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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 28th August, 2025

+ **CUSAA 111/2025 & CM APPL. 53964/2025**

COMMISSIONER OF CUSTOMS (AIRPORT AND GENERAL)

.....Appellant

Through: Mr. Aakarsh Srivastava, SSC with
Mr. Anand Pandey, Adv.

versus

M/S JAISWAL IMPORT CARGO SERVICES LTDRespondent

Through: Mr. Piyush Kumar, Ms. Shikha Sapra
& Ms. Reena Rawat, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

JUDGMENT

Prathiba M. Singh J.

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed under Section 130 of the Customs Act, 1962, *inter alia*, challenging the Final order dated 2nd January, 2025 passed in *Customs Appeal No. 50251/2024* (hereinafter “*impugned order*”) by the Customs, Excise, Service Tax Appellant Tribunal (hereinafter “*CESTAT*”). *Vide* the impugned order, the CESTAT has set aside the Order-in-Original dated 23rd February, 2024.
3. *Vide* the said Order-in-Original, the customs brokers license (hereinafter “*the subject license*”) of Respondent - M/s Jaiswal Import Cargo Services Ltd., was suspended due to non-compliance of the Customs Brokers Licensing Regulations, 2018 (hereinafter “*CBLR 2018*”). The operative



portion of the Order-in-Original dated 23rd February, 2024 is extracted herein below:

“ORDER

In exercise of powers conferred in terms of Regulation 14 & 18 read with Regulation 17(7) of CBLR, 2018,

(i) I hereby revoke the CB Licence No.R-81/DEL/CUS/2006 of M/s Jaiswal Import Cargo Services Ltd (PAN: AACCCJ5444N);

(ii) I direct the CB to immediately surrender the Original CB License No. R-81/DEL/CUS/2006 along with all ‘F/G/H’ Cards in original issued there under;

(iii) I order for forfeiture of the whole amount of security deposit furnished by them under Regulation 14 read with Regulation 17 of CBLR, 2018;

(iv) I impose a penalty of Rs.50,000/- on M/s Jaiswal Import Cargo Services Ltd. (PAN: AACCCJ5444N) under Regulation 18 read with Regulation 17 of CBLR, 2018.”

4. The said Order-in-Original has been set aside by CESTAT *vide* the impugned order. In effect, therefore, the revocation of the license of the Respondent has been set aside.

5. The allegation against the Respondent was that one M/s Tanu Trading *vide* Bills of Entry No. 3673416 dated 09th December, 2022 had imported certain cosmetic items with the intention to re-export the same. However, the said goods instead of being deposited in a bonded warehouse, were in fact, diverted to the local market for home consumption.

6. Pursuant to the intelligence received by the Department in respect of the above allegations, efforts were made to locate the premises of the said importer, however its address was found to be fake and bogus. Further, the office premises of the Respondent were also searched.



7. An offence report dated 9th May 2023 was then filed for action against the Respondent for having enabled the diversion. A Show Cause Notice (hereinafter, 'SCN') was then issued on 4th September, 2023 and after the inquiry report dated 28th November, 2023 the impugned Order-in-Original was passed on 23rd February 2024. The Order-in-Original held that the Respondent violated the CBLR 2018.

8. These allegations were considered by the CESTAT in the impugned order which held that the KYC documents pertaining to the importer were duly verified by the Respondent. These documents were not fraudulent or fake. It was held by CESTAT that the only obligation of the Customs broker is to physically verify the premises and the verification of the Government issued documents. This has been done by the Respondent. The relevant portion of the impugned order reads as under:

“9. We find that the impugned order has also held that the appellant had violated Regulation 10(n) of the CBLR, 2018. It is an admitted fact that the appellant submitted the KYC documents pertaining to the importer such as IEC, GSTIN, Axis Bank letter regarding the AD code, copy of the PAN and Aadhar card of the proprietor Importer. There is nothing on record that these documents have been proved to be fraudulent or fake. It has been repeatedly held that there is no legal requirement of the CB to physically verify the premises and verification of the government issued documents can be verified from the portal. This has been done by the appellant. We note that the Delhi High Court in a similar case, (CUSAA No. 2/2022) and vide judgment dated 25.09.2023 in the case of D S Cargo Agency vs Commissioner of Customs, New Delhi, held as follows: [...]

10. In the instant case, the KYC documents submitted by



the appellant are all valid documents. There is no other requirement under Regulation 10 (n) which remains to be fulfilled by the appellant.

11. In view of the above, we hold that the revocation of CB license by the Customs authorities is not sustainable, and impugned order is set aside with consequential benefit, if any. Accordingly, the appeal is allowed.”

9. On the basis of these findings, the CESTAT held in favour of the Respondent.

10. The submission of Id. SSC for the Department is that the Customs Broker has a duty and obligation to ensure that there is no violation of the CBLR 2018. Further, the various statements which were recorded during the investigation by the Department revealed the complicity of the Respondent. The role played by the Respondent was more active and the it had failed to oversee clearance of the goods from Customs which led to the illegal divergence. Proper authorisation was also not obtained from the importer by the Respondent as per the Appellant. Ld. counsel for the Respondent submits that there is no substantial question of law that arises. Further,

11. The Court has considered the matter. After the issuance of the SCN, the Respondent’s licence was suspended at all Customs Stations/ Ports of India with immediate effect *vide* order dated 16th June 2023. This fact is recorded in para no.5 of the Order-in-Original, which reads as under:-

“5. Therefore, in view of the foregoing reasons, it appeared that M/s Jaswal Import Cargo Service Ltd, Block M, RZ-81B, Chanakya Place, Part-II, Opp. C-1, Janak Puri, New Delhi - 110059, Customs Broker having CB License No. R-81/DEL/CUS/2006 (PAN: AACCJ5444N) contravened various provisions of the CBLR, 2018, which amounts to breach of trust and faith



reposed on the CB by the Customs. Therefore, it appeared that the continuation of business transaction by the Customs Broker would be prejudicial to the interest of Revenue and immediate action under regulation 16 of CBLR, 2018 is warranted to prevent further misuse of Customs Broker Licence. Accordingly, in exercise of the powers conferred under Sub-Regulation (1) of Regulation 16 of the Customs Broker Licensing Regulation 2018 (CBLR,2018) the Customs Broker License No. R-81/DEL/CUS/2006 (PAN: AACCJ5444N) of M/s Jaswal Import Cargo Service Ltd was suspended at all the Customs stations/ports of India with immediate effect vide Order-in-Original No. 36/ZR/Suspension/Policy/2023 dated 16.06.2023.”

12. The suspension was thereafter revoked on 17th August, 2023 which is recorded in para no. 9 of the Order-in-Original. However, when the Order-in-Original was passed on 23rd February 2024, the license was again revoked. This order continued till the final order of the CESTAT on 2nd January 2025. Therefore, for a total period of 13 months, the Respondent’s business had come to a standstill. The primary responsibility here was of the importer and at best the allegation against the Customs Broker was that it was complicit with the importer.

13. The appeal filed by the Department now seeks to reinstate the revocation against the Customs broker which this Court is not inclined to do. There is no doubt that Customs Brokers do have significant responsibility under the CBLR 2018 which ought to be performed with diligence and commitment. The fact that the Respondent did not oversee the clearance and the warehousing of the goods leading to diversion of the goods in the domestic market is a clear infraction.



14. However, the Respondent has already suffered in its business for 13 months. Applying the principle of proportionality, this Court is of the opinion that the suspension/ revocation for a period of 13 months is a sufficient period considering the nature of violation.

15. In *CUSAA 24/2012* titled *M/S. Ashiana Cargo Services v. Commissioner of Customs (I&G)*, this Court discussed the proportionality of punishment imposed on Custom House Agents in an appeal where the CESTAT upheld the revocation of the license of the Appellant under the Custom House Agents Licensing Regulations, 1984. While deciding the said appeal, the Court held as under:

“8. The issue before the Court is the proportionality of the penalty awarded in this case. The CHA Regulations prescribe two penalties: suspension of the license for a particular period of time, and revocation of the license, such that it irretrievably loses its currency. Once the Commissioner reaches a decision, the CESTAT, and this Court, would not ordinarily interfere with the award of punishment, denuding the disciplinary power of the designated authority. That said, the course of action taken by the Commissioner of Customs must depend on the gravity and nature of the infraction by the CHA, and thus, the punishment must be proportional to the violation. Given the civil consequences of revocation for the CHA, read in the background of its freedom under Article 19(1)(g), this principle of law is undisputed. Casting some clarity on the meaning of proportionality, especially at the second appellate stage, the Supreme Court in *Management of Coimbatore District Central Co-operative Bank v. Secretary, Coimbatore District Central Co-operative Bank Employees Association and Anr.*, (2007) 4 SCC 669, held as under:



“18. 'Proportionality' is a principle where the Court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of CUS.A.A.24/2012 Page 8 decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise the elaboration of a rule of permissible priorities.” In the context of revocation of a CHA license, this ordering or priorities, or the proportionality doctrine, was considered recently by the Andhra Pradesh High Court in Commissioner of Customs and Central Excise v. HB Cargo Services, 2011 (268) ELT 448 (AP) in the following terms:

“12.....For minor infraction, or infractions which are not of a serious nature, an order of suspension may suffice. On the contrary, when revocation is directed it has to be only in cases where the infraction is of a serious nature warranting exemplary action on the part of the authorities for, otherwise, two types of actions would not have been provided for. Primarily it is for the Commissioner to decide as to which of the actions would be appropriate but, while choosing any one of the two modes, the Commissioner has to consider all relevant aspects, and draw a balance sheet of the gravity of the infraction and the mitigating circumstances. The difference in approach for consideration of cases warranting revocation or suspension has to be borne in mind while dealing with individual cases. The proportionality question is of great significance as action is under a fiscal statute, and may ultimately lead to a civil death.”



9. *The consequences of revocation being serious, the proportionality doctrine must inform the Commissioner's analysis. This is also the exercise the Court must undertake, though with a measure of deference towards the Commissioner's conclusions.*

10. *Beginning with the facts, there is virtually no dispute. There is a concurrent finding of fact by the Commissioner and the CESTAT that the appellant did not have knowledge that the illegal exports were effected using the G cards given to VK's employees. There was no active or passive facilitation by the appellant in that sense. Undoubtedly, the provision of the G cards to nonemployees itself violated the CHA Regulations. This is an admitted fact, but it is not the Revenue's argument (nor is it the reasoning adopted by the Commissioner or the CESTAT) that this violation in itself is sufficiently grave so as to justify the extreme measure of revocation. Not any and every infraction of the CHA Regulations, either under Regulation 13 ("Obligations of CHA") or elsewhere, leads to the revocation of license; rather, in line with a proportionality analysis, only grave and serious violations justify revocation. **In other cases, suspension for an adequate period of time (resulting in loss of business and income) suffices, both as a punishment for the infraction and as a deterrent to future violations. For the punishment to be proportional to the violation, revocation of the license under Rule 20(1) can only be justified in the presence of aggravating factors that allow the infraction to be labeled grave. It would be inadvisable, even if possible, to provide an exhaustive list of such aggravating factors, but a review of case law throws some light on this aspect. In cases where revocation of license has been upheld (i.e. the cases relied upon by the Revenue), there has been an element of active facilitation of the infraction, i.e. a finding of mens rea, or a gross and flagrant violation of the CHA Regulations. In Sri***



Kamakshi Agency (supra), the licensee stopped working the license, but rather, for remuneration, permitted his Power of Attorney to work the license, thus in effect transferring the license for money.

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

16. In addition, Id. Counsel for the Respondent on instructions submits that as a matter of retribution, the Respondent is willing to contribute a sum of Rs. 4 lakh towards some good cause. Taking this statement on record, this Court is of the opinion that the suspension of 13 months and with payment of Rs. 4 lakh, the SCN proceedings can come to an end.

17. The appeal along with the pending application is disposed of with the following directions:



(i) The Respondent shall deposit, within four weeks, a sum of Rs. 4 lakh in the following manner:

- i. Rs. 2 lakh to be deposited with the Customs Department.
- ii. Rs. 1 lakh to the Delhi High Court Legal Service Committee.

Name: *Delhi High Court Legal Services Committee*
Bank: *UCO Bank, Delhi High Court.*
A/c No.: *15530110008386*
IFSC Code: *UCBA0001553*

- iii. Rs. 1 lakh to the Delhi High Court Bar Association. The details of the bank account are as under:

Name: *Delhi High Court Bar Association*
Bank: *UCO Bank, Delhi High Court.*
A/c No.: *15530100000478*
IFSC Code: *UCBA0001553*

(ii) The revocation/ suspension of the Respondent's Customs Broker License is restricted to the 13 months which has already been undergone.

18. The next date fixed in the matter i.e., 10th November 2025, stands cancelled.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

AUGUST 28, 2025

kk/msh