IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75902 of 2026

(Arising out of Order-in-Original No. 01/CBLMS/KOL/CUS(PREV.)/WB/2026-27 dated 18.08.2026 passed by the Commissioner of Customs (Prev.), 3rd Floor, Custom House, 15/1, Strand Road, Custom House, Kolkata-70001)

M/s. Shitala & Co. **: Appellant**
I Rajendra Nath Mukherjee Road,
Mezzanine Floor, Room No. 17/4,
Martin Burn Building, Kolkata-700001

VERSUS

The Commissioner of Customs(Prev.), Kolkata **: Respondent**
15/1, Strand Road,
Custom House, Kolkata-70001

APPEARANCE:

Shri Jay Bohra, Advocate for the Appellant
Shri R. Chakraborty, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.76561/ 2026

DATE OF HEARING / DECISION: 13.10.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed assailing the Order-in-Original No. 01/CBLMS/KOL/CUS(PREV.)/WB/2026-27 dated 18.08.2026 passed by the Commissioner of Customs (Prev.), 3rd Floor, Custom House, 15/1, Strand Road, Custom House, Kolkata-70001, whereby the suspension of the Custom Broker License of M/s. Shitala & Co (herein after referred as the

Appellant/CB), as ordered vide Circular No. 11/CUS/P/WB/2026 dated 22.07.2026, has been continued.

2. The facts of the case are that officers of DRI, Indore Zonal Unit vide their report dated 15.07.2026 has informed Commissioner of Customs (Preventive), Kolkata, that an investigation is being conducted by them regarding illicit import of Southeast Asian areca nuts by way of false declaration of the country of origin and fraudulent availment of preferential duty benefits under the SAFTA Notification No. 99/2011-Cus. dated 09.11.2011. The investigation conducted so far has revealed that Shri Dinesh Kumar Ramuka, the F-Card holder of M/s Shitala and Co., colluded with several stakeholders including Bangladesh-based EPZ units, Indonesian suppliers, IEC holders, dummy IEC holders and others to facilitate the import of the said areca nuts of Indonesian origin through Mongla EPZ, Bangladesh.

2.1. The DRI report further indicated that Shri Dinesh Kumar Ramuka in collusion with Bangladesh based EPZ suppliers arranged SAFTA Certificates of Origin by submitting forged/fake documents in Bangladesh and falsely represented the goods as being Bangladesh origin. He also facilitated customs clearance of such illicitly imported goods, resulting in an estimated cumulative customs duty evasion exceeding Rs. 2,500 crore. The Report further informed that in view of the provisions of Regulation 16 of CBLR, 2018, the license of the said CB is liable to be suspended with immediate effect for all Customs Stations/Ports until completion of the investigation.

2.2. On the basis of the communication received from DRI, Indore Zonal Unit, the CB License of the said Custom Broker was immediately suspended vide Circular No. 11/CUS/P/WB/2026 dated 22.07.2026, in terms of Regulation 16(1) of CBLR, 2018. Subsequently, a Personal Hearing was granted to the CB on 05.08.2026, in terms of Regulation 16(2) of CBLR, 2018.

2.3. During the course of personal hearing, Shri Jay Bohra, counsel of the CB submitted that, the CB was not aware of the specific contravention of Regulation 10 of CBLR, 2018 and requested for intimation of the reasons for suspension of the CB license in a letter form. Vide letter dated 06.08.2026, the Office of the Principal Commissioner informed the Appellant that an investigation is being conducted by DRI, Indore Zonal Unit against the CB and the failure of the said CB to comply with the provisions of Regulation 10(d), (e) and (q) of CBLR, 2018, warrants suspension of the CB License of the Appellant. In response to the letter dated 06.08.2026, the Counsel of the CB Shri Jay Bohra, has submitted a letter dated 10.08.2026. In the Letter the Ld. Counsel inter alia submitted that the Impugned Communication by DRI does not identify any circumstance demonstrating that suspension of the CB License was necessary. It does not disclose any continuing or contemporaneous conduct of the CB that posed a threat to the ongoing investigation. In the absence of such a finding, the jurisdictional requirement of Regulation 16(1) has not been satisfied. Accordingly, the Ld. Counsel submitted that the suspension of the License is without authority of law.

2.4. On adjudication, vide the impugned order dated 18.08.2026, the Ld. Principal Commissioner has ordered that the suspension of Customs Broker Licence shall continue, pending inquiry proceedings under Regulation 17 of CBLR, 2018. Aggrieved against the impugned order, the Appellant has filed this appeal.

3. The submissions made by the Appellant are summarized below:

(i) The impugned suspension is unsustainable in the absence of specific reasons establishing the urgency and necessity for immediate action under Regulation 16 of the CBLR, 2018. The mere pendency of an investigation by DRI, Indore, cannot, by itself, justify the immediate suspension of the Appellant's licence in the absence of cogent material establishing the necessity of such action and the degree of involvement of the Appellant. There is no finding in the impugned order that demonstrates any imminent threat to the interests of revenue or any circumstances warranting the immediate curtailment of the Appellant's business activities.

(ii) The matter is no longer *res integra* and stand settled in favour of taxpayers in plethora of cases including by this Tribunal. Reliance is placed on:

a. **M/s S.K. Kanjilal vs. CC [Para 13 - 2023 (10) TMI 243 - CESTAT Kolkata]**
b. **Hind Ship Airways vs. CC, (General), Mumbai [Para 6, 7.2, 7.5 & 7.7 - 2026 (3) TMI 447]**
c. **NC. Singha & Sons vs. UOI [Para 5 - 1998 (104) E.L.T. 11 (Cal.)].**

d. **M.K. Saha & Company vs. CC, (Airport & Administration), Kolkata [Para 9, 10 & 13 - 2021 (376) E.L.T. 534 (Tri. - Kolkata)]**
e. **Shakti Cargo Movers vs. CC, New Delhi [Para 10 - 2023 (9) TMI 1389]**
f. **Hirannya Shipping and Logistics Services vs. CC [2026 (3) TMI 480 - CESTAT Mumbai]**

(iii) Mechanical exercise of power without independent application of mind: The Ld. Adjudicating Authority could not have resorted to the drastic measure of immediate suspension merely on the basis of a communication received from DRI, without independently examining whether the facts warranted such exceptional action. The absence of specific findings demonstrating the urgency and necessity of immediate suspension renders the impugned action arbitrary and unsustainable. This is further reinforced by ***CBIC Instruction No. 24/2023 dated 18.07.2023*** which states that suspension under Regulation 16(1) is not to be applied "*in a manner routine or mechanical or in every case*" and that "*the Commissioner should also take the care also of recording his/her reasons as to why it is considered an appropriate case where immediate action of suspension is necessary*."

(iv) Suspension under Regulation 16 is a preventive measure and not a punishment. The impugned Order continues the suspension "*till completion of the investigation being conducted by DRI* without identifying/recording any ongoing prejudice from the

Appellant's continued functioning. Such an open-ended continuation of suspension, without an independent assessment of its necessity, defeats the preventive object of Regulation 16 and effectively subjects the Appellant to an indefinite restraint on its business activities, thereby, affecting livelihood of the Appellant and its employees

(v) It is alleged that the Appellant had violated Regulations 10(d) and 10(e) of the CBLR, 2018, by failing to advise its clients to comply with applicable laws and to exercise due diligence in verifying the authenticity of information given to client. It was further alleged that the Appellant's role is more than verifying documents and it had failed to adequately interact with the importers, exporters, or IEC holders to verify their functioning. It has also been alleged that the Appellant itself was involved in fraudulent documentation on behalf of its clients. However, there is no evidence brought on record to substantiate this allegation. In Para 5.10 of the impugned order, it is recorded that the details will be published only after completion of the DRI investigation. In this regard, the Appellant submits that an adverse finding founded on material withheld from the Appellant violates the principles of natural justice and cannot sustain continuation of suspension.

(vi) In the impugned order, it has been alleged that the Appellant has violated Regulation 10(q) of the CBLR concerning cooperation with Customs authorities and joining investigation in case of inquiry proceedings. Relying on Regulations 7(2) and 10(b), it holds that the presence of Shri Dinesh Kumar Ramuka, the F-card holder and proprietor, is

essential to the DRI investigation and that such requirements could not be treated as mere procedural formalities. In this regard, the Appellant submits that they have duly cooperated with the Customs authorities throughout. The Appellant was examined in the DRI investigation, and its authorised representative was deposed and also remained in judicial custody. Within days of the Suspension, it engaged counsel, filed representations and attended the personal hearing. The impugned Order relies only on Shri Ramuka's alleged non-appearance before the DRI. It points to no instance where the Appellant firm failed to cooperate with Customs or to join an inquiry against it or its employees. Reliance on Regulations 7(2) and 10(b) is misplaced. These provisions deal with grant of licence and who may transact business on the firm's behalf. They do not require a particular individual to appear personally before the DRI, so they cannot turn Shri Ramuka's alleged absence into a breach of Regulation 10(q) by the Appellant.

(vii) In view of the above submissions, the Appellant prayed for setting aside the impugned order and cancel the order of suspension of the CB License.

4. The Ld. A.R. submits that the Appellant had violated Regulations 10(d) and 10(e) of the CBLR, 2018, by failing to advise its clients to comply with applicable laws and to exercise due diligence in verifying the authenticity of information given to client. The Appellant’s role is more than verifying documents and it had failed to adequately interact with the importers, exporters, or IEC holders to verify their functioning. The investigation has found that the Appellant itself was involved in fraudulent documentation on behalf of its clients. Shri Dinesh

Kumar Ramuka, the F-card holder and proprietor of the Appellant CB is essential to the DRI investigation. However, he is absconding and not co-operating with the investigation. Thus, the Ld. A.R. Submits that continued suspension of the CB License is required for completing the investigation. Accordingly, the Ld. A.R supported the impugned order suspending the License.

5. Heard both sides and perused the appeal documents.

6. We find that the Appellant's Customs Broker Licence was suspended with immediate effect vide Customs Broker Circular No. 11/CUS/P/WB/2026-27, dated 22.07.2026 issued under Regulation 16(1) of the CBLR, 2018. We find that the Ld. Adjudicating Authority continued the suspension vide Order-in-Original No. 01/CBLMS/KOL/CUS(PREV.)/WB/2026-27 dated 18.08.2026. Thus, we find that the issue to be decided in this appeal is whether continuation of suspension of Appellant's Customs Broker Licence under Regulation 16(2) of the CBLR, 2018, is warranted or not.

6.1. Regulation 16(1) of CBLR, 2018 states that the Pr. Commissioner can suspend the CB license in appropriate cases where immediate action is necessary. Regulation 16(2) provides the mechanism for continuation of the suspension after following the due process mentioned therein.

6.2. Regulation 16(2) of CBLR, 2018 stipulates that (2) Where a license is suspended under sub-regulation (1), the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, shall, within fifteen days from the date of such suspension, give an opportunity of hearing to

the Customs Broker whose license is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the Customs Broker:

Provided that in case the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, passes an order for continuing the suspension, further procedure thereafter shall be as provided in regulation 17. The procedure stipulated under Regulation 17 of the CBLR, 2018 will be followed only after the issuance of the Order under Regulation 16(2) of CBLR, 2018.

6.3. We find that the CB License of the Appellant has been suspended on the basis of communication received from the DRI. We observe that a mechanical adoption of DRI's instruction without independent appreciation of facts and application of mind does not satisfy the condition for suspension of license. As per Regulation 16(1), a license issued to a CB can be suspended only in cases where there is immediate and emergent necessity is warranted. We observe that the power conferred under Regulation 16 is preventive not punitive in nature. Suspension of a License is resorted only when the CB is failed in performing the functions assigned to it under the CBLR Regulations, 2018. The investigation must brought on record the role alleged to be done by the CB with respect to a specific transaction involving a specific importer. In the present case, we find that there is no such allegation levelled against the CB. Even as per the report dated 15.07.2026 received from DRI, Indore, there is no specific allegation against the CB. The Report submitted by DRI reveals

that investigation is being conducted by them regarding illicit import of Southeast Asian areca nuts by way of false declaration of the country of origin and fraudulent availment of preferential duty benefits under the SAFTA Notification No. 99/2011-Cus. dated 09.11.2011. It is alleged that Shri Dinesh Kumar Ramuka, the F-Card holder of the CB colluded with several stakeholders including Bangladesh-based EPZ units, Indonesian suppliers, IEC holders, dummy IEC holders and others to facilitate the import of areca nuts of Indonesian origin through Mongla EPZ, Bangladesh. However, we find that the investigation has not cited any specific case where the Appellant CB was involved in facilitating the illegal import by way of false declaration of the country of origin. In the absence of any such violation brought on record, we observe that the allegations of facilitating illicit import by the CB is not substantiated.

6.4. We find that the Ld. Adjudicating Authority has resorted to the drastic measure of immediate suspension on the basis of a communication received from DRI, without independently examining whether the facts warranted such exceptional action. The absence of specific findings demonstrating the urgency and necessity of immediate suspension renders the impugned action arbitrary and unsustainable.

6.5. **In the case of M/s S.K. Kanjilal vs. CC [Para 13 - 2023 (10) TMI 243 - CESTAT Kolkata], the Tribunal has held that:**

> *"13. We observe that Regulation 16(1) of CBLR, 2018 allows suspension of the License in appropriate case where immediate action is*

necessary. In the instant case, the Commissioner has not adduced any reason of 'immediate necessity' to exercise the power under Regulation 16(1) of CBLR, 2018 to pass the impugned order. We observe that an Offence Report dated 26.05.2023 was issued by the Additional Commissioner of Customs, SIB (Port), Custom House, Kolkata, wherein it was alleged that the Appellant has facilitated the attempted overvaluation in the export consignments of M/s Axon International under three shipping bills, all dated 25.04.2019. The Appellant stated that the investigation in this case has already completed and there is no urgent necessity warranting suspension of the CB. Immediate suspension of the Customs Broker is warranted when there is an apprehension that the CB may interfere in the investigation or tamper with any evidence which will be detrimental to the investigation. There is no such apprehension in this case, as the investigation has already been completed."

6.6. **In the case of Hind Ship Airways vs. CC, (General), Mumbai, it has been held as under:**

"6. The issue involved herein is to decide,

(i) whether the action taken for immediate suspension of the appellants Customs Broker and its continuation is legally sustainable in terms of CBLR, 2018 or not.

The specific sub-regulations which were alleged to have been violated by the appellants are Regulations 1(4), 10(a), 10(b), 10(d) and 10(e) of CBLR, 2018, and hence the issue to be decided is also

(ii) whether such distinct charges framed against the appellants enable the immediate suspension action and its continuation under Regulation 16 of the CBLR, 2018.

7.2 We find that the Commissioner of Customs had come to the conclusion that the appellants CB had violated the above stated Regulation 1(4) and sub-regulations (a), (b), (d) and (e) of Regulation 10 ibid, as they rented out their CB license to Shri Amrendra Kumar Amar; and did not discharge their obligations since they did not meet the importer nor obtained the requisite authorization; allowed customs clearance work to be handled by persons, other than their employee; did not advise their client; and did not exercise due diligence in discharging their duties and obligations in handling customs work. Thus, the adjudicating authority had passed the impugned order confirming all the allegations of violation of above Regulations of CBLR, 2018 for justifying the continued suspension of the appellants CB license. Whereas, in terms of the Regulation 16 ibid, what is required to be done is to evidentially provide for the appropriateness for immediate suspension action of the CB license and its continuation, pending regular inquiry proceedings under Regulation 17 ibid. However, we find that there is no record to show such a procedure prescribed has been followed in this case. Therefore, we find that

the impugned order is not in conformity with the provisions of CBLR, 2018.

7.5 From the factual matrix of the case, it transpires that the alleged over-debiting of SIL license of the importer, than the permitted quantity/value and mis-declaration of goods had taken place in respect of 2 live B/Es filed on 30th and 31st May, 2025; and the past 9 consignments of imports during January, 2025 and 2 more consignments on 08.02.2025 and 19.05.2025. The investigation conducted had come to the conclusion that the act of debiting the SIL license of the importer with correct quantity/value etc. is also the responsibility of the customs broker. In this regard, three customs brokers who were made responsible for over-debiting are M/s Star India for 31.6 MTs of assessable value of Rs.3,58,766/-; M/s Das Cargo Logistics for 6714 MTs of assessable value of Rs.6,10,30,766/-; and M/s Hind Ship Airways for 7.8 MTs of assessable value of Rs.87,160/-. Upon completion of such investigation, the customs authorities have issued SCN dated 15.12.2025 to the importer M/s Shabbir and Sons Eco Exim Pvt. Ltd. and the said three CBs as co-noticees. As the said SCN was issued on 15.12.2015, therefore the learned Commissioner could not have had the knowledge that the appellants are the least involved in the aforesaid case, since his order for continuation of immediate suspension was issued on 12.11.2025. However, the basis tenets of any adjudication order under CBLR

is to provide the basis on which the allegations of failure to fulfill the obligations of CBLR are found to have been proved on the basis of evidences placed before him and on the basis of his findings arrived at from such evidences establishing the actual committing of violations for taking action on the appellants CB. On the other hand, the learned Commissioner of Customs in the impugned order dated 13.11.2025, had straight away gone into the conclusion by giving his findings that the appellants CB had violated Regulation 1(4) and sub-regulations (a), (b), (d) and (e) of Regulation 10 of CBLR, 2018, even before an independent inquiry proceedings have been initiated.

7.7 In this regard, we find that Central Board of Indirect Taxes and Customs (CBIC) had issued certain instructions to all the Chief Commissioners/ Commissioners of Customs about the various references received about suspension of CB licenses being resorted to by the licensing authorities even in cases which do not merit immediate suspension of CB license. As the CBIC instruction No.24/2023 dated 18.07.2023 was issued in the context of the problems faced by the trade with respect to immediate suspension being invoked in a number of cases, it is necessary that the impugned order also needs to be examined from such perspective, as to whether such action taken in the impugned order is disruptive or not, and also whether it is in conformity with the instructions of CBIC, which is meant to bring

in uniformity in implementation of the CBLR, 2018 among the Customs field formations in terms of Section 151A of the Customs Act, 1962. The extract of said instructions dated 18.07.2023 is extracted and given below:

"Instruction No. 24/2023

F. No. 520/01/2023-Cus. VI

Government of India Ministry of Finance,

Department of Revenue

Central Board of Indirect Taxes and Customs

Room No. 252A, North Block, New Delhi

Dated: 18.07.2023

To,
All Principal Chief Commissioner/Chief Commissioner of Customs/Custom (Preventive),
All Principal Chief Commissioner/Chief Commissioner of Central Tax and Customs,
All Principal Commissioner/Commissioner of Customs/Custom (Preventive),
All Principal Commissioner/Commissioner of Central Tax and Customs.
Subject: Suspension of Licence of Customs Broker-regarding Madam/Sir,

The undersigned is directed to say that references have been received in the Board that often the suspension of Customs Broker licence is resorted even in the cases which do not merit immediate suspension of licence. It is represented that this may be disruptive, especially in the case of small enterprises of Custom Brokers.

2. The matter has been examined. The Regulation 16 of CBLR, 2018 provides that notwithstanding anything contained in Regulation 14, the Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the licence of a customs broker, where the enquiry against such customs broker is pending or contemplated.

3. Since the power is specified to be exercised in specified circumstances, that is, the appropriate cases where immediate action is necessary, it indicates that suspension is not visualized for application in a manner routine or mechanical or in every case. This aspect is to be kept in view by the Commissioner of Customs in the course of considering a proposal to suspend the licence of a customs broker. Before doing so, the Commissioner should also take the care also of recording his/her reasons as to why it is considered an

appropriate case where immediate action of suspension is necessary."

Plain reading of above instructions reveals that there is twin requirement of appropriateness of the case, as such action is not contemplated in every case. These are

(i) the grounds for invoking immediate suspension action should be indicated so as to demonstrate that it is not an exercise undertaken in a mechanical or routine manner; and

(ii) that the reasons for such immediate suspension should be recorded. These are to be fulfilled for taking action on immediate suspension of CB license under Regulation 16 of CBLR, 2018.

From the facts of the case, it is clear that there is no ground or evidence produced by the department to implicate the appellants CB in misdeclaration of import goods and in over-debiting of SIL licenses. In fact, even in the proceedings initiated for the customs offences against the importer, the appellants CB is no more a co-noticee for any action to be taken against them and proceedings against the appellants have come to an end. Hence, there existed no ground in order to claim that the learned Commissioner had gone by his preponderance of probability, in order to decide that the present case is an appropriate case for immediate suspension, on the basis of his subjective satisfaction of the facts and evidences. There is neither such basis recorded by learned Commissioner of

Customs nor there exists any facts or documents evidencing such ground. Hence, we are of the considered opinion, that the impugned order is contrary to the requirement of the provisions of Regulation 16 of CBLR, 2018 and therefore it does not stand the scrutiny of law."

6.7. **Shakti Cargo Movers vs. CC, New Delhi [Para 10 - 2023 (9) TMI 1389]**

"*10. Although there is enough power vested in the Commissioner to suspend the license of Custom Broker, in terms of Customs Brokers Licensing Regulations, 2018, however the said power which impacts the livelihood of the person and his employees needs to be exercised with caution and in accordance with the inbuilt safeguards, to prevent the arbitrary and reckless use of the power. In our view, in the present case, Commissioner has not recorded any reason for the cause of immediate suspension. Infact, there is no cogent reason or finding recorded by the Commissioner to suspend the license of the appellant two years after the date of export. In this regard, we note that the Hon'ble Madras High Court has in case of Thiru Rani Logistic Pvt. Ltd. [2019 (365) E.L.T. 856 (Mad.)] has laid down the law as follows:*

"9. Perusal of the above said provision would show that the Commissioner of Customs is empowered to suspend the approval granted to Customs Cargo Services Provider in appropriate cases where immediate action is necessary, pending enquiry or where the

enquiry is contemplated. Therefore, it is evident that action under Regulation 11(2) of erstwhile Regulations can be taken only when the Commissioner of Customs is of the view that immediate action is necessary for suspending the license. Needless to say that such consideration must explicitly available in the order of suspension. Certainly, the order of suspension made by exercising the power under Regulation 11(2), an ex parte action, is not a punishment by itself, but a preventive action before passing a final order either imposing a punishment or otherwise. At this juncture, it is relevant to note that Regulation 11(1) empowers the very same Commissioner to suspend or revoke the license and the procedure to be followed for suspension or revocation of the license is contemplated under Regulation 12. Perusal of the Regulation 12 would show that before doing so, the licensee should be put on notice and he must be heard. However, Regulation 11(2) can be invoked for suspending the license only when the Commissioner of Customs feels and comes to a conclusion that immediate action is necessary to suspend the license. Thus, the materials to be relied on for initiating and taking action under Regulation 11(1) cannot be the sole basis for taking action under Regulation 11(2). On the other hand, when an action under Regulation 11(2) is contemplated, there must be other reasons available before the authority for his consideration to the effect that unless such immediate suspension is ordered, the damage already caused would either continue

or likely to continue. In other words, the suspension to be made by invoking Regulation 11(2) must be on the known principle that "prevention is better than cure". Therefore, it is not only necessary to state the intention of the authority to prevent the illegality from its continuance, and also there exist the circumstances of continuance of illegality. Such continuance of illegality cannot be presumed as a matter of course in every case. On the other hand, it has to be stated in clear and categorical terms in each and every case, where action under Regulation 11(2) is invoked, that immediate action is required based on the reasons supporting such apprehension of the authority of continuance of illegality. Hence, there is a clear distinction between the nature of action taken under Regulations 11(1) and 11(2), while the former is a punitive, the later is a preventive. Perusal of the impugned order in this writ petition would show that no such consideration was made by the Commissioner of Customs except extracting Regulation 11(2) and stating that an enquiry is contemplated in this case and that allowing the petitioner to continue for work will seriously jeopardize the Customs duties and security of Cargo. The respondent has not stated any other reason anywhere as to why an immediate action is required in this case.

10. This Court has considered the similar provision made under Regulation 21(2) of the Customs House Agents Licensing Regulations, 1984 in W.P. No. 17363/1994, dated 28-11-

1994 reported in 1995 (77) E.L.T. 79 (Madras) [East West Freight Carriers (P) Ltd. v. Collector of Customs, Madras]. At paragraph Nos. 7 to 9 of the said decision, it has been observed as follows:

"7. I have considered the submissions made by the Learned Counsel for the parties. The power of the Collector to take action under Regulation 21(1) is not questioned in the writ petition. It cannot also be disputed that under Regulation 21(2) the Collector has the power to suspend licence of a Customs House Agent when enquiry against such agent is pending or contemplated where immediate action is necessary.

8. In my opinion, the power to suspend the licence is to be exercised where immediate action is necessary. A plain reading of the impugned order does not show that the Collector applied his mind to consider whether immediate action was necessary in the case. The order also does not state that the licence was suspended before immediate action was necessary. I do not express here one way or the other as to whether on the facts of the case immediate action was necessary or was not necessary because it is for the Collector to take decision in that regard.

9. In the absence of any indication that there was application of mind by the Collector on the aspect as to whether immediate action was necessary, in my opinion, the impugned order

> *cannot be sustained. The Collector gets jurisdiction to suspend the license in cases where immediate action is necessary. In this view, I consider it just and appropriate to pass the following order :-*

The writ petitions allowed and the impugned order dated 26-9- 1994 issued by the respondent is quashed. It is open to the respondent if so desired to exercise the power under Section 21(2) and pass appropriate orders."

6.8. This is further reinforced by ***CBIC Instruction No. 24/2023 dated 18.07.2023*** which states that suspension under Regulation 16(1) is not to be applied "*in a manner routine or mechanical or in every case*" and that "*the Commissioner should also take the care also of recording his/her reasons as to why it is considered an appropriate case where immediate action of suspension is necessary*."

6.9. Thus, by relying on the decisions cited supra, we hold that the mechanical adoption of DRI's instruction without independent appreciation of facts and application of mind does not satisfy the condition for suspension of license, as mandated under Regulation 16(1) of the CBLR, 2018.

7. A license issued to a CB can be suspended only when there is immediate and emergent necessity is warranted. There must be some allegation that the CB has violated the Regulations of CBLR, 2018. In the impugned order, it has been alleged that the Appellant CB had violated Regulations 10(d), 10(e)

and 10(q) of the CBLR, 2018. We would now examine the role of the Appellant under the said Regulations:

Regulation 10(d):

7.1. Regarding violation of Regulation 10(d), the Appellant submitted that it has consistently advised its clients to comply with applicable Customs laws and procedures. We find that there is no evidence brought on record any particular instance where the Appellant CB failed to advise it's clients. The mere allegation that an importer furnished forged or fraudulent documents does not establish any breach by the Appellant. Further, neither the DRI communication nor the Impugned Order identifies the client concerned, the specific advice allegedly not provided, or the non-compliance known or reasonably expected to be known to the Appellant. Rather, it states in Para 5.10 that the details will be published after completion of DRI investigation. The finding in Para 5.8 is therefore circular and unsupported, as it relies solely on DRI's allegations of the Appellant's involvement in fraudulent activities without independently establishing any violation of Regulation 10(d).

Regulation 10(e)

7.2.The provision concerns due diligence in ascertaining the correctness of information imparted by the Customs Broker to its client and does not require independent investigation into alleged fraud by third parties. It is settled that a Customs Broker is not an investigative agency and cannot be expected to independently verify foreign supply chains or

detect overseas-origin fraud. In support of this view, we rely on the following decisions:

- **M/s. P.B.N. Logistics vs. CC (Preventive), Kolkata [Para 6.1, 6.2 - 2026 (8) TMI 31 - CESTAT KOLKATA]**
- **R.N. Lal & Brothers vs. CC (Prev.), Kolkata [2006 (205) E.L.T. 686 (Tri. - Kolkata)]**

7.3. We find that the Appellant has filed the documents as furnished by the importer. The Appellant ensured that SAFTA Certificates of Origin, FSSAI test reports/NOCs and other requisite import documents were on record. The sample transaction records establish that the consignments underwent first-check/100% examination by Customs. The proper officer has verified the documents and allowed the clearance of goods without raising any objection. Thus, we find that there is no evidence brought on record to substantiate the allegation that the Appellant CB failed to advise its clients to comply with applicable laws and to exercise due diligence in verifying the authenticity of information given to client. In Para 5.10 of the impugned order, it is recorded that the details will be published only after completion of the DRI investigation. We observe that an adverse finding founded on material withheld from the Appellant violates the principles of natural justice.

Regulation 10(q)

7.4. In the impugned order, it has been alleged that the Appellant has violated Regulation 10(q) of the CBLR concerning cooperation with Customs

authorities and joining investigation in case of inquiry proceedings. Relying on Regulations 7(2) and 10(b), it holds that the presence of Shri Dinesh Kumar Ramuka, the F-card holder and proprietor, is essential to the DRI investigation and that such requirements could not be treated as mere procedural formalities. In this regard, we observe that the impugned Order relies only on Shri Ramuka's alleged non-appearance before the DRI. It points to no instance where the Appellant firm failed to cooperate with Customs or to join an inquiry against it or its employees. We find that reliance on Regulations 7(2) and 10(b) in the impugned order is misplaced. These provisions deal with grant of licence and who may transact business on the firm's behalf. They do not require a particular individual to appear personally before the DRI. Thus, we observe that the adjudicating authority cannot turn Shri Ramuka's alleged absence into a breach of Regulation 10(q) by the Appellant.

7.5. Thus, we observe that the evidences available on record does not establish that the Appellant CB had violated the Regulations 10(d), 10(e) and 10(q) of the CBLR, 2018.

8. We observe that suspension under Regulation 16 is a preventive measure and not a punishment. The impugned Order continues the suspension "*till completion of the investigation being conducted by DRI* without identifying/recording any ongoing prejudice from the Appellant's continued functioning. Such an open-ended continuation of suspension, without an independent assessment of its necessity, defeats the preventive object of Regulation 16 and effectively subjects the Appellant to an indefinite

restraint on its business activities, thereby, affecting livelihood of the Appellant and its employees. Accordingly, we hold that the continuation of the suspension of the CB License in the impugned order is legally not sustainable and hence we set aside the same.

9. In the result, we set aside the impugned order and allow the appeal filed by the Appellant with consequential relief, if any, as per law.

(Operative part of the order was pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP