CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86249 of 2023

(Arising out of Order-in-Original CAO No. 55/CAC/PCC(G)/SJ/CBS-Adj dated 12.12.2022 passed by Principal Commissioner of Customs (General), New Custom House, Mumbai.)

Yes Clearing Solutions **.....Appellant**
(CB License No. 11/2248)
703, B-Wing, Wagheshwari Darshan Apartment
Bhatwadi, Ghatkopar (West),
Mumbai – 400 084.

VERSUS

Principal Commissioner of Customs (General), Mumbai **.....Respondent**
New Custom House, Ballard Estate,
Mumbai–400 001.

Appearance:

Shri Raj Kumar Majhi, Advocate for the Appellant
Shri C. S. Vinod, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86200/2026

Date of Hearing : 22.07.2026
Date of Decision: 24.09.2026

PER : M.M. PARTHIBAN

This appeal has been filed by M/s Yes Clearing Solutions, Mumbai (herein after, referred to as 'the appellant'), holders of Customs Broker License No. 11/2248 assailing Order-in-Original CAO No. 55/CAC/PCC(G)/ SJ/CBS-Adj dated 12.12.2022 (herein after, referred to as 'the impugned order') passed by the learned Principal Commissioner of Customs (General), New Custom House, Ballard Estate, Mumbai-I.

2.1. Briefly stated, the facts of the case are that the appellant herein is a Customs Broker (CB) holding a regular CB license issued by Mumbai Customs under Regulation 7(2) of Customs Brokers Licensing Regulations (CBLR), 2018. An offence report in the form of Order-in-Original No.

300/2021-22/JC/NS-II/JNCH/CAC dated 06.01.2022 passed by the Joint Commissioner of Customs, Jawaharlal Nehru Custom House (JNCH) was received in Customs Brokers (CB) Section, New Custom House (NCH), Mumbai. In the said order dated 06.01.2022, the appellant CB was imposed with a penalty of Rs. 24,50,000/- under Section 114(i) of the Customs Act, 1962 for commission of wrongful committed by them, thereby aided and abetted an attempt to fraudulently export prohibited Red Sanders for export out of the country. This relates to the investigation conducted by Special Intelligence & Investigation Branch-Exports (SIIB-X), JNCH in respect of Shipping Bill (S/B) No. 5111423 dated 11.09.2020, which was filed by an exporter M/s Orchid International, Andheri (West) through the appellant CB. On detailed examination of the said export consignment, SIIB-X found that 6155.08 Kgs. of prohibited Red Sanders wooden logs were attempted to be exported in the aforesaid S/B by concealing in a plastic sheet pallets having cavity created for such concealment. The offending goods were seized under Panchnama proceedings dated 15.09.2020. Upon completion of the investigation show cause notice was issued under the Customs Act, 1962, to the persons concerned and the appellant CB was imposed with penalty as aforesaid in the order dated 06.01.2022.

2.2 On the above basis the jurisdictional Principal Commissioner of Customs (General), Mumbai-I had concluded that there is a prima facie case against the appellant for having contravened Regulations 10(a), 10(d) and 10(n) of CBLR, 2018. Accordingly, the CB license of the appellant was immediately suspended under Regulation 16 ibid vide Order No.38/2021-22 dated 04.02.2022. Further, upon giving post decisional hearing, the said suspension was continued vide Order No.40/2021-22 dated 17.02.2022, pending regular inquiry proceedings under CBLR, for which he had issued Show Cause Notice (SCN) No. 33/2021-22 dated 17.02.2022, for initiating inquiry proceedings under Regulation 17 *ibid*, against violations of CBLR as above.

2.3 Upon completion of the inquiry, a report dated 22.09.2022 was submitted by the Inquiry Authority concluding that all the charges alleged in the SCN are proved and that the appellant CB has failed to adhere to/abide by the provisions of Regulations 10(a), 10(d) and 10(n) of CBLR, 2018. Accordingly, the Principal Commissioner of Customs (General), Mumbai, being the licensing authority had passed the impugned order dated 12.12.2022 under Regulations 17(7), 14 and 18 *ibid,* for revocation of CB

License of the appellant and for forfeiture of entire amount of security deposit, besides imposition of penalty on the appellant. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

3.1 Learned Advocate for the appellant contends that all the allegations of violation of Regulations 10(a), 10(d) and 10(n) of CBLR, 2018 have been countered by them. The main argument advanced by the Learned Advocate against the impugned order dated 12.12.2022, is that the basis of initiating the proceedings under CBLR being allegation of violation under the Customs Act, 1962 on the appellant CB firm along with exporter in separate SCN proceedings having resulted in imposition of penalty under Section 114 ibid by the Order-in-Original No. 300/2021-22/JC/NSII/JNCH/CAC dated 06.01.2022 was finally decided by the First Appellate Authority in their favour. He further stated that in Order-in-Appeal No. 522-525(CAC)/ 2025(JNCH)/Appeals dated 28.04.2025, the appellant CB firm along with its proprietor have been exonerated from those primary charges, by setting aside the imposition of penalty of Rs. 24,50,000/- against each of them under Section 114(i) ibid in the said order dated 06.01.2022 of the original authority. Hence, learned Advocate pleaded that the consequential action taken under CBLR proceedings on the basis of the said order dated 06.01.2022, in treating the same as offence report informing such primary charges does not stand legal scrutiny.

3.2 Further, learned Advocate also stated that the appellant CB did not have any prior knowledge about the fact that the exporter is going to mis-declare the export goods by fraudulently concealing prohibited red sander wooden logs; they had received the documents for export through Shri Samir Shah on behalf of exporter viz., M/s Orchid International posing as an employee, and they had duly verified the existence of the exporter through the statutory documents in the manner prescribed under CBLR. He further stated that for the acts of misdeeds done by the exporter, the appellant CB cannot be held liable. Thus, he claimed that the appellant did not contravene these Regulations *ibid*.

3.3 In support of their stand, the learned Advocate had relied upon the following decisions of the Tribunal and the judgement of the Hon’ble High Court of Delhi, in the respective cases mentioned below:

(i) *Innovative Cargo Services Vs. Commissioner of Customs (Exports.), New Delhi* - 2025 (2) TMI 908 – CESTAT New Delhi

(ii) *K.S. Sawant & Co. Vs. Commissioner of Customs (Gen.), Mumbai* - 2012 (284) E.L.T. 363 (Tri.-Mumbai)

(iii) *Perfect Cargo and Logistics Vs. Commissioner of Customs (Airport & General)* – 2020 (12) TMI 649 – CESTAT, New Delhi

(iv) *Kunal Travels (Cargo)* Vs. *Commissioner of Customs (Import & General)* - 2017 (354) E.L.T. 447 (Del.)

(v) *Him Logistics Pvt. Ltd.* Vs. *Commissioner of Customs, New Delhi* - 2016 (338) E.L.T. 725 (Tri.-Del.)

(vi) *Sholk Logistics Private Limited Vs. Principal Commissioner of Customs (General), Mumbai* - 2023 (12) TMI 1154 – CESTAT, Mumbai

(vii) *Ajay Clearing Enterprise Vs. Commissioner of Customs (General), Mumbai* - 2016 (343) E.L.T. 475 (Tri. - Mumbai)

(viii) *Seaswan Shipping and Logistics Vs. Commissioner of Customs, Chennai-II* - 2022 (380) E.L.T. 358 (Tri. - Chennai)

4. Learned Authorised Representative (AR) reiterated the findings made by the Principal Commissioner of Customs (General) in the impugned order and submitted that all the violations under sub-regulations (a), (d) and (n) of Regulation 10 *ibid*, has been examined in detail by the Principal Commissioner. The appellant CB got all the documents for export from Shri Samir Shah on behalf of exporter, who is neither IEC holder nor exporter or their representative; they never verified the authenticity of KYC documents properly and had not cross checked or conducted proper verification of existence of exporter at their level. Thus, learned AR justified the action of Principal Commissioner of Customs (General) in revocation of the appellant CB's license, imposition of penalty and forfeiture of security deposit in the impugned order and stated that the same is sustainable in law.

5. We have heard both sides and perused the case records.

6.1 The issue involved herein is to decide whether the appellant Customs Broker has fulfilled all his obligations as required under CBLR, 2018 or not. The specific sub-regulations which were alleged to have been violated by the appellant are Regulations 10(a), 10(d) and 10(n) *ibid*, and hence there are three distinct charges framed against the appellant. We find that the Regulation 10 of CBLR, 2018, provides for the obligations that a Customs Broker is expected to be fulfilled during their transaction with Customs in connection with import and export of goods. These are as follows:

"Regulation 10. Obligations of Customs Broker: -

A Customs Broker shall -

(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;
…

(d) advise his client to comply with the provisions of the Act 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;
…

(n) verify correctness of Importer Exporter Code (IEC) number, Good 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;"

6.2. We find that the Principal Commissioner of Customs had come to the conclusion that the appellant CB had violated the above stated sub-regulations (a), (d) and (n) of Regulation 10 ibid as they did not receive the authorisation and export documents directly from the exporter and also did not bother to verify whether such authorisation have been issued by the exporter; appellant CB did not have any interaction with the IEC holder/ exporter; they did not met the exporter personally and had no direct contact to advice their client to comply with rules and regulations; and they also did not properly verify the KYC documents, which prove that they were not careful and not diligent in undertaking the KYC verification. Thus, the adjudicating authority had passed the impugned order confirming all the allegations of violation of above Regulations of CBLR, 2018.

7. We would now take up for examination each of the alleged violations of CBLR, 2018, one by one, as follows. In respect of Regulation 10(a) the adjudicating authority had found that the appellant CB did not personally meet the proprietor of export firm i.e., Shri Ashif Khan and obtained the documents from one Shri Samir Shaik through freight forwarder; and thus he concluded that the appellant CB was neither in contact with the exporter nor verified whether the exporter had issued such authorisation to the intermediary. Hence, he concluded that the appellant CB have violated Regulation 10(a) ibid.

8.1 On perusal of the facts of the case and voluntary statements given during investigation of the case by Shri Dattatray V. Gawade, Proprietor of appellant CB firm M/s Yes Clearing Solutions, it transpires that Shri Sanjay Sargar, an employee of the appellant CB firm had obtained the export documents for exports in respect of S/B No.5111423 dated 11.09.2020 from Shri Samir Shaikh of exporter M/s Orchid International, who had in turn known Shri Rakesh Mane for approaching to export goods by submitting such documents through the freight forwarder M/s Stellar Air & Surface Transport LLP. All the documents required for export such as invoice, packing list, Self-Declaration Form etc., were received from exporter and the export goods were declared as "Expansion joint filler sheet HD-20 (cellular of plastics). Hence, they did not suspect any thing wrong in such documentation.

8.2 The fraud committed in illegal export of 'Red Sanders' - prohibited goods came to the fore, when physical examination of the export goods was conducted and the concealment was detected by SIIB-X. The role of the appellant CB in the above irregular export has been examined in separate proceedings under the Customs Act, 1962 and the Commissioner (Appeals) in the Order-in-Appeal dated 28.04.2025 has given his findings and ordered as follows:

> *"4.11 On perusal of the impugned order, I find that from none of the statement recorded under section 108 of the Customs Act, 1962, it emerges that the CB M/s Yes Clearing Solutions and his proprietor Shri Dattatray V. Gawade, were knowingly involved in the attempted smuggling of the red sanders wood logs. Further, I do not find any evidence on record in this case which shows that the CB M/s Yes Clearing Solutions and his proprietor Shri Dattatray V. Gawade, were knowingly involved in any manner in the attempted smuggling of the red sanders wood logs. Investigation/Department has also not brought out any evidence on record to show that the appellants were knowingly or intentionally involved in the smuggling of the impugned goods or they knowingly or intentionally used false/fabricated documents to facilitate smuggling of the impugned goods.*
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> *xxx xxx xxx xxx*
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> *4.20 In view of the above, I hold that imposition of penalty of Rs.24,50,000/- under Section 114(i) of the Customs Act, 1962, on Shri Dattatray V. Gawade, proprietor of Customs Broker (CB) firm, M/s Yes Clearing Solutions is legally not sustainable. Further, I also hold that penalty of Rs.24,50,000/- imposed on Customs Broker (CB) firm measures yes clearing solutions under Section 114(i) of the Customs Act, 1962 is also legally not sustainable. Accordingly, I set aside the penalty imposed on the appellants (Appellant-1 and Appellant-2) under Section 114(i) of the Customs Act, 1962*

as mentioned in para 23(8) para 23(7) of the impugned order dated 06.01.2022. The Order-in-Original No.300/2021-22/JC/NS-II/JNCH/CAC dated 06.01.2022 is modified in above extent only…."

However, since the action under CBLR was taken on the basis of the order dated 06.01.2022, treating the same as 'offence report' and such basic premise itself was set aside in the order of the Appellate Authority dated 28.04.2025 (supra), such order/offence report does not have any existence. Further, the allegation against the appellant that they aided and abetted the exporter for an attempt to fraudulently export prohibited Red Sanders for export out of the country, has also been held in the aforesaid order to be non-existent and consequential penalties on the appellant CB firm and the proprietor of the appellant CB firm imposed under Section 114(i) ibid have been set aside. Thus, the edifice for initiating action by the department under CBLR, including the impugned order, is therefore not sustainable, particularly when there is no role for the appellant CB in the activities of the exporter.

8.3 We also find that on the above issue, the Tribunal in the case of *K.S. Sawant & Co.*(supra) had already held that accepting the documents through logistics operator is not barred by CBLR. The relevant paragraph of the said order is extracted below:

"5.1 From the records, it is clear that the business in respect of the client M/s. Advanced Micronics Devices Ltd., was brought in by Shri Sunil Chitnis, who claims himself to be a sub-agent of the appellant CHA. The statements of Shri Badrinath and Shri Sunil Chitnis amply proves this fact. The question is, merely because the appellant procured the business through an intermediary who is not his employee, can it be said that he has sub-let or transferred the business to intermediary. The Tribunal in the case of Principal Commissioner of Customs v. Chhaganlal Mohanlal & Co. Ltd. [2006 (203) E.L.T. 435 (Tri. - Mum.)], held that if the Customs clearance has been done through intermediary and business was got through intermediary, the same is not barred by the provisions of CHALR, 2004 and it cannot be stated that the appellant has sub-let or transferred his licence. In the case of Krishan Kumar Sharma v. Principal Commissioner of Customs, New Delhi reported in 2000 (122) E.L.T. 581 (Tri.), this Tribunal held that the mere fact of bills raised on the intermediary cannot be held against the CHA firm to prove that the CHA licence was sub-let or transferred. Therefore, in the light of the judgments cited above, the charge of violation of Regulation 12 is not established. As regards the violation of Regulation 13(a), the adjudicating authority himself has observed that the "I have no doubt to say that the CHA might have obtained the authorisation but it is surely not from the importer. Therefore, the authorisation submitted is not a valid one". This finding is based on a presumption. Obtaining an authorisation from the importer does not mean that the same should be obtained directly; so long

as the concerned import documents were signed by the importer, it amounts to authorisation by the importer and, therefore, it cannot be said that there has been a violation of Regulation 13(a). … The question now is whether revocation of licence is warranted for such a violation. In our view, the punishment should be commensurate with the gravity of the offence. Revocation is an extreme step and a harsh punishment, which is not warranted for violation of Regulation 13(b). Accordingly, we are of the view that forfeiture of security tendered by the appellant CHA is sufficient punishment and revocation is not warranted. Accordingly, we set aside the order of the revocation and direct the Principal Commissioner of Customs (General) to restore the CHA licence subject to the forfeiture of entire security amount tendered by the CHA."

8.4 It is also on record that the exporter M/s Orchid International had vide their letter addressed to the Deputy Commissioner of Customs, Nhava Sheva had given the letter of authority to the appellant CB to act as their custom house agent to handle their import/export clearance. Therefore, in the absence of any document to prove the claim of having not obtained necessary authorisation from the exporter, which involve mis-declaration of export goods, the findings given by the learned Principal Commissioner of Customs in the impugned order for violation of Regulation 10(a) ibid is difficult to be sustained for fastening such liability on the appellant CB.

9. In the instant case, the attempted illegal export of red sanders wooden logs was found by the department only on the basis of specific investigation conducted by the SIIB-X of JNCH customs authorities, and hence the appellant CB cannot be found fault for the reason that they did not advise their client exporter to comply with the provisions of the Act. Thus, when the customs authorities undertaking assessment of export transaction were not aware of the non-genuineness of the documents or alleged attempt of concealment of illegal goods till the SIIB-X investigation authorities conducted physical examination and found the discrepancy, and thus there is no possibility for the appellant CB to be aware of the same, and to bring it to the notice of the Deputy Commissioner of Customs (DC) or Assistant Commissioner of Customs (AC) about the mis-declaration of exported goods. Thus, we are of the considered view that the violation of Regulation 10(d) *ibid*, as concluded in the impugned order is not sustainable.

10.1 Learned Principal Commissioner of Customs (General) had come to the conclusion that the CB had violated the provision of Regulation 10(n) *ibid,* on the ground that the appellant had never met the proprietor of export

firm/IEC holder, and they were not careful and diligent in undertaking the KYC verification process about the background of exporter.

10.2 We find from the records, that the appellant CB had obtained the KYC documents from the exporter M/s Orchid International along with KYC form and enclosures; and verified the existence of the exporter through the Certificate of Registration dated 09.07.2019 obtained from GST authorities indicating the name along with address, name of the proprietor; PAN Card of the proprietor/exporter; Aadhaar card of proprietor; signature and account verification letter from IndusInd Bank, Bandra Branch, Mumbai.

10.3 In this regard, we find that CBIC had issued instructions in implementing the KYC norms for verification of identity, existence of the importer/exporter by Customs Broker in Circular No. 9/2010-Customs dated 08.04.2010, and verification of any two documents among specified documents is sufficient for fulfilling the obligation prescribed under Regulation 10(n) of CBLR, 2018. We find that in the present case, the appellant CB has obtained the KYC documents and submitted the same to the Customs Department. Thus, we do not find any legal basis for upholding the alleged violation of Regulation 10(n) *ibid* by the appellant in the impugned order on the above issue.

10.4 We find that in the case of *M/s Perfect Cargo & Logistics Vs. Principal Commissioner of Customs (Airport & General), New Delhi* 2021 (376) E.L.T. 649 (Tri. - Del.), the Tribunal had decided the issue of KYC verification of the importer/exporter by the Customs broker and the requirements specified in the CBLR, 2018.

> **"***34. The basic requirement of Regulation 10(n) is that the Customs Broker should verify the identity of the client and functioning of the client at the declared address by using, reliable, independent, authentic documents, data or information. For this purpose, a detailed guideline on the list of documents to be verified and obtained from the client is contained in the Annexure to the Circular dated April 8, 2010. It has also been mentioned in the aforesaid Circular that any of the two listed documents in the Annexure would suffice. The Principal Commissioner noticed in the impugned order that any two documents could be obtained. The appellant had submitted two documents and this fact has also been stated in paragraph 27(a) of the order. It was obligatory on the part of the Principal Commissioner to have mentioned the documents and discussed the same but all that has been stated in the impugned order is that having gone through the submissions of the Customs Broker, it is found that there is no force in the submissions. The finding recorded by the Principal Commissioner that the required documents were not submitted is, therefore, factually incorrect.*

> *35. The Principal Commissioner, therefore, committed an error in holding that the appellant failed to ensure due compliance of the provisions of Regulation 10(n) of the Licensing Regulations."*

10.5 Further, we also find that the Hon'ble High Court of Delhi has held in the case of *Kunal Travels (Cargo) Vs. Principal Commissioner of Customs (I&G), IGI Airport, New Delhi* reported in 2017 (354) E.L.T. 447 (Del.), the appellant CB is not an officer of Customs who would have an expertise to identify mis-declaration of goods. The relevant portion of the said judgement is extracted below:

> *"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..... 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."*

10.6 From the above, we also find that the above orders of the Tribunal and higher judicial forum are in support of our considered views in this case in respect of the compliance with respect to Regulation 10(n) *ibid*.

11. In view of the foregoing discussions, we do not find any merits in the impugned order passed by the learned Principal Commissioner of Customs (General), Mumbai in revocation of the CB license of the appellant; for forfeiture of security deposit and for imposition of penalty, inasmuch as there is no violation of regulations 10(a), 10(d) and 10(n) *ibid*, and the findings in the impugned order is contrary to the facts on record.

12. Therefore, by setting aside the impugned order dated 12.12.2024, we allow the appeal in favour of the appellant.

(Order pronounced in open court on 24.09.2026)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

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