



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

संचिका सं./F. No.- GEN/300/2023 -CBS

आदेश दिनांक/Date of Order: 15.01.2024

CAO No. 65/CAC/PCC(G)/SJ/CBS-Adj

जारी दिनांक/Date of issue: 16.01.2024

संख्या:

DIN : 2024017700000000DFBA

द्वारा जारी : सुनील जैन
प्रधान आयुक्त, सीमाशुल्क(सामान्य)
मुंबई -400 001

Issued By : Sunil Jain
Pr. Commissioner of Customs(Gen.),
Mumbai – 400 001.

ORDER-IN-ORIGINAL मूल आदेश

ध्यान दीजिए/ N.B. :

1. यह प्रति उस व्यक्ति को निजी उपयोग हेतु निःशुल्क प्रदान की जाती है, जिसे यह जारी की जा रही है।
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2. इस आदेश के विरुद्ध अपील माँगे गए राशी के **7.5%** के भुगतान पर सीमाशुल्क अधिनियम, 1962 की धारा 129A(1B)(i) के संबंधमें सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण में स्वीकार्य है, जहाँ शुल्क या शुल्क एवं जुर्माना विवादित हों, या जुर्माना, जहाँ सिर्फ जुर्माना ही विवादित हो।यह अपील इस आदेश के संप्रेषण की तारीख के तीन महीने के अंदर दायर की जाएगी। यह अपील सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण (कार्यविधि) नियमावली, १९८२, के प्रावधानों के अंतर्गत, यथोत्तखंडपीठ में स्वीकार्य है।

An appeal against this order lies with the Customs, Central Excise and Service Tax Appellate Tribunal in terms of section 129A(1B)(i) of the Customs Act, 1962 on payment of **7.5%** of the amount demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. It shall be filed within three months from the date of communication of this order. The appeal lies with the appropriate bench of the Customs, Central Excise and Service Tax Appellate as per the applicable provisions of Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

3. यह सूचित किया जाता है की इस आदेश के अमल में आते ही,न्याय निर्णयन अधिकारी का अधिकार क्षेत्र समाप्त होता है और सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण, पश्चिम क्षेत्री यखंडपीठ, के M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai के संदर्भ में जारी आदेश क्रमांक A/86617-86619/2018 दिनांक 31.05.2018 के अनुसार न्यायिक आदेश तदोउ प्रांत न्याय निर्णयन अधिकारी *functus officio* बन जाता है

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

4. यदि एक ही प्रकरण में उसी पक्षकार के विरुद्ध कई कारण बताओ नोटिस लगाकर आदेश पारित किया 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 उल्लेखित व्यक्ति द्वारा हस्ताक्षरित एवं सत्यापित की जाएगी।

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

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

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

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

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

BRIEF FACTS OF THE CASE

M/s. Fourstar Enterprises, (PAN: AAFF7386A), having office address at “196/198 Samuel St., R. No. 25/26, New Bhagwan Bhavan, Masjid, Mumbai-400009” [hereinafter referred as the Customs Broker/CB] holding regular Customs Broker License No. 11/845, issued by the Commissioner of Customs, Mumbai under Regulations of CHALR, 1984, [Now regulation 7(2) of CBLR, 2018] and as such they are bound by the regulations and conditions stipulated therein.

2. An offence report in the form of Investigation Report vide F. No. SG/Misc.-101/2016-17 CIU/JNCH dated 15.12.2022 was received in CB Section, NCH, from CIU/JNCH, Mumbai wherein, it was informed that the officers posted at MSWC CFS (Factory Stuffing Containers) suspected the genuineness of the factory stuffing permission (FSP) produced by exporter M/s. Neminath Industries for the two S/Bs No. 2014912 dated 02.11.2016 and 2014929 dated 02.11.2016. The said Factory Stuffing Permission (FSP) produced by the exporter was sent for verification to FSP Cell, JNCH. It was confirmed by the FSP Cell, JNCH on 08.11.2016 that the said FSP letter was not issued by their office. Therefore, the matter was referred to C.I.U. for investigation on 10.11.2016. The goods contained in the containers pertaining to the said Shipping Bills were examined by the officers of C.I.U, JNCH at CONCOR DRT CFS under Panchanama dated 11.11.2016. During examination of the goods, it was found that each of these containers were stuffed with 40 cartons only, and each carton contained 6 sets of Melody insulated Hot Pot 800/1600/2400/3200, each set containing 4 pieces. No other items were found except Hot pots from both of these containers.

3. During further investigation, it was found that the invoices submitted to the Central Excise Department for the subject consignments at the time of factory stuffing were different from the invoices produced for Customs clearance. In the invoices submitted to Central Excise Department, exporter was declared as M/s. Arihant Industries. However, in the invoices produced for Customs clearance the exporter was declared as M/s. Neminath Industries. As per the Central Excise Invoice there were 70 cartons in each container and the declared Net weight was 12282 kgs per container. However, on examination of above mentioned two containers, each container was found to contain only 40 cartons each weighing 900 kgs in total.

4. Thereafter, a search was conducted on 11.11.2016 at the premises of M/s. Neminath Industries situated at Gala No. 6, Bhayander Industrial Estate, CSM Road, Bhayander East, Thane by a team of officers of C.I.U., JNCH and Central Excise, Thane-II Office. However, it was found that Gala No. 6 did not exist in the Bhayander Industrial Estate. Further, inquiry revealed that M/s. Neminath Industries used to function from Gala No. 1, Naronha Estate, Near United Rubber Industries, Near Phatak, Kashi-Mira Road, Bhayander East, Thane which was in control of Mr. Tarun Jain. Accordingly, a search was conducted at Gala No. 1 and certain documents pertaining to M/s. Neminath Industries were seized under Panchnama dated

11.11.2016. In addition to above, recovery of many incriminating documents such as Shipping Bills and Factory Stuffing Invoices of M/s. Neminath Industries, Bhayander, unsigned declaration form of M/s. Aadinath Industries, Blank Letter head of M/s. Aadinath Industries, Bills of Lading of M/s. WAN HAI Shipping Line, Certificate of Importer-Exporter Code (IEC) one in the name of M/s. Neminath Industries and Shri. Tribhavan Budhiram Verma as Proprietor (IEC No. 0315079053), address Gala No. 6, Bhayander Industries Estate, Chhatrapati Shivaji Maharaj Road, Bhayander (East), Thane, Maharashtra-401105 and another one in the name of M/s. Aadinath Industries and Shri. Tribhav Budhiram Nath as Proprietor (IEC No. 0315064196), address Gala No.4, Panchal Industries Estate, Chhatrapati Shivaji Maharaj Road, Near Reliance Office, Bhayander (East), Thane-401105 was recovered at the same place.

5. Further intelligence gathered by CIU JNCH indicated that several factory stuffed containers were exported in the name of the following companies, and on suspicion of fraudulent exports on similar modus operandi which may have taken place on inflated value by manipulation of documents, further investigation was carried out in respect of the following exporters as mentioned in the Table below:

Sr. No.	Name and address of the Exporter	IEC No.	Name of the IEC Holder
1	Neminath Industries, Gala No.6, Bhayander East	0315059281	DAMER BAHADUR T. SUBBA
2	Neminath Industries, Gala No.6, Bhayander East	0315079053	TRIBHAVAN BUDHIRAM VERMA
3	Adinath Industries, Gala No.4, Bhayander East	0314078461	LOKESH MADAN BANSAL
4	Adinath Industries, Gala No.4, Bhayander East	0315064196	TRIBHAV BUDDHIRAM NATH
5	Arihant Industries, Gala No.22, Bhayander East	0311050638	LOKESH M. BANSAL

6. Data pertaining to the Shipping Bills filed by the above mentioned exporters was sought from EDI section, JNCH, and it was found after analysis of the data that a total of 1474 Shipping Bills were filed by the above mentioned exporters. The total FOB value of the 1474 Shipping Bills was Rs.543,58,38,842/-. Analysis of the number of Shipping Bills filed by each exporter is as mentioned in the Table below:

Sr. No.	Name of the Exporter	IEC	No. of Shipping Bills	FOB value (In Rs.)	Drawback claimed(Rs.)	Drawback availed(Rs.)
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1.	Neminath Industries	0315059281	249	83,29,15,745	7,68,36,587	7,56,78,257
2.	Neminath Industries	0315079053	384	139,04,62,304	12,91,04,183	12,40,76,187
3.	Adinath Industries	0314078461	322	114,08,17,723	10,29,51,957	10,29,51,957
4.	Adinath Industries	0315064196	289	105,83,43,158	9,55,74,324	9,18,35,014
5.	Arihant Industries	0311050638	230	101,32,99,912	9,11,54,263	8,59,30,385
Total			1474	543,58,38,842	49,56,21,314	48,01,71,800

7. To verify the genuineness of the Factory Stuffing Permissions used in these fraudulent exports, FSP Cell JNCH was requested to verify the details of the factory stuffing permissions. It was informed by the FSP Cell vide their letter dated 29.11.2016 that FSP No. 534/2015-16 dated 07.12.2015 was issued to M/s. Neminath Industries, FSP No. 399/2015-16 dated 29.09.2015 was issued to M/s. Aadinath Inudstries, FSP No. 780/2015-16 was issued to M/s. Abhinandan Industries, FSP No. 791/2015-16 dated 02.03.2016 was issued to M/s. IAC Exports Pvt. Ltd., FSP No. 171/16-17 dated 27.06.2016 was issued to M/s. Emsons Exim Pvt. Ltd. & FSP No. 641/2015-16 was issued to M/s. Trend Technologies India Pune Pvt. Ltd.

8. The details of factory stuffing permissions received from the FSP Cell JNCH were examined by officers of CIU JNCH, and it was noticed that factory stuffing permissions were used fraudulently by making and producing forged export documents. Analytical examination of factory stuffing permission is given in Table below:

Sr. No.	FSP No.	Name of Exporter to which FSP issued	Name of Exporter against which FSP used in Excise	Name of the Exporter against which shipping bills filed in Customs
1	791/2015-16	M/s. IAC Exports Pvt. Ltd.	M/s. Neminath Industries (IEC No. 315079053)	M/s. Neminath Industries (IEC No. 315079053)

2	171/ 2016- 17	M/s. Emsons Exim Pvt. Ltd.	M/s. Arihant Industries (IEC No. 0311050638)	M/s. Arihant Industries (IEC No.0311050638) M/s. Neminath Industries (IEC No.315079053) M/s. Adinath Industries (IEC No.315064196)
3	641/ 2015- 16	M/s.Trend Technologies India	M/s. Adinath Industries (IEC No. 315064196)	M/s. Adinath Industries (IEC No. 315064196)
4	534/ 2015- 16	M/s. Neminath Industries (IEC No.315059281)	M/s. Neminath Industries (IEC No.315059281)	M/s. Arihant Industries (IEC No.0311050638) M/s. Neminath Industries (IEC No.315059281) M/s. Adinath Industries (IEC No.315064196)
5	399/ 2015- 16	M/s. Aadinath Inudstries (IEC No.0314078461)	M/s. Aadinath Inudstries (IEC No.0314078461) M/s. Neminath Industries (IEC No. 315059281) M/s. Adinath Industries (IEC No.0315064196)	M/s. Aadinath Inudstries (IEC No.0314078461) M/s.Neminath Industries (IEC No.315059281) M/s. Adinath Industries (IEC No.315064196)

8.1 Since, no FSP had been issued to M/s. Neminath Industries (IEC No. 0315079053), M/s. Adinath Industries (IEC No. 0315064196) & M/s. Arihant Industries (IEC No. 0311050638) by the FSP Cell, JNCH, therefore, out of the total 1474 Shipping Bills, 384 Shipping Bills pertaining to M/s. Neminath Industries (IEC No. 0315079053), 289 Shipping Bills pertaining to M/s. Adinath Industries (IEC No. 0315064196) & 230 Shipping Bills pertaining to M/s. Arihant Industries (IEC No. 0311050638) were filed using fake factory stuffing permissions. In total, out of 1474 Shipping Bills, 903 (384+289+230) Shipping Bills pertaining to the above mentioned

three exporters were filed using fake factory stuffing permission, the same is as tabulated in the table below:

Sr. No.	Exporter	IEC	FSP issued	Total S/Bs filed	S/Bs filed using fake FSPs
1.	Neminath Industries	0315079053	No FSP issued	384	384
2.	Adinath Industries	0315064196	No FSP issued	289	289
3.	Arihant Industries	0311050638	No FSP issued	230	230
Total				903	903

8.2 On further analysis of the data, remaining 571 Shipping Bills pertaining to M/s. Neminath Industries (IEC No. 0315059281) & M/s. Adinath Industries (IEC No. 0314078461), it was observed that data pertaining to 40 Shipping Bills of M/s. Neminath Industries (IEC No.0315059281) and 48 Shipping Bills of M/s. Adinath Industries (IEC No.0314078461) was not found with the Central Excise department. Out of the remaining Shipping Bills, 79 Shipping Bills pertaining to M/s. Neminath Industries (IEC No.0315059281) and 20 Shipping Bills pertaining to M/s. Aadinath Industries (IEC No.0314078461) were filed using fake Factory Stuffing permission. A tabular analysis of the data is as mentioned in table below:

Sr. No.	Exporter	IEC No.	No. of Shipping Bills for which Data not found in Central Excise	No. of Shipping Bills for which Data found in Central Excise		Total Shipping Bills filed
				Shipping Bills filed using fake FSPs	Shipping Bills filed using genuine FSPs	
			A	B	C	A+B+C
1	Neminath Industries	0315059281	40	79	130	249
2	Adinath Industries	0314078461	48	20	254	322
	Total		88	99	384	571

8.3 From the table above, it is evident that the above said factory stuffing permissions (FSP) were used in making forged export documents at both levels in Central Excise during stuffing of the containers and in customs during filing of shipping bills. Out of the 1474 Shipping Bills, a total number of 1002 (903+99) Shipping Bills were filed using fake FSP (Factory Stuffing Permission). Out of the remaining 472 (1474-1002) Shipping Bills, data pertaining to 40 shipping bills of M/s. Neminath Industries and 48 shipping bills of M/s. Aadinath Industries was not found with the Central Excise department. It appears that those 88 (40+48) shipping bills were filed using fake Central Excise examination reports and invoices endorsing fake factory stuffing permission. Therefore, out of 1474 Shipping Bills, 1090 (1002+88) numbers of shipping bills were filed using fake documents such as factory stuffing permission, invoice, packing list and central excise examination reports, and only 384 (1474-1090) shipping bills were filed using factory stuffing permission issued by Customs, JNCH.

9. The Investigation Report mentioned the role of various Customs Brokers including M/s. Fourstar Enterprises (CB No. 11-845) (PAN: AAAFF7386A) who facilitated the subject **fraudulent exports**.

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

10.1 Statement of Mr. Tarun Jain, proprietor of M/s. Abhinandan Industries was recorded vide various summons issued under Sec 108 of Customs Act, 1962 wherein he inter-alia stated that

- He had a factory by name M/s. Abhinandan Industries, Gala No.1, Narohna Estate, United Rubber Industries, Bhayander (East), Thane-401105; the utensils manufactured in his factory were sold in the domestic market;
- They were also exporting the utensils to places like Nigeria, Hong Kong, Dubai etc., till 2014;
- the two containers lying at CFS DRT, Nhava Sheva, contained about 40 cartons each of Hot Pot;
- On being asked why the goods were found in lesser quantity than declared, he stated that they used to stuff only so many goods;
- On being asked whether the goods were stuffed in presence of Central Excise officers, he stated that original invoices used to be shown to the Central Excise officers but the stuffing was not supervised by them; that his partner Shri Lokesh Bansal used to manage the stuffing and Central Excise officers;
- On being asked how much money he had received from the drawback amount

sanctioned in the name of M/s. Neminath Industries, he said that about Rs. 80 lakhs must have been received from this account;

- On being asked as to who used to operate the bank account of M/s. Neminath Industries, he stated that the account used to be operated by Shri. Lokesh Bansal, and that he used to have signed cheques of Shri. Tribhuvan Budhiram Verma - the IEC holder of M/s. Neminath Industries;
- Shri. Verma used to work for Shri. Lokesh Bansal;
- The goods were exported as factory stuffed containers in the name of M/s. Neminath Industries but this company had no factory stuffing permission;
- As regards to Mr. Tribhuvan Budhiram Verma, IEC holder of M/s. Neminath Industries, he did not personally know Mr. Tribhuvan Budhiram Verma. Mr. Verma had once or twice come with Mr. Lokesh Bansal in his office and he had introduced him as one of his relatives;
- He received Rs.1,61,00,000/- from the account of M/s. Neminath Industries out of which Rs.1,16,00,000 was received in the account of M/s. Abhinandan Industries while Rs.45,00,000 was received in his personal Savings Bank account with Canara Bank;
- On being asked how he received Rs.1,61,00,000/- from the bank account of M/s. Neminath Industries when he raised the invoices of supply of goods to M/s. Arihant Industries, he inter alia stated that he was told by Sh. Lokesh Bansal that the account of M/s. Neminath Industries is of his uncle and he would get the letter from his uncle saying that transfer of the money is for the goods supplied to M/s. Arihant Industries, however, he had not received any such letter;
- On asking that how did he supply goods to M/s. Arihant Industries as the premises of M/s. Arihant Industries could not be located by the Central Excise Officers, he stated that Sh. Lokesh Bansal used to send Tempo at his factory and he used to load the goods in his tempo;
- Mr. Lokesh Bansal was operating from his office as Mr. Lokesh Bansal was his good friend; that he was in the business of export of 'SS Utensils'; that he used to charge Rs.7000/- per month to Mr. Lokesh Bansal for using his office, which he used to collect in cash and there was not written agreement for the same;
- He didn't know anything about M/s. Neminath Industries, M/s. Aadinath Industries and M/s. Arihant Industries;
- The goods were loaded in truck in his factory at Bhayander and then those goods were stuffed in container at Bhayander East West bridge crossing for export;

- On asking that it was found on verification of the premises of M/s. Neminath, M/s. Aadinath & M/s. Arihant Industries that no factory existed on the address mentioned in their IEC and FSP, he replied that he was not aware of this fact;
- On asking that was Gala No. 4 Bhayander Industrial Estate the factory premises of M/s. Aadinath Industries (IEC NO. 0314078461), he replied that the mentioned address is of his (Tarun) factory; that he had original Leave and licence agreement of that premises for last five years; that Aadinath Industries never existed at that address;
- On asking that was Gala No. 6, Bhayander Industrial Estate the factory premises of M/s. Neminath Industries, he replied that gala No. 6 did not exist at Bhaynder Industrial Estate so it could not be the premises of any factory;
- Lokesh Bansal used to provide the documents to the CHA for filing Shipping Bills for M/s. Neminath Industries, M/s. Arihant Industries and M/s. Aadinath Industries.

10.2 Statement of Shri Chetan Chauhan, employee of M/s. Fourstar Enterprises (CB No. 11-845) was recorded under Section 108 of the Customs Act, 1962 on 05.12.2016 wherein he inter alia stated that he had filed approximately 120 shipping bills from January, 2015 to October, 2015 of M/s. Neminath Industries (IEC No.0315059281), M/s. Aadinath Industries and M/s. Arihant Industries; that the work came of these companies came to them through one Mr. Amin of M/s. Ameera Shipping & Logistics Pvt. Ltd.; that he had not directly dealt with the said exporters; that he never met any employees, Directors, partners of M/s. Neminath Industries, M/s. Aadinath Industries & M/s. Arihant Industries; that he received export documents such as invoice, packing list, Self-Declaration Form, copy of the Factory Stuffing permission etc. from same Shri Amin through e-mail; that the; that had received Authorization letter, IEC Copy, PAN Card, Factory Stuffing Permission & Bank letter etc. of the exporters Ameera Shipping; that he had not physically verified the addresses or meet the owners of the exporters; that he verified IECs of the said exporters online.

10.3 Shri Lokesh Madan Mohan Bansal, proprietor of M/s. Arihant Industries (IEC No. 0311050638), Shri. Damer Bahadur Subba, proprietor of M/s. Neminath Industries (IEC No. 0315059281), Shri Tribhavan Budhram Verma alias Tribhav Buddhram Nath, proprietor of M/s. Neminath Industries (IEC No. 0315079053) and M/s. Aadinath Industries (IEC No. 0315064196) were summoned several times under Section 108 of Customs Act, 1962. However, none of them turned up for statement and are still absconding.

11. On perusal of the case, it appears that approximately 120 shipping bills were cleared by the CB M/s. Fourstar Enterprises (CB No. 11/845) on behalf of M/s. Aadinath Industries, M/s. Neminath Industries and M/s. Arihant Industries; Mr. Amin of M/s. Ameera Shipping & Logistics Pvt. Ltd., provided KYC documents,

PAN card, FSP, IEC etc. Mr. Chetan Chauhan, employee of M/s. Fourstar Enterprises had never met the exporters or IEC holders. Further, it is pertinently clear that CB did not establish any communication linkage with the exporters. Hence, prima facie, it appears that the CB failed to carry out certain statutory obligations laid under CBLR, 2018.

11.1 In view of the above facts, it is evident that the CB was working in a seriously negligent manner and was in violation of the obligations casted upon them under the CBLR 2018. By their acts of omission and commission it appears that the said CB has violated Regulation 10(a), 10(d) & 10(n) of the Customs Brokers Licensing Regulations, 2018 and rendered himself for penal action under Regulations 14, 17 & 18 of CBLR, 2018.

12. Legal Provision of the CBLR, 2018:-

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

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

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

13. SHOW CAUSE NOTICE: M/s. Fourstar Enterprises (PAN: AAFF7386A) CB No. 11/845 was issued a Show Cause Notice No. 15/2023-24 dated 26.05.2023 by the Principal Commissioner of Customs (General), NCH, Mumbai Zone-I asking them to Show Cause as to why the CB License No. 11/845 issued to them should not be revoked and security deposited should not be forfeited and/or penalty should not be imposed upon them under Regulation 14 read with Regulations 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018 as elaborated in the Show Cause Notice. They were directed to appear for a personal hearing and to produce proof of evidence/documents, if any, in their defence to Shri Ankush Salame, Dy.

Commissioner of Customs, who was appointed an inquiry officer to conduct inquiry under Regulation 17 of CBLR, 2018.

14. INQUIRY REPORT: -

Inquiry Officer submitted Inquiry Report dated 05.10.2023, wherein, the charges against CB M/s. Fourstar Enterprises (11/845) i.e. violation of Regulation 10(a), 10(d) and 10(n) of CBLR, 2018 were held as '**Proved**'.

14.1 IO submitted that Shri Anil Balani authorized representative of the CB M/s. Fourstar Enterprises appeared for the personal hearing held on 07.08.2023. They have submitted their detailed written submission dated 07.08.2023.

14.2 Written Submission of the Customs Broker:

IO submitted that the CB replied to the SCN vide their letter dated 07.08.2023. Accordingly point wise replies submitted by CB in their defence which is reproduced as below:

a. FSP was issued by Customs directly to the Exporter. The CB was not involved. The notice did not even allege that the Customs Broker Played any role in issuance of FSP.

b. The CB was admittedly not involved in the stuffing of the container at the premises of the exporter.

c. The stuffing was done under supervision of the Central Excise Officers.

d. Notices had been issued to the CB only because they allegedly did not personally meet and interact with the exporters. Further, the CB allegedly did not physically visit the address of the exporters.

e. The allegations were denied at very outset.

f. It is well settled the penalty under section 114 cannot be imposed for any violation of CBLR. The following judgements are relied upon in support-

i. Adani Wilmar Ltd-2015 (330) ELT 549 (T).

ii. Quick Systems-2019 (365) ELT 558 (Tri. Chennai).

iii. Parvez J Irani-2016 (333) ELT 333 (Tri).

iv. World Cargo Movers-2002 (139) ELT 408 (T).

v. Pankaj Babu Saini-2015 (316) ELT 164 (T).

vi. I. Sahaya Edin Prabhu-2015 (320) ELT 264 (Mad).

vii. Neptune's Cargo Movers Pvt. Ltd.-2007 (219) ELT 673 (T).

etc.

g. The Customs Broker have acted bona-fide, in their normal course of business and in good faith.

h. They did not commit any act rendering the goods liable for confiscation under section 113(i) (ia) (k) and for this reason also they are not liable under section 114 (iii). As per CESTAT judgement in the case of Manish Raj Chemicals {2015 (317) ELT (Tri. Mum)} section 113 (ia) is not applicable in such case.

14.3 COMMENTS OF THE INQUIRY OFFICER:- IO submitted that after the facts available on record i.e. Show Cause Notice No. 15/2023-24 dated 26.05.2023 along with RUDs, statements of person recorded during the investigation, alleged Articles of Charges and contraventions mentioned in SCN as well as legal provisions reflected in CBLR, 2018 and submission made by the CB he is in considered opinion that;

14.4 Violation of Regulation 10 (a) of CBLR, 2018:

It is alleged in the Show Cause Notice that the CB did not establish any communication linkage with the exporters, that the basis of above analysis, it appeared that CB did not obtain authorization from Exporters by whom he was employed as a CB but received authorization from Mr. Amin who was neither the Exporter nor its representative; CB did not establish any communication with the exporters/IEC holders of M/s. Neminath Industries (IEC No.0315059281), M/s. Aadinath Industries and M/s. Arihant Industries.

14.4.1 Shri Chetan Chauhan, employee of M/s. Fourstar Enterprises (CB No. 11-845) in his statement recorded under Section 108 of the Customs Act, 1962 on 05.12.2016 inter alia stated work of M/s. Neminath Industries (IEC No.0315059281), M/s. Aadinath Industries and M/s. Arihant Industries came to them through one Mr. Amin of M/s. Ameera Shipping & Logistics Pvt. Ltd.; that he never directly dealt and never met any employees, Directors, partners of M/s. Neminath Industries, M/s. Aadinath Industries & M/s. Arihant Industries exporters/IEC holders. Mr. Amin of M/s. Ameera Shipping & Logistics Pvt. Ltd. used to forward the documents to him for clearance; that Mr. Amin gave him the copy of factory stuffing permission, KYC Form, copy of IEC, PAN card and CHA authorisation letter; that he had not physically verified the addresses or meet the owners of the exporters/IEC holders and he verified IECs of the said exporters online. Thus it is apparent that there was no direct communication between the CB and the Exporters/ IEC holder of M/s. Neminath Industries (IEC No.0315059281), M/s. Aadinath Industries and M/s. Arihant Industries. The CB has admitted that the work of these companies came to them through intermediary Mr. Amin of M/s. Ameera Shipping & Logistics Pvt. Ltd.

14.4.2 Shri Tarun Jain, proprietor of M/s. Abhinandan Industries in his statement recorded under Sec 108 of Customs Act, 1962 stated that Lokesh Bansal used to provide the documents to the CHA for filing Shipping Bills for M/s. Neminath

Industries, M/s. Arihant Industries and M/s. Aadinath Industries. Thus, it is apparent that the CB M/s. Fourstar Enterprises received documents from intermediary who was not authorized by M/s. Neminath Industries, M/s. Arihant Industries and M/s. Aadinath Industries.

14.4.3 During the course of Inquiry proceedings, the CB has not produced copy of the valid authorizations from M/s. Neminath Industries, M/s. Arihant Industries and M/s. Aadinath Industries. It is evident from the aforesaid statement of Shri Chetan Chauhan, employee of M/s. Fourstar Enterprises that the CB did not possess valid authorization from M/s. Neminath Industries, M/s. Arihant Industries and M/s. Aadinath Industries to undertake the subject exports, which clearly proves contravention of provisions of Regulation 10 (a) of the CBLR, 2018. Hence, the Article of Charge alleging violation of Regulation 10(a) of CBLR, 2018 as "Proved".

14.4 Violation of Regulation 10 (d) of CBLR, 2018:

It is alleged in the Show Cause Notice that CB did not establish any communication linkage with the Exporters; that Mr. Lokesh Madan Mohan Bansal, proprietor of M/s. Arihant Industries (IEC No. 0311050638), Mr. Damer Bahadur Subba, proprietor of M/s. Neminath Industries (IEC No. 0315059281) and Mr. Tribhavan Budhiram Verma alias Tribhav Buddhiram Nath, proprietor of M/s. Neminath Industries (IEC No. 0315079053) and M/s. Aadinath Industries (IEC No. 0315064196) were summoned several times under Section 108 of Customs Act, 1962 but failed to turn up for statement.

14.4.1 IO submitted that it is evident from the statement of Shri Chetan Chauhan, employee of M/s. Fourstar Enterprises that CB neither met personally to exporter nor established any communication linkage to exporters (IEC holders) for clearance of their consignment nor was in contact through any other means. Here, neither the Customs Broker nor any of its employees had come into contact with the exporter of the beneficial owner of the exporter firm. In these circumstances, it is clear that CB did not know actual IEC holder and fails to advice his client (IEC holder) to comply with the provision of the Customs Act, other allied Acts and the rules and regulations. Further, nothing on record has come to his notice which proves that the CB has brought the contravention of the Customs Act, 1962 by the exporter or its beneficial owner to the notice of the Deputy Commissioner. In view of the foregoing the charges levelled against the Customs Broker M/s. Fourstar Enterprises for violation of Regulation 10 (d) of the CBLR, 2018 is proved.

14.5 Violation of Regulation 10 (n) of CBLR, 2018:

IO in his report submitted that it has been alleged that CB did not make any efforts to identify the identity, background and functioning of his client before undertaking customs clearance work of the client; that it appears to be a gross negligence on the

part of the CB who acts a vital link between the Importer/Exporter and Customs Department.

14.5.1 It is evident from the statement of Shri Chetan Chauhan, employee of M/s. Fourstar Enterprises (CB) that he was not in contact with IEC Holders of M/s. Neminath Industries, M/s. Arihant Industries and M/s. Aadinath Industries directly or indirectly. Thus, CB fails to verify the address of IEC holders which was found to be non-existing and filed the Shipping Bills without proper verification of the address, identity, functioning and credential of exporter. It is also evident from statement of Shri Chetan Chauhan that they dealt with Mr. Amin of M/s. Ameera Shipping & Logistics Pvt. Ltd. who was neither exporter nor its representative.

14.5.2 Therefore, it can be inferred that M/s. Fourstar Enterprises (11/845) have cleared 120 Shipping bills without verifying the identity of his clients and functioning of his clients at the declared address by using reliable, independent, authentic documents, data or information. Hence, M/s. Fourstar Enterprises (11/845) has contravened the provision of the Regulation 10(n) of the CBLR, 2018, and the same is found proved.

15. PERSONAL HEARING AND RECORDS OF PERSONAL HEARING:-

A personal hearing was granted to Customs Broker on 14.12.2023. Shri Anil Balani, Advocate, representative of CB appeared for personal hearing & submission made vide letter dated and they reiterated written submission dated 13.12.2023. Further they, relied upon Hon'ble High Court Judgement in case of Ashiana Cargo Services for proportionate of punishment, if any.

15.1. CB in response to the Inquiry Report submitted his written submission vide letter dated 13.12.2023, wherein, they inter alia submitted the following:-

- a) Show Cause Notice dated 31.03.2023 was issued inter alia proposing action under the CBLR against the Customs Brokers.
- b) However, vide OIO No.1077/2023-24/ADC/NS-II/CEAC/CAC/JNCH dated 29.11.2023 the learned Additional Commissioner of Customs held that he would not recommend any action under CBLR against the Customs Brokers.
- c) The Inquiry Report has nevertheless confirmed the charges under Regulations 10(a), 10(d) and 10(m) of the CBLR, 2018 only on the ground that the assignment was accepted from logistic company and not directly from the exporters. Further, there was no interaction with the exporters and their premises were not physically verified.
- d) Regulations 10(a), 10(d) & 10(n) of CBLR, 2018 do not stipulate that work has to be accepted directly from the exporter. In fact in the following judgements it is recognised that logistics companies and Forwarding agents can assign work on behalf of exporter to the Customs Broker:-

- (a) Natvar Parikh & Co. Pvt. Ltd. [2012 (281) ELT 116(Tri.)]
 - (b) Hera Shipping Solutions Pvt. Ltd.-2022 (382) ELT 552 (Tri.- Chennai).
 - (c) Seaswan Shipping and Logistics – 2022 (380) ELT 358 (Tri- Chennai).
 - (d) Trade Wings Logistics India P. Ltd.- 2019 (370) ELT 510 (Tri.- Chennai).
 - (e) K.S. Sawant & Co. - 2012 (284) ELT 363 (Tri.)
- e) Likewise, as per CBLR as well as settled law, there is no requirement to physically verify the premises of the exporter. The antecedents, etc. have to be verified on the basis of data, documents and information only. The following judgements are relied upon in this connection:
- (a) S. Prakash Kushwaha & Co. [2023 (384) ELT 89 (Tri.- Del.)]
 - (b) Jyoti Custom Broker Service Pvt. Ltd. – 2023 (385) ELT 404(Tri.)
 - (c) Perfect Cargo and Logistics - 2021 (376) E.L.T. 649 (Tri.)
 - (d) Him Logistics Pvt. Ltd. - 2016 (338) E.L.T. 725 (Tri.)
 - (e) International Cargo Services – 2015 (323) ELT 206 (Tri. Del.)).
- f) Likewise stuffing was under Central Excise supervision and their client was not present.
 - g) Admittedly, 384 FSPs were genuine and it is not established that the shipping bills in the instant case were filed against bogus FSPs.
 - h) As far as BRCs are concerned, it is well settled that Customs Brokers have no control over remittances which usually happen after the export is completed. There is no obligation under the CBLR. It is nobody's case that the Customs Broker is the beneficiary.
 - i) This Customs Broker had filed only 120 shipping bills out of total 1474 shipping bills for Neminath, Aadinath and Arihant Industries.
 - j) The CBLR inquiry was conducted without supplying copies of relied upon documents, List of Witnesses and without examining the witnesses and offering their cross-examination by their clients.
 - k) The inquiry was thus conducted contrary to and in violation of the law laid down by the CESTAT in the case of Thakkar Shipping Agency reported in 1994 (69) ELT 90 (Tribunal) and Telangana High Court Judgement in the case of Shasta Freight Services Pvt. Ltd. [2019 (368) ELT 41 (Telangana)] upheld by the Supreme Court [2022 (381) ELT 436 (SC)]. Therefore, the Inquiry Report deserves to be rejected on this ground alone.

- l) The Customs Broker has a clean track record and reputation for integrity.
- m) In the case of Ashiana Cargo Services [2014 (302) E.L.T. 161 (Del.)] the Hon'ble Delhi High Court has held that the punishment, if any, should be proportionate.
- n) In the circumstances, it is humbly prayed that the proceedings against him kindly be dropped.
- o) CB also submitted a letter dated 05.01.2024 and stated that suspension Order of CB License of Purshotam Chatrabhuj Thakkar was set aside by the Hon'ble CESTAT vide Order No. 10041/2024 dated 04.01.2024 in case of Purshotam Chatrabhuj Thakkar vs. C.C Kandla and prayed another opportunity of personal hearing before deciding the case.

16. DISCUSSION AND FINDINGS:-

I have gone through the fact of the case, material evidence on record, the Show Cause Notice dated 26.05.2023 and Inquiry Report dated 05.10.2023, oral & written submissions of the said CB.

16.1 I observed that the charges against the said CB is of violation of regulation 10(a), 10(d) and 10(n) of CBLR, 2018 made vide Show Cause Notice No. 15/2023-24 dated 26.05.2023. The inquiry Officer vide Inquiry report dated 05.10.2023 held the charges of violation of regulations 10(a), 10(d) and 10(n) as "Proved".

16.2 On perusal of Order-in-Original No. 1077/2023-24/ADC/NS-II/CEAC/CAC/JNCH dated 29.11.2023 of the subject case adjudicated by Additional Commissioner of Customs, NS-II, JNCH, Nhava Sheva, I find that the adjudicating authority in the said OIO refrained from imposing penalty under section 114(iii) of the Customs Act, 1962 the Custom Broker. Further, the adjudicating authority has opined that action as is felt appropriate against the Customs Broker under CBLR, 2013.

16.3 On perusal of the CESTAT Order No. 10041/2024 dated 04.01.2024, I find that the Hon'ble CESTAT set aside the suspension order of CB License in case of Purshotam Chatrabhuj Thakkar vs. C.C Kandla for violation of regulation 10(n) of CBLR, 2018. I find that only Suspension order was set aside by the CESTAT and further inquiry proceedings and final order is still awaited. I also find that in the instant case the CB is charged with violation of Regulations 10(a) and 10(d) in addition to 10(n). Therefore, the said case law is not squarely applicable in this case. Opportunity of PH was already given to the CB in the instant case, and since no new facts have emerged in the case, therefore, personal hearing request is rejected.

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

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

16.4.2 The said regulation 10(a) of CBLR, 2018 read as:-

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

16.4.3 IO in his report submitted that CB did not produce any evidence to prove that he obtained Authorization from the Exporters/IEC Holders. Shri Chetan Chauhan, employee of M/s. Fourstar Enterprises (CB) in his statement dated 05.12.2016 stated that the clearance work of Exporters/IEC Holders came to them through one Mr. Amin of M/s. Ameera Shipping & Logistics Pvt. Ltd. and they had not directly dealt with the exporters and never met any of the employees, Directors, Partners of the Exporters/IEC Holders of M/s. Neminath Industries, M/s. Aadinath Industries & M/s. Arihant Industries. IO submitted that CB did not obtained authorization from the Exporter/IEC Holders. CB obtained Authorization from the middle man Mr. Amin of M/s. Ameera Shipping & Logistics Pvt. Ltd. Therefore, it is concluded that CB had never took pain to obtain proper authorisation from exporter with malafide intention. Therefore, IO proved that CB had violated the Regulation 10(a) of the CBLR, 2018.

16.4.4 CB in his submission submitted that Regulation 10(a) of the CBLR, 2018 do not stipulate that work has to be accepted directly from the exporter and relied upon certain case laws.

16.4.5 I find that the work of Exporters/IEC Holders of M/s. Neminath Industries, M/s. Arihant Industries and M/s. Aadinath Industries came to CB M/s. Fourstar Enterprises through intermediate Mr. Amin of M/s. Ameera Shipping & Logistics Pvt. Ltd. and CB never met nor had contacted the Exporters/IEC Holders. Further, in his submission CB could not produce any proper evidence to prove that they obtained authorization from exporter at any stage of investigation. Further, the provision of the regulation 10(a) of the CBLR, 2018 are crystal clear and there is no scope of ambiguity. From plain reading of the said regulation it is amply clear that the CB shall obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker. The legislative intent is clear and thus there is no scope of taking such authorisation from an intermediary without contacting the exporter directly. I observe that Shri Chetan Chauhan, employee of M/s. Fourstar Enterprises (CB) in his statement dated 05.12.2016 categorically accepted that the clearance work of Exporters/IEC Holders in the instant case came to them through one Mr. Amin of M/s. Ameera Shipping &

Logistics Pvt. Ltd. Thus, the CB has clearly failed to fulfil the obligation casted upon him under regulation 10(a) of the CBLR, 2018.

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

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

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

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

16.5.2 IO in his report submitted that Shri Chetan Chauhan, employee of CB M/s. Fourstar Enterprises in his statement dated 05.12.2016 stated that had not met the Exporters/IEC Holders at any point of time and therefore it is proved that they did not advise their client to comply with the provisions of the Act. IO further submitted that CB was aware that Mr. Amin is not the real exporter and he is a middle man, the CB did not inform the same to the Department. Therefore, IO proved that CB had violated the regulation 10(d) of the CBLR 2018.

16.5.3 CB in his submission refers certain case laws and submitted that CBLR, 2018 do not stipulate that work has to be accepted directly from the exporter. In fact, in the following judgements it is recognised that logistics companies and Forwarding agents can assign work on behalf of exporter to the Customs Broker.

16.5.4 I find that the work of Exporters/IEC Holders of M/s. Neminath Industries, M/s. Arihant Industries and M/s. Aadinath Industries came to CB M/s. Fourstar Enterprises through intermediate Mr. Mr. Amin of M/s. Ameera Shipping & Logistics Pvt. Ltd. and CB never met nor had contacted the Exporters/IEC Holders. Since the CB and exporters/IEC Holders were not in contact through any means of communication, therefore, it is beyond doubt that the CB could have advised the exporter.

16.5.5 Further, I find that majority of the export consignments were cleared by the CB on behalf of the Exporters/IEC Holders M/s. Neminath Industries & M/s. Aadinath Industries on the basis of fake FSP documents. Further, all documents filed by the CB on behalf of M/s. Arihant Industries were on the basis of fake FSP documents. Subject case of fraudulent export may have been avoided, if, CB made efforts to communicate with the exporters/IEC holders directly and had advised them properly in spirit of the regulation 10(d) of the CBLR, 2018. Thus, I agree to the findings of the Inquiry Officer.

16.5.6 In view of the above, I hold that the CB has violated the regulation 10(d) of the CBLR, 2018

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

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

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

16.6.2 IO in his report submitted that Shri Chetan Chauhan, employee of CB M/s. Fourstar Enterprises in his statement dated 05.12.2016 stated that he did not physically verify the address of the Exporters/IEC Holders or meet the owners. IO submitted that CB did not verify the identity of the Exporters/IEC Holders and accepted the clearance work. Therefore, IO proved that CB had violated the Regulation 10(n) of the CBLR, 2018

16.6.3 CB in his defence relied upon certain case laws and submitted that as per CBLR as well as settled law, there is no requirement to physically verify the premises of the exporter. The antecedents, etc. have to be verified on the basis of data, documents and information only.

16.6.4 On perusal of the investigation report, I find that the CB was not in contact with Exporters/IEC holders i.e. M/s. Neminath Industries, M/s. Aadinath Industries and M/s. Arihant Industries directly or indirectly and had done almost 120 Shipping bills including all the said firms through one intermediate person Mr. Amin of M/s. Ameera Shipping & Logistics Pvt. Ltd. CB. I also find that address mentioned in the IEC of M/s. Arihant Industries, M/s. Neminath Industries & M/s. Adinath Industries were found to be non-existing. It is clear that the CB got KYC documents through third person.

16.6.5 From plain reading of the provision of regulation 10(n), it is clear that the said regulation cast a very important obligation on the CB that is to know his customer by using reliable means and also to verify the identity of his client and working of his client at the declared address by using reliable and independent and authentic documents and information. It is beyond stretch of imagination that the CB could have fulfilled said obligations without meeting or even contacting his client personally. It is very clear from the records that the CB failed miserably to verify even the basic requirements of knowing who is his actual client, and has of course not done any elaborate verification of his client and has not verified the business premises of the exporter. In this regard I agree to the findings of the Inquiry Officer.

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

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

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

“A Custom Broker occupies a very important position in the customs House and was supposed to safeguard the interests of both the importers and the Customs department. A lot of trust is kept in CB by the Government Agencies and to ensure made under CBLR, 2013 and therefore rendered themselves liable for penal action under CBLR, 2013 (now CBLR, 2018)”.

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

- i. *The very purpose of granting a licence to a person to act as a Customs House Agent is for transacting any business relating to the entry or departure of conveyance or the import or export of goods in any customs station. For that purpose, under Regulation 9 necessary examination is conducted to test the capability of the person in the matter of preparation of various documents determination of value procedures for assessment and payment of duty, the extent to which he is conversant with the provisions of certain enactments, etc. Therefore, the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as CHA, it is seen that while CHA should be in a position to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an Agent for carrying on certain illegal activities of any of the persons who avail his services as CHA. In such circumstances, the person playing the role of CHA has got greater responsibility. The very description that one should be conversant with the various procedures including the offences under the Customs Act to act as a Custom House Agent would show that while acting as CHA, he should not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as CHA by taking advantage of his access to the Department. The grant of licence to a person to act as CHA is to some extent to assist the Department with the various procedures such as scrutinizing the various documents to be presented in the course of transaction of business for entry and exit of conveyances or the import or export of the goods. In such circumstances, great confidence is reposed in a CHA. Any misuse of such position by the CHA will have far reaching consequences in the transaction of business by the customs house officials. Therefore, when, by such malpractices, there is loss of revenue to the custom*

house, there is every justification for the Respondent in treating the action of the Petitioner Applicant as detrimental to the interest of the nation and accordingly, final order of revoking his licence has been passed.

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

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

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

18. I have gone through the various Case Laws referred by the said CB in his submissions and observed that the ratios of the judgment of said Case Laws are not squarely applicable in the instant case, as the facts and circumstances are different and clearly distinguishable.

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


20. Thus in view of the above, I hold that the CB M/s. Fourstar Enterprises (11/845) failed to comply with the Regulation 10(a), 10(d) and 10(n) of the CBLR, 2018, as discussed Supra and is liable for penal action under Regulation 14 and 18 of CBLR, 2018. On the basis of facts on record, it is substantiated that the Custom Broker connived with the intermediate person Mr. Amin of M/s. Ameera Shipping & Logistics Pvt. Ltd. in the said fraud even without verifying the genuineness of the IEC holder. Accordingly, I pass the following order.

ORDER

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

- (i) I hereby revoke the license of the CB M/s. Fourstar Enterprises (11/845).
- (ii) I hereby impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on M/s. Fourstar Enterprises (11/845) under Regulation 18 of the CBLR, 2018.
- (iii) I hereby order for forfeiture of entire amount of security deposit furnished by the CB, under Regulation 14 of the CBLR, 2018.
- (iv) I hereby order to surrender all F, G, H passes to the department.

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


(SUNIL JAIN)
Principal Commissioner of Customs (G)
NCH, Mumbai - I

To,

CB M/s. Fourstar Enterprises
196/198 Samuel St., R.No.25/26,
New Bhagwan Bhavan, Masjid,
Mumbai- 400009.

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. CIU's of NCH, ACC & JNCH
4. EDI of NCH, ACC & JNCH
5. ACC (Admn), Mumbai with a request to circulate among all departments.
6. JNCH (Admn) with a request to circulate among all concerned.
7. Cash Department, NCH, Mumbai.
8. Notice Board
9. Office Copy
10. Guard File (Admin)