

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87390 of 2024

[Arising out of Order-in-Original No. CAO No. 19/CAC/PCC(G)/SJ/Adj-CBS dated 25.06.2024 passed by Principal Commissioner of Customs (General), New Custom House, Mumbai.]

Fairdeal Shipping Agency Private Limited

.... Appellant

708, Damji Shamji Business Galaria
LBS Marg, Kanjurmarg (West)
Mumbai – 400 078.

Versus

Principal Commissioner of Customs (General)

.... Respondent

New Custom House (NCH), Ballard Estate
Mumbai – 400 001.

APPEARANCE:

Shri Anil Balani, Advocate for the Appellant

Shri Dinesh Nanal, 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/85317/2026

Date of Hearing: 01.12.2025

Date of Decision: 19.02.2026

Per: M.M. PARTHIBAN

This appeal has been filed by M/s Fairdeal Shipping Agency Private Limited, Mumbai (herein after, referred together as 'the appellant', for short), holders of Customs Broker License No. 11/091, assailing the Order-in-Original CAO No. 19/CAC/PCC(G)/SJ/Adj-CBS dated 25.06.2024 (herein after, referred to as 'the impugned order'), passed by the Principal Commissioner of Customs (General), New Custom House, Ballard Estate, Mumbai.

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 the Mumbai Customs under erstwhile Regulation 10 of Customs House Agents Licensing Regulations, 1984 (CHALR) and now Regulation 7(2) of Customs Brokers Licensing Regulations (CBLR), 2018.

2.2. An offence report in the form of Show Cause Notice (SCN) dated 28.02.2018 was received from Principal Commissioner of Customs (Preventive), R&I Division, Mumbai, alleging attempt to evade customs duty on import of 'Titanium alloy' (forged and machined) by an importer M/s Adler Mediequip Private Limited, A-1, MIDC, Sadavali, Ratnagiri by claiming ineligible exemption benefit vide Sl. No.260(i) of Notification No.50/2017-Customs dated 30.06.2017, in which the appellant CB have cleared such imported goods. On the above basis, the jurisdictional Principal Commissioner of Customs (General), NCH, Mumbai, Mumbai Zone-I had concluded that there is a *prima facie* case against the appellant for having contravened Regulations 11(d), 11(e) and 11(f) of CBLR, 2013/10(d), 10(e) and 10(f) of CBLR, 2018. Accordingly, he had immediately suspended the CB license of the appellant under Regulation 16(1) of *ibid*, vide Order No. 11/2018-19 dated 11.05.2018; and such suspension was continued vide Order No. 24/2018-19 dated 18.06.2018; further the department had issued Show Cause Notice No. 03/ 2018-19 dated 11.05.2018 for initiating inquiry proceedings under Regulation 14 *ibid* read with 17 and 18 *ibid*, against violations of CBLR as above.

2.3. During the pendency of the inquiry proceedings, the appellant had filed an appeal against the order dated 18.06.2018 directing continued suspension of the CB license, which was disposed of by the Tribunal by revoking such order of the suspension vide Final Order No. A/85474/2019 dated 14.02.2019 and gave liberty to the Principal Commissioner of Customs (General), to proceed with inquiry proceedings as per CBLR. Accordingly, the CB license of the appellant was restored vide Notice No.101/2019-20 dated 18.06.2019 and inquiry proceedings were continued. Further, appeal filed by the department against the order of the Tribunal dated 14.02.2019 before the Hon'ble High Court of Bombay in Customs Appeal No.14 of 2020, was also dismissed by the Hon'ble High Court in its judgement dated 22.06.2023.

2.4 As a part of inquiry proceedings, the Principal Commissioner of Customs (General), Mumbai-I, being the licensing authority, had appointed the Inquiry Officer (IO) vide letter dated 28.12.2021. In the meantime, the appeal filed by the appellant before the Hon'ble High Court of Bombay against such action vide WPL/29721/2023 was also got rejected for non-compliance of office objections by the appellant under O.S. Rule 986 on 22.04.2025. Upon completion of the inquiry, a report was submitted on 29.12.2023 concluding that all charges framed against the appellant CB had

been proved. Accordingly, the Principal Commissioner of Customs (General), Mumbai, being the licensing authority, after examining such inquiry report, had passed the impugned order dated 25.06.2024 under Regulations 14, 17(7) and 18 *ibid*, for revoking CB License of the appellant, for forfeiture of entire amount of security deposit and for imposition of penalty on the appellant CB. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

3.1. Learned Advocate for the appellant contends that each of the allegations of violation Regulations 11(d), 11(e) and 11(f) of CBLR, 2013/10(d), 10(e) and 10(f) of CBLR, 2018 have been countered by them. In respect of Regulations 10(d), 10(e) and 10(f) *ibid*, learned Advocate stated that the appellants had at the first instance prepared the check list for filing the B/E by classifying the imported goods under CTI 8108 9090 and at the insistence of the importer, they had filed the B/Es for the importer on the basis of earlier B/Es filed in the past for classifying the Titanium Alloy articles under CTI 8108 9090 and claiming exemption benefit vide Sl. No.260(i) of Notification No.50/2017-Customs dated 30.06.2017, and on the basis of the registration taken by the importer with the local Central Excise authorities under the Central Excise Act and Rules for claiming the benefit of notification. Therefore, he claimed that the appellant CB had acted with a bona fide intent and on the directions of the importer. Further, he stated that the appellant had no basis to doubt the eligibility of the exemption, especially when the importer had undertaken such imports earlier under the classification adopted by him duly registered with local Central Excise authorities and imported goods have also been cleared by the customs authorities. Hence, there was no occasion for the appellant CB either to advise the importer against the assessment practice followed by the Customs authorities in the earlier clearances of the same goods, or to bring such assessment practice of extending the exemption benefit to be treated as ineligible exemption for bringing it to the knowledge of customs authorities.

3.2 Further, learned Advocate also claimed that all the declarations in the various Bills of Entry (B/Es) were made on the basis of documents given by the importers, and they claimed that the appellant was in no manner connected with the violations of the Customs law in claiming ineligible exemption on imported goods. In the impugned order, the learned Principal Commissioner of Customs (General), Mumbai-I on examination of their case had already dropped the proceedings against violation of Regulations 11(e)/

10(e) and 11(f)/10(f) of CBLR, 2013/2018. In respect of violation of Regulation 10(d) *ibid*, they stated that the appellant had discharged their duties as CB diligently and thus claimed that they did not contravene the said Regulation 10(d) *ibid*.

3.3 In support of their stand, learned Advocate had relied upon the following case laws:

(i) *Union of India Vs. Naman Singh Sekhawat* - 2008 (225) E.L.T. 161 (S.C.)

(ii) *P.V. Cargo Carriers P. Ltd. Vs. Commissioner of Customs (General), New Delhi* - 2016 (337) E.L.T. 586 (Tri. - Del.)

(iii) *Principal Commissioner of Customs (General), Mumbai Vs. Unison Clearing P. Ltd.* - 2018 (361) E.L.T. 321 (Bom.)

(iv) *Cargo Concept (Bombay) Pvt. Ltd. Vs. Commissioner of Customs (General), Mumbai* - 2016 (344) E.L.T. 954 (Tri. Mumbai)

4. Learned Authorised Representative (AR) reiterated the findings made by the Principal Commissioner of Customs (General) in the impugned order and submitted that the violation under sub-regulation (d) of Regulation 10 *ibid*, has been examined in detail by the Principal Commissioner. Thus, learned AR justified the action of Principal Commissioner of Customs (General) in revocation of the appellant's CB license, forfeiture of security deposit and imposition of penalty in the impugned order and stated that the same is sustainable in law. It is further stated by him that the impugned order viewed that the timelines specified in CBLR are directory in nature and not a mandatory factor.

5. Heard both sides and perused the case records. We have also considered the additional written submissions given in the form of paper book submitted in this case.

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. Though the SCN dated 11.05.2018 proposed for action to be taken against the appellant CB for alleged violations under Regulations 10(d), 10(e) and 10 (f) *ibid*, the learned Principal Commissioner of Customs (General) in the impugned order had dropped the proceedings against the appellant CB in respect of Regulation 10(e) and 10 (f) *ibid* and held that the appellant CB had violated only Regulation 10(d) *ibid*, on the ground that they did not observe and inform about the discrepancy of availing ineligible exemption to the importer or to the customs authority. Thus, there is only one distinct

charge framed against the appellant CB. Though immediate suspension order No. 24/2018-19 dated 18.06.2018 was revoked by issue of Tribunal's Final Order No. A/85474/2019 dated 14.02.2019, upon completion of inquiry proceedings the Principal Commissioner of Customs (General) after taking into consideration the inquiry report dated 29.12.2023, the record of oral submission made at the time of personal hearing on 30.04.2024, and the written submissions dated 07.05.2024 made by the appellant for considering the charges of violations against them, before passing the impugned order. Thus, we are of the considered view that sufficient and reasonable opportunity was given to the appellant before passing an order, in respect of charges framed against them and there is no infirmity of the impugned order for compliance with the principles of natural justice in this regard.

6.2 We notice that the learned Principal Commissioner of Customs (General) in the impugned order had examined the allegations in the SCN proposed against 11(e)/10(e) and 11(f)/10(f) *ibid* on the appellant CB and based on his conclusions recorded in the impugned order, had dropped the proceedings against the appellant CB in respect of Regulation 10(e) and 10 (f) *ibid*. Accordingly, he held that the appellant CB had violated only Regulation 10(d) *ibid*, on the basis of the following conclusions. The relevant portion of the impugned order is quoted below:

"10.7 I observe that in the said SCN it has been alleged that the CB has violated the regulation 11(d)/10(d) of the CBLR, 2013/2018. For reference, the said regulation is reproduced below:-

'A customs broker shall advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, 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;'

10.7.1 Further, I observe that Shri Rajiv K. Sadavarte, Director of M/s Fairdeal Shipping Agency Pvt. Ltd. in his statement dated 21.09.2017 has categorically admitted that the CB firm was acting as per importer's instruction and representative of the importer Shri Nayan Dhane instructed him to file the said B/E No. Availing the benefit of Notification No. 50/2017 dated 30.06.2017 in terms of Sr. No.260(ii) and he also admitted that he did not confirm from the importer whether the importer was eligible for the benefit of the said notification or not.

10.7.2.... In this case, he failed to check exemption benefits and unit of goods (imported under RITC 81089090) before finalising the RITC and he also did not take advice from the CHA. Hence, I observe that had the CB advised the importer regarding applicability of exemption benefits, it would not have been possible for importer to claim benefits (even unintentionally) which were not applicable to them.

10.7.3 ... The CB relied completely on the communication received from the importer and has not cross verify the facts. CB's lackadaisical approach

can also be seen from the fact that the unit of the goods in B/E No.3100605 dated 04.09.2017 was mentioned as 'Nos.' whereas as per the HSN it should have been in "KG.". This clearly shows the CB was disregarding the responsibilities as mandated in CBLR, 2013 (now CBLR, 2018).

10.7.4. Further, CB in his submission stated that the SCN dated 08.02.2013 (issued by investigating agency) was adjudicated vide Order-in-Original CAO No.CC-VA/08/2019-20 Adj.(I) ACC dated 11.06.2019 wherein the proceedings against the director of the CB were dropped. I find that such proceedings initiated against the CB where under the Customs Act, 1962 and proceedings under the CBLR, 2013/2018 are both separate and independent proceedings and outcome of one proceeding has no bearing on the other. Thus, I observe that such submission hold no bearing in the case.

10.7.5 From the records of the case, I find that this is not a case where the subject matter is related with just 01 or 02 B/Es. The importer M/s Adler Mediequip Pvt. Limited had filed 59 Bills of Entry where they wrongly avoid benefit of Notification No. 12/2012 dtd. 17.03.2012 or 50/2017 dated 30.06.2017 (effective at the time of clearance). Later, the importer agreed with the view of the Customs authorities & paid the differential duty.

Out of these 59 B/Es, the CB processed 17 B/Es and it is really surprising that they did not even cross verify the eligibility criteria to claim notification benefit, importer's declaration and relied completely on the communication received from the importer and has not cross verified the facts. At the time of clearance of these 17 B/Es, they must have presented themselves for the examination of the goods, still could not observe & inform about the discrepancies to the importer or customs authority. The dependency of the CB over importer's instruction (has admitted in the statement of the CB) also indicates that the CB was not really committed towards the responsibilities under CBLR, 2013/2018.

10.7.6 in view of above, I observe that the CB has acted in a careless and negligent manner and had not properly advise the said importer in the spirit of the CBLR, 2013/2018 and **hence I hold that the charge of violation of regulation 11(d)/10(d) is sustainable and I confirm the same.**

10.8 I observe that in the said SCN it has been alleged that the CB has violated the regulation 11(e)/10(e) of the CBLR, 2013/2018. For reference, the said regulation is reproduced below:-

'A customs broker shall exercise due diligence to ascertain the correctness of any information which he imparts to your client with reference to any work related to clearance of cargo or baggage:'

From the facts of the case, I observe that there is nothing in the SCN which substantiates that the CB had imported any wrong information to the said the client. This is not the case where the said importer had during the investigation had brought out anything against the said CB in regard to the quality/correctness of information supplied to them. Therefore, I find no such records/facts which may prove that the CB provided any wrong information to the importer. **Hence, I am of the view that charges of violation of regulation 11(e)/10(e) of the CBLR, 2013/2018 are not sustainable and I drop the same."**

10.9 I observe that in the said SCN it has been alleged that the CB has violated the regulation 11(f)/10(f) of the CBLR, 2013/2018. For reference, the said regulation is reproduced below:-

'A customs broker shall not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information;'

I observe that to climb the benefit of the said notification 50/2017 dated 30.06.2017 and Notification no. 12/2012 dtd. 17.03.2012, the importer has to fulfil condition mentioned in point no. 9 of the said notification 50/2017 dt. 30.06.2017 and point no.5 of notification 12/2012 dtd 17.03.2012, and the said the importer is well aware of the conditions of the said notification as such conditions are to be fulfilled with the jurisdictional Central Excise Division much before the goods are being brought in Customs area for import.

Further, this is not the case where the importer has complained of withholding of any information by the CB. From the facts of the case, I observe that this was a case of wrongful appointment of import benefit under notification no 50/2017 dt. 30.06.2017 and Notification no. 12/2012 dtd. 17.03.2012 as the subject imported goods Titanium alloy where more akin to final product and the importer admitted that the only activities required were cleaning, sterilizing, packing etc. and therefore, such import benefit was not available to them.

Further, the said importer has paid the differential duty liability along with interest and penalty. Thus, **this is more a case of wrong interpretation of the notification benefit which could only be brought out during the examination by the Department** and thus it is much beyond the scope of obligations on the CB has prescribed in the CBLR, 2013. **Hence, I am of the view that the charge of violation of regulation 11(f)/10(f) is not sustainable and I drop the same."**

From the above, it clearly transpires that the learned Principal Commissioner has found that out of the three charges levelled against the appellant CB, two charges were dropped on the conclusions recorded by him and he had confirmed the lone charge of violation against Regulation 10(d)/11(d) of CBLR, 2018/2013.

6.3 We find that Regulation 11/10 of CBLR, 2013/2018 vide sub-regulations (a) to (q), provide for the obligations that a Customs Broker is expected to be fulfilled during their transaction with Customs in connection with import and/ or export of goods. The relevant sub-regulation (d) to Regulation 10 ibid which is alleged to have been violated in the impugned order is also quoted below.

"Regulation 11/10 of CBLR, 2013/2018. Obligations of Customs Broker: -

A Customs Broker shall -

(d) advise his client to comply with the provisions of the Act, (other allied Acts and the rules and regulations thereof,) 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;"

6.4 We find that the Principal Commissioner of Customs had come to the conclusion that the only charge framed which is confirmed, by agreeing with the findings of the inquiry authority is the specific omissions and commissions on the part of appellant CB for contravention of Regulations 10(d) *ibid*. Against such charge, he had concluded that it enabled the importer to claim ineligible customs duty concession. However, we find that there is apparent contradiction in concluding that the appellant CB had violated Regulation 10(d)/11(d) *ibid* by the learned Principal Commissioner on the following grounds: On the one hand, he had found that the appellant CB "*did not even cross verify the eligibility criteria to claim notification benefit, importer's declaration and relied completely on the communication received from the importer and has not cross verified the facts*" and "*could not observe & inform about the discrepancies to the importer or customs authority*" at paragraph 10.7.5, and on the other hand, he had held that "*this (duty exemption benefit) is more a case of wrong interpretation of the notification benefit which could only be brought out during the examination by the Department and thus it is much beyond the scope of obligations on the CB as prescribed in the CBLR, 2013*" at paragraph 10.9 of the impugned order. Such apparent contradiction in the findings of the adjudicating authority in the impugned order, in our view reflects the non-application of mind in deciding the issue by the learned Principal Commissioner for revoking the license of the appellant CB; imposing penalty on them and for forfeiture of security deposit. Therefore, on this ground alone the impugned order is liable to be set aside.

6.5 In respect of delay in completion of inquiry proceedings initiated for the SCN dated 11.05.2018, which was concluded vide impugned order dated 25.06.2024, it could be construed that the learned Principal Commissioner had not adhered to the timelines given under the CBLR. However, by taking into account the fact that a part of the delay was caused due to litigation protracted before the Hon'ble High Court of Bombay by the appellant CB, which was finally decided by the judgement dated 22.04.2025 in rejecting their petition for non-compliance and that the Hon'ble High Court of Bombay in the case of *Unison Clearing P Ltd.*, (supra) have held that time factor under CBLR is directory in nature and not a mandatory factor, we find no infirmity on this account.

6.6 We further find from the factual matrix of the case, that the customs authorities at the port of import were clearing the goods imported by the importer M/s Adler Mediequip Private Limited, by extending the duty exemption benefit under notification No. 50/2017-Customs dated 30.06.2017 / Notification No. 12/2012-Customs dt. 17.03.2012, as the subject imported goods 'Titanium alloy' were declared for use in manufacture, on the basis of registration taken by the importer with the jurisdictional Central Excise authorities as per the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. It is also evident from the adjudication order dated 13.08.2019 passed in respect of SCN dated 28.02.2018, that the penal action proposed against the appellant CB under Section 114A of the Customs Act, 1962 was dropped and that the importer had paid the differential duty arising on account of such exemption benefit. The very same SCN dated 28.02.2018 is the offence report on the basis of which the entire action under CBLR was initiated by the Customs authorities. Therefore, when the very basis of the offence report itself had dropped action against the appellant CB, the alleged violation of Regulation 10(d)/11(d) *ibid* on the basis of such offence report, does not have any legal sanction for sustaining it. Therefore, we are of the view that the impugned order is liable to be set aside on these grounds also.

6.7 From the facts of the case, it is also evident that appellant CB have duly filed seventeen B/Es as per the documents given by the importer and after informing the importer about the correct classification of the imported goods and applicable duty thereon, by preparing the check lists and sending it to them before finally filing the B/Es. In the instant case, the non-payment of duty by the importer, on account of claim made for ineligible notification benefit during the disputed period 21.10.2016 to 04.09.2017, was found by the department only on the basis of specific intelligence developed by the Air Preventive Unit/R&I Division of the Commissioner of Customs, Air Cargo Complex, Mumbai when similar import took place vide B/E No.3100605 dated 04.09.2017, and hence the appellants CB cannot be found fault for the reason that they did not advise their client importer to comply with the provisions of the Act of 1962. Further, as the duty exemption benefit for imported goods were hitherto have been extended, by the very same customs authorities at the port of import during the relevant point of time, the appellants CB could not have brought it to the notice of the Deputy Commissioner of Customs (DC) or Assistant Commissioner of Customs (AC).

Thus, we are of the considered view that the violation of Regulation 10(d)/11(d) *ibid*, as concluded in the impugned order is not sustainable.

6.8 Further, as the Hon'ble Supreme Court had held in the case of *Northern Plastic Limited Vs. Collector of Customs & Central Excise* reported in 1998 (101) E.L.T. 549 (S.C.) holding that the declaration of the description of goods given correctly and fully in the Bill of Entry/classification declaration laying claim to some exemption was in the nature of a claim made on the basis of the belief entertained by the appellant and therefore, cannot be said to be a mis-declaration for the purpose of Customs Act.

6.9 Furthermore, the Co-ordinate Bench of the Tribunal in the case of self-same appellant CB in Final Order No. A/85474/2019 dated 14.02.2019, on the same facts of the case have held as follows:

"6. The proceedings have its origin in the availment of an exemption notification. Determination of the appropriate rate of duty, and ascertaining eligibility for exemption/concession in the notification, is not the responsibility of the Customs broker. That lies exclusively, and entirely, within the empowerment of the 'proper officer' designated to assess the consignment. The taxing statute does not envisage transfer, or delegation, of such authority to non-officials. It was patently incorrect on the part of the competent authority to consider this to be a ground for suspension, and more so, as suspension is a preliminary for revocation and revocation is a consequence of circumstances enumerated in Regulation 18 of Customs Broker Licensing Regulations, 2018. There has been a perverse resort to the statutory powers without the competence to do so. Such whimsical action is deplorable."

7. On the basis of our analysis in paragraphs 6.2 to 6.9 and on the basis of above judgement of Hon'ble Supreme Court, we are of the considered view that the conclusion arrived by the Principal Commissioner of Customs (General) on this issue in the impugned order is not supported by any evidence or factual detail, to fasten the liability for claiming ineligible notification benefit on the part of the appellant CB, and thus the impugned order stating that the appellant CB have violated Regulation 10(d) *ibid* is not sustainable.

8. 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 revoking the license of the appellant; and for forfeiture of security deposit, inasmuch as there is no violation of regulations 11(d)/10(d) of CBLR, 2013/2018, and the findings in the impugned order is contrary to the facts on record.

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

(Order pronounced in open court on 19.02.2026)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha