



प्रधानआयुक्त (सामान्य) सीमाशुल्ककार्यालय
OFFICE OF THE PR.COMMISSIONER OF CUSTOMS (GENERAL)
कस्टमब्रोकरअनुभाग, नवीनसीमाशुल्कभवन,बेलाईइस्टेट, मुंबई- I
CUSTOMS BROKER SECTION, NEW CUSTOM HOUSE, BALLARD ESTATE,
MUMBAI - I.

F.No. S/8-72/2020-21 CBS

Date: ०९.04.2021

डिन: 202104११००००००० FF60

ORDER No. ०५ /2021-22

M/s. OV Shipping Agencies (Pan No AABFO9725DCH001) hereinafter referred to as the Customs Broker/CB situated at A-35, Ashoka Complex, Ground Floor, Near MAFCO Market, Sector-18, Vashi, Mumbai-400705, is holding a regular Custom Broker License No 11/1847 issued by Commissioner of Customs.

2. The Directorate of Revenue Intelligence (DRI), Sub-Regional Unit, Vapi received an intelligence that M/s Ramniklal & Sons, 62/64, Zaveri House, Hughes Road, Mumbai-400 007 (IEC No. 0388094702) (hereinafter referred to as M/s Ramniklal & Sons, Mumbai for the sake of brevity) indulged in misuse of the Advance Authorization Scheme in violation of the provisions of Foreign Trade Policy 2015-20 and the conditions of Notification No. 18/2015-Cus Dated 01.04.2015 by diverting the duty free imported goods to local market without payment of applicable Customs duties. Intelligence further indicated that the above said firm was a partnership firm where Shri Sanjiv Ramniklal Dhanak and Shri Laxmikant Deenanath Jaiswal were partners of the said firm.

3. Intelligence further indicated that M/s. Ramniklal & Sons, Mumbai had obtained licenses under Advance Authorization Scheme under Notification No. 18/2015-Cus. Dated 01.04.2015 from DGFT, Mumbai in terms of Paragraph 4.03 of the Foreign Trade Policy 2015-2020. The items allowed to be imported against the said authorizations were LDPE/LLDPE/HDPE/PVC Resins of different grades and Copper Rods and the items allowed to be exported against the said Authorizations were Articles Made up of LDPE/ LLDPE/ HDPE/PVC Compound and Copper wire. In the instant matter, the supporting manufacturer for process of LDPE / LLDPE / HDPE Granules / PP/ PVC Resin had been declared as M/s Crocus Enterprises [IEC-3012014721], 2888/2, B-23, Street No. 5, Link Road, Samrala Chowk, Ludhiana, Punjab-141008 and supporting manufacturer for process of Copper Rods had been declared as M/s Maks Technologies [IEC-3113017076], 1361, H. No. B/2/4, H. 1572, Milkat

No. 2/596, Pune Nagar Road, Wagholi, Haveli, Pune-412207. However, the said firm indulged in diversion of LDPE/LLDPE/HDPE/PVC Resins of different grades and copper rods imported duty free under Advance Authorization Scheme into local market.

4. Acting upon the aforesaid intelligence, simultaneous searches were conducted by the officers of Directorate of Revenue Intelligence, Surat, Directorate of Revenue Intelligence, Gandhidham, Directorate of Revenue Intelligence, Vapi, Directorate of Revenue Intelligence, Mumbai, Directorate of Revenue Intelligence, Ludhiana and the Officers of Pune Customs at different premises on 11.04.2018.

5. From the simultaneous searches carried out, it appears that no manufacturing activities were carried out at any of the declared premises of supporting manufacturer of M/s Ramniklal & Sons, Mumbai viz at the premises of M/s Crocus Enterprises, Ludhiana and at factory premises of M/s Maks Technologies, Pune and no physical stock of imported PP/LDPE/LLDPE/HDPE/PVC Resins/Copper Rods were available at any of the declared premises of supporting manufacturer of M/s Ramniklal & Sons, Mumbai.

6. Accordingly, after the completion of search proceedings, statement of following Customs House Agents who had arranged the clearance of imported goods i.e. LDPE/LLDPE/HDPE/PVC Resins/Copper Rods of different grades, were recorded for further investigation: (i) M/s. OV Shipping Agencies and (ii) M/s. Shakti Forwarders Pvt. Ltd.

7. Accordingly, M/s. OV Shipping Agencies, (CB No.1847) A-35, Ashoka Complex, Ground Floor, Near MAFCO Market, Sector-18, Vashi, Mumbai-400705 was summoned and statement dated 24.04.2018 of Sh. Sanjay Dnyadeo Dawkhar, Partner of M/s. OV Shipping Agencies was recorded under Section 108 of the Customs Act, 1962 wherein he inter alia stated that:

7.1 They had taken authorization letters from importers /exporters for the clearance of the goods from Customs. Further, he stated that as per new policy of Government, they had started to fill up the KYC form of their new clients. On being asked regarding Advance Authorization Scheme, he stated that he knew the provisions and conditions of Advance Authorization Scheme completely.

7.2 They had already obtained the KYC details of M/s. Ramniklal & Sons. They had obtained IEC, PAN Card, CHA Authority Letter, Bank attested verification, Passport copy in their records. Moreover, the registered premises located at Hughes Road had also been verified by them.

7.3 On being asked regarding CHA charges taken by them, he stated that they charged based on their clients. For 20' container, it ranges between Rs. 3500-4000 and for 40' Container; it ranges between Rs. 4500-5000. On being asked, he stated that they looked after C & F work for around 40 companies.

7.4 He was looking after import clearances work of M/s. Ramniklal & Sons since 2016-17. They were doing only import clearance work of M/s. Ramniklal & Sons.

7.5 On being asked specifically regarding clearances of import and export consignments of M/s. Ramniklal & Sons, he stated that Sh. Sanjiv Ramniklal Dhanak and Shri Veer Dhanak (Son of Shri Sanjiv Dhanak) used to deal with the work related to import consignments of M/s. Ramniklal & sons. They got instructions from Sh. Sanjiv Ramniklal Dhanak as well as Shri Veer Dhanak for clearance related work of the import consignments. Shri Veer Dhanak also regularly used to give instructions regarding TRAs, payments, Delivery of the goods, vehicle Nos. etc. and used to monitor the imports of the goods. Their firm, being one of the CHA of the said company, did the Customs Clearances of import consignment only.

7.6 On being asked regarding the goods imported/exported by M/s. Ramniklal & Sons, he stated that M/s. Ramniklal & Sons was engaged in import of LDPE / HDPE/ PP plastic granules. As far as export was concerned, he did not look after the export related work of M/s. Ramniklal & Sons.

7.7 On being asked regarding the details of customs clearances done by their firm of the imports of M/s. Ramniklal & Sons, he produced an Annexure-A duly prepared and verified very carefully by him for the period from 01.07.2016 to 30.01.2018. The said Annexure A bearing Sr. No. from 01 to 99 was containing the details viz. Bill of Entry No., Product, Assessable Value. Duty Foregone, country of Origin, Name of the transporters, High Sea Seller Name & Destination of the goods as available in his records. The import for the said period was summarized as below: -

Period	Qty. (In MTs.)	Value (in ₹)	Duty Foregone (in ₹)	ADD Foregone (in ₹)	Total Duty Foregone (in ₹)
01.04.2016 to 31.01.2018	16973	123,98,97,710/-	31,08,56,555/-	6,35,69,866/-	37,44,26,421/-

7.8 On being asked about his role in import done by M/s. Ramniklal & Sons, he stated that he had done in-bond, out bond and intra transfer Customs Clearance of the imported goods from Nhava Sheva Port & Arshiya (FTWZ). They had also generated Transfer Release Advice (TRA) for the party as per direction received either from Sh. Sanjiv Ramniklal Dhanak or from his son Shri Veer Dhanak.

7.9 On being asked regarding transportation of goods imported by M/s. Ramniklal & Sons, he stated that all transportation arrangement had been done by the party itself. They used to get instructions either Email or Phone from Sh. Sanjiv Dhanak /Sh. Veer Dhanak regarding the details of transporters for each consignment. Sh. Sanjiv Dhanak /Sh. Veer Dhanak used to give the Mobile No. of Transporters and subsequently he used to contact the transporters. Supplier/High Sea Sellers of the imported goods also used to send the mails to Customer Relationship Manager (CRM) of Arshiya (FTWZ) regarding the details of transporters of the Consignment.

7.10 On being asked regarding the destination of goods which had been Customs cleared by their firm and transported through these transporters, he stated that wherever destination was known to him, he had mentioned the same in the Annexure which he had submitted during the course of statement. Wherever, destination was not known to him, the respective column was left blank. Moreover, he stated that majority of the imported consignments had been delivered at godowns located at Bhiwandi.

7.11 On being asked regarding the payments received from M/s. Ramniklal & Sons, he stated that they had received all payments through RTGS/NEFT in their account in Kotak Mahindra Bank.

8. Further, inquiries were also made with the different Customs House Agents who had arranged the clearance of imported goods of M/s. Ramniklal & Sons, Mumbai viz. (i) M/s. OV Shipping Agencies, (ii) M/s. H. G. Mehta & Co. Pvt. Ltd., (iii) M/s. Oil Field Warehouse & Services Ltd., (iv) M/s. Indian Shipping Services, (v) M/s. K. T. Desai Clearing & Forwarding LLP, (vi) M/s A M Logistics, (vii) M/s. Aggressive Shipping & Logistics Pvt. Ltd.

9. M/s. OV Shipping Agencies, (CB No.11/1847) was again summoned and statement dated 25.10.2018 of Sh. Sanjay Dnyadeo Dawkhar, Partner of M/s. OV Shipping Agencies was recorded under Section 108 of the Customs Act, 1962 wherein he inter alia stated that:

9.1 On being asked specifically regarding clearances of import consignments of M/s. Ramniklal & Sons, he stated that in his previous statement dated 24.04.2018, he had tendered that Sh. Sanjiv Ramniklal Dhanak and Sh. Veer

Dhanak (Son of Shri Sanjiv Dhanak) used to instruct him for clearance related work of the import consignments. However, after recollecting, now he stated that in addition to Sh. Sanjiv Dhanak and Sh. Veer Dhanak, Sh. Viral Kanubhai Mehta, Proprietor of M/s. Nirantar also used to give him instructions for most of the import consignments of M/s. Ramniklal & Sons wherein he used to be instructed that he had to do Customs Clearances of the imported goods of M/s. Ramniklal & Sons. Moreover, as far as receipts of documents viz. invoices, TRAs, Packing List, etc., is concerned, he stated that most of the time he used to receive instructions from Sh. Viral Kanubhai Mehta to collect the licenses issued under Advance Authorization Scheme/ TRAs issued from JNCH. On his instructions, they used to collect these documents of M/s. Ramniklal & Sons. As regards to other documents viz. invoice, packing list, etc., he used to receive those documents through Email from the supplier of goods where the said mails were marked as CC to M/s O V Shipping and receiver email id used to be of M/s. Ramniklal & Sons. On receipt of those documents, he used to file Ex-Bond Bill of Entry for the consignments of M/s. Ramniklal & Sons without getting confirmation from M/s. Ramniklal & Sons under presumptions that M/s. Ramniklal & Sons had already given concurrence for the same. Actually, all these processes were under routine practice, so they had never taken confirmation of M/s. Ramniklal & Sons for filing Bills of Entry. Moreover, he used to be in regular contact with Sh. Viral Kanubhai Mehta regarding clearances of these consignments.

9.2 On being asked regarding the reasons for not narrating the name of Sh. Viral Kanubhai Mehta in his previous statement dated 24.04.2018 which was recorded u/s 108 of the Customs Act, 1962, he stated that he was threatened by Sh. Viral Kanubhai Mehta, not to disclose his name. He was under fear of Shri Viral Mehta. But he was narrating the factual statement without any duress or coercion.

9.3 On being asked regarding the reasons why he worked on the instructions of Sh. Viral Kanubhai Mehta when the imported consignments belonged to M/s. Ramniklal & Sons, he stated that it was known to him that Sh. Viral Kanubhai Mehta was in good relation with Sh. Sanjiv Dhanak and for this he was working on behalf of Sh. Sanjiv Dhanak. Even on later stage, Sh. Sanjiv Dhanak never complained regarding Custom clearances of his imported goods when it was already known to him that his imported goods were cleared from customs by their firm as per direction of Sh. Viral Kanubhai Mehta/ Suppliers of goods. When they had not received any objection/complaint from Sh. Sanjiv Dhanak even in the later stage, they thought that deemed concurrence was already given as and when they received documents through Email or received

licenses issued under Advance Authorization from Sh. Viral Kanubhai Mehta. Even after doing clearances of imported goods, they used to send the import related documents to M/s. Ramniklal & Sons/ Sh. Viral Kanubhai Mehta/ other sellers and in support of this, he produced & submitted a file having page no from 01 to 451 containing some of the Documents Acknowledgement Receipt (whichever found in record). In the said file, he also submitted the KYC related documents, bank attestation letter, IEC, Authorization Letter, bank a/c statement etc.

10. Statement of Sh. Pankaj Shahbuddin Surani, one of the Directors of M/s. Oil Field Warehouse & Services Ltd. was recorded on 01.11.2018, under Section 108 of the Customs Act, 1962, wherein he inter alia stated that:

10.1 On being asked regarding the instructions to clear the imported goods of M/s. Ramniklal & Sons, he stated that after getting confirmations from the suppliers of goods, they used to contact Sh. Minesh Shah and Sh. Shailesh, employees of M/s. Eskey Bee Intl. Pvt. Ltd./M/s. MM9 Intl. Pvt. Limited respectively wherein they used to get instructed that Release Advice (RA) issued against the licenses under Advance Authorization Scheme would be delivered to their office from M/s. OV Shipping Agencies (CB. No. 11/1847). On receipt of Release Advices via courier from the CB M/s. OV Shipping agencies, they used to do custom clearances of the goods of M/s. Ramniklal & Sons after debiting the said RAs. In short, he stated that for most of the consignments of M/s. Ramniklal & Sons, they used to get instructions from Sh. Minesh Shah for doing the Customs clearances work of consignment of M/s. Ramniklal & Sons. They were never in contact with any of the employees of M/s. Ramniklal & Sons for doing clearances of their consignments.

11. Statement of Shri Ashwani Gopalrao Jachak, Authorized representative of M/s. Best Roadways Limited was recorded on 22.11.2018, under Section 108 of the Customs Act, 1962, wherein he inter alia stated that:

11.1 On being asked regarding the relations with M/s. Ramniklal & Sons, he stated that their firm was known to M/s. OV Shipping Agencies and M/s. Aggressive Shipping Agencies [both CHAs of M/s Ramniklal & Sons]. The representative namely Sh. Sanjay Dawkhar of M/s. OV Shipping Agencies and Sh. Nilesh Shinde/Shri Ashok of M/s. Aggressive Shipping Agencies contacted their company to do transportation of imported goods of M/s. Ramniklal & Sons from CFS (Customs Freight Station) or Arshiya FTWZ. On their request, they had transported the goods of M/s. Ramniklal & Sons.

11.2 They used to receive call from M/s O.V. Shipping/ M/s. Aggressive Shipping to book the trailers for transportation of the imported cargos of M/s

Ramniklal & Sons and after getting the goods loaded from Container Freight Station/Arshiya in their trailers, they used to receive copy of Bill of Entry only from M/s. OV Shipping Agencies/ M/s. Aggressive Shipping Agencies. On receipt of Bill of Entry and goods, they used to prepare Lorry Receipt/Consignment Note for transportation of those goods. Being a local transport only, they did not prepare invoice/packing list/other transport related documents. Simultaneously, representative of M/s. OV Shipping Agencies/ M/s. Aggressive Shipping Agencies used to inform them that the goods which had been loaded in their trailers had to be delivered at their godowns. As per instructions of M/s. OV Shipping Agencies/ M/s. Aggressive Shipping Agencies, they delivered all imported goods of M/s. Ramniklal & Sons at their godowns.

11.3 They used to get confirmation call from M/s. OV Shipping Agencies/ M/s. Aggressive Shipping Agencies when payment against these aforesaid transportation was completed from their end.

12 Statement of Sh. Rama Chenna Poojari, Proprietor of M/s. RP Total Logistics was recorded on 03.12.2018, under Section 108 of the Customs Act, 1962, wherein he inter alia stated that:

12.1 After the goods got loaded from Arshiya (FTWZ), the CHA M/s. OV Shipping Agencies used to give the delivery challan along with the goods to the driver of vehicles and on the basis of those documents, they used to prepare Consignment Note/Lorry Receipt for the consignment.

13. Statement of Shri Manohar Anandrao Kakade, Proprietor of M/s. Amey Transport was recorded on 30.11.2018, under Section 108 of the Customs Act, 1962, wherein he inter alia stated that:

13.1 He was known to Sh. Sanjay Dnyadeo Dawkhar, Partner of M/s. OV Shipping Agencies [CHA of M/s. Nirnatar]. The office of M/s. OV Shipping Agencies and his firm were both located in same complex namely Ashoka Complex at Vashi. Sh. Sanjay Dnyadeo Dawkhar initially, introduced him to Shri K. Prasad (Mob No. 9096942620) of M/s. Crescent Furnishing Pvt. Ltd. and Sh. Shailesh bhai (Mob No. 9833003832) of M/s. Eskay Bee Int. Pvt. Ltd. who asked him to do transportation of imported goods to Mumbai. After being agreed upon to do transportation of goods to Mumbai, further he came to know that the goods which were supposed to be transported to Mumbai actually belonged to M/s. Ramniklal & Sons. This he came to know only after getting document (delivery Challans) from Sh. Sanjay Dawkhar (CHA) for doing transportation of said goods wherein the outbound party name was used to be written as M/s. Ramniklal & Sons. The goods which were purported to be

delivered at Mumbai were provided only Delivery Challans as document by Sh. Sanjay Dnyandeo Dawkhar [CHA].

14. Statement of Shri Prasad Babaji Vishwasrao, Proprietor of M/s. Sai Prasad Logistics was recorded on 03.12.2018, under Section 108 of the Customs Act wherein he inter alia stated that:

14.1 On being asked, he stated that loading and deliveries of imported cargo were carried out as per instructions given by Sh. Shailesh Bhai, employee of M/s. Eskay Bee Int. Pvt. Ltd. Sh. Sanjay Dnyandeo Dawkhar of M/s. OV Shipping Agencies used to inform them via phone call about the quantum of goods and requirement of Lorry. Thereafter, after getting loaded the containers, Sh. Shailesh Bhai used to inform about the destination of goods where the goods were supposed to be delivered. As per Sh. Shailesh Bhai instructions, they delivered the goods to various godowns located at Bhiwandi.

15. Statement of Sh. Hitesh Lodaya, Proprietor of M/s. Shah Roadlines Corporation was recorded on 25.01.2019, under Section 108 of the Customs Act, 1962, wherein he inter alia stated that:

15.1 On being asked regarding the reasons to mention name of Consignor as M/s. Eskey Bee Int. Pvt. Ltd., Mumbai on the LRs imported goods of M/s. Ramniklal & Sons were transported by them, he stated that those goods were actually imported by M/s. Ramniklal & Sons and Customs clearances for those import consignments were done by M/s. OV Shipping Agencies (CHA). After doing out of Charge clearances of those goods, they were loaded into their vehicles. Along with the vehicles, they received Delivery Challans and Bill of Entries and other import related documents. After going out from Arshiya (FTWZ), those documents were again taken back by Sh. Shailesh Bhai, employee of M/s. Eskey Bee Int. Pvt. Ltd. Thereafter, Sh. Shailesh Bhai used to provide the Invoices of M/s. Eskey Bee Int. Pvt. Ltd. for doing transportation of the said loaded goods. On receipt of Invoices, they used to prepare Lorry Receipts where Consignor address were written as M/s. Eskey Bee Int. Pvt. Ltd., Mumbai and consignee address were written as M/s. Eskey Bee Int. Pvt. Ltd., Ahmadabad/Halol/Vadodara/Morbi/Rajkot. He further stated that in some of the cases, they had not prepared LRs for transporting of the said goods.

16. Statement of Sh. Surendra Pandey, Authorized representative of M/s. Shree Vindhyvasini Roadlines was recorded on 06.03.2019, under Section 108 of the Customs Act, 1962, wherein he inter alia stated that:

16.1 They had worked for M/s Ramniklal & Sons during the year 2017-18 and transported 42 containers of Imported Cargos of M/s Ramniklal & Sons from

Nhava Sheva to Bhiwandi as per the instruction given by Shri Amish (Mobile No. 9930728722) on behalf of M/s Ramniklal & Sons and Sh. Sanjay (Mobile No. 09594668777) of M/s OV Shipping Agencies, Mumbai.

17. Statement of Sh. Ramesh Kumar, Authorized representative of M/s Vishwaa Carriers of India was recorded on 07.11.2019, under Section 108 of the Customs Act, 1962 wherein he inter alia stated that:

17.1 On being asked to comment over the vehicle details and consignment details on the said delivery Challans, he stated that as per the said delivery Challans, it was clear that the imported goods which they had transported vide their LRs mentioning consignor as M/s Universal Poly Products, New Mumbai were actually the imported goods of M/s. Ramniklal & Sons, Mumbai and hence they had committed a mistake as they were in false impression that Shri Amish Bhai was the controller of those imported goods. He further wished to state that those activities were carried out by them as per the instructions received from Shri Amish Bhai of M/s Mahavir Polyfilms Pvt. Ltd.

18. Statement of Shri Machhinder Mane, Proprietor of M/s. Mansi Roadlines was recorded on 05.04.2019, under Section 108 of the Customs Act, 1962 wherein he inter alia stated that:

18.1 He did not know M/s Ramniklal & Sons, Mumbai. Shri Shailesh bhai (Mobile No. 9833003832) employee of M/s Eskay Bee International Pvt. Ltd. was known to him and Shri Shailesh bhai had told him to transport imported goods from Nhava Sheva & Arshiya. He agreed to the proposal of Shri Shailesh. He later came to know that those imported goods, which were to be transported to Mumbai, belonged to M/s Ramniklal & Sons, which he came to know after he received delivery challans from M/s OV Shipping/Shri Sanjay. In the said delivery challans name of outbound party was mentioned as M/s Ramniklal & Sons.

19. In light of the facts discussed in the foregoing paras and material evidence available on record Sh. Sanjay Dnyadeo Dawkhar, Partner of M/s OV Shipping Agencies, Vashi Mumbai, by their acts of omission and commission had knowingly abetted Shri Sanjiv Ramniklal Dhanakand other conspirators to perpetuate the alleged fraud of misuse of Advance Authorization Scheme. He had instructed transporter M/s Amey Transport Co. to follow the instructions of the employees of the masterminds and game planner of this case for delivering the duty free imported goods of M/s Ramniklal & Sons, Mumbai at different godowns at Mumbai, if they wanted to do business. He had also instructed M/s Shree Vindhyvasini Roadlines to deliver the duty free imported goods at Bhiwandi i.e. at a place other than the registered premises. Hence, it

appears that he was very much aware that those duty free goods of M/s Ramniklal & Sons, Mumbai were to be diverted to open market. Thus, CB had contravened Regulation 11(d) of CBLR, 2013(Now 10(d) of CBLR, 2018).

11(d). 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;

20. The acts and deeds of Sh. Sanjay Dnyadeo Dawkhar, Partner of M/s OV Shipping Agencies, Vashi, Mumbai enabled the conspirators to implement their game plan of illicitly importing the duty free goods imported under the Advance Authorization Scheme and thereby assisted the conspirators to accomplish their motives to defraud the government exchequer. It appears that the CB was hand in gloves with the importer and did not act diligently regarding the clearance of goods under Advance Authorization Scheme. Thus, CB had contravened Regulation 11(e) of CBLR, 2013(Now 10(e) of CBLR, 2018).

11(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;

21. Shri Sanjay Dnyadeo Dawkhar, Partner of M/s OV Shipping Agencies, Vashi, Mumbai had therefore knowingly concerned themselves in act of commission and omission which rendered the goods liable for confiscation under Section 111 of the Customs Act, 1962 and also indulged in removing, selling or in any other manner dealing with the goods which he had reason to believe were liable to confiscation under Section 111 of the Customs Act, 1962. In this instant case, the CB was not efficient while discharging their duties as per the obligation under Regulation 11(m) of CBLR, 2013(Now 10(m) of CBLR, 2018).

11(m). Discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;

22. In light of the facts discussed in the foregoing paras and material evidence available on record M/s Kaveri Transport, B-201, Krishna Complex, Narol, Ahmadabad by his acts of omission and commission had knowingly abetted Shri Sanjiv Ramniklal Dhanak and other main conspirators to perpetuate the alleged fraud of misuse of Advance Authorization Scheme. As per the statement dated 24.04.2018 of Shri Sanjay Dnyadeo Dawkhar, Partner of M/s. OV Shipping Agencies, Mumbai, M/s Kaveri Transport had also transported the duty free imported goods of M/s Ramniklal & Sons, Mumbai

and as per the investigation, it appears that PP/LDPE/HDPE/LLDPE/PVC Resin were never delivered at the declared premises of the supporting manufacturer of M/s Ramniklal & Sons, Mumbai.

23. In the view of above, considering the acts of omission and commission on the part of the Customs Broker firm viz. M/s OV Shipping Agencies (CB No. 11/1847), it appears that the said firm has violated Regulation 11(d), 11(e) and 11(m) of the Customs Brokers Licensing Regulations, 2013(Now 10(d),10(e)and 10(m) of CBLR,2018) and is liable for action under the provisions of the said Regulations.

24. In view of the above, the CB License held by M/s. OV Shipping Agencies (CB No. 11/1847) [PAN No. AABFO9725DCH001] was suspended by the Pr. Commissioner of Customs (General) vide Order No.44/2020-21 dated 18.02.2021 and personal hearing was granted to the CB on 26.02.2021.

RECORD OF PERSONAL HEARING

25. Sh. D H Nadkarni (Advocate) and Shri Sanjay Dawkhar (Partner M/s OV Shipping Agencies) both appeared for PH on 26.02.2021 and submitted written submission 24.02.2021. They requested that suspension be revoked.

WRITTEN SUBMISSION OF CB

26. The CB submitted a written submission dated 24.02.2021 wherein it was submitted that:

(I) Order No. 44/2020-21 dated 18.02.2021 passed under Regulation 16(1) of CBLR meant nothing for immediate suspension of license.

a) Present action was initiated on the basis of investigation conducted by DRI and in Para 4 of the impugned Order, it was stated that investigation started from 11.4.2018 by carrying out searches at various places. Thereafter, during investigations, statement of various persons were recorded including statement of Shri Saniay Dawkhar, Partner of the CB on two occasions i.e. 24.4.2018 and 25.10.2018 and on conclusion of investigations Show cause notice dated 22.10.2020 was issued by Principal Additional Director General, DRI.

(b) Investigation was going on from 11.4.2018 and suspension Order was passed on 18.02.2021, as such, in spite of investigations were continued by DRI, the CB was allowed to conduct clearance work for almost 3 years. It is to submit that power of suspension is an emergent power to be used in those cases where it is required that CB license be immediately suspended and by allowing CB to conduct business for almost three years, it would be

clear that there was no emergency which required license to be suspended. As per settled position of law, suspension of license can be made only in appropriate cases, where immediate action is necessary.

The CB relied on following decisions/judgments:

- i) National Shipping Agency-2008(226) ELT 46 (BOM)
 - ii) A.S. Vasan & Sons-2018(362) ELT 272 (T)
 - iii) Orient Clearing & Forwarding Agency- 2001(136) ELT 3 (CAL)
 - iv) P. Cawasji & Co.-2018(364) ELT 871(T)
 - v) R.S. Kandalkar & Co.- 2014(299) ELT 360(T)
- (II) Settled position of law in the matter of Sunshine Agency reported in 2003 (156) E.L.T. 978 (TRI-MUMBAI)-proceed against cha in terms of regulation 23 of CHALR, 1984 on completion of proceeding initiated by show cause notice:

The CB submitted that Show cause notice dated 22.10.2020 was issued by Principal Additional Director General, DRI is pending adjudication and as of today allegations made in the impugned notice are not proved. As per settled position of law in the matter of Sunshine Agency reported in 2003 (156) E.L.T. 978 (Tri. - Mumbai), it was held that extraordinary power being used by Commissioner after lapse of considerable period from cause of action, requirement of immediate action does not established, hence, the Commissioner may proceed against CHA in terms of Regulation 23 of Custom House Agent Licensing Regulations, 1984 on completion of proceeding initiated by show cause notice. The CB relied on the decisions of Poonam Cargo Services Vs. Collector of Customs, [1999 (110) E.L.T. 696 (Tribunal)] during the course of hearing.

(III) No violation of Regulation 10(d) OF CBLR, 2018:

- (a) In the suspension order, it has been observed that the CB had not fulfilled regulation 10(d) of CBLR. In this regard, it is to submit that M/s. Ramniklal was a star export house, as they had excelled in international trade and successfully achieved certain minimum amount of export performance decided by respective Authority.
- (b) The CB submitted that their terms of engagement with every Client were to carry out clearance business as Custom Broker at any Customs Station. In the present case, the CB had engaged himself in the clearance of goods in JNPT and Arshiya FTWZ. The domain of his engagement was ceased on obtaining out of Customs Charge by affecting the delivery to the importer on record. The CB further submitted that it was not his duty to escort the goods to the ultimate destination and consumption and he acted within the provisions of

CBLR on handling over the goods after out of charge given by Customs under Section 47 of the Customs Act, 1962. It is on record that delivery was given at the exit gate of JNPT and Arshiya. It was further submitted that beyond Customs gate, it's not the duty of CB to ascertain as to where goods were taken by their Client.

- (c) The CB submitted that when M/s Ramniklal was well conversant with import/export activities and earned the status of star export House, it can be safe to presume that they are and were well conversant with the provisions of the Customs Act, 1962 or allied acts and the rules and regulations thereof. It was to submit that till the delivery of goods at JNPT/ Arshiya FTWZ, M/s. Ramniklal had not done anything contrary to the Customs Act, 1962 or Allied Acts and the Rules and Regulations thereof and as such, the charge of non fulfillment of regulation 10(d) was without any basis and not sustainable in law and under regulations.

(IV) No violation of Regulation 10 (e) of CBLR, 2018:

The CB submitted that charge of violation of regulation 10(e) was made on the assumption that Shri Sanjay Dnyadeo Dawkhar, Partner of CB enabled the conspirators to implement their game plan of illicitly importing the duty free goods imported under the Advance Authorization and thereby assisted the conspirators to accomplish their motives to defraud the Government exchequer. The CB reproduced Regulation 10(e) as follows:

(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.

On perusal of the said aforementioned regulation 10(e), it would be clear that CB's duty is to exercise due diligence to ascertain the correctness of any information which he imparts to the client up to the point of clearance of cargo. Once out of charge Order under Section 47 of the Customs Act, 1962 is passed and goods are handed over to the Client at Custom's port gate, the responsibility of CB is over. The post import condition or any other condition of license is to be complied with by his client, who is carrying out imports or exports, as the case may be. The observation in Para 20 i.e. "illicit importing...", itself is erroneous, as out of charge was given by the Proper Officer after assessing the goods and scrutinizing the documents related thereto. The CB submitted that they had not violated regulation 10(e) in any manner.

(V) No violation of regulation 10(m) of CBLR, 2018:

The CB submitted that there was no objection raised by anyone that they had discharged duties with utmost speed and efficiency and without any delay. The charge of non-fulfillment of Regulation 10(m) of CBLR, 2018 was made by taking support of provisions of the Section 111 of the Customs Act, 1962 which was not sustainable in law. It was to submit that Customs Act, 1962 and CBLR are different and distinct Act /Rule and proceedings carried out under respective provisions are also different and distinct, as per settled position of law. By making general statement without substantiation i.e. CB was not efficient while discharging their duties as per obligation under Regulation 11(m) of CBLR was on assumption and preconceived notion, hence, not sustainable in law.

26. Request to cross-examine:

The CB submitted that they would like to cross examine transporters viz. Shri Manohar Anandrao Kakade of M/s. Amey Transport and Shri Surendra Pandey of M/s. Shree Vindhyavasini Roadlines and others for examining veracity of statements under the principles of natural justice.

The CB submitted that based on the aforementioned factual submissions, it would be clear that they had carried out business within the parameters laid down by CBLR and not at all contravened any provisions of said Regulations.

DISCUSSION AND FINDINGS

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

26. I find that the license of Customs Broker M/s. OV Shipping Services (CB no. 11/1847) was suspended vide Order No. 44/2020-21 dated 18.02.2021 based on the offence report from O/o. The Commissioner of Customs(G), Mumbai-III, CIU, JNCH vide F. No. SG/Misc-102/2020-21/CIU/JNCH dated 29.12.2020 received by this office on 01.01.2021 alongwith copy of SCN issued vide F. No. DRI/AZU/SRU-7/2018-Ramniklal/Pt-I/594 dated 22.10.2020 by Pr. Additional Director General, DRI, Ahmadabad. From the SCN, it appears that the CB contravened the provisions of Regulation 11(d), 11(e) and 11(m) of the CBLR, 2013 (Now 10(d), 10(e) and 10(m) of CBLR, 2018).

27. The defence submission stated that the Investigation was going on from 11.4.2018 and suspension Order was passed on 18.02.2021, as such, in spite of investigations were continued by DRI, the CB was allowed to conduct

clearance work for almost 3 years. It is to submit that power of suspension is an emergent power to be used in those cases where it is required that CB license be immediately suspended and by allowing CB to conduct business for almost three years, it would be clear that there was no emergency which required license to be suspended; that as per settled position of law, suspension of license can be made only in appropriate cases, where immediate action is necessary. The CB relied on the decisions/judgments as follows:

- i) National Shipping Agency-2008(226) ELT 46 (BOM)
- ii) A.S. Vasan & Sons-2018(362) ELT 272 (T)
- iii) Orient Clearing & Forwarding Agency- 2001(136) ELT 3 (CAL)
- iv) P. Cawasji & Co.-2018(364) ELT 871(T)
- v) R.S. Kandalkar & Co.- 2014(299) ELT 360(T)

27.1 Further, the defense submission stated that the Show cause notice dated 22.10.2020 was issued by Principal Additional Director General, DRI is pending adjudication and as of today allegations made in the impugned notice are not proved; that as per settled position of law in the matter of Sunshine Agency reported in 2003 (156) E.L.T. 978 (Tri. - Mumbai), it was held that extraordinary power being used by Commissioner after lapse of considerable period from cause of action, requirement of immediate action does not established, hence, the Commissioner may proceed against CHA in terms of Regulation 23 of Custom House Agent Licensing Regulations, 1984 on completion of proceeding initiated by show cause notice. The CB relied on the decisions of Poonam Cargo Services v. Collector of Customs, [1999 (110) E.L.T. 696 (Tribunal)] during the course of hearing.

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

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

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

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

I find that in the instant case License of the Customs Broker, M/s OV Shipping Services (CB no. 11/1847) was suspended vide Order No. 44/2020-21 dated 18.02.2021 based on the offence report from O/o The Commissioner of Customs(G), Mumbai-III, CIU, JNCH vide F. No. SG/Misc-102/2020-21/CIU/JNCH dated 29.12.2020 received by this office on 01.01.2021 alongwith copy of SCN issued vide F. No. DRI/AZU/SRU-7/2018-Ramniklal/Pt-I/594 dated 22.10.2020 by Pr. Additional Director General, DRI, Ahmadabad; that an opportunity of personal hearing was granted to the CB on 26.02.2021 i.e. within 8 days which has been availed by the C.B. on 26.02.2021. As such, there is no delay in the instant case. Further, I find that observations Hon'ble High Court judicature at Madras i.e. "there can be no straight-jacket formula for computing the time period to assess as to

whether a case is one which calls for immediate suspension or not" are squarely applicable in the instant case.

27.3 I find that Regulation 14 of the CBLR, 2018 deals with the revocation of license or imposition of penalty. Regulation 14 of the CBLR, 2018 states that the Principal Commissioner or Commissioner of Customs may, subject to the provisions of Regulation 17, revoke the license of the Customs Broker and order for forfeiture of part or whole of security, on any of the following, namely :-

- (a) failure to comply with any of the conditions of the bond executed by him under Regulation 8;
- (b) failure to comply with any of the provisions of these regulations, within his jurisdiction or anywhere else;
- (c) commits any misconduct, whether within his jurisdiction or anywhere else which in the opinion of the Principal Commissioner of Customs or Commissioner of Customs renders him unfit to transact any business in the Customs Station;
- (d) adjudicated as an insolvent;
- (e) of unsound mind; and
- (f) Convicted by a competent court for an offence involving moral turpitude or otherwise.

28. As per statement recorded on 24.04.2018 of Shri Sanjay Dnyadeo Dawkhar, partner of M/s. OV Shipping Agencies, he stated that wherever destination was known to him, he had mentioned the same in the Annexure which he had submitted during the course of statement. Wherever, destination was not known to him, the respective column was left blank. Moreover, he stated that majority of the imported consignments had been delivered at godowns located at Bhiwandi.

28.1 I find that he (Shri Sanjay Dnyadeo Dawkhar) had instructed transporter M/s Amey Transport & Co. to follow the instructions of the employees of the masterminds and game planner of this case for delivering the duty free imported goods of M/s Ramniklal & Sons at different godowns in Mumbai, if they wanted to do business. He (Shri Sanjay Dnyadeo Dawkhar) had also instructed M/s Shree vindhyavasini Roadlines to deliver the duty free imported goods at Bhiwandi i.e. at a place other the registered premises and in the instant matter, the supporting manufacturer for process of LDPE / LLDPE / HDPE Granules / PP/ PVC Resin had been declared as M/s Crocus Enterprises [IEC-3012014721], 2888/2, B-23, Street No. 5, Link Road, Samrala Chowk, Ludhiana, Punjab-141008 and supporting manufacturer for process of Copper Rods had been declared as M/s Maks Technologies [IEC-

3113017076], 1361, H. No. B/2/4, H. 1572, Milkat No. 2/596, Pune Nagar Road, Wagholi, Haveli, Pune-412207. I also find that Shri Sanjay Dnyadeo Dawkhar, partner of M/s. OV Shipping Agencies was very much aware that those duty free goods of M/s Ramniklal & Sons were to be diverted to open market. Thus it appears that the CB has contravened the provisions of Regulation 10 (d) of the CBLR, 2018.

29. On being asked regarding transportation of goods imported by M/s. Ramniklal & Sons in his statement recorded on 24.04.2018, he stated that all transportation arrangement had been done by the party itself. However, as per statements of:

29.1 I find that statement of Shri Ashwani Goprao Jachak Authorized representative of M/s. Best Roadways Limited recorded on 22.11.2018, he stated that their firm was known to M/s. OV Shipping Agencies and M/s. Aggressive Shipping Agencies [both CHAs of M/s Ramniklal & Sons]. The representative namely Sh. Sanjay Dawkhar of M/s. OV Shipping Agencies and Sh. Nilesh Shinde/Shri Ashok of M/s. Aggressive Shipping Agencies contacted their company to do transportation of imported goods of M/s. Ramniklal & Sons from CFS (Customs Freight Station) or Arshiya FTWZ. Further, he stated that they used to get confirmation call from M/s. OV Shipping Agencies/ M/s. Aggressive Shipping Agencies when payment against these aforesaid transportation was completed from their end.

29.2 I find that statement of Shri Manohar Anandrao Kakade, Proprietor of M/s. Amey Transport recorded on 30.11.2018, he stated that he was known to Sh. Sanjay Dnyadeo Dawkhar, Partner of M/s. OV Shipping Agencies [CHA of M/s Nirnatar]. The office of M/s. OV Shipping Agencies and his firm were both located in same complex namely Ashoka Complex at Vashi. further he came to know that the goods which were supposed to be transported to Mumbai actually belonged to M/s. Ramniklal & Sons. This he came to know only after getting document (delivery Challans) from Sh. Sanjay Dawkhar (CHA) for doing transportation of said goods wherein the outbound party name was used to be written as M/s. Ramniklal & Sons.

29.3 I find that Sh. Sanjay Dnyadeo Dawkhar, Partner of M/s OV Shipping Agencies, Vashi, Mumbai enabled the conspirators to implement their game plan of illicitly importing the duty free goods imported under the Advance Authorization Scheme and thereby assisted the conspirators to accomplish their motives to defraud the government exchequer. It appears that the CB was hand in gloves with the importer and did not act diligently regarding the clearance of goods under Advance Authorization Scheme and as far as provisions of Regulation 10(e) of the CBLR, 2018 is concerned, there is nothing

to do with the qualification of the client, as has been submitted by the defense submission. It is evident that the Customs Broker processed the documents without exercising due diligence to ascertain the correctness of the information. Thus, it appears that the CB has contravened the provisions of Regulation 10(e) of the CBLR, 2018.

30. As per statement recorded on 24.04.2018 of Shri Sanjay Dnyadeo Dawkhar, partner of M/s. OV Shipping Agencies under Section 108 of the Customs Act, 1962 wherein he stated that they got instructions from Sh. Sanjiv Ramniklal Dhanak (Partner of M/s Ramniklal & Sons) as well as Shri Veer Dhanak (Son Sh. Sanjiv Ramniklal Dhanak) for clearance related work of the import consignments. Shri Veer Dhanak also regularly used to give instructions regarding TRAs, payments, Delivery of the goods, vehicle Nos. etc. and used to monitor the imports of the goods. Their firm, being one of the CHA of the said company, did the Customs Clearances of import consignment only.

30.1 I find that the statement recorded on 25.10.2018 of Sh. Sanjay Dnyadeo Dawkhar, he accepted that in addition to Sh. Sanjiv Dhanak and Sh. Veer Dhanak, Sh. Viral Kanubhai Mehta, Proprietor of M/s. Nirantar also used to give him instructions for most of the import consignments of M/s. Ramniklal & Sons wherein he used to be instructed that he had to do Customs Clearances of the imported goods of M/s. Ramniklal & Sons. He used to file Ex-Bond Bill of Entry for the consignments of M/s. Ramniklal & Sons without getting confirmation from M/s. Ramniklal & Sons under presumptions that M/s. Ramniklal & Sons had already given concurrence for the same. Actually, all these processes were under routine practice, so they had never taken confirmation of M/s. Ramniklal & Sons for filing Bills of Entry. Therefore, it appears that the CB was involved in illicitly importing the duty free goods imported under the Advance Authorization Scheme. These commissions and omissions on the part of the CB firm prove grave inefficiency in discharge of their duties as a Customs Broker. I find that the CB did not restrict the illegal diversion of the imported goods covered under Advance Authorization Scheme, on the contrary he aided the importer. Thus it appears that the CB has contravened the provisions of Regulation 10 (m) of the CBLR, 2018.

31. The defence submission stated that they would like to cross examine transporters viz. Shri Manohar Anandrao Kakade of M/s. Amey Transport and Shri Surendra Pandey of M/s. Shree Vindhyavasini Roadlines and others for examining veracity of statements under the principles of natural justice.

31.1 I find that as per the provisions of Regulation 17(4) of the CBLR, 2018 the CB may cross-examine Shri Manohar Anandrao Kakade of M/s. Amey

Transport and Shri Surendra Pandey of M/s. Shree Vindhyavasini Roadline, and others at the time of Inquiry Proceedings, subject to permission granted by the Inquiry Officer (Assistant Commissioner of Customs/Deputy Commissioner of Customs). In view of the above, the CB's request for cross-examination cannot be considered at this juncture.

32. From the facts stated above and outcome of the investigation, it appears that the CB M/s OV Shipping Agencies (CB No. 11/1847) have failed in fulfilling the obligations as mandated under CBLR, 2018 and has violated the Regulation 10(d), 10(e) and 10(m) of CBLR,2018.

33. My consideration at present is limited to determining whether the continuation of suspension of the Customs Broker License is warranted or otherwise in the instant case in light of the material of the record. I find that Whether or not the individual charges hold will be the subject matter of detailed inquiry under Regulation 17 of CBLR, 2018 but there is enough prima facie material on record to apprehend that charges are sustainable. All the charges sustain for the time being and can form grounds for continuation of the order of suspension.

34. In view of the above facts stated above, it appears that the Customs Broker is liable for their acts of omissions and commissions leading to contraventions of the provisions of CBLR, 2018, which amounts to breach of trust and faith imposed on the CB by the Customs. The Customs Broker M/s OV Shipping Agencies, CB No. 11/1847 (Pan No AABFO9725DCH001) have therefore, prima-facie, failed to fulfill their responsibilities as per Regulation 10(d), 10(e) and 10 (m) of CBLR, 2018.

35. Accordingly, I pass the following order:-

ORDER

36. I, Principal Commissioner of Customs (General), in exercise of powers conferred upon me under the provisions of Regulation 16 (2) of CBLR, 2018 order that the suspension of the Customs Broker License M/s OV Shipping Agencies, CB No. 11/1847 (Pan No AABFO9725DCH001) vide Order no. 44/2020-21 dated 18.02.2021 shall continue, pending inquiry proceedings under Regulation 17 of CBLR, 2018.

37. This order is being issued without prejudice to any other action that may be taken against the CB or any other person(s)/firm(s) etc under the provisions

of the Customs Act, 1962 and Rules/Regulations framed there under or under any other law for the time being in force.



9/4/21

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

To,

M/s. OV Shipping Agencies (Pan No AABFO9725DCH001)
A-35, Ashoka Complex,
Ground Floor, Near MAFCO Market,
Sector-18, Vashi
Mumbai-4000705

Copy to:

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