



प्रधान आयुक्त, 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.- S/8-105/2017-18 CBS

आदेश दिनांक/Date of Order: 21.10.2022

CAO No. 49/CAC/PCC(G)/SJ/CBS Adj

जारी दिनांक/Date of issue: 21.10.2022

संख्या:

DIN : 2022107700000000C001

द्वारा जारी : सुनील जैन

Issued By : Sunil Jain

प्रधान आयुक्त, सीमाशुल्क(सामान्य)Pr. Commissioner of Customs (Gen.),  
मुंबई -400 001

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, जिससे 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 मॉगिंग एराशी के 7.5% के भुगतान पर सीमाशुल्क अधिनियम, 1962 की धारा 129A(1B)(i) के संबंध में सीमाशुल्क, के द्रीय उत्पाद शुल्क एवं सेवा कर 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, के द्रीय उत्पाद शुल्क एवं सेवा कर अपील अधिकरण (कार्यविधि) नियमावली, १९८२, के प्रावधानों के अंतर्गत, यथोत्तर खंड पीठ 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 कि इस आदेश के अमल में आते ही, न्यायनिर्णयन अधिकारी का अधिकार क्षेत्र समाप्त होता है और सीमाशुल्क, के द्रीय उत्पाद शुल्क एवं सेवा कर अपील अधिकरण, पश्चिम क्षेत्रीय खंड पीठ, 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 तदोत्प्रांत न्यायनिर्णयन 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 जाता 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 उल्लिखित 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 मॉगिंग एग्जाज वल गाए एग्जुमने की राशि रु. पाँच लाख या इससे कम हो तो रु. 1000/-, (ii) यदि यहराशि रु. पाँच लाख से अधिक हो कि तुपचास लाख से अधिक न हो तो रु.

5000/- एवं (iii) यदि यहराशिरु. पचासलाखसे अधिक होतोरु. 10000/-  
के शुल्क का भुगतान क्रॉस बैंक ड्राफ्ट के माध्यम से अधिकरण की खंड पीठ के सहायक पंजीयक के पक्ष में जिस स्थान पर खंड पीठ  
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 इस के 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 Sharada Impex having address at Room No. 14, Pashvir Chambers, 1st Floor, Bhandari Street, Masjid Bunder (West), Mumbai 400 003 (hereinafter referred as CB) is holder of a Customs Broker Licence No. 11/1763 (PAN No. ABLPY2494C) issued by the Commissioner of Customs (G), Mumbai under Regulation 7(1) of the Customs Brokers Licensing Regulations, 2013 (CBLR, 2013) [now Regulation 7(2) of CBLR, 2018] for transacting business at the Mumbai Customs Stations, hence they are bound by the regulation & conditions stipulated therein.

2. Offence report vide letter F. No. DRI/AZU/ENQ-02(INT-01)/2017 dated 07.03.18 from the Additional Director General, Directorate of Revenue Intelligence, Ahmedabad, received in this office, whereby it was intimated that an investigation was initiated by the DRI for the import of Glass chatons/Cup Chains and other items of China origin in the name of dummy persons/firms. On the basis of specific intelligence, a search was conducted in the office premises of an importer namely M/s. R. D. Traders situated at Shop No. 4, B-Wing, Triple-S-Heights, Himanshu Rai Road, Malad (West), Mumbai 400 064 on 05/06.01.2017, which resulted in the recovery of incriminating data/documents showing import of various goods of Chinese origin by mis-declaring their description, quantity and value. During investigation, it was observed that for the import of such goods, Shri Amit Gala of M/s R.D. Traders utilised the services of one Shri Ali Hussain S. Ujjainwala, Manager and H-Card Holder of CB firm M/s Sharada Impex, Mumbai (CB No.11/1763) and that various firms/IECS were used by Shri Ali Hussain S. Ujjainwala to effect the import of such mis-declared goods which were owned/imported by Shri Amit Gala.

3. In this connection, statements of various related persons were recorded under Section 108 of the Customs Act, 1962 as detailed below:

3.1 The statement of Shri Ali Hussain S. Ujjainwala, Manager and H-Card Holder of CB firm M/s Sharada Impex was recorded on 11.01.2017, wherein, he inter alia stated that he was fully aware of the provisions of the CBLR, 2013 (now CBLR 2018); that as per regulation 11(n) of the CBLR, 2013 [now regulation 10(n) of the CBLR 2018], it was the responsibility of CB to verify the antecedent, correctness of the Importer Exporter Code (IEC) number, identity of client and functioning of client at the declared address by using reliable, independent, authentic documents, data or information etc; that being a CB, he could not have allowed import or export of goods by any other person in the name of some firms/companies which were not owned by the said person; that he knew Shri Amit Gala, Malad(W), Mumbai very well; that Shri Amit Gala was importing



various commodities from China in the name of his firm M/s. R. D. Traders and also in the name of various other firms; that he used to get documents of the said firms mostly from Shri Amit Gala; that he might had met one or two persons, who owns the export firms because all the documents required to complete KYC formalities were received from Shri Amit Gala only; that Shri Amit Gala was the person who used to clear such goods in the name of the other firms; that he used to hand over the import documents to Shri Amit Gala after importation of the said goods; that whenever the goods were imported by M/s R. D. Traders, Shri Amit Gala made payment through cheques; that in other cases i.e. imported in the name of some other firms, the payments were made in cash; that the goods were also mis-declared in the Bills of Entry and invoice filed before Customs; that those importers could be identified by Marks or Identification mentioned in Packing List and the invoice presented before Customs.

3.2 Statement Shri Shivjor J Yadav, Proprietor, M/s Sharada Impex (CB No. 11/1763) was recorded on 14.08.2017, wherein, he *inter alia* stated that a CB could not allow import or export of goods by any other person in the name of some firms/companies which were not owned by importer or exporter; on being shown the statement of Shri Ali Ujjainwala dated 11.01.2017, employee of his firm, he stated that the firms name given by Shri Ali Ujjainwala were not known to him; that the formality of all those firms regarding KYC was done by Shri Ali Ujjainwala; that he never met any person related to those firms; that Shri Ali Ujjainwala was responsible for dealing with all above firms and Shri Ali's statements on behalf of his firm would be admissible and binding to his firm because Shri Ali Ujjainwala interacted with the said importers or actual owner of the goods imported in the name of those firms; that goods of various firms were cleared by his firm; that all the payments except for M/s. R. D. Traders were done in cash with Shri Ali Ujjainwala and payment of M/s. R. D. Traders was done by cheques; that Shri Ali Ujjainwala was the person who handled their import related work and used to deal with them directly; that Shri Ali Ujjainwala might had done something in personal capacity but he was not involved.

3.3 In his (Shri Ali Ujjainwala), Manager and H-Card Holder of CB firm M/s Sharada Impex, further statement dated 06.11.2017, *inter alia* stated that the imports which were made by Shri Amit Gala in the names of various importer firms were cleared by him by using CB license of M/s Sharada Impex, Mumbai; that he agreed with the submissions made on 14.08.2017 by Shri Shivjor J Yadav, Proprietor, M/s Sharada Impex, Mumbai; that Shri Amit Gala used to give the copy of Invoice, Packing List to invoice and Bill of Lading; that on the strength of such documents he used to prepare Check List and then used to file

the Bills of Entry; that he used to get delivery order from the shipping line for the containers containing various goods owned by Shri Amit Gala, which were imported in the name of various dummy firms; that the charges towards shipping expenditure and port expenditure were paid by them from the account M/s. Sharada Impex; that the said amount used to be received in the account of Sharada Impex from Shri Amit Gala; that he used to make such payments through Bank account of the firm namely M/s. Surya & Co. with IDBI Bank, Wadala branch; that he used to get documents required to complete KYC formalities of the said firms under Customs Broker Regulation from the persons namely Kadir, Abdul and Suhail, who were in the business of creating firms in the name of dummy persons and then give these to persons like Shri Amit Gala for effecting imports in their names; that they used to arrange IECs for Shri Amit Gala for the monetary consideration of Rs. 40,000/- to 50,000/- per IEC; that he used to contact those persons over mobile phone; that he used to arrange transportation of the goods imported by Shri Amit Gala till the warehouse or place of storage of such goods; that he used to interact with Shri Amit Gala regarding the import consignments imported in the name of various firms; that Shri Amit Gala imported the said goods in those firms by mis-declaring its description and value; that the Glass chatons were imported by not declaring in the Bills of Entry and Cup Chains of Brass were imported by declaring as Iron Chain or Imitation Chain in the Bills of Entry; that Shri Amit Gala used to interact with the China based suppliers; that he never interacted with the overseas suppliers; that he used to get copy of Bill of Lading from Shri Amit Gala and thereafter he used to track the container movement for its Clearance; that he filed the documents i.e. Bills of Entry before Indian Customs wherein the description of Cup Chains was declared as Imitation Chain or Iron Chain mostly: that in some cases description declared as Cup Chain but value of the said goods was grossly mis-declared; that the Glass Chatons were not declared in the Bills of Entry and were cleared without declaration.

3.4 A statements of Shri Amit Gala, Proprietor, M/s R. D. Traders recorded on 07.06.2017 and 16.11.2017, wherein he stated that for the import of cup chains, glass chatons and other items, he used IECs of 21 firms (detailed in SCN 31/18-19 dated 13.12.2018 at para 6); that all these imports were effected by him with the help of Shri Ali Ujjanwala; that he never met any of the person from those 21 firms, Shri Ali Ujjanwala used to interact with the said persons through one Shri Arif; that Shri Ali, Manager and H-Card Holder of CB firm M/s Sharada Impex, used to complete KYC formalities of the said IEC holders; that he sent remittance for the import made by his firm M/s R. D. Traders and for other IECs, no remittance sent to the overseas suppliers in all such imports; that he



did not maintained any account for the sale of such imported goods in local market at Mumbai and Rajkot because entire quantity was sold in cash; that the goods imported were mis-declared in the BE and in the invoice filed with Customs. Further he *inter alia* submitted the details of the importers on the basis of the BEs submitted by Shri Ali Husain Ujjainwala and Shri Shivjor J Yadav of M/s Sharada Impex, CB, read with data retrieved from i-Phone of Shri Amit Gala. Shri Gala stated that in the said containers the goods which were actually stuffed were not declared correctly, in terms of description and value, before Customs authorities; that the said goods were manufactured in China and shipped in the name of those importers; that the sheets forwarded on his I-phone by the overseas supplier, which were sent by him to Shri Ali, contained the actual description and quantity of the goods which were stuffed in the said containers; that Shri Ali was fully aware that he was importing Glass Chatons and Cup Chains in the said containers but the said actual description and quantity was not declared by him before Customs authorities at the port of import; that he met Shri Shivjor J Yadav of M/s Sharada Impex, Mumbai in their office but never dealt with Shri Shivjor J Yadav regarding import related documentation or follow ups; that as per his instructions Shri Ali prepared invoices in the name of the said importer firms and the name of supplier/shipper along with address was given by him; that as per convenience Shri Ali mentioned the description and value of the goods in the said invoices in consultation with him; that he was not aware as to who signed the said invoices presented before Indian Customs but looking at the said documents and being the actual importer of the said goods he was fully aware that the said goods were cleared by declaring wrong description & value before Indian Customs; that the quantity of Glass Chatons and Cup Chains were not declared before Indian Customs which also known to the actual buyers of the said goods; that no remittances were sent from the said firms apart from his own firm M/s. R. D. Traders; that he sent remittances equivalent to the invoice value to the overseas supplier firms through banking channels and the differential amount was sent through non-banking channels in cash.

4. In view of the above it appeared that:

A. Shri Ali Hussain S. Ujjainwala, Manager and H-Card Holder of the CB firm M/s. Sharada Impex, Mumbai (CB Licence No 11/1763) was aware of the fact of import of various items of Chinese origin in the names of dummy firms/dummy IECs arranged by him or Shri Amit Gala by using dummy persons;

B. Shri Ali dealt with Shri Amit Gala only for the goods imported in the names of the said firms;

C. Shri Ali was fully aware of the provisions of CBLR, 2013 (now CBLR, 2018) and Customs Act, 1962: however, knowingly he connived with Shri Amit Gala of M/s. R. D. Traders and facilitated him in contravention to the provisions of CBLR, 2013 (now CBLR, 2018);

D. Shri Ali himself admitted that he did not meet any of the owners of the said importer firms: however without knowing them he filed import documents for the said importers;

E. Shri Ali used to receive details of actual quantity/description of goods from Shri Amit Gala but knowingly he prepared documents of wrong description/value, he also admitted the said facts;

F. Shri Shivjor J Yadav, Proprietor, M/s Sharada Impex, Mumbai admitted and confirmed that Shri Ali Hussain S. Ujjainwala himself was responsible for dealing with all above firms and his statements on behalf of his firm would be admissible and binding to his firm because Shri Ali interacted with the said importers or actual owner of the goods imported in the name his firm.

#### **SUSPENSION OF LICENSE**

5. From the above facts, prima facie it appeared that Customs Broker. M/s Sharada Impex holder of CB Licence No. 11/1763 did not exercise due diligence in discharging their obligation as required under Regulations 11(a), 11(d), 11(e) & 11(n) of CBLR, 2013 [now Regulations 10(a), 10(d), 10(e) & 10(n) of CBLR, 2018]. Therefore, action was taken and the CB Licence No. 11/ 1763 held by M/s Sharada Impex (PAN ABLPY2494C) was suspended vide Order No. 66/2018-19 dated 13.12.18 and Show Cause Notice No. 31/1819 was issued vide F. No. S/8-105/2017-18 and Inquiry Officer was appointed vide order dated 13.12.2018 by the Commissioner of Customs (G), Mumbai Zone-I. Inquiry Officer, Shri. Brijendra Chowdhary, Jt. Commissioner of Customs, submitted his report on 25.03.2019 in which he held all the four charges levelled against the CB as proved.

#### **REVOCATION OF LICENSE**

6. After receiving Inquiry Report from IO where all the charges were held as proved, the Commissioner of Customs (General), Mumbai vide O-in-O CAO No.38/CAC/CC(G)/RC/CBS(Adj) dated 12.07.2019, revoked the CB License, imposed penalty of Rs. 50,000/- and ordered to forfeit the security deposit in full.

7. The CB, M/s. Sharada Impex, filed Appeal No.C/87930/2019 before the Hon'ble CESTAT, Mumbai against the Order-in-Original CAO

No.38/CAC/CC(G)/RC/CBS(Adj) dated 12.07.2019, passed by the Commissioner of Customs (General), Mumbai.

The Hon'ble CESTAT, Mumbai, **passed the Final Order against the above said appeal vide Order No.A/85708-85709/2021 dated 22.02.2021** as under:

Para 9 of CESTAT order stated:

*"The License of the Appellant having been revoked by the first of the impugned orders, the subsequent revocation, and forfeiture of security deposit should in normal circumstances be held as infructuous. However, as the procedure laid down in law, under CBLR, 2018 have been departed from in the stages leading to the first order of revocation rendering the original revocation to be lacking in legality and propriety, it would be appropriate to set aside both the impugned orders and remand them to the original authority for deciding afresh after instituting a fresh enquiry, as prescribed under CBLR, 2018 for ascertaining the correctness, or otherwise of each of the articles of charge appended to the two show cause notices".*

Para 10 of CESTAT order:

*"The appeals are, consequently allowed by way of remand for compliance with the directions supra. We also direct that, to the extent possible the inquiry should be completed within a period of ninety days and the order of the Licensing authority issued within thirty days therefrom".*

Thus, the Hon'ble CESTAT set aside the Order-in-Original CAO No.38/CAC/CC(G)/RC/CBS(Adj) dated 12.07.2019, passed by the Commissioner of Customs (General), Mumbai and ordered for instituting a fresh Inquiry in the matter.

8. The department filed the appeal in the Hon'ble Bombay High Court in Oct, 2021 against the said CESTAT Order dtd 22.02.2022, the same is not yet heard by the Hon'ble High Court and is still in the admission stage. Shri Karan P. Adik (Sr.Panel Counsel) and Shri Dhananjay Balkrishna Deshmukh (Jr.Panel Counsel) were appointed as authorized Panel counsel on behalf of the department to represent the case in Hon,ble High Court of Mumbai.

### **REINSTITUTION OF LICENSE**

9. The Advocate of the CB vide their email dated 16.03.2022 requested for the restoration of the CB license as per the Hon'ble CESTAT, Mumbai Final Order No. A/85708-85709/2021 dated 22.02.2021 and further filed miscellaneous appeal in the CESTAT, Mumbai for the implementation of the said CESTAT order. Thereafter, after taking the legal opinion of the panel counsel and with the approval of the Principal Commissioner of Customs(G), the CB License No. 11/1763 (PAN: ABLPY2494C) issued to M/s. Sharada Impex was



restored in EDI and Shri. Onkar Nath Singh, Assistant Commissioner of Customs, was appointed as the Inquiry Officer for conducting the inquiry afresh as per the Hon'ble CESTAT Order.

In the instant case, violation of the regulations 11(a), 11(d), 11(e) & 11(n) of CBLR, 2013 [now Regulations 10(a), 10(d), 10(e) & 10(n) of CBLR, 2018] were levelled against the CB.

## **INQUIRY REPORT**

10. Inquiry Officer submitted Inquiry Report dated 22.08.2022, wherein the charges against the CB i.e. violation of Regulations 10(a), 10(d), & 10(n) of CBLR were held as '**proved**' and violation of Regulation 10(e) of CBLR was held as '**not proved**'.

10.1 For the sake of clarity the relevant extracts of Regulation 10 of the CBLR 2018 are reproduced hereinafter:

***Regulation (a): 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 (d): advise his client to comply with the provisions of the Act and in case of noncompliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;***

***Regulation (e): exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;***

***Regulation (n): 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;***

10.2 The Inquiry Officer concluded the inquiry proceedings as under.

10.2.1 In respect of **Regulation 10(a)** of the CBLR, 2018, the inquiry officer observed that there is no allegation regarding the authorisation obtained from importers on whose behalf the Bills of Entry were filed. But it is a fact that Shri Amit Gala obtained these IECs from S/Shri Kadir, Abdul and Suhail who created these IECs in the name of dummy persons. Consequently, the inquiry officer implied that that authorisation obtained would be fraudulent only. Hence, the inquiry officer held that the allegation of violation of Regulation 11(a) of CBLR 2013 [now regulation 10(a) of the CBLR, 2018] stands conclusively **proved**.

10.2.2 In respect of **Regulation 10(d)** of the CBLR, 2018, the inquiry officer submitted that this regulation seems to be the main case against the CB since the DRI offence report states that the importers stated that they under invoiced the goods and that as per the Panchnama of the office of the CB, it is alleged that letterheads of suppliers were found, which are alleged to have been used for preparing the invoices. It is stated that the Ali Hussain Ujjainwala connived with the importers to help them mis-declare the goods in description, quantity and value. The CB states that he is not aware of the alleged mis-declarations in description, quantity and value since the clearances were handled by his employee Shri Ali Hussain Ujjainwala. The SCN clearly points to the lack of supervision by the CB on his employee and therefore the inquiry officer opined that the allegation of violation of Regulation 11(d) of CBLR 2013 [now regulation 10(d) of the CBLR, 2018] stands conclusively **proved**.

10.2.3 In respect of **Regulation 10(e)** of the CBLR, 2018, the inquiry officer submitted that the said regulation mandates that the CB shall exercise due diligence to ascertain the correctness of any information which he imparts to a client in relation to clearance of Cargo and is unable to find any allegation in the Offence Report or the impugned notice that the CB actually lacked in due diligence in relation of any information that he imparted to the clients. Therefore, the inquiry officer held that the said Regulation 11(e) of the CBLR, 2018 [now regulation 10(e) of the CBLR, 2018] **was not been violated** by the CB in the facts and circumstances of this case.

10.2.4 In respect of **Regulation 10(n)** of the CBLR, 2018, the inquiry officer submitted that it was the responsibility of the CB M/s Sharada Impex, Mumbai to verify the antecedent, correctness of the Importer Exporter Code (IEC) numbers, identity of clients and functioning of clients at the declared addresses by using reliable, independent, authentic documents, data or information etc. On this count the CB miserably failed to comply the provision of Regulation 11(n) of CBLR 2013 which allowed import of mis-declared goods by Shir Amit Gala in the name of some dummy firms/companies which were not owned by him. The CB M/s Sharada Impex knew Shri Amit Gala of M/s R. D. Traders very well as he was importing various commodities from China through the CB M/s Sharada Impex, Mumbai. The CB ought to have complied the provision of Regulation 11(n) of CBLR 2013 there would not be any mis-declaration of quantity/description and consequent revenue loss. Therefore, the inquiry officer opined that the allegation of violation of Regulation 11(n) of CBLR 2013 [now regulation 10(n) of the CBLR, 2018] stands conclusively **proved**.

11. Hence, the inquiry officer, proved the charges levelled against the CB under regulation 10(a), 10(d) and 10(n) of the CBLR, 2018 and did not prove the charge levelled against the CB under regulation 10(e) of the CBLR, 2018. The Inquiry report was shared with the Customs Broker.

### **PERSONAL HEARING**

12. Shri Sanjay Singhal, Advocate, on behalf of the CB, M/s. Sharada Impex (CB No. 11/1763) attended the personal hearing on 19.09.2022 at 12.00 hrs. During the course of personal hearing he reiterated & summarised the facts of the case. He denied all the Charges levelled against the CB and urged that all the charges may be reconsidered and dropped.

### **WRITTEN SUBMISSIONS**

13. Shri Sanjay Singhal, Advocate, in his written submission dated 19.09.2022, on behalf of the CB, M/s. Sharada Impex (CB No. 11/1763), inter-alia stated that:

a. The CESTAT vide the Para 10 of their Order No. A/85708-85709/2021 dated 22.02.2021 directed that to the extent possible, the inquiry should be completed within a period of ninety days and the order of the licensing authority issued within thirty days therefrom, however, in the present instance, the CESTAT order was issued on 22.02.2021 and the inquiry was not completed till that date, which is clearly in violation of the orders of CESTAT and therefore requested that the matter be closed in terms of the CESTAT Order.

b. The Facts of the case clearly indicate that in none of the consignments, which were examined by departmental officers and scanned by the CSD, any kind of discrepancy was found. It was only when the DRI, Ahmedabad seized the mobile phone of the main accused that it came to light that there was underinvoicing as well as misdeclarations. Even the DRI Investigations have not brought out any direct connivance of the noticee with the importer but that one of his staff was in active connivance with the Importer. Therefore, the allegations made under the CBLR cannot be sustained against the noticee.

c. The Licence of the noticee was suspended and Show Cause Notice was issued on 13.12.2018 while the offence report was received on 07.03.2018. Hon'ble High Court in the case of CC Vs Unison Clearing Pvt ltd [2018 (4) TMI 1053 (Bom)] has mandated that while the time limit of 90 days for issuance of Show Cause Notice is not mandatory but directory, it held that reasons must be supplied as to why the Show Cause Notice was not issued within 90 days time limit. The CBIC Circular No. 09/2010 dated 08.04.2010 also mandates that time limits should be strictly adhered by the field formations. Even recently, the Delhi



High Court in the case of *Leo Cargo Services & Ors Vs CC (Gen)* [2022 (8) TMI 115(Del)] has held that the time limits prescribed by the Circular are mandatory. It also examined the judgment of Bombay High Court in the case of *Unison Clearing Pvt Ltd* and held that when no reasons are available to justify the delay in issuing show cause notice, the same cannot be sustained. Therefore, since there is violation of the CBIC Circular and the directions of the Hon'ble High Court, it is requested that the proceedings against the noticee may be abated.

d. The Licence of the CB was suspended on 13.12.2018 and revoked only on 06.05.2022 which is almost three and half years without any work or income for the noticee, whose sole source of income was the Custom Broker licence. Even if it is deemed that he ought to have kept close control of his employees dealings, the loss of business for over three and half years is sufficient punishment for the misdemeanour of the noticee. It is therefore, prayed that the extreme punishment of revocation of licence may not be awarded to the noticee.

e. To further substantiate his submissions, the advocate referred to the following judgements:-

I. Hon'ble Tribunal in the case of *V Arjoon Vs Pr CC* [2021 (10) TMI 718] has held that when there are no documents to prove the actual involvement of the customs broker and the licence remained suspended for four years affecting his livelihood, the tribunal set aside the revocation of licence while upholding the penalty imposed.

II. Hon'ble Tribunal in the case of *Jetwing Freight Forwarders Vs CC* [2020 (6) TMI 316] held that although the charges of violation of Regulation 11(a), 11(d), 11(e) and 11(n) of CBLR 2013 are proved against the customs broker, the revocation of licence is an extreme punishment and set aside the same while upholding the penalty imposed.

III. Hon'ble Tribunal in the case of *Perfect Cargo and Logistics Vs CC* [2020 (12) TMI 649] set aside the revocation and penalty, which was imposed on the ground that two of the exporters were not available at the address and case of over-valuation of export goods was made against the exporters.

IV. Hon'ble Tribunal in the case of *Advent Shipping Agency Vs CC* [2022 (7) TTMI 317] set aside the revocation and penalty on custom broker, which was imposed in a case of over-valuation of export goods and that the address of IEC holders was not verified.

V. Hon'ble Tribunal in the case of *SSS Sai Forwarders P Ltd Vs CC* [2022 (6) TMI 15] set aside the order of revocation and reduced the penalty in the case, where the exporters have wrongly availed excess export benefits.

DISCUSSION AND FINDINGS:

14. I have carefully gone through the brief facts of the case, statements recorded during investigation and the Inquiry Report. I have also considered, both written & oral submissions made by the CB during the personal hearing held on 19.09.2019.

14.1 This is a case of import of various goods of Chinese origin by mis-declaring its description, quantity and value in the name of the dummy import firms/persons. Shri Amit Gala of M/s R. D. Traders utilised the services of one Shri Ali Hussain S. Ujjainwala, Manager and H-Card Holder of the charged CB firm M/s Sharada Impex, Mumbai (CB No.11/1763) and Shri Ali Ujjainwala used CB code of M/s. Sharada Impex to effect the import of such mis-declared goods which were owned/imported by Shri Amit Gala.

14.2 I find that for the omissions and commissions of the CB, the licence of the CB was revoked by Commissioner of Customs (General), Mumbai vide O-in-O CAO No.38/CAC/CC(G)/RC/CBS(Adj) dated 12.07.2019 and imposed penalty of Rs. 50,000/- and ordered to forfeit the security deposit in full. The CB, M/s. Sharada Impex, filed Appeal No.C/87930/2019 before the Hon'ble CESTAT, Mumbai against the said Order-in-Original and the Hon'ble CESTAT, Mumbai, **passed the Final Order in respect of the above said appeal vide Order No.A/85708-85709/2021 dated 22.02.2021.**

14.3 The CESTAT vide their order dtd 22.02.2021 set aside the O-in-O passed by the Commissioner of Customs (G) and remanded the impugned order to the original authority for deciding afresh.

An appeal in the Hon'ble High Court against the CESTAT Final Order No. A/85708-85709/2021 dated 22.02.2021 was filed by the department in Oct, 2021, the same is yet to be heard by the Hon'ble High Court. I further find that the said CESTAT final order was also implemented by the department and that Shri. Onkar Nath Singh, Assistant Commissioner of Customs, was appointed as the new inquiry officer in the matter on 25.05.2022 and the Licence of the CB was also reinstated in the EDI System.

14.4 Inquiry Officer, Shri. Onkar Nath Singh, Assistant Commissioner of Customs submitted inquiry report in the matter on 22.08.2022. I have gone through the findings made by the IO in respect of the charges framed. I agree completely with the IO's findings. Shri Ujjainwala, the manager and employee of CB has accepted in his statements that he used to obtain dummy IECs from one Shri Arif for monetary consideration and gave the same to Shri Amit Gala for import purpose. He also admitted that he was aware of the Glass Chatons in the

consignments and the non-declaration of the same to the Customs. The provisions under Regulation 13(12) of CBLR, 2018 specifically stipulates that the act of the employees are binding on the CB firm and they are responsible for their acts of omission and commission. The CB has not only failed to regulate the conduct of their employees about the way to handle the work in the customs premises but also failed to monitor their employees properly which led them to indulged in above activities which are violation of CBLR, 2018. The CB firm was mandated to supervise and guide their employees to handle the documents and legitimate business and not to entertain illegal entities in the course of employment as CB.

14.5 The voluntary statements made by the CB Shri Shivjor Yadav, Proprietor, his employee Shri Ali Ujjainwala and Shri Amit Gala, Importer under section 108 of the Customs Act, 1962 are admitted as evidence before the court of law in view of following judgements:

- i) Jasjeet Singh Marwah vs UOI by the Hon'ble Delhi High Court reported in 2009 (239) ELT 407 (Del)

*"..... In our view a statement recorded under Section 108 of the Customs Act, 1962 of the CHA by the Custom authorities is admissible in evidence and can form the sole basis for suspending the CHA's licence, however, subject to the usual safeguards that it is voluntarily and truthful. Where the statement under Section 108 of the Act is retracted it can only be relied upon if on examination of evidence one arrives at a conclusion, that the, retracted statement is true and voluntary."*

The statement made before the Customs officials under Section 108 of the Customs Act, 1962 is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is material piece of evidence collected by Customs under Section 108. Statement recorded under Section 108 can be used as evidence against the CB to the extent of establishing the omission and commissions of the CB with regard to the contravention of the provisions of the CBLR, 2013 (Now CBLR, 2018). I find that none of the statements recorded in the instant case have been retracted. The statements can, therefore, be used as substantive evidence to hold the CB liable for violation of CBLR, 2013 and I propose to do so.

- ii) Hon'ble High Court of Andhra Pradesh in the case of **CC (Hyd-II) vs. H.B. Cargo Services [2011 (268) ELT 448 (AP)]** wherein it has been held that the CB is required to ensure that the particulars which they entered in the Shipping Bill are true and correct.
- iii) In the case of **Arvind C. Bhagat v. Commissioner of Customs, reported in 2000 (122) ELT. 678 (Mad.)**. The Division Bench of Madras High Court upheld the Department's action on the CB, who had stood for surety of his client-importer, who was found to be a fictitious firm. When a Customs Broker is aware that the IEC holder and the person importing/exporting



is different and despite that, he does not bring this fact to the notice of the Department, this would amount to clear violation of the obligations cast upon the Customs Broker under CHALR/CBLR.

- iv) The **Hon'ble Supreme Court in the case of Commissioner of Central Excise, Madras vs. Systems & Components P. Ltd. [2004(165) ELT 136 (SC)]** at para 5 observed that :

"It is a basic and settled law that what is admitted need not be proved"

- v) **Hon'ble High Court of Bombay in Commissioner of Customs (General) v. Worldwide Cargo Movers [2010 (253) ELT 190 (Bom)]**

...The CHA Regulations which have been quoted above, are very clear and the CHA is responsible for all acts and omissions of his employees. Regulation 11(2)(b) states that when it comes to renewal, also the Commissioner has to be satisfied of absence of instances of any complaint or misconduct, including non-compliance of any of the obligations specified in Regulation 13. In the present case, the Assistant Commissioner had clearly held that as far as the first incident at Sahar was concerned, the violation of Regulations 13(d), (e), (l), (n) and 19(8) was clearly established. This being the position, as the authority in-charge of the Customs, it was his responsibility to see to it that such agents are no longer continued.....

- vi) **Sri Kamakshi Agency v. Commissioner-2001 (129) E.L.T. 29 (Mad.)**

The CHA was held responsible for the fraudulent activities of a third party whom it had delegated its functions. This CHA was responsible for the fraudulent activity carried out by the Power of Attorney leading to the revocation of the licence.

14.6 Having perused the findings of the Inquiry Officer in his report dated 22.08.2022, wherein allegations for the violation of regulations 11(a), 11(d) & 11(n) of CBLR, 2013 [Now Regulations 10 (a), 10 (d) & 10 (n) of CBLR, 2018] were proved against the CB during the inquiry and the CB was exonerated from the violation of regulation 11(e) of the CBLR, 2013 [now regulation 10(e) of CBLR, 2018], I am of the considered opinion that the inquiry report is based on the correct application of mind and appreciation of the facts and circumstances of the case. Therefore, I accept the inquiry report in respect of the charges proved under Regulations 11(a), 11(d) & 11(n) of CBLR, 2013 (Now Regulations 10 (a), 10 (d) & 10 (n) of CBLR, 2018). In respect of the regulation 11(e) of the CBLR, 2013 [now regulation 10(e) of CBLR, 2018], I agree with the findings of the IO and hold that there is nothing on record to prove that CB violated the provisions of the said regulation.

14.7 From the above, it is seen that the CB failed to comply with the Regulations 11(a), 11(d) & 11(n) of CBLR, 2013 (Now Regulations 10 (a), 10 (d) & 10 (n) of CBLR, 2018). In the era of facilitation, lot of trust is place on the Customs Broker who directly deals with the importers as the department does not interface with the importer. Failure to comply with Regulations by the CB

mandated in the Regulations gives room for unscrupulous people to escape after committing import export violations and revenue crimes. In this case there is all round failure of the CB and failure to supervise activities of his employee. Hence the infraction would have resulted into the revenue loss to the department.

15. From the above discussion, it is quite evident and beyond doubt that CB was involved in offence of mis-declaration using dummy IEC numbers leading to undervaluation of the goods imported with an aim to defraud the Government. The CB completely failed to fulfil the obligation cast on him and has not verified the KYC done by his employee and failed to monitor his employees which led his employees to misuse dummy IECs with fraudulent intention.

16. In view of the above, I pass the following order:-

**ORDER**

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) I hereby impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on M/s Sharada Impex, CB No. 1763 [PAN No. ABLPY2494C] under Regulation 18 of the CBLR, 2018 [erstwhile Regulation 22 of the CBLR, 2013].
- (ii) I hereby order for forfeiture of entire amount of security deposit furnished by the CB, under Regulation 14 of the CBLR, 2018.
- (iii) The CB License No. 1796 is ordered to be revoked under Regulation 14 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 against the Customs Broker and their employees under the Customs Act, 1962, or any other act of the time being in force in the Union of India.

  
21/10/2022

(SUNIL JAIN)  
PRINCIPAL COMMISSIONER OF CUSTOMS (G)  
MUMBAI ZONE-I

To,

M/s Sharada Impex, CB No. 11/1763 (PAN No. ABLPY2494C)  
Room No. 14, Pashvir Chambers,  
1st Floor, Bhandari Street, Masjid Bunder (West),  
Mumbai 400 003

Copy to:-

1. The Pr. Chief Commissioner/Chief Commissioner of Customs, Mumbai I,II,III Zone.

2. All Pr. Commissioners/Commissioners of Customs, Mumbai I, II, III Zone
3. Commissioner of Customs (NS-II), SIIB (Export), JNCH, Raigad, Maharashtra-400707
4. CIU's of NCH, ACC & JNCH
5. EDI of NCH, ACC & JNCH
6. ACC (Admn), Mumbai with a request to circulate among all departments.
7. JNCH (Admn) with a request to circulate among all concerned.
8. Cash Department, NCH, Mumbai.
9. Notice Board
10. Office Copy
11. Guard File (Admin)