

ppn/Rekha Patil



PRANESH  
NANDIWADEKAR

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1326 OF 2014  
WITH  
NOTICE OF MOTION NO. 617 OF 2017

M/s. Skypak Services Specialists Limited  
A Public Limited Joint Stock Company  
being registered under the provisions of  
Companies Act, 1956 having its registered  
office at 3, Sona Udyog,  
Parsi Panchayat Road, Andheri East,  
Mumbai – 400 069

... Petitioner

*Versus*

1. Union of India  
Through the Ministry of Finance  
(represented by its secretary), Department  
of Revenue having his office at North Block,  
New Delhi.

2. Commissioner of Customs  
Chhatrapati Shivaji International Airport,  
having his office at Avas Corporate Point,  
Andheri (East), Mumbai – 400 059.

3. Chief Commissioner of Customs, Mumbai  
Having his office at 5/6<sup>th</sup> floor,  
Avas Corporate Point, Makwana Lane,  
Andheri Kurla Road,  
Andheri (East),  
Mumbai 400 059.

... Respondents

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**Mr. Chirag Shetty i/by Economic Law Practice** for Petitioner.  
**Ms. Maya Majumdar a/w Mr. Abhishek R. Mishra** for  
Respondents.

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CORAM : M.S. Sonak &  
Jitendra Jain, JJ.

RESERVED ON : 24 June 2025  
PRONOUNCED ON 30 June 2025

**Judgment (Per Jitendra Jain, J.):**

1. This petition challenges an order passed by respondent no.2 dated 28 November 2013 and the order dated 20 February 2014 passed by respondent no.3 confirming the Order-in-Original (O-I-O) whereby the petitioner's registration under the Courier Imports And Exports (Clearance) Regulations, 1998 ('1998 Regulations') was revoked and an order of forfeiture of Rs.10 lakhs, deposited by the petitioner as security at the time of registration, was passed.

**Brief Facts:-**

2. The petitioner is engaged in the business of providing courier services. The petitioner was granted registration under the 1998 Regulations for conducting its business of clearing express import/export cargo through the courier mode as an authorised courier at the Mumbai terminal.

3. In the first week of November 2012, intelligence was received that the two consignments imported from gulf country carried contraband gold jewellery. Based on this intelligence, two consignments covered by Airway Bills ('AWB') Nos.9717334743 and 9717334738 dated 8 November 2012 were detained. The clearance of the said two consignments were handled by the petitioner for which 'Form IV' Bill of Entry was filed by the petitioner. The goods were

declared as 'Die and Hydraulic bottle jack' valued at Rs.8,728/- and the importers were entities controlled by one Shri Mansukhlal Dhanak. On an in-depth enquiry and examination of the said two consignments, gold jewellery weighing 4879.9 gms. was found concealed in the die and hydraulic bottle jack. The estimated value of the gold on the date of seizure was Rs . 1.21 crore.

4. On investigation, it was revealed that the petitioner was handling courier parcels of 'Balaji Engineering', 'Chamunda Enterprises' and 'Regent Engineering', entities belonging to Shri Mansukhlal Dhanak, without obtaining proper authorisation from the consignee. It was also revealed during the investigation that the petitioner had cleared more than 250 consignments described as "hydraulic jacks, dies and bladeless fans" from the period April 2012 to October 2012. These 250 consignments belong to the above referred entities of Shri Mansukhlal Dhanak.

5. The respondents recorded the statements of Shri Mansukhlal Dhanak, Shri Mohan Naik and the employees of the petitioner. In the investigation, it was revealed that Shri Mansukhlal Dhanak, through Shri Mohan Naik, engaged the petitioner for the clearance of imports since Shri Mohan Naik acted as an intermediary and knew Shri Mansukhlal Dhanak and the petitioner. In the statements recorded it is admitted that these consignments were cleared from April to October by the petitioner and Shri Dhanak has made payments through illegal channels. Therefore, although only two consignments are subject matter of this petition, we cannot

lose sight of the fact of past clearance. In the statement recorded, it was noticed by the respondents that the petitioner has not complied with the obligations cast upon the petitioner under the 1998 Regulations. Therefore, a show cause notice came to be issued against the petitioner.

6. Based on above, the proceedings were initiated by the respondents against the petitioner under the 1998 Regulations.

7. On 28 November 2013, an O-I-O was passed after considering the reply of the petitioner and after hearing the petitioner. The O-I-O holds that the petitioner has not carried out its obligation under Regulation 13(a), 13(c), 13(g), 13(i) and 13(j) of the 1998 Regulations and, therefore, the courier license issued was deregistered under Regulation 14 along with forfeiture of the security deposit.

8. Being aggrieved by the aforesaid O-I-O, the petitioner availed the alternate remedy of challenging the aforesaid order before respondent no.3 under Regulation 14 of the 1998 Regulations. On 20 February 2014, respondent no.3 confirmed the O-I-O passed by respondent no.2.

9. It is on the above backdrop that the present petition is filed under Article 226 of the Constitution of India challenging the aforesaid two orders since there is no further remedy provided under the 1998 Regulations.

10. We have heard learned counsel Mr. Shetty for the petitioner and the learned counsel Ms. Majumdar for the

respondents. We propose to deal with the submissions of the parties in our analysis and findings.

**Analysis & Conclusions:-**

**11.** On 9 November 1998, the Central Board of Excise and Customs through a notification notified the Regulations for regulating the business of courier at the Airport for the purposes of import and export. These regulations are called “the Courier Imports and Exports (Clearance) Regulations, 1998”. These 1998 Regulations apply for assessment and clearance of goods carried by the authorised couriers on incoming or outgoing flights or by any other mode of transport on behalf of a consignee or consignor for a commercial consideration.

**12.** Regulation 3 defines certain terms like “Authorised Courier,” “documents,” etc. Regulation 4 deals with packaging of goods to be imported or exported by courier. The said regulation provides that the goods shall be packed separately in identifiable courier company bags, with appropriate labels and each package of import or export goods shall bear a declaration from the sender regarding the contents of the package and the value thereof. Regulation 5 deals with clearance of import goods and lays down the procedure to be followed by the Authorised Courier for clearing the goods imported in the country. Regulation 6 deals with clearance of export goods.

**13.** Regulation 7 provides for application for registration to be made by a person intending to operate as an authorised

courier and thereafter under Regulations 8 and 9, if the applicant satisfies the conditions and on scrutiny of application, the applicant is found to be eligible, then under Regulation 10, registration is granted as an authorised courier. Regulation 10B prescribes for validity of registration and it states that a registration shall be valid unless and until revoked. Regulation 11 deals with execution of bond and furnishing of security by the authorised courier.

**14.** Regulation 13 provides for various obligations of Authorised Courier. Regulation 14 provides for deregistration. The said Regulation 14 provides that the registration may be revoked and the security may be forfeited if there is a failure of the Authorised Courier to comply with the conditions of the bond or there is a failure to comply with any of the provisions of the 1998 Regulations or there is misconduct on the part of the Authorised Courier which renders him unfit to transact any business in the Custom Station. The order of revocation can be challenged under Regulation 14.

**15.** Insofar as the present petition is concerned, the relevant clauses of Regulation 13 are transcribed below for convenience :-

***“REGULATION 13. Obligations of Authorised Courier- An Authorised Courier shall -***

- (a) obtain an authorisation, from each of the consignees of the import goods for whom such Courier has imported such goods or consignors of such export goods which such courier proposes to export, to the effect that the Authorised Courier may act as agent of such consignee or consignor, as the case may be, for clearance of such import or export goods by the proper officer;*

*[Provided that for import consignments having a declared value of ten thousand rupees or less, the authorization may be obtained at the time of delivery of the consignments to consignee]*

- (c) exercise due diligence to ascertain the correctness and completeness of any information which he submits to the proper officer with reference to any work related to the clearance of import goods or [of] export goods;*
- (g) maintain records and accounts in such form and manner as may be directed from time to time by an [Assistant Commissioner of Customs or Deputy Commissioner of Customs] and submit them for inspection to the said Assistant Commissioner of Customs or an officer authorised by him, wherever required.*
- (i) verify the antecedent, correctness of Importer Exporter Code (IEC) Number, identity of his client and the functioning of his client in the declared address by using reliable, independent, authentic documents, data or information;*
- (j) (not sub-contract or outsource functions permitted or required to be carried out by him in terms of these regulations to any other person, without the written permission of the "[Principal Commissioner of Customs or Commissioner of Customs, as the case may be]"*

**16.** We now propose to deal with each of the Regulations which have been invoked in the present case.

### **Regulation 13(a):-**

**17.** Regulation 13 (a) provides that the Authorised Courier is obliged to obtain an authorisation, from each of the consignees of the import goods for whom such courier has imported such goods and such authorisation should be to the effect that the Authorised Courier acts as an agent of such consignee for clearance of such imported goods.

**18.** Mr. Shetty, learned counsel for the petitioner brought to our attention page 76 of the Writ Petition and submitted that

the petitioner has complied with the obligations imposed by Regulation 13(a). He further submitted that in any case, Mr. Mohan Naik who sought the said courier service from the petitioner and Shri Mansukhlal Dhanak, the consignee have accepted in their statement that the petitioner was authorised to clear the imported goods. Therefore, he submits that there is no dispute that the petitioner was authorised by these two people for clearing the consignments under consideration. He, therefore, submitted that there is no violation of Regulation 13(a).

**19.** Ms. Majumdar, learned counsel for the respondents submitted that the so called authorisation at page 76 of the Writ Petition is dated 11 April 2012 whereas the consignments under consideration are of 8 November 2012 and, therefore, the said so called authorisation is not an authorisation for the import of the consignments under consideration. She further submitted that the said document, by no stretch of imagination, can be considered as authorisation as required under Regulation 13(a). She also submitted that the said authorisation is fabricated and not in the name of the petitioner and also not issued by the original importer.

**20.** Reliance placed on page 76 by the learned counsel for the petitioner to submit compliance of Regulation 13(a) is scanned as under : -



76

Exhibit - 'C'**BALAJI ENGINEERING**

80 FEET ROAD, PATEL NAGAR - 9, RAJLOT, GUJRAT.

FREIGHT FORWARDERS & SHIPPING AGENTS

Date : 11/4/2012

To,  
Sky Com Courier  
Andheri, Mumbai

→ Pg 87, 88

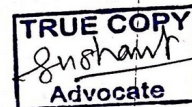
Kind Attention to Mr. Vasant

Dear sir,

This is to inform you that Balaji Engineering, Regent Engineering and Chamunda Enterprises are all our companies. We further request you that we will take the delivery from your Andheri Office opp. Garware. The s/mnt should not send to Rajkot.

This is for your information.

Regards,

Mr. Mansukh Jadeja  
C.E.O

tendered by Me.



29/11/12

(Arul Helvin Meneses)

**21.** The discussion on this Regulation by respondent no.2 is at page 24 of the O-I-O.

**22.** Regulation 13(a) obliges an Authorized Courier to obtain an authorization on behalf of the consignee or consigners as agent for clearance of import/export of goods. The document dated 11 April, 2012 relied upon by the petitioner to submit that they have complied with Regulation 13(a) cannot be accepted as an authorization contemplated under the said Regulation for various reasons. Firstly, the document is addressed to 'Sky Com Courier' whereas the petitioner before us is 'Skypak Services Specialists Limited'. The said document, so-called authorization, is not in the name of the petitioner but in the name of another entity. The other entity is Sky Com Courier Limited as per the statement of Shri Mohan Naik dated 10 November, 2012. Therefore, the contention of the petitioner that there is an authorisation in their favour, which is at page 76 of the Writ Petition, is required to be rejected.

**23.** Secondly, the said document is dated 11 April, 2012 whereas the consignment detained is of 8 November, 2012. The said document does not say the petitioner is authorized to clear the goods imported by the importer for all times to come. The authorisation should be on or before the date of imports. Statements subsequently recorded in which the Petitioner is said to have been authorised is not compliance if Regulation 13(a). Thirdly, the said document only states that the delivery will be taken from Andheri office and the consignment should not be sent to Rajkot. Therefore, even on this count the said document does not comply with the

requirement of Regulation 13 (a). Fourthly, Shri Mohan Naik in his statement on 29 November, 2012 admitted that he had prepared the said document on the letterhead of Balaji Engineering. The said statement clearly shows that there is no authority as contemplated under Regulation 13(a) in favour of the petitioner by any of the entities belonging to Shri Mansukhlal Dhanak.

**24.** In the courier Bill of Entry, an authorised courier must declare that they have obtained authorisation from the importer. One such Bill of Entry is at page 118 of the petition. In the instant case, the said declaration given is false because no such authorisation has been obtained. On a reading of the statements of Shri Dhanak and Shri Mohan Naik, it is clear that petitioner had no contact with Shri Mansukhlal Dhanak but the work of clearing given by Mansukhlal Dhanak was sub-contracted by Shri Naik to the petitioner. Therefore, clearly there is serious violation of Regulation 13(a). The consignment detained pertained to Airway Bill 971733473 and 9717334738 which as per pages 77, 78 and 91 of the petition pertains to Chamunda Trading and Regent Engineering whereas page 76 which the petitioner claims to be authorisation is on a letter head of Balaji Engineering. Therefore, even on this count petitioner's submission is found to be incorrect.

**25.** Therefore, for all the aforesaid reasons, the submission of the learned Counsel for the petitioner that document at page 76 of the Writ Petition, which is reproduced above, complies with Regulation 13(a) is to be rejected. We do not

see any infirmity in the orders of respondent Nos.2 and 3 in concluding that the petitioner has violated its obligation cast under Regulation 13(a).

**Regulation 13(i):-**

26. Regulation 13 (i) obliges an Authorized Courier to verify the antecedent, correctness of Importer Exporter Code (IEC) Number, identity of his client and the functioning of his client in the declared address by using reliable, independent, authentic documents, data or information.

27. Mr. Shetty, learned Counsel for the petitioner, submitted that the petitioner verified the IEC on the portal of the respondents and, therefore, the petitioner has discharged its obligations cast under Regulation 13(i).

28. Ms. Majumdar, learned Counsel for the respondents, submitted that on a perusal of the statements recorded and the investigation done, the petitioner failed to verify the identity and functioning of its client despite being obligated to do so. She submitted that admittedly the business was obtained by the petitioner from Shri Mohan Naik, who was serving as intermediary between the petitioner and the entities of Shri Mansukhlal Dhanak. She, therefore, supported the orders of both the Authorities on this count.

29. Shri Mansukhlal Dhanak, in his statement on 10 November, 2012, has admitted that he does not have any IEC issued in the name of his company. There is no rebuttal of this by the petitioner. Shri Mansukhlal Dhanak in his statement has also admitted that the addresses of the three entities are

bogus and fake. He has also admitted that the business of clearing the imported goods was given to the petitioner by Shri Mohan Naik, who happened to be known to Shri Dhanak. Furthermore, the airway bill annexed at page 116A of the Writ Petition in favour of 'Chamunda Trading', shows the address of Borivali, Mumbai. We, therefore, do not accept the contention of the learned Counsel for the petitioner that the obligation cast under Regulation 13(i) has been discharged.

**30.** The said regulation requires the authorised courier to verify not only the correctness of the IEC but also to verify the antecedents of the importer, identity of the importer and functioning of the importer at the declared address by using reliable, independent, authentic documents, data or information. We have not been shown any material by the petitioner that would compel us to conclude that the petitioner has verified the antecedents, identity, and functioning of the entities owned by Shri Manshukhlal Dhanak at the declared address using reliable, independent, and authentic documents, data, or information.

**31.** One of the addresses on the Airway Bill is of Borivali, Mumbai, and the petitioner's is also from Mumbai, which at least they could have verified as required under Regulation 13(i). Merely, verifying the IEC from the portal of the respondents would not relieve the obligation cast under Regulation 13(i) for verifying the antecedent, identity and functioning of the importer on the declared address. The petitioner's counsel himself has admitted that the business

from these three entities were received through one Shri Mohan Naik, who was an intermediary.

**32.** Therefore, in our view, in the absence of any material, we cannot accept the submission of the petitioner that the obligation cast under Regulation 13(i) has been discharged. It is also important to note that in a period of six months around 250 consignments were cleared on behalf of the entities owned by Shri Mansukhlal Dhanak. That means on an average more than one consignment a day was cleared. If this is the magnitude of the business obtained by the petitioner, it was obligatory on its part to have verified the antecedents, identity and functioning of such a person at the declared address. The statements recorded of Shri Dhanak, Shri Naik and Shri Menezes clearly evidences that the petitioner did not know anything about the entities of Shri Dhanak which clearly violates Regulation 13(i).

**33.** Therefore, in our view, the findings arrived by both the authorities cannot be said to be vitiated. In our view, the petitioner has not discharged its obligation cast under Regulation 13(i) of the 1998 Regulation.

**Regulation 13(g):-**

**34.** Regulation 13(g) requires an Authorized Courier to maintain records and accounts in such form and manner as may be directed from time to time and submit them for inspection whenever required.

**35.** Mr. Shetty, learned Counsel for the petitioner, submitted that they have correctly maintained the records and, therefore, the said obligation is discharged.

**36.** Ms. Majumdar, learned Counsel for the respondents, has relied upon the findings of both the Authorities in support of her submission that there has been a violation of Regulation 13(g).

**37.** At the outset, we wish to state that we have not been shown any records or documents which the petitioner claims to have maintained in compliance with Regulation 13(g). The order in O-I-O categorically states that the petitioner could not produce any authentic records of the entities controlled by Shri Mansukhlal Dhanak. None of the documents of these entities were produced before us. The said findings in the O-I-O have been confirmed by respondent No.3. Except for making a bald statement, we have also not been shown what records the petitioner has maintained with respect to the entities of Shri Mansukhlal Dhanak. Therefore, in our view, there is violation of Regulation 13(g) by the petitioner. In the absence of any perversity shown in the impugned orders and the failure of the petitioner to produce any records before us, we do not agree with the contention of the petitioner that there has been compliance of Regulation 13(g).

**Regulation 13(j):-**

**38.** Regulation 13(j) provides that an Authorized Courier shall not sub-contract or outsource functions to be carried out by him without the written permission of the Principal

Commissioner of Customs or Commissioner of Customs. Insofar as, this regulation is concerned, we agree with the learned counsel for the petitioner that it is not the case of the respondents that the petitioner has sub-contracted its functions to any other persons. Rather, the case of the respondents appears to be that because Shri Mohan Naik had sub-contracted his work to the petitioner, Regulation 13(j) was attracted. In our view, since the petitioner has not subcontracted its functions, Regulation 13(j) cannot be said to have been violated. Therefore, the findings of both authorities, insofar as this regulation is concerned, are vulnerable.

**39.** However, in our view, both the Authorities are justified in recording adverse findings regarding the petitioner's non-compliance with the obligations under Regulations 13(a), 13(i), and 13(g). Given these serious violations, the finding regarding Regulation 13(j) of the 1998 Regulations, even if excluded, will not affect the impugned orders in the least.

**Submissions and Findings on Disproportionality:-**

**40.** Mr. Shetty, alternatively, contended that revocation of the licence and forfeiture deposit is disproportionate and, therefore, this Court should interfere in the impugned orders insofar as revocation is concerned. He submitted that there is no *mens rea* on the part of the petitioner in non-compliance with the regulation and relying upon the following three decisions, submitted that the revocation of the licence in the absence of *mens rea* was unjustified.



- i) **Exim Cargo Services vs. Commissioner of Customs (General)**<sup>1</sup>
- ii) **Kunal Travels (Cargo) vs. CC (I & G), IGI Airport, New Delhi**<sup>2</sup> &
- iii) **Ashiana Cargo Services vs. Commissioner of Customs (I&G)**<sup>3</sup>
- iv) **D. S. Cargo Agency Vs. CC**<sup>4</sup>

41. Regulation 14 deals with deregistration. Regulation 14(1) provides for revocation and forfeiture of security on any of the grounds mentioned therein. Regulation 14(1)(b) refers to failure of the Authorized Courier to comply with any of the provisions of the 1998 Regulations. In the instant case, we have already held above that the petitioner has not carried out its obligation under Regulation 13(a), 13(g) and 13(i). Therefore, the case of the petitioner squarely falls within Regulation 14(1)(b) of the 1998 Regulations.

42. The facts narrated above clearly demonstrate that the petitioner has been negligent in carrying out its obligation under the 1998 Regulations. These obligations are cast on the Authorised Courier since the petitioner was engaged in the business of clearance of imports and exports. There is a high degree of responsibility cast upon the petitioner in the discharge of its functions because the repercussions of illegal imports and exports are economically and otherwise also far reaching.

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<sup>1</sup> [2019 (368) ELT 1024 (Del.)]

<sup>2</sup> [2017 (354) ELT 447 (Del.)]

<sup>3</sup> [2014 (3) TMI 562 – Delhi High Court]

<sup>4</sup> 2023 (9) TMI 1202 (Del.)

43. In the instant case, more than 250 consignments were cleared by the petitioner on behalf of the entities which were not genuine. It is only after a period of six months and on receipt of intelligence that the two consignments under consideration were detained and from which approximately 4879 gms. of gold was seized. The said gold was smuggled into the country in violation of the law. Had the petitioner discharged its obligation under Regulation 13, the illegality committed by the bogus entities of Shri Mansukhlal Dhanak could have been prevented at least from being carried out through the petitioner. Shri Dhanak has admitted in his statement that payments for all these consignments were sent to the Gulf by illegal channels. This shows that earlier consignments cleared by the petitioner amounted to smuggling, leading to a huge loss to the State.

44. There are reasons why these obligations are cast and the business of courier at the Airport is regulated. Considering the nature of the business in which the petitioner is engaged and for which he was authorised under the 1998 Regulations, non-compliance with the **Regulations** must be dealt with strictly. If any lenient view is taken, particularly in light of the present case, it would send a wrong signal, and this Court, under Article 226 of the Constitution of India, cannot condone such leniency. Any such exercise of discretion of leniency will only encourage persons to commit the offence by taking recourse to the services of the courier agencies. We, therefore, do not accept the submission of the petitioner in the instant case that a lenient view should be taken. In our view and

more so looking at the facts of the present case and findings arrived at by us as above, the Authorities were justified in revoking the licence and forfeiting the security deposit.

**45.** On a reading of various obligations cast on authorised couriers under Clauses (a) to (j) of Regulation 13, in our view, an authorised courier acts in a fiduciary capacity on behalf of their client and the customs authorities. He is a bridge on which the customs authorities rely heavily in ensuring that clearance of imports and exports of goods affecting the economy is legal. Regulation 13(b) requires the authorised courier to advise his clients to comply with Customs Act, Rules and Regulations. Regulation 13(c) requires the exercise of due diligence to ascertain correctness of various information submitted to the authorities. He is obliged not to withhold information from the assessing officer of the Customs under Regulation 11, and the authorised courier is liable to pay duty and interest also. In our view and on dissection of Regulation 13 and 1998 Regulation as a whole, there can be no iota of doubt in the facts of the present case that there is any disproportionality in revoking the license. The petitioner has shown utter disregard to the 1998 Regulations, which has resulted into huge revenue loss to the exchequer. Beneath every obligation lies deep responsibility and discharge of these obligation is not merely paper compliances. The revocation is because the petitioner failed to carry out its obligations under the 1998 Regulations which if carried out would have detected the bogus importers and saved the nation of the outflow of foreign exchange by illegal means. It is with the

said object that obligations are framed under the 1998 Regulations.

46. The Government has been simplifying the law and procedure relating to imports through courier from time to time. Accordingly, lot of trust and reliance has been placed on the courier agencies. A very clear procedure has been put in place by way of Courier Regulations to stream line the imports through courier mode. It was incumbent upon the Petitioner courier agency to adhere to the Regulations in order to safeguard the interest of Revenue and the trust placed on them. The Petitioner was mandated to work within the legal framework of the Customs Act, 1962, Rules and Regulations made thereunder. The Petitioner failed to do so. The Petitioner did not exercise due diligence in discharging its obligations under the Regulations. By violating the Regulations, it had given scope for massive misuse of the facility given in addition to loss of Revenue. In short, the Petitioner courier agency has breached the trust reposed on it by the Revenue. Therefore, the revocation of license is justified and any leniency shown in the misconduct of this nature would send wrong signals. Punishment of revocation of licence would certainly go a long way to act as a deterrent.

47. Keeping Regulation 13 analysed and cited above would certainly show that by a legal fiction the Petitioner steps into the shoes of the importer and has a legal responsibility which crystallises into legal liability to answer any contravention or fraud or for that matter any criminality in conduct. In the

instant case, we notice that two consignments were found which smuggled gold of 4879.9 grams which indicates criminality. The Petitioner, if not directly, vicariously becomes liable for such act on account of his non-discharge of the obligations cast under the Regulations.

48. The issue also arose before the Hon'ble Delhi High Court in the case of *M/s. Bombino Express Pvt. Ltd. v. The Chief Commissioner of Customs (Delhi Zone) & Anr.*<sup>5</sup> (2015) 315 *ELT* 496 where on very similar regulations and facts, the Delhi High Court upheld the revocation of licence under Regulation 14 for violation of Regulations 13(a) and 13(g) of the 1998 Regulations.

49. It is also important to note that we are not sitting in Appeal from the orders of both the Authorities as the petitioner has challenged the orders by invoking our extraordinary jurisdiction under Article 226 of the Constitution of India. Our scope of interference is much narrower than in an appeal and moreso the petitioner in the present case cannot invoke equitable and discretionary jurisdiction for showing the leniency in the present facts of the case. We do not find any infirmity in the decision-making process of both the Authorities nor is it the case of the petitioner. The findings of both the Authorities are based on facts and on examination independently by us, we also agree with the concurrent findings of facts arrived at by both authorities. Therefore, in our view, no leniency can be

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<sup>5</sup> (2015) 315 *ELT* 496

accorded to the petitioner and order of revocation and forfeiture of deposit is required to be confirmed and same cannot be treated as disproportionate in the facts of the present case.

50. It is apt to refer to the decision of the Hon'ble Supreme Court in the case of ***Commissioner of Customs v. K. M. Ganatra & Co.***<sup>6</sup> reported in ***(2016) 4 SCC 687*** wherein the Supreme Court has affirmed that for revocation of license mens rea is not relevant if there is non-compliance of obligations cast under the Regulations. The relevant para 18 of the said decision reads as under:

*In this regard, Ms Mohana, learned Senior Counsel for the appellant, has placed reliance on the decision in Noble Agency v. Commr. of Customs [Noble Agency v. Commr. of Customs, (2002) 142 ELT 84 (Tri)] wherein a Division Bench of CEGAT, West Zonal Bench, Mumbai has observed : (ELT p. 87, para 12)*

*"12. The CHA occupies a very important position in the Custom House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the government agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even*

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<sup>6</sup> (2016) 4 SCC 687

*without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations.”*

*We approve the aforesaid observations of CEGAT, West Zonal Bench, Mumbai and unhesitatingly hold that this misconduct has to be seriously viewed.*

51. The decisions relied upon by the learned counsel for the petitioner do not apply to the facts of the present case. Also these decisions run contrary to the above decision of the Supreme Court. We have, as we have already observed above, the findings of the authorities have not been rebutted. We have concluded that the petitioner was negligent in discharging its obligation under the Regulations and therefore, the decisions relied upon are not applicable and are distinguishable on facts and more so in the present case.

52. The authorities appointed under the Act are the best judges based on ground reality to revoke the license and unless it shocks the conscience of the Court or it is so perverse that a reasonable person could not have imposed such a punishment, the Court will not exercise its equity jurisdiction.

53. In view of the above, the Rule is discharged, and the petition is dismissed. Notice of motion, consequently, does not survive.

**(Jitendra Jain, J)**

**(M.S. Sonak, J)**