



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

सचिका सं/ F. No.- S/8-20/2019-20 CBS  
CAO No. 121/CAC/PCC(G)/SJ/CDS Adj  
संख्या:

DIN : 2022017700000011111C

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

आदेश दिनांक/Date of Order: 10.01.2022

जारी दिनांक/ Date of issue: 11.01.2022

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।

This copy is granted free of charge for the private use of the person to whom it is issued.

2. इस आदेश के विरुद्ध अपील मॉगे 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, यथोत्संघपीठ 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 तदोत्तर 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 ब्याजबलगाए गए जुर्माने की राशि रु. पाँच लाख या इस से कम होती 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 स्टेम्प लगा होना चाहिए एवं इसके साथ संलग्न इस आदेश की उक्त प्रति में रु. 50 का कोर्ट फी स्टेम्प 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:**

1. M/s. Kotak Multilink Logistix, a Customs Broker firm holding License No. 11/1688 (PAN- APDPK3682A) issued by Mumbai Customs [hereinafter referred to as 'the Customs Broker' or 'the CB'] under Regulation 7(1) of Customs Broker Licensing Regulations (CBLR), 2013 (now Regulation 7(2) of CBLR, 2018).
2. An Investigation Report dated 17.01.2019 was received from Serious Fraud Investigation Office (SFIO), Ministry of Corporate Affairs, New Delhi in the matter of M/s. ABC Cotspin Pvt. Ltd. (hereinafter referred to as 'M/s. ABCCPL'), wherein the investigation was conducted under section 212(1)(c) of the Companies Act, 2013. The investigation was ordered based on the report of fraud in FMR 1 to RBI by SBI, BOB and Axis Bank Limited. These banks reported that ABCCPL committed fraud by availing export finance in lieu of submission of export bills without actually exporting any goods.
3. In the Investigation Report, it is submitted that, the Customs House Agent (CHA) (now Customs Broker), RSS Shipping Pvt. Ltd., operating the CHA License in the name of M/s. Harin Transport and M/s. Ramesh Transport, and CHA, M/s. Kotak Multilink Logistix, issued checklists and uploaded the data on the "ICEGATE" portal of Customs Department without ensuring the receipt of merchandise at the Port. They also facilitated issuance of House Bills of Ladings (BLs) from the freight forwarding companies, namely, M/s. Seamax Logistics Limited and M/s. United Container Lines Pvt. Ltd.
4. ABCCPL is a Private Limited Company owned (in majority) and controlled by Ashish Jobanputra (AJ). ABCCPL was exporting cotton since the year 2009 and mainly exporting to China under Letters of Credit (LC) and AJ looked after the export sales. AJ, with a view to avail trade credit from banks against the export documents easily, had arrangements with Customs House Agents (CHAs) to get the Checklists (Shipping Bills prior to customs formalities) and the House Bills of Lading (BLs)/Multimodal Transport Documents (MTDs) through them before completion of exports. As AJ was a major shareholder in Universal Logistics Pvt. Limited (in which the Directors of RSS Shipping were also directors) and Universal Logistics Pvt. Limited was handling the container requirements and shipping liner requirements of ABCCPL, AJ was influencing the CHAs namely, M/s. RSS Shipping Pvt. Limited and M/s. Kotak Multilink Logistix. AJ joined with CHAs, namely, M/s. RSS Shipping P Limited (& its Director) and M/s. Kotak Multilink Logistix (Hardik Kotak) and the employees/directors of freight forwarding companies entered into a criminal conspiracy with object to misrepresent before the banks in particular (SBI and BOB) to avail credit facilities. Resultantly, AJ and ABCCPL availed of the opportunity created and defrauded banks to the tune of Rs.1826.99 Crores by availing export trade credits on fabricated and falsified export documents. ABCCPL, its director AJ and other directors along with the CHA entities, M/s. RSS Shipping Pvt. Ltd., M/s. Kotak Multilink Logistix and its authorized signatories, namely, Sanjay Verma and Hardik Kotak and the employees/directors of freight forwarding companies (who signed and issued House BL/MTD) hatched a criminal conspiracy and also participated in the aforesaid conspiracy.

5. The investigation revealed that ABCCPL and AJ used to submit the export documents under LCs for negotiation and discount to SBI and BOB with the checklists and the House BLs/ MTDs and before completion of underlying export shipments (i.e.) shipping bills without LEO date and Customs Department signature (which in other words is called checklist) at the time of discount. The shipping bill with the LEO date and Customs signature would be handed over to the banks at a later date on completion of shipment.
6. The CHAs were obtaining the House BLs/MTDs from freight forwarders before or without receipt of merchandise/handing-over merchandise and completion of Customs/export formalities (i.e. before clearance of cargo by Customs for export) and handing these documents along with Checklists (without LEO date) to ABCCPL and AJ to enable them to get the export bills discounted with the banks.
7. ABCCPL and AJ utilized the opportunities to avail the bank credit on unsecured terms based on bills of ladings without having underlying merchandise at the time of grant of credit through negotiation/discount of export bills backed by LCs and submitted the required Custom Department's documents evidencing the export of merchandise at a later date. SBI and BOB accepted the export bills submitted along with the checklist for negotiation/discount without insisting for submission of shipping bill duly certified by the Customs Department and granted advances on the documents submitted at the time of granting advance i.e. negotiation/discount of the export bill. In other words, the advance against the export bills was released by the banks even before the merchandise was accepted for shipment without ensuring availability of security i.e. documents to the title of goods. Therefore, the advances were unsecured in nature till the date of completion of exports by ABCCPL.
8. The investigation further revealed that AJ and ABCCPL always insisted to have Checklist from CHA along with the House BLs/MTDs Issued by the freight forwarder with an intent to avail bank credit (which ABCCPL and its directors were not entitled to). These incomplete set of export documents were submitted to banks for negotiation/discount. The actual shipment of merchandise mostly took place at a later date and on getting the cargo cleared by the Customs Department for export, ABCCPL used to hand over the EDI copy with LEO date (Shipping Bill) duly signed by the Customs Department to the banks afterwards.
9. ABCCPL and its director AJ had arrangements with CHAs, namely, M/s. RSS Shipping Pvt. Limited and M/s. Kotak Multilink Logistix, to handover the checklist immediately on or before entering the data on the Customs Portal along with the House BLs/MTD issued by the freight forwarder.
10. The freight forwarder issued House BLs/MTDs based on the Checklists only and did not insist on receipt of merchandise or EDI copy with LEO date duly passed by the Customs Department. The freight forwarder also did not have any control over the cargo to be shipped (Cotton) and all these aspects were handled by the CHAs in coordination with AJ.

- 11. Both the CHAs and the freight forwarders knew very well the purpose of giving the Checklist along with the House BLs/MTDs to ABCCPL and AJ. They knew that AJ was using the checklist and House BL to get the export bills discounted/negotiated with the banks.**
- 12. The CHAs and the freight forwarders knowingly assisted ABCCPL and its directors, by providing false, fabricated BLs/MTDs in violation of norms, legal requirements, the rules and regulations governing the Customs formalities for exports and the relevant Acts (Customs Act and rules, Multimodal Transport Act and shipping rules). They, thereby, aided with ABCCPL and its directors in providing false, fabricated documents as part of the export bills to the banks. AJ and ABCCPL started the practice of availing bank finance on export bills supported with Checklist and the fabricated, false House BL/MTD from 2010-11 onwards. This practice continued till 2013-14 without any hiccups on account of favourable conditions of cotton imports to China and price factor of Cotton World over.**
- 13. SBI and BOB, which extended credit facilities to ABCCPL for negotiation/diskont of export bills backed by LCs, had put in place a practice, in contravention of the Bank/RBI guidelines, of accepting export documents with Checklists accompanied by all export documents along with House BLs/MTDs submitted by ABCCPL extending credit facilities thereof, and accept the required Shipping Bills (EDI along with SDF with LEO date duly passed by Customs) at a later date. This created an unmitigated risk for the banks for the period from the submission of initial documents till the submission of the required SBs wherein the underlying goods were not available as security for the loans. This was exploited by AJ later. During the initial years, the SB was submitted within a period of 4 to 5 days of the export negotiation/diskont; however, during the last quarter of 2012-13 and 2013-14, the gap widened beyond a period of 15 days.**
- 14. AJ started submitting false and fabricated export documents (Invoices, House BLs/MTDs and the accompanied Checklists) for negotiation/diskont from December 2013 onwards and got the export documents discounted utilizing his established practice of discounting with banks by submitting export bills with Checklists and House BLs/ MTDs. ABCCPL and AJ delayed the shipments to be made as the procurements of merchandise (Cotton) was delayed as evidenced by negative stocks in "Tally" continuously with high volumes.**
- 15. The exports were not completed based on the Checklist (on completion of exports and certification by Customs, the checklist is named as Shipping Bill) used for discounting with the banks and the exports were completed at a later date through another Checklist/Shipping Bill.**
- 16. The data of shipping bill numbers given at the time of discount of export bills to the banks and the data of shipping bill numbers obtained from Customs in respect of many export consignments/invoices were completely different and this proved that the exports were not taking place as per the documents given to banks (Bill of lading giving the details of shipping bill numbers and date of shipment).**

17. This clearly established ABCCPL, AJ and other directors availed the bank funds on submitting the false/fabricated export documents at the time of discount in respect of export bills wherever the shipping bill numbers were different in Customs Department's records with the shipping bill numbers given to the banks. ABCCPL and its directors were not entitled to the receipt of credit at the time of discount as the exports were not completed and the documents to title to goods (Bills of Lading) were defective (Goods were not shipped on the vessel mentioned in the House BL).
18. The practice of getting advance against export bills with checklist from SBI and BOB by ABCCPL and its directors to submit export bills for discount first and carry out the shipment later is also evidenced from the stock registers maintained in "Tally" from 2012-13 onwards on account of negative stock balances. All the export bills submitted by AJ and ABCCPL with SBI and BOB till 2013-14 were realized with receipt of foreign exchange (Indicating completion of exports) and a few bills of 2014-15. During 2014-15, some of the export bills were realized by allowing reduction in invoice value as per permissible norms by the banks.
19. Further, it is revealed that, the freight forwarders and the CHAs indulged in illegal practice of issuance of House BL/MTD without receipt of merchandise. They were fully aware that these documents evidenced receipt of merchandise by them and were very well aware of the use of the same for discounting the export bills with the banks by M/s. ABCCPL. Despite knowing this fact, they neither took any corrective measures nor exercised any restraint on issuance of Checklist and the related House BL/MTD after noticing the frequent delays in shipments during the later part of 2012-13 and throughout the financial year in 2013-14. Their active involvement is established by the fact that this was not a onetime act but done frequently from later part of 2012-13 onwards.
20. It is further revealed that, though the arrival of merchandise at the designated port of shipment slowed very much, the CHAs continued to hand over the Checklists with House BLs/MTDs to ABCCPL based on the requirement. The CHAs did not stop issuing fresh Checklists to ABCCPL, despite having lot of pending shipments for already issued Checklists.
21. The CHAs knew very well that ABCCPL was availing bank finance through negotiation of export bills only by the Checklists and House BLs/MTDs arranged by them. They continued to issue checklist based on the invoice of ABCCPL, even in November/December, 2014 despite the fact there were pending shipments to be completed for Checklists/BLs issued as far back as May/June 2014 (not completed even after expiry of six months).
22. The CHAs knew very well the purpose of issuance of House BL/MTD and the use of the same for discounting the export bills with the banks. Despite knowing the purpose and also the facts of non-completion of exports for previously issued House BLs/MTDs, they continued to issue checklists and House BLs for fresh/further invoices. The CHA never sought return of House BLs/MTDs from ABCCPL, to prevent

the misuse by them. The role of CHAs were highly sceptical as they colluded with and aided ABCCPL, to misrepresent before the banks for obtaining credit facilities.

23. Shri Hardik Shah, authorised signatory of M/s. Kotak Multilink Logistix, in his statement dated 11.07.2016 and 27.07.2018 (as cited at para 4.10.12 Page no. from 149 to 152 of the Investigation Report) recorded under oath as per provisions of Section 217(4) of the Companies Act, 2013, stated that:

- i. His brother's (Mr. Viraj Kotak's) proprietorship concern i.e. M/s. Kotak Multilink Logistix (KML) were the clearing and forwarding (C&F) agents of ABCCPL since 2011. He was working as an Export Sales Marketing Executive in the aforesaid firm and his brother had given him the authority to sign on his behalf in banks.
- ii. AJ was his childhood friend. AJ had a company called M/s. Universal Logistics for freight forwarding & CHA work and other company called ABCCPL for making cotton exports. AJ asked him in 2008 to do business for ABCCPL and he used to make ABCCPL shipments from the Nhava Sheva Port. He also used to book containers for shipments to be made by ABCCPL.
- iii. M/s. KML used to get the Invoice from the ABCCPL by e-mail. (KML used to get mail from sales mail id of ABCCPL and he used to get mail on [csumum@kmlline.com](mailto:csumum@kmlline.com)). Accordingly, they used to prepare the checklist. The checklist was issued by using the CHA license of KML. Then, they used to make the entry of this checklist on the "ICEGATE" portal of Customs Department to get the shipping bill number. Then, ABCCPL used to contact him for getting the Bill of Lading for the checklist handed over to them.
- iv. KML used to prepare the BL (first print) and check with ABCCPL that all were fine, then this was forwarded to United Containers Lines (UCL) for preparation of House BL/MTD. UCL used to give them House BL/MTD based on the checklist and invoice and same used to be given to ABCCPL.
- v. He (Mr. Hardik) was told by AJ that on submission of House BL and checklist, AJ would get money from the bank, which AJ would use to pay the manufacture to get the goods. It is also accepted by him (Mr. Hardik), that, it is a fact that the checklist was handed over to ABCCPL before making the entry in Custom Portal.
- vi. It is also accepted by Mr. Hardik that the House BLs issued by UCL contained the words "cargo received for shipment" without actually receiving the cargo.
- vii. He (Hardik Kotak) did not put the stamp of "Shipped on Board". He/KML used to forward the BLs received from UCL by Maruti Courier Services to Rajkot Office of ABCCPL.
- viii. This BL was handed over to him (Mr. Hardik) by AJ asking him to change the consignee and issue new BL. Accordingly, he asked UCL to cancel the House BL and issue new House BL of new consignee. He did not know who has put the "Shipped on Board" stamp. His role was limited to acquiring the BLs from UCL.

- ix. He was told by AJ that shipment would happen from Mundra Port, he had to arrange for House BLs for Mundra Port. AJ told him to just get the BLs and the rest would be done by him through some other clearing and forwarding agent.

**Recommendations of SFIO Investigation Report:**

24. SFIO in its investigation report, at para 5.14 Page No. 278, recommended the CBIC and Ministry of Shipping:
- i. To study the modus operandi adopted by the company, the CHAs and freight forwarders and amend existing rules/guidelines, to prevent recurrence of such fraud through trade-based money laundering;
  - ii. To cancel the license of CHAs, namely, M/s. Harin Transport, M/s. Ramesh Transport and M/s. Kotak Multilink Logistix on account of involvement of fraud;

**Order No.37/2019-20 dated 27.08.2019 issued by Principal Commissioner of Customs (Gen). NCH. Mumbai Customs-I:**

25. In view of the above facts, the Competent Authority found that the CHA, M/s. Kotak Multilink Logistix, indulged in the practice of issuing checklist/BL without receipt of the merchandise (cotton) despite knowing the actual export never happened. They continued this practice despite knowing the fact of non-completion of exports for previously issued House BLs/MTD, they continued to issue checklists and House BLs for fresh /further invoices. The CHA never sought return of House BL/MTD from ABCCPL to prevent the misuse by them. The role of CHA is highly sceptical as they colluded with and aided ABCCPL to misrepresent before the banks for obtaining credit facilities.
26. The Competent Authority also found that, as per statement of Mr. Hardik Shah, the CHA, and authorised signatory of M/s. Kotak Multilink Logistix (KML), dated 11.07.2016 and 27.07.2018, it is clear that M/s. KML used to get the invoice from the ABCCPL by e-mail. Accordingly, they used to prepare the checklist and make the entry of this checklist on the "ICEGATE" portal of Customs Department to get the shipping bill number. Then, ABCCPL used to contact him for getting the Bill of Lading for the checklist handed over to them. KML used to prepare the BL (first print) and check with ABCCPL that all were fine, then this was forwarded to United Containers Lines (UCL) for preparation of House BL /MTD. Mr. Hardik used to change the name of the consignee and issue fresh checklist against the same invoice.
27. Therefore, the Competent Authority found that the CHA, M/s. Kotak Multilink Logistix, have violated the obligations under Regulations 10(a), 10(b), 10(d), 10(e) 10(m) and 10(n), of the Customs Broker Licensing Regulations, 2018 which amounts to breach of trust and faith reposed on the CB by the Customs and appeared liable for penal action for their above mentioned acts of omission and commission. This warrants necessary action against the Customs Broker to prevent such lapse.



