IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19535 of 2014

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1. Bhaskar Logistic Services Pvt. Ltd., a Company incorporated under the Companies Act, 1956 null having its registered office at A/27, Ashraya Pawan Apartment, Raja Bazar, P.O. - B.V. College, P.S. Shastrinagar, District - Patna - 800014, through its Director, Saroj Mallik, D/o Late Raj Narayan Lal Das, resident of A/25, Asharaya Pawan Apartment, Raja Bazar, P.O. - B.V. College, P.S. Shastrinagar, District - Patna - 800014.

.... Petitioner

Versus

1. Union of India, through the Chairman, Central Board of Excise AND Customs, office at North Block , Rashtrapati Bhawan, New Delhi.
2. The Commissioner of Customs (P), having its office at Central Revenue Building, 5th Floor, Beer Chand Patel Path, Patna (Bihar) PIN 800001.
3. The Commissioner of Customs (Import), having its office at Jawaharlal Nehru Customs House (hereinafter in short JNCH), Nhava Sheva, District Raigdad, Navi Mumbai (Maharashtra), PIN 400707.
4. The Commissioner of Customs (General) having its office at New Customs House, Ballard Estate, Mumbai (Maharashtra) PIN 400001.
5. The Joint Commissioner of Customs (Import) having its office at Jawaharlla Nehru Customs House, Raigad, Navi Mumbai, (Maharashtra) PIN - 400707.
6. The Superintendent of Customs (CIU), having its office at New Customs House, Nhava Sheva, District Raigad, Navi Mumbai (Maharashtra) PIN 400707.

.... Respondents

WITH

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Civil Writ Jurisdiction Case No. 5540 of 2015

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1. Bhaskar Logistic Services Pvt. Ltd., a Company incorporated under the Companies Act,1956 having its registered office at A/27, Ashraya Paswan Apartment, Raja Bazasr, P.O.- B.V. College, P.S. Sharstrinagar, District- Patna-800014, through its Director, Saroj Mallik D/o Late Raj Narayan Lal Das, resident of A/25, Asharaya Pawan Apartment, Raja Bazar, P.O.- B.V. College, P.S. Sharstrinagar, District- Patna-800014

.... Petitioner

Versus

1. The Union of India, through the Chairman, Central Board of Excise & Customs, office at North Block, Rashtrapati Bhawan, New Delhi.

2. The Commissioner of Customs (P), having its office at Central Revenue Building, 5th Floor, Beer Chand Patel Path, Patna (Bihar) PIN 800001.
3. The Commissioner of Customs (Import), having its office at Jawaharlal Nehru Customs House (hereinafter in short JNCH), Nhava Sheva, District Raigdad, Navi Mumbai (Maharashtra)- PIN400707.
4. The Commissionerof Customs (General) having its office at ofice at New Customs House, Ballard Estate, Mumbai,(Maharashtra)- PIN400001.
5. The Joint Commissioner of Customs (Import) having its office at Jawaharlal Nehru Customs House, Raigad, Navi Mumbai (Maharashtra)- PIN-400707.
6. The Superintendent of Customs (CIU), having its office at New Customs House, Nhava Sheva, District Raigad, Navi Mumbai (Maharashtra)- PIN 400707.
7. Shri Mahipa; Singh, the Assistant Commissioner (hqr), Custom, Patna, having its office at Central Revenue Building, 5th Floor, Beer Chand Patel Path, Patna (Bihar) PIN 800001.

.... Respondents

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Appearance :
(In CWJC No.19535 of 2014)
For the Petitioner : Mr. D. V. Pathy, Advocate
For the Respondents : Mr. Sanjay Kumar, ASG
(In CWJC No.5540 of 2015)
For the Petitioner : Mr. D.V.Pathy, Advocate
For the Respondents : Ms. Nivedita Nirvikar, CGC

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
AND
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

<u>JUDGMENT AND ORDER</u>
CAV

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 23-06-2016

These two writ applications, under Article 226 of the Constitution of India, have been filed on behalf of the same petitioner and arise out of the action taken, under the provisions of Customs House Agent Licensing Regulations, 2004 (CHALR)/Customs Broker Licensing Regulation, 2013 (CBLR), against the petitioner, which is said to be a registered company, engaged in the business of Customs House Agent (hereinafter referred to as "C.H.A.").

2. The petitioner held licence of C.H.A. in accordance with the said CHALR, framed under sub-Section (2) of Section 146 of the Customs Act, 1962.

3. By Adjudication Order No. 1 (7) and C.H.A. Order No. 01/2013, dated 04.04.2013, invoking provisions of Regulation 20 and 22 of the CHALR, the petitioner's license was suspended by the Commissioner, Customs (Headquarters), Patna. The petitioner has challenged the said order of suspension by filing CWJC No. 19535 of 2014. The Customs House Agent Licensing Regulations, 2004 (CHALR), came to be superseded with issuance of notification, dated 21.06.2013, and framing of "Customs Broker Licensing Regulations, 2013" (CBLR). The said CBLR, however, have saved all things done or omitted to have done before such supersessions.

4. During the pendency of the said writ application, a show cause notice was served on the petitioner through letter, dated 05.03.2015, issued under the signature of the Commissioner of Customs (P), Patna, which contains imputation of misconduct in respect of which an enquiry was proposed to be conducted. Along with the said show cause notice, the grounds of imputation, articles of charges and list of documents, by which the articles of charges were proposed to be sustained, were annexed. The petitioner was asked to submit his written statement of defence within 30 days from the date of receipt of the said show cause notice. The petitioner, by way of filing CWJC No. 5540 of 2015, challenged issuance of the show cause notice. From the records, it transpires that an Enquiry Officer was appointed to enquire into the allegations of misconduct made against the petitioner. The enquiry was held in accordance with the provisions of Customs Broker Licensing Regulations, 2013, which superseded the previous Customs House Agent Licensing Regulations, 2004. The petitioner was charged of having acted in breach of Regulation 11 (e) and 11 (o) of the Regulations. The Enquiry Officer found the charges against the petitioner to have been proved and, accordingly, submitted his report on 09.06.2015. The petitioner was, thereafter, given an opportunity of personal hearing. Finally, by an order, dated 04.09.2015, the Commissioner of Customs (P), Patna, vide his Adjudication No. 01-VII(13)05-CHA/T/07/Part, revoked the License No. 1/CHA/2008, issued in favour of the petitioner. By filing an interlocutory application, being I.A. No. 7616 of 2015, the petitioner sought amendment in CWJC No. 5540 of 2015, for seeking quashing of the said adjudication order, dated 04.09.2015, which has been allowed.

5. These are the circumstances in which both the writ applications have been heard together and are being disposed of by the present common judgment.

6. We have Heard Mr. D. V. Pathy, learned Counsel for the petitioner, Mr. Sanjay Kumar, Assistant Solicitor General and Ms. Nivedita Nirvikar, learned Central Government Counsel, appearing on behalf of the respondents.

7. For all practical purposes, CWJC No. 19535 of 2014 has lost its significance and has become infructuous in view of the subsequent developments, whereby the petitioner's license itself has been cancelled and which is under challenge in CWJC No. 5540 of 2015.

8. A preliminary objection has been raised at the very outset by Ms. Nivedita Nirvikar, learned Central Government Counsel, appearing on behalf of the respondents, over maintainability of the present writ application (CWJC No. 5540 of 2015) on the ground of existence of statutory and equally efficacious remedy under Regulation 21 of the CBLR, which reads thus:-

> "**21. Appeal by Customs Broker.-** A Customs Broker, who is aggrieved by any order passed by the Commissioner of Customs under these regulations, may prefer an appeal under

section 129A of the Act to the Customs, Central Excise and Service Tax Appellate Tribunal established under sub-section (1) of section 129 of the Act."

9. Ms. Nirvikar has submitted that there is no exceptional circumstance for this Court to entertain this writ application, despite there being statutory remedy available to the petitioner. She has, accordingly, submitted that this writ application deserves to be dismissed at the very threshold. She has placed reliance, in this regard, on a Supreme Court's decision, in the case of **Star Paper Mills Limited v. State of U.P. and Others** , reported in **2006 (10) SCC 201**.

10. Mr. D. V. Pathy, learned Counsel appearing on behalf of the petitioner, responding to the preliminary objection, has submitted that the rule of non-maintainability of writ petition, under Article 226 of the Constitution of India, is a rule of discretion and not of compulsion. He has submitted that in similar circumstance, other Courts have interfered with the action of the adjudicating authorities. Special reference has been made in this regard to the Supreme Court's decision, in the case of **Hotel Ashoka v. Assistant Commissioner of Commercial Taxes**, reported in **2012 (276) E.L.T. 433 (S.C.)** and a Division Bench decision of the Kerala High Court, in the case of **Proprietor, Carmel Exports and Imports v. Commissioner of Customs, Cochin**, reported in **2012**

(276) E.L.T. 505 (Ker.).

11. Before we take note of the aforesaid submissions, we consider it appropriate to briefly narrate the facts of the case, which has given rise to the filing of these writ applications.

12. During course of an investigation, relating to a consignment of mobile accessories by one M/s Regent Enterprise, it was noticed that there was another live consignment also covered under Bill of Entry (B/E) No. 762971, dated 15.03.2011, and Bill of Lading No. TAOCB1100032301 of laminate sheets having dimensions 1220 x 2440 x 0.7 MM abd 1220 x 2440 x0.9 MM, total admeasuring 15.83 CBM, imported in the name of the said importer, which was awaiting clearance. The declared assessable value of the said consignment was Rs. 3,36,757.59/- and the duty assessed on that value was Rs. 90,415/-, which was paid through challan. M/s Regent Enterprises was having IEC (Importer-Exporter Code) No. 0309006198 and address at 9, Navratna Building, P. D'Mello road, Carnac Bunder, Mumbai – 400009. The said Bill of Entry was filed by the petitioner, as CHA.

13. During examination, the IEC Holder, Izahar Hussain, and CHA representive, Sheikh Khursheed were also present. Izahar Hussain was summoned and he, in his statement recorded under Section 108 of the Customs Act, disclosed that the goods did not belong to him and one Mehmood Patni had taken him to an Office at Belapur where he was introduced to one Kamlesh as owner of the goods and another person as CHA. He categorically said that whatever goods had been imported in the name of M/s Regent Enterprises did not belong to him and only his IEC was used. In course of investigation of another consignment, which was imported in the name of M/s Regent Enterprises, his (Izahar Hussain's) statement, under Section 108 of the Customs Act, was recorded, wherein he said that he had never imported and exported any goods into or out of India and he did not know what was an IEC and one Mehmood Patni had approached him in February, 2009, and offered to obtained an IEC in his name. Mehmood Patni is said to have promised him to pay regular money for use of his IEC. Mehmood Patni also convinced him that he would not get into any trouble and promised to pay him regular money. He further said that said Mehmood Patni had given him a sum of Rs. 30,000/- in two instalments and when he was suspicious about the money which said Mehmood Patni was giving, Mehmood Patni made him to understand that he would not put him in trouble. He also disclosed that since he (Mehmood Patni) was not paying him money, he had taken back the IEC from Mehmood Patni and, thereafter, he allowed the goods to be imported against his IEC, which were not his goods.

14. Sheikh Khursheed, who was described as Executive Director of the petitioner company, was also summoned. He said in his statement under Section 108 of the Customs Act that he had received the documents of M/s Regent Enterprises through one of his friends, Sahnawaz Choudhary, prior to which he had not handled any consignment of M/s Regent Enterprises. Sheikh Khursheed is said to have enquired about the importer from Sahnawaz, who had told him that the importer would be introduced to him within two days and, thereafter, he filed the Bill of Entry and paid duty and thereafter he proceeded to clear the goods. In the docks, the Officer had directed him to appear before Central Investigation Unit (CIU). It was, then, that he contacted said Sahnawaz for calling the importer and, thereafter, he learnt that the consignment belonged to one Kamlesh and Ramesh. He, thus, failed to give details of whereabouts and antecedents of said Ramesh and Kamlesh.

15. Sahnawaz Choudhary said, in his statement recorded under Section 108 of the Customs Act, that one of his friends had asked him to help clearing the consignment of laminate sheets and, thereafter, he had received the documents from one Ajay. He had, thereafter, handed over the documents to Sheikh Khursheed of CHA, who filed the Bill of Entry and paid the duty also. Sahnawaz Choudhary also said that he did not know the whereabouts of Ramesh and Kamlesh.

16. Analyzing these facts, the Department came to a conclusion that the said consignment, which was covered under Bill of Entry No. 762971, dated 15.03.2011, was imported by Ramesh and Kamlesh in the name of M/s Regent Enterprises, which acted as front to this import. The said Izahar Hussain was only IEC Holder, who had obtained the IEC at the instance of Mehmood Patni. The said IEC was obtained to be lent to other persons for misuse. Izahar Hussain had categorically said that the goods imported by using his IEC did not belong to him. While scrutinizing the documents, it was found that C & F value declared by the imported was quite low.

17. Sheikh Khursheed, apparently associated with the petitioner-company, either as Director or G-card holder employee of the petitioner-company, had submitted the Bill of Entry for import of goods for the importer, who did not have the IEC and he allowed the IEC of one Izahar Hussain to be used for the purpose of said import. The status of Sheikh Khursheed, as Director, has been disputed in the writ application, which is evident from the statements made in paragraphs 4 and 5 of CWJC No. 5540 of 2015, as follows:

> "4. That the petitioner, after having Custom House Agent/Custom Broker (hereinafter CHA/CB) License No. 01/CHA/2008 by the Commissioner of Customs, Patna (Res No – 2) on 29.02.2008, has been professing the business of Custom House Agent on all India basis and while granting license the respondent did not assure any secured or guaranteed any sort of business or livelihood.
>
> 5. That the petitioner opened an office at Mumbai in November/December, 2008 at declared address and besides directors, appointed at least six employees on salary among whom two persons were G-card holder and three persons were H-card holder. **That it is further stated that one Shaikh Khursheed was a G-card holder employee of petitioner, at the relevant time and subsequent he has resigned from his service since 30th January 2013 on account of illness of his wife**."
>
> (Emphasis is supplied)

18. The purpose of making statement in paragraph 5 of the writ application, as noted above, is, evidently, an attempt to convince this Court that Sheikh Khursheed was merely G-card holder employee of the petitioner-company at the relevant point of time and was not the Executive Director of the petitioner-company.

19. In order to make out a case that said Sheikh Khursheed had nothing to do with the company after 30.01.2013, statement has been made that he had resigned his job with the petitioner-company on 30.01.2013 on account of illness of his wife. There is no such statement in the earlier writ application filed by the petitioner, i.e., CWJC No. 19535 of 2014.

20. A confiscation proceeding was initiated under Section 111 of the Customs Act, which finally culminated with an adjudication order, dated 03.12.2014, by the Joint commissioner of Customs, Jawaharlal Nehru Customs House, NHAVA SHEVA-I. The Joint Commissioner ordered for absolute confiscation of the goods, in question, under Section 111 (d) and 111(m) of the Customs Act read with Section 7 and 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rules 2(c), 12 and 14 of Foreign Trade (Regulation) Rules, 1993 and part 2.12 of Foreign Trade Policy, 2009-2014 read with Rule 8 and 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The Confiscating Authority rejected the declared assessable value of the goods to be Rs. 3,36,757.59/- and re-determined the value under

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, at Rs. 30,41,260/-. After having ordered for absolute confiscation, the Joint commissioner imposed penalty on said Izahar Hussian (the IEC Holder), the petitioner-company, Sheikh Khursheed (as Executive Director) of a sum of Rs. 50,000/- each.

21. Aggrieved by the said order passed by the Joint Commissioner, the petitioner and the said Sheikh Khursheed appears to have filed two appeals under Section 128 of the Customs Act, 1962, giving rise to Appeal No. 504 and 505 (Adj-Imp/NS-I)/2015 (JNCH)-Appeal-II, in the Office of the Commissioner of Customs (Appeals-II), Mumbai-II. The appeals came to be allowed, so far as the petitioner and Sheikh Khursheed are concerned by an order, dated 30.09.2015, by quashing the order, in original, dated 03.12.2014, whereby penalty of Rs. 50,000/- was imposed on the petitioner and said Sheikh Khursheed.

22. The said order, dated 30.09.2015, has been brought on record by way of Annexure 29 to the supplementary affidavit filed on behalf of the petitioner.

23. What is surprising from the said order is that address of the appellant, Sheikh Khursheed, has been described as follows:

"Shri Shaik Khusheed, Director,
M/s Bhaskar Logistics Services Pvt. Ltd.

CHA No. 11/459, 'B' Wing, 201, Om Adarsh Co-op Society, Deonar BMC Colony, Govandi, Mumbai – 400043"

24. The address of Sheikh Khursheed contradicts the statement made by the petitioner in paragraphs 4 and 5 of the writ application, wherein it has been mentioned that said Sheikh Khursheed had resigned from service on 30.01.2013. Had that been so, the address of Sheikh Khursheed would have been different. We are not on the consequence or purpose of the said statement having been made in paragraph 5 of the writ application, but in our view, the statement is palpably false which has been deliberately made to mislead this Court in a proceeding under Article 226 of the Constitution of India. The conduct of the petitioner is reprehensible.

25. Mr. D. V. Pathy, learned Counsel appearing on behalf of the petitioner has submitted that in the light of the said order, dated 30.09.2015, passed by the Commissioner of Customs, as noted above, nothing remains to be decided inasmuch as there is clear-cut observations that the appellant before him had held a bona fide belief with regard to the verification of import documents and were not concerned with the mis-declaration and under-valuation and accordingly filed the Bill of Entry on the basis of the said documents for the purpose of assessment. Much emphasis has been laid on paragraph 8 of the said order, dated 30.09.2015, which is being reproduced herein below:-

> "As a result, I find that on facts that the Appellants had held a bona fide belief with regard to the verification of the import documents and were not concerned with the mis-declaration and undervaluation and accordingly filed the Bill of Entry on the basis of the said documents for the purposes of assessment. Hence, the question that the Appellants had prior knowledge of the offence committed by the Importer and that the Appellant was aware of the mis-declaration and undervaluation and did not produce the actual importers is not proved by the department. The ingredients of the provisions of Section 112 (a) and Section 114 AA of the Act have to be proved for imposing penalty under Section 112 (a) and 114 AA which the original authority has failed to do."

26. We may refer to paragraph 6 of the order, dated 30.09.2015, wherein the Commissioner of Customs has recorded, as follows:-

> "6. .... The allegations made against the Appellant, CHA is with regard to possible violation of the CHALR, 2004 such as satisfying himself about the genuineness of the importer,

meeting the actual importer personally, proper verification of import documents, etc. which under the present adjudication proceedings are not required to be discussed in view of the fact that the case is required to be discussed in the light of the customs Act, 1962. **Therefore, any lapse attributable to the discharge of the duties and functions of the Appellant CHA in the context of CHALR, 2004 has to be adjudged accordingly for which there are separate proceedings that can be initiated**."

(Emphasis is added)

27. Prior to passing of the order, dated 30.09.2015, the Commissioner of Customs (P), Patna, vide impugned order, dated 04.09.2015, had already held that the CHA had failed to supervise his employee, Executive Director, Sheikh Khursheed, and did not exercise due diligence to ascertain the correctness of the actual importer, and did not observe due diligence for proper classification and valuation of the imported goods.

28. Mr. Pathy has placed reliance on the Division Bench decision of the Kerala High Court, in the case of **Proprietor, Carmel Exports and Imports** (supra), wherein the Court held, in paragraph 15, as follows:-

"15. Coming to the submission that the appellant is only a "name lender" for the import of goods by one Anwar, we shall presume for the time being that the appellant is only a name lender, but the actual beneficiary of the import is one Anwar. We called upon learned counsel for the respondents to place the relevant provision which prohibits such an activity on the part of an Import Export Code Number holder. **Learned counsel for the respondents categorically made a statement that he is not able to place any such prohibition in law except Section 7 of the Foreign Trade (Development and Regulation) Act, 1992, which reads as follows** :-

> 7. Importer-exporter Code Number. - No person shall make any import or export except under an Importer-exporter Code Number granted, by the Director General or the officer authorised by the Director General in this behalf, in accordance with the procedure specified in this behalf by the Director General".

The expression "import" occurring in the said section means bringing into India of goods as defined under Section2(e). There is nothing in the law which requires an importer to be either the consumer or even the buyer of the goods also Even otherwise, we are of the opinion that it is a matter of common sense that no importer would consume all the materials imported. Necessarily, the goods imported are meant for sale to the consumer, in which case, if an importer, who enjoys the facility of I.E. Code imports certain goods in the normal course of business on the strength of a contract entered by such importer with either a consumer or a trader who eventually sells the imported goods to consumers. We do not understand what can be the legal objection for such a transaction especially where the import of such goods is otherwise not prohibited by law. At any rate, if the respondents have any tenable legal objection on that count, the respondents must pass an appropriate order indicating the legal basis on which the action is proposed and also the nature of the action proposed for such perceived violation of law on the part of the respondents after giving a reasonable opportunity to the importer to meet the case against him. Instead of proceeding to determine the duty leviable on the imported goods by following the appropriate procedure or passing an order of confiscation if they believe that they are justified in the facts and circumstances, the respondents, it appears, are indefinitely detaining the goods without any appropriate order being passed thereon. Such a course of action, in our opinion, is absolutely illegal.

16. Coming to the submission of the appellant that the respondents are bound to release the goods under Section 110A of the Customs Act pending adjudication of the legality of the import, we are of the opinion that as rightly held by the learned Single Judge, Section 110A does not create an absolute right in favour of the importer, but vests a discretion in the customs authorities to follow such course in appropriate case goes without saying that it is only a discretion to be exercised in accordance with the well settled principles of law governing the exercise of a statutory discretion vested in a public authority, but not caprice. In either case the respondents are required to take a decision expeditiously either to make a regular assessment or a provisional assessment or a decision to confiscated the goods in question if it is permissible under law after following appropriate procedure or provisionally release the goods under Section 110-A of the Customs Act. As already noticed, even in a case where the goods are liable for confiscation, Section 125 of the Customs Act provides for redemption of goods on payment of fine so long as the goods are not goods falling under the category of

prohibited goods for the purpose of import."

(Emphasis is supplied)

29. It is noticed from the Division Bench decision of the Kerala High Court, in the case of **Proprietor, Carmel Exports and Imports** (supra), that nothing was brought to the notice of the Court except Section 7 of the Foreign Trade (Development and Regulations) Act, 1992. The Kerala High Court held that Section 7 of the said Act prescribes that no person shall make any import or export except under Importer-Exporter Code Number, granted, by the Director General or the Officer authorized by the Director General in this behalf, in accordance with the procedure specified in this behalf by the Director General. Foreign Trade (Regulation) Rules, 1993, issued vide Notification No. GSR 791(E), dated 30.12.1993, published in the Gazette of India, Extra-Ordinary, has been brought to our notice by learned Counsel appearing for the respondents-Union of India. The said Rules have been framed in exercise of power under Section 19 of the Foreign Trade (Development and Regulation) Act, 1992. Section 2 (c) of the said Rules defines the term 'Importer or Exporter'. as follows:

"2 (c) "importer" or "exporter" means a person who imports or exports goods and **holds a valid Importer-exporter Code Number granted under**

section 7."

(Emphasis is added)

30. Evidently, thus, a person who imports goods must hold a valid Importer-Exporter Code Number, granted under Section 7 of the Foreign Trade (Development and Regulations) Act, 1992. Rule 12 of the said Rules prescribes that on importation into or exportation out of any Customs port of any goods, the importer or exporter shall in the Bill of Entry or shipping detail or, as the case may be, in any other documents, prescribed by the rules made under the Act or Customs Act, 1962, "*state the Importer-Exporter Code Number allotted to him by the competent authority*". Rule 12 clearly prescribes that one can import goods only after declaring the Importer-Exporter Code Number. The person importing the goods, therefore, must have Importer-Exporter Code Number allotted to him by the competent authority. An importer, as is apparent from Rule 12, cannot import goods under Importer-Exporter Code Number allotted to someone else. Said it differently, a person having Importer-Exporter Code Number cannot allow someone else to use it, for the purpose of import being made by him. Further, Section 5 of the Foreign Trade (Development and Regulation) Act, 1992, enables the Central Government to formulate and announce the foreign trade policy, from time to time, by notification in official gazette. In exercise of the said statutory provision, the Central Government had formulated foreign trade policy for the period, in question, i.e. 2009-2014. Paragraph 2.4 of the said policy authorizes the Director General, Foreign Trade, to specify procedures to be followed for an exporter or importer or by licensing or other competent authority for the purpose of implementing provisions of the said Act, rules and orders made thereunder, as well as the foreign trade policy. It also prescribes that such procedures shall be published by means of public notice. In exercise of power conferred under the said Paragraph 2.4 of the Foreign Trade Policy, 2009-2014, the Director General of Foreign Trade had notified the handbook of procedures and the appendices to the handbook of procedures, which came into force with effect from 05.06.2012.

31. Thus, the importer/exporter is a person who imports or exports goods on his own account and such person must have his own account number in his name as granted by the Director General of Foreign Trade and is under obligation to declare it to the Customs in terms of Rule 12 of Foreign Trade (Regulation) Rules, 1993. It is the legislative intent that only one Importer-Exporter Code is allowed against one Permanent Account Number (PAN) and no person could import or export without IEC. If the actual importer or exporter is not having his own IEC, he could be able to circumvent the obligation imposed under Customs Act or under any other law, for the time being in force.

32. These provisions were apparently not brought to the notice of the Division Bench of the Kerala High Court, in the case of **Proprietor, Carmel Exports and Imports** (supra).We, respectfully, disagree with the view taken by the Division Bench of the Kerala High Court, in the case of **Proprietor, Carmel Exports and Imports** (supra).

33. As regards the role and responsibility of a CHA/Customs Broker in such clearance, Regulation 11 (n) of CBLR clearly provides that Customs Broker shall verify the antecedent, correctness of IEC, identity of his client and functioning of his client at the given address by using reliable independent authentic documents/data/information. Identical provision was there under CHALR under Regulation 13 (o) of the CHALR. Thus, if a Customs Broker facilitates the filing/processing of a Bill of Entry by a person other than a valid IEC holder using IEC of a different person, it will amount to violation of the provisions of Regulation 11 (n) of CBLR/Regulation 13 (o) of CHALR.

