakar (Prabhu) went to CFS to clear the goods on the basis of these forged documents and for taking delivery;

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V. Shri Hari Prabhu of M/s. Raj Brothers took documents and arranged for the forged set of documents and given to Karthikeyan for clearance of containers. For having colluded with the IEC Holder to smuggle the goods in contravention to the import policy, and arranging for the forged Set of documents he is liable to penalty under Section 112 (a) & 114AA of Customs Act, 1962.

VI. Shri Thirumalai Thiagarajan of M/s. Raj Brothers took documents and arranged for the forged set of documents given to karthikeyan for clearance of containers. For having colluded with the IEC Holder to smuggle the goods in contravention to the import policy, and arranging for the forged set of documents he is liable to penalty under Section 112 (a) & 114AA of Customs Act, 1962.

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41. Further Shri Hari Prabhu has arranged for the forged OOC documents and has tried to remove the container from the Customs Area without proper permission, hereby called upon to show cause to the Commissioner of Customs, Chennai-II Commissionerate, Custom House, Chennai-600001, within 30 days of receipt of this notice as to why-

I. Penalty under Section 112 (a) of the Customs Act, 1962 should not be imposed on you for rendering the goods liable for confiscation.

II. Penalty under Section 114AA of the Customs Act, 1962 should not be imposed on him for submitting forged documents in respect of the imported goods before Customs.

42. Further Shri Thirumalai Thiagaran has arranged for the forged OOC documents and has tried to remove the container from the Customs Area without proper permission, hereby called upon to show cause to the Commissioner of Customs, Chennai-II Commissionerate, Custom House, Chennai-600001, within 30 days of receipt of this notice as to why-

III. Penalty under Section 112(a) of the Customs Act, 1962 should not be imposed on you for rendering the goods liable for confiscation.

IV. Penalty under Section 114AA of the Customs Act, 1962 should not be imposed on him for submitting forged documents in respect of the imported goods before Customs.”

18. From the above, it can be seen that the main allegation against the appellant is that they have created forged OOC and other documents for clearance and removal of container and handed over such documents to Shri Karthikeyan by which the container was taken out of the CFS area.

19. The learned counsel for the appellants has vehemently argued that the appellants have no connection with the illegal removal of the container or forging of documents. It is submitted that the department has implicated these appellants on the basis of the statement given by Shri M.D. Karthikeyan. On perusal of records, it can be seen that other than this statement, there is no evidence adduced to show that the appellants were involved in the incident. Moreover, there are contradictions in the case set up by the department. According to the case records, the container is said to have been removed from the CFS on 29.9.2017. Interestingly, such removal has happened after the container was examined and detained by SIIB. It is the case of department that forged documents were presented before officer in-charge of CFS to remove the container along with the goods from the CFS area. The Preventive Officer of the department who was in-charge has endorsed his signature on the document. The Preventive Officer denied his signature on these documents. Merely on such denial by the officer, the department has concluded that the documents are forged. When such officer has denied his signature, it is incumbent upon the department to obtain expert opinion as to whether the signature is forged or not. There is no such evidence adduced before me. The statement of Preventive Officer disowning his signature in the document and also the statement of Shri Karthikeyan that the

appellant Shri Hari Prabhu had handed over the documents is the sole reason for holding that Shri Hari Prabhu and Shri Thirumalai Thiagarajan have been involved in forging document and removing the container illegally. Shri M.D. Karthikeyan is a co-noticee / co-accused in the proceedings. In the case of *Chandra Shekhar R Shukla Vs. Commissioner of Customs, Nhava Sheva* as reported in 2019 (370) ELT 1449 (Tri. Mum.) it was held that the allegation based on vague statement and call records between persons involved cannot be relied to prove the role of appellant in alleging misdeclaration of goods. The relevant portion of the order is as under:-

“4. Heard both the sides and perused the records of the cases. We find that penalty of Rs. 10,00,000/-, Rs. 20,00,000/- and Rs. 10,00,000/- has been imposed on the Appellant. In going through the Order-in-Original the role of Appellant was shown to be the main person behind the whole case and that is based on the statement of Shri Pansare who had claimed before the CHA that he has taken up with Shri C.R. Shukla and the statement of Shri Anwar saying that he had financial dealing with M/s. Gaylord Impex one of the importer and the fact that there are some call records showing conversation between the person involved, other than this no evidence has been brought to justify the imposition of penalty to Shri R. C. Shukla. It has not been brought out as to the exact role he played in rendering the case liable for confiscation in the Show Cause Notice nor the adjudicating authority conclude that he would have been benefited in any manner had the import been through. He understandably [held that] the revenue cannot conclude with a clinical precision. However the case cannot be built on the basis of vague statement of the co-accused and mere existence of call records. It has been considerably held by the tribunal that though the theory of preponderance of probability is hall mark in evasion cases of taxation than proof beyond doubt, there should be some evidence, document to support scope for such preponderance of probability. We find that no such record is available. It is reinforced by the fact that no evidence of any sort has been found during the search of the Appellant residence. It is also not clear whether investigation could reach of the actual importer. In such situation imposition of penalty on the Appellant without properly establishing his role is not acceptable. We find that the ratio of the cases submitted by the Appellant reinforce the same.

5. In view of the above, appeals are allowed with consequential relief, if any.”

20. The Tribunal in the case of *Sri Krishna Industries Vs. Commissioner of Customs* as reported in 2020 (372) ELT 121 (Tri.

Ahmd.), held that the charge of undervaluation of goods solely based on statement of the buyer who was not presented for cross-examination is not sustainable in the absence of any documentary evidence to establish when such statement was inconsistent and unreliable. A statement of co-accused which has not been presented for cross-examination is not admissible in evidence. The Hon'ble Supreme Court dismissed the appeal filed by the department against such order, thus upholding the view taken by the Tribunal as reported in 2020 (372) ELT A25 (SC).

21. The learned AR has relied upon various decisions to argue that the statements given before Customs Officers under sec. 108 of the Customs Act, 1962 are to be admissible as evidence. There is no quarrel that the statements are admissible in evidence. Such statements have to be supported by other independent evidence so as to establish the role of the accused. Each link of the case set up by the department has to be proved without any contradictions. In the case of *Ram Lal Kataria* (supra), it was held that the statement of co-accused alone is not sufficient to come to the conclusion that the other accused is guilty. Such statement of the co-accused may be taken into consideration along with other evidence.

22. The learned counsel has been at pains to point out the contradictions in the case put up by the department. According to him, the department alleges that the appellant Shri Hari Prabhu had handed over the documents on 23.10.2017 in order to remove the container from CFS area. However, according to the department, the container was removed on the basis of such documents on 29.9.2017. Further, as per para 32 of the Order in Original, the statement given by U.

Mahesh shows that the date of removal of the container is 14.8.2017. Thus, there is much contradiction as to the dates on which the container was removed. The investigation of the removal of this container was taken up along with alleged illegal removal of containers in respect of five other bills of entry. However, the date of removal of the container of this case is not satisfactorily established. I am able to see that apart from the statement of Shri Karthikeyan, there is nothing to establish that the appellant had any role in forging documents or removing the container from the CFS area. The contradiction pointed out by the learned counsel also shakes the case put up by the department.

23. From the discussions made above, I have to hold that the department has failed to establish the allegations raised against the appellants. The penalties imposed therefore require to be set aside, which I hereby do. The appeals are allowed with consequential relief if any.

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24. The original authority has imposed penalty of Rs. One lakh on the appellant Smt. J. Lakshmi under sec. 112(a) of the Customs Act, 1962. A penalty of Rs.2.00 lakhs has been imposed on M/s. Southern Clearing and Forwarding Agencies Pvt. Ltd. under sec. 112(a) of the Act ibid for violation of compliance of Regulation 11(n) of CBLR 2013.

25. On perusal of the Show Cause Notice, the allegation raised against the appellants read as under:-

“51. Also the Customs Broker, M/s. Southern Clearing & Forwarding Agencies Pvt. Ltd., the CB is hereby called upon to show cause to the Commissioner of Customs, Chennai-II Commissionerate, Custom House, Chennai-600001, within 30 days of receipt of this notice as to why-

I. Penalty under Section 112 (a) of the Customs Act, 1962 should not be imposed on Ms. J. Lakshmi, authorized signatory (Form – F) and Director of Southern Clearing & Forwarding Agencies Pvt. Ltd., the CB for dealing with unauthorized persons who are not the actual IEC holder and authorized importer by violating the provisions of the DGFT Policy Circular NO.6(RE-2013/2009-2014 dated 16.09.2013 thereby rendering the goods liable for confiscation and by failure to ensure compliance of Regulation 11 (n) of the Customs Broker Licensing Regulations, 2013.

II. Penalty under Section 112(a) of the Customs Act, 1962 should not be imposed on M/s. Southern Clearing & Forwarding Agencies Pvt. Ltd., the CB, for rendering the goods liable for confiscation and by failure to ensure compliance of regulation 11 (n) of the CBLR, 2013.”

26. From the above, it can be seen that the only allegation against the appellants is that they have not complied with Regulation 11(n) of CBLR, 2013. The said Regulation requires that the Customs Broker has to obtain authorization as well as KYC documents from the importer for filing the Bill of Entry before the customs authorities. In the present case, the appellant has not obtained such KYC documents directly from the importer M/s. A.K. Imports and Exports. However, they obtained the same through M/s. We Can Shipping and Logistics. The CBLR 2013 does not require that the documents have to be obtained directly from the importer.

27. The allegation is that the goods have been misdeclared. Though the adjudicating authority has absolutely confiscated goods under Annexure II, the reason for such confiscation is that the goods have violated IPR / BIS Rules. In regard to goods imported under Annexure I and III, the adjudicating authority has given an option to the importer to redeem the goods on payment of redemption fine. The appellant who is a Customs Broker cannot be expected to have knowledge about the goods in the container. On such circumstance, when there is no dispute with regard to the KYC documents submitted on behalf of the importer, the penalty imposed under sec. 112(a) alleging that the appellant has abetted smuggling of misdeclared / undeclared goods is

without any factual basis. The learned counsel has relied on the decision in the case of Trade Wings Logistics Pvt. Ltd. (supra). The Tribunal had observed as under:-

“6. As per the impugned order, the licence of the customs broker/appellant has been suspended indefinitely as it states that suspension order should continue until further orders. In the earlier order of suspension dated 10-11-2017, it is brought out that statements of various persons including Shri M. Jayakumar who is alleged to have handed over the KYC documents to the appellant were taken by the department. He has stated that he got acquaintance with Mr. Ravichandran who was looking for some business in import clearance and that he knew one Mr. S. Sukumar who has handed over the documents of the importer in the present case. The department has issued summons to Shri S. Sukumar of M/s. Easwar Logistics and he also appeared before the department and gave his statement. The finding in the impugned order is that the appellant did not directly collect the authorization letter and KYC norms from the importer but got the same through Mr. Jayakumar of Easwar Logistics which is clear violation of obligation under Regulation 11(a) and (m) of CBLR, 2013. The Regulation does not specifically mention that customs broker has to obtain KYC norms from the importer directly. It only states that appellant has to comply with obtaining the KYC documents. It is also not the case of the department that the appellant has played any active role in the importation of misdeclared consignment. Further even after 9 months of issuing the SCN, so far there has been no proceedings for revocation of the licence. Department cannot issue orders of suspension indefinitely in the guise of revocation of licence so as to obstruct the customs broker from engaging in his activities of livelihood indefinitely. The provisions under Regulation 19(2) for suspension of the licence cannot be used for issuing orders of suspension indefinitely so as to give the effect of revocation of licence. Further the Hon'ble High Court in the case relied upon by the Ld. Counsel has emphasised the necessity for adhering to the time limit prescribed under Regulation 22 of the CBLR, 2013. Appreciating the facts of the case and the law laid down in this regard, we are of the considered view that the impugned order for continuation of suspension of customs broker licence is unjustified and requires to be set aside, which we hereby do. Appeal is allowed with consequential benefits, if any, as per law.

28. In Poonia & Brothers (supra), the Tribunal observed that the Customs Broker is not supposed to verify each and every aspect about the business of the importer. If he has taken due diligence while verifying the KYC of the importer based on the records submitted to him, he cannot be found to be guilty for violation of Regulation 11(n) of CBLR 2013 / CBLR 2018.

“6. So, we find that obtaining the business through the acquaintance of their employee is not offence under the CBLR. Regarding the use of another person's IEC by the appellant. It is evident at the first instance that the same

was not within the knowledge of the appellant and, therefore, he cannot be held responsible for that. But even otherwise, it has been held in the case of M/s. Necko Freight Forwarders Ltd. (supra) that lending of IEC is not an offence under the Customs Act. Therefore, the appellant can also not be held to be liable for this charge which in any case is not sustainable against the appellant. We also find in this case the proceeding has initiated against the appellant on 20-8-2014 and final order was passed on 2-2-2016 which is much more than the prescribed period of nine month under the CBLR. It has been held in many decisions such as Necko Freight Forwarders Ltd. (supra), Innovative Cargo Services (supra) and many others. Therefore, the entire proceeding is time barred and the impugned order is liable to be set aside on this ground alone. The appellant has also taken due precaution to verify the antecedent of the importer so as to comply with the KYC norm. There are larger numbers of decisions which states that the appellant has Customs Broker is liable to verify the KYC of the appellant on the basis of documents supplied by them as a prudent person. The CHA is not supposed to verify the each and every aspect about the business of importer as the Inspector of Department or investigating agency. From the submission made by the Id. Advocate and fact on record, it is apparent that the appellant has taken due diligence while verifying the KYC of the appellant based on the record submitted by him.”

29. After appreciating the facts, evidence and following the principle laid down in the above two decisions, I am of the view that the penalty imposed on the appellants alleging abetment, that they have rendered the goods liable for confiscation, is totally unwarranted. The penalty imposed on the appellants require to be set aside, which I hereby do. The appeals are allowed with consequential relief if any.

(Pronounced in open court on 25.1.2023)

(SULEKHA BEEVI C.S.)
Member (Judicial)

Rex