



प्रधानआयुक्त, सीमाशुल्क (सामान्य) का कार्यालय
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
(GENERAL),
नवीन सीमाशुल्क भवन,बेलाई इस्टेट, मुंबई- 400 001. NEW CUSTOM
HOUSE, BALLARD ESTATE, MUMBAI - 400 001.

संचिका सं./F. No.- GEN/CB/72/2023 -CBS

आदेश दिनांक/Date of Order: 08 .03.2024

CAO No. 81/CAC/PCC(G)/SJ/CBS-Adj

जारी दिनांक/Date of issue: 11.03.2024

संख्या:

DIN : 20240379OC0000728727

द्वारा जारी : सुनील जैन

प्रधान आयुक्त, सीमाशुल्क(सामान्य)
मुंबई -400 001

Issued By : Sunil Jain

Pr. Commissioner of Customs(Gen.),
Mumbai - 400 001.

ORDER-IN-ORIGINAL मूल आदेश

ध्यान दीजिए/ N.B. :

1. यह प्रति उस व्यक्ति को निजी उपयोग हेतु निःशुल्क प्रदान की जाती है, जिसे यह जारी की जा रही है।
This copy is granted free of charge for the private use of the person to whom it is issued.
2. इस आदेश के विरुद्ध अपील माँगे गए राशी के 7.5% के भुगतान पर सीमाशुल्क अधिनियम, 1962 की धारा 129A(1B)(i) के संबंधमें सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण में स्वीकार्य है, जहाँ शुल्क या शुल्क एवं जुर्माना विवादित हों, या जुर्माना, जहाँ सिर्फ जुर्माना ही विवादित हो। यह अपील इस आदेश के संप्रेषण की तारीख के तीन महीने के अंदर दायर की जाएगी। यह अपील सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण (कार्यविधि) नियमावली, १९८२, के प्रावधानों के अंतर्गत, यथोत्तखंडपीठ में स्वीकार्य है।
An appeal against this order lies with the Customs, Central Excise and Service Tax Appellate Tribunal in terms of section 129A(1B)(i) of the Customs Act, 1962 on payment of 7.5% of the amount demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. It shall be filed within three months from the date of communication of this order. The appeal lies with the appropriate bench of the Customs, Central Excise and Service Tax Appellate as per the applicable provisions of Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.
3. यह सूचित किया जाता है की इस आदेश के अमल में आते ही, न्याय निर्णयन अधिकारी का अधिकार क्षेत्र समाप्त होता है और सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण, पश्चिम क्षेत्री यखंडपीठ, के M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai के संदर्भ में जारी आदेश क्रमांक A/86617-86619/2018 दिनांक 31.05.2018 के अनुसार न्यायिक आदेश तदोउ प्रांत न्याय निर्णयन अधिकारी' *functus officio* बन जाता है

It is informed that the jurisdiction of the Adjudicating Authority stands alienated with the conclusion of the present adjudication order and the Adjudicating Authority attains the status of '*functus officio*' as held by Hon'ble CESTAT, Mumbai in its decision in the case of M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai vide Order No. A/86617-86619/2018 dated 31.05.2018.

4. यदि एक ही प्रकरण में उसी पक्षकार के विरुद्ध कई कारण बताओ नोटिस लगाकर आदेश पारित किया जा रहा है तो प्रत्येक प्रकरण में अलग अपील दायर की जाए।

In case where an order is passed by bunching several show cause notices on an identical issue against the same party, separate appeal may be filed in each case.

5. यह अपील फॉर्म C.A.-3 में दायर की जानी चाहिए जो कि सीमाशुल्क (अपीलस) नियमावली, १९८२ के नियम 6 के तहत निर्धारित है एवं उसी नियमावली के नियम 3 के उपनियम 2 में उल्लेखित व्यक्ति द्वारा हस्ताक्षरित एवं सत्यापित की जाएगी।

The Appeal should be filed in Form C.A.-3 prescribed under Rule 6 of the Customs (Appeals) Rules, 1982 and shall be signed and verified by the person specified in sub-rule 2 of rule 3 rules ibid.

6. (i) यदि प्रतिवादित आदेश, जिसके विरुद्ध अपील की गई है, में शुल्क एवं मांगे गए ब्याजवलागाए गए जुर्माने की राशि रु. पाँच लाख या इस से कम होतो रु. 1000/-, (ii) यदि यह राशि रु. पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न होतो रु. 5000/- एवं (iii) यदि यह राशि रु. पचास लाख से अधिक होतो रु. 10000/- के शुल्क का भुगतान क्रॉस्ड बैंक ड्राफ्ट के माध्यम से अधिकरण की खंडपीठ के सहायक पंजीयक के पक्ष में जिस स्थान पर खंडपीठ स्थित है, के किसी भी राष्ट्रीय क्रत बैंक की शाखा में किया जाए एवं डिमांड ड्राफ्ट अपील के साथ संलग्न किया जाए।

A fee of (i) Rs. 1000/- in case where the amount of duty and interest demanded and the penalty imposed in the impugned order appealed against is Rupees Five Lakhs or less, (ii) Rs. 5000/- in case where such amount exceeds Rupees Five Lakhs but not exceeding Rupees Fifty Lakhs and (iii) Rs. 10000/- in case where such amount exceeds Rupees Fifty Lakhs, is required to be paid through a crossed bank draft in favour of the Assistant registrar of the Bench of the Tribunal on a branch of any nationalized bank located at the place where the bench is situated and demand draft shall be attached to the Appeal.

7. अपील की एक प्रति में कोर्ट फी अधिनियम, 1870 की अनुसूची मद 6 के तहत निर्धारित रु. 50 का कोर्ट फी स्टैम्प लगा होना चाहिए एवं इसके साथ संलग्न इस आदेश की उक्त प्रति में रु. 50 का कोर्ट फी स्टैम्प लगा होना चाहिए।

Once copy of the Appeal should bear a Court Fee Stamp of Rs. 50 and said copy of this order attached therein should bear a Court Fee Stamp of Rs. 50 as prescribed under Schedule item 6 of the Court Fee Act, 1870, as amended.

BRIEF FACTS OF THE CASE

M/s. Bablani Clearing Forwarding & Logistics Co. Pvt. Ltd., (PAN: AACCB1333J), having office address at 207, D Wing, Twin Arcade, Marol Military Road, Andheri East, Mumbai - 400059 [hereinafter referred to as the Customs Broker/CB] holding regular Customs Broker License No. 11/238, issued by the Commissioner of Customs, Mumbai under Regulation 10(1) of the Customs House Agents Licensing Regulations (CHALR), 1984 [Now regulation 7(2) of Customs Broker Licensing Regulations (CBLR, 2018)] and as such they are bound by the regulations and conditions stipulated therein.

2. An offence report in the form of Investigation Report vide F. No. SG/Misc-101/2016-17 CIU/JNCH dated 15.12.2022 was received in CB Section, NCH, from CIU/JNCH in respect of goods exported by misuse of Factory Stuffing Permission, forgery of customs documents with the intention of availing drawback and other incentives fraudulently.

3. Preliminary investigation into two shipping bills (SB No. 2014912 and 2014929 both dated 02.11.2016) filed by exporter M/s. Neminath Industries (IEC No. 0315079053) revealed that the Factory Stuffing Permission (FSP) produced by the exporter in respect of these shipping bills were not genuine. Further, it was found that the invoices submitted to the Central Excise Department for the subject consignments at the time of factory stuffing were different from the invoices produced for Customs clearance in respect of quantity and net weight of the goods as well as the name of the exporter, which was declared as M/s. Arihant Industries in the invoices submitted to the Central Excise Department.

4. Thereafter, a search was conducted on 11.11.2016 at the premises of M/s. Neminath Industries situated at Gala No.6, Bhayander Industrial Estate, CSM Road, Bhayander East, Thane by a team of officers of C.I.U., JNCH and Central Excise, Thane-II office. However, it was found that Gala No.6 did not exist in the Bhayander Industrial Estate. Further inquiry revealed that M/s. Neminath Industries used to function from Gala No.1, Naronha Estate, Near United Rubber Industries, Near Phatak, Kashi-Mira Road, Bhayander East, Thane which was in control of Mr. Tarun Jain. Accordingly, a search was conducted at Gala No.1 and certain documents pertaining to M/s. Neminath Industries were seized under Panchnama dated 11.11.2016. In addition to above, recovery of many incriminating documents such as Shipping Bills and Factory Stuffing Invoices of M/s. Neminath Industries, Bhayander, unsigned declaration form of M/s. Aadinath Industries, Blank Letter head of M/s. Aadinath Industries, Bills of Lading of M/s. WAN HAI Shipping Line, Certificate of Importer-Exporter Code (IEC) one in the name of M/s. Neminath Industries and Shri Tribhavan Budhiram Verma as Proprietor (IEC No.0315079053), address Gala No.6, Bhayander Industries Estate, Chhatrapati Shivaji Maharaj Road, Bhayander (East), Thane, Maharashtra-401105 and another one in the name of M/s. Aadinath Industries and Shri Tribhav Budhiram Nath as Proprietor (IEC No.0315064196),

address Gala No.4, Panchal Industries Estate, Chhatrapati Shivaji Maharaj Road, Near Reliance Office, Bhayander (East), Thane-401105 were recovered at the same place.

5. Further investigation revealed that several factory stuffed containers were exported using fake Factory Stuffing Permission (FSPs) through a total of 1474 Shipping Bills filed by several exporters, namely M/s. Neminath Industries (IEC No. 0315059281), M/s. Neminath Industries (IEC No. 0315079053), M/s. Aadinath Industries (IEC No. 0315064196), M/s. Aadinath Industries (IEC No. 0314078461), and M/s. Arihant Industries (IEC No. 0311050638). The total FOB value and drawback claimed in respect of these Shipping Bills amounted to Rs. 5,43,58,38,842/- and Rs. 49,56,21,314/- respectively.

6. The outcome of detailed analysis and examination of the said shipping bills is summarised below:

S. No.	Exporter Name	No. of Shipping Bills Filed	Remarks
1	M/s. Neminath Industries (IEC No.0315079053)	384	No FSP issued to the exporter. All Shipping Bills filed using Fake FSP.
2	M/s. Adinath Industries (IEC No.0315064196)	289	No FSP issued to the exporter. All Shipping Bills filed using Fake FSP.
3	M/s. Arihant Industries (IEC No.0311050638)	230	No FSP issued to the exporter. All Shipping Bills filed using Fake FSP.
4	M/s. Neminath Industries (IEC No.0315059281)	249	(i) For 40 Shipping Bills, no data was found with Central Excise department. (ii) For 79 Shipping Bills, data was found with Central Excise department, but Shipping Bills were filed using Fake FSPs. (iii) For 130 Shipping Bills, data was found with Central Excise department and Shipping Bills were filed using genuine FSPs.
5	M/s. Adinath Industries (IEC No.0314078461)	322	(i) For 48 Shipping Bills, no data was found with Central Excise department. (ii) For 20 Shipping Bills, data was found with Central Excise department, but Shipping Bills were filed using Fake FSPs. (iii) For 254 Shipping Bills, data was found with Central Excise department and Shipping Bills were filed using genuine FSPs.

7. From the table above, it is evident that the factory stuffing permissions (FSP) were used in making forged export documents at both levels in Central Excise during stuffing of the containers and in customs during filing of shipping bills. Out of the 1474 Shipping Bills, only 384 (130+254) shipping bills were filed using genuine factory stuffing permission issued by Customs, JNCH and remaining 1090 shipping bills were filed using fake documents such as factory stuffing permission, invoice, packing list and central excise examination reports.

8. The Investigation Report mentioned the role of various Customs Brokers including M/s. Bablani Clearing Forwarding & Logistics Co. Pvt. Ltd. (CB No. 11/238) (PAN: AACCB1333J) who facilitated the subject fraudulent exports.

9. During the course of investigation, statements of various stakeholders which included Mr. Tarun Jain, Customs Brokers, officers of Central Excise, concerned representatives of banks were recorded. The relevant statements of concerned and relevant stakeholders have been mentioned in the paragraphs below.

9.1 Statement of Mr. Tarun Jain, proprietor of M/s. Abhinandan Industries was recorded under section 108 of Customs Act, 1962 wherein he inter-alia stated that:

- He had a factory by name M/s. Abhinandan Industries, Gala No.1, Narohna Estate, United Rubber Industries, Bhayander (East), Thane-401105; that the utensils manufactured in his factory were sold in the domestic market;
- They were also exporting the utensils to places like Nigeria, Hong Kong, Dubai etc., till 2014; that the two containers lying at CFS DRT, Nhava Sheva, contained about 40 cartons each of Hot Pot;
- On being asked why the goods were found in lesser quantity than declared, he stated that they used to stuff only so many goods;
- On being asked whether the goods were stuffed in presence of Central Excise officers, he stated that original invoices used to be shown to the Central Excise officers but the stuffing was not supervised by them; that his partner Shri Lokesh Bansal used to manage the stuffing and Central Excise officers;
- On being asked how much money he had received from the drawback amount sanctioned in the name of M/s. Neminath Industries, he said that about Rs.80 lakh must have been received from this account;
- On being asked as to who used to operate the bank account of M/s. Neminath Industries, he stated that the account used to be operated by Shri Lokesh Bansal, and that he used to have signed cheques of Shri Tribhuvan Budhiram Verma - the IEC holder of M/s. Neminath Industries; that Shri Verma used to work for Shri Lokesh Bansal;
- The goods were exported as factory stuffed containers in the name of M/s. Neminath Industries but this company had no factory stuffing permission;
- As regards to Mr. Tribhuvan Budhiram Verma, IEC holder of M/s. Neminath Industries, he did not personally know Mr. Tribhuvan Budhiram Verma. Mr. Verma had once or twice come with Mr. Lokesh Bansal in his office and he had introduced him as one of his relatives;
- He received Rs.1,61,00,000/- from the account of M/s. Neminath Industries out of which Rs.1,16,00,000 was received in the account of M/s. Abhinandan Industries while Rs.45,00,000 was received in his personal Savings Bank account with Canara Bank;
- On being asked how he received Rs.1,61,00,000/- from the bank account of M/s. Neminath Industries when he raised the invoices of supply of goods to

M/s. Arihant Industries, he inter alia stated that he was told by Sh. Lokesh Bansal that the account of M/s. Neminath Industries is of his uncle and he would get the letter from his uncle saying that transfer of the money is for the goods supplied to M/s. Arihant Industries, however, he had not received any such letter;

- On being asked how did he supply goods to M/s. Arihant Industries as the premises of M/s. Arihant Industries could not be located by the Central Excise Officers, he stated that Sh. Lokesh Bansal used to send Tempo at his factory and he used to load the goods in his tempo;
- Mr. Lokesh Bansal was operating from his office as Mr. Lokesh Bansal was his good friend; that he was in the business of export of 'SS Utensils'; that he used to charge Rs.7000/- per month to Mr. Lokesh Bansal for using his office, which he used to collect in cash and there was no written agreement for the same;
- He didn't know anything about M/s. Neminath Industries, M/s. Aadinath Industries and M/s. Arihant Industries;
- The goods were loaded in truck in his factory at Bhayander and then those goods were stuffed in container at Bhayander East-West bridge crossing for export;
- On being asked that it was found on verification of the premises of M/s. Neminath, M/s. Aadinath & M/s. Arihant Industries that no factory existed on the address mentioned in their IEC and FSP, he replied that he was not aware of this fact;
- On being asked about Gala No. 4 Bhayander Industrial Estate the factory premises of M/s. Aadinath Industries (IEC NO.0314078461), he replied that the mentioned address is of his (Tarun) factory; that he had original Leave and licence agreement of that premises for last five years; that Aadinath Industries never existed at that address;
- On being asked about Gala No. 6, Bhayander Industrial Estate the factory premises of M/s. Neminath Industries, he replied that gala No. 6 did not exist at Bhaynder Industrial Estate so it could not be the premises of any factory;
- Lokesh Bansal used to provide the documents to the CHA for filing Shipping Bills for M/s. Neminath Industries, M/s. Arihant Industries and M/s. Aadinath Industries.

9.2 Statement of Shri Lalit Krishna Kotian, Director of Custom Broker firm M/s. Bablani Clearing Forwarding & Logistics Co. Pvt. Ltd. was recorded under Section 108 of customs Act 1962 on 05.12.2016 wherein he inter alia stated that:

- They had handled the export clearance of companies namely M/s. Neminath Industries under 2 IECs, M/s. Aadinath Industries & M/s. Arihant Industries during the period September 2015 till June 2016; that all those exports were under Factory stuffing facilities.

- On being asked how he came in contact with these exporters, he explained that the clearance work of these companies came to them through one Mr. Baiju Shekhar, owner of M/s. Transglobe Logistix; that Mr. Baiju Shekhar used to pay his clearing charges through cheque; that he did not know who were the owners of M/s. Neminath Industries, M/s. Aadinath Industries & M/s. Arihant Industries and he had never met any of them.
- That the documents such as invoice, packing list, Self-Declaration Form, Copy of the Factory Stuffing permission etc. used to come from the same Mr. Baiju Shekhar through e-mail and then they prepared check list and copy of the same was mailed back to Mr. Baiju Shekhar for his approval and on approval, they used to send the above said documents in original through his person or mainly, along with the driver of the container.
- On being asked who booked the containers, he said that he did not know about that but must be the same Baiju Shekhar who booked the containers.
- On being asked as to how many Shipping Bills had been filed for these 4 exporters, he said that approximately 150 — 200 Shipping Bills had been filed during the period (approx.) September 2015 to June 2016. He further stated that they stopped the clearance of above exporters since June 2016 due to delay in payments from Mr. Baiju Shekhar.
- On being asked regarding verification of KYC norms, he stated that they received Appointment letter of CHA vide P.N. No.91/2010 dtd.14.9.2010 to be submitted to SIIB(X), IEC copy, Pan Card, Factory Stuffing Permission & Bank letter etc. from Baiju Shekhar.
- On being asked how they had verified the existence of the above said 4 exporters at the given addresses or the whereabouts of their owners, he stated that they did not physically verify the addresses or meet the owners. He said that the documents submitted by Baiju Shekhar included documents such as copies of Factory Stuffing Permission, Electricity Bill, Telephone Bill etc. and hence they verified their IEC online if the names of the IEC were blocked or blacklisted. He thereby submitted copies of Letter of Appointment, IEC & Factory Stuffing Permission No.534/2015-16 dated 07.12.2015 of M/s. Neminath Industries having IEC No.0315059281, Letter of Appointment, Copies of IEC & Factory Stuffing Permission No.171/16-17 dated 18.05.2016 of M/s. Arihant Industries & Letter of Appointment, Copies of IEC, Bank Letter, Udhog Aadhar Memorandum, Electricity Bill and PAN copy of Mr. Tribhav Buddhram Nath, IEC holder of M/s. Aadinath Industries. He further stated that he did not have copies of M/s. Neminath Industries (IEC No. 0315079053) however assured to submit the same within 2-3 days. He also submitted copies of Shipping Bills, Commercial Invoice with Central Excise examination report on the reverse and packing list of all the 4 exporters.

9.3 Shri Lokesh Madan Mohan Bansal, proprietor of M/s. Arihant Industries (IEC No. 0311050638), Shri Damer Bahadur Subba, proprietor of M/s. Neminath

Industries (IEC No. 0315059281), Shri Tribhavan Budhiram Verma alias Tribhavan Buddhiram Nath, proprietor of M/s. Neminath Industries (IEC No. 0315079053) and M/s. Aadinath Industries (IEC No. 0315064196) were summoned several times under Section 108 of Customs Act, 1962. However, none of them turned up for statement and are still absconding.

10. Based on perusal of the Investigation Report, prima facie, it appears that CB failed to carry out certain statutory obligations laid under CBLR, 2018.

10.1 On perusal of the case, it appears that CB M/s. Bablani Clearing Forwarding & Logistics Co. Pvt. Ltd. had filed Shipping Bills on behalf of M/s. Aadinath Industries, M/s. Neminath Industries and M/s. Arihant Industries. It appears that Mr. Baiju Shekhar of M/s. Transglobe Logistix, provided CB with the KYC documents including the authorization letter on behalf of the exporters. Mr. Lalit Krishna Kotian, Director of CB M/s. Bablani Clearing Forwarding & Logistics Co. Pvt. Ltd. in his statement dated 05.12.2016 held that he did not know who were the owners of M/s. Neminath Industries, M/s. Aadinath Industries and M/s. Arihant Industries and he had never met any of them. Thus, it is pertinently clear that CB did not establish any communication linkage with the exporters. Further, they used to receive payments from Mr. Baiju Shekhar who was not the exporter. On the basis of above analysis, it appears that CB did not obtain authorisation from Exporter by whom he was employed as a CB but dealt with Mr. Baiju Shekhar who was neither the Exporter nor its representative. Further, CB did not establish any communication with the exporters. Due to the above act of omission, it appears that CB failed to comply with Regulation 10(a) of CBLR, 2018.

10.2 On perusal of the case, it appears that CB did not establish any communication linkage with the Exporters. Had CB established communication linkage, CB may have advised the client to comply with the Customs Act, other Allied Acts and Rules and Regulations thereof or brought the irregularities to the Department's notice. It may be regarded that the subject case of fraudulent exports may have been avoided had CB made efforts to communicate with the client. It is pertinent to note that Mr. Lokesh Madan Mohan Bansal, proprietor of M/s. Arihant Industries (IEC No. 0311050638), Mr. Damer Bahadur Subba, proprietor of M/s. Neminath Industries (IEC No. 0315059281) and Mr. Tribhavan Budhiram Verma alias Tribhavan Buddhiram Nath, proprietor of M/s. Neminath Industries (IEC No. 0315079053) and M/s. Aadinath Industries (IEC No. 0315064196) were summoned several times under Section 108 of Customs Act, 1962 but failed to turn up for statement. Due to the above act of omission, it appears that CB failed to comply with Regulation 10(d) of CBLR, 2018.

10.3 On perusal of the Investigation Report, it appears that address mentioned in the IEC of M/s. Neminath Industries & others were found to be non-existing. CB failed to verify the identity of the clients and functioning of the client at the declared address and dealt with Mr. Baiju Shekhar who was neither the exporter nor its representative. Mr. Lalit Krishna Kotian, Director of CB M/s. Bablani Clearing Forwarding & Logistics

Co. Pvt. Ltd. in his statement dated 05.12.2016 held that he did not know who were the owners of the M/s. Neminath Industries, M/s. Aadinath Industries and M/s. Arihant Industries and he had never met any of them. He further stated that the documents such as invoice, packing list, Self-Declaration Form, Copy of the Factory Stuffing permission etc. used to come from Mr. Baiju Shekhar through e-mail and then they prepared check list and copy of the same was mailed back to Mr. Baiju Shekhar for his approval. Thus, it appears that CB did not make any efforts to identify the identity, background and functioning of his client before undertaking customs clearance work of the client. It appears to be a gross negligence on the part of the CB who acts as a vital link between the Importer/Exporter and Customs Department. Due to the above act of omission, it appears that CB failed to comply with Regulation 10(n) of CBLR, 2018.

11. Legal Provision of the CBLR, 2018:-

Regulation 10 (a) of the CBLR, 2018:- *"A Customs Broker shall obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be."*

Regulation 10 (d) of the CBLR, 2018:- *"A Customs broker shall advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;"*

Regulation 10 (n) of the CBLR, 2018:- *"A Customs Broker shall verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information,"*

12. SHOW CAUSE NOTICE

M/s. Bablani Clearing Forwarding & Logistics Co. Pvt. Ltd. (PAN: AACCB1333J) CB No. 11/238 was issued a Show Cause Notice No. 16/2022-23 dated 22.05.2023 by the Principal Commissioner of Customs (General), Mumbai Zone-I asking them to show cause as to why the CB License No. 11/238 issued to them should not be revoked and security deposited should not be forfeited and/or penalty should not be imposed upon them under Regulation 14 read with Regulations 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018 as elaborated in the Show Cause Notice. They were directed to appear for a personal hearing and to produce proof of evidence/documents, if any, in their defence to Shri Guntu Sitaram Raju, Asstt. Commissioner of Customs, who was appointed as inquiry officer to conduct inquiry under Regulation 17 of CBLR, 2018. The Inquiry Officer informed

that he had been relieved from JNCH on 02.06.2023. Accordingly, Ms. Leelamani R, Assistant Commissioner of Customs was appointed as inquiry officer to conduct inquiry into the case under Regulation 17 of CBLR, 2018.

13. INQUIRY REPORT: -

Inquiry Officer submitted Inquiry Report dated 14.12.2023, wherein, the charges against CB M/s. Bablani Clearing Forwarding & Logistics Co. Pvt. Ltd. (11/238) i.e. violation of Regulation 10(a), 10(d) and 10(n) of CBLR, 2018 were held as 'Proved'.

13.1 During inquiry proceedings, the CB submitted defense reply dated 31.07.2023 along with copy of vakalatnama dated 25.05.2023 in the name of Shri Anil Balani, Advocate to appear and plead in their behalf, who appeared for the personal hearing on 16.08.2023.

13.2 During inquiry proceedings, Shri Anil Balani submitted letter dated 21.11.2023 requesting to grant cross-examination of Shri Tarun Jain, Shri Lokesh Bansal, Shri Baiju Shekhar and the Investigating Officer. However, Shri Lokesh Bansal and Shri Tarun Jain could not be contacted through postal and telephonic means. Shri Baiju Shekhar appeared for cross-examination on 28.11.2023, however, Shri Anil Balani did not appear for the same but one of his staff who was not the authorized person to represent the CB, attended the same.

13.3 Written Submission of the Customs Broker:

13.3.1 During inquiry proceedings the CB through their counsel Shri Anil Balani made written submission dated 29.11.2023, key points of which are reproduced below:

- i. Two witnesses (Shri Tarun Jain and Lokesh Bansal) did not appear for cross-examination, hence their statements could not be tested.
- ii. The Telangana High Court in the case of M/s. Shasta Freight Services Pvt Ltd [2019 (368) E.L.T. 41 (Telangana)] has held that "Enquiry officer may decline to examine any person on the ground that his examination is not relevant - Enquiry officer having relied upon statements of certain witnesses which was objected to by petitioner on the ground of same taken under coercion, had violated principles of natural justice by not providing their cross-examination on the ground that report has to be submitted within 90 days of show cause notice. The judgement was upheld by the Supreme Court as 2022 reported in (381) E.L.T. 436 (S.C.).
- iii. The exports are of the period 2015 to 2016 and their clients handled only about 150 to 200 Shipping Bills out of a total of 1474 Shipping Bills, of which 1090 Shipping Bills were filed using fake documents while 384 Shipping Bills were filed on the basis of genuine Factory Stuffing Permission (FSP). It is nowhere alleged or established that the Shipping Bills filed through my clients were on the basis of fake documents.

- iv. Without prejudice to the above, the proceedings are barred by time and hit by limitation. As per Regulation 20(1), notice has to be issued within 90 days from receipt of Offence Report. In this case the Offence Report was never placed on record.
- v. In respect of Regulation 10(a), Authorization was obtained by the Custom Broker and it was produced on demand. Hence there is no violation. In his statement dated 05.12.2016, Shri Lalit Kotian, Director of the Custom Broker firm stated that they received appointment letter from Mr. Baiju Shekhar in terms of Public Notice dated 14.09.2010. The said Baiju in his Cross Examination on 28.11.2023 confirmed that he had obtained the KYC documents and handed over to Customs Broker. In the case of Natvar Parikh & Co.Pvt.Ltd. [2012 (281) ELT 116 (Tri)] the CESTAT held that in the normal course of international business work to the CB can be routed through a logistics company or a forwarder. The CBLR does not mandate that work must be accepted directly from the exporter.
- vi. In respect of Regulation 10(d), their clients have advised all their customers to comply with the law. As per the evidence on record they were never aware of any non-compliance. They acted bonafide in good faith and in the normal course of their business. They did not have any ulterior motives. They did not have any prior knowledge or information about the non-compliance. It is not as if they were part of a conspiracy. In fact they are the victims. In the circumstances violation of Regulation 10(d) is not established.
- vii. In respect of Regulation 10(n), their clients verified the address of the exporter by using authentic documents, data and information. There is no requirement under CBLR to personally visit the office of the Exporter. Thus Regulation 10(n) is complied with.

13.3.2 Subsequently, Shri Anil Balani made written submission dated 04.12.2023, key points of which are reproduced below:

- i. Para XX on Page No. 52 of Show Cause Notice dated 31.03.2023 called upon my clients M/s. Bablani Clearing Forwarding & Logistics Co. Pvt. Ltd. (C.B.No. 11/238) to show cause why suitable action as per Regulations 19 and 20 and any other Regulation under CBLR should not be taken against them.
- ii. The Ld. Addl. Commissioner of Customs in Para XXIV on Page No. 98 of his Order-in Original No.1077/2023-24/ADc/NS-II/CEAC/CAC/JNCH dated 29.11.2023, held that he was refraining from recommending any action under Regulations 19 and 20 of CBLR. He further held that the Customs Brokers were innocent and they had not violated or contravened any law.
- iii. The instant proceedings under Regulations 19 and 20 of CBLR, 2018 are therefore mis-conceived and unjustified in view of the said Order-in-Original dated 29.11.2023, it is prayed that the subject SCN dated 22.05.2023 be recalled without further delay.

13.4 Since the Customs Brokers or his representative neither appeared for cross-examination nor submitted the Export documents in defense of the case, final personal hearing was fixed on 05.12.2023. M/s. Bablani Clearing & Forwarding Logistics Co Pvt Ltd was represented by their Director, Mr. Lalit Kotian and their representatives Mr. Anil Balani and Ms. Priyasha Pawar. The following submissions were made.

- i. As per the SCN, 384 Shipping bills were filed with genuine FSP. The CB have filed about 150 to 200 S/Bs only. The notice does not state that these S/Bs were under fake FSP.
- ii. Original S/Bs are already submitted to CIU as recorded.
- iii. The Addl. Commissioner has held that action under Regulations 19 and 20 of CBLR, 2013 is not recommended. Further he did not impose any penalty.
- iv. Since the transaction and cause of action are the same, this order dated 29.11.2023 is binding. It is not stayed by any authority.
- v. Earlier submissions are reiterated. In the circumstances representation is put up to the Principal Commissioner to re-call the SCN.

13.5 Comments of the Inquiry Officer

13.5.1 The Inquiry Officer finds that from the statements of Mr. Tarun Jain, Proprietor of M/s Abhinandan Industries and Shri Lalit Krishna Kotian, Director of CB, it has been settled to a considerable extent that the CB in the present case have filed 150-200 Shipping Bills for facilitating fraudulent export by wilfully disregarding the provisions of the Customs Brokers Licensing Regulations, 2018 that caused huge loss to government exchequer. The charges framed against the CB and other available facts and records, this is the case of unlawful activity to avail undue export incentives/benefits for which bogus IECs were obtained. There is a syndicate operating behind the bogus IECs, for availing ineligible export incentives on the basis of bogus invoices and other export related documents and money were siphoned. The modus operandi used by dummy exporters in this case appears to be by obtaining IECs on the basis of forged/fabricated documents with a motive to avail undue Government revenue.

13.5.2 The IO finds that the CB failed to furnish the Export documents IECs, Shipping Bills etc., for verification purpose. Therefore, the genuineness of the 150-200 shipping bills raised by them could not be identified. The CB or his authorised person failed to attend the cross-examination, even though a date was fixed for the same.

13.5.3 The IO finds that the CB had placed reliance on judgements delivered in the case of Thakkar Shipping Agency reported in 1994 (69) ELT 90 (Tribunal) by CESTAT and in the case of Shasta Freight Services Pvt. Ltd. [2022(381) ELT 436 (SC)] by the Hon'ble Supreme Court; Statements recorded under Section 108 of Customs Act 1962 not to be used as evidence under Customs House Agents Licensing Regulations, 1984. However, this argument appears to be an afterthought as none of

the statements made in the case have been retracted by the persons involved. No person has retracted any statement made so far on the grounds of statement being recorded under duress. As per the order of the Hon'ble Supreme Court in the case of NARESH J. SUKHAWANI Versus UNION OF INDIA, 1996 (83) E.L.T. 258 (S.C.), it was held that the statement is a material piece of evidence and it can be used as substantive evidence. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act.

13.5.4 The IO finds that the CB has further relied upon the Addl. Commissioner of Customs Order-in-Original No.1077/2023-24/ADC/NS-II/CEAC/CAC/JNCH dated 29.11.2023, wherein it is held that he had "refrained from recommending any action under Regulations 19 and 20 of the CBLR in para XXIV on Page No. 98 of the order." However, it is mentioned in the same Para XXIV on Page No. 98 of the order that the appropriate authority may initiate such action as is felt appropriate against the Customs Broker under CBLR, 2013.

13.5.5 Article of Charge-I:- Violation of Regulation 10(a) of CBLR 2018

The IO finds that it is evident from the statement of Shri Lalit Krishna Kotian, Director of the CB company, did not produce any evidence to prove that he obtained authorization from exporter. On the contrary he himself stated in his statement dated 05.12.2016, that the work of M/s. Neminath Industries, M/s. Aadinath Industries and M/s. Arihant Industries came to them through forwarder Mr. Baiju Shekhar of M/s Trans Globe Logistix and that he did not know who were their owners, and had never met any of them. It is evident that the exporter and CB had never been in touch with each other by any means of communication or contact which indicate that the CB filed the shipping bills without taking proper authorisation from IEC holder and did not verify the genuineness of the exporter. Therefore, it is concluded that CB has never took pain to obtain proper authorisation from exporter with mala fide intension. Hence, the charge that the CB has contravened the provision of Regulation 10(a) of CBLR, 2018, is proved beyond doubt.

13.5.6 Article of Charge-II:- Violation of Regulation 10(d) of CBLR 2018

The IO finds that it is evident from the statement of Shri Lalit Krishna Kotian, Director of the CB company, that he neither met the exporters personally nor established any communication linkage with them for clearance of their consignment, nor was in contact through any other means. Here, neither the Customs Broker nor any of its employee had come into contact with the exporter or the beneficial owner of the exporter firm. In these circumstances, it is clear that CB did not know actual IEC holder and failed to advice his client (IEC holder) to comply with the provision of the Customs Act, other allied Acts and the rules and regulations. Further, nothing on record has come to notice which proves that the CB has brought the contravention of the Customs Act, 1962 by the exporter or its beneficial owner to the notice of the

Deputy/ Assistant Commissioner. In view of the foregoing discussion, the charges levelled against the CB for violation of Regulation 10 (d) of the CBLR, 2018 is proved beyond doubt.

13.5.7 Article of Charge-III:- Violation of Regulation 10(n) of CBLR 2018

The IO finds that it is evident from the statement of Shri Lalit Krishna Kotian, Director of the CB company, that he was not in contact with IEC Holders i.e. M/s.Neminath Industries, M/s Aadinath Industries and M/s. Arihant Industries directly or indirectly. Thus, CB failed to verify the address of IEC holder which was found to be non-existing and filed the shipping bills without proper verification of the address, identity, functioning and credential of exporter. It is also evident from the aforementioned statement that the CB dealt with Mr. Baiju Shekhar of M/s Trans Globe Logistix who was neither the exporter nor its representative. In the said statement, he further stated that the clearing charges were paid by Mr. Baiju Shekhar. Therefore it can be inferred that the CB filed 150-200 shipping bills without verifying the identity and functioning of his clients at the declared address by using reliable, independent, authentic documents, data or information. Hence, the CB has contravened the provision of the Regulation 10(n) of the CBLR, 2018, and the same is found proved beyond doubt.

13.5.8 The IO finds that it is clearly established that the Customs Broker M/s. Bablani Clearing Forwarding & Logistics Co. Pvt. Ltd (11/238) was working in absolute disregard to the provisions of Regulation 10 (a), 10 (d) and 10 (n) of the CBLR 2018. The CB has ignored his responsibilities of verification of the Exporter and had an important role in the fraudulent export. Therefore, all the charges levelled against the CB are 'Proved beyond the doubt'.

14. PERSONAL HEARING AND RECORDS OF PERSONAL HEARING

A personal hearing was granted to Customs Broker on 29.01.2024. Shri Anil Balani, Advocate, representative of CB along with Ms. Priyasha Pawar, Advocate appeared for personal hearing and reiterated their written submission dated 13.12.2023. Further they relied upon the Order-in-Original dated 22.12.2023 passed in the case of M/s. V & S Clearing Agency Pvt Ltd. in a similar case and requested to take a lenient view.

14.1 CB in response to the Inquiry Report submitted written submission vide letter dated 18.01.2024, wherein, they inter-alia stated the following:

- i. Para 13.1 of the Inquiry Report states that *“the CB has failed to furnish the Export documents IECs, Shipping Bills etc., for verification purpose. Therefore the genuineness of the shipping bills raised could not identified.”* This finding is factually incorrect. The charges had to be proved and established by the department with the help of documentary and oral evidence. However, this was never done. The genuineness of shipping bills was never in question. Each and

every document was admittedly and undisputedly submitted to the CIU, JNCH during the investigations s reflecting in the statement of the CB.

- ii. The department's case from inception is that Factory Stuffing Permissions (FSPs) were fake. This can be established with the help of forensic evidence. However, the responsibility for a fake FSP cannot be fastened on the CB because it was never the department's case that the CB was involved in issuance of FSP. Likewise, the stuffing of the container was verified by the Excise Officers and the CB was never involved. On this basis the Additional Commissioner of Customs acquitted the CB. Order-in-Original No.1077/2023-24/ADC/NS-II/CEAC/CAC/JNCH dated 29.11.2023 held that the CB was not involved.
- iii. The CB merely presented documents received from the Excise Authorities in a sealed cover, which was opened by Customs at Nhava.
- iv. The finding that the CB failed to attend the cross-examination is also false. In fact, the cross-examination was attended on 28.11.2023. Shri Baiju Shekhar of Transglobe Logistix, who had assigned the work to the CB was cross-examined. He confirmed that he had taken KYC documents from M/s. Adhinath Industries & Neminath Industries and in turn supplied them to the CB. He did not earn anything extra nor was the CB paid anything over and above the normal charges. He was not aware of any malpractice. Thus, the CB also would never have any knowledge. In the circumstances, the statements which have not been tested by way of cross-examination ought to be discarded.
- v. Para 9.7 of the Inquiry Report states that one of the staff of Advocate attended the cross-examination. It was clarified during the hearing that Ms. Priyasha Pawar is an Advocate and she was instructed by Anil Balani, Advocate to attend on his behalf. This is admitted in para 11 of the Inquiry Report.
- vi. **Regulation 10(a)**

Authorizations were obtained from the forwarders. Contravention of Regulation 10(a) cannot be proved simply because the authorization was not obtained directly from the exporter. Further, the CB placed the KYC documents of exporters M/s. Aadinath Industries, M/s. Neminath Industries and M/s. Arihant Industries, as well as Appointment Letter issued by M/s. Aadinath Industries and M/s. Neminath Industries, addressed to SIIB on record. Further, the CB made reference to the following CESTAT judgements:

1. K.S. Sawant & Co.- 2012 (284) E.L.T. 363 (Tribunal)

"Obtaining an authorisation from the importer does not mean that the same should be obtained directly; so long as the concerned import documents were signed by the importer, it amounts to authorisation by the importer and, therefore, it cannot be said that there has been a violation of Regulation 13(a)."

2. Trade Wings Logistics India Pvt. Ltd.- 2019 (370) ELT 510 (Tri. - Chennai)

"The finding in the impugned order is that the appellant did not directly collect the authorization letter and KYC norms from the importer but got the same

through Mr. Jayakumar of Easwar Logistics which is clear violation of obligation under Regulation 11(a) and (m) of CBLR, 2013. The Regulation does not specifically mention that customs broker has to obtain KYC norms from the importer directly. It only states that appellant has to comply with obtaining the KYC documents.”

3. Seaswan Shipping and Logistics — 2022 (380) E.L.T. 358 (Tribunal)

“When the necessary authorization and KYC documents have been obtained and when these documents are proper, merely because the said documents were not obtained directly from the importer, the appellant cannot be said to have violated provisions of Regulation 11(a). It may not always be practical for a Customs Broker to obtain the documents directly from the importer.”

vii. **Regulation 10(d)**

The alleged contravention could not be brought to the notice of the department because the CB did not have any prior knowledge. The CB received the work from Transglobe Logistix in the normal course of business. Regulation 10(d) is not violated as in the following judgements it is held that work can be accepted from a logistics company:

1. Natvar Parikh & Co.Pvt.Ltd.-2012 (281) ELT 116(Tri.);
2. Hera Shipping Solutions Pvt. Ltd.-2022 (382) ELT 552 (Tri.)
3. Seaswan Shipping and Logistics — 2022 (380) ELT 358(Tri.)
4. Trade Wings Logistics India P.Ltd.- 2019 (370) ELT 510 (Tri.)
5. K.S. Sawant & Co. - 2012 (284) ELT 363 (Tri.).

viii. **Regulation 10(n)**

Physical verification of addresses is not mandatory. The verification was done by using documents, data and information. Regulation 10(n) is not violated as in the following judgements it is held that physical verification is not required:

1. S. Prakash Kushwaha & Co.-2023 (384) ELT 89 (Tri.);
2. Jyoti Custom Broker Service Pvt.Ltd.-2023 (385) ELT 404(Tri.)
3. Perfect Cargo and Logistics - 2021 (376) ELT 649 (Tri.)
4. Him Logistics Pvt. Ltd. - 2016 (338) ELT 725 (Tri.)
5. International Cargo Services — 2015 (323) ELT 206 (Tri.)

- ix. In its Order No. 10041/2024 dated 04.01.2024, the Hon'ble CESTAT in the very same case of Neminath and Aadinath Industries but in respect of another CB (Purshotam Chaturbhuj Thakkar), held that physical address verification was not required under CBLR and restored the license.
- x. The CB firm is over 43 years old. It has a clean and unblemished track record. It contributes approximately Rs. 50 crores per annum towards customs duty. It has 17 number of employees.

- xi. It is prayed that the charges be held to be not proved and the proceedings be dropped.

15. DISCUSSION AND FINDINGS:-

I have gone through the facts of the case, material evidence on record, the Show Cause Notice dated 22.05.2023 and Inquiry Report dated 14.12.2023, oral & written submissions of the said CB.

15.1 I observed that the charges against the said CB are of violation of Regulation 10(a), 10(d) and 10(n) of CBLR, 2018 made vide Show Cause Notice No. 16/2022-23 dated 22.05.2023. The inquiry Officer vide Inquiry report dated 14.12.2023 held the charges of violation of regulations 10(a), 10(d) and 10(n) as "Proved".

15.2 On perusal of Order-in-Original No. 1077/2023-24/ADC/NS II/CEAC/CAC/JNCH dated 29.11.2023 of the subject case adjudicated by Additional Commissioner of Customs, NS-II, JNCH, Nhava Sheva, I find that the adjudicating authority in the said OIO refrained from imposing penalty against the Custom Broker. Further, the adjudicating authority has opined that action as is felt appropriate against the Customs Broker under CBLR, 2013 may be initiate by appropriate authority.

15.3 For brevity, I refrain from reproducing the brief facts of the case which have already being discussed above. I, now, examine the charges in the SCN sequentially.

15.3.1 With regard to violation of Regulation 10(a) of CBLR, 2018:

15.3.1.1 The said Regulation 10(a) of CBLR, 2018 reads as:

"A Customs Broker shall obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be."

15.3.1.2 I find that the work of Exporters/IEC Holders of M/s. Neminath Industries, M/s. Arihant Industries and M/s. Aadinath Industries came to the CB through an intermediary Mr. Baiju Shekhar of M/s. Trans Globe Logistix and CB never met or contacted the actual Exporters/IEC Holders. Further, the CB has admitted that they never met/contacted the actual IEC holders. The CB has relied on several case laws which state that not obtaining authorisation directly from the IEC holder is in itself not a violation of Regulation 10(a) as it is not always possible for the CB to directly meet the IEC holder. In the instant case, I find that the CB not only did not obtain the authorisation directly from the exporters, but also did not bother to verify whether any such authorisation has been issued by the exporter. Thus the stated case laws are not squarely applicable in the instant case.

15.3.1.3 I find that had the CB obtained authorization from the exporter or made attempts to contact the exporter regarding the same, no intermediary could have chance to use fake documents to clear the consignment through Customs.

15.3.1.4 From the above facts and circumstances, I hold that the CB has violated the provisions of Regulation 10(a) of the CBLR, 2018.

15.3.2 With regard to violation of Regulation 10(d) of CBLR, 2018:

15.3.2.1 The said regulation 10(d) of CBLR, 2018 reads as: -

"A Customs broker shall advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be,"

15.3.2.2 I find that the work of Exporters/IEC Holders of M/s. Neminath Industries, M/s. Arihant Industries and M/s. Aadinath Industries came to the CB through an intermediary Mr. Baiju Shekhar of M/s. Trans Globe Logistix and CB never met or contacted the Exporters/IEC Holders. Since the CB and exporters/IEC Holders were not in contact through any means of communication, therefore, it is beyond doubt that the CB could have advised the exporter. Even if the contention of the CB is accepted that they had no prior knowledge of the alleged contravention, CB was admittedly aware of the fact that they were dealing with an intermediary who was on-record not the authorised representative of the exporter/IEC holder. And while continuing to do so, the CB did not bring this fact to the notice of the Assistant Commissioner/Deputy Commissioner of Customs.

15.3.2.3 I find that the subject case of fraudulent export may have been avoided, if, CB made efforts to communicate with the exporters/IEC holders directly and had advised them properly in spirit of the Regulation 10(d) of the CBLR, 2018.

15.3.2.4 From the above facts and circumstances, I hold that the CB has violated the provisions of Regulation 10(d) of the CBLR, 2018.

15.3.3 With regard to violation of Regulation 10(n) of CBLR, 2018:

15.3.3.1 The said regulation 10(n) of CBLR, 2018 reads as: -

"A Customs Broker shall verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;"

15.3.3.2 I find that the CB was not in contact with Exporters/IEC holders i.e. M/s. Neminath Industries, M/s. Aadinath Industries and M/s. Arihant Industries directly or indirectly and had processed Shipping bills of the said firms through an intermediary Mr. Baiju Shekhar of M/s. Trans Globe Logistix. I also find that address mentioned in the IEC of M/s. Arihant Industries, M/s. Neminath Industries & M/s. Aadinath Industries were found to be non-existing. I find that while the CB admitted to have received KYC documents through third person, the CB has nowhere mentioned about verification of identity of his clients in his submission. The casual approach of the CB is not acceptable because Regulation 10(n) of CBLR, 2018 is

specially prescribed to verify identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. It is very clear from the records that the CB failed miserably to verify even the basic requirements of knowing who is his actual client and has of course not done any elaborate verification of his client.

15.3.3.3 From the above facts and circumstances, I am of the considered view that the CB in the present case showed an act of carelessness which resulted in fraudulent activities of export. Therefore, I hold that the CB has violated the provisions of Regulation 10(n) of the CBLR, 2018.

16. While deciding the matter, I rely upon following judgements:

16.1 The Hon'ble Supreme Court in the case of Commissioner of Customs V/s. K. M. Ganatra and Co. in civil appeal no. 2940 of 2008 upheld the observation of Hon'ble CESTAT Mumbai in M/s. Noble Agency V/s. Commissioner of Customs, Mumbai that:

"A Custom Broker occupies a very important position in the customs House.....The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed.....Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations....."

16.2 In case of M/s Cappithan Agencies Versus Commissioner Of Customs, Chennai-Viii, (2015(10) LCX 0061), the Hon'ble Madras High Court had opined that:

i. *The very purpose of granting a licence to a person to act as a Customs House Agent is for transacting any business relating to the entry or departure of conveyance or the import or export of goods in any customs station. For that purpose, under Regulation 9 necessary examination is conducted to test the capability of the person in the matter of preparation of various documents determination of value procedures for assessment and payment of duty, the extent to which he is conversant with the provisions of certain enactments, etc. Therefore, the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as CHA, it is seen that while CHA should be in a position to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an Agent for carrying on certain illegal activities of any of the persons who avail his services as CHA. In such circumstances, the person playing the role of CHA has got greater responsibility. The very description that one should be conversant with the various procedures including the offences under the Customs Act to act as a Custom House Agent would show that while acting as CHA, he should not be a cause for violation of*

those provisions. A CHA cannot be permitted to misuse his position as CHA by taking advantage of his access to the Department. The grant of licence to a person to act as CHA is to some extent to assist the Department with the various procedures such as scrutinizing the various documents to be presented in the course of transaction of business for entry and exit of conveyances or the import or export of the goods. In such circumstances, great confidence is reposed in a CHA. Any misuse of such position by the CHA will have far reaching consequences in the transaction of business by the customs house officials. Therefore, when, by such malpractices, there is loss of revenue to the custom house, there is every justification for the Respondent in treating the action of the Petitioner Applicant as detrimental to the interest of the nation and accordingly, final order of revoking his licence has been passed.

- ii. In view of the above discussions and reasons and the finding that the petitioner has not fulfilled their obligations under above said provisions of the Act, Rules and Regulations, the impugned order, confirming the order for continuation of prohibition of the licence of the petitioner is sustainable in law, which warrants no interference by this Court. Accordingly, this writ petition is dismissed.

16.3 The Hon'ble CESTAT Delhi in case of M/s. Rubal Logistics Pvt. Ltd. Versus Commissioner of Customs (General) wherein in (para 6.1) opined that:-

"Para 6.1 These provisions require the Customs Broker to exercise due diligence to ascertain the correctness of any information and to advise the client accordingly. Though the CHA was accepted as having no mensrea of the noticed mis-declaration /under- valuation or mis-quantification but from his own statement acknowledging the negligence on his part to properly ensure the same, we are of the opinion that CHA definitely has committed violation of the above mentioned Regulations. These Regulations caused a mandatory duty upon the CHA, who is an important link between the Customs Authorities and the importer/exporter. Any dereliction/lack of due diligence since has caused the Exchequer loss in terms of evasion of Customs Duty, the original adjudicating authority has rightly imposed the penalty upon the appellant herein."

17. I have gone through the various Case Laws referred by the said CB in his submissions as well as the Order-in-Original passed in a similar case against the Customs Broker M/s. V&S Clearing Agency Pvt. Ltd. Which is referred to by the CB during the personal hearing dated 29.01.2024. I find that the ratios of judgment of the said Case Laws are not squarely applicable in the instant case, as the facts of the case are not identical.

18. In a regime of trade facilitation, a lot of trust is being placed on the Customs Broker who directly deals with the importers/exporters. Failure to comply with regulations by the CB mandated in the CBLR, 2018 gives room for unscrupulous persons to get away with import-export violations and revenue frauds.

19. Thus in view of the above, I hold that the CB M/s. Bablani Clearing Forwarding & Logistics Co. Pvt. Ltd. (11/238) failed to comply with the Regulation 10(a), 10(d) and 10(n) of the CBLR, 2018, as discussed supra and is liable for penal action under Regulation 14 and 18 of CBLR, 2018. On the basis of facts on record, it is substantiated that the Custom Broker connived with the Mr. Baiju Shekhar of M/s. Trans Globe Logistix in the said fraud even without verifying the genuineness of the IEC holder. Accordingly, I pass the following order.

ORDER

21. I, Principal Commissioner of Customs (General), in exercise of the power conferred upon me under Regulation 17(7) of the CBLR, 2018, pass the following order:

(i) The CB License No. 11/238 is ordered to be revoked under Regulation 14 of the CBLR, 2018.

(ii) I hereby order for forfeiture of entire amount of security deposit furnished by the CB, under Regulation 14 of the CBLR, 2018.

(iii) I hereby impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on M/s. Bablani Clearing Forwarding & Logistics Co. Pvt. Ltd. (11/238) under Regulation 18 of the CBLR, 2018.

(iv) I hereby order that the CB surrender the original License as well as all the 'F', 'G' & 'H' cards issued there under immediately.

This order is passed without prejudice to any other action which may be taken or purported to be taken against the Customs Broker and their employees under the Customs Act, 1962, or any other act for the time being in force in the Union of India.



(SUNIL JAIN)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)

MUMBAI ZONE-I

To,

M/s. Bablani Clearing Forwarding & Logistics Co. Pvt. Ltd.
207, D Wing, Twin Arcade,
Marol Military Road,
Andheri East,
Mumbai - 400059

Copy to:-

- 1) The Pr. Chief Commissioner/Chief Commissioner of Customs, Mumbai Zones I, II & III
- 2) All Pr. Commissioners/Commissioners of Customs, Mumbai Zones I, II & III
- 3) All departments in Mumbai Customs Zone I
- 4) ACC (Admn), Mumbai with a request to circulate among all departments.
- 5) JNCH (Admn) with a request to circulate among all concerned.
- 6) Cash Department, NCH, Mumbai
- 7) CIU's of NCH, ACC & JNCH
- 8) EDI of NCH, ACC & JNCH
- 9) Notice Board
- 10) Office copy