



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/190/2022- CBS

आदेश दिनांक/Date of Order: 09.01.2024

CAO No. 62/CAC/PCC(G)/SJ/CBS-Adj

जारी दिनांक/Date of issue: 09.01.2024

संख्या:

DIN : 20240177000000111F22

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 ब्याजवलगाए 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. M. D. Ruparel & Sons (11/244) (PAN No. AAFFM4798J) having office address at Torana Apartment, 1-A, Sahar Village Road, Andheri (E), Mumbai, 400 099, [hereinafter referred to as the Customs Broker/CB], bearing PAN based Registration No. AAFFM4798J is holding a regular Customs Broker License No. 11/244, issued by the Commissioner of Customs, Mumbai under Regulation 10(1) 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 was received vide letter F.No. SIIB(I)/Gen-48/2021-22/ACC (I) dated 31.05.2022 in the CBS, NCH from SIIB, Import/ACC, Mumbai wherein, it was informed that SIIB(I), ACC, Mumbai Customs Zone-III, had initiated an inquiry against importer M/s Firoza Movie International Enterprise (hereinafter referred to as the "Importer") in respect of goods imported vide Bill of Entry No. 5466407 dated 16.09.2021 filed by Customs Broker M/s. M. D. Ruparel & Sons (CB No. 11/244) for import of Blank Cartridge 9MM Kaiser (Air Gun Pellets Dummy). Assessable value of the consignment was declared as Rs. 1,03,455.59/- and declared duty is Rs. 32,051/- (Quantity 33,000).

3. The goods were examined 100% by the Officers of SIIB(I)/ACC under Panchanama dated 03.11.2021 in the presence of two independent panchas and Shri Umesh V Dasai employee of M/s. M.D. Ruparel & Sons, CHA, (D-2000) who had filed Bill of Entry No 5466407 dated 16.09.2021 on behalf of M/s. Firoza Movie International Enterprises (IEC No. BXJPK6746G). The representative samples of goods were drawn during examination of goods imported vide BE No. 5466407 dated 16.09.2021. On examination, it was noticed that the importer had declared the imported goods as "Air Gun Pellet dummy". However, the goods which were packed, had markings of "KAISER 9 BLANK CARTRIDGES" and cartridges had marking of "K S R 9mm P.A.K." As per Import Policy of Chapter Sub-heading 9306, all items are restricted except "Air Gun Pellets" and hence, it appeared that the goods "Blank Cartridges" is restricted. Prima facie, it appeared that the importer as well as the CB had deliberately mis-declared the goods as "Air Gun Pellet Dummy" to circumvent the restriction of import policy.

4. As per Chapter 93 of the Schedule 1- Import Policy, all items imported under CTH 9306 are restricted. However, policy for import of "Air Gun Pellets Dummy" is "Free". Also Rule 42 of G.S.R. 701 (E) dated 15.07.2016 issued by Ministry of Home Affairs, also known as Arms Rules 2016, which mentions the requirement of license for arms and ammunitions for theatrical, film or television production, appear to have been violated. The importer as well as the CB had not produced any valid certificate for import of "blank cartridges". As there existed, sufficient reason to believe that "Blank Cartridge 9mm Kaiser" were mis-

declared, therefore, the goods covered under BE No. 5466407 dated 16.09.2021 were seized under Seizure Memo dated 16.12.2021.

5. Representative Sealed Samples (RSS) of the seized consignment covered under B/E No.5466407 dated 16.09.2021, were forwarded to the Director, Central Forensic Science Laboratory (CFSL), Ramanthapur, Hyderabad - T.S. on 17th January, 2022 for testing. CFSL, Hyderabad vide their Case/Report No. CFSL(H)/72-76/BAL/02-06/2022 dated 04.02.2022 opined that "When a blank cartridge is fired, high pressure gas is discharged from the case and progresses down the barrel. The effect of the superheated high pressure gas as well as unburnt particles of propellant can cause fatal injuries and can endanger human life." Thus the goods were dangerous in nature and could cause fatal injuries to human life. During the course of investigation, it was revealed that the said Importer had already imported 3 consignments of blank cartridges vide Bills of Entry Nos. 3625478 dated 19.04.2021, 4368312 dated 18.06.2021 (both filed by the CB M/s Charania Associates) and 4963255 dated 07.08.2021 (filed by the CB M. D. Ruparel & Sons) & total of 78,000 blank cartridges were imported by M/s Firoza Movie International Enterprise.

6. Statement of Ms. Firoza Khatun, Proprietor of M/s Firoza Movie International Enterprise was recorded on 11.02.2022 under Section 108 of Customs Act, 1962 wherein she inter-alia stated that M/s Firoza Movie International Enterprise had been importing mostly blank cartridges for film and movie shooting from 2021; that she did not think that license was required for import of blank cartridges; that these blank cartridges produce sound when fired and nothing emanates from the gun; that she met CB M/s M. D. Ruparel & Sons in their office premises and agreed to pay Rs. 3,000/- per consignment in advance; that she had no idea why 'Air Gun Pellets Dummy' was written in the description of the goods i.e. "Blank Cartridges 9mm Kaiser" and it might have been changed by the Customs Broker as they did not seek confirmation from her after filing Bills of Entry.

7. The importer failed to explain how she had utilized the goods previously imported by her. The premises of M/s Firoza Movie International Enterprise were searched but no document related to the import of "Blank Cartridges were found during search.

8. Statement of Shri Mahendra Ruparel, F Card Holder in M/s M. D. Ruparel & Sons, who had filed Bill of Entry No. 4963255 dated 07.08.2021 and 5466407 dated 16.09.2021 on behalf of the Importer, was recorded under Section 108 of Customs Act, 1962, wherein, he inter-alia stated that Ms. Firoza Khatun, Proprietor of M/s Firoza Movie International Enterprise visited his office and told him that she wanted to import blank cartridges for movie shooting purpose and

showed her Identity Card of Stunt Artist Association and also showed previous Bills of Entry in which she cleared the goods; that the goods imported vide Bills of Entry No. 4963255 dated 07.08.2021 and 5466407 dated 16.09.2021 were blank cartridges; that the Importer did not produce any license for import of 'Blank Cartridges', he agreed that subject goods had been mis-declared by importer & the changes in the description of the goods had been done on the request of the importer.

9. Further, Ms. Firoza Khatun, Proprietor of M/s Firoza Movie International Enterprise, Shri Mahendra Ruparel, F Card Holder in M/s M. D. Ruparel & Sons (11/244) and Shri Shailesh Kathe, G-Card Holder of M/s Charania Associates (11/950) were arrested on 25.05.2022 at 14:30 hrs under Section 104 of Customs Act, 1962 for committing offences under Section 132, and Section 135 (i) (C) of the Customs Act, 1962 which is non-bailable and cognizable offence.

10. On carefully going through the facts on record and laws, rules and regulations applicable in the case, it appears that the CB M/s M. D. Ruparel & Sons have violated the provisions of CBLR, 2018 in import of goods vide Bill of Entry No. 5466407 dated 16.09.2021. Therefore, 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(d), 10(e), 10(f) & 10(n) of the Customs Brokers Licensing Regulations, 2018 and rendered himself for penal action under Regulations 14, 17 & 18 of CBLR, 2018.

Legal Provision of the CBLR, 2018:-

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 (e) of the CBLR, 2018:- "A Custom Broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage".

Regulation 10 (f) of the CBLR, 2018:- " A Customs broker shall not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information;"

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;"

11. SUSPENSION OF LICENSE:

11.1 In view of the facts stated above, CB, M/s. M. D. Ruparel & Sons (11/244) was found liable for their acts of omission and commission leading to contraventions of the provision under Regulation 10(d), 10(e) and 10(f) of CBLR, 2018. Therefore, prima facie, it appeared that the CB failed to fulfil their responsibilities as per provisions of regulations of CBLR, 2018. Hence, the licence of CB was put under immediate suspension under regulation 16(1) of CBLR, 2018 vide Order No. 14/2022-23 dated 23.06.2022 and suspension was continued under regulation 16(2) of CBLR, 2018 vide Order No. 20/2022-23 dated 28.07.2022 passed by the Principal Commissioner of Customs (G), NCH in the instant case.

11.2 Aggrieved with Order No. 20/2022-23 dated 28.07.2022, the CB M/s M. D. Ruparel & Sons (11/244) filed an appeal No. C/86841/2022 before Hon'ble CESTAT, Mumbai. Hon'ble CESTAT vide its Final Order No. A/86016/2023 dated 28.06.2023 set aside the Order No. 20/2022-23 dated 28.07.2022 and allowed the appeal. The subject CESTAT order has been accepted and the CB licence was restored and a Notice No.105/2023-24 was issued to this effect.

12. SHOW CAUSE NOTICE:

M/s M. D. Ruparel & Sons (11/244) (PAN No. AAFFM4798J) was issued a Show Cause Notice (SCN) No. 18/2022-23 dated 26.09.2022 by the Principal Commissioner of Customs (General), NCH, Mumbai, Zone-I asking them to show cause as to why the Customs Broker License bearing No. 11/244 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 Regulation 10(d), 10(e), 10(f) and 10 (n) 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 defense to Shri Sandip Bhosale, Deputy Commissioner of Customs who was appointed as an inquiry officer to conduct inquiry under regulation 17 of CBLR, 2018.

13. INQUIRY REPORT

Inquiry Officer (IO) submitted Inquiry Report dated 12.09.2023, wherein, the charges against CB M/s. M. D. Ruparel & Sons (11/244) i.e. violation of

Regulation 10(d), 10(e) and 10(f) of the CBLR, 2018 were held as 'Proved' and violation of charge 10 (n) of the CBLR, 2018 as 'Not Proved'.

13.2 The IO submitted that the CB was granted opportunity for personal hearing on 18.10.2022. Shri Mahendra Ruparel, F card holder, M/s. M. D. Ruparel & Sons (11/244) appeared for the Personal Hearing on 18.10.2022.

13.3 WRITTEN SUBMISSION OF THE CUSTOMS BROKER

The CB submitted in his defence vide their letter dated 13.10.2022, 18.10.2022 & 10.12.2022 and submitted the following:

- The proprietor of the Importing firm, Ms. Firoza Khatun approached them for clearance of imported goods and informed them that goods are freely importable. She also produced copy of two assessed Bills of Entry showing clearance of identical goods to substantiate her contention. Further the two previous Bills of Entry produced by importer showed that though the same were processed by system, the goods were allowed clearance only after physical examination by the officers of customs. In the circumstances Noticee CB trusted the instructions of the importer and processed the two Bills of Entry.
- **In defence of violation of Regulation 10(d) of CBLR, 2018-**
Noticee CB denied that he knowingly or intentionally connived with importer and amplified the description of the goods to circumvent the policy restrictions imposed on Blank Cartridges. Notice CB submitted that it was importer who gave instructions for adding the description which is corroborated by the earlier two assessed Bills of Entry produced by her to the CB, which were not processed by noticee CB contained similar addition to description. Also the Noticee CB had sent the Check list of the B/E to the importer, which was duly approved by her. Noticee CB submitted that he was not having technical knowledge about the Arms and ammunition and these were first imports handled by him. The two previous Bills of Entry were allowed clearance after examination of the goods by the Officers of Customs who are experts in assessment of goods. The notice CB therefore had a bonafide belief that the goods did not require possession of licence by importer. In the circumstances, the noticee CB could not notice non-compliance by the importer so as to advise him to comply with the requirement or to report the same to the Assistant Commissioner or Deputy Commissioner of Customs. CB, therefore submitted that they had not violated the provisions of Regulation 10(d).
- **In defence of violation of Regulation 10 (e) of CBLR, 2018-**
That in the past two cases, the goods with amplified description were allowed clearance by the department after examination. It may thus be seen that even the customs department, the Shed Examination Officers as well as Group also held a view that blank cartridges do not require a

licence. When the department itself was allowing clearance of the goods after detailed examination, it was reasonably expected by CB that the goods were not subject to restriction and hence a CB who does not have any technical knowledge about the goods imported could not give a contrary opinion about restriction on import of the goods. Notice CB therefore submit that there is no case of lack of due diligence in the processing of two Bills of Entry by the noticee CB and they have not violated the provisions of Regulation 10(e) of CBLR, 2018.

- **In defence of violation of Regulation 10 (f) of CBLR, 2018-**

When Ms. Firoza Khatun approached the CB with import documents for filing Bill of Entry she had claimed that the goods imported by her does not require any licence and asked the CB to put additional description as was in the earlier two B/Es. Noticee CB had sent the check list of the B/E to her and she had approved the check list. The noticee CB had documentary evidence to support this submission. The contention of the importer is thus false made with ulterior motive to save herself. Notice CB also invites kind attention to the facts that all the three assessed Bills of entry (two filed by another CB and one by notice CB) were examined by the Shed Customs Officers and thereafter group allowed clearance of the goods without any insistence for licence under Rule 42 of the Arms Rules, 1968 without an objection regarding additional description of "Air Gun Pellet Dummy". Noticee CB submitted that he had no technical knowledge of the arms and the processing the B/E. Therefore, the allegation of connivance of the noticee CB with the importer or the CB having failed to impart any information regarding Customs law and the Arms Act, 1962 regarding restriction. Noticee CB therefore, submit that they have not contravened the provisions of regulation 10 (f) of CBL, 2018.

- **In defence of violation of Regulation 10 (n) of CBLR, 2018-**

It was alleged that the CB M/s. M.D. Ruparel & Sons did not make genuine or substantive efforts to verify the identity and functioning of his client. Noticee CB submitted that the Importer had earlier also imported two consignments through another CB. There KYC file of the importer was already with the department. Also the Para 13 of the SCN itself takes note of the fact that the CB had had visited the office address of M/s Firoza Movie International Enterprise to verify their credentials and had also verified the PAN Card, Aadhar Card, ID issued by Movie Makers Association. This charge is made on the basis of SIIB (I), ACC report that they could not find any documents in the office premises of the Importer. Noticee CB submitted that it is not the allegation that the CB did not make appropriate verification of the importer or that that the importer is non-existent at the given address. The allegation is made as SIIB (I), ACC could not get any documents in the office of the importer. There is nothing in the

SCN to show that the SIIB (I), ACC officers queried the importer in this regard. The CB has no control over the importer or the goods once these are handed over to the importer. Merely because the SIIB (I), ACC could not find documents at the importer's premises, it cannot be said that the CB did not carry out proper verification. Notice CB therefore submit that they have not violated the provisions of regulation 10(n) of CBLR, 2018.

13.4 COMMENTS OF THE INQUIRY OFFICER :-

The IO submitted that he had gone through the facts of the case, the Show Cause Notice, the submission of the Customs Broker and records of the Personal Hearings and submitted the following:

13.4.1 Article of Charge-I :- Violation of Regulation 10 (d) of CBLR, 2018:

IO submitted that the CB in his written submission as well as his personal hearing that the description of the goods in invoice dated 06.09.2021 provided to him for filing bill of entry No 5466407 dated 16.09.2021 was "Blank Cart 9mm Kaiser". He did not have the proper as well as technical knowledge about the Arms and Ammunitions and went by the instruction of the importer. The description of the goods was mis- declared from "Blank Cart 9mm Kaiser" to "Blank Cartridge 9mm (Air Gun Pellets Dummy)" as per say of the Importer. As Customs Broker accepted in his statement, written submission and personal hearing that he was not having proper knowledge of the rules and regulation and solely depended on the Importer. As a Customs Broker, it was his duty to advise his client to comply with the provisions of the Customs Act, other allied Act 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. Therefore, the CB was totally careless about his duties. Thus, the Customs Broker has violated the Regulation 10 (d) of CBLR, 2018. Accordingly, IO held that the Article of Charge alleging violation of Regulation 10 (d) of CBLR, 2018 is "Proved".

13.4.2 Article of Charge-II :- Violation of Regulation 10 (e) of CBLR, 2018:

IO submitted that, the CB in his defence submitted that he was not having technical knowledge about arms and ammunition therefore solely relied upon the instructions of the importer. The importer has intentionally and willingly imported restricted goods i.e. Blank Cartridges by amplification of "Air Gun Pellets Dummy" in the description of goods to circumvent the restriction imposed vide Arms Rules, 2016. The amplification was done in the description of the goods by the Customs Broker to evade the policy restriction. Further, it was the obligation of the Customs Broker to take reasonable steps to impart information regarding restriction/prohibition imposed on import of Blank Cartridges" but in contrast CB and the importer have intentionally and willingly imported restricted goods by amplification in the description of goods to circumvent the restriction of policy. As a Customs Broker, it was his duty to exercise due diligence to

ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage. Thus, the CB was totally careless about his duties. Thus, the Customs Broker has violated the Regulation 10 (e) of CBLR, 2018. Accordingly, IO held that the Article of Charge alleging violation of Regulation 10 (e) of CBLR, 2018 is "Proved".

13.4.3 Article of Charge-III :- Violation of Regulation 10 (f) of CBLR, 2018:

IO submitted that the importer has intentionally and willingly imported restricted goods i.e. Blank Cartridges" by amplification of Air Gun Pellets Dummy" in the description of goods to circumvent the restriction imposed vide Arms Rules, 2016. The mis-declaration in the description of the goods from "Blank Cart 9mm Kaiser" to "Blank Cartridge 9mm (Air Gun Pellets Dummy)" was done by the Customs Broker as per say of the importer to evade the policy restriction. Therefore, the CB acted in connivance with the importer rather than imparting all information regarding the Customs Act, 1962 and Rule 42 of GSR 701 E dated 15.07.2016 i.e. Arms Rules, 2016. Thus it appeared that the CB M/s. M.D. Ruparel & Sons have withheld information from importer with respect to Blank Cartridges imported vide B/E No.4963255 dated 07.08.2021 and B/E No. 5466407 dated 16.09.2021. As a Customs Broker, it was his duty to not withhold information contained in any order, instruction of public notice relating to clearance of cargo or baggage issued by the find Customs Authority, as the case may be, from a client who is entitled to such information. I find that CB was totally careless about his duties. Thus, the Customs Broker has violated the Regulation 10 (f) of CBLR, 2018. Accordingly, IO held that the Article of Charge alleging violation of Regulation 10 (f) of CBLR, 2018 as "Proved".

13.4.4 Article of Charge-IV :- Violation of Regulation 10 (n) of CBLR, 2018:

IO submitted that it has been submitted by the Customs Broker that there has been no violation of Regulation 10(n) of the CBLR, 2018 in the instant case. It appeared that neither in the offense report nor in the Show Cause Notice 18/2022 dated 26.09.2022 make an averment that IEC was forged. It was also mentioned therein the Office Order No 14/2022-23 that the premise of M/s Firoza Movie Internation Enterprises was searched. Further, during the personal hearing and along with the written submission also, the CB submitted the KYC documents of the Importer. The IO also took cognizance of the below case laws:

- a. *"APS Freight & Travels Put. Ltd. Vs. Commissioner of Customs (General) New Delhi, reported in 2016 (344) ELT 602 (Tri. - Del)"*
- b. *"Poonia & Brothers Vs. Commissioner of Customs (Preventive), Jaipur, reported in 2019 (370) ELT 1074 (Tri. Del)"*

Reliance is placed upon the aforesaid case law that no physical verification of importer/s premises is mandated in the Regulations nor it is a general

requirement as per business practice. Accordingly, IO held that the Article of Charge alleging violation of Regulation 10 (n) of CBLR, 2018 is "Not Proved".

14. PERSONAL HEARING AND RECORDS OF PERSONAL HEARING :-

A personal hearing was granted to Customs Broker on 19.12.2023. Shri V. K Singh, Advocate and Shri Mahendra M Ruparel, Partner of the CB firm appeared for personal hearing and submitted a written submission dated 24.11.2023 & 19.12.2023 and reiterated contents therein. The following submissions are made:-

- i. The proceedings against the C.B. are substantially based on the statement of Ms. Firoza Khatun, Importer. However, she was not examined nor the CB was afforded opportunity to cross examine her. Since her evidence is not corroborated therefore her statement ought not to be relied upon against the CB. Further even though the show cause notice relied upon the report of the CFSL, Hyderabad, the officer who gave this report was also not examined by the Learned I.O.
- ii. The CB submitted that the importer had submitted a declaration to the Customs Department vide her letter dated 15.09.2021 which was uploaded on the e-sanchit on 16.09.2021. In her declaration she had stated- "We have imported Blank Cartridges 9MM Kaiser and 8 MM V-Sports (Air Gun Pellete) from Turkey. Imported Cartridges are Blank Cartridges and does not contain any explosive. Also note that it is use for Film Shooting only. Hence we request you to release the cargo."
- iii. That, it was the importer who mis-represented to the C.B. and to department regarding exact nature of the goods by making a declaration that the blank cartridges are 'Air Pellet Gun Dummy' and that the supplier had also declared classification of the goods under CTH 93039300.
- iv. The CB submitted that they handled clearance of two consignments of goods declared as Blank Cartridges 9 mm Kaiser for importer M/s. Firoza Movie International Enterprises, vide bills of entry No.4963255 dated 07.08.2021 and 5466407 dated 16.09.2021 having Assessable value Rs 95,573.00 and Rs 1,03,455.00 respectively. In the invoice goods were declared as "Blank Cartridges 9 mm Kaiser", however, as per importer's instruction, in the bill of entry description was amplified as "Blank Cartridges 9mm Kaiser (Air Gun Pellets Dummy)". While handing over the job related to clearance of these goods importer also provided copies of two previous assessed Bills of Entry filed by another CB having similar amplified description. Importer also gave a letter addressed to the Deputy Commissioner of Customs describing the description of the goods as "Blank Cartridges 9mm Kaiser (Air Gun Pellets Dummy)" said letter was loaded on e-sanchit while filing above bills of entry. In all cases

goods have been classified under Tariff Item 93069000 of the Customs Tariff. Further in respect of all Bills of Entry the system gave examination instructions. Accordingly, the goods were cleared only after physical examination by the officers of customs.

- v. The CB further submitted that the findings of the IO are substantially based on the statement of Ms. Feroza Khatun, Proprietor of M/s. Firoza Movie International Enterprises recorded under Section 108 of the Customs Act, 1962, who was neither examined by the Learned Inquiry Officer nor was made available for cross examination by the CB. CB therefore have been deprived of the effective defence as provided under regulation of C.B.L.R., 2018. In support of this submission, the CB relied upon the following judgments-
- (i) Thakker Shipping Agency Vs CCE, Bombay [1994(69) ELT 90].
 - (ii) Dakor Clearing & Shipping P Ltd. Vs.C.C.(Gen), Mumbai-2015(326)E.L.T. 178 (Tri-Mum).
 - (iii) Shasta Freight Services P Ltd. Vs. Pr. Commr. Of Cus. Hyderabad-2019(368) E.L.T. 41 (Telangana).
 - (iv) Principal Commissioner of Customs (general), Mumbai Vs. Unison Clearing P Ltd. -2018 (361) E.L.T. 3211` (Bom).
 - (v) Perfect Cargo & Logistics Vs. Commissisoner of Customs (Airport & General), New Delhi -2021 (376) E.L.T. 649 (Tri-Del).
 - (vi) Leo Cargo Services Vs. C.C., Airport and General, N. Delhi.-2022(382) E.L.T. 30 (Del).
- vi. The CB submitted that they were not provided with copies of three previous Bills of Entry with Examination report. They also made efforts to get these documents under Right to Information Act, 2005 but the Department withheld the documents.
- vii. The CB submitted that the Inquiry Officer submitted his inquiry report after a lapse of one year i.e. on 13.09.2023. Thus, there had been delay in completion of inquiry proceedings within the specified time and hence it is prayed that proceedings against be dropped on this ground alone.
- viii. The CB submitted that it was the importer who mis-represented to the CB and the department regarding exact nature of the goods by making a declaration that the blank cartridges are "Air Pellet Gun Dummy". It was further submitted that the CB not being conversant with the arms and ammunition relied upon the instructions of the importer and also on fact that the two previous Bills of Entry produced by importer, where identical goods were allowed clearance only after physical examination by the officers of the Customs, identical description has been given. Further when check lists was uploaded, system did not raise any query regarding the licence requirement and as such there was nothing for them to notice

- non-compliance by the Importer so as to ask him to comply with the provisions of law or to bring the non-compliance to the notice of the Assistant Commissioner or Deputy Commissioner of Customs. Therefore, the CB submitted that they have not violated the provisions of Regulation 10(d) of CBLR, 2018 and the IO has erred in holding the charge as proved.
- ix. The CB submitted that in the past two Bills of Entry (which were filed by another C.B), the goods with identical amplified description were allowed clearance by the department after examination. It may thus be seen that even the officers of Customs viz Shed Examining Officers also held a view that blank cartridges do not require a licence. Therefore, they had a reasonable belief that the goods were not subject to restriction and therefore could not form an opinion about restriction on import of the goods. Thus, there was no case of lack of due diligence in the processing of two B/Es by them and they had not violated the provisions of Regulation 10(e) of CBLR, 2018. The CB further submitted that the Inquiry Officer had in his findings fairly considered the fact that the Importer himself represented to the Commissioner that their goods were Air Gun Pellet Dummy, and the system also did not raise any query regarding restriction, there was nothing to suspect that the goods required licence and to ask for licence from the importer. Thus there was no deliberate carelessness on their part and they had not contravened the provision of Regulation 10 (e) of C.B.L.R. 2019.
- x. The CB further submitted that it was not a case of first time import and they had nothing to doubt the contention of the importer and in the absence of knowledge about nature of goods, they had not withheld any information from the Importer and it was prayed that they had not contravened the provisions of Regulation 10(f) of C.B.L.R., 2018.
- xi. The CB further submitted that they have been holding CB licence for more than 50 years and have been carrying out their business diligently and do not have any blemish track record.

15. DISCUSSION AND FINDINGS:-

I have gone through the facts of the case, material evidence on record, the said Show Cause Notice dated 22.09.2022, and Inquiry Report dated 12.09.2023, oral and written submissions of the said CB.

15.1 I observe that the charges against the said CB is of violation of Regulation 10(d), 10(e), 10(f) and 10 (n) of CBLR, 2018 made vide Show Cause Notice No. 18/2022-23 dated 26.09.2022. The Inquiry Officer vide Inquiry Report dated 12.09.2023 held the charges of violation of regulations 10(d), 10(e) and 10(f) of CBLR, 2018 as "Proved" and 10 (n) of CBLR, 2018 as "Not Proved".

15.2 On perusal of Order-in-Original No. CAO No. AC/PJMR/502/2023-

24/Gr-VI/ACC (I) dated 11.12.2023 of the subject case adjudicated by Assistant Commissioner of Customs, Gr. VI, ACC, I find that the adjudicating authority in the said OIO has found that the CB failed to fulfil their obligations under CBLR, 2018 by not performing due diligence while filing the Bills of Entry No. 4963255 dated 07.08.2021 and 5466407 dated 16.09.2021 and assisted the Importer in illegal import of "Blank Cartridges" and has imposed a penalty of Rs.1,00,000/- (Rupees One lakh only) on the CB firm M/s. M.D. Ruparel under Section 112(a)(i) of the Customs Act, 1962 which shall be paid by/ recovered from the importer; imposed a penalty of Rs.1,00,000/- (Rupees One lakh only) with applicable interest on CB firm M/s. M.D. Ruparel under Section 114AA of the Customs Act, 1962 which shall be paid by/ recovered from the importer; imposed a penalty of Rs.1,00,000/- (Rupees One lakh only) on Shri Mahendra Ruparel, F-card of M/s. M.D. Ruparel & Sons under Section 112(a)(i) of the Customs Act, 1962 which shall be paid by/ recovered from the importer.

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

15.3.1. With regards to violation of Regulation 10(d) of CBLR, 2018:

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

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

15.3.1.2 IO in his report submitted that the CB in his written submission as well as his personal hearing accepted that the description of the goods in the invoice dated 06.09.2021 provided to him for filing bill of entry No 5466407 dated 16.09.2021 was "Blank Cart 9mm Kaiser". He did not have the proper as well as technical knowledge about the Arms and Ammunitions and went by the instruction of the importer. The description of the goods was mis- declared from "Blank Cart 9mm Kaiser" to "Blank Cartridge 9mm (Air Gun Pellets Dummy)" as per say of the Importer. As Customs Broker accepted in his statement, written submission and personal hearing that he was not having proper knowledge of the rules and regulation and solely depended on the Importer. As a Customs Broker, it was his duty to advise his client to comply with the provisions of the Customs Act, other allied Act 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. Therefore, the CB was totally careless about his duties. Thus, IO held that the Customs Broker has violated the Regulation 10 (d) of CBLR, 2018.

15.3.1.3 The CB in his defence submitted that it was the importer who misrepresented to the CB and the department regarding exact nature of the goods

by making a declaration that the blank cartridges are "Air Pellet Gun Dummy". It was further submitted that the CB not being conversant with the arms and ammunition relied upon the instructions of the importer and also on fact that the two previous Bills of Entry produced by importer, where identical goods were allowed clearance only after physical examination by the officers of the Customs, identical description has been given. Further, when check lists was uploaded, system did not raise any query regarding the licence requirement and as such there was nothing for them to notice non-compliance by the Importer so as to ask him to comply with the provisions of law or to bring the non-compliance to the notice of the Assistant Commissioner or Deputy Commissioner of Customs.

15.3.1.4 I find from Case/Report No. CFSL(H)/72-76/BAL/02-06/2022 dated 04.02.2022 received from CFSL, Hyderabad, it is clear that the importer along with the CB had mis-declared the goods by adding "Air Guns Pellets Dummy" in the description of goods while the goods were actually "Blank Cartridges". In addition to this, CFSL, Hyderabad vide their said report, opined that "When a blank cartridge is fired, high pressure gas is discharged from the case and progresses down the barrel. The effect of the superheated high pressure gas as well as unburnt particles of propellant can cause fatal injuries and can endanger human life." Thus the goods were dangerous in nature and could cause fatal injuries to human life and therefore posed a threat to public safety. Import of "Blank Cartridges" requires license as per Rule 42 of Arms Rules, 2016. Therefore, I find that all Blank Cartridges imported vide Bills of Entry No. 4963255 dated 07.08.2021 and 5466407 dated 16.09.2021 are in violation of the provisions laid out under Rule 42 & Rule 88 of Arms Rules, 2016.

Moreover, Shri Mahendra Ruparel, F Card Holder in M/s M. D. Ruparel & Sons, who had filed Bill of Entry No. 4963255 dated 07.08.2021 and 5466407 dated 16.09.2021 on behalf of M/s Firoza Movie International Enterprise, recorded under Section 108 of Customs Act, 1962, inter alia accepted that Ms. Firoza Khatun, Proprietor of M/s Firoza Movie International Enterprise wanted to import blank cartridges for movie shooting purpose and also showed previous Bills of Entry in which she cleared the goods; that the goods imported vide Bills of Entry No. 4963255 dated 07.08.2021 and 5466407 dated 16.09.2021 were blank cartridges; that M/s Firoza Movie International Enterprise did not produce any license for import of 'Blank Cartridges', he agreed that subject goods had been mis-declared by importer & the changes in the description of the goods had been done on the request of the importer.

Therefore, it is evident that the CB was acquainted with the restriction of the Arms Rules, 2016 and Customs Act, 1962 in the import of Blank Cartridges 9mm Kaiser and he knowingly & intentionally in connivance with importer amplified the description of the goods to circumvent the policy restriction imposed on the import of Blank Cartridge for theatrical, film or television

productions. Ms. Firoza Khatun, Proprietor of M/s Firoza Movie International Enterprise has also admitted in her statement that she was of the opinion that no license is required for import of Blank Cartridge for theatrical, film or television productions. Thus, the CB neither advised her to comply with the provisions of Customs Act, 1962 and Arms Rules 2016 under which import license is compulsory for import of arms and ammunition for theatrical, film or television productions nor brought the non-compliance of the Arms Rules 2016 and Customs Act, 1962 by importer into the notice of concerned AC/DC of Customs.

From the above facts and circumstances, I am of the considered view that the CB failed to advise the exporter to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof and in case of non-compliance did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Therefore, I hold that the CB has violated the provisions of Regulation 10(d) of the CBLR, 2018.

15.3.2 With regards to violation of Regulation 10 (e) of CBLR, 2018:

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

"A Customs broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;"

15.3.2.2 The IO in his Report submitted that the importer has intentionally and willingly imported restricted goods i.e. Blank Cartridges by amplification of "Air Gun Pellets Dummy" in the description of goods to circumvent the restriction imposed vide Arms Rules, 2016. The amplification was done in the description of the goods by the Customs Broker to evade the policy restriction. Further, it was the obligation of the Customs Broker to take reasonable steps to impart information regarding restriction/prohibition imposed on import of Blank Cartridges" but in contrast CB and the importer have intentionally and willingly imported restricted goods by amplification in the description of goods to circumvent the restriction of policy. As a Customs Broker, it was his duty to exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage. Thus, the CB was totally careless about his duties. Thus, the Customs Broker has violated the Regulation 10 (e) of CBLR, 2018. Accordingly, the Article of Charge alleging violation of Regulation 10 (e) of CBLR, 2018 is "Proved".

15.3.2.3 The CB in his defence submitted that in the past two Bills of Entry (which were filed by another C.B), the goods with identical amplified description were allowed clearance by the department after examination, and the system also did not raise any query regarding restriction. Therefore, they had a reasonable belief that the goods were not subject to restriction to ask for licence

from the importer.

15.3.2.4 I find that Ms. Firoza Khatun, Proprietor of M/s Firoza Movie International Enterprise in her statement dated 11.02.2022 admitted that she wanted to import blank cartridge for film and movie shooting was not aware that any license is required for import of blank cartridges. Moreover, she also disclosed that the addition of term 'Air Gun Pellets Dummy' was done in the description by CB M/s M. D. Ruparel & Sons. However, CB have submitted that the amplification 'Air Gun Pellets Dummy' was made during filing of the Bill of Entry as per the instructions of the Proprietor of the Importing firm and also on the ground that in the past goods having identical description and amplification have been imported and were cleared by importer. Thus, it is evident that CB did not provide correct information to Importer that import of Blank Cartridges for theatrical, film or television productions requires Licence under Arms Rules 2016. Since it was the obligation of the Customs Broker to take reasonable steps to impart information regarding restriction/prohibition imposed on import of 'Blank Cartridges' but in contrast CB and the importer have intentionally and willingly imported restricted goods i.e. "Blank Cartridge" by amplification of "Air Gun Pellets Dummy" in the description of goods to circumvent the restriction imposed vide Arms Rules, 2016. The CB in their written submission stated that they did not have any technical knowledge about arms and ammunition and relied on the instructions of the importer. However, it is an unacceptable argument as "Blank Cartridges" and "Air Gun Pellets Dummy" are two words giving different colour to the goods. When the import documents did not mention "Air Gun Pellet Dummy", adding it in B/E by the CB shows that he somehow wanted to clear goods knowing well, that they are restricted.

From the above facts and circumstances, I am of the considered view that the CB failed to exercise due diligence to ascertain the correctness of information in respect of fraudulent exported goods. Therefore, I hold that the CB has violated the provisions of Regulation 10(e) of the CBLR, 2018.

15.3.3 With regards to violation of Regulation 10 (f) of CBLR, 2018:

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

"A Custom Broker shall not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information;"

15.3.3.2 The IO in his Report submitted that the importer has intentionally and willingly imported restricted goods i.e. Blank Cartridges" by amplification of Air Gun Pellets Dummy" in the description of goods to circumvent the restriction imposed vide Arms Rules, 2016. The mis-declaration in the description of the goods from "Blank Cart 9mm Kaiser" to "Blank Cartridge

9mm (Air Gun Pellets Dummy)" was done by the Customs Broker as per say of the importer to evade the policy restriction. Therefore, the CB acted in connivance with the importer rather than imparting all information regarding the Customs Act, 1962 and Rule 42 of GSR 701 E dated 15.07.2016 i.e. Arms Rules, 2016. Thus it appeared that the CB M/s. M.D. Ruparel & Sons have withheld information from importer with respect to Blank Cartridges imported vide B/E No.4963255 dated 07.08.2021 and B/E No. 5466407 dated 16.09.2021. As a Customs Broker, it was his duty to not withhold information contained in any order, instruction of public notice relating to clearance of cargo or baggage issued by the find Customs Authority, as the case may be, from a client who is entitled to such information. I find that CB was totally careless about his duties. Thus, the Customs Broker has violated the Regulation 10 (f) of CBLR, 2018. Accordingly, the Article of Charge alleging violation of Regulation 10 (f) of CBLR, 2018 is "Proved".

15.3.3.3 The CB in his defence stated that it was not a case of first time import and they had nothing to doubt the contention of the importer and in the absence of knowledge about nature of goods, they had not withheld any information from the Importer.

15.3.3.4 On perusal of the Offence Report and the relevant RUDs, I find that Shri Mahendra Ruparel, F card holder, CB M/s M. D. Ruparel & Sons in his statement dated 03.03.2022 admitted that he was aware that goods were blank cartridges which are importable into India under a valid license issued under Arms Rules, 2016. Ms. Firoza Khatun, Proprietor of M/s Firoza Movie International Enterprise in her statement dated 11.02.2022 has stated that she wanted to import Blank Cartridge, however, she had no valid license but her CHA M/s M. D. Ruparel & Sons added 'Air Gun Pellets Dummy' in the description of goods. It appears that CB M/s M. D. Ruparel & Sons acted in connivance with the Importer rather than imparting all information regarding the Customs Act, 1962 and Rule 42 of GSR 701 E dated 15.07.2016 i.e. Arms Rules, 2016. Thus, the CB M/s M. D. Ruparel & Sons have withheld information from importer with respect to Blank Cartridges imported vide B/E No. 4963255 dated 07.08.2021 and B/E No. 5466407 dated 16.09.2021. Therefore, I find that the CB has violated Regulation 10(f) of CBLR, 2018.

From the above facts, I am of the considered view that the CB failed to inform the importer about the the Customs Act, 1962 and Rule 42 of GSR 701 E dated 15.07.2016 i.e. Arms Rules, 2016. Therefore, I hold that the CB has violated the provisions of Regulation 10(f) of the CBLR, 2018.

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

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

"A Customs Broker shall verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his

client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;”

15.3.4.2 The IO in his Report submitted that that neither the Offence Report nor the Show Cause Notice No. 18/2022 dated 26.09.2022 make an averment that IEC was forged, moreover, it was mentioned in the Office Order No 14/2022-23 that the premise of M/s Firoza Movie International Enterprises was searched. Further, the IO also submitted that during the personal hearing and along with the written submission also, the CB submitted the KYC documents of the Importer. The IO also took cognizance of the below case laws: -

- c. *"APS Freight & Travels Put. Ltd. Vs. Commissioner of Customs (General) New Delhi, reported in 2016 (344) ELT 602 (Tri. - Del)"*
- d. *"Poonia & Brothers Vs. Commissioner of Customs (Preventive), Jaipur, reported in 2019 (370) ELT 1074 (Tri. Del)"*

Reliance is placed upon the aforesaid case law that no physical verification of importer/s premises is mandated in the Regulations nor it is a general requirement as per business practice. Accordingly, it was held by the IO that the Article of Charge alleging violation of Regulation 10 (n) of CBLR, 2018 is "Not Proved".

15.3.4.3 On perusal of the Offence Report and the relevant RUDs, I find that since, the correctness of the IEC of the importer has not been under question and the existence and functioning of the Importer at the declared address was found to be present during the premise search of the Importer M/s. Firoza Movie International Enterprise, also Shri Mahendra Ruparel in his statement submitted that he had visited the address of the Importer and to verify their credentials and verified their PAN Card, Aadhar Card. Therefore, in light of the facts and circumstances as discussed above, I agree with the findings of the IO with regard to violation of Regulation 10(n) of CBLR, 2018.

From the above facts and circumstances, I am of the considered view that there is no substantial proof/ records to establish that CB has contravened provisions of Regulation 10(n) of the CBLR, 2018. Therefore, I hold that the CB has not violated the provisions of Regulation 10(n) of the CBLR, 2018.

16. The evidence on record and applicable regulations clearly indicate that the CB was working in an absolute negligent manner and was in violation of the obligations cast upon them under the CBLR 2018. It is also evident that an attempt of fraudulent imports would not have been possible, if Customs Broker had fulfilled his due obligation bestowed on him under Regulations 10 (d), 10(e), and 10(f) of CBLR 2018. While deciding the matter, I rely upon following judgements:-

16.1 The Hon'ble Supreme Court in the case of Commissioner of Customs V/s. K. M. Ganatra and Co. in Civil Appeal no. 2940 of 2008 upheld the

observation of Hon'ble CESTAT Mumbai in M/s. Noble Agency V/s. Commissioner of Customs, Mumbai that:

"A Custom Broker occupies a very important position in the customs House 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)".

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

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

accordingly, final order of revoking his licence has been passed.

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

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

"Para 6.1 These provisions require the Customs Broker to exercise due diligence to ascertain the correctness of any information and to advise the client accordingly. Though the CHA was accepted as having no mensrea of the noticed mis-declaration /under- valuation or mis-quantification but from his own statement acknowledging the negligence on his part to properly ensure the same, we are of the opinion that 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."

16.4 Further, CB in his written submission dated 19.12.2023 submitted that the findings of the IO are substantially based on the statement of Ms. Feroza Khatun, Proprietor of M/s. Firoza Movie International Enterprises recorded under Section 108 of the Customs Act, 1962, who was neither examined by the Learned Inquiry Officer nor was made available for cross examination by the CB.

16.5 I observe that under the regulation 17(4) of the CBLR, 2018, the CB is entitled to cross-examine the persons examined in support of ground forming the basis & the proceedings at the inquiry stage only and not later stage. Further, the said regulation provides that Deputy Commissioner of Customs or Assistant Commissioner of Customs declines permission to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing. I observe that the Inquiry Officer vide letters issued vide F.No. Gen/CB/347/2022-DC/AC dated 19.10.2022, 11.11.2022, 18.11.2022 instructed Ms. Feroza Khatun, Proprietor of M/s. Firoza Movie International Enterprises to appear before him for personal hearing and for the purpose of cross examination and the same were recorded in the Daily Order Sheet No. 02 dated 10.11.2022; Daily Order Sheet No. 03 dated 18.11.2022 and Daily Order Sheet No. 04 dated 25.11.2022 of the IO during investigation with recording that

even after sufficient opportunity was given to the Cross Examinee, Ms. Feroza Khatun, Proprietor of M/s. Firoza Movie International Enterprises, she didn't turn up for personal hearing and hence, recording of evidence was closed.

The contention of the CB through their written submission that even though the show cause notice relied upon the report of the CFSL, Hyderabad, the officer who gave this report was also not examined by the Learned I.O. does not appear to be tenable, since Shri Mahendra Ruparel, F-card holder in M/s M. D. Ruparel & Sons, in his statement dated 03.03.2022 accepted on being shown copy of examination panchanama dated 03.11.2021 of the goods imported under Bill of Entry no. 5466407 dated 16.09.2021 that the goods were blank cartridges and the goods were blank cartridges in previous Bill of Entry having no. 4963255 dated 07.08.2021 also. Therefore, I find that despite accepting in his statement recorded under Section 108 of the Customs Act, 1962, that the actual goods imported under Bs/E No. 546607 dated 16.09.2021 and 4963255 dated 07.08.2021 were "Blank Cartridge 9mm Kaiser" and not "Blank Cartridge 9mm Kaiser (Air Gun Pellets Dummy)", the CB is attempting to mislead the findings on an unreasonable ground.

16.6 CB in submission has submitted that the inquiry proceedings is beyond the limitation period of 90 days as the SCN was issued on 22.09.2022 and the Inquiry report on 12.09.2023.

16.7 With regard to submission of the CB in respect of present inquiry is barred by time limitation, I rely on the decision of Hon'ble High Court of Judicature at Bombay in the case of Principal Commissioner of Customs (General), Mumbai Versus Unison Clearing P. Ltd. reported in 2018 (361) E.L.T. 321 (Bom.), which stipulates that:

"the time limit contained in Regulation 20 cannot be construed to be mandatory and is held to be directory. As it is already observed above that though the time line framed in the Regulation need to be rigidly applied, fairness would demand that when such time limit is crossed, the period subsequently consumed for completing the inquiry should be justified by giving reasons and the causes on account of which the time limit was not adhered to. This would ensure that the inquiry proceedings which are initiated are completed expeditiously, are not prolonged and some checks and balances must be ensured. One step by which the unnecessary delays can be curbed is recording of reasons for the delay or non-adherence to this time limit by the Officer conducting the inquiry and making him accountable for not adhering to the time schedule. These reasons can then be tested to derive a conclusion whether the deviation from the time line prescribed in the Regulation, is "reasonable". This is the only way by which the provisions

contained in Regulation 20 can be effectively implemented in the interest of both parties, namely, the Revenue and the Customs House Agent.

*In the light of the aforesaid discussion, the appeals filed by the Revenue succeed and the question of law framed in the appeals is answered by holding that the CESTAT was not justified in setting aside the order or suspension of the Customs Brokers' Licence on the ground of delay between suspension and the notice of deviation or omission and it cannot be laid down as an absolute proposition of law that delay in taking immediate action of suspension or **initiation of inquiry within a period of 90 days** would vitiate the action of the Commissioner.".*

In view of the above, I find that the delay has occurred in inquiry proceedings owing to unavoidable administrative reasons such as transfer and posting of the officers from/to section etc., such delay cannot be fatal to outcome of inquiry and cannot neutralise the acts of omission and commission already committed by the CB. Hon'ble High Court of Judicature at Bombay also observed that the time limit contained in Regulation 20 cannot be construed to be mandatory and is held to be directory.

17. I have gone through the various Case Laws referred by the said CB in his various 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.

18. In a regime of trade facilitation, a lot of trust is being placed on the Customs Broker who directly deals with the importers/exporters. Failure to comply with regulations by the CB mandated in the CBLR, 2018 gives room for unscrupulous persons to get away with import-export violations and revenue frauds. The CB deliberately and knowingly in connivance with the Importer defeated the very purpose of Rule 42 of Arms Rules 2016, which mentions the requirement of license for arms and ammunitions for theatrical, film or television production and cleared the consignment. The facts on record prove that CB had violated various provisions of CBLR, 2018 with mens rea.

19. Thus in view of the above, 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, which certainly warrant penal action against the CB. Therefore, for their acts of omission and commission, CB M/s. M. D. Ruparel & Sons (11/244) (PAN No. AAFFM4798J) is held liable and guilty for violating the provisions of CBLR, 2018 as mentioned above. I hold that the CB has failed to discharge his duties cast upon him with respect to Regulation 10(d), 10(e) and 10(f) of CBLR, 2018 and is liable for penal action. Accordingly, I pass the following order.

ORDER

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

- (i) The CB License No. 11/244 is ordered to be revoked under Regulation 14 of the CBLR, 2018.
- (ii) I hereby order for forfeiture of entire amount of security deposit furnished by the CB, under Regulation 14 of the CBLR, 2018.
- (iii) I hereby impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on M/s. M. D. Ruparel & Sons (11/244) (PAN No. AAFFM4798J) under Regulation 18 of the CBLR, 2018.
- (iv) I hereby order that the CB surrender the original License as well as all the 'F', 'G' & 'H' cards issued there under immediately.

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


(SUNIL JAIN)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
MUMBAI ZONE-I

To,

The CB, M/s. M. D. Ruparel & Sons (11/244),
186 Sons, 1-A, Torana Apartments, Sahar Village Road, Andheri East,
Mumbai - 400099.

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. SIIB, ACC, Mumbai.
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)