28. Accordingly, Order No.37/2019-20 dated 27.08.2019 was passed by the Competent Authority (i.e. Pr. Commissioner of Customs (Gen), NCH, Mumbai Customs-I) wherein Customs Broker Licence No. 11/1688 (PAN No.APDPK3682A) of M/s. Kotak Multilink Logistix was suspended with immediate effect. However, a personal hearing on 09.09.2019 was granted to the CHA for making any representation on their behalf on the instant matter.
29. In the personal hearing dated 09.09.2019, Mr. Viraj Kotak (Proprietor, M/s. Kotak Multilink Logistix) along with detailed written argument submitted that "they have only given a copy of the Checklist without any documents to ABCCPL and are not aware how this was used to discount for bank credit as no other documents were given by him".
30. Based on the above mentioned oral and written submissions made by the CHA on personal hearing dated 09.09.2019, the Pr. Commissioner of Customs (Gen), NCH, Mumbai Customs-I has provided interim relief, pending inquiry, to the CHA, M/s. Kotak Multilink Logistix, by revoking the suspension of their license vide Order No.67/2019-20 dated 25.11.2019.
31. A Show Cause Notice dated 19.12.2019 has been issued by the Pr. Commissioner of Customs (Gen), NCH, Mumbai Customs-I against the CHA, KML, alleging that
- i. The CHA, M/s. Kotak Multilink Logistix (KML), indulged in the practice of issuing checklist/BL without receipt of the merchandise (cotton) despite knowing the actual export never happened. They continued this practice despite knowing the fact of non-completion of exports for previously Issued House BLs/MTD, they continued to issue checklists and House BLs for fresh /further invoices. The CHA never sought return of House BL/MTD from ABCCPL to prevent the misuse by them. The role of CHA is highly sceptical as they colluded with and aided ABCCPL to misrepresent before the banks for obtaining credit facilities.
  - ii. The CHA, KML, used to get the invoice from the ABCCPL by e-mail. Accordingly, they used to prepare the checklist and make the entry of this checklist on the "ICEGATE" portal of Customs Department to get the shipping bill number. Then, ABCCPL used to contact him for getting the Bill of Lading for the checklist handed over to them. KML used to prepare the BL (first print) and check with ABCCPL that all were fine, then this was forwarded to United Containers Lines (UCL) for preparation of House BL /MTD. Mr. Hardik used to change the name of the consignee and issue fresh checklist against the same invoice.
  - iii. The CHA, KML, has violated the obligations under Reg. 10(d), 10(e) and 10(m), of the CBLR, 2018.
32. The Competent Authority also appointed Mr. Ashok Kumar, Asst. Commissioner as Inquiry Officer in the instant case.
33. For the purpose of the Inquiry, three separate personal hearing (PH) memos dated 29/09/2020, 12/10/2020, and 28/10/2020, were issued to KML asking them to appear

on three different dates. However, they neither appeared for PH on any of the scheduled dates nor filed any written submissions in the matter. Therefore, an ex-parte Order dated 02.12.2020 was passed the Inquiry Officer, wherein, he upheld all the three charges i.e. violation of Reg. 10(d), 10(e) and 10(m), of the CBLR, 2018, alleged in the above mentioned SCN dated 19.12.2019.

34. As per the CBLR, 2018, after receipt of the above Inquiry Report, the Pr. Commissioner of Customs (Gen), NCH, Mumbai Customs-I accorded the CHA, KML, personal hearing, which was held on 12.02.2021. The CB, KML, submitted that they could not attend the hearing during the inquiry proceedings because they could not receive the intimation of hearing due to address issues. Therefore, on their request, the Competent Authority, re-appointed Mr. Ashok Kumar as the Inquiry Officer and ordered to conduct fresh inquiry proceedings and submit report accordingly.

**Written Submissions by M/s. Kotak Multilink Logistix**

35. The CHA, M/s. Kotak Multilink Logistix vide letter dated 21.03.2021, inter-alia, made below submissions to the Inquiry Officer:

- i. They denied that they have violated any of the above three Regulations as wrongly alleged in the Articles of Charges.
- ii. That background for all the three Articles of Charges is the Investigation Report dated 17.01.2019 of the Serious Fraud Investigation Office (SFIO) which primarily deals with the fraud committed by Mr Ashish Suresh Jobanputra and his company M/s ABC CotspinPvt Ltd, in connivance with other persons, on the banks by discounting export documents/bills without actual export of the goods represented therein. Apart from this major fraud, they have also remitted huge amount of foreign exchange abroad by showing it as advance remittances for import of goods whereas no goods were imported against such advance remittances.
- iii. All the above three Charges in the Articles of Charges have therefore to be viewed with reference to the context and contents of the SFIO Investigation Report and there is no material or evidence beyond the Report.
- iv. They averred at the moot point whether the Customs Broker is responsible for any act committed by an exporter qua its banker beyond the jurisdiction of Port or Customs area. The Customs Broker license is provided only for the purpose of carrying on business as a Customs Broker relating to import and export of goods. None of the fraudulent activities conducted by AJ and his company ABCCPL and their associates have been alleged to have been conducted within the Customs area. The CB cannot be held responsible if the exporter misuses any of the documents generated without the knowledge of the CB.
- v. That they were not aware that AJ and his company ABCCPL were availing bank finance through negotiation of the Checklists. There is no statement of any of the representatives of the company either recorded or relied upon to allege knowledge of their wrong doings on their part.

- vi. That the SFIO Investigation Report is incomplete and unfinished as mentioned in Para 2.16 at Page No 10 thereof. The limitations of the Report are succinctly stated therein. In these facts and circumstances, the Investigation Report cannot be considered as gospel truth to raise serious charges as have been made against them in these proceedings.
- vii. That even otherwise, not a single corroborative evidence has been produced or marshalled by the SFIO in its Investigation Report to support the allegations made by the department in the Articles of Charges regarding violations of the CBLR, 2018. In the absence of such evidence, the allegations are mere bald allegations and not sustainable.
- viii. That for any export consignment, generally the exporter sends the Invoice and packing list on the basis of which the CB generates the check list using his software for the proposed Shipping Bill. The check list is not generated on the EDI. A check list is nothing but a proforma Shipping Bill. However, it is not a legal and valid document. The check list gives information about the goods and applicable provisions of the Customs Act, 1962 or any notification for which the invoice is supplied by the exporter. To ensure that no error is committed while filing the Shipping Bill, check list is generated and given to the exporter for verification. After the exporter confirms the details mentioned in the check list, the CB generates the Shipping Bill online. It is important to note that if the exporter fails to comply with the requisition mentioned in the check list or fails to cart the goods within 15 days of the generation of the Shipping Bill, the Shipping Bill number gets purged automatically and cannot be used. If the exporter wants to ship the consignment beyond 15 days, then a fresh Shipping Bill has to be generated. The CB cannot be held responsible if the exporter uses any such document like check list for any other purpose as has been done by AJ and his company ABCCPL.
- ix. That RBI has framed certain guidelines and framework for the banking entities to follow while discounting export bills. Clearly from the SFIO Investigation Report, it appears that the banking authorities have failed to comply with the guidelines which has resulted into the alleged fraudulent activities committed by AJ and his company ABCCPL. The negligence of the banking authorities is sought to be shifted on innocent persons like CB.
- x. They have quoted from the SFIO Investigation Report as under to drive home the point that the fraud was committed by AJ and his company ABCCPL in connivance with the Banks:

(a) Para 5.9 at Page No XLVI of the Executive Summary of the Report:

*The entire fraud could have been averted if the Bank officials had followed the guidelines issued by their banks and RBI in letter and spirit. The Investigation team detected many aspects of gross negligence on the part of bank officials and senior management level of the bank/branch in not following the guidelines issued by the RBI, their own banks and the Uniform Customs and Practices*

*for Documentary Credit (UCPDC) issued by the International Chamber of Commerce (ICC), Paris, France. Credit facilities were provided from a remote branch which did not have much exposure or experience in export dealings when another branch nearby was having adequate experience thereby knowingly creating risk. Senior officers overruled valid objections made by junior officers. ICEGATE was not used for counter checking the export documents. Fresh bills were discounted when old bills were overdue which raises questions that should be looked at by the banking regulator and the appropriate enforcement agency."*

(b) Para 4.5.5 at Page No XV and XVI of the Executive Summary of the Report:

*"..... During February 2014, RBI introduced a change in system of entering the Shipping Bill Numbers by Authorised Dealer Banks and introduced a system of picking up the Shipping Bill Numbers from Export Data Processing and Monitoring System (EDPMS) maintained by the RBI. The EDPMS data is sent by Customs Department to RBI in a secured manner and the same is shared with respective Banks. The Banks are advised to enter the Shipping Bill data of the relevant export bills from the EDPMS data. In September 2014, RBI completely changed the reporting of exports by AD Banks. Investigation by the SFIO has revealed that Bank of Baroda and State Bank of India had not picked up the Shipping Bill Numbers in respect of export bills given by ABCCPL from EDPMS data as stated by RBI in its Master Circulars....."*

*"..... Many of the export Shipping Bills, where exports had taken place, were not realised by receipt of foreign exchange and the liability of these bills was recovered by SBI and BOB from ABCCPL through amounts in local Rupees obtained through discounting of further export bills. These amounts were received by ABCCPL from further bill discounting carried out by the banks on the basis of check list submitted by ABCCPL....."*

(c) Para 4.8.2 at Page No XXIV of the Executive Summary of the Report:

*"In respect of some export Shipping Bills, for export done in later part of 2014- -15 and 2015 - 16, ABCCPL did not handover the Shipping Bills to the banks and in most of these cases, the advance amounts given by the Banks were recovered."*

- xi. That the tone and tenor of the SFIO Report all throughout is that the bank officers accepted incomplete and improper documents while discounting the so-called export bills. In that case, the question of their complicity with AJ and his company ABCCPL does not arise.
- xii. That they had no role to play in the fraud committed by AJ and his company ABCCPL inasmuch as there was no violation of the provisions of the Customs Act, 1962 by the above person/company in commission of the fraud on the Banks.

- xiii. That their assertion that they had no complicity with the above person/company is supported by the Special Case No 26/2016 filed by the CBI against the above persons/company in the Court of Hon'ble Special Judge for CBI Cases, Court No 8, Ahmedabad wherein they have not been arraigned as an accused. Copy of the Final Report has been submitted.
- xiv. Further, though the matter of fraud by AJ and his company ABCCPL was enquired into by the DRI also, however, no enquiry was held by the DRI against them.
- xv. That their CHA License was earlier suspended by the Hon'ble Pr. Commissioner of Customs (Gen) vide Order No 37/2019-20 dated 27.08.2019. However, after due process, the Hon'ble Pr. Commissioner of Customs (Gen) was pleased to revoke the suspension vide Order No 67/2019-20 dated 25.11.2019.
- xvi. They quoted from the abovementioned Order No. 67/2019-20 dated 25.11.2019, the following extracts from the findings:

(a) Para 6.2 of the Order:

*"... I find that check list per se does not appear to have any legal sanctity without gate-in/export of cargo and the same cannot be used as a valid document for discounting export bills or facilitating bank credit as contended by the CB. Further I find from the statement of Mr. Hardik authorised signatory of the CB recorded on 11.07.2016 and 27.07.2017 by the SFIO (Para 14.10.12 of the Report refers) that he appears to have followed the procedure of generating check list on the basis of invoice and packing list furnished by the exporter and then sending the check list to the exporter for verification. I find that the said statement does not appear to have been refuted by the SFIO or any other person as per the SFIO Report."*

(b) Para 6.3 of the Order:

*"... As per Para 4.10.9 of the SFIO Investigation Report, it appears that there are three occasions when Bill of Lading is issued i.e. (i) One is when the cargo arrives in the port warehouse i.e. CFR (Cargo Freight Receipt), (ii) The second instance is called 'received for Shipment' and (iii) The third instance is when 'Shipment on Board' (SOB) Bill of Lading is issued after receipt of the cargo by the Freight Forwarder/Shipping Line/Agent/Company and not by the CB. Further I find from Para 4.10.6 of the SFIO Investigation Report that Freight Forwarding Companies namely Seamax Logistics Ltd, Transmodal Marine Logistics P Limited, Pentagon Waterlines P limited and United Containers Line India P Limited appeared to issue MTDs/BLs for the export bills for which exports had not taken place. All such export bills were discounted by the banks as stated by the SFIO in their report. However, I find force in the contention of the CB that such Bills of Lading/MTD appeared to be not issued by them. CB's contention that ensuring receipt of the cargo in the warehouse for export and thereafter issuance of any Bill of Lading is the*

responsibility of the Freight Forwarder/Shipping Line/Agent/Company appears to draw support from the aforesaid discussions. The CB has argued that they merely collected the Bills of Lading from the offices of the Freight Forwarders/Shipping Lines/Agents/Lines/Companies like UCL etc. and delivered the same to the addresses as instructed by the exporter. The CB has contended that it was not within their knowledge whether the cargo was received or not in the port warehouse for export; that they acted according to the instructions of ABCCPL as it was not their responsibility to verify whether the Bills of Lading were issued after receipt of the cargo or not and that it was the sole responsibility of the Freight Forwarders/Shipping Lines. Further I also find from the Investigation Report that there appears to be no allegation against the CB for preparing, signing or stamping or fabricating or manipulating the Bills of Lading/MTD in any manner and the same appeared to have been issued by the aforesaid Freight Forwarders/Shipping Lines. I also notice that Mr. Hardik appeared to have not put any stamp of 'Shipment on Board'. Merely collecting and delivering any documents by the CB at the instructions of their clients cannot be termed as an offence and violation of any Regulation under the CBLR, 2018. From the above, it does not appear that if any irregularity was committed by the CB on this count. It has been mentioned in the SFIO Report that Shipping Lines/Agents issued the BLs after verbal confirmation from MrHardik that cargo was received for export. Presuming it to be true, still it appeared to be the responsibility of the concerned Shipping Agency to ensure arrival of the cargo for export in their warehouse/ship/vessel before issuance of the Master/House Bill of Lading/MTD. Though the CB Kotak Multilink Logistics (KML) through his authorised signatory MrHardik Kotak who at the instructions of the ABCCPL appeared to have co-ordinated and arranged the Bills of Lading /MTDs from the aforesaid Freight Forwarders, it appears that the CB cannot be held liable for any act of omission or commission of any other person (Freight Forwarders/Shipping Companies) who issued Bills of Lading/MTD on false assurance of receipt of the Merchandise/Cargo for export in port warehouse."

(c) Para 6.4 of the Order:

"... In this regard, I find on perusal of the SFIO report that Shri Hardik Kotak, authorised signatory of M/s Kotak Multilink Logistix appeared to have been told by Ashish Jobanputra that Banks would give credit facility to him on submission of House BL and check list. I find from the Investigation report of the SFIO that though MrHardik Kotak, authorised signatory of the CB Kotak Multilink Logistix (KML), at the instructions of the ABCCPL appeared to have co-ordinated and arranged the Bills of Lading/MTDs from the aforesaid Freight Forwarders but there appeared to be nothing on record to suggest that KML fabricated or signed any Bill of Lading or forged any other documents for fraudulently obtaining any BLs/MTDs as discussed hereinabove. It appears that it was for the Shipping Agency to issue the Master or House Bills of Lading after

verification of physical exports. It appears that KML worked at the instructions of Ashish Jobanputra of ABCCPL and appeared to have asked the concerned freight forwarders/shipping companies to issue BLs at the behest of the ABCCPL unaware of the mischievous plans of Ashish Jobanputra.

(d) Para 6.4 (i) of the Order.

*"... I find from the SFIO report that the Banks extended credit facility/discounted export bills on the basis of the check list and the MTDs/Bills of Lading. The MTDs/BLs are issued by the Freight Forwarders and Shipping Lines upon receipt of the cargo in port warehouse/ship/vessel for export. The CB cannot issue MTDs/BLs. It appears from the SFIO report that the Banks had extended credit/discounted the export bills based on false/fabricated export documents (check lists and MTDs/BLs were issued without any physical exports). In this regard I find from perusal of Para 4.10.20 of the SFIO report which reveals that "The Guidelines issued by the RBI entrust upon AD banks the onus of complying with the procedure for scrutiny of documents in handling the export documents on collection/negotiation/discount. The main point for clearance of merchandise for export is the signature of customs officials and release of Shipping Bill (SB) for submission to AD Banks with LEO Date along with other documents. The Customs authorities have a portal 'ICEGATE' which indicates the status of the Shipping Bill i.e. whether the concerned SB number or check list number is allowed for export or purged in the computer system. Apart from the above, the bank officials and internal auditors are required to verify the status of the shipping bills at random to check the veracity of the SBs tendered along with the export documents." In this regard, I further find from perusal of Para 4.6.7 that the banks negotiated and discounted the export bills on the basis of check list alone in gross violation of the guidelines as discussed in Para 4.10.20 of the SFIO report above."*

(e) Para 6.4 (ii) of the Order.

*"I also find from the SFIO report that as per the guidelines of the RBI, it was incumbent upon Banks to accept only the Shipping Bills (authenticated by Customs) evidencing physical exports. But it appears from the SFIO report that the banks accepted the check lists and MTDs/Bills of Lading issued by the concerned Freight Forwarders and Shipping Lines without receipt of the cargo in port warehouse/ship/vessel for export. The SFIO report further reveals that Banks did not verify the authenticity of the Shipping Bills despite having access to the customs data of Shipping Bills. Therefore, it also appears from the SFIO report that all such Shipping Bills i.e. export bills for which exports had not taken place, were also discounted by the Banks."*

(f) Para 6.5 of the Order.

*" ..... In this regard, as argued by the CB, it appears to be the banks who failed to adhere to the guidelines while extending credits/discounting export bills to the exporter as enumerated at Para 4.10.20 of the SFIO Investigation Report. The CB submitted that misuse of the check list and the Bills of Lading was not within their knowledge. Therefore, it appears that the CB cannot be held liable for any act of omission or commission of any other person (Freight Forwarders/Shipping Companies/Banks) who issued Bills of Lading/MTD without receipt of the Merchandise/Cargo for export in port warehouse. I also observe from the SFIO report that there appears to be no allegation of any Customs fraud like fraudulent claim of any export incentives or evasion of customs duty or violation of any of the provisions of the Customs Act, 1962. I also find from the copy of the FIR No RC9/(E)/2015 dated 30.10.2015 filed by the CBI that the CB does not appear to have been charged or made co-accused."*

- xvii. That the above findings of the Pr. Commissioner of Customs (G) in her Order No 67/2019 -20 dated 25.11.2019, revoking the suspension of our licence, are binding on the department in further proceedings under the CBLR, 2018 for the same issue and the department cannot take a contrary stand now.
- xviii. They made following submissions on each of the three charges individually:

#### **Article of Charge – I**

- (a) They have always advised all their clients, including Mr Ashish Suresh Jobanputra and his company M/s ABC CotspinPvt Ltd to comply with the provisions of the Customs Act, 1962; other allied Acts and the rules and regulations made thereunder.
- (b) The above Article of Charges fails to bring out as to what should have been advised by them to the client but was not advised under Regulation 10(d). They submitted that the department has merely resorted to Regulation 10(d) without pointing out any lapse on their part. Further, the Article of Charge raised this bald allegation on assumptions and presumptions. They submitted that they are in this profession for more than one decade with unblemished records and the impugned proceedings have adversely affected their business.
- (c) In this regard, they relied upon the ratio of CESTAT Order in the case of M/s Delta Infralogistics (Worldwide) Pvt Ltd Vs C.C. Bangalore, reported in 2019 (11) TMI 621 - CESTAT BANGALORE. Hon'ble CESTAT on the issue of Regulation 10(d) held as under:

*"Further the impugned order says that the appellant has not advised the importer without specifying as to what advice was required to be given by the appellant and the same was not given by the appellant to the importer"*



## Article of Charge – II

- (a) There is no allegation anywhere in the Investigation Report of the SFIO that they have not exercised due diligence as Customs Broker to ascertain the correctness of any information which they have imparted to the client Mr Ashish Suresh Jobanputra and his company M/s ABC Cotspin Pvt Ltd with reference to any work related to clearance of their cargo. Moreover, they were actual exporters of long standing and were well versed with the information relevant to the export & import process. In fact, with the knowledge at their command and meticulous planning, they were able to exploit the banking system to achieve their nefarious goals to defraud the banks.
- (b) In this regard, they relied upon the ratio of Hon'ble Delhi High Court Order in the case of M/s Kunal Travels (Cargo) Vs Commissioner of Customs (Import & General) New Customs House, IGI Airport, New Delhi reported in 2017 (3) TMI 1494 - DELHI HIGH COURT wherein it was held that:

*"Regulation 13(e) of the CHALR 2004 requires the CHA 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. The CHA's due diligence is for information that he may give to its client and not necessarily to do a background check of either the client or of the consignment. Documents prepared or filed by a CHA are on the basis of instructions/documents received from its client/importer/exporter. Furnishing of wrong or incorrect information cannot be attributed to the CHA if it was innocently filed in the belief and faith that its client has furnished correct information and veritable documents. The mis-declaration would be attributable to the client if wrong information were deliberately supplied to the CHA. Hence there could be no guilt, wrong, fault or penalty on the appellant apropos the contents of the shipping bills."*

## Article of Charge – III

There is no allegation anywhere in the Investigation Report of the SFIO that we have not discharged our duties as a Customs Broker with utmost speed & efficiency and without any delay. There was no complaint from the aforesaid client ever about this issue. Neither the Articles of Charges have substantiated this with the help of any cogent and reliable evidence. The Articles have merely raised this bald allegation without any corroboration.

- xix. Therefore, the allegation that they have violated the above three Regulations is vague and remains unsubstantiated.

- xx. That in the SFIO Investigation Report, name of another CHA M/s Harin Transport, registered in Nagpur Customs, was mentioned. In view of the recommendations in Para 5.14 at Page No 278 of the SFIO Report to cancel the licence of CHA namely, inter-alia, Harin Transport, similar proceedings were initiated against them also. However, M/s Harin Transport have been acquitted vide Order No 02/AT/Commr/Cus/2020 dated 25.11.2020 passed by the Commissioner of Customs, Nagpur. In the case of M/s Harin Transport, the Inquiry Officer came to the conclusion that all the three Articles of Charges for contravention of Regulations 10(d), 10(e) and 10(m) of the CBLR, 2018 were not proved as mentioned in Para 6.8 of the Order.
- xxi. That no mens-rea has been alleged against them as a CHA and there is no charge that they have made quick and substantial gains in the process of issuing the check lists.
- xxii. They claimed that they have the following mitigating circumstances in their favour:
- (a) The allegation that they have violated Regulation 10(d), 10(e) and 10(m) of the CBLR, 2018 are vague & un-substantiated as elaborated above and are therefore merely bald allegations.
  - (b) The Pr. Commissioner of Customs has given her findings in her Order No 67/2019-20 dated 25.11.2019 exonerating them of all the allegations made in the Articles of Charges.
  - (c) They have not been arraigned as an accused by the CBI and the DRI in their probe conducted into the affairs of ABCCPL after the SFIO investigation.
  - (d) Another CB M/s Harin Transport, registered in Nagpur Customs, mentioned in the SFIO Investigation Report, has been acquitted wherein the Inquiry Officer came to the conclusion that all the three Articles of Charges for contravention of Regulations 10(d), 10(e) and 10(m) of the CBLR, 2018 were not proved.
  - (e) No mens-rea has been alleged against them and there is no charge that they have made exorbitant money in the process of issuing the check lists.
- xxiii. They, therefore, prayed that all the three Articles of Charges against them in these proceedings may be dropped in toto.
36. Another personal hearing fixed in the matter was held on 06.04.2021 when Mr. Viraj Kotak of KML and Shri Hans Raj Garg, their Consultant, appeared. They stated that they wanted to make further written submissions on the issue of the proceedings being time barred inasmuch as the SCN issued on 19.12.2019 was time barred having been issued after expiry of 90 days from the date of receipt of the Offence Report. KML filed further submissions vide their letter dated 16.04.2021 stating as under:

- i. The present inquiry is being conducted in terms of Regulation 17(2) of the CBLR, 2018 as ordered in Para 27 of the Show Cause Notice No 38/2019-20 CBS dated 19.12.2019 issued to them from File No 5/8 – 20/2019-20 CBS by the Hon'ble Pr Commissioner of Customs (General) New Customs House, Mumbai. The SCN proposes to revoke our CB Licence and also proposes to forfeit their Security Deposit and to impose penalty on them under Regulation 14 read with Regulations 17 & 18 of the CBLR, 2018.
- ii. It appears that the SFIO Investigation Report issued on 17.01.2019, which is the sole basis of the present Inquiry proceedings, was received in the office of the Pr Commissioner of Customs (General), Customs Broker Section, New Customs House, Mumbai on 16/19.07.2019 from JNCH NhavaSheva vide their letter F. No SG/Misc – 50/2019-20/SIIB(X) JNCH dated 10.07.2019. However, the SCN was issued to them only on 19.12.2019.
- iii. They stated that Regulation 17(1) of the CBLR, 2018 provides as under:

*'(1)The Principal Commissioner or Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the license or impose penalty requiring the said Customs Broker to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defence and also to specify in the said statement whether the Customs Broker desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Custom.'*

- iv. Therefore, the CBLR, 2018, under its Regulation 17(1), has prescribed the time limit of 90 days from the receipt of 'Offence Report' for issue of a notice to the Customs Broker stating the grounds on which it is proposed to revoke the license or impose penalty.
- v. In the present case, the SFIO Report is the 'Offence Report' which was received by the Commissionerate on 16/19.07.2019 as mentioned above.
- vi. However, the aforesaid SCN has been issued to them on 19.12.2019 i.e. after two months of the expiry of the period of 90 days from the receipt of the 'Offence Report' as mandatorily prescribed by the above Regulation.
- vii. They stated that the period of 90 days is mandatory & not directory and hence is inviolable as held in catena of cases by various Benches of CESTAT/High Courts, some of which are quoted below and we rely upon ratio of the same to support our contention that the proceedings initiated on account of the said 'Offence Report' are time-barred:

(a) Order dated 25.03.2021 of the Hon'ble Chennai Bench of CESTAT in the case of M/s Seasky Exlm (P) Ltd Vs Commissioner of Customs, Chennai reported in

2021 (3) TMI 1119 - CESTAT CHENNAI wherein it was held in Para 7 of the Order as under:

*".....Further on the issue of limitation, I find that the department has not complied with Regulation 17(1) of CBLR, 2018. As per this Regulation, the Show Cause Notice under CBLR 2018 should be issued within 90 days from the date of receipt of the offence report. In the present case, there is no separate offence report. The Show Cause Notice under section 124 was issued to the appellant on 27.2.2019. The said Show Cause Notice can be considered as an offence report since the department was fully aware with the details of the offence on such date of issuance of Show Cause Notice. When computed from 27.2.2019, Show Cause Notice under CBLR 2018 ought to have been issued within 90 days whereas the department has issued the Show Cause Notice under CBLR only on 21.6.2019. This is well beyond the period prescribed under Regulation 17(1) of CBLR, 2018. The Hon'ble jurisdictional High Court in the cases of M/s. A.M. Ahmed and M/s. Carewell Shipping Pvt. Ltd. cited supra has held that the time limit prescribed in the Regulation is mandatory and the violation would vitiate the proceedings. Following the decisions, I am of the view that the proceedings are vitiated by noncompliance of time limit prescribed in the Regulation. Hence the impugned order cannot sustain. The same is set aside and the appeal is allowed with consequential relief, if any."*

- (b) Order dated 18.03.2021 of Hon'ble Madras High Court in the case of M/s Bhuvan Shipping Services Vs Commissioner of Customs reported in 2021 (4) TMI 24 - MADRAS HIGH COURT - Paras 8 to 10 of the Order refer.
- (c) M/s. KTR Logistics Solutions Pvt. Ltd. Vs The Commissioner of Customs, the Inquiry Officer/Deputy Commissioner of Customs - 2019 (12) TMI 22 - MADRAS HIGH COURT- Paras 31 to 34 of the Order refer.
- (d) M/s. Sabin Logistics Pvt. Ltd., Mr. S. Loganathan Vs Commissioner of Customs Shri Felix Raj - 2019 (4) TMI 1713 - MADRAS HIGH COURT - Para 21 to 23 of the Order refer.
- (e) M/s S. B. Enterprises Vs commissioner of Customs, Chennai - VIII - 2019 (4) TMI 40 - CESTAT CHENNAI - Para No 5 to 7 of the Order refer.
- (f) M/s Carewell Shipping Pvt Ltd Vs Commissioner of Customs & others - 2018 (12) TMI 1160 -MADRAS HIGH COURT - Paras 7 to 13 of the Order refer.
- (g) M/s. Necko Freight Forwarders Ltd. Versus Commissioner of Customs

(General) - 2018 (1) TMI 1185 - DELHI HIGH COURT- Para 18 to 24 of the Order refer.

(h) M/s Santon Shipping Services Vs The Commissioner of Customs, The Customs, Excise And Service Tax Appellate Tribunal - 2017 (10) TMI 621 - MADRAS HIGH COURT- Para 30 to 45 of the Order refer.

(i) M/s. Sowparnika Shipping Services Chennai Vs The Commissioner of Customs, Chennai & The Deputy Commissioner of Customs, Chennai - 2016 (12) TMI 1566 - MADRAS HIGH COURT- Para 15 to 21 of the Order refer.

(j) M/s Overseas Air Cargo Services Vs Commissioner of Customs (General) New Delhi, - 2016 (7) TMI 1060 - DELHI HIGH COURT- Para 15 to 17 of the Order refer.

(k) M/s Impexnet Logistic Vs Commissioner of Customs (General) - 2016 (6) TMI 348 - DELHI HIGH COURT- Para 9 of the Order refers.

(l) M/s Indair Carrier Pvt. Ltd. Versus Commissioner of Customs (General) - 2016 (5) TMI 775 - DELHI HIGH COURT- Para 3 to 10 of the Order refer.

(m) M/s Sunil Dutt Vs Commissioner of Customs (General), New Customs House - 2016 (5) TMI 907 - DELHI HIGH COURT- Para 12 to 15 of the Order refer.

(n) M/s Masterstroke Freight Forwarders Pvt. Ltd, Vs The Commissioner of Customs (Imports), The Inquiry Officer/Assistant Commissioner of Customs - 2015 (12) TMI 1148 - MADRAS HIGH COURT- Para 48 to 58 of the Order refer.

(o) M/s A. H. Ahamed & Co Vs Commissioner of Customs (Imports) - 2014 (9) TMI - MADRAS HIGH COURT - Para 11 to 25 of the Order refer.

viii. Further, they stated that in the recent case of M/s D S Cargo Agency Vs Commissioner of Customs (Airport & General), New Delhi, reported in 2021 (2) TMI 899 - CESTAT NEW DELHI (TM), Hon'ble CESTAT has held in Para 72 of the Order that the time limit prescribed in regulation 17(1) of the 2018 Regulations or Regulation 20(1) of the 2013 Regulations is mandatory in nature. In this case, the issue was decided based on Order of Hon'ble Third Member since there was difference of opinion among the Hon'ble Two Members.

ix. On the issue of time limit prescribed under any statute, Hon'ble Supreme Court has held in the case of Popat Biharu Govardhane and Others Vs Special Land Acquisition Officer & Others, reported in (2013) 10 SCC 765 - as under.

*"16 It is a settled legal proposition that law of limitation may harshly affect a particular party, but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice, but to enforce it giving full effect to the same. The legal maxim 'dura lex sed lex' which means 'the law is hard but it is the law', stands attracted in such a situation. It has consistently been held that, 'inconvenience is not' a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." (See: *The Martin Burn Ltd. v. The Corporation of Calcutta*, AIR 1966 SC 529; and *Rohitas Kumar & Ors. v. Om Prakash Sharma & Ors.*, AIR 2013 SC 30).*

*17 In view of the above, we are of the candid view that none of the submissions advanced on behalf of the appellants is tenable....."*

- x. In view of the above, they added that the SCN is without jurisdiction and is unlawful being vitiated by the delay and therefore, consequently the present inquiry, which emanates from the said SCN, is also vitiated as barred by time.
- xi. Hence, without prejudice to the merits as pleaded in their submissions dated 21.03.2021, the Articles of Charges need to be dropped on the ground that these inquiry proceedings are barred by time as elaborated above.

**Inquiry Report dated 18.05.2021 by Mr. Ashok Kumar (Inquiry Officer)**

37. The Inquiry Officer, Mr. Ashok Kumar, submitted fresh Inquiry Report dated 18.05.2021, wherein, in respect of the alleged violation/charges it was particularly reported that

**1. Article of Charge-I:** Regulation 10 (d) of the CBLR, 2018 states that "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;

- (i) It is not mentioned in the SCN as to what advice the CB was supposed to offer to ABCCPL and AJ. ABCCPL and AJ were old clients of the CB and prior to the fraud committed by them on the Banks were genuine exporters of cotton to China. They were well versed and experienced in the Customs procedure.

- (ii) It is also not forthcoming from the SCN as to whether the CB had given any wrong advice to ABCCPL and/or AJ.
- (iii) Also no evidence of knowledge of collusion of the CB about the misrepresentation by ABCCPL or AJ before the Banks for discounting of the false so-called export documents.
- (iv) Further, no violation of the provisions of the Customs Act, 1962 or any allied Acts by ABCCPL and/or AJ is alleged.

Therefore, the charge of violation of Regulation 10 (d) of the CBLR, 2018, not proved.

**2. Article of Charge-II: Regulation 10(e) of the CBLR, 2018** states that "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;

- (i) The Inquiry Officer in his report submitted that, he did not find anything in the SCN which gives evidence that the CB has failed on this count.
- (ii) The CB prepared the Check Lists on the basis of documents received from ABCCPL/AJ and after preparing, the CB shared the Check Lists with ABCCPL for verification as per normal practice in this regard.
- (iii) Further, in this matter, the CB has issued only Check Lists and no cargo has been handled by them. Therefore, the question of non-exercise of due diligence to ascertain the correctness of any information imparted with reference to any work related to clearance of any cargo does not arise.
- (iv) "Furnishing of wrong or incorrect information cannot be attributed to the CB if it was innocently filed in the belief and faith that its client has furnished correct information and verifiable documents. The mis-declaration would be attributable to the client if wrong information were deliberately supplied to the CB. Hence there could be no guilt, wrong, fault or penalty on the appellant apropos the contents of the shipping bills," as held by Hon'ble Delhi High Court Order in the case of M/s Kunal Travels (Cargo) Vs Commissioner of Customs (Import & General) New Customs House, IGI Airport, New Delhi reported In 2017 (3) TMI 1494 - DELHI HIGH COURT.

Therefore, the charge of violation of Regulation 10(e) of the CBLR, 2018, not proved.

**3. Article of Charge-III: Regulation 10(m) of the CBLR, 2018** states that "-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;

- (i) The Inquiry Officer in his report submitted that there is no evidence marshalled in the SCN to support this charge. There was no complaint from any client of the CB, much less from ABCCPL or AJ to this effect.

Therefore, the charge of violation of Regulation 10(m) of the CBLR, 2018, not proved.

Hence, the Inquiry Officer in his report dated 18.05.2021 held that all of the three charges alleged in the SCN are "Not Proved".

**Disagreement Memo dated 03.09.2021 issued by Principal Commissioner of Customs (Gen), NCH, Mumbai Customs-I**

38. A Disagreement Memo dated 03.09.2021, wherein, the Competent Authority opined that the Inquiry Report dated 18.05.2021 has failed to bring out the facts of non-completion of export for previously issued House BLs/MTDs. Also it is clear that, the CHA, KML, knew the fact that exports have not been taken place for already issued House BLs/MTDs and the exporter was continuously asking for fresh checklist. Strangely it did not raise suspicion in the mind of an experienced Customs House Agent (now Customs Broker).
39. The Competent Authority disagreed with the findings of Inquiry Report dated 18.05.2021 on the following grounds:
- i. From the investigation report it is observed that M/s. ABCCPL (the exporting firm) connived with CHA, M/s. Kotak Multilink Logistix (11/1688), and other CHAs and freight forwarding companies to conceal the facts that the exports of merchandise did not take place at the time of negotiation/availment of bank finance on export bills and presented the documents as if the exports had taken place. By doing so, M/s. ABCCPL induced the banks to grant advance against the export bills by negotiation/discount (crediting of funds into the account) and committed the act of "Cheating". I also find that, as per statements of Shri Hardik Shah, the CHA, and authorised signatory of M/s. Kotak Multilink Logistix, dated 11.07.2016 and 27.07.2018, it is clear that M/s. KML used to get the invoice from the ABCCPL by e-mail. Accordingly, they used to prepare the checklist and make the entry of this checklist on the "ICEGATE" portal of Customs Department to get the shipping bill number. Then, ABCCPL used to contact him for getting the Bill of Lading for the checklist handed over to them. KML used to prepare the BL (first print) and check with ABCCPL that all were fine, then this was forwarded to United Containers Lines (UCL) for preparation of House BL /MTD. Mr. Hardik used to change the name of the consignee and issue fresh checklist against the same invoice.
  - ii. It is also accepted by Mr. Hardik Kotak that the checklist was handed over to ABCCPL before making the entry in Customs Portal. It is also accepted that the House BLs were issued by United Containers Lines (UCL) containing the words "cargo received for shipment" without actually receiving the cargo. The data of shipping bill numbers given at the time of discount of export bills to the banks and the data of shipping bill numbers obtained from Customs in respect of many export consignments / invoices were completely different and this proved that the



exports were not taking place as per the documents given to banks (Bill of lading giving the details of shipping bill numbers and date of shipment).

- iii. It has been mentioned in the Inquiry report that, it is not forthcoming from the SCN as to whether the CHA, KML, had given any wrong advice to ABCCPL and/or Mr. Ashish Jobanputra and also as to what advice the CHA, KML, was supposed to offer to ABCCPL and AJ. It is also mentioned in the Inquiry report that, ABCCPL and Mr. Ashish Jobanputra were old clients of the CHA, KML, and prior to the fraud committed by them on the Banks were genuine exporters of cotton to China.

40. The Competent Authority dis-agreed with the finding of the inquiry report that the CHA has fulfilled the obligation of regulation 10(d) of CBLR, 2018. He found that, the CHA, M/s Kotak Multilink Logistix, failed to advise his client for filing of Shipping Bill for the checklists they have generated despite knowing the fact that of non-completion of exports for previously issued House BLs/MTD, they continued to issue checklists and House Bill of Ladings for fresh /further invoices. The CB cannot delink or distance himself from this attempted undue availment of export credits/discounting of export bills from the obligations cast upon him under the Regulations under which he is required to function. On the basis of above facts, I find that the CB neither advised his client nor the matter was brought to the notice of Dy./Assistant Commissioner of Customs and thus have failed to advise his client(ABCCPL) thereby failing to fulfill the obligation of regulation 10(d) of CBLR, 2018.

41. He noted that it is a recorded fact that, the CHA failed to verify the credentials of his client; that the CHA neither restricted the Freight Forwarder or the exporter for wrong doing nor informed the department about the misuse of checklists, House BL/MTDS. Further it is observed that the Customs Broker instead of exercising due diligence, colluded with and aided M/s. ABCCPL to misrepresent before banks for obtaining credit facilities. The CHA clearly, knowingly aided and abetted the offence and facilitated the same through deliberate layering of intermediaries as he was part of the gang of the fraudsters. It is clearly evident that the CHA deliberately processed the Checklist without exercising due diligence to ascertain the correctness of the information and impart the same to the exporter. Despite knowing this fact, they neither took any corrective measures nor exercised any restraint on issuance of Checklist and the related House BL/MTD after noticing the frequent delays in shipments during the later part of 2012-13 and throughout the financial year in 2013-14. Their active involvement is established by the fact that this was not a onetime act but done frequently from later part of 2012-13 onwards. Thus, it is clear that the CB has deliberately not carried out obligation cast on him so as to feign innocence later. Hence, he concluded that the CB has intentionally violated the provisions of Regulation 10(e) of CBLR, 2018.

42. In respect of violation of Regulation 10 (m) of the CBLR, 2018, he observed that, the CHA contended that they were not aware that a Checklist would be used for discounting of export bills with banks as they had neither such advance knowledge of modus operandi of M/s ABCCPL nor they had been accused of the same. The CHA further contended that their role was limited to generating checklists and

examination of cargo if arrived at the port of shipment. The submissions of the CHA does not appear to be sustainable. The Freight Forwarders and CB indulged in illegal practice of issuance of House BLs/MTDs without receipt of merchandise. They were fully aware of the use of the documents generated by them for discounting of the export bills with the banks by ABCCPL and that the checklist generated on the basis of invoice and packing list gets purged in system after 15 days as per the prevailing guidelines, if the exports are not made by the exporters and on expiry of such shipping bill number a fresh shipping bill number has to be filed. The CHA, M/s. Kotak Multilink Logistix (CB License No.11/1688), indulged in practice of issuing checklists and continued this practice despite knowing the fact that actual exports were not happening. They never verified the non-completion of exports for previously issued House BLs/MTDs, rather, they continued to issue checklists for fresh invoices. The CHA never sought return of House BLs/MTDs from ABCCPL to prevent misuse by them. The BLs for exports which never happened were wrongly stamped as "Shipped on Board". Further, it is observed that, had the CHA asked for return of BLs/MTDs issued on the basis of checklists generated by them, further misuse of checklists and wrongly stamped BLs could be stopped. Therefore, this act on the part of CHA proved to be far from being efficient as the CHA failed to use requisite knowledge and skill in the instant case to be a reliable CHA under the Regulations. Thus, the Competent Authority, disagreed with the findings in the Inquiry Report dated 18.05.2021 that the CHA has fulfilled the obligation of regulation 10(m) of CBLR, 2018.

43. From the foregoing discussion, the Competent Authority concluded that there appears to be failure on the part of CHA in discharging the obligations cast upon them under Regulation 10(d), 10 (e), and 10(m) of CBLR, 2018.
44. Another hearing was granted and held on 07.10.2021 after intimating the CHA, KML, of the Inquiry Report dated 18.05.2021 and Disagreement Memo dated 03.09.2021. Mr. H.R. Garg and Mr. Viraj Kotak represented the CHA and submitted that
  - i. This is a peculiar case wherein SCN was issued to the CHA basing on the investigation conducted by SFO. The main allegation against them is that they had issued checklist and facilitated bank fraud. The investigation was started by SFO, CBI and other agencies in 2016 and only peripheral investigation was conducted. The SFO did not specifically mentioned the number of checklists issued by each of the CHAs for which the goods were not exported and in their case only in respect of 19 checklists the export goods were not received after issuance of checklist. This was also for the reason that the exporter informed them that after generating the checklists, the goods were being exported from Mundra Port.
  - ii. They submitted that issuance of Checklist is a weak procedural aspect and the checklist was issued by the CHA using his own software.
  - iii. They referred to their above mentioned written submissions.

- iv. To a very specific question as to why such an activity did not arouse any suspicion, they replied that this was due to load of work and also as such things happen in the normal course of trade transactions in export of goods.
- v. There was no connivance on their part with the exporter and they have not received any extra consideration from them.
- vi. They finally requested to not to revoke their license and to take lenient view in the issue and drop all the charges against them.

### **Discussion and Findings**

45. I have gone through the above facts of the case, material on record, Inquiry Report, oral and written submissions made by the CHA (now Customs Broker (CB)) and examined the role and conduct of CHA in the instant case before me.

46. I find that the investigation conducted by SFIO, inter-alia, revealed that

- i. M/s. ABCCPL (the exporting firm) connived with CHA, M/s. Kotak Multilink Logistix (11/1688), and other CHAs and freight forwarding companies to conceal the facts that the exports of merchandise did not take place at the time of negotiation/availment of bank finance on export bills and presented the documents as if the exports had taken place. By doing so, M/s. ABCCPL induced the banks to grant advance against the export bills by negotiation/discount (crediting of funds into the account) and committed the act of "Cheating".
- ii. As per statements of Shri Hardik Shah, the CHA, and authorised signatory of M/s. Kotak Multilink Logistix, dated 11.07.2016 and 27.07.2018, it is clear that M/s. KML used to get the invoice from the ABCCPL by e-mail. Accordingly, they used to prepare the checklist and make the entry of this checklist on the "ICEGATE" portal of Customs Department to get the shipping bill number. Then, ABCCPL used to contact him for getting the Bill of Lading for the checklist handed over to them. KML used to prepare the BL (first print) and check with ABCCPL that all were fine, then this was forwarded to United Containers Lines (UCL) for preparation of House BL /MTD. Mr. Hardik used to change the name of the consignee and issue fresh checklist against the same invoice. It is also accepted by Mr. Hardik Kotak that the checklist was handed over to ABCCPL before making the entry in Customs Portal. It is also accepted that the House BLs were issued by United Containers Lines (UCL) containing the words "cargo received for shipment" without actually receiving the cargo. The data of shipping bill numbers given at the time of discount of export bills to the banks and the data of shipping bill numbers obtained from Customs in respect of many export consignments / invoices were completely different and this proved that the exports were not taking place as per the documents given to banks (Bill of lading giving the details of shipping bill numbers and date of shipment).
- iii. In his statements, Mr. Hardik, the CHA and authorised signatory of M/s. Kotak Multilink Logistix also stated that Mr. AJ told him that on submission of House BLs and checklists given by them, AJ would get money from the bank. Therefore, the

CHA had full knowledge that AJ/ABCCPL was availing bank finance through negotiation of export bills against the submission of the Checklists and House BLs/MTDs arranged by them. Despite having this full knowledge of wrongful availment of bank finance/credit, they continued issuing checklists based on the fresh invoices of ABCCPL. They even continued, blatantly, issuing fresh checklists when in November/December, 2014 the shipments for which Checklists/BLs were issued as far back as May/June 2014 were still pending (not completed even after expiry of six months).

47. The CB had placed reliance on a list of judgements, however, the ratio of those judgements are not relevant in the instant case. In the instant case, it is evident from above facts that the CHA/CB was very much aware of the false/fabricated nature of the documents viz. Checklists, House BLs/MTDs provided by/through them to the Exporter and the wrongful availment of credit by the Exporter (AJ/ABCCPL) from the banks using the Checklists, House BLs/MTDs provided by/through them. Therefore, it is a case of deliberate failure and in-fact connivance of the CB with the Exporter. Hence judgements cited by the CHA/CB in their support are not applicable in the instant case in spirit and in rem.

48. The CHA vide its submissions stated that the SCN issued on 19.12.2019 was time barred as it was not issued within a period of 90 days from the issuance of the SFO Investigation Report. In this matter, the ratio of the Hon'ble High Court of Judicature at Bombay in the case of Principal Commissioner of Customs (General), Mumbai Vs Unison Clearing Pvt. Ltd. reported in 2018 (361) E.L.T. 321 (Bom.) is fairly applicable. It which stipulates that:

*...15. In view of the aforesaid discussion, the timelimit contained in Regulation 20 cannot be construed to be mandatory and is held to be directory.*

I rely on the above cited judgement and hold that the timelines stipulated under the CBLR, 2018 are directory rather than mandatory in the instant case and therefore, the SCN dated 19.12.2019 and the charges alleged in the said SCN are tenable in-terms of the time limits.

49. I now examine the charges alleged in the above mentioned SCN sequentially:

- i. I find that the CHA, M/s Kotak Multilink Logistix, failed to advise his client for filing of Shipping Bill for the checklists they have generated and complete their export obligations. They, instead, continued to issue checklists and House Bill of Ladings for fresh/further invoices despite knowing the fact that exports for previously issued House BLs/MTD was still pending. Further, the BLs for exports provided to the Exporter by the CHA were stamped as "Shipped on Board" even though corresponding the exports did not happen. The CHA again failed to advise its client on this non-compliance/wrongful act and did not bring the matter department.

I rely on the case law, M/s. Eagle Transport Services Vs. Commissioner of Customs Mumbai reported in 1997 (096) E.L.T. 0469 (Tri-Bom), as under:

*'A Custom House Agent has a significant role to play in the clearance of goods through Customs and Port Trust. Such clearance involves application of either specialised laws and detailed procedures often conduct complexed. It is not possible for every layman to have the requisite knowledge and the time to personally undertake such clearances. It is for this reