

of licence of the Customs Broker/Petitioner was subject to fresh security deposit and payment of penalty imposed under the said order.

Facts in brief in this case as appear on perusal of the Writ Petition is that petitioner no. 1 is a partnership firm having a customs broker licence which is valid up to 23rd May, 2026. A proceeding under Section 17 of the Customs Broker Licensing Regulations, 2018 ("CBLR, 2018" in short) was initiated against the petitioner no. 1 which was finally culminated into original adjudication order dated 3rd March, 2021 being Annexure – "P-3" to the Writ Petition imposing punishment of penalty of Rs. 50,000/- and forfeiture of security deposit which was furnished by the petitioner no. 1 under Regulations 8 of Customs Brokers Licensing Regulations, 2018, at the time of granting Customs Broker Licence.

It is the case of the petitioner that on 18th March, 2021 while processing a bill of entry at the Indian Customs EDI system it came to know of an "Alert" in EDI system of the Customs that the licence of the petitioner has been suspended against which petitioner made a representation on 19th March, 2021 before the respondent concerned to consider the case of the petitioner so that it can process the bill of entry and transact the business as a customs broker.

The petitioner has contended that the impugned action of issuance of "Alert" and "Suspension" of the aforesaid licence of the petitioner in Customs EDI system is in total departure and violation of due process of law as envisaged under Customs Act, 1962 and Customs Brokers Licensing Regulations, 2018 thereunder and it amounts to infringement of petitioners' right to livelihood and right to carrying on its business.

Being aggrieved by the aforesaid impugned action of suspending the aforesaid licence of the petitioner and sitting over the Petitioner's representation against the same by the respondents, petitioner has filed the instant Writ Petition on 22nd April, 2021. During the pendency of the Writ

petition, petitioner has filed statutory appeal on 23rd June, 2021, before the Learned Tribunal by making pre-deposit of 7.5% of the penalty amount of Rs. 50,000/- imposed by the adjudicating authority by the order dated 3rd May, 2021 and also challenging the impugned punishment of forfeiture of security deposit of the petitioner.

With the leave of this Court, petitioner has filed connected application being GA No. 1 of 2021 challenging the impugned order of corrigendum passed by the Principle Commissioner of Custom (A & A) under Section 154 of the Customs Act, 1962 purported to be passed in April, 2021 which does not contain date and signature of the Commissioner who has passed such order as appears at page 14 of the said application though it shows attestation of the said order of corrigendum, by the appraiser customs broker section, on 3rd May, 2021 as appears at page 13 of the aforesaid connected application.

Learned Advocate appearing for the petitioner submits that the appeal of the petitioner against the adjudication order dated 3rd March, 2021 which was filed after making pre-deposit of 7.5% of the penalty imposed as per relevant law, on legality of the aforesaid two issues, is pending before the Ld. Tribunal. He also submits that there is no whispering about suspension of petitioner's Customs Broker Licence in the said original adjudication order dated 3rd March, 2021 and it contains only imposition of penalty of Rs. 50,000/- and forfeiture of security deposit and petitioner was surprised to find "Alert" in the customs EDI system on 18th March, 2021 that its aforesaid licence has been suspended but the respondent authority has never disclosed when the formal order of suspension of the said licence was passed and it is the case of the petitioner that the suspension of the aforesaid licence is in total disregard and in complete violation of provisions of Regulation 16 (1) and (2) of the Customs Brokers Licensing Regulations, 2018 which are only provisions for suspension of such licence. He submits that as per criteria laid down in the aforesaid Regulation 16 (1), the respondent authority could not have passed the order of

suspension of the aforesaid licence on 15th March, 2021 since it is admitted position that after the final order of adjudication made on 3rd March, 2021 question of pendency of any enquiry or contemplation of any enquiry against the petitioner does not arise which are the criteria and conditions precedent for suspension of Customs Broker Licence under Regulation 16 (1) of Customs Brokers Licensing Regulations, 2018.

Petitioner submits that displaying of “Alert” and “Suspension” of licence of the petitioner in the EDI system of Customs authority on 18th March, 2021 is illegal and is not in accordance with the law and submits that even if it is presumed that after the order of adjudication order dated 03rd March, 2021, purported order of suspension of license under Regulation 16 (1) of the said Regulation was passed on 15th March, 2021 which is the date according to respondents in its affidavit-in-opposition, the respondent never furnished any formal order of suspension of the aforesaid licence to the petitioner and further submits that the respondent concerned was also bound to give an opportunity of hearing to the petitioner within 15 days from the date of such purported order of suspension which is mandatory as per Regulation 16 (2) of the Customs Brokers Licensing Regulations, 2018 and the said provision of Regulation 16 (2) was never complied with even till date.

Petitioner further submits that the impugned order of corrigendum under Section 154 of the Customs Act, 1962 which according to the respondent, was passed on 30th April, 2021 though a copy of the same which was furnished to the petitioner does not contain the date and signature of the Commissioner of Customs and which is much later to the original adjudication order dated 3rd March, 2021. The impugned “Alert” dated 15th March, 2021 showing suspension of licence of the petitioner and the said corrigendum/rectification under Section 154 of the Customs Act as appears at page- 14 of the application being CAN No. 1 of 2021 are after passing of the original order of adjudication dated 3rd March, 2021.

Petitioner relies on a circular no. 502/68/99-CX dated 16th December, 1999 issued by the Ministry of Finance, Department of Revenue (Central Board of Excise & Custom), Government of India, in support of his contention that there cannot be any significant change or alteration in the original adjudication order and only clerical or arithmetical or typographical mistake can be corrected under Section 154 of the Customs Act, 1962 and the authority should take recourse to review for any significant change or alteration in the original adjudication order.

He has further relied on a circular no. 788/21/2004-CX dated 25th May, 2004 issued by the Ministry of Finance, Department of Revenue (Central Board of Excise & Custom), Government of India in support of his contention that officer concern should refrain from taking coercive action for recovery of the demand raised in the order of adjudication till the period of 6 months of filing of stay petition in Appeal against the adjudication order.

He has further relied on a circular no. 984/08/2014-CX dated 16th September, 2014 issued by the Ministry of Finance, Department of Revenue (Central Board of Excise & Custom), Government of India in support of his contention that since the petitioner has filed appeal by making pre-deposit of 7.5% of the penalty imposed in the adjudication order dated 3rd March, 2021, no coercive measure for recovery of the balance amount under Section 129E of the Customs Act, 1962 should be taken.

He has further relied on a circular no. 1053/2/2017-CX dated 10th March, 2017 issued by the Ministry of Finance, Department of Revenue (Central Board of Excise & Custom), Government of India, containing the opinion of Ministry of Law and advice that the adjudicating authority after passing the order of adjudication becomes functus officio and he can make rectification of an order where there is only minor clerical mistakes and which does not alter the adjudication order itself.

Learned Advocate appearing for the petitioner has relied on Paragraph- 38 of a judgment of the Hon'ble Supreme Court in the case of Union of India – vs- West Cost Papers Mills Ltd. Reported in 2004 (164) E.L.T. 375 (SC) on the proposition that since the appeal of the petitioner against the adjudication order is pending before the Appellate Authority the issue involved has not reached its finality.

He has further relied on Paragraph- 69 of a judgment of the Hon'ble Supreme Court in the case of Dharam Dutta –vs- Union of India reported in AIR 2004 Supreme Court 1295 on the same proposition that a decision does not reach its finality if it is pending before the Appellate Authority.

Learned Advocate appearing for the respondents custom authority has filed affidavit-in-opposition in the instant Writ Petition and in connected application and submits that in the instant case petitioner has violated regulations 10 (b), 10 (d), 10 (e) and 10 (h) of the Customs Brokers Licensing Regulations (CBLR), 2018 and for violation of the same respondent customs authority by its order of adjudication dated 3rd March, 2021, has imposed a penalty of Rs. 50,000/- in terms of Regulation 18 of the Customs Brokers Licensing Regulations, 2018 and forfeiture of security deposit furnished by the petitioner/Customs Broker and for non-compliance of the order of adjudication dated 3rd March, 2021 by not paying the penalty and full amount of fresh security deposit, in EDI system of Customs with effect from 15th March, 2021 it was showing “Alert” and “suspension” of licence and the petitioner has no security deposit to continue with its business transaction.

Learned Advocate appearing for the respondent customs authority submits that the petitioner's licence has neither been revoked nor suspended, it is simply “Alert” in the system but he could not show the formal order of suspension passed by the Commissioner or show any provision of law or any guideline under which circumstances and when and in which case the said

“Alert” and “Suspension” could be displayed in Customs EDI system which is penal in nature infringing the petitioner’s right to livelihood.

Respondents customs authority themselves have admitted in their affidavit-in-opposition to the G.A. No. 1 of 2021 in Paragraph – 3 (b) that order of suspension of the petitioner’s Customs Broker licence was passed on 15th March, 2021 but it has failed to annex in his affidavit any formal order of such suspension of the licence of the petitioner and also could not show from record as to how formalities of Regulation 16 (1) & (2) of the Customs Brokers Licensing Regulations, 2018 for suspending the aforesaid licence were observed by the Commissioner of Customs after passing the original order of adjudication on 3rd March, 2021 after which no proceeding was pending or contemplating against the petitioner.

Learned Advocate appearing for the respondents customs authority submits that suspension of the aforesaid licence is automatic on non deposit of penalty and fresh security deposit in compliance of the original adjudication order dated 3rd March, 2021 but in support of his such contention could not show any provision of law, regulation, notification or circular or guideline with regard to such penal action of automatic suspension of the petitioner Customs Broker’s licence in question in case of such non-compliance of the adjudication order which has no whispering about the suspension of the aforesaid licence.

Learned Advocate appearing for the respondents customs authority could not show any provision of law to show existence of any provision of “Deemed” or “automatic” suspension of licence of Customs Broker either under the Customs Act, 1962 or under Customs Brokers Licensing Regulations, 2018, though he submits that the Commissioner of Customs has got the power under Regulation 18 (3) of the Customs Brokers Licensing Regulations, 2018 to take any action apart from imposition of penalty but could not satisfy that in exercise of power under Regulation 18 (3), Commissioner of Customs has got

the power to dispense with or waive the formalities of Regulation 16 of the Customs Brokers Licensing Regulations, 2018.

Learned Advocate appearing for the Customs authority also contends that the impugned order of corrigendum by invoking Section 154 of the Customs Act, 1962 for suspension of the petitioner's customs broker licence and imposing conditions for restoring of suspension of licence of the petitioner is justified since it could not be recorded in the original adjudication order due to inadvertence while it would appear that the aforesaid impugned rectification order itself is not the order of suspension and it simply puts the conditions for restoration of the order of the said aforesaid suspended licence.

The respondents in support and justification of its action of invoking Section 154 of the Customs Act, 1962 has relied on several judgments which are as follows:

- (a) 1997 (95) E.L.T. 33 (Mad.) (Collector of Customs & Central Excise, Madurai -vs- Samudram)
- (b) 2019 (365) E.L.T. 802 (Mad.) (Commissioner of Customs (port-imports), Chennai -vs- Volvo India Pvt. Ltd.)
- (c) 1996 (83) E.L.T. 41 (Ker.) (Union of India -vs- Aluminium Industries Ltd.)
- (d) Civil Appeal No. 1171 of 2004 Supreme Court of India (Assistant Commissioner of Income Tax, Rajkot -vs- Saurashtra Kutch Stock) dated 15th September, 2008

Learned Advocate appearing for the respondents could not deny that in the instant case original order of adjudication was passed on 3rd March, 2021, and at the time of passing such order the aforesaid licence of the petitioner was not suspended and only the punishment of forfeiture of security deposit was ordered in addition to imposition of penalty. He has submitted that petitioner's Customs Broker Licence was suspended for a considerable period in

implementation of the original order of adjudication and as a consequence of non deposit of fresh security deposit petitioner was not allowed to transact its business. He submits that order of corrigendum under Section 154 of the Customs Act, 1962 was issued after approval by the Commissioner of Customs on 30th April, 2021 informing the petitioner on 3rd May, 2021 that its aforesaid licence will be restored only after fresh security deposit and deposit of penalty amount of Rs. 50,000/-. He further submits that since the petitioner failed to deposit the penalty amount and started to transact its business by processing bill of entry, an “Alert” and “Suspension” has been issued in the EDI system of Customs for restricting transaction of its business.

Some provisions of Customs Act, 1962 which are relevant for this case are quoted hereunder:

“129-E. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal.-- The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal, -

(i) Under sub-section (1) of Section 128, unless the appellant has deposited seven and a half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the Commissioner of Customs;

(ii) Against the decision or order referred to in clause (a) of sub-section (1) of Section 129-A, unless the appellant has deposited seven and a half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where

such penalty is in dispute, in pursuance of the decision or order appealed against;

(iii) Against the decision or order referred to in clause (b) of sub-section (1) of Section 129-A, unless the appellant has deposited ten per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against:

Provided that the amount required to be deposited under this Section shall not exceed Rupees Ten crores:

Provided further that the provisions of this Section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.”

“154. Correction of Clerical errors, etc. – Clerical or arithmetical mistakes in any decision or order passed by the Central Government, the Board or any officer of customs under this Act, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Central Government, the Board or such officer of customs or the successor in office of such officer, as the case may be.”

Some relevant Regulations of the Customs Brokers Licensing Regulation, 2018 are as follows:

“Regulation 8. Execution of bond and furnishing of security.—(1) Before granting the license under regulation 7, the Principal Commissioner or Commissioner

of Customs shall require the successful applicant to enter into a bond in Form D and where specified a surety bond in Form E for due observance of these regulations and furnish a bank guarantee, or a postal security or National Saving Certificate or a fixed deposit receipt issued by a nationalised bank, in the name of the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, for an amount of five lakhs rupees for carrying out the business as a Customs Broker.

(2) In cases where a postal security or National Saving Certificate or a fixed deposit receipt is furnished, the benefit of interest on the instrument shall accrue to the Customs Broker concerned.”

“Regulation 16. Suspension of license. – (1) Notwithstanding anything contained in regulation 14, the Principal Commissioner or Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the license of a Customs Broker where an enquiry against such Customs Broker is pending or contemplated:

Provided that where the Principal Commissioner or Commissioner of Customs may deem fit for reasons to be recorded in writing, he may suspend the license of a specified number of Customs Stations.

(2) Where a license is suspended under sub-regulation (1), the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, shall, within fifteen days from the date of such suspension, give an opportunity of hearing to the

Customs Broker whose license is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the Customs Broker:

Provided that in case the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, passes an order for continuing the suspension, further procedure thereafter shall be as provided in regulation 17.”

“Regulation 18. Penalty.—(1)The Principal Commissioner or Commissioner of Customs may impose penalty not exceeding fifty thousand rupees on a Customs Broker or F-card holder who contravenes any provisions of these regulations or who fails to comply with any provision of these regulations.

(2) The Deputy Commissioner or an Assistant Commissioner of Customs may impose penalty not exceeding ten thousand rupees on a G-card holder who contravenes any provisions of these regulations in connection with the proceedings against the Customs Broker.

(3)The imposition of penalty or any action taken under these regulations shall be without prejudice to the action that may be taken against the Customs Broker or F-card holder or G-card holder under the provisions of the Customs Act, 1962 (52 of 1962) or any other law for the time being in force.

On perusal of the Writ Petition, connected application and affidavits filed by the parties and considering the submission of the parties, according to me

following questions of law arise which are required to be considered and answered in this case:

- (i) Whether there is any provision of “automatic” or “Deemed Suspension” of licence of Customs Broker under the Customs Act, 1962 or under the Customs Brokers Licensing Regulations, 2018?
- (ii) Whether Commissioner of Customs after passing the final adjudication order and when there is any enquiry proceeding pending or contemplating as per Regulation 16 (1) of the Customs Brokers Licensing Regulations, 2018, has the jurisdiction to pass order suspending the licence of the Customs Broker by waving or dispensing with the formalities of Regulation 16 (1) and (2) of the Customs Brokers Licensing Regulations, 2018.
- (iii) Whether any provisions of Customs Act, 1962 or Customs Brokers Licensing Regulations, 2018 confers such power of discretion upon the Commissioner of Customs to waive or dispense with the formalities of Regulation 16 (1) & (2) of the aforesaid Regulations for suspending the licence of a Customs Broker?
- (iv) Whether in exercise of power under Section 154 of the Customs Act, 1962 can Commissioner of Customs, by way of corrigendum insert additional order of punishment by suspending Customs Broker licence of the petitioner or put conditions of restoration of licence of Customs Broker and make substantial and significant alteration in the original order of adjudication after passing of the original adjudication order in the name of correcting clerical or arithmetical or typographical error when in the original adjudication order there were only two punishments that is penalty of Rs. 50,000/- and forfeiture of security deposit of the petitioner and there was no whispering about the suspension of the aforesaid licence in it?

- (v) Whether the term “security deposit” has the same nature and character as of “Duty” or “Penalty”?
- (vi) Whether by making pre-deposit of 7.5 % of the amount of penalty imposed in adjudication order while filing appeal before the Tribunal against the original adjudication order would amount to automatic revocation or stay of the order of forfeiture of security deposit?

For answering the aforesaid questions I would like to deal with the relevant provisions of law, circulars, notifications etc., and the judgments relied upon by the parties in course of hearing.

The respondents Customs authority could not show any provision under Customs Act, 1962 or Customs Brokers Licensing Regulations, 2018 for any “Deemed Suspension” or “automatic suspension” of brokers licence. Regulation 16 (1) of the Customs Brokers Licensing Regulations, 2018 confers the power upon the Principle Commissioner or Commissioner of Customs in appropriate cases where immediate action is necessary he can suspend the licence in the circumstances where an enquiry against any Customs Broker is “pending” or “contemplated” but in this case I find from record and even averments made by the respondent customs authority in its affidavit-in-opposition that on the date when the original adjudication order was passed on 3rd March, 2018 there was no whispering about suspension of the aforesaid licence of the petitioner, it had only two punishments namely penalty of Rs. 50,000/- and forfeiture of security deposit of the petitioner and it has been admitted by the respondent Commissioner of Customs in his affidavit-in-opposition that after the order of adjudication imposing the aforesaid punishment on 3rd March, 2021, subsequent by order of suspension of Customs Broker licence of the petitioner was passed on 15th April, 2021 when no enquiry proceeding was pending or contemplating against the petitioner. No record of formal order of suspension of the aforesaid licence has been shown or placed before me as to when the

formal penal order of punishment of suspension of Brokers Licence of the petitioner was passed and neither it has annexed in its affidavit-in-opposition to the Writ Petition and connected application and also no documents were produced to show that statutory criteria under Regulation 16 (1) were fulfilled and formalities of Regulation 16 (2) of the aforesaid Regulations were observed before passing the order for suspending such licence.

Regulation 18 (3) of the Customs Brokers Licensing Regulations, 2018 upon which learned Advocate for the respondents Customs authority has relied for justifying the action of suspending of the aforesaid licence without observing the statutory formalities of Regulation 16, according to me nowhere in Regulation 18 (3) it confers any power upon the Commissioner of Customs to dispense with or waive the statutory obligation and formalities under Regulation 16 of the said Regulations for suspending the aforesaid licence and the respondents could not show any provision of law relating to concept of “automatic” or “Deemed” Suspension of Customs Broker licence under the Customs Act, 1962 or Customs Brokers Licensing Regulations, 2018. Learned Advocate for the respondents also could not show any guideline with regard to display of “Alert” and “Suspension” as to when and in which case it will be displayed in the Indian Customs EDI system.

With regard to justification of the respondent for invoking Section 154 of the Customs Act, 1962 as appears at Page – 13 and 14 of the connected applications and defending the action of the respondent Commissioner of Customs, on perusal of the same I find that the order of Commissioner at page – 14 does not bear any date and signature of the Commissioner which was attested and forwarded by the staff of the Customs Department to the petitioner as appears at Page – 14 by letter dated 3rd May, 2021 communicating to the petitioner that its Customs Broker licence will be restored subject to fresh security deposit and on payment of penalty imposed in adjudication order. When the respondent produced the original order under Section 154 of

the Customs Act, 1962, I found that it does not tally with the copy of the corrigendum order under Section 154 furnished to the petitioner which has been annexed to the connected application since copy which was forwarded to the petitioner shows the date of the order blank and it mentions April 2021 and it does not contain the signature of the Commissioner of Customs who has passed the aforesaid order while the original order produced before me contains the signature of the Commissioner and shows the date of passing the order as 30th April, 2021. The order of corrigendum does not support the case of the respondents for justification of suspension of the said licence since it simply puts the conditions for restoration of the said licence in the name of rectification and this order dated 30th April itself is not the order of suspension of licence and does not show compliance of Regulation 16 of the Customs Brokers Licensing Regulations, 2018.

The decisions which were cited by the learned Advocate for the Customs on scope of Section 154 of the Customs Act, 1962, I have considered all those judgments which clearly says the ambit and scope of invoking Section 154 of the Customs Act is conferred to rectification of clerical or arithmetical or typographical error in the order of adjudication and in my considered opinion Section 154 of the Customs Act cannot be used for making substantial change or alteration in the original order of adjudication by way of imposing additional penalty or putting conditions restoration of licence in the name of correcting clerical, arithmetical or typographical mistake when in the original order of adjudication there is mentioning of suspension of licence at all.

It has been brought to my notice the circular no. 502/68/99-CX dated 16th December, 1999 issued by the Ministry of Finance, Department of Revenue (Central Board of Excise & Custom), Government of India, with regard to action of corrigendum subsequent to adjudication order passed by the Departmental Authorities, opinion was sought from the Law Ministry and it appears from the said Circular dated 16th December, 1999 that on that basis of

opinion of Ministry of Law, advice has been issued to the department and to all concerned that where any significant change in the order becomes necessary after the order has been passed which cannot be termed as clerical or arithmetical or typographical mistakes, in such cases review might be mooted instead of taking recourse to corrigendum and that after the order of adjudication, authority passing such order becomes functus officio as appears from the aforesaid notification dated 16th December, 1999.

In view of the discussion made above I am of the considered opinion that the impugned action of suspending Customs Broker Licence of the petitioner which is penal in nature depriving livelihood of the petitioner, is not supported by any provision of law and has no legal sanction and is not sustainable in law since it is settle position of law that every action of the statutory authority must be supported by legal provisions and authorization by the statute and a statutory authority cannot act or do anything which has not been authorised under the law and it shall act only in the manner it has been authorised by law.

I am also of the considered opinion, in view of the discussion made above that the impugned order of corrigendum under Section 154 of the Customs Act, 1962 is not sustainable in law since in the name of rectification of clerical or arithmetical or typographical mistake neither any additional penal order of suspension of licence can be inserted nor any fresh condition can be imposed for restoration of Customs Broker licence when the punishment of suspension of licence itself had no existence in the original order of adjudication.

Whether the term "Security deposit" has the same nature and character legally as of "Duty" and "Penalty" and whether by mere pre-deposit of 7.5% of the penalty amount imposed in the original adjudication order, in filing the appeal would amount to automatic stay or revocation of the order of the

forfeiture of security deposit passed in the original adjudication order against which appeal has been filed?

In my view the term “Security deposit” cannot be equated with the term “Penalty” or “Duty” and their nature and character are totally different since security deposit does not arise out of any demand and “Security Deposit” is a condition precedent for granting Customs Broker Licence while the “Duty” and “Penalty” arise out of a transaction and adjudication proceeding and security deposit has nothing to do with “Duty” or “Penalty” which arise out of an adjudication proceeding. Petitioner itself before filing the appeal has made pre-deposit of 7.5% of the penalty only which was imposed in the adjudication proceeding and not any pre-deposit of any percentage of amount of the security deposit. On perusal of Section 129 E of the Customs Act, 1962, I find that it talks only about pre-deposit of certain percentage of duty demand or penalty imposed before filing appeal and nowhere it talks anything about the security deposit.

Contention of the learned Advocate for the petitioner that no coercive action can be taken after filing the appeal by making pre-deposit of the percentage of penalty prescribed under Section 129E of the Act by no stretch can enlarge the scope to the extent that the pre-deposit of penalty imposed in the adjudication order against which appeal has been filed would amount to automatic stay of the order of the forfeiture of security deposit or revocation of the order of the forfeiture of the security deposit. All the circulars/notifications referred above which has been relied upon by the petitioner in support of his contention that by mere filing of appeal upon payment of certain percentage of penalty under Section 129E of the Customs Act, 1962, order of forfeiture of security deposit would automatically stand stay is not tenable in the eye of law since none of those circular talks about Security Deposit and such contention is not supported by any Act, circular or notification. All the circulars and notifications and regulations and the statute upon which the petitioner has

relied talks only about “Duty” and “Penalty” and “Interest” and do not cover the issue of forfeited security deposit in adjudication proceeding.

Circular No. 201/04/98-CX.6 issued by the Ministry of Finance, Department of Revenue (Central Board of Excise & Custom), Government of India upon which petitioner has relied has no relevance since it specifically relates to Central Excise and it talks about “Duty” demanded and is applicable in the cases where the formal stay application has been made and is pending with a direction upon the Appellate Authority to dispose the stay application within a month of its filing. So this Circular has got no manner of application in this case since there is no involvement of fact of filing of stay application during the appeal against the order of adjudicating authority.

Circular being F. No. 208/41/2003-CX-6 issued by the Ministry of Finance, Department of Revenue (Central Board of Excise & Custom), Government of India dated 25th May, 2004 upon which the petitioner has relied has also no manner of application in this case since that Circular also specifically relates to Central Excise and secondly that Circular also says about recovery of “Duty” demanded and the said circular is applicable where a stay application is pending before the Appellate Authority in Central Excise cases.

Another Circular being No. 984/08/2014-CX issued by the Ministry of Finance, Department of Revenue (Central Board of Excise & Custom), Government of India dated 16th September, 2014 upon which petitioner has relied also speaks only about the “Duty” demanded and “Penalty” payable pursuant to the order of adjudicating authority as would appear from Paragraph 1, 2 and 4 of the said Circular referred under Section 129E of the Customs Act, 1962 and this speaks only about 7.5% of the “Duty” and/or “Penalty” and not anything about forfeiture of security deposit. So considering these circulars and relevant provisions of Customs Act etc., in my considered opinion only by mere pre-deposit of 7.5% of the penalty in filing appeal against the order of adjudication imposing both penalty and forfeiture of security

deposit, order of forfeiture of security deposit will not stand stayed/revoked automatically unless specific order of stay of the same or is revoked by the appropriate authority. This position becomes more clear from the conduct of the petitioner that it has made pre-deposit of 7.5% of the penalty only and not pre-deposit of any percentage of amount of security deposit which has been forfeited by the adjudicating authority.

Petitioner has relied on Paragraph- 69 of the decision of the Hon'ble Supreme Court in the case of Dharam Dutta -vs- Union of India reported in AIR 2004 Supreme Court 1295, on perusal of which I find it is in a different context and has nothing to do with the contention of the petitioner in its case about automatic stay/revocation of the order of forfeiture of security deposit by mere making pre-deposit of 7.5% of the penalty, in Appeal before the Appellate Authority against the original order of adjudication on the ground that the issues remains alive so long it is not decided by the Appellate authority and the petitioner is not bound to make fresh security deposit.

So far as contention of the petitioner that the issue which is subject matter of appeal and if the same is pending and so long it is not decided by the Appellate Authority it does not reach its finality, with the deepest respect that it is undisputed and settled proposition of law. Paragraph- 69 of the said judgment of the Hon'ble Supreme Court is quoted hereunder from which it appears that it has no relevance with the case of the petitioner for the purpose of automatic stay or revocation of the order of forfeiture of security deposit by mere filing of appeal by making pre-deposit of the penalty imposed in the adjudication order:

“69. That decision of the learned Single Judge was not left unchallenged. In fact, the correctness of the judgment of the learned single-Judge was put in issue by the Union of India by filing an intra- court appeal. Filing of an appeal destroys the finality of the judgment under appeal. The

issues determined by the learned Single Judge were open for consideration before the Division Bench. However, the Division Bench was denied the opportunity of hearing and the aggrieved party could also not press for decision of the appeal on merits, as before the appeal could be heard it was rendered infructuous on account of the Ordinance itself having ceased to operate. The Union of India, howsoever it may have felt aggrieved by the pronouncement of the learned single-Judge, had no remedy left available to it to pursue. The judgment of the Division Bench refusing to dwell upon the correctness of the judgment of the Single Judge had the effect of leaving the matter at large. Upon the lapsing of the earlier Ordinance pending an appeal before a Division Bench, the judgment of the Single Judge about the illegality of the earlier Ordinance, cannot any longer bar this Court from deciding about the validity of a fresh law on its own merits, even if the fresh law contains similar provisions.

Petitioner has relied on Paragraph 38 of the decision of the Hon'ble Supreme Court in the case of Union of India -vs- West Coast Paper Mills Ltd. reported in 2004 (164) E.L.T. 375 (S.C.). This decision is also on the same proposition of finality of an issue which is the subject matter of a pending appeal. Special distinguishing feature of the said judgment is that it is in the context of special power of the Hon'ble Supreme Court under Article 136 of the Constitution of India where the Hon'ble Supreme Court has held that once special leave is granted and the appeal is admitted the correctness or otherwise of the judgment of the tribunal becomes wide open and in such appeal the Hon'ble Supreme Court is entitled to go into both questions of facts as well as law and in such event the correctness of the judgment is in jeopardy. In my

considered opinion Petitioner cannot equate the power of the Customs Tribunal where its appeal is pending with the power of the Hon'ble Supreme Court under Article 136 of the Constitution of India.

I feel that Paragraphs – 13 and 14 and of the aforesaid judgment are also relevant and should be read along with Paragraph - 38 of the said judgment of the Hon'ble Supreme Court and on reading the same together it will appear that the aforesaid judgment has no manner of application in the facts involve in the case of the petitioner:

“13. It may be true that by reason of Section 46A of Indian Railways Act the judgment of the Tribunal was final but by reason thereof the jurisdiction of this Court to exercise its power under Article 136 of the Constitution of India was not and could not have been excluded.”

“14. Article 136 of the Constitution of India confers a special power upon this Court in terms whereof an appeal shall lie against any order passed by a Court or Tribunal. Once a Special Leave is granted and the appeal is admitted the correctness or otherwise of the judgment of the Tribunal becomes wide open. In such an appeal, the court is entitled to go into both questions of fact as well as law. In such an event the correctness of the judgment is in jeopardy.”

“38. In the aforementioned cases, this Court failed to take into consideration that once an appeal is filed before this Court and the same is entertained, the judgment of the High Court or the Tribunal is in jeopardy. The subject matter of the lis unless determined by the last Court, cannot be said to have attained finality. Grant of stay of operation of the judgment may not be of

much relevance once this Court grants special leave and decides to hear the matter on merit.”

In view of the discussions made above, my answers to the questions framed above are as follows:

- (i) There is no existence of any provision of “Deemed Suspension” or “automatic suspension” of licence of a Customs Broker under the Customs Act, 1962 or under the Customs Brokers Licensing Regulations, 2018 and action of the respondent Customs authority suspending the Customs Broker Licence of the petitioner infringing the petitioner’s right to livelihood is penal in nature and is without any authority of law and is without jurisdiction since respondent Customs authority has failed to show any document of formal order of suspension of Customs Broker licence under Regulation 16 of Customs Brokers Licensing Regulations, 2018 and that criteria and formalities of Regulation 16 (1) & (2) were fulfilled and observed in the instant case. It is settled position of law that when a statute requires a statutory authority to do a thing in a particular manner the same must be done in the same manner and in accordance with the procedure prescribed in law or not at all.
- (ii) In my considered opinion Regulation 18 (3) of the Customs Brokers Licensing Regulations, 2018 and no other provisions of the said Regulations or the Customs Act does confer any power upon the Commissioner of Customs to waive or dispense with the fulfilment of criteria and compliance of formalities under Regulation 16 (1) & (2) of the Customs Brokers Licensing Regulations, 2018, for suspending Customs Broker licence of the petitioner.

- (iii) I am also of the considered opinion that action of display of “Suspension” of Customs Broker licence of the petitioner in Customs EDI system on 15.03.2021, after passing the original order of adjudication on 03.03.2021 wherein there is no whispering of suspension of petitioner’s Customs Broker Licence and in absence of any formal order of suspension of the aforesaid licence which is penal in nature restricting business transaction of the petitioner without fulfilling the criteria under Regulation 16 (1) and observing the formalities of Regulation 16 (2) of the Customs Brokers Licensing Regulations, 2018 and the failure of the respondents’ Customs adjudication authority to place any statutory provision, notification or any guideline in this regard in support of such penal action, is not legal and valid and not sustainable in law.
- (iv) In my considered opinion, in exercise of power of rectification under Section 154 of the Customs Act, Commissioner of Customs cannot by way of corrigendum insert additional punishment of suspension of Customs Broker Licence or impose conditions for revocation of suspension of Customs Broker Licence of the petitioner in the original adjudication order in the name of correcting clerical, arithmetical or typographical mistake since additional punishment of suspension of the aforesaid licence or imposing of conditions for revocation of suspension of Customs Broker Licence would amount to substantial alteration in the original order of rectification and the same could not be called a correction of clerical, arithmetical or typographical mistake in the original adjudication order. I am of the considered view that in case of non-compliance of the adjudication order by the petitioner legal consequences will follow automatically and for compliance or implementation of the original order of adjudication a further

corrigendum under Section 154 of the Customs Act, 1962, is not required.

- (v) In my considered opinion terms “Duty” and “Penalty” cannot be equated with “Security Deposit” since “Duty” is levied on dutiable goods and is actually indirect tax imposed by the government on the importation or exportation of goods or commodities and “Penalty” arises out of violation or breach of any provision of law and both arise out of an adjudication proceeding while “Security Deposit” is a condition precedent for granting Customs Broker Licence irrespective of any transaction or adjudication or enquiry proceeding which is clear from Regulation 8 of Customs Brokers Licensing Regulations, 2018 that “Security Deposit” is one of the conditions precedent for granting Customs Broker Licence under Regulation 8 of Customs Brokers Licensing Regulations, 2018 and which has to be complied with before granting the said licence.
- (vi) I am of the considered opinion that mere filing of Appeal before the Customs Tribunal by making pre-deposit of certain percentage of “Penalty”, “Interest” or “Demand” raised in an adjudication proceeding would not amount to automatic stay or revocation of the order of forfeiture of security deposit unless there is any specific order of stay or revocation of the order of forfeiture of security deposit by an appropriate forum and in case of non-deposit of fresh security deposit in compliance of the adjudication order legal consequence will follow automatically.

In the light of the discussion made above this Writ Petition being WPO No. 203 of 2021 and G.A No. 1 of 2021 stand disposed of with no order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(MD. NIZAMUDDIN, J.)