34. In the case of **Arvind C' Bhagat v. Commissioner of Customs**, reported in **2000 (122) E.L.T. 678 (MAD.)**. The Division Bench of Madras High Court upheld the Department's action on the CHA, who had stood for surety of his client-importer, who was found to be a fictitious firm. When a Customs Broker is aware that the IEC holder and the person importing/exporting is different and despite that , he does not brings this fact to the notice of the Department, this would amount to clear violation of the obligations cast upon the Customs Broker under CHALR/CBLR. Our view finds support from the said decision.

35. From the pleadings and other materials on record, we find that there has been no violation of principles of natural justice. The petitioner was given due opportunity of being heard, which it had availed. The competent authority came to a conclusion that the petitioner had failed to exercise due diligence to ascertain correctness of any information which it imparts to a client with reference to any work relating to clearance of cargo or baggage. What we notice in the present case is that Sheikh Khursheed of the petitioner-company knew that the IEC holder, Izahar Hussain, was not the importer. From the statement of Sheikh Khursheed, recorded under Section 108 of the Customs Act, it transpires that he did not try to ascertain as to who was the importer. Only in course of investigation, it came to light that the goods were imported by Ramesh and Kamlesh in the name of M/s Regent Enterprises, which were under-valued for the purpose of evading Customs duties. It is difficult for this Court to arrive at a conclusion that no violation of Regulation 11 (e) of the Customs Broker Licensing Regulations, 2013 is made out. The plea that Sheikh Khursheed disassociated himself from the affairs of the petitioner-company, may make the case of the petitioner worse inasmuch as there is requirement under Clause (5) of Regulation 17 of Customs Broker Licensing Regulations, 2013, that "Where the Customs Broker has authorized any person employed by him to sign documents relating to his business on his behalf, he shall file with the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, a written authority in this behalf and give "*prompt notice in writing if such authorization is modified or withdrawn*". It is not the case of the petitioner that after said Sheikh Khursheed severed his relationship with the petitioner-company, it informed the concerned Deputy Commissioner of Customs or Assistant Commissioner of Customs withdrawing authorization given by it to said Sheikh Khursheed. Clause (9) of Regulation 17 of Customs Broker Licensing Regulations, 2013, casts obligation on the Customs Broker to exercise such supervision as may be necessary to ensure proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment.

36. In a proceeding under Article 226 of the Constitution of India, this Court is required to evaluate the correctness of the decision making process and not the decision itself. Findings of fact arrived at by the statutory competent authority should normally be not gone into in a proceeding under Article 226 of the Constitution of India unless the same are perverse, without evidence or contrary to evidence. When there exist a statutory alternative remedy of appeal, an aggrieved person may avail that if he wishes to question the findings of fact after re-appreciation of evidence. This Court, in a proceeding under Article 226 of the Constitution of India, would normally not re-appraise the evidence and cannot, acting as an Appellate Authority, substitute its views in place of the findings/decision of an authority exercising quasi-judicial functions.

37. We would have granted the petitioner the liberty to avail the alternative remedy, but since we have considered and discussed the merits of the case, we are not inclined to do so.

38. Before we part with, we deprecate the conduct of the petitioner in making statement in paragraph 5 of CWJC No. 5540 of 2015, as discussed above. There is statement in the said paragraph that said Sheikh Khursheed resigned his post on 30.01.2013. Neither resignation letter has been brought on record nor there is any material to show that in compliance with the requirement under Clause (5) of Regulation 17 of Customs Broker Licensing Regulations, 2013, any intimation was given to the competent authority.

39. We, therefore, do not find any merit in these applications. These applications stands, accordingly, dismissed with the observations, as above.

(Chakradhari Sharan Singh, J.)

I. A. Ansari, ACJ.: I agree.

(I. A. Ansari, ACJ.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	19.05.2016
Uploading Date	23.06.2016
Transmission Date	N.A.