



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

संचिका सं /F. No.- GEN/CB/40/2022-CBS

आदेश दिनांक/Date of Order: 25.11.2022

CAO No. 53/CAC/PCC(G)/SJ/CBS Adj

जारी दिनांक/Date of issue: 25.11.2022

संख्या:

DIN: 202211770000001540A

द्वारा जारी : सुनील जैन

Issued By : Sunil Jain

प्रधान आयुक्त, सीमाशुल्क(सामान्य)

Pr. Commissioner of Customs(Gen.),

मुंबई -400 001

Mumbai - 400 001.

ORDER-IN-ORIGINAL मूल आदेश

ध्यान दीजिए/ N.B. :

1. यह प्रति उस व्यक्ति को निजी उपयोग हेतु निःशुल्क प्रदान की जाती है, 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 ब्याजवत्तगाएगए 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 क्रॉसड 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 Frontier Shipping Agencies Pvt. Ltd., (CHA No. AAACF0854CCH001) (CB No. 11/1004) (hereinafter referred to as the "Custom Broker or CB) having registered office at C-205, Great Eastern Garden, LBS Road, Kanjurmarg (W), Mumbai —400 078, was issued a CB license by Commissioner of Customs, Mumbai under regulation 8 of CHALR, 1984, [Now regulation 7(2) of CBLR, 2018] and as such they are bound by the regulations and conditions stipulated therein.

2. A letter vide F. No. SG/Misc-516/2021-22/D-Cell/SIIB(I)/JNCH dated 26.02.2022 was received from the Commissioner of Customs, NS-V, JNCH proposing action against the CB M/s Frontier Shipping Agencies Pvt. Ltd. for the violation of regulations of CBLR, 2018 and it was intimated that on the basis of specific information, SIIB (Import), JNCH was investigating two cases pertaining to Bills of Entry No.7338443 dated 03.02.2022 having importer as M/s. DK International (IEC AEIPI1245G) & Bill of Entry No. 7328015 dated 02.02.2022 having Importer as M/s. Saifee Glass LLP (IEC ADNFS6746D).

2.2 Both the aforesaid Bills of Entry i.e. 7338443 dated 03.02.2022 and 7328015 dated 02.02.2022 were filed by the Customs Broker M/s Frontier Shipping Agencies Pvt. Ltd. (CHA No. AAACF0854CCH001) on behalf of importers.

3. Issue relating to M/s. D.K. International (B/E No. 7338443 dated 03.02.2022):

3.1 On the basis of the information received from NCTC on 04.02.2022 at 5:06 PM, SIIB(Import), JNCH initiated investigation in the case of the importer M/s. D.K. International. A letter vide F. No. SG/Misc-516/2021-22/D-cell/SIIB(I)/JNCH dated 26.02.2022 received from the Dy. Commissioner of Customs, SIIB(I), JNCH intimated that, the imported goods were found to be out of charged and were already taken out of the CFS. Besides, it was reported that the goods could not be traced because of non-cooperation of the Customs Broker M/s Frontier Shipping Agencies Pvt. Ltd.

3.2 As per the Offence Report dated 26.02.2022, the Customs Broker was not aware about the whereabouts of the importer. They

did not even provide the details of the vehicle on which the goods were taken out. Also as the said CB did not verify the KYC of the importer, SIIB(I), JNCH was not able to locate the importer in order to ascertain the whereabouts of the container and the goods therein.

3.3 During the course of investigation conducted by SIIB(I), JNCH, with respect to the import vide Bill of Entry No. 7338443 dated 03.02.2022 filed by CB M/s Frontier Shipping Agencies Pvt. Ltd on behalf of importer M/s. DK International (IEC AEIP11245G), statement of Shri Chand Kumar Sewa Ram Dawar (Director of the CB M/s. Frontier Shipping Agencies Pvt. Ltd.) was recorded on 05.02.2022 under Section 108 of the Customs Act, 1962, wherein, he inter-alia stated that:

- i) He received a document from Mr. Dhiraj and importer by email id indorekishor21@gmail.com which is the official email id of the importer M/s. DK International;
- ii) He checked the DGFT and GST website and also banker's letter certifying importer's signature with office details matching and found reliable;
- iii) There was no inkling of doubt on Mr. Kishore(Importer) as he was young and well educated;
- iv) He checked online on DGFT, GST website;
- v) He did not doubt the bank's letter as it was with banker's round stamp and signatory code no with rubber stamp too;
- vi) He did not verify the address physically as bank's letter and GST certified the same address;
- vii) He did not submit the documents to the Customs Authorities even after knowing that M/s. DK International (IEC AEIP11245G) is the first time importer;
- viii) He received the import documents from Mr. Dhiraj, who is the cousin of Mr. Kishore (Importer).

4. Issue relating to M/s. Saifee Glass LLP (B/E No. 7328015 dated 02.02.2022):

4.1 Another case related to mis-declaration in terms of description. Bill of Entry No. 7328015 dated 02.02.2022 was also filed by the CB company M/s Frontier Shipping Agencies Pvt. Ltd. on behalf of the importer M/s. Saifee Glass LLP. In the said Bill of Entry, the goods were declared as

"Dish Wash Liquid, Floor Cleaner, Sink Pipe Cleaner & Kitchen Chimney Cleaner". However, during the course of examination, the nature of the goods was found to be "perfumes, cosmetics, shower gel, and bath soaps of various brands like, Dolee & Gabbana, Burberry, Lakme, Matrix, Dove, Lux etc."

4.2 During the Course of further investigation in connection with the import vide B/E NO.7328015 dated 02.02.2022 filed by CB M/s Frontier Shipping Agencies Pvt. Ltd on behalf of importer M/s. Saifee Glass LLP, a search was executed by the SIIB (I) at the address of the importer. However, the search could not be executed as the premise of the importer was untraceable which further led to conclusion that the KYC of the said importer was not verified by the Customs Broker.

4.3 During the course of investigation in this matter, statement of Shri Chand Kumar Sewa Ram Dawar (Director of the CB M/s. Frontier Shipping Agencies Pvt. Ltd.) was recorded on 11.02.2022 under Section 108 of the Customs Act, 1962. He inter-alia stated that:

- i) He received the documents including KYC, authority letters among others from Mr. Dattatray Subhash Sonawane on WhatsApp;
- ii) He checked online on DGFT, GST website mainly. He also spoke telephonically to the company owner;
- iii) By matching the address of the importer mentioned in IEC Gate, GST Portal and banker's letter certifying their AD code number and they assumed that the address was correct hence there was no need for physical verification;

5. From the above facts mentioned in Offence Report of SIIB(Import) /JNCH, prima facie, it appeared that Customs Broker M/s Frontier Shipping Agencies Pvt. Ltd. (CHA No. AAACF0854CCH001) having CB license No. 11/1004 did not fulfil its responsibility by not advising his client to declare the imported goods properly to Customs department as the goods were found grossly misdeclared in case of M/s. Saifee Glass LLP. CB failed to advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof. Hence, the CB company appeared to have failed to advise their client properly to comply with the provisions of Regulation 10(d) of CBLR, 2018. Further, it appeared that in case of M/s. D.K. International &, M/s. Saifee Glass LLP, KYC verification was not properly done by the CB company in as much as in one case goods could not be traced due to non availability of KYC documents with the CB and in another case premises could not be found. Hence, the CB company appeared to have violated the provisions of Regulation 10(n) of CBLR, 2018.

Moreover, as per the Investigation agency's report, in case of M/s. D.K. International, the imported goods could not be located because of non-cooperation of the customs broker. Thus, it also appeared that the CB company has violated the provisions of Regulation 10(q) of CBLR, 2018.

6. From the facts stated above, it appeared that the CB M/s. Frontier Shipping Agencies Pvt Ltd. (11/1004) has failed in fulfilling the obligations as mandated under CBLR, 2018 and appeared to have violated the regulation 10(d), 10(n) and 10(q) of CBLR, 2018.

- **Regulation 10(d) of CBLR, 2018:** *"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:** *"(n) verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;"*
- **Regulation 10(q) of the CBLR, 2018:** *"co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees."*

7. **SUSPENSION OF LICENCE: -**

In view of the facts stated above, CB, M/s Frontier Shipping Agencies Pvt Ltd. (11/1004) appeared to be liable for their acts of omissions and commissions leading to contraventions of the provision under Regulation 10 (d), 10(n) and 10(q) of the Customs Brokers Licensing Regulations, 2018 which amounts to breach of trust and faith reposed on the CB by the Customs. M/s Frontier Shipping Agencies Pvt Ltd. (11/1004) have, therefore, prima facie, failed to fulfil their responsibilities as per provisions of regulations of CBLR, 2018. Hence, in exercise of powers conferred under the provisions of Regulation of CBLR, 2018, license of Customs Broker, M/s Frontier Shipping Agencies Pvt Ltd. (11/1004) was suspended by Principal Commissioner of Customs, NCH, Mumbai vide order no. 02/2022-23 dated 01.04.2022. Thereafter the PH dated 08.04.2022 to CB was given and suspension was continued vide Order No. 07/2022-23 dated 11.05.2022.

8. **SHOW CAUSE NOTICE**

M/s Frontier Shipping Agencies Pvt Ltd. (11/1004) was issued a Show Cause Notice (SCN) No. 08/2022-23 dated 26.05.2022, by the Principal

Commissioner of Customs (General), NCH, Mumbai, Zone- I. asking them to show cause as to why the licence bearing no. 11 / 1004 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 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 given an opportunity to appear for a personal hearing on the date as may be fixed and to produce proof of evidence/documents if any, in their defence to the Inquiry officer, Shri H.D. Gawai, Assistant Commissioner of Customs who was appointed as the inquiry officer to conduct inquiry under regulation 17 of CBLR, 2018.

9. INQUIRY REPORT

Inquiry Officer submitted inquiry report dated 24.08.2022 wherein two charges against CB M/s Frontier Shipping Agencies Pvt Ltd. (11/1004) i.e. violation of Regulation 10 (d) and 10(q) of CBLR,2018 were held '**proved**' and one charge 10(n) of CBLR,2018 was held as '**not proved**'.

9.2 Inquiry Officer submitted that a letter dated 27.07.2022 vide F. No. GEN/CB/40/2022 CBS was issued to the Customs Broker M/s. Frontier Shipping Agencies Pvt. Ltd. (CB No. 11/1004) to submit a reply to the Show Cause Notice and appear for the Personal Hearing fixed on 30.07.2022 at 12.00 pm. Shri Chand kumar Sevaram Dawar, Managing Director of the Customs Broker M/s. Frontier Shipping Agencies Pvt. Ltd. (CB No. 11/1004) appeared for the Personal Hearing on 30.07.2022 at 12.00 pm. CB submitted his submissions vide letters dated 15.06.2022 and 01.08.2022 to inquiry officer during the inquiry proceedings. Inquiry officer submitted that CB in his submission relied upon the following case laws:

- I. IAPS Freight & Travels Pvt. Ltd. Vs. Commissioner of Customs (General), New Delhi, reported in 2016 (344) ELT 602 (Tri. — Del)
- II. Poonia & Brothers Vs. Commissioner of Customs (Preventive), Jaipur, reported in 2019 (370) ELT 1074 (Tri. Del)
- III. HIM Logistics Pvt. Ltd. Vs. Commissioner of Customs, New Delhi, reported in 2016 (338) ELT 725 (Tri. Del)
- IV. Kienal Travels (Cargo) Vs. CC (I & G), IGI AIRPORT, 2017 (354) E.L.T. 447 (Del.)
- V. Final Order No.50002/2022 dated 3.1.2022 in the case of Anax Air Services Pvt.Ltd. V/s Commissioner of Customs, New Delhi (Airport and General)
- VI. Final Order for Customs Appeal No. 50389 OF 2021 WITH

CUSTOMS CROSS OBJECTION NO. 50408 OF 2021 in the case of
Commissioner of Customs, New Delhi (Airport and General) V/s
M/s CRM Logistics Private Limited

VII. N.T. Rama Rao & Co. Vs. Commissioner of Customs, Chennai-
VIII reported in 2020 (371) E.L.T. 789 (Tri. - Chennai)

9.3 Inquiry Officer now discussed the charge as under:

9.3.1 Articles of charge- I: - (Regulation 10(d) of CBLR 2018)

Inquiry officer in his report submitted that the documents of clearance were presented by the Customs Broker in the name of their own firm. The CB in their written submission stated that in order to establish the charge under Regulation 10(d) of CBLR, 2018, it is required to point out specific instances where the CB failed to advise its clients to comply with the provisions of the Act or when the CB failed to report any non-compliance of the provisions of the Act by its clients to the Customs authorities. The investigation report shows that the CB did not submit the documents of verification to the Customs authority even when he was knowing that the importer namely M/s. D K International (IEC AEIP11245G) was a first time importer. Further the inquiry officer found that Shri Chand Kumar Sewa Ram Dawar (Director of the CB M/s. Frontier Shipping Agencies Pvt. Ltd.) in his statement recorded on 05.02.2022 under Section 108 of the Customs Act, 1962, inter-alia stated that there was no inkling of doubt on Mr. Kishore as he was young and well educated; that he did not submit the documents to the Customs Authorities even after knowing that M/s. DK International (IEC AEIP1145G) was the first time importer; that he received the import documents from Mr. Dhiraj, who is the cousin of Mr. Kishore (Importer).

Inquiry officer found that the CB deliberately dealt with a person viz Mr. Kishore, who was not related to the importer nor was an employee of the importer. The CB did not bring the matter of dealing with a person not connected with the IEC holder for importing goods to the knowledge of Customs authorities. Inquiry officer observed that it is undisputed fact that there was no interaction between the Customs Broker and the IEC holder of the importing firm M/s. DK International (IEC AEIP1145G) for the Customs Broker to give proper advice. The CB was completely unaware about the out of charge and delivery of goods took place. After intervention of the Investigating Agency, he came to know about the delivery of the goods. During the personal hearing on 30.07.2022 before inquiry officer, on being asked about B/E No. 7338443 dated 03.02.2022 which was filed by the charged CB against first time importer M/s. D K

International Ltd, the charged CB stated that B/E was examined on 04.02.2022 without his staff and he was not aware about examination done so no question of raising the objection and informing the Customs Department about this. Inquiry officer found that the CB was totally careless about his duties. As a Customs Broker, it was his duty to track his shipment right from the filing the documents upto clearance and onwards handing over the shipment to the importer. Thus, inquiry officer submitted that the Customs Broker violated the Regulation 10(d) of the CBLR, 2018, which clearly proved contravention of provisions of Regulation 10(d) of the CBLR, 2018.

The Inquiry officer held that the charge against the Customs Broker, of having violated the regulation 10(d) of CBLR, 2018 stands '**proved**'.

9.3.2 Article of Charge-II: - (Regulation 10(n) of CBLR,2018)

Inquiry officer in his report stated that the Customs Broker submitted that there was no violation of Regulation 10(n) of the CBLR, 2018 in the instant case. I.O. stated that during the course of inquiry proceedings the CB submitted copy of the Authorization letter and KYC documents.

Inquiry officer found that the CB in their written submission stated that they had verified the KYC and authenticity of the said importers on the Government website viz. DGFT and ICEGATE, which constitute as independent and reliable source. I.O. noticed that Shri Chand Kumar Sewa Ram Dawar (Director of the CB M/s. Frontier Shipping Agencies Pvt. Ltd.) in his statement recorded on 05.02.2022 under Section 108 of the Customs Act, 1962, inter-alia stated that he checked the DGFT and GST website and also banker's letter certifying importer's signature with office details matching and found reliable; that he did not verify the address physically as bank's letter and GST certified the same address.

Inquiry officer further found that Shri Chand Kumar Sewa Ram Dawar (Director of the Customs Broker M/s. Frontier Shipping Agencies Pvt. Ltd.) in his statement recorded on 11.02.2022 under Section 108 of the Customs Act, 1962 stated that he received the documents including KYC & authority letters etc. from Mr. Dattatray Subhash Sonawane on WhatsApp; that he checked online on DGFT, GST website mainly. He also spoke telephonically to the company's owner; that by matching the address of the importer mentioned in ICEGATE, GST Portal and banker's letter certifying their AD code number and they assumed that the address was correct hence there was no need for physical verification.

Inquiry officer found that neither in the offense report nor in the Show Cause Notice No. 08/2022-23 dated 26.05.2022 make an averment that IEC was forged. Inquiry Officer found that it was not disputed that KYC documents were not received by the Customs Broker.

Inquiry officer submitted that he took the cognizance of the case laws submitted by CB and found that ratio of the judgement relied by the CB is applicable in the instant case. Further, reliance was placed upon the case laws submitted by CB that there is no stipulation or legal requirement to physically verify the business premises or residential premises of the importer and also to have a personal meeting with the importer before taking up the work for any importer. The CB in his written submission stated that due to Covid-19 pandemic situation and disruption, because of complete lock down imposed by Central as well as State Government, it was impossible to visit and personally meet the individual importers.

Inquiry officer found that there is force in the CB's submission. Accordingly, The Inquiry officer held that the Article of Charge alleging violation of Regulation 10(n) of CBLR, 2018 as "**Not Proved**".

9.3.3 Article of Charge-III: - (Regulation 10 (q) of the CBLR, 2018)

Inquiry officer in his report stated that the CB in their written submission submitted that the CB co-operated the Customs authorities and joined investigations promptly; that it is on record that statement of Shri C. K. Dawar was recorded on 05.02.2022 and 11.02.2022. During the investigation of SIIB (Import), JNCH it was emerged that the goods covered under Bill of Entry No. 7338443 dated 03.02.2022 having importer as M/s. DK International (IEC AEIP11246G) were already out of charged and CFS out on the same day and the goods could not be traced because of non-cooperation of the Customs Broker M/s. Frontier Shipping Agencies Pvt. Ltd. Inquiry officer found that the CB was completely unaware about the out of charge and delivery of goods took place. After intervention of the Investigating Agency, he came to know about the delivery of the goods. During the personal hearing held on 30.07.2022 before inquiry officer, on being asked as a Customs Broker, it was not his duty to track their document when filed in Customs, Shri C. K. Dawar replied affirmative and further stated that they keep the track of their documents, as in this document also there was no incline of doubt at all and also importer agreed when they told importer to give delivery on 05.02.2022. Also, During the personal hearing on 30.07.2022 before inquiry officer, on being asked about B/E No. 7338443 dated 03.02.2022 which was filed by the charged CB against first time importer M/s. D K

International Ltd and the charged CB stated that B/E was examined on 04.02.2022 without his staff and he was not aware about examination done so no question of raising the objection and informed Customs Department about this.

Inquiry officer found that the CB was totally careless about his duties. As a Customs Broker, it was his duty to track his shipment right from the filing the documents upto clearance and onwards handing over the shipment to the importer. Inquiry officer submitted that non-cooperation of the CB resulted in escape of the said shipment from the investigating authorities.

The Inquiry officer held that the charge against the Customs Broker, of having violated the regulation 10(q) of CBLR, 2018 stands '**proved**'.

9.4 Therefore, inquiry officer held that that Articles of Charges viz. 10(d) and 10(q) of the CBLR, 2018 stands "proved" and the charges under Regulation 10(n) of the CBLR, 2018 stands 'not proved' against the Customs Broker M/s. Frontier Shipping Agencies Pvt. Ltd. (Customs Broker No. 11/1004).

10. DISAGREEMENT MEMO: - The Inquiry Officer in his report dated 24.08.2022 held two charges for violation of regulation 10(d) and 10(q) leveled against the CB as 'Proved' and one charge for violation of regulation 10(n) leveled against the CB as 'not proved'. Against the said the inquiry report, Pr. Commissioner of Customs (G) found that he was in agreement with the finding of inquiry Officer in the respect of two charges under regulation 10(d) and 10(q). However, he was not in agreement with the finding of inquiry Officer in the respect of one charge under regulation 10(n) in the light of available evidences on record. So a disagreement memo dated 01.11.2022 was issued by Pr. Commissioner of Customs with respect to charge 10(n) of CBLR,2018.

11.SUBMISSIONS BY CB: - The following facts in defence of M/s. Frontier Shipping Agencies Pvt. Ltd. were submitted by the CB vide letter dated 10.11.2022 and the CB denied all the charges leveled against them.

11.1 Refutation on article of charge viz. Regulation 10(d) of the CBLR, 2018:

In defence of violation of Regulation 10(d) of the CBLR, 2018, CB submitted that it is required to point out specific instances where the CB failed to advise its clients to comply with the provisions of the Act or when

the CB failed to report any non-compliance of the provisions of the Act by its clients to the Customs authorities. The Inquiry Officer ignored the settled position of law that a Customs Broker cannot be faulted in any manner when the complete available information is placed before the customs authorities. The role of the CHA is limited to facilitation in filing of documents as received from the importer. The Inquiry Officer's findings were based on speculative premise of its role in the taking Out of Charge and delivery by the importer without knowledge of us and therefore could not be sustained. Hence it was not with the knowledge of the Customs Broker and the misdeed of the importer was beyond the control of the Customs Broker.

There is nothing in the Show Cause Notice No. 08/2022-23 dated 26.05.2022 which shows that the Charged CB had any previous knowledge of mis-declaration of goods by the importers. In this regard, CB submitted copy of Letter of Authority dated 02.02.2022 issued by M/s. Saifee Glass LLP wherein the said importer has given declaration regarding import of the said consignment.

CB further submitted that there is no evidence in the form of statement of any of the importer or any corroborative evidence to prove that M/s. Frontier Shipping Agencies Pvt. Ltd. (CB No. 11/1004), as the Customs broker, have ever given wrong advice or that they were having prior knowledge of the alleged mis-declaration of the goods.

In order to establish the charge of Regulation 10(d) of the CBLR, 2018, it was requested to the Inquiry Officer that CB may be allowed to cross examine the both the importers M/s. Saifee Glass LLP and M/s. D. K. International under the provisions of Regulation 17(4) of the CBLR, 2018. However, the Inquiry Officer denied the cross examination without recording his reasons in writing for so doing in his Inquiry Report, which is against the provisions of Regulation 17(4) of the CBLR, 2018.

In the instant case, there is no evidence to prove that there was any prior knowledge of the alleged mis-declaration of the goods.

11.2 Refutation on Article of Charge viz. Regulation 10(n) of the CBLR, 2018:

In defence of violation of Regulation 10(n) of the CBLR, 2018, CB submitted that from M/s D.K. International, he obtained IEC, GST, PAN card, Bank' Letter for Confirming Importer Co, Full name, Address, Signature and A.D no , Aadhar card, Office Leave & Licence agreement.

He Met with Proprietor, Mr Kishore (aged 25 years). CB submitted that documents of M/S Saifee Glass LLP.i.e. Individual Aadhar Card, directors photo & sign attested by Bank, Passport Copy, Co agreement Copy were submitted to Inquiry Officer after checking all on Site, found Ok then only BE was filed.

In 1st case, Incident / Misunderstanding happened on 04/2/2022 wherein with respect to first Consignment of M/s D.K. International Importer Co. without their Staff or their knowledge OOC was Given by Dept, and container went out of CFS too. In case of M/s. Saifee Glass LLP, CB Presented Mr. Dattatray (importer) in less than 2 Hrs to Department and Submitted KYC documents. CB stated that they Submitted all evidences to SIIB(I) which proves that they have cooperated Department. CB submitted that it is their first case but CB Licence was Suspended which is bad in Law & against to natural justice Hence the CB prayed to Set aside the above refer charges under regulation 10 (d), 10(n) & 10(q) of CBLR 2018.

In 2nd Case related to M/s Saifee Glass LLP, CB submitted that they got information of miss declaration on 07.02.2022 by 8.00 pm, they called importer Mr. Shabbir who was in Banglore and sent him SIIB(I) mail ID and persuaded him to mail to SIIB(I) JNCH and he mailed. CB stated that they submitted KYC documents to SIIB, presented Importer Mr. Shabbir - Director and his China contact man Mr. Firoz to SIIB(I) on 11/2/22 & 14/2/22. CB submitted the photos of importer's office & Building. CB submitted that department has released 7 import Consignments of the said importer by showing ICEGATE TR6 receipts but his CB licence is still suspended. CB further submitted that they are Victim Not Gainer,

CB further submitted that they verified the correctness of Import Export Code (IEC) number through DGFT website, which is Government of India's website as <https://dgft.gov.in>. They also verified the Goods and Service Tax number from Central Government official website. CB submitted that no physical verification of the importer's/exporter's premises is mandated in the CBLR, 2018.

CB further submitted that in first week of Feb 2022, due to Corona, all were taking serious sensitive precautions. In this regard, CB mentioned various Govt sites links for in his support i.e.
1)<http://www.cessi.in/coronavirus/pune>,
2)<https://indianexpress.com/article/cities/pune/pune-and-pimpri-chinchwad-curbs-on-night-movement-between-11-pm-and-6-am-till-feb-28-7200018/>

3)<https://www.thehindu.com/news/national/other-states/new-covid-19-restrictions-in-pune-schools-colleges-to-remain-shut-till-feb-28/article33893885>.

In this regard, CB also submitted copy of a letter issued by Ministry of Railways, dated 28.02.2022, copies of the letter dated 25.02.2022 from the Ministry of Home Affairs and letter dated 18.02.2022 from the Hon'ble Secretary, Ministry of Health and Family Welfare. CB emphasized on para 6 (I) (vii) of the letter dated 18.02.2022 from the Hon'ble Secretary, Ministry of Health and Family Welfare which states that "There shall be no restrictions on inter-state and intra-state movement including Transportation of essential goods". Hence, there were various COVID -19 restriction prior to the issuance of the said letter. Hence, there is no-force in the dis-agreement memo that letter of authority dated 02.02.2022 were issued by M/s. D. K. International and M/s. Saifee Glass LLP and there were no COVID -19 restrictions.

11.3 Refutation on Article of Charge viz. Regulation 10(q) of the CBLR, 2018:

In this regard, CB submitted that on 04.02.2022 at 6.15 pm, they received call from SIIB (I) JNCH to call back both containers and to give vehicle number and driver name. In case of M/s D.K. International, the delivery was planned for next day i.e. on 05.02.2022. The importer paid the duty and asked for delivery on 04.02.2022, they explained him that pass holder staff was busy in FTWZ Arshiya hence the delivery would be given on 05.02.2022. They were surprised to see that Out of Charge was given on 3.35 pm and container was out from CFS by 5.17 pm on 04.02.2022 without instructions/ communications of their staff. The Bill of Entry IGM inward date is 30.01.2022 i.e. for 6 days container were in restricted area. As soon as the OOC was given, department came in action.

After receiving call from the SIIB, the he contacted Mr. Dhiraj, who gave documents of M/s. D. K. International and he informed over phone that Mr. Jayesh had gone for examination and delivery. CB submitted that after receiving OOC from the Department, CFS gave delivery. He confirmed that he was trying to get driver and his number. CB submitted that he gave number of importer Mr. Kishore, Mr. Dhiraj and Mr. Jayesh to SIIB promptly.

CB further submitted that they took vehicle number from CFS and passed it to SIIB immediately and asked their staff and their regular transporter to check on RTO site and find out vehicle owner name,

number, address etc. They reached 10.00 am in JNCH, by 12.45 pm on 05.02.2022 and met with Commissioner (G) JNCH. They informed the Commissioner that the importer without informing them sent his own person, who was given OOC and delivery of goods without their staff. The CB called the importer and the importer assured that he was trying to get the driver and his number. Full day the CB was attending call and his statement was also taken on the same day. CB submitted that he sent KYC documents to SIIB email ID. By evening they could receive one vehicle number and owner name.

The CB co-operated the Customs authorities and joined investigations promptly. It is on record that the statement of the undersigned was recorded on 05.02.2022 and 11.02.2022. Thus, CB stated that they have not violated the provisions of Regulation 10 (q) of the CBLR, 2018.

Further, CB prayed to set aside all the charges proposed /alleged under regulation 10(d), 10(n) & 10(q) of CBLR,2018 as they have already suffered heavy loss till then. CB further submitted that the I.O. failed to notice that the cited case law was dealing with various issues out of which one issue was the manner of verification of KYC documents and the other issue was cancellation of the licence. CB submitted that irrespective of whether the CB was alleged to have colluded with the importer/exporter or otherwise, the decision of the Hon'ble CESTAT is categorical in saying that a CB is not expected to physically verify the premises and his verification of the KYC documents would suffice; that the rejection of the case law on an unacceptable reasoning by the I.O falls under the mischief of syllogism.

CB requested to take a lenient view to consider the minor penalty instead of a harsh action of revocation of license affecting the livelihood of the CB. CB relied upon the decision of the Hon'ble CESTAT in the case of M/s. R. R. Shipping Agency Vs. Principal Commissioner of Customs (General), wherein the Hon'ble CESTAT observed that "If the harshness of every available penalty is to be visited upon each and every breach of obligation, there would be no difference between magnitude of the offence and major breaches will be resorted to with impunity. CB stated that they are of the opinion that the fiscal penalty of Rs. 50,000 imposed under Regulation 18 of the Customs Broker Licensing Regulations, 2018 suffices for the established offence" and requested to take lenient view in

the matter and Prayed to withdraw all allegations as per Disagreement Memo & I.O. Report while considering their 42 Years Clean record & oblige.

12. PERSONAL HEARING & RECORDS OF PERSONAL HEARING

A personal hearing was granted and Shri C.K. Dawar, Managing Director of the CB appeared before Principal Commissioner of Customs, NCH, Mumbai through virtual mode on 11.11.2022. He stated that he had a very straight record since 1980. He had co-operated extensively and personally in the investigation. He explained that office was existing and officers should have also gone to residential and existing address mentioned in IEC, which was not done. CB humbly requested to withdraw the charges and drop the proceedings.

13. DISCUSSION AND FINDINGS: -

I have carefully gone through the case, the show cause notice dated 26.05.2022, material facts on record, Inquiry officer's report, Submissions of CB and examined the role and conduct of CB in the case before me.

13.2. The charges were leveled against the CB i.e. violation of Regulation 10(d), 10(n) and 10(q) of CBLR, 2018 made vide Show Cause Notice No. 08/2022-23 dated 26.05.2022 issued by Pr. Commissioner of Customs (General), NCH, Mumbai and the inquiry Officer held two charges i.e. violation of Regulation 10 (d) and 10(q) of CBLR,2018 as '**proved**' and one charge 10(n) of CBLR,2018 as '**not proved**'. Further the disagreement memo dated 01.11.2022 was issued with respect to charge 10(n) for violation of regulation 10(n) of CBLR,2018 by Pr. Commissioner of Customs (General), NCH, Mumbai.

13.3 From the facts stated in offence letter dated 26.02.2022 and SCN dated 26.05.2022, it appeared that the CB M/s Frontier Shipping Agencies Pvt. Ltd. (Customs Broker No. 11/1004) failed in fulfilling the obligation of a Customs Brokers as mandated under CBLR, 2018 and violated the regulation 10(d), 10(n) and 10(q)) of CBLR, 2018.

13.4 CB relied upon various case laws in their favour of arguments but it is found that as per offence report dated 26.02.2022 and Show Cause Notice dated 26.05.2022 the charged CB was found to have violated the regulations made under CBLR,2018. In the one case related the importer M/s. D.K. International, the Customs Broker was not aware about the whereabouts of the container. CB did not even provide the details of the vehicle on which the goods were taken out. Also as the charged CB did

not verify the identity & functioning of client and SIIB(I), JNCH was also not able to locate the importer in order to ascertain the whereabouts of the container and the goods therein. Another case was related to M/s. Saifee Glass LLP where mis-declaration in terms of description were found. The goods were declared as "Dish Wash Liquid, Floor Cleaner, Sink Pipe Cleaner & Kitchen Chimney Cleaner". However, during the course of examination, the nature of the goods was found to be "perfumes, cosmetics, shower gel, and bath soaps of various brands like, Dolee & Gabbana, Burberry, Lakme, Matrix, Dove, Lux etc." A search was executed by the SIIB (I) at the address of the importer M/s Saifee Glass LLP and it was found that the premise of importer was untraceable which further led to conclusion that the KYC of the said importer was not verified by the Customs Broker as mandated under CBLR,2018.

Thus, the ratio of the judgements sought to be relied upon by the CB are not applicable in the present case as the facts and circumstances are different and distinguishable.

13.5 I now examine the charges in the SCN sequentially. It was alleged that CB did not exercise due diligence in discharging their obligation as required under 10(d), 10(n) and 10(q) of CBLR, 2018.

13.5.1 With regard to violation of regulation 10(d) of CBLR, 2018: -

"the CB shall advise his client to comply with the provisions of the Act, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs;

It is evident from the offence report that in case of M/s. D.K. International, the Customs Broker was not aware about the whereabouts of the container. They did not even provide the details of the vehicle on which the goods were taken out. SIIB(I), JNCH was not able to locate the importer in order to ascertain the whereabouts of the container and the goods therein. The charged CB received the import documents from Mr. Dhiraj, who is the cousin of Mr.Kishore (Importer) which shows that there was no proper interaction between the Customs Broker and importer. For the Customs Broker to give proper advice to the importer to comply with the provisions of the Act not seems possible.

Inquiry officer in his report observed that Shri Chand Kumar Sewa Ram Dawar (Director of the CB M/s. Frontier Shipping Agencies Pvt. Ltd.) in his statement recorded on 05.02.2022 under Section 108 of the Customs Act, 1962, inter-alia stated that he did not submit the documents to the Customs Authorities even after knowing that M/s. DK

International (IEC AEIP1145G) is the first time importer and he received the import documents from Mr. Dhiraj, who is the cousin of Mr. Kishore (Importer). Inquiry officer further found that the CB deliberately dealt with a person viz Mr. Kishore, who was not related to the importer nor was an employee of the importer. The CB did not bring the matter of dealing with a person not connected with the IEC holder for importing goods to the knowledge of Customs authorities. Inquiry officer also observed that it is undisputed fact that there was no interaction between the Customs Broker and the IEC holder of the importing firm M/s. DK International (IEC AEIP1145G) for the Customs Broker to give proper advice. The CB was completely unaware about the out of charge and delivery of goods took place. After intervention of the Investigating Agency, he came to know about the delivery of the goods.

CB submitted that it is required to point out specific instances where the CB failed to advise it's clients to comply with the provisions of the Act/regulation or when the CB failed to report any non-compliance of the provisions of the Act by its clients to the Customs authorities. The role of the CHA is limited to facilitation in filing of documents as received from the importer. CB further submitted that there is no evidence in the form of statement of any of the importer or any corroborative evidence to prove that M/s. Frontier Shipping Agencies Pvt. Ltd. (CB No. 11/1004), as the Customs broker, have ever given wrong advice or that they were having prior knowledge of the alleged mis-declaration of the goods.

I find that since CB was completely unaware about the out of charge and delivery of goods took place in case of M/s D.K. International. After intervention of the Investigating Agency, he came to know about the delivery of the goods which indicates that CB was totally careless about his duties. As a Customs Broker, it was his duty to advise his client about all the legally mandated requirements & compliance to clear the goods in which he failed. The CB did not monitor his client right from the filing the documents upto clearance and onwards handing over the shipment to the importer. CB in his statement dated 05.02.2022 stated that he received the import documents from Mr. Dhiraj, who is the cousin of Mr. Kishore (Importer). The CB did not bring the matter of dealing with a person not connected with the IEC holder for importing goods to the knowledge of Customs authorities. CB was unable to contact the importer which shows that proper KYC was not done then the question of advising to importer doesn't arise. I find that Customs Broker did not fulfil its responsibility in advising his client to declare the imported goods properly to Customs

department in case of M/s. Saifee Glass LLP. Hence, the CB company appeared to have failed to advise their client properly to comply with the provisions of Regulation 10(d) of CBLR, 2018.

Therefore, I find that the charge against the Customs Broker for violation of the Regulation 10(d) of CBLR, 2018 as proved and thus I hold that the CB has violated the provisions of Regulation 10(d) of CBLR, 2018.

13.5.2 With regard to violation of regulation 10(n) of CBLR, 2018: -

"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."

It is clear from offence report dated 26.02.2022 that in case of M/s D. K. International, the Customs Broker was not aware about the whereabouts of the importer and they did not even provide the details of the vehicle on which the goods were taken out which shows that the charged CB did not verify the KYC of the importer. SIIB(I), JNCH was not able to locate the importer in order to ascertain the whereabouts of the container and the goods therein. In another case of M/s. Saifee Glass LLP, mis-declaration in terms of description was found and a search was executed by the SIIB (I) at the address of the importer. However, the search could not be executed as the premise of the importer was untraceable which further led to conclusion that the KYC of the said importer was not verified by the Customs Broker.

CB submitted in his defence that they have verified the correctness of Import Export Code (IEC) number through DGFT website, which is Government of India's website as <https://dgft.gov.in>. They have also verified the Goods and Service Tax number from Central Government official website. CB submit that no physical verification of the importer's/exporter's premises is mandated in the CBLR, 2018. CB further submitted that in first week of Feb 2022, Maharashtra even country was in grip of Corona, all were taking serious sensitive precautions. In this regard, CB mentioned various Govt sites links for in his support and submitted copies of a letter issued by different government departments. CB also specially mentioned copy of the letter dated 25.02.2022 from the Ministry of Home Affairs and letter dated 18.02.2022 from the Hon'ble Secretary, Ministry of Health and Family Welfare. CB emphasized on para 6 (I) (vii) of the letter dated 18.02.2022 from the Hon'ble Secretary, Ministry of Health and Family Welfare which

states that "There shall be no restrictions on inter-state and intra-state movement including Transportation of essential goods". Hence, there were various COVID -19 restriction prior to the issuance of the letter (i.e. before 25.02.2022).

I find from the statements dated 05.02.2022 & 11.02.2022 of director, Mr. Chand Kumar Sewa Ram Dawar of the CB that no proper KYC verification was done by the CB. CB never visited the premises. Moreover, as per CBLR, it mandatory that identity & functioning of the client must be verified using reliable, independent, authentic documents, data or information but it appeared that the CB failed to comply. If the CB could have verified the identity & functioning of his client, this fraud could have not have been taken place.

It is also noted that the address of the importer could not be located and found to be fake and non-existent. In this regard CB stated that due to COVID restrictions physical visit was not possible and referred some judgements as APS Freight & Travels Pvt Ltd Vs Commissioner of Customs (General), New Delhi, HIM Logistics Pvt. Ltd Vs Commissioner of Customs (General) etc. to justify that physical visits are not compulsory. Having accepted the judgments, inquiry officer accepted' that physical visits are not compulsory and there is no violation of Regulation 10(n) but in this regard it is also pertinent to mention the judgement of 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 which approved 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)". This judgement of the Hon'ble Supreme Court stipulates the important responsibility of CB which cannot be taken as lackadaisical.

As per Regulation 10(n) of CBLR, 2018 this is obligation of CB to identify his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. The verification of functioning means the CB should verify about the nature of business and its related aspect by authentic means. CB M/s frontier Shipping Agency did not make any genuine or substantive efforts to verify the identity and functioning of his client

Therefore, I find that the charge against the Customs Broker for violation of the Regulation 10(n) of CBLR, 2018 as '**proved**' and thus I hold that the CB has violated the provisions of Regulation 10(n) of CBLR, 2018.

13.5.3 With regard to violation of regulation 10(q) of CBLR, 2018: -

"co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees."

It was mentioned in offence report dated 26.02.2022 that the CB was not aware about the consignment's position and the goods could not be traced because of non-cooperation of the Customs Broker M/s Frontier Shipping Agencies Pvt. Ltd.

Inquiry officer in his report submitted that the CB was completely unaware about the out of charge and delivery of goods took place. After intervention of the Investigating Agency, he came to know about the delivery of the goods.

CB submitted in his defence that the CB co-operated the Customs authorities and joined investigations promptly and it is on record that statement of Shri C. K. Dawar was recorded on 05.02.2022 and 11.02.2022. In case of M/s D.K. International, the delivery was planned for next day i.e. on 05.02.2022. The importer paid the duty and asked for delivery on 04.02.2022. CB explained the importer that pass holder staff was busy in FTWZ Arshiya hence the delivery would be given on 05.02.2022. CB submitted that they were surprised to see that Out of Charge and delivery was given on 04.02.2022 without instructions/ communications of their staff. He confirmed that he was trying to get driver and his number. CB submitted that he gave number of importer Mr. Kishore, Mr. Dhiraj and Mr. Jayesh to SIIB promptly. CB submitted that IGM inward date related to the said bill of Entry is 30.01.2022 i.e. for 6 days container were in restricted area and as the container moved out of CFS after OOC, department came in action. CB further submitted that they took vehicle number from CFS and passed it to SIIB immediately and asked their staff and their regular transporter to check on RTO site and find out vehicle owner name, number, address etc. They met with Commissioner (G) JNCH. They informed the Commissioner that the importer without informing them sent his own person, who was given OOC without their staff and given delivery to the Importer. The CB called the importer and the importer assured that he was trying to get the driver and his number.

I find that since the CB was completely unaware about the out of charge and delivery of goods took place. The charged CB was not present during the examination of good and after intervention of the Investigating Agency, he came to know about the delivery of the goods. The goods could not be traced because of non-cooperation of the Customs Broker M/s Frontier Shipping Agencies Pvt. Ltd.

Therefore, I find that the charge against the Customs Broker for violation of the Regulation 10(q) of CBLR, 2018 as **proved** and thus I hold that the CB has violated the provisions of Regulation 10(q) of CBLR, 2018.

13.6 I rely on the following judgements and hold that in the instant case, CB, M/s. Frontier Shipping Agencies Pvt. Ltd. (Customs Broker No. 11/1004) has failed to adhere to the responsibilities as was expected in terms of the Regulations made under CBLR, 2018 and therefore rendered themselves liable for penal action under CBLR, 2018.

Ratio of The Hon'ble Tribunal judgement in the case of Rubal Logistics Pvt. Ltd. Vs. Commr. of Cus. (General), New Delhi reported in 2019 (368) E.L.T. 1006 [Tri. - Del.] is applicable in the present issue. The relevant para 6.1 of the said judgement are as under:

"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 misdeclaration/under-valuation or mis-quantification but from his own statement acknowledging the negligence on his part to properly ensure the same, we are of the opinion that CHA definitely has committed violation of the above mentioned Regulations. These Regulations caused a mandatory duty upon the CHA, who is an important link between the Customs Authorities and the importer/exporter. Any dereliction/lack of due diligence since has caused the Exchequer loss in terms of evasion of Customs Duty, the original adjudicating authority has rightly imposed the penalty upon the appellant herein."

Further, 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 approved 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)".

The Hon'ble Tribunal's judgement in the case of Ajay Clearing Enterprise Vs. Commissioner Of Customs (General), Mumbai, reported in 2016 (343) E.L.T. 475 (Tri. -Mumbai). The relevant para 5.3 of the said judgement is as under:

"5.3..... The second charge of contravention of Regulation 13(d) of advising the client to comply with the provisions of the Customs Act and in case of non-compliance to bring the matter to the notice of the Customs Authorities is also established for the reason that to advise the client, the CHA should know the client. In the present case, they have not met the client at all and they have received the documents through a freight forwarder. Therefore, the question of advising the client would not arise at all..... »

I find that ratio of the aforesaid judgement is squarely applicable in the instant case, as Customs Broker M/s Frontier Shipping Agencies Pvt. Ltd. received the documents through an intermediary i.e. Mr. Dhiraj, who is the cousin of Mr. Kishore (Importer)., therefore, the question of advising the client would not arise at all.

13.7 In a regime of trade facilitation, a lot of trust is placed on the Customs Broker who directly deals with the importers/exporters as the department does not interface with the importers/exporters. Failure to comply with regulations by the CB mandated in the Regulations gives room for unscrupulous persons to get away with import-export violations and revenue frauds. In this case, there was involvement of CB by way of not cooperating the Customs authorities to trace the goods and in another case by way of misdeclaration. The facts on record prove that CB violated various provisions of CBLR 2018 with mens rea.

13.8 I hold that the proof of charges in inquiry are acceptable and tenable based on the available evidence, the facts and circumstances of the case and judicial pronouncement mentioned supra which certainly warrant penal action against the CB. Therefore, for their acts of omission and commission, CB M/s. Frontier Shipping Agencies Pvt. Ltd. (Customs Broker No. 11/1004) is held liable and guilty for involving in misdeclaration of goods and non-cooperation with Customs Authorities. I hold that the CB has failed

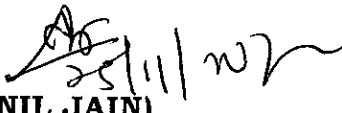
to discharge duties cast on them with respect to Regulation 10(d), 10(n) and 10(q) of CBLR,2018 and are liable for penal action. Accordingly, I pass the following order.

ORDER

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

- (i) I hereby impose penalty of Rs. 50,000 (Rupees fifty thousand) on M/s. Frontier Shipping Agencies Pvt. Ltd. (Customs Broker No. 11/1004) (PAN No.AIDPA8045M) under Regulation 18 of the CBLR, 2018.
- (ii) I hereby order for forfeiture of entire amount of security deposit furnished by the CB, under Regulation 14 of the CBLR, 2018.
- (iii) The CB License No.11/1004 is ordered to be revoked under Regulation 14 of the CBLR, 2018.
- (iv) I hereby order that the CB surrender the original License as well as all the 'F', 'G' & 'H' cards issued there under immediately

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


(SUNIL JAIN)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
MUMBAI ZONE-I

To,

M/s Frontier Shipping Agencies Pvt. Ltd (11/1004),
C-205, Great Eastern Garden, LBS Road,
Kanjurmarg(W), Mumbai - 400 078

Copy to: -

1. The Pr. Chief Commissioner/Chief Commissioner of Customs, Mumbai I, II, III Zone
2. All Pr. Commissioners/Commissioners of Customs, Mumbai I, II, III Zone
3. Commissioner of Customs (NS-V), JNCH, Mumbai Zone-II Vide F.No. SG/Misc-516/2021-22/D-cell/SIIB(I)/JNCH dated 26.02.20220
4. CIU's of NCH, ACC & JNCH
5. EDI of NCH, ACC & JNCH
6. ACC (Admn), Mumbai with a request to circulate among all departments.
7. JNCH (Admn) with a request to circulate among all concerned.
8. Cash Department, NCH, Mumbai.
9. Notice Board
10. Office Copy.
11. Guard File (Admin)

