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

Date of Decision: 6th October 2025

+ **CUSAA 56/2024, CM APPL. 33527/2024 & CM APPL. 53272/2024**

NITCO LOGISTICS PVT LTD

.....Appellant

Through: Mr. Rupesh Kumar, Sr. Adv. with Mr.
Prem Ranjan Kumar, Adv.

versus

THE COMMISSIONER OF CUSTOMS AIRPORT
AND GENERAL

.....Respondent

Through: Mr. Abhinav Kalia & Mr. Ajit Kumar
Kalia, SSC.

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 by the Appellant- Nitco Logistics Pvt. Ltd. under Section 130 of the Customs Act, 1962 assailing the Final Order dated 12th March, 2024 (hereinafter, '*impugned order*') passed by the Customs Excise And Service Tax Appellate Tribunal (hereinafter, '*CESTAT*') in *Customs Appeal No. 52259 of 2022*.
3. The brief background of the present case is that the Appellant was a registered custom broker who was granted a license in the year 1989 for working as a Customs Housing Agent (hereinafter, '*CHA*') at various customs ports/stations. Sometime in November, 2020, the Directorate Of Revenue Intelligence (hereinafter, '*DRI*'), Vijayawada had suspected some



misdeclaration in respect of a consignment of one of the Appellant's customers, namely, M/s Hiba Enterprises. It was realized that the misdeclaration was in respect of certain Set Top Boxes which were being exported.

4. Upon issuance of the summons to the Appellant, one of the Senior Managers of the Appellant *i.e.*, Mr. Ajay Sharma who was in-charge of the Delhi office appeared for recording his statement. Mr. Ajay Sharma in his statement had stated that the shipping bills were provided for export by one Mr. Vikas Joshi. The Import Export Code (hereinafter, '*IEC*') of the customer of the Appellant *i.e.*, M/s Hiba Enterprises was used for exporting the consignments. The statements of the other employees of the Appellant and Mr. Yusuf Khan, proprietor of M/s Hiba Enterprises was also recorded by the Department.

5. The Appellant who was the employer issued a Notice of termination on 10th December, 2020 to Mr. Ajay Sharma. He was also suspended from his employment.

6. Finally, the SCN was issued on 20th October, 2021 to the Appellant by the Customs Department. *Vide* the Order-in-Original which was passed on 22nd December, 2021, the Appellant's license was suspended. Thereafter, *vide* impugned Order-in-Original dated 27th July, 2022, the licence of the Appellant being CB Licence No. 01/DEL/CUS/1989 was revoked. *Vide* the Order-in-Original dated 27th July, 2022, the security money was forfeited and a penalty of Rs.50,000/- was imposed upon the Appellant. This Order-in-Original dated 27th July, 2022 was challenged before CESTAT and *vide* impugned order dated 12th March, 2024, the appeal filed by the Appellant was dismissed. In effect, therefore, the present appeal challenges the said order



passed by CESTAT.

7. The submission of Id. Senior Counsel appearing for the Appellant is that the Appellant's license has in effect been suspended since 2021 and the Appellant which is a well-established company has been penalised for the wrong doings of its employee, who is now no longer in its employment. Ld. Senior Counsel for the Appellant further submits that the employee *i.e.*, Mr. Ajay Sharma himself in his statement has admitted that he was himself responsible for dealing with the said customer *i.e.*, M/s Hiba Enterprises. In addition, it is also argued by the Id. Senior Counsel that this employee of the Appellant was not authorised to undertake such illegal or out of the line business with any customer. All the transactions ought to have been done through the company itself but the said employee was dealing with the client independently and misusing his position.

8. Ld. Senior Counsel for the Appellant has also submitted that there is a permanent revocation of the license of the Appellant and a fresh application has been filed by the Appellant as the license had expired on 18th September, 2024. However, the same is also not being considered.

9. On behalf of the Customs Department, Id. Counsel submits that the Appellant had a duty to have performed all due diligence and supervise its employees properly. In fact, from the investigation, it was revealed that Mr. Ajay Sharma was the key managerial personnel of the Appellant as he was sole in-charge of the Delhi office of the Appellant.

10. It is further argued by the Id. Counsel for the Customs Department that the KYC documents of the customer were being received by the said employee on his private email address which was also reflecting the fact that no proper cautionary steps were taken by the Appellant in respect of its



employee's activities.

11. It is further submitted that the Custom Broker Licensing Regulations, 2018 (hereinafter, 'CBLR') imposes stringent conditions upon CHAs and the Customs Department fully rely upon the said CHAs in respect of verification of documents, verification of the identity and credibility of the persons who are importing and exporting. Considering their duties in terms of the CBLR, the impugned order is justified.

12. Heard. It is relevant to note the Mr. Ajay Sharma's voluntary statement given to the Customs Department. The relevant portion of the statement reads as under:

"12. In response of the Summons dated 09.12.2020 Shri. Ajay Sharma, Senior Manager (ID No.015324), appeared before Superintendent of Customs (SIIB-Exp), Air Cargo, Export, New Delhi on 09.12.2020 and tendered his voluntary statement dated 09.12.2020 (RUD-1) in respect of the investigation being conducted regarding the consignment covered under Shipping Bill No. 6884966 dated 01.12.2020 & 6921244 dated 02.12.2020 under AWB 023-6802-1494 & 023-6802-1505, respectively filed on behalf of M/s. HIBA Enterprises (IEC-AJXPK4569N), F/F, 2983, Kucha Neel Kanth, Darya Ganj, New Delhi-110002, wherein he interalia stated that:

(i) In response to summons issued to M/s. Nitco Logistics Pvt. Ltd. he [Ajay Sharma - Senior Manager] appeared on behalf of the company (as directed by Mr Vijay Kochar MD of the company) to represent the company and to tender voluntary statement.

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(iii) On being asked regarding details of M/s Nitco Logistics Pvt. Ltd. and his duties, responsibility in the company i.e. M/s Nitco Logistics Pvt. Ltd., he [Ajay Sharma - Senior Manager] stated M/s. Nitco Logistics



Pvt. Ltd is a CHA firm and is a Private Limited firm; that this firm was established in 1964-65 with the purpose of Clearing & Forwarding for Export/Import and Road Transportation and that the basic work of the firm is Road Transportation on PAN India basis; that at present, the firm's office is operating from 882, East Park Road, 3rd Floor, Karol Bagh, New Delhi, that the company has obtained separate GSTINs for locations/addresses in India and having head office at NITCO HOUSE, NITCO LANE, TALAB TILLO ROAD, JAMMU-180002 that Shri Vijay Kochar is the Managing Director and there are 07-08 Directors in the firm and regarding CHA business, Sh Ashwant Handa, Director, In-Charge is looking after the CHA business in the company and currently sits in Noida Office. [He (Ajay Sharma-Senior Manager) also provided mobile number of Sh Ashwani Handa which is 98100 46347] and that he [Ajay Sharma - Senior Manager) is assisted by a permanent employee in NITCO namely Mr. Vikas Joshi, Senior Associate / Cargo Assistant in the company related work; that in respect of filing papers for generating shipping bills for export Sh Vikas Joshi has the digital signature and he files the shipping bills on his direction; that Vikas Joshi is filing shipping bills in the EDI system with the help of digital signature key owned by F Card Holder Sh. Sathi Nanda, Director (sits in Greater Kailash Delhi); that we [CHA Company] do not provide our CHA services for imports against our license.

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(v) On being asked regarding details of M/s HIBA Enterprises, he [Ajay Sharma - Senior Manager] stated that M/s HIBA Enterprises (IEC-AJXPK4569N dated 18:04.2018), Address: F/F, 2983, Kucha Neel Kanth, Darya Ganj, New Delhi-110002 is a proprietorship concern and the proprietor of the firm is YUSUF KHAN; that they in the past worked for Mr. YUSUF KHAN and at that time his firm name was M/s Y.K. Enterprises (IEC



No.0598031341 dated 07.09.1998).

(vi) On being asked regarding details of KYC of M/s HIBA Enterprises, he [Ajay Sharma - Senior Manager] stated that the KYC documents in respect of M/s HIBA Enterprises (IEC-AJXPK4569N dated 18.04.2018) were not obtained as they have the KYC of his earlier firm named M/s Y.K. Enterprises (IEC No.0598031341 dated 07.09.1998).

(viii) Further on being asked who else was aware in his company of the fact that exports were facilitated without obtaining KYC, he [Ajay Sharma Senior Manager] stated that he is responsible however ultimately his "MD is responsible".

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14. (ii) On being asked whether he used IEC of any other firm other than M/s HIBA ENTERPRISES for facilitating non-registered exporters for exporting their goods and in this regard, he stated that he has not used any other IEC for exporting nonregistered exporters for exporting their goods. Further, he stated that he has utilized the IEC of M/s HIBA ENTERPRISES for the period starting from second half of May 2019 and continued with till date.

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(iv) that the proprietor of M/s HIBA ENTERPRISES have nothing to do with the exports made on his IEC during May 2019 to till date; that this has been done by him intentionally for earning freight and CHA charges for the company and some petty amount for himself over and above company charges.

(v) On being asked whether such illegal activities of export on someone's IEC without the knowledge of the IEC holder was done only by him or whether his management or / and his F-card holder have consented for the same and in this regard, he divulged that there was lot of pressure upon him from his Managing Director Sh. Vijay Kochhar to enhance the business of freight forwarding and CHA services and



so he discussed with him the abovesaid modus operandi before starting such exports for not-registered exporters on existing IEC of M/s HIBA ENTERPRISES.

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(ix) that in respect of 3rd export which was made by his known Chinese National and that person provided me the entire amount in cash and that was Rs 4.50 lakh and out of that amount we have raised bills of around Rs.2.25 lakh and deposited in company account. There is no export other than above referred exports done surreptitiously made on the IEC of M/s HIBA ENTERPRISES.”

13. A perusal of the statement would in fact show that he admits that he was personally responsible for the affairs with M/s Hiba Enterprises. The Managing Director is also responsible. Mr. Ajay Sharma also states that he personally knew Mr. Yusuf Khan from M/s Hiba Enterprises. He has also accepted the knowledge of cancellation of the GST registration of M/s Hiba Enterprises. In fact, he admits that though the GST was cancelled, since the IEC of M/s Hiba Enterprises was valid, he thought of using the said IEC in order to do the business of sending the export consignments on their behalf. The admissions made by Mr. Ajay Sharma also shows that he was completely complicit in the wrong doings and misuse of the IEC of the exporter. Mr. Ajay Sharma had also in the past indulged in similar exports by one Chinese national called Mr. Jason as also admitted that certain bogus/forged invoices were signed and prepared which were mostly imaginary.

14. These statements of Mr. Ajay Sharma leaves no manner of doubt that the employee concerned had connived and colluded with other parties which led to the Appellant also being implicated. In addition, it is also clear that some part of the activity was being done by the said employee through the



company. Insofar as filing of documents was concerned, he did misuse the third party's IEC *i.e.*, of M/s Hiba Enterprises.

15. While on the one hand there can be doubt that the employee was the person who may have been indulging in these incorrect activities, the Appellant also had a responsibility being a CHA to exercise supervision and due diligence and could not have completely allowed misuse in this manner.

16. However, the law in this regard is also well settled that the principle of proportionality would apply in such cases. This has been so held by this Court in *M/S. Ashiana Cargo Services v. Commissioner Of Customs (I&G)*, **2014:DHC:1413-DB** where it has been observed 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 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 term:

“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.”

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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 of 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.

12. Learned Senior Standing Counsel for the Customs has stressed that the infraction in this case is not a routine matter, but rather, illegal smuggling of narcotics by the G card users. However, given the factual finding that the CHA was not aware of the misuse of the G cards (and thus, also unaware of the contents being smuggled), no additional blame can be heaped upon the CHA on that count alone. Rather, the only proved infraction on record is of the issuance of G cards to non-employees, as opposed to the active facilitation of any infraction, or any other violation of the CHA Regulations, whether gross or otherwise. Neither have any such allegations been raised as to the past conduct of the appellant, from the time the license was granted in January, 1996. Equally, it is important to note that the appellant has – as of today – been unable to work the license for 8 years, and thus been penalized in this manner. This is not to say that the trust operating between the Customs Authorities and the CHA is to be



*taken lightly, or that violations of the CHA Regulations should not be dealt with sternly. A penalty must be imposed. At the same time, the penalty must – as in any ordered system – be proportional to the violation. Just as the law abhors impunity for infractions, it cautions against a disproportionate penalty. Neither extreme is to be encouraged. **In this case, in view of the absence of any mens rea, the violation concerns the provision of G cards to two individuals and that alone. A penalty of revocation of license for this contravention of the CHA Regulations unjustly restricts the appellant’s ability to engage in the business of the CHA for his entire lifetime. As importantly, it skews the proportionality doctrine, substantially lowering the bar for revocation as a permissible penalty, especially given the dire civil consequences that follow. On the other hand, the minority Opinion of the CESTAT, delivered by the Judicial Member, correctly appreciates the balance of relevant factors, i.e. knowledge/mens rea, gravity of the infraction, the stringency of the penalty of revocation, the fact that the appellant has already been unable to work his license for a period of 6 years (now 8 years), and accordingly sets aside the order of the Commissioner dated 24.01.2005.***

13. In light of the above discussion, the majority Opinion of the CESTAT is hereby set aside. The Minority Opinion of the Judicial Member, Ms. Archana Wadhwa, is restored, and the revocation of the license of the appellant is quashed. There shall be no order as to costs.”

17. The decision in *M/s. Ashiana Cargo Services (Supra)* was followed by this Court in the decision in *Commissioner of Customs (Airport and General) v. M/s Jaiswal Import Cargo Services Ltd, 2025:DHC:7566-DB*. This Court in the said decision held as under:



“16. In addition, *ld. 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. Under such circumstances, this Court is of the opinion that in order to maintain proportionality and to ensure that the Appellant, which has its own reputation, is not permanently dissuaded from conducting its activities as a CHA, the period of revocation of the license is restricted to 4 years instead of perpetual revocation, *i.e.*, till 21st December, 2025.



19. In addition, on instructions, Id. Senior Counsel submits that the Appellant is willing to deposit a sum of Rs.10 lakhs in this matter, by way of retribution. Out of the said amount, Rs.5 lakhs shall be deposited with the Customs Department, Rs. 2 lakhs to be deposited with the Delhi High Court Bar Clerk Association and Rs. 3 lakhs with the Delhi High Court Bar Association. The bank details of the same are under:

Delhi High Court Bar Clerk Association

- **Name: Delhi High Court Bar Clerk Association**
- **Bank: UCO Bank, Delhi High Court.**
- **A/c No.: 15530100006282**
- **IFSC Code: UCBA0001553**

Delhi High Court Bar Association

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

20. Upon the deposit as directed being made, the fresh application of the Appellant for renewing its earlier CHA license shall be considered by the Customs Department. In addition to the application that may have already been filed by the Appellant, the Appellant shall also submit a detailed Due Diligence Document as to the manner in which it intends to supervise its employees in future, the system and framework that is being put in place for ensuring adequate supervision and proper verification of documents, etc. and file the same with the Customs Department.

21. After considering the application and the due diligence documents, the Customs Department shall take a decision on the renewal of the CHA license



of the Appellant.

22. It is made clear that any renewal which may be granted to the Appellant would be with effect from 1st January, 2026.

23. The appeal is disposed of in these terms. All pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

**SHAIL JAIN
JUDGE**

OCTOBER 6, 2025

Rahul/Ck