

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75869 of 2024

(Arising out of Order-in-Original No. KOL/CUS/A&A/PR.COMMISSIONER/CBS/14/2024 dated 27.03.2024 passed by the Principal Commissioner of Customs (Airport & ACC), Custom House, 15/1, Strand Road, Kolkata – 700 001)

Shyamal Kumar Ghosh

: Appellant

C/o. M/s. S.K. Acharya,
CB 40, Weston Street, 2nd Floor,
Kolkata – 700 013

VERSUS

**Principal Commissioner of Customs
(Airport & ACC Commissionerate)**

: Respondent

Custom House, 15/1, Strand Road, Kolkata – 700 001

APPEARANCE:

Shri Aditya Dutta, Advocate, for the Appellant

Shri A.K. Choudhary, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76554 / 2025

DATE OF HEARING: 12.06.2025

DATE OF DECISION: 19.06.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The facts of the case are that Shri Shyamal Kumar Ghosh (hereinafter referred to as the "appellant") is a F-Category Identity Card (F-Pass) holder of the CHA Firm M/s. S.K. Acharya (CHA). The F-Card was issued by the Commissioner of Customs, Kolkata, since 2007. The appellant had been employed with the CHA Firm. The CHA Firm mostly attended the job of clearance of goods imported by M/s. New Heera Sales Corporation and M/s. Ashok Trading Company through Kolkata Port.

1.1. The CHA License bearing No. S-108, Code No. 2104 of M/s. S.K. Acharya (PAN No. ABFFS9543N) was renewed from time to time and it was last renewed on 09.03.2019 up to 26.11.2026 by the Customs Authorities, Custom House, Kolkata. On 17.06.2022, the Commissioner of Customs, Airport & Administration suspended the aforesaid CHA/CB License of M/s. S.K. Acharya for some earlier irregularity prior to June, 2022 and accordingly the F Card (F Pass) No. S-108/01 (F) attached with the said CHA Firm also became non-functional.

1.2. Since M/s. S.K. Acharya's CB License was under suspension and the F Card issued to the appellant was also inoperative, the appellant contacted M/s. P.R. Logistics, a Custom Broker (CB) known to him in the same trade for customs clearance purposes. In the process, he acted as an intermediary between M/s. P.R. Logistics and the respective importers.

1.3. The SIIB, Kolkata Customs examined the goods imported by Shri Ashok Banka of M/s. Ashok Trading Company and M/s. New Heera Sales Corporation and purportedly found difference in quantity between the quantity as declared in the B/E and that were found physically. They also recorded statements from Shri Ashok Banka, M/s. Ashok Trading Co. (Importer) and M/s. P.R. Logistics, Customs Broker.

1.4. On 12.07.2023, an Offence Report was forwarded by SIIB to the Commissioner of Customs indicating therein the discrepancies noticed in the consignments imported by M/s. Ashok Trading Co. and M/s. New Heera Sales Corporation. Clearance of the said consignments were dealt with by the CB, M/s. P.R. Logistics and the appellant played a limited role of liasoning in the form of intimating duty liability,

sharing assessed Bill of Entry copy along with ICEGATE E-payment link for payment of said duty amount etc.

1.5. On 18.09.2023, in connection with the aforesaid investigations, the Commissioner of Customs (Airport & ACC) suspended the F-Card of the appellant on the basis of the offence report forwarded by SIIB against the CB P.R. Logistics, for the alleged violation of Regulations 10(a), 10(b), 10(d), 10(m) and 10(q) of CBLR, 2018. The said suspension was confirmed by Commissioner of Customs (Airport) on 11.10.2023.

1.6. On 16.11.2023, a Show Cause Notice was issued to the appellant, which was confirmed by the Inquiry Officer on 23.01.2024.

1.7. On 27.03.2024, the Ld. Pr. Commissioner of Customs (Airport & ACC Commissionerate) Custom House, Kolkata vide Order-in-Original No. KOL/CUS/A&A/PR.COMMISSIONER/CBS/14/2024 dated 27.03.2024 ordered revocation of the F-Card License of the appellant having Customs Pass No. S-108/01(F), FP No. 280/19 with immediate effect for violation of Regulations 10(a), 10(b), 10(d), 10(m) and 10(q) of the CBLR, 2018 and also ordered for imposition of penalty of Rs. 50,000/- for violation of the said Regulations.

1.8. Against the said order, the instant appeal has been filed by the appellant.

2. The Ld. Counsel appearing on behalf of the appellant submits that the F Card was issued to the appellant under F Card (F Pass) No. S-108/01 (F) on 06.03.2007 and was tagged with the CB Firm M/s. SK Acharya bearing CHA License No. S-108, Code No. 2104; the F Card was renewed from time to time and

was last renewed on 07.08.2019, up to 26.11.2026. He submits that on 17.06.2022, the CB License of M/s. S.K. Acharya (PAN No. ABFFS9543N) was suspended relating to some purported irregularity prior to that and so, it was a natural corollary that his F-Card also lost the status of being operative with effective from 17.06.2022; accordingly, he started to function as a freelancer based on his experience in the import-export matters in his individual capacity to earn his livelihood and not as an F-Card Holder.

2.1. The Ld. Counsel for the appellant submits that the Departmental allegation in the present case all along has been to the effect that he had used his F-Card to commit the alleged violations of CBLR, 2018, but it is amply clear that once the CHA License of the CB Firm M/s. SK Acharya was suspended on 17.06.2022 and he being not tagged with any other CB Firm as an F-Card Holder, he could not function as an F-Card Holder in the matter of importations related to the present case. Therefore, it is contended by the appellant that the allegation that he had used his F-Card in his personal capacity to commit the alleged violations of CBLR, 2018 is baseless.

2.2. It is also the submission of the appellant that his F-Card has been revoked vide impugned Order dated 27.03.2024 for violation of the Regulations 10(a), 10(b), 10(d), 10(m) and 10(q) of the CBLR, 2018. It is submitted in this regard that Regulation 17(9) of CBLR, 2018 envisages action against the F Card holder only if any action is taken against the concerned CB Firm with which he is attached; in the instant case, vide Order dated 20.09.2023, the case against the CB Firm M/s. SK Acharya has been dropped. Thus, the appellant submits that the suspension of his F-Card

also stands revoked. In view of the above, the appellant has contended that revocation of his F card and imposition of penalty on him by the Pr. Commissioner of Customs (Airport & ACC Commissionerate) Custom House, Kolkata vide Order dated 27.03.2024, is legally not sustainable.

2.3. Accordingly, in view of these submissions, the appellant has prayed for setting aside the revocation of his F Card and imposition of penalty on him in the impugned order dated 27.03.2024.

3. The Ld. Authorized Representative of the Revenue submitted that the offence report submitted by SIIB has clearly highlighted the appellant's role in the alleged offence and accordingly contends that his F Card has been rightly revoked and penalty has been rightly imposed.

4. Heard both sides and perused the appeal records.

5. We observe that the appellant was an employee of the Customs Broker Firm M/s. S.K. Acharya and the F Card bearing No. S-108/01 (F) was issued to him on 06.03.2007. A perusal of the above F Card number clearly shows that the said F card had been tagged with the CB Firm M/s. SK Acharya bearing CHA License No. S-108, Code No. 2104. It is also observed that the F Card of the appellant was renewed from time to time and it was last renewed on 07.08.2019 (renewed up to 26.11.2026), when the Customs Broker, M/s. S K Acharya was operational. On 17.06.2022, the Customs Broker License of M/s. S.K. Acharya (PAN No. ABFFS9543N) was suspended relating to some purported irregularity. So, we observe that the natural corollary of the suspension of the License of the CB

Firm S K Acharya was that the F-Card of the appellant, attached with the said CB Firm, also lost the status of being operative with effect from 17.06.2022.

5.1. It is also observed that the appellant started to function as a freelancer based on his experience in the import-export matters in his individual capacity to earn his livelihood. We observe that this activity of the appellant cannot be considered as an activity undertaken by him in his capacity as an F-Card Holder, as his F card was already inoperative.

5.2. We find that in this case, an Offence Report was forwarded by SIIB to the Commissioner of Customs indicating therein some discrepancies noticed in the consignments imported by M/s. Ashok Trading Co. and M/s. New Heera Sales Corporation. It is a fact on record that the clearance of the said consignments were dealt with by the CB Firm M/s. P.R. Logistics. We find that the appellant played a limited role of liasoning in the form of intimating duty liability, sharing assessed Bill of Entry copy along with ICEGATE E-payment link for payment of said duty amount etc. It is clear that these activities were undertaken by him in his individual capacity and not as a F Card holder, as his F card is already non operational.

5.3. We also take note of the fact that the F-Card of the appellant had been revoked vide impugned Order dated 27.03.2023, relying Regulations 10(a), 10(b), 10(d), 10(m) and 10(q) of the Customs Brokers Licensing Regulations (CBLR), 2018. For the sake of ready reference, the said Regulation 17(9) of CBLR, 2018 is reproduced below:

*"Where in an offence report, charges have been framed **against an F card holder in addition to the Customs Broker** who has been issued a license under regulation 7, then procedure prescribed in regulations 16 and 17 shall be followed mutatis mutandis in so far as the prescribed procedure is relevant to the F card holder."*

(Emphasis supplied)

5.3.1. A perusal of the Regulation 17(9) of the said Regulations reproduced above clearly indicates that the procedures under Regulations 16 and 17 can only be invoked when charges have been framed **against an F card holder in addition to the Customs Broker**. We observe the present proceedings against the appellant are not related to the Customs Broker Firm M/s. S.K. Acharya. Hence, we are of the view that violation of Regulation 17(9) *ibid.* cannot be charged against the appellant in the present proceedings.

5.4. Further, in the instant case, we observe that the entire allegation against the appellant has been upheld on the basis of statement given by Shri Ashok Banka, Importer. We do not find any concrete evidence against the appellant in the offence report against the appellant. We also find that there is no evidence brought on record by the Department against the appellant to establish that the appellant has violated the provisions of the Regulations 10(a), 10(b), 10(d), 10(m) and 10(q) of the CBLR, 2018. It is well settled that mere allegation alone is not sufficient to establish the role of the appellant in the alleged offence. Accordingly, we find that the allegation of violation of the provisions of the Regulations 10(a), 10(b), 10(d), 10(m) and 10(q) of

the CBLR, 2018 against the appellant herein are not substantiated. Consequently, we hold that revocation of the F card of the appellant by the Pr. Commissioner of Customs (Airport & ACC Commissionerate) Custom House, Kolkata vide Order dated 27.03.2024, is legally not sustainable and hence we set aside the same.

6. As regards the penalty of Rs. 50,000/- imposed on the appellant under Regulation 18 of the CBLR, 2018, we observe that when the charge against the appellant is not sustainable, the question of imposition of penalty on him does not arise. Accordingly, we set aside the penalty imposed on the appellant.

7. In view of the above discussions, we pass the following orders:

(i) We set aside the Revocation of the F Card of the appellant as ordered in the impugned order dated 27.03.2024.

(ii) The penalty imposed on the appellant in the impugned order is set aside.

8. The appeal filed by the appellant is disposed on the above terms.

(Order pronounced in the open court on **19.06.2025**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd