



प्रधानआयुक्त) सामान्य(सीमाशुल्ककाकार्यालय)
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
 कस्टमब्रोकरअनुभाग, नवीनसीमाशुल्कभवन,
CUSTOMS BROKER SECTION, NEW CUSTOM HOUSE,
 बेलार्डइस्टेट, मुंबई - I
BALLARD ESTATE, MUMBAI - I

F.NO. GEN/CB/ACTN/68-2021/CBS
 DIN: 20210777000000580BE

Date: 22.07.2021

ORDER NO. 14/2021-22

M/s. A. B. Paul & Co, (PAN No. AABPP7363G), Vikas Building, 4th Floor Unit No. 403, 11th Bank Street, Mumbai, Pin Code -400023, (hereinafter referred as the Customs Broker/ CB) is holder of Customs Broker License No. 11/543, issued by the Commissioner of Customs, Mumbai under Regulation 8 of CHALR, 1984, [Now regulation 7(2) of CBLR, 2018] and as such they are bound by the regulations and conditions stipulated therein. The validity of the license No. 11/543 held by M/s A. B. Paul & Co. is up to 31.12.2024, and Sh. Kenneth Paul is the Proprietor of M/s. A. B. Paul & Co.

2. On the basis of general intelligence and data analysis, 21 IECs/Exporters were suspected to be indulging in fraudulent exports of Cut and Polished Diamonds in names and IECs, whose credentials as exportes appeared to be fake, fabricated and created with intent to create bogus entities. Thereafter on the basis of address verification of these IECs, it was revealed that some unscrupulous persons have been exporting in the names of some of these IECs which are non-functional and non-existent at the declared IEC addresses or found to be existing on paper only. The goods under the 29 Shipping Bills in respect of 21 IEC holders having declared value of approx Rs. 80 crores were placed under seizure under Section 110 of Customs Act, 1962 under the reasonable belief that these companies are either non-existent, non-functional and existent on paper only.

3. Out of these 21 IEC holders, CB M/s A. B Paul & Company filed 22 Shipping Bills of following 14 IEC holders. Details of the said 14 IEC holders are as below:

- i. M/s Arushi Corporation (IEC - AFBPV9369M)
- ii. M/s. Arvind Gems (IEC - ABKFA5939R)
- iii. M/s Ayush Exports (IEC - ABJFA6326k)
- iv. M/s Star Gems (IEC - ADKFS0867N)
- v. M/s Pal Export (IEC - BKRPS6768P)
- vi. M/s. Patel Export (IEC - BOPPP9415L)
- vii. M/s Rushabh Gems (IEC - CXSPS8753H)
- viii. M/s Spam International (India) (IEC - 0317502158)
- ix. M/s. Tanisha Gems (IEC - AJLPJ8535D)
- x. M/s Yashshree Enterprises (IEC - ATHPN9601J)
- xi. M/s Jayshree Enterprises (IEC - DLHPM4814F)

- xii. M/s Ganpati Trading (IEC - BVIPV1527M)
- xiii. M/s Shine Star Export (IEC - AXGPJ2438N)
- xiv. M/s Sea Shine Export (IEC-BVIPJS549R)

4. During the course of investigation, it was revealed that proprietor/partner of these IECs were not the actual owner of the goods being exported out of India, wherein the Shipping Bills have been filed using these IECs. In this context, it was pertinent to emphasize that the past exports of some of these exporters were substantial both in terms of number of shipments as well as quantum of FOB value involved. The gravity of this matter becomes more alarming in the light of the fact that the foreign remittance of all the Shipping Bills filed using these IECs have not been realized till date through formal banking channel, even after lapse of the time limit prescribed by the RBI guidelines, as per database available with the Customs, which aggregately runs into more than rupees Five Thousand crores presently.

5. In view of the findings emerged during investigation, it is found that these IECs did not belong to the proprietor/partner of these IECs and the basic understanding or modus operandi on the basis of investigations was that these IECs were created in the name of real estate agents; drivers; teachers etc. who were actually not related to the diamond trade. The sale proceeds of exports affected in this manner in USD mainly from Hong Kong/Dubai were not coming and have not come till now through formal banking channels or may be coming through hawala route for such import/export at PCCCC. In these cases, the Export proceeds were not realized through proper banking channels but may be through illegal channels which could be utilized for various illegal funding and transactions. This shrewd and unique modus operandi appears to have been used to facilitate hawala transaction and almost everybody who wants to do business in parallel economy, appears to be using this route of export.

6. Based on the findings of the investigation as detailed above, show cause notice under Section 124 of the Customs Act, 1962 have been issued to the following exporters:

- i. M/s Arushi Corporation (IECAFBPV9369M)}
- ii. M/s. Arvind Gems (IECABKFAS939R)
- iii. M/s Ayush Exports (IECABJFA6326K)
- iv. M/s Star Gems (IECADKFS0867N)
- v. M/s Pal Export (IECBKRPS6768P)
- vi. M/s. Patel Export (IEC - BOPPP9415L)
- vii. M/s Rushabh Gems (IECCXSPS8753H)
- viii. M/s Spam International (India) (IEC0317502158)
- ix. M/s. Tanisha Gems (IECAJLPJ8535D)
- x. M/s Yashshree Enterprises (IECATHPN9601J)

7 And Provisional release orders were issued in cases of Following IEC holders:

- i. M/s Jayshree Enterprises (IEC-DLHPM4814F)
- ii. M/s Ganpati Trading (IEC-BVIPV1527M)

- iii. M/s Shine Star Export (IEC-AXGPJ2438N)
- iv. M/s Sea Shine Export (IEC-BVIPJ5549R)

8. Further, it is informed that the said Shipping Bills have been filed by Custom Broker M/s A. B Paul & Company in gross violation of regulation of Customs Brokers Licensing Regulations, 2018 in view of the fact that during various statements recorded under Section 108 of the Customs Act, 1962 purported exporters or representatives of the exporters have, inter alia, stated that they have applied for the IEC for monetarily consideration and/or have offered their documents for the same; they have not any idea regarding the remittances, or the purchase or sale of the goods; that they didn't know whom the goods belong to or from where the goods have been purchased; that they had not signed any documents related to any import or export consignment; that they had never claimed and will not claim anything through any legal representative in respect of the subject export; that they did not have any claim for the goods attempted to be exported against respective IECs; that the export proceeds were never received through proper banking channel; that they were not aware who was the actual owner of the consignments covered under subject shipping bills; that Shri Suresh Rasiklal Joshi, Proprietor of M/s. Spam International (India), Mumbai (IEC 0317502158) during his statement recorded on 27.10.2020 under section 108 of the Customs Act, 1962 stated that he was the sole proprietor of the firm M/s. Spam International (India) for last 3 years and prior to that he had been working in diamond sell/buy broker for 7 years and he was not aware who was the actual owner of the consignment covered under Shipping Bill No. 6040132 dated 22.10.2020 and the goods were arranged by one Mr. AB Paul, Mobile No. 7045301795 and the said consignment was also cleared by him and he was only aware of that his IEC which was used in current shipment and as per deal he was to get 1% commission of profit. Shri Suresh Rasiklal Joshi, on being asked how he knows Mr. A B Paul, Mr. Joshi inter-alia stated that Sh. A B Paul was an agent who used to arrange goods (diamonds) from market and get it cleared from Customs; that one (Mr. Joshi) has been in contact with Sh. Paul for the last 3 years and he was not aware of the source and destination of the subject goods and during last 3 years approximately 150 Shipping Bills have been filed and cleared by A B Paul through his IEC; that he has only authorized M/s. A B Paul to use his IEC and he has nothing to do with things involved in the matter; that he didn't know the address of AB Paul and they used to meet in Diamond Market at Opera House, Mumbai-04 only. On being asked whether he knew the value and genuineness of the goods, he inter-alia stated that he do not have to do anything in this regard; that the payment received sometime in his account and sometimes it was received in Shri A B Paul's account and he used to issue cheque in name of the person as suggested to him by Shri A B Paul; that he always received the commission amount in hard cash through Shri AB Paul and he has received approximately 6-7 lakhs in last 3 years; that he admit that he is not the owner of the present consignment and the consignments which were exported earlier; that he is totally unaware of genuineness and value of the present consignment as well as the earlier exported consignments; that he wants to submit that he do not want to claim any ownership of detained goods now and will not claim it in future as well; that Shri MukeshGautam Lal Kothari, Partner of M/s Star Gems during his statement was recorded on 13.11.2020 under section 108 of the Customs Act, 1962, inter-alia, stated that M/s Star Gems is a partnership firm and he along with Shri Jayesh Desai are the partners of the firm; that Shri Pintu Chauhan (he met through his friend), has promised to pay him an amount of

Rs, 5,000 to 7,000 on clearance of each consignment; that the said amount was paid by Shri Pintu Chauhan in cash; that he has not invested any capital/money in the said company; that he has often deposited money in the account of M/s A.B Paul & Co, CHA on verbal instructions from Sh.Pintu Chauhan; that all the exports done using the above said company name were neither done by him, nor he has purchased / manufactured / processed / procured the goods for export using the said IEC's; On being shown the signed documents pertaining to M/s. Star Gems, he stated that these documents were not signed by him; that they used to get 1% of the FOB Value for facilitating export through these IECs.

9. During the course of investigation, it was revealed that Shipping Bill No. 6023913 dtd 21.10.2020 was filed by CB M/s. A.B. Paul & Co. on behalf of the Exporter M/s. Yashshree Enterprises (IEC - ATHPN9601J). On retrieval of data from IECS, it was seen that M/s. Yashshree Enterprises (IEC - ATHPN9601J) had filed S/B No. 6039205/22.10.2020, 5885272/15.10.2020 and 6023913/31.10.2020 for clearance of 3,339.09 carats of Cut and Polished Diamond through CB M/s. A.B. Paul & Co.

9.1 During the course of investigation, to verify the genuineness of the IEC address of M/s. Yashshree Enterprises (IEC - ATHPN9601J), an officer of customs visited the given address declared in the IEC on 24.10.2020 against which the subject S/B was filed. During verification, it was found that the given address was non-functional and non-existent at the declared IEC addresses and was found to be existing on paper only.

9.2 During the course of investigation, statement of Shree Prashant Vaidya, Employee of M/s. Yashshree Enterprises was recorded on 24.10.2020 under section 108 of the Customs Act 1962, wherein he inter-alia stated that as per his knowledge Shri Tanmay Prakash Nimkar is the owner of M/s. Yashshree Enterprises.

9.3 During the course of investigation, statement of Shri Tanmay Prakash Nimkar was recorded on 26.10.2020 under section 108 of the Customs Act 1962 wherein he inter-alia stated that he was approached by one Sh. Vijay Varahiya through a common friend Sh. Sandesh Jadhav, Later Sh. Vijay Varahiya introduced him to one Sh. Niranjana Malvania, who promised him to make his passport. So, he handed over his Aadhar card, Pan card, light bill, 01 year bank statement and passport size photograph to Sh. Vijay Varahiya. He further stated that he had no knowledge about diamonds and his financial condition is not so that he can do business in diamonds; that he was totally unaware of the business carried out in the name of M/s. Yashshree Enterprises; that he came to know about the firm when Sh. Vijay Varahiya asked him to sign blank cheques in the name of M/s. Yashshree Enterprises; that Sh. Vijay Varahiya has changed name as Sh. Avinash Daksh in official gazette as well as in Aadhar card, Pan card, and passport; that he believes that goods belongs to Sh. Niranjana Malvania. Further Sh. Tanmay Nimkar wrote a handwritten letter to the Dy. Commissioner, PCCCC, BKC dated 13.11.2020; vide the said letter he stated that the signatures done on 03 subject Shipping Bills were forged and not done by him; that he does not claim any ownership of the seized goods.

9.4 Further during the Course of investigation, the status of realization of foreign remittances of M/s. Yashshree Enterprises was sought from the Reserve Bank of India. The Reserve Bank of India vide their email dated 24.12.2020

informed that as per EDPMS no remittance has been realized against M/s. Yashshree Enterprises.

10. During the course of the investigation, statement of Shri Sunil Ramsharik Verma, proprietor of M/s. Arushi Corporation (IEC AFBPV9369M) was recorded on 11.11.2020 under section 108 of Customs Act, 1962, wherein he interalia stated that he had given his documents to Shri Janak Rathod, who opened two companies namely M/s. Arushi Corporation which is proprietor company and M/s. Ayush Export (IEC ABJFA6326K) which is a partnership company; that he was told by Sh. Janak Rathod that the companies will deal in the import/export of Diamonds; that Sh. Janak Rathod is an Estate Agent and he was introduced to him through one of his friends Sh. Haresh Patel who is also Estate Agent; that he had not invested any capital/money in both companies; that both the companies have registered at the same address i.e. shop no. 41, V Mall, WE Highway, Thakur Complex, Kandivali East, Mumbai 400101; that he deals with a computer repairing work namely M/s. Elicon Computers at Shop No. 41, V Mall WE Highway Thakur Complex, Kandivali East, Mumbai 400101; that he had given his identity documents like PAN Card, Aadhar Card to Sh. Janak Rathod; that Sh. Janak Rathod had promised him to give some amount for using his documents; that the shipping bill no. 6050524 dated 22.10.2020 filed in the name of M/s. Arushi Corporation does not belong to him; that he used to receive amount between 12 to 15 thousand rupees per month for each of the two companies; that he don't have any idea regarding the remittances, or the purchase or sale of the goods vide the shipping bill no. 6050524 dated 22.10.2020; that he don't know whom the goods belong to or from where goods have been purchased; he will not claim the goods under said S/B or any other in the name of M/s. Arushi Corporation that he had not signed any documents related to any import or export consignment of M/s. Arushi Corporation; that he had never claimed and will not claim anything through any legal representative in respect of export/import by M/s. Arushi Corporation; that all the transactions were done and handled by Sh. Janak Rathod; the main person is Sh. Janak Rathod who operate the company in his name; that he doesn't have any contact details or address of him as he used to call him from different numbers and he never visited his residence.

During the course of investigation, the status of realization of foreign remittances of M/s. Arushi Corporation (IEC - AFBPV9369M) was sought from Reserve Bank of India, Mumbai, RBI, vide their e-mail dated 24.12.2020 informed that as per the EDPMS no remittance has been realized against M/s. Arushi Corporation (IEC - AFBPV9369M).

11. Further during the course of investigation, it was revealed that S/B No. 6040156 dated 22.10.2020 & 6023289 dated 21.10.2020 were filed by the CB M/s. A.B. Paul & Co. on behalf of the exporter M/s. Avind Gems (IEC No. ABKFA5939R). To verify the genuineness of the IEC address of M/s. Avind Gems, officers of customs visited the given address declared in the IEC against which the subject S/B's had been filed (i.e. Shop No. 103, New Municipal Market, Tejpal Road, Vile Parle East, Mumbai) on 24.10.2020. During verification of the said IEC address, the officer met one person namely Shri Mahesh Sonigra. On being asked Shri Mahesh Sonigra said that he had been running the subject Shop no. 103 since 1976 as 'Ladies Dress Maker'. It was found that the subject IEC was non-functional and non-existent at the declared IEC address and was found to be existing on paper only.

11.1 During the course of investigation, statement of Smt. Meena Pitchappa, Partner of M/s. Avind Gems was recorded on 27.10.2020 under section 108 of Customs Act, 1962, wherein she inter-alia, stated that she has been working as a home tutor; that M/s. Avind Gems is a partnership firm and she along with Shri Mahesh Narayan Sonigra were the partners of the firm; that she knew Shri Sonigra for 7 - 8 years; that she first met Shri Mahesh Narayan Sonigra at his Tailer Shop; that Shri Janak Rathore is nephew of Shri Mahesh Narayan Sonigra and they were introduced by Shri Sonigra; that Shri Janak Rathore did all documentation work for partnership agreement of M/s. Avind Gems; that the firm was incorporated in November 2018; that she has not invested any money in the company M/s. Avind Gems; that the whole operation of company was handled by Shri Janak Rathore; that she don't know about business of the company; that she was only aware that some kind of export business was being carried out in the name of M/s. Avind Gems that she had not invested an amount for M/s. Avind Gems but she was promised to get a handsome amount in return for being a partner in the firm; that she get Rs. 7000/- at the time of documentation during incorporation of company and she has been paid the same amount three times in cash only. On being asked if she has ever visited the premise of M/s. Avind Gems at address "Shop No. 103 New Municipal Market, Tejpal Road Vile Parle, Mumbai - 400057", she stated that she already knew the fact that there was a tailor shop at said address which she used to visit; that the said shop belongs to Shri Mahesh Narayan Sonigra; On being asked whether she was aware that an export shipment of Lab Grown Cut and Polished Diamonds under S/B No. 6040156 dated 22.10.2020 was attempted to be exported in the name of M/s. Avind Gems was held up at Customs PCCCC in violations of Cusotms Act, 1962, she replied negatively stating that she was not aware of fact that any diamonds were being exported from PCCCC Mumbai on the name of M/s. Avind Gems; that she has nothing to do with the export shipment of diamonds; that she even has no knowledge of diamonds; that she was not aware of the value of the export shipments of cut and polished diamonds and she has nothing to do with any of the export of cut and polished diamonds or any other goods if any exported in the name of M/s. Avind Gems, neither do she own any of the goods, exported in the past of the live goods kept on hold by the Customs.

11.2 In furtherance to the above, statement of Shri Mahesh Narayan Sonigra, Partner of M/s. Avind Gems was recorded on 13.11.2020 under section 108 of the Customs Act, 1962, wherein he interalia stated that he has a tailoring business which is located at '103, New Municipal Mkt, TEJPAL Road, Vile Parle, Mumbai - 400057; that he runs his tailoring business at the said address; that Shri JanakRathod took his address proof Aadhar Card, Pan Card and also took his sign on cheque of IDBI Bank; that Shri JanakRathod did all documentation workfor partnership agreement of M/s. Avind Gems; that the firm was incorporated in Nov. 2018; that he was promised amount of money by Shri JanakRathod but he has not received any money from him; that he has not invested any money in the firm M/s. Avind Gems; that he was not aware that diamonds are being exported from PCCCC Mumbai on the name of M/s. Avind Gems; that he came to know about the two export diamond shipment are held up only after receiving the summons from Customs; that he was not aware of the value of the export shipments of cut and polished diamonds; that he has no knowledge of any past or present shipment except the two shipments which he came to know after receipt of summons from customs; that he has nothing to do with any export of the cut and polished diamonds or any other goods if any,

exported in the name of M/s. Avind Gems, neither he owns any of the goods exported in the past or presently kept on hold by customs; that he will not claim any present or past goods exported or sought to be exported vide the two shipping bills in the name of M/s. Avind Gems.

11.3 Further statement of Shri Janak Rathod was recorded on 27.10.2020 under section 108 of Customs Act, 1962, wherein he interalia stated that he has been working as Real Estate Agent and deals with builders for brokerage on selling of properties; that the partner of the firm M/s. Avind Gems, Mr. Mahesh Sonigra was his maternal uncle and Mrs. Meena Pitchappa was his friend; that he has made all arrangement to obtain IEC for export of diamonds. On being asked the purpose to make arrangements in obtaining the IECs for diamond export he stated that he obtained three IECs (M/s. ArvindGems, M/s. Tanisha Gems and M/s. Patel Exports) for one Mr. Prerak Shah, owner of M/s. Rose Gold Jewellery who used to pay him Rs. 5000/- for every export consignment; that he does not have any claim for the goods of the three IECs; that for the three IECs, Sh. Prerak Shah used to handle all exports of diamonds; that Sh. Prerak Shah is the handling person and none of the proprietor/partners/company owners, of the three IECs, owns the goods.

11.4 Further statement of Shri Prerak Pankaj Shah was recorded on 31.10.2020 under section 108 of Customs Act, 1962, wherein he interalia stated that he collected the cut and polished diamonds from various people who wish to export diamonds to Hongkong and other countries and after aggregating the same he arranges for export in the name of M/s. Tanisha Gems, M/s. Patel Exports and M/s. Arvind Gems in co-ordination with Sh. Janak Rathod and Customs Broker; that the export proceeds are never received through proper banking channel; that after exporting the goods, he received the goods at the destination country and he hands over the same to other person/buyer at the prevailing USD rate and whatever value obtained at this rate of the exported diamonds, equivalent value in INR is received in india through the related person in cash; that the benefit or the profit is the difference in Dollar rate in destination country and in India; that whenever the difference improves considerably; that he get 1% of the FOB value for facilitating export through dummy IECs; that the real owner of cut and polished diamonds do not have to show in their books of account and other advantage is the sale proceeds INR which they use for their several unaccounted transactions.

12. During the course of investigation, it was revealed that S/B No. 6050104 dated 22.10.2020 & 6024201 dated 21.10.2020 were filed by the CB M/s. A.B. Paul & Co. on behalf of the exporter M/s. Tanisha Gems (IEC No. AJLPJ8535D). To verify the genuineness of the IEC address, officers of customs visited the given address declared in the IEC against which the subject S/B had been filed (i.e. B-102, Second Floor, Shreeji Paradise CHS, Amboli Andheri West, and Mumbai - 400058) on 28.10.2020. During verification of the said IEC address, the officer met one person namely Shri Bilas Yadav (who was a security guard present at the entrance gate, ground floor of the shreeji Paradise CHS), he informed that the said flat No. B-102 was rented to Sh. JanakRathod, the flat owner's name i.e. Sh. Ragnath S Nalavade was embossed in Society's shareholder board and same was confirmed by society security guard Sh. Bilas Yadav. No signboard or any proof of existence of the Exporte M/s. Tanisha Gems was found at the said address. It was found that the subject IEC was non-functional and non-existent at the declared IEC address and was found to be existing only on paper.

During the Course of investigation, statement of Shri SandepRasikJethwa, proprietor of M/s. Tanisha Gems was recorded on 13.11.2020 under section 108 of Customs Act, 1962, wherein he interalia stated that he was having his own business of plumbing and fire-fighting work whenever he get work related to that field; that Sh. JanakRathod is his cousin brother and Sh. Janak has taken his identity documents like PAN Card and Aadhar card and also took his signature in a cheque of HDFC Bank, to open a company related to gems; that the office address of the company is B-103, Shreeji Paradise, Amboli, Andheri (W), Mumbai; that the company was incorporated in Aug-Sept, 2018; that Shri Janakrathod had given him amount of Rs. 50,000/-

13. During the course of investigation, Statement of Shri Sunil RamsharikVerma, Proprietor of M/s. Ayush Exports was recorded under section 108 of the Customs Act, 1962, wherein he admitted that the impugned goods do not belong to him and the export documents have not been signed by him, therefore prima facia, it appears that M/s. Ayush Exports was a non-existent firm created by some unscrupulous person. The ongoing investigation and stataements recorded on various occasions revealed that Shri Sunil RamsharikVerma deals with a computer repairing work and he gave his ID document like PAN and Aadhar Card to Shri JanakRathod for opening of two companies i.e. M/s. Arushi Corporation and M/s. Ayush Exports. Sh. JanakRathod was introduced him by one of his friends namely Sh. Haresh Patel. Sh. JanakRathod used to pay amount of 12 to 15 thousand rupees per month for each of the two companies. Further Shri Sunil RamsharikVerma disowned the goods covered under shipping bill no. 6050558 dated 22.10.2020 as well as goods covered under past exports in the name of M/s. Ayush Exports. Therefore, it appears, that the exporter M/s. Ayush Exports is a dummy firm as its proprietor namely Shri Sunil RamsharikVerma did not have any relation to M/s. Ayush Exports as his documents and photos were mis-used for opening IEC in the name of M/s. Ayush Exports. The Visit report dated 28.10.2020 made by the officers of PCCCC also established that no such firm in the name of M/s. Ayush Exports existed on the given registered address. The Reserve Bank of India, Mumbai has also informed that no foreign remittance has been received in the bank account of M/s. Ayush Exports despite fact that past export to the tune of Rs. 53692.82 lakh has been made in the name of said firm. Thus, there appears to be a nexus of creating bogus IEC by borrowing documents from some known persons by luring them to certain amount of money and thereafter using these IEC's for money laundering by making fraudulent exports.

14. Further during the course of investigation, Statement of Shri Parag Tansukhlal Shah, Proprietor of M/s. Rushabh Gems was recorded on 20.11.2020 under section 108 of the Customs Act, 1962, wherein he interalia stated that he had given his documents to Shri Ketan Seth who opened company namely M/s. Rushabh Gems which is his proprietorship company; that he was told by Sh. Ketan Seth that the companies will deal in the import/export of diamonds; that he had not invested any capital/mondy in this company; that the firm has been registered at the address i.e. Shop No. 275, 2nd Floor, V Mall, Thakur Complex, Kandivali East, Mumbai - 400101; that he is working as Administrator in M/s. Komal Fashion located at Ullhas Nagar; that he had given his identity documents like PAN Card, Aadhaar Card to Sh. Ketan Seth; that he doesn't have any address of Sh. Ketan Seth as he used to call him from different numbers and he never visited his residence; that the shipping bill no. 6052278 dated 22.10.2020 filed in the name of M/s. Rushabh Gems does not belong to him; that he does not have any idea regarding the remittances, or the purchase or sale of the goods vide the S/B No. 6052278, dated 22.10.2020;

that he does not know whom the goods belong to or from where goods have been purchased; he will not claim the goods under S/B No. 6052278 dated 22.10.2020 or any other in the name of M/s. Rushabh Gems; that he had not signed any documents related to any import or export consignment of M/s. Rushabh Gems that he had never claimed and will not claim anything through any legal representative in respect of export/import by M/s. Rushabh Gems.

15. During the course of investigation, Statement of Shri Jayesh Jamnadas Desai, Partner of M/s. Star Gems (IEC - ADKFS0867N) was recorded on 13.11.2020 under section 108 of the Customs Act, 1962, wherein he interalia stated that M/s. Star Gems is a partnership firm and he alongwith Shri Mukesh Gautamlal Kothari are the partners of the firm; that I handed over document to Shri Gautam Lal Kothari three years back to open a firm for dealing in export/import of diamond; that Shri Gautam Lal Kothari had promised him to give certain amount of money on monthly basis; that he had not invested any capital/money in the said company; that the said firm has been registered at a rented property taken on agreement having registered address at Shop No. 245, 2nd Floor, V Mall, Thakur Complex, Kandivali East, Maharashtra; that he is presently working in Gift Shop at Laxmi Toy Shop Nallasopara (East), Shantikutir Building. Mumbai having montly salary of Rs. 10,000/- that the goods covered under S/B No. 6050538 dated 22.10.2020 as well as goods covered under past exports filed in the name of M/s. Star Gems do not belongs to him; that he does not have any idea about whom the goods belongs to, from where goods have been purchased; that all the exports done using the above said company name were neither done by him, nor he has purchased/manufactured/processed/procured the goods for export using the said IEC; that he will not claim the goods under Shipping Bill No. 6050538 dated 22.10.2020 in the name of M/s. Star Gems. On being shown the signed documents pertainging to M/s. Star Gems, he stated that these documents were not signed by him.

Further statement of Shri Mukesh Gautam Lal Kothari, Partner of M/s. Star Gems was recorded on 13.11.2020 under section 108 of the Customs Act, 1962, wherein he interalia stated that M/s. Star Gems is a partnership firm and he along with Shri Jayes Desai are the partners of the firm; that this firm has been registered three years before and deals with import/export of diamonds; that 3 to 4 years back he met with one Sh. Pintu Chauhan through one of his friends near his home at Mira Road and he offered him to open a firm for dealing import/export of diamonds; that he along with one of his friend Sh. Jayesh Jamunadas Desai gave their ID documents to Sh. Pintu Chauhan for opening a firm; that Shri Pintu Chauhan has promised to pay him an amount of Rs. 5,000/- to 7,000/- on clearance of each consignment; that the said amount was paid by Shri Pintu Chauhan in cash; that he had not invested any capital/money in the said company; that the said firm has been registered in a rented property taken on agreement having registered address at Shop No. 245, 2nd Floor, V Mall, Thakur Complex, Kandivali East, Maharashtra; that he is presently running an electric hardware shop namely M/s. Jenne Pint Elecetirc hardware at Shop No. 24, Lotus Building, Vasai West, Mumbai and his annual income is approximately Rs. 7,00,000/-; that he has often deposited money in the account of M/s. A.B. Paul & Co. CHA on verbal instructions from Sh. Pintu Chauhan; that the goods covered under Shipping Bill No. 6050538 dated 22.10.2020 as well as goods covered under past exports filed in the name of M/s. Star Gems do not belong to him; that he does not have any idea about whom the goods belong to, from where goods have been purchased; that all the exports done using the above said company name were neither done by him, nor

he has purchased/manufactured/processed/procured the goods for export using the said IEC; that he will not claim the goods under S/B NO. 6050538 dated 22.10.2020 in the name of M/s. Star Gems. On being shown the signed documents pertaining to M/s. Star Gems, he stated that these documents were not signed by him. On being asked about the contact details of Shri Pintu Chauhan, he stated that he is a regular customer at his electric shop in Vasai and he has not met him since lockdown in March, 2020; that he is not aware about the contact number or residential address of Shri Pintu Chauhan.

16. During the course of investigation, Statement of Shri Suresh Rasiklal Joshi, Proprietor of M/s. Spam International (India) was recorded on 27.10.2020 under section 108 of the Customs Act, 1962, wherein he inter alia stated that M/s. Spam International (India) is a non-existent firm created by some unscrupulous person. The ongoing investigation and statements recorded on various occasions revealed that Shri Suresh Rasiklal Joshi used to get certain amount of money from the profit share of the exports made using the dummy IEC. Shri Suresh Rasiklal Joshi in his statement has held that the goods are arranged by M/s. A.B. Paul and he is not related to any export made in the name of M/s. Spam International (India). He also disowned the goods covered under past exports made in the name of M/s. Spam International (India). Mr. Kenneth Paul and Mr. Nandkumar R Pawar in their statements have held that they do not know any person with name Sh. Suresh Rasiklal Joshi. Therefore, it appears that the exporter M/s. Spam International (India) is a dummy firm as its purported proprietor namely Shri Suresh Rasiklal Joshi does not have any relation to the exports made in the name of M/s. Spam International (India).

To verify the IEC address of M/s. Spam International (India), officers of PCCCC visited their given registered address. On verification of the address, the officers found that the address provided by the exporter on the IEC was of an empty plot without and structure on it. On further enquiry with the people in locality, it was revealed that the Pearl Plaza had been demolished three months back and all the tenants had vacated the building one year before the demolition. Therefore, the address of the IEC provided by the exporter does not exist.

Despite the fact that past export to the tune of Rs. 68526.54 Lakh has been made in the name of said firm M/s. Spam International (India). No foreign remittance has been received through proper banking channel. Thus, there appears to be a nexus of creating bogus IEC by borrowing documents from some known person by luring them to certain amount of money and thereafter using these IEC's for money laundering by making fraudulent exports.

17. During the course of investigation, Statement of Shri Haresh Patel, Proprietor of M/s. Patel Exports was recorded on 28.10.2020 under section 108 of the Customs Act, 1962, wherein he inter alia stated that he has been working as a real estate agent and have his own firm named M/s. Patel Exports, at Shop No. 41 V Mall, W E highway, Kandivali East, Mumbai - 400101 since 2012; that before 2012, he was working as an office boy in an Air Condition Repairing shop in kandivali (W), Mumbai; that he is also the proprietor of M/s. Patel Exports, kandivili (E), Mumbai, which is operational since December 2019 formed with acquaintance of Sh. Janak Rathod; that he met Sh. Janak Rathod in 2017 in the matter relating to renting a shop to his client as he is also into real estate business; that he has been into a friendly relationship with him since then; that during august 2019, he was informed by Sh. Janak Rathod that he wish to start a diamond import export business, that all his personal details like name, address, mobile no. Aadhar Card, Pan Card, IEC, Bank Account details and any

other such relevant documents would be used for that purpose; that he was promised an amount of Rs. 5,000/- per parcel as a monetary consideration and he agreed to his proposal. On being shown the copy of IEC of M/s. Patel Export, Sh. Haresh inter-alia stated that he confirms that the address mentioned on the IEC, is shop no. 41 V Mall, W E highway, Kandivali East, Mumbai - 400010, which is in the name of Elicon Computers and the proprietor of said firm is Shri Sunil Verma and a part of the space of the said shop address, is shared by M/s. Patel Exports & M/s. Patel Properties and both these firms are owned by him (Mr. Haresh Patel); that the rent of the said premises is shared by him with Shri Sunil Verma, the proprietor of M/s. Elicon Computers; that initially he had given Rs. 40,000/- to Sh. Janak Rathod, to acquire IEC No., GST related documents and other related documentation for the formation of company M/s. Patel Exports; that the whole operation of the company is handled by Shri Janak Rathod; that he does not know anything about the business; that he does not exactly remember the actual amount he has been paid approx. Rs. 1 lakh in total has been received by him since December 2019 at various instances from Sh. Janak Rathod, as per his promise; that the entire amount was paid to him in hard cash.

On being asked, he stated that he has nothing to do with the export shipment of diamonds under S/B No. 6050543 dated 22.10.2020; that he does not have knowledge of diamonds; that he was aware only that some kind of export business is being carried out in the name of M/s. Patel Exports; that he has been told by Shri Janak Rathod to visit PCCCC Mumbai customs clarification; that he has not invested any money in the firm except the amount of Rs. 40,000/- which was given to Shri Janak Rathod for obtaining IEC; that he was promised a fixed amount of Rs. 5000/- for every parcel by Shri Janak Rathod; that he is unaware of the value of the export shipments of Cut and Polished Diamonds; he has nothing to do with any of the export of Cut and polished diamonds or any other goods, if any, exported in the name of M/s. Patel Exports, neither he owns any of the goods, exported in the past or presently being kept on hold by customs.

Further he stated that he was told to transfer certain amount online to the persons suggested by Sh. Janak Rathod; that he does not know the actual owner of the export consignment covered under S/B No. 6050543 dated 22.10.2020; that it has to be known to Sh. Janak Rathod, that he has only given his ID proofs on the request of Sh. Janak; that he is not aware that they are exporting cut and polished diamonds. He further stated that he does not want to claim any ownership of the detained goods and the goods that have been exported earlier through IEC; that he will not claim anything in this regard in future as well.

18. During the course of investigation, Statement of Shri Jayesh Vasantlal Sarve, Proprietor of M/s. Pal Export was recorded on 27.10.2020 under section 108 of the Customs Act, 1962, wherein he inter-alia stated that he had given his documents to one of his friends Shri Chetan Malvaniya who opened company namely M/s. Pal Export which is his proprietorship company; that he had not invested any capital/money in this company; that Shri Chetan Malvaniya had managed all the legal formalities for opening the firm namely M/s. Pal Export that the firm has been registered at the address i.e. G-24, Pearl Plaza Tata Road No. 2, Roxy Cinema, Opera House, Girgaon, Mumbai - 400004; that he is working as an assorter of diamond and his monthly income is around 15000/- per month; that Sh. Chetan Malvaniya used to give him Rs. 3500/- in cash for each consignment of M/s. Pal Export that the shipping bill no. 6051829 dated

22.10.2020 and 6050490 dated 22.10.2020 filed in the name of M/s. Pal Export does not belong to him; that he don't have any idea that the diamonds were being exported from PCCCC Customs Mumbai in the name of M/s. Pal Export; that he will not claim the goods under shipping bill no. 6051829 dated 22.10.2020 and 6050490 dated 22.10.2020; that he had not signed any documents related to any import or export consignment of M/s. Pal Export and the invoices of both the shipping bills have must been prepared and signed by Shri ChetanMalvaniya; that he will never claim the goods under shipping bill no. 6051829 dated 22.10.2020 and 6050490 dated 22.10.2020.;

From the above statements of various IEC Holders and from ICES System, it is observed that the exporter has exported "Cut and Polished Diamond" using dummy IECs wherein no foreign remittance has been received using formal banking channel in the bank account of authorised AD Banks.

19. During the course of investigation, statement of Shri Kenneth Paul, Proprietor of M/s A.B. Paul & Co, CB (CB No, 11/543) was recorded on 21.11.2020 under section 108 of the Customs Act, 1962 wherein he inter-alia, stated that he ensures that all work done for any export and import the staff must follow the Customs Act and the rules and regulations; that every documents related to Import/Export Consignment is verified by Mr. Nandkumar R Pawar (having BDB Pass no. GEM-131197) and if the Importer or Exporter want any clarification or advice with respect to policy and Customs Notification, Sh. Nandkumar R Pawar inform him and accordingly he gives them the details of notification, chapter heading and details of customs exemption notification for duty etc; that the documents of exports /import comes by mail on M/s. A B Paul & Co.'s mail id i.e. cca442bdb@gmail.com or kumarpawar834@gmail.com. ; that the checklist prepared for both import as well as export were sent to parties for confirmation, thereafter, on confirmation from parties, under supervision of his subordinate, the documents related to export / import consignment are filed through ICEGATE; that when the client come first time, he ensures that the KYC is done and approval from the Customs Department is obtained; that he also takes copies of IEC, GST registration certificate, address proof, bank verification letter, copy of ITR, Bank A/c statement, Rent agreement, Receipt bill, Company Pan card/Aadhaar card etc. and party's letter authorising the CHA to file documents on his behalf; that for regular parties, representative of his firm visit their IEC address and deliver the relevant documents viz. Airway bill, Shipping Bill etc. Shri Kenneth Paul, also, stated that he never met Sh. Mukesh Gautam Lal Kothari of M/s Star Gems and don't Know any person namely Sh. Pintu Chauhan; that payment from M/s Star Gems into the account of M/s A B Paul & Co. in State Bank of India A/e No. 38392477213 has been received towards clearing charges; that about the statement of Sh. Suresh Rasiklal Joshi, proprietor of M/s Spam International (India) wherein Mr. Joshi had stated that the goods covered under S/B No. 6040132 dated 22.10.2020 was arranged by one Mr. A B Paul, he stated that he does not know anything about it and denied the allegations.

20. During the course of investigation, statement of Shri Nandkumar R Pawar, Manager of M/s A.B. Paul & Co. CB (CB No, 11/543) was recorded on 19.04.2021 and 20.11.2020 under section 108 of the Customs Act, 1962, wherein he inter-alia, stated that, he is working as a Manager in M/s A B Paul & Co. and his work is to look after the work related to KYC of the client and verification of the same and submitting documents for clearance at Customs; that when parties want to export they send signed copies of invoice/packing list etc through e-mail on M/s A B Paul & Co.'s mail id i.e.

kumarpawar834@gmail.com, and based on that shipping bills are filed; that he personally visited the addresses of the exporters and the firm was found to be existing at the declared address, however he does not have any records for address verification; that he doesn't have Custom Broker Pass; that he does not know Sh. Suresh Rashiklal Joshi of M/s Spam International (India) who in his statement had stated that the goods covered under S/B No. 6040132 dated 22.10.2020 was arranged by one (mobile no. 7045301795) of M/s AB Paul & Co.; Sh. Nandkumar R Pawar held that the mobile no. i.e. 7045301795 belongs to him but he do not know Sh. Suresh Rashiklal Joshi; that he (Mr. Pawar) met him (Mr. Joshi) first time on 27.10.2020 when he came at PCCCC, BKC, Mumbai.

21. In view of the above, once it has been proved beyond doubt that the goods against subject shipping bill, which were filed through customs broker M/s A.B Paul and Co., have been attempted to be exported on bogus, fictitious and non-existent IECs, it is categorically clear that the subject export document have been filed in contravention of the provisions of Section 7 of the Foreign Trade (Development and Regulation) Act, 1992 and rules made there under.

22. In view of the above, it is crystal clear that an attempt has been made to export cut and polished diamonds by fraudulent exporters based on the IECs which had been procured on non-functional and non-existent addresses and based on forged documents which has been obtained offering monetarily offers which is an attempt to export the goods in contravention of the provisions laid down under Section 50(2) of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992, that is why the subject goods have been held liable for confiscation under Section 113(i) of the Customs Act, 1962 by issuing respective show cause notices. Further, it appears that an attempt of fraudulent exports had not been possible, if Customs Broker M/s A B Paul & Co. would have fulfilled his obligation bestowed on him in view of CHA Licence under relevant Regulations of CBLR 2018. In view of the above, it appears that M/s A. B Paul and Company (CHA No 11/543) have contravened provisions of Regulation 10(a), 10(d), 10(e), 10(k), 10(m), 10(n) and Regulation 13(11) of Customs Brokers Licensing Regulations, 2018.

23. In view of the above, as per the obligations of a Customs Broker, it appears that the said CB has failed in their obligations as per the Regulation 10(a), 10(d), 10(e), 10(k), 10(m), 10(n) and 13(11) of CBLR, 2018.

24. In view of the above, the CB License held by M/s A B PAUL & CO., (PAN No. AABPP7363GG) was suspended by the Pr. Commissioner of Customs (General) vide Order No. 12/2021-22 dated 06.07.2021 and personal hearing was granted to the CB on 12.07.2021.

RECORD OF PERSONAL HEARING OF THE CB

25. Sh. Anil Balani (Advocate) authorized representative of M/s A B Paul & Co. appeared for PH through virtual mode on 12.07.2021. The Advocate made detailed oral submission, which they would be submitting in writing by the closer of tomorrow (13.07.2021). They had nothing further to add.

WRITTEN SUBMISSION OF THE CB

26. The CB vide their letter dated 12.07.2021 through email submitted following parawise submissions, which are as under:-

- i. Para 1 of the Order states that the validity of the CB license is

upto 31.12.2024. Yet from 4th June onwards, on the system, when we file a Shipping Bill or a Bill of Entry we are told that the license has expired.

- ii. The department's case as per Para 2 is that cut and polished diamonds were being exported by some unscrupulous persons in the name of 21 parties and in fact the exporter companies were existing only on paper.
- iii. As per Para 3 this CB filed 22 Shipping Bills for 14 parties.
- iv. Para 4 states that for past exports the foreign remittance was not realised to the tune of almost Rs.5000 crores.
- v. Para 8 relies on statement dated 27.10.2020 of Suresh Joshi of M/s. Spam International. Shri Suresh Joshi stated that the goods were arranged by Mr. AB Paul and that he was in contact with Shri Paul for the last 3 years; 150 SB were filed and cleared by AB Paul; They used to meet in the diamond market at Opera House; Sometimes payment was received in AB Paul's account; He received commission in hard cash through Shri A B Paul.
 - (a) This statement is patently false to the knowledge of the department. Hence although it was recorded in October 2020, no action was taken against this CB.
 - (b) AB Paul is the name of the firm. The proprietor is Kenneth Paul. Suresh Joshi could never have dealt with Mr AB Paul or Shri Suresh Joshi could have been easily confronted with Kenneth during the investigations to establish the truth.
 - (c) Kenneth was engaged only in the business of clearing. He was incapable of arranging diamonds.
 - (d) All AB Paul's bank accounts were available with the department and the notice didn't refer to any entries which substantiate the allegations of Suresh Joshi. Thus the allegations were demonstrably false.
 - (e) What was significant to note that Joshi was working in the diamond trade for 7 years and he conveniently stated that he was not aware about the value and genuineness of the goods exported by him.
- vi. Mukesh Kothari in his statement dated 13.11.2020 admitted that Pintu Chauhan promised to pay him Rs.5000 per consignment. As per the statement he had not disclosed this to the CB. The money which he deposited in the account of the CB was for payment of Bills raised for clearing the goods.
- vii. Para 9 refers to Yashshree Enterprises and no one has implicated this CB in the said statements.
- viii. Para 10 refers to Aarushi Corporation. The proprietor Varma gave his documents to Janak who opened 2 firms - Aarushi and Aayush. Verma was informed by Janak that the companies will deal in the import and export of diamonds. There was no mention of the CB in the said Para.

- ix. Para 11 refers to M/s. Arvind Gems. Janak was nephew of Sonigra, Partner of Arvind Gems. This CB was not blamed for anymisdemeanour.
- x. In Para 11.3, Janak has taken responsibility for Arvind Gems, Tanisha Gems and Patel Exports and further named Prerak Shah.
- xi. Para 12 reveals that Sandeep Jetwa of M/s. Tanisha Gems was cousin brother of Janak.
- xii. Para 13 refers to M/s. Aayush Exports. Again the representatives have not blamed or named thisCB.
- xiii. Para 14 refers to M/s. RishabhGems.
- xiv. Para 15 refers to M/s. Star Gems. Kothari, Partner, states that he deposited money in the account of AB Paul and Co. It was hereby clarified that this was on account of clearingcharges.
- xv. Para 16 again refers to statement of Sh. Suresh Joshi. Sh. Suresh Joshi alleged that the goods were arranged by AB Paul. The same Para 16 admits that Kenneth and Nandkumar of AB Paul do not know Suresh Joshi. Thus the allegation made by Joshi is false.
- xvi. Para 17 refers to M/s. Patel Exports. He has named Janak Rathod only.
- xvii. Para 18 refers to M/s. Pal Exports. He has not named thisCB.
- xviii. Para 19 refers to statement of Kenneth, Proprietor of this CB. He confirms that for every client KYC was done, approval from Customs obtained. He takes copies of IEC, GST Registration, Address Proof, Bank verification, ITR, Bank statement, rent agreement and receipt, Pan Card, Aadhar Card and authority letter. The address was visited and documents were delivered at the address. Lastly he denied the allegations of Suresh Joshi.
- xix. In para 20 NandkumarPawar has also denied the allegations of Suresh Joshi. He met Joshi for the first time on 27.10.2020 at PCCCC. This was obviously verified by the department and also confirmed from their mobile phones.
- xx. All the IECs were validly issued by DGFT. Many exporters approached the High Court and their petitions were entertained and interim relief was granted to them.
- xxi. Para 22 states that the following Regulations under CBLR, 2018 were contravened:

Regulation 10(a):

Sandeep from M/s. Tanisha Gems allegedly stated that the signatures on 2 shipping bills were not his signatures. This allegation has not been independently verified from any expert. Nor has a case of forgery been registered.

Regulation 10 only stipulates that the CB shall obtain an Authorization. Sandeep has not denied the signature on the Authorization. Regulation 10(a) was therefore not violated. The

signatures on the export documents can be subjected to scrutiny but the CB cannot be punished under Regulation 10 (a).

Regulation 10 (d):

All clients were advised to comply with the law. It is alleged that the CB did not meet 3 of the 14 exporters and therefore could not have given proper advice to them.

The fact was that all KYC documents were produced on demand, address verification was carried out and no one has alleged that they failed to receive advice. Even the 3 exporters have not complained about not receiving proper advice.

Regulation 10(e):

The CB has always imparted correct information to all their clients. It was only during investigation that it was revealed that the IEC holders were allegedly not the actual owners of the goods and that remittance was not realised. The CB was exactly in the same position as the department came to a conclusion that revenue loss could not happen without the involvement of the customs broker was preposterous. The finding has been arrived at without a whisper of evidence against the CB. If all agencies of the department were not aware with all the resources at their command the poor CB cannot be made the scape goat simply because he is conveniently available.

Regulation 10(k):

The CB has maintained up to date records. There was absolutely no requirement under the regulations to prepare a visit report for address verification. The regulations clearly say that verification has to be done on the basis of documents. It's a large country. The importer can be located in any corner of the country. The CB is not expected to physically travel and thereafter maintain a record.

Regulation 10(m):

This CB has always discharged all his duties efficiently. There was no obligation or duty or requirement for any CB to monitor remittances after export completed. That would be within the jurisdiction of RBI and Customs. It was nobody's case that the CB was involved in or aware of the delay in receiving remittance.

Regulation 10 (n):

The declared address was verified by using authentic documents etc. Sh. Sunil Verma of M/s. Arushi Corporation may allege that he is not aware about exports but his statement cannot be taken at face value and it certainly cannot be used for depriving the CB of his livelihood. In fact his statement proves that he was aware that IEC was issued in his name and that it was in use.

27. The advocate of the CB made further following submissions:

- i. Admittedly no drawback or other custom incentive has been earned on these exports and there was no revenue loss.

- ii. Confiscation is proposed under 113(i). Valuation however is the prerogative of the department. For diamonds there is an expert panel. The CB has no role to play.
- iii. Regulations 10(a),(d),(e),(k),(m),(n) and 13(11) of the CBLR, 2018 were not violated.
- iv. There was no violation of Regulation 13(11) because Pawar was working under BDB Pass no.GEM131197.
- v. This was a generation old CB firm started by the Father of the present incumbent. Sh. Kenneth, the Proprietor passed the Rule 9 Exam when he was 29 years old. Today he is 58 years old and ailing from Hypertension and Palpitations.
- vi. They have survived for such a long time because of their reputation and service. The order creates an impression that 14 out of 21 exporters whose exports are under the scanner were serviced by their firm. The fact is that they provide their services to some of the most reputed importers and exporters, a few of which are listed below:-
 - i. Fine Organics Ltd.:
 - ii. Fine Zeelandia PvtLtd.:
 - iii. Hilti International Toolmanufacturers
 - iv. Amoli Organics Pvt.Ltd.:
 - v. AmsalChem PvtLtd.:
 - vi. Super abrasivetooling
 - vii. Abrasivetechnology
 - viii. Avenue Minerals-
 - ix. Stay Sharp DiaTools
 - x. DMMetals
 - xi. Sky onBoard
 - xii. SimoCorporation
 - xiii. EnpeeEnterprises
 - xiv. ZelleBiotech

In the PCCCC also, over and above these 14 parties they have worked for the following exporters who are untainted:-

- i. JH Gems
- ii. Jhaliya Exporters
- iii. Jasoliya Brothers
- iv. Jainain Exports
- v. K. Star Exporters
- vi. Kerycare Diamond
- vii. KM Exports

- viii. Mani Export PvtLtd.
- ix. M Sipani Exports
- x. Nagesh Impex
- xi. Neelam Exports
- xii. P & Sons Export PvtLtd.
- xiii. Purvi Enterprises
- xiv. R Rajesh Exports
- xv. Rose Gems
- xvi. Ruchi Exports
- xvii. Dharam Jewels
- xviii. Donda Exports
- xix. Dhurvi Impex
- xx. Exclusive Diamonds
- xxi. Excel Gems
- xxii. Eco- lightdiamonds
- xxiii. HRV diamonds
- xxiv. Formax diamonds
- xxv. Frontline overseas
- xxvi. GG exports
- xxvii. H Vishal & co
- xxviii. H Navin & co.
- xxix. H Sharad & co
- xxx. Amrut exports
- xxxi. Ankit gems
- xxxii. Akshar diamonds
- xxxiii. Alpit Gems
- xxxiv. Ajay diamonds
- xxxv. Aksht impex
- xxxvi. Aalya impex
- xxxvii. Anjali diamonds
- xxxviii. B Vijay kumar & co
- xxxix. Bhagwati gems
- xl. Bhumika gems
- xli. Bhoomi diamonds
- xlii. Carbon creation
- xliii. Chandan gems
- xliv. Deshma creation

xiv. Usha exports

vii. As far as these 14 exporters were concerned, they have responded to the department's summons and they have issued letters to the department, stating the facts from their perspective. They have all approached the Hon'ble Bombay High Court. In 4 petitions interim relief was also granted to them. Thus, proceeding against the CB at this stage is premature and unjustified. Other CB who have serviced such exporters were rightly not subjected to suspension and inquiry and the same treatment must be given to the CB in the instant case. Otherwise the suspension will be discriminatory and arbitrary.

viii. Much has been made of Nandkumar Pawar allegedly working without a pass. The facts of the case are asunder:

The List of CB's employees is as follows:

1. Shirley
2. Indar
3. Ankush
4. Nandu
5. Ravi
6. Sanjay
7. Dilkush
8. Sheshadri
9. Mangesh
10. Pawar&More.

List of employees with custom pass is as follows:

1. Reggie Lewis
2. SharadSakhore
3. R kRaju
4. CliffordDsouza
5. HemantSatam
6. DattaShinde
7. Sachinkale
8. AdrainPaul

Sh. Nandkumar is Manager at Admin level at PCCCC with a Diamond Bourse pass. His function is to ensure smooth functioning of office in the Diamond Bourse. Cargo being valuable in nature, a responsible & experienced person for due diligence and for managing the staff is necessary. He ensures verification of KYC. Clients were given daily status report on their import/export shipments. Billing & Accounts were also handled by him. Clients' grievances were handled by him and the proprietor. They ensure that every client was given timely service. The custom formalities at PCCCC were handled exclusively by Custom Pass holders Hemant Satam & Uday Pawar.

ix. There was no extra monetary benefit or ulterior motive attributed to

the CB.

- x Although the suspension order is dated 6th July, the CB has been effectively prevented from filing any Bill of Entry or Shipping Bill since the 4th of June.
- xi Since the problem pertains to PCCCC, the CB undertakes to stop doing business at PCCCC until it is completely absolved of all charges.
- xii The justification for suspension of the CB License was completely lacking. There was no emergent situation or urgency in this stale old case. At the highest an Inquiry can be ordered. In the following cases the High Courts and CESTAT have held that CB license cannot be suspended when there is no emergent situation:
 - (a) In the case of **National Shipping Agency [2008 (226) ELT 46 (Bom.)]** it was held that the power of suspension of a license is an emergent power which is to be used in cases where it is required that CHA license be immediately suspended. Para 2 of the Court's order reads as under:

"The power of suspension is pursuant to the powers conferred under Regulation 20(2) of the CHALR, 2004. As we have noted in the earlier judgments, this is an emergent power to be used in those cases where it is required that the CHA licence be immediately suspended. The very fact that alleged violation is of the year 2005, as the import had taken place in September, 2005 and order of suspension was issued on 30-10-2006 itself would indicate that that there is no emergency which required that the licence be suspended. The tribunal has noted that it is always open to the appellants herein to take steps even after the order of the tribunal sated 11-5-2007. It appears that no show cause notice has been issued to the respondents herein, till date."
 - (b) In the case of **East West Freight Carriers [1995 (77) ELT 79 (Mad.)]** it was held that suspension of licence is not sustainable unless the order indicates application of mind by the Collector to the aspect whether immediate action is necessary pursuant to contravention by the Clearing Agent. The jurisdiction conferred on the Collector to suspend the licence exists only in cases where immediate action is necessary.
 - (c) In the case of **Schankar Clearing & Forwarding [2012 (283) ELT 349 (Del.)]** it was held as under: Regulation 20 empowers the Commissioner of Customs to revoke or suspend the license of CHA, in certain eventualities including in the case of misconduct. Regulation 20(2) is an overriding provision conferring emergency powers upon the Commissioner to-without any previous show-cause or any previous hearing - wherever immediate action is warranted, direct suspension of license pending an inquiry. Regulation 22 spells out the procedure for suspension or regulation of license. It is in effect the procedure to be adopted for the

purpose of holding an inquiry. However, proviso to Regulation 22(1) reserves the right of the Commissioner of Customs to order immediate suspension of the CHA license. A close reading of these provisions would disclose that the power to direct immediate action is confined to taking it within 15 days from the date of receipt of a report from the investigating authority.

(d) In the case of **Venus Shipping Agencies [2009 (237) ELT 549 (Tri.)]** it was held as under: "Judicial authorities reaffirm the legal position that the licence issued to a CHA can be suspended only where immediate action is necessary against him and where enquiry is pending or contemplated against him. In the instant case, none of these ingredients is present. The learned Commissioner has not indicated in his order that any enquiry is pending or contemplated against the CHA, nor has he stated circumstances warranting immediate action against the CHA. As a matter of fact, the licence was suspended after nearly three months from the date of filing of the second shipping bill. This Bench also had occasion to set aside an order of the same Commissioner vide Final Order No.1370/07 dated 19-11-2007 in Appeal No. C/363/2007 [Ganesh Shipping Agency v. Commissioner of Customs, Chennai, 2008(222) E.L.T.536 (Tribunal).] In both the cases, it was held that the licence issued to a CHA could be suspended only in cases where immediate action was necessary and that too where enquiry against the CHA was pending or contemplated. Had it been urgent for the Commissioner with the present case to take action against the CHA, he could have taken appropriate proceedings like issue of show-cause notice to them. On these facts and circumstances, we find that the Commissioner's order is vitiated by serious infirmity, which calls for interference by this Tribunal."

(e) In the case of **Vetri Impex [2001 (135) ELT 95 (Tri)]** it was held that suspension of CHA's licence without issue of show cause notices and without granting any personal hearing is bad in law and the order of suspension should be set aside. There was nothing on record to show any emergent situation to warrant immediate action under Regulation 21(2) of Customs House Agents Licensing Regulations, 1984.

- xiii. Under Regulation 17, notice of inquiry has to be issued within 90 days from date of receipt of offence report. Suspension can be ordered only when inquiry is contemplated. There is no reference to any offence report in the entire suspension order. Thus the proceedings are barred by time and hit by limitation.
- xiv. Suspension of the CB License is causing grave and irreparable loss and hardship to the CB. The livelihood of the proprietor of the CB and employees are affected.
- xv. In the circumstances it was earnestly prayed that the suspension be withdrawn and the C.B. License be restored forthwith.

- xvi The CB undertakes to cooperate with the department in all the investigation and enquiry proceedings.

28. The Authorised representative of the CB further made additional written submissions vide letter dated 15.07.2021 made following submissions:-

- (i) At PCCCC the actual export was carried out by the exporter and its personnel.
- (ii) The Custom Broker only gets the Shipping Bill assessed and completes the other formalities.
- (iii) The reason was that the cargo involved was small and valuable and the CB cannot take financial responsibility for the same.
- (iv) This was unlike normal imports by sea and air where the export was handled by the Custom Broker and the Shipping Agents.

DISCUSSION AND FINDINGS

1. I have gone through the fact of the case. The issue before me at the present is limited to determining whether the continuation of suspension of the CB License is warranted or otherwise in the instant case in the light of the material on record.

2. I find that the license of Customs Broker M/s. A B Paul & Co. (CB no. 11/543) was suspended vide Order No. 12/2021-22 dated 06.07.2021 based on the offence report received from PCCCC, Air Cargo Complex vide letter F.No. S/3-Misc-01(182)/2020-21 PCCCC Vol-I dated 05.05.2021 along with copy of various Show Cause Notices issued by the Joint Commissioner of Customs, PCCCC, APSC, Mumbai..

3. The defense submission stated that Under Regulation 17, notice of inquiry has to be issued within 90 days from date of receipt of offence report. Suspension can be ordered only when inquiry is contemplated. There was no reference to any offence report in the entire suspension order. Thus the proceedings are barred by time and hit by limitation. They also stated that Suspension of the CB License is causing grave and irreparable loss and hardship to the CB. The livelihood of the proprietor of the CB and employees are affected. In the circumstances it was earnestly prayed that the suspension be withdrawn and the C.B. License be restored forthwith. The CB undertakes to cooperate with the department in all the investigation and enquiry proceedings.

3.1 Further, I find from the Show Cause Notices that :-

- i. The actual owner of the goods has not been identified yet.
- ii. The role of the CB to be investigated thoroughly.
- iii. Many documents are still to be obtained from agencies like Banks etc.
- iv. Apart from that involvement of many other persons is to be investigated.

In the instant case, inquiry is contemplated in all the Show Cause Notices. And it is appropriate case where immediate action is necessary, and under Regulation 16(1) of CBLR, 2018 suspend the licence of a Customs Broker where an enquiry against such Customs Broker is pending or contemplated.

4. The defense submission further stated that the justification for suspension

of the CB License was completely lacking. There was no emergent situation or urgency in this stale old case. At the highest an Inquiry can be ordered. In the following cases the High Courts and CESTAT have held that CB license cannot be suspended when there is no emergent situation.

5. The CB relied upon the following judgement:

- a) National Shipping Agency [2008 (226) ELT 46 (Bom.)]
- b) East West Freight Carriers (P) Ltd. Vs. Collr. of Customs, Madras, reported in 1995 (77) E.L.T. 79 (Mad.)
- c) M/s. Schankar Clearing & Forwarding Vs. C.C. (Import & General), reported in 2012 (283) E.L.T. 349 (Del.)
- d) Venus Shipping Agencies [2009 (237) ELT 549 (Tri.)]
- e) M/s. Vetri Impex [2001 (135) ELT 95 (Tri.)]

In this regard, I rely on the Hon'ble High Court Judicature at Madras judgement in the case of Sabin Logistics Pvt. Ltd. Vs. Commissioner of Customs, Chennai, reported in 2018 (362) E.L.T. 226 (Mad.), where in it was held that -

"13. From the above dates and events, it is seen that Specific Intelligence was received by the Department alleging mis-declaration on 1-3-2017. The cargo, which was shifted through Oman Airways, recalled from Muscat before reaching its final destination at Italy. Thereafter, summons have been issued and the business premises of the exporter as well as the petitioner were searched, records were recovered and statements were recorded. The cargo arrived at 6-3-2017, which was opened for 100% examination and samples were drawn and the consignments were seized on 6-3-2017. The CLRI submitted a report on 8-3-2017/10-3-2017 stating that the consignment does not satisfy norms in PN 21/2009. The statements of persons including the Customs Broker were recorded between 8-3-2017 to 11-4-2017. Several correspondences were sent between March, 2017 to May, 2017 calling for records of the export cargo handled by the petitioner. The Licensing Authority is the Customs Department and the intelligence and inquiry conducted was by the Air Intelligence and the Air Customs. The offence report was received by the respondent on 27-2-2018.

*14. On a cursory perusal of the impugned order, it is seen that the investigation, which was being done, did not relate to one single consignment, viz., that of M/s. Fortune Leather Exports, but it is seen that nearly 79 export consignments handled by the petitioner, all of which pertain to leather products, are subject matter of scrutiny. The respondent would state in the impugned order that several consignments were cleared by describing the goods as "Finished Leathers" and there is misdeclaration by the exporter/petitioner and apart from misdeclaration, as regards the number of packages. After the personal hearing, the impugned order has been passed on 6-4-2018. In the given facts and circumstances, it has to be seen as to whether the respondent was justified in invoking the power under Regulation 19(1) of the CBLR and whether there is an inordinate delay between the date on which the Air Customs received Specific Intelligence and the date on which the Commissioner of Customs/Licensing Authority suspended the petitioner's licence. **In my view, there can be no straight-jacket formula for computing the time period to assess as to whether a case is one which calls for immediate suspension or not**".*

19. Thus, for the above reasons, this writ petition is dismissed holding that the impugned order of suspension passed under Regulation 19(2) of the Regulations cannot be held to be invalid merely because the power was exercised only after the receipt of the offence report dated 27-2-2018 and the Court is convinced that the exercise of power cannot be faulted as not being the one where immediate exercise was done. In other words, in the facts and circumstances, the invocation of power under Regulation 19(1) of the CBLR cannot be held to be inappropriate. Therefore, the contention, raised by the petitioner, in this regard, is rejected. With regard to all other factual issues, the petitioner is granted liberty to file an appeal before the CESTAT and if such appeal is filed, the CESTAT while computing limitation, shall exclude the period from 13-4-2018 till the receipt of the certified copy of this order. No costs. Consequently, the connected miscellaneous petition is closed".

6. I find that in the instant case License of the Customs Broker, M/s. A.B. Paul & Co. (CB no. 11/543) was suspended vide Order No. 12/2021-22 dated 06.07.2021 based on the offence report received from PCCCC, Air Cargo Complex vide letter F.No. S/3-Misc-01(182)/2020-21 PCCCC Vol-I dated 05.05.2021 along with copy of various Show Cause Notices issued by the Joint Commissioner of Customs, PCCCC, APSC, Mumbai; that an opportunity of personal hearing was granted to the CB on 12.07.2021 i.e. within 06 days. The C.B. appeared for the personal hearing on 12.03.2021. As such, there is no delay in the instant case. Further, I find that observations Hon'ble High Court judicature at Madras i.e. "there can be no straight-jacket formula for computing the time period to assess as to whether a case is one which calls for immediate suspension or not" are squarely applicable in the instant case.

7. The defense submission stated that at PCCCC the actual export was carried out by the exporter and it's personnel; that the Custom Broker only gets the Shipping Bill assessed and completes the other formalities; that the reason was that the cargo involved was small and valuable and the CB cannot take financial responsibility for the same; this was unlike normal imports by sea and air where the export was handled by the Custom Broker and the Shipping Agents.

In the instant case, I find that the power under Regulation 16(1), was invoked as in the opinion of the Principal Commissioner of Customs, it was found that it is an appropriate case, where immediate action is necessary. In terms of sub-regulation (2) of Regulation 16, opportunity of hearing was granted to the CB, which has been availed. Further, orders issued under Regulations 16(1) and 16(2) of the CBLR, 2018 are temporary measures and final order is to be issued under Regulation 17 of CBLR, 2018 after the receipt of the inquiry report from the nominated Inquiry Officer and issue of show cause notice.

8. The defense submission stated that the proprietor was Sh. Kenneth Paul and Sh. Suresh Joshi could never have dealt with Mr. AB Paul or Shri Suresh Joshi could have been easily confronted with Sh. Kenneth during the investigations to establish the truth. They also stated that various Exporters have not blamed or named the CB. They also stated that Regulations 10(a),(d),(e),(k),(m),(n) and 13(11) of the CBLR, 2018 were not violated. There was no violation of Regulation 13(11) because Sh. Pawar was working under BDB Pass no. GEM131197. This was a generation old CB firm started by the Father of the present incumbent. Kenneth, the Proprietor passed the Rule 9 Exam when he

was 29 years old. Today he is 58 years old and ailing from Hypertension and Palpitations.

From the investigation report, I find that the IECs which had been procured on non-functional and non-existent addresses and based on forged documents which has been obtained offering monetarily offers which is an attempt to export the goods in contravention of the provisions laid down under Section 50(2) of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992. Further, it appears that an attempt of fraudulent exports had not been possible, if Customs Broker M/s A B Paul & Co. would have fulfilled his obligation bestowed on him in view of CHA Licence under relevant Regulations of CBLR 2018. In view of the above, it appeared that M/s A. B Paul and Company (CHA No 11/543) have contravened provisions of Regulation 10(a), 10(d), 10(e), 10(k), 10(m), 10(n) and Regulation 13(11) of Customs Brokers Licensing Regulations, 2018.

9. With regard to Regulation 10(a) of CBLR, 2018, the defense submission stated that Sh. Sandeep from M/s. Tanisha Gems allegedly stated that the signatures on 2 shipping bills were not his signatures. This allegation has not been independently verified from any expert. Nor has a case of forgery been registered.

Regulation 10 only stipulates that the CB shall obtain an Authorization. Sh. Sandeep has not denied the signature on the Authorization. Regulation 10(a) was therefore not violated. The signatures on the export documents can be subjected to scrutiny but the CB cannot be punished under Regulation 10 (a).

In this regard, I find from the statement of Shri Sandeep Rasik Jethwa that Janak Rathod take his Aadhar Card, Pan Card and his signature. And opened a company in the name of M/s. Tanisha Gems. The bank account was perated and used by Shri Janak Rathod. Also no material bring on record that the IEC holder has authorized the CB to file Shipping Bills. On being asked, he stated that he was not aware of fact that any diamonds were being exported from PCCCC Customs Mumbai on the name of M/s. Tanisha Gems. He stated that he didn't have any knowledge of diamonds. He also admitted that the S/Bills and related invoices and packing list filed before customs, were not signed by him and none documents were related to him.

As per the statement of Shri Sunil Ramasharik Verma, proprietor of M/s. Arushi Corporation in his statement dated 11.11.2020 recorded under section 108 of the Customs Act, 1962 stated that he gave his identity documents like PAN Card, Aadhar Card to Mr. Janak and he was the main person who operate the company in his name. He also stated that the Shipping Bill No. 6050558 dated 22.10.2020 filed in the name of M/s. Ayush Exports did not belong to him. He also stated that he has not signed any documents related to any import or export consignment of M/s. Ayush Exports and M/s. Arushi Corporation. He also stated that signature on the said shipping bill and documents and invoices were forged and he doesn't have any knowledge of the same, those signatures were not done by him.

As per the statement of Sh. Nandkumar R. Pawar, Manager of the CB firm M/s. A.B. Paul in his statement dated 19.04.2021 recorded under section 108 of the Customs Act, 1962 stated that the Shipping Bills were not signed in their presence. Also the IEC holders denied that they have signed on the documents related to the exportation of the goods. Thus it is clear that the CB has violated the Regulation 10(a) of the CBLR, 2018.

10. With regard to Regulation 10(d) of CBLR, 2018, the defense submission stated that all clients were advised to comply with the law. It is alleged that the CB did not meet 3 of the 14 exporters and therefore could not have given proper advice to them.

The fact was that all KYC documents were produced on demand, address verification was carried out and no one has alleged that they failed to receive advice. Even the 3 exporters have not complained about not receiving proper advice.

I find from the statement of Shri Nandkumar R. Pawar, working Manager of the CB M/s A. B Paul and Company recorded on 20.11.2020 under section 108 of the Customs Act, 1962, wherein he admitted that he never met the IEC holders of M/s. Jayshree Enterprises, M/s. Sea Shine Export & M/s. Shine Star Export. On being asked about contacted the above IEC holders, he replied that he have tried to contact the IEC holder on their mobile numbers, however no response from them. Also from the statement of various IEC holders, it is evident that they were not aware that Cut and Polished Diamonds were being exporting in their name. Also they did not have any knowledge of the exported goods i.e. cut and polished Diamonds. In this regard, it is clear that if the CB has not contacted with the IEC holders, he could not able to give proper advice to their clients. Thus, it appears that CB neither advised the actual IEC holders about provisions of the Customs Act 1962 and the Rules & Regulations nor brought to the notice of the Customs Authorities in case of non-compliance. Thus it appears that the CB has contravened the provisions of Regulation 10 (d) of the CBLR, 2018.

11. With regard to Regulation 10(e) of the CBLR, 2018, the defense submission stated that they have always imparted correct information to all their clients. It was only during investigation that it was revealed that the IEC holders were allegedly not the actual owners of the goods and that remittance was not realised. The CB was exactly in the same position as the department came to a conclusion that revenue loss could not happen without the involvement of the custom broker was preposterous. The finding has been arrived at without a whisper of evidence against the CB. If all agencies of the department were not aware with all the resources at their command the poor CB cannot be made the scape goat simply because he was conveniently available.

In respect of Regulation 10(e) of CBLR, 2018, I find from the statement of Shri Nandkumar R. Pawar, working manager of the Custom Broker recorded on 19.04.2021 under section 108 of Customs Act, 1962, wherein he interalia admitted that they do not have any knowledge about the realization of export procees. During the course of investigation, it was revealed that proprietor/partner of these IECs were not the actual owner of the goods which were being exported out of India, Wherein the S/Bs have been filed using these IECs. In this context, it was pertinent to emphasize that the past exports of some of these exporters were substantial both in terms of number of shipments as well as quantum of FOB value involved. The gravity of this matter becomes more alarming in the light of the fact that the foreign remittance of all the shipping bills filed using these IECs have not been realized till date through formal banking channel; ever after lapse of time limit prescribed by the RBI guidelines, as per database available with the Customs, which aggregately runs into more than rupees Five Thousand Crores presently. This is a huge revenue loss to the government. This type of revenue loss could not happen without the involvement of the Customs Broker. In the subject matters M/s A. B Paul &

Company has failed to exercise due diligence to correctness of information in respect of the fraudulent exporter, otherwise they could have not made an attempt to export goods on the basis of forged documents and IEC's obtained on non existence addresses. Thus, it appears that CB was hand in glove with the proxy exporter and facilitated the exporter to export of the goods. It is evident that the Customs Broker processed the documents without exercising due diligence to ascertain the correctness of the information. Thus it appears that the CB has contravened the provisions of Regulation 10 (e) of the CBLR, 2018.

12. With regard to Regulation 10(k) of CBLR, 2018, the defense submission stated that the CB has maintained up to date records. There was absolutely no requirement under the regulations to prepare a visit report for address verification. The regulations clearly say that verification has to be done on the basis of documents. It's a large country. The importer can be located in any corner of the country. The CB is not expected to physically travel and thereafter maintain a record.

In respect of Regulation 10(k) of CBLR, 2018, I find from the statement of Shri Nandkumar R. Pawar, working manager of the Custom Broker recorded on 19.04.2021 under section 108 of Customs Act, 1956 wherein he admitted that they have physically verified the IECs at the declared addresses. However, they have not prepared any visit report at the time of physical verification of the address; hence it was not available in his records. On being asked about the verification records maintained by the CB firm, he stated that no such record was available with them. In this regard, it is clear that the CB could not maintain proper record in respect of the exporter and their addresses; therefore, it appears that the CB has violated the provisions of Regulation 10(k) of CBLR, 2018.

13. With regard to Regulation 10(m) of the CBLR, 2018, the defense submission stated that this CB has always discharged all his duties efficiently. There was no obligation or duty or requirement for any CB to monitor remittances after export completed. That would be within the jurisdiction of RBI and Customs. It was nobody's case that the CB was involved in or aware of the delay in receiving remittance.

I find that M/s A. B Paul & Company failed to discharge his duties with efficiently by filing shipping bills on bogus IEC's. Due to this, the foreign remittance of all the Shipping Bills filed using these IECs have not been realized till date through formal banking channel; even after lapse of the time limit prescribed by the RBI guidelines, as per database available with the customs, which aggregately runs into more than Rupees Five Thousand Crores presently, i.e. a huge revenue loss to the government. If the CB has verified the credential of the IEC holders, these commissions and omissions on the part of the CB firm prove grave inefficiency in discharge of their duties as a Customs Broker. Thus it appears that the CB has contravened the provisions of Regulation 10 (m) of the CBLR, 2018.

14. With regard to Regulation 10(n) of the CBLR, 2018, the defense submission stated that the declared address was verified by using authentic documents etc. Sunil Verma of Arushi Corporation may allege that he was not aware about exports but his statement cannot be taken at face value and it certainly cannot be used for depriving the CB of his livelihood. In fact his statement proves that he was aware that IEC was issued in his name and that it was in use.

I find from the investigation report that not only Mr. Sunil verma but also many other IEC holder in their statement admitted that they were not the actual exporter. In this case, Shri Nandkumar R. Pawar in his statement dated 19.04.2021 recorded under section 108 of the Customs Act, 1962, stated that he personally visited the address of the IEC holders. However, Smt. Meena Pitchappa, Partner in M/s. Arvind Gems in his statement dated 27.10.2020 stated that he was already knowing the fact that there was tailor shop at the address of M/s. Arvind Gems, which she used to visit. The shop belongs to Shri Mahesh Narayan Sonigra. This shows that the Customs Broker tried to misguide the department by giving false statement. To verify the address of the IEC holders, all the office address of the IEC holders were visited by the officers of customs, however no signboard or any proof of existence of the Exporters found at the said addresses. This is a repeated and complete failure on part of customs broker that they have processed the subject bills for clearances without doing the necessary KYC as mandated under Regulation 10(n) of CBLR, 2018 of all the IEC holders mentioned in Para 7 above. Also various IEC holders in their statements admitted that they did not have any relations with the subject export consignment and had never exported any consignments through the CB M/s. A.B. Paul & Co. and also stated that they did not know him; that somebody has misused for the clearance of the said consignment and dragging them into this illicit export of Cut and Polished Diamonds to Dubai and Hong-Kong. I find that this being the case, the whole purpose of KYC is defeated i.e. to ensure that the CB has received and verified the KYC documents submitted by the genuine client. There is no denying the fact that the CB M/s. A.B. Paul & Co. (CB No.11/543), have not been careful and not diligent in undertaking the KYC of the background of exporter and accepted documents, which he did not verify. Thus it appears that the CB has contravened the provisions of Regulation 10 (n) of the CBLR, 2018.

15. In respect of Regulation 13(11) of CBLR, 2018, the defense submission stated that the Custom formalities at PCCCC were handled exclusively by Custom Pass holders Hemant Satam & Uday Pawar. But it was not on record that the Customs clearance handled by Sh. Hemant Satav and Sh. Uday Pawar. I find that, it is pertinent to mention that Sh. Suresh Rasiklal Joshi, proprietor of the firm M/s. Spam International (India), in his voluntary statement recorded on 27.10.2020 under Section 108 of the Customs Act, 1962, wherein he interalia stated that the goods were arranged by one Sh. A B Paul, Mobile No. 7045301795 and the said consignment was also cleared by him, the said Mobile No. belongs to Sh. Nandkumar Pawar, Manager in M/s: AB Paul & Co, and however, he has not been issued any pass from Customs. Shri Nandkumar R. Pawar in his statement dated 19.04.2021 admitted that he looked after the work related to KYC of the client and verification of the same and submitting documents for clearance at Customs and he was working as a Manager in the Custom Broker Firm M/s. A B Paul & Co. (CB No. 11/543). From the statement of Shri Nandkumar R. Pawar, it is clear that he was handling the work of the Customs Broker; however, he does not hold any F, G and H Category Customs Pass; thus it appears that the CB has contravened the provisions of Regulation 13(11) of the CBLR, 2018.

16. My consideration in the instant case is limited to determining whether the continuation of suspension of the Customs Broker License is warranted or otherwise in light of the material of the record. I find that Personal Hearing opportunity given to the CB, his authorized advocate appeared for PH on 12.07.2021 and give written submission also through e-mail. Whether or not the

individual charges hold will be the subject matter of detailed inquiry under Regulation 17 of CBLR, 2018 but there is enough prima facie material on record to apprehend that charges are sustainable. All the charges sustain for the time being and can form grounds for continuation of the order of suspension.

17. In view of the above facts stated above, it appears that the Customs Broker is liable for their acts of omissions and commissions leading to contraventions of the provisions of CBLR, 2018, which amounts to breach of trust and faith imposed on the CB by the Customs. The Customs Broker M/s. A B Paul & Co. (CB no. 11/543) have therefore, prima-facie, failed to fulfill their responsibilities as per Regulation 10(a), 10(d), 10(e), 10(k), 10(m), 10(n) & 13(11) of CBLR, 2018.

18. Accordingly, I pass the following order: -

ORDER

01. I, Principal Commissioner of Customs (General), in exercise of powers conferred upon me under the provisions of Regulation 16 (2) of CBLR, 2018 order that the suspension of the Customs Broker Licence M/s. A B Paul & Co. (CB no. 11/543) (PAN No. AABPP7363G) vide Order no. 12/2021-22 dated 06.07.2021 shall continue, pending inquiry proceedings under Regulation 17 of CBLR, 2018.

02. This order is being issued without prejudice to any other action that may be taken against the CB or any other person(s)/firm(s) etc. under the provisions of the Customs Act, 1962 and Rules/Regulations framed there under or under any other law for the time being in force.


22/7/21
(PRACHI SAROOP)

**Principal Commissioner of Customs (G)
NCH, Mumbai - I.**

To,

M/s. A. B. Paul & Co, (PAN No. AABPP7363G),
Vikas Building, 4th Floor Unit No. 403,
11th Bank Street, Mumbai, 400023.

Copy to:

1. The Principal/Chief Commissioner of Customs, Mumbai I, II, III Zone
2. The Pr. Commissioner of Customs (Preventive), NCH, Mumbai.
3. CIU's of NCH, ACC & JNCH
4. EDI of NCH, ACC & JNCH
5. Bombay Custom House Agent Association
6. Office copy
7. Notice Board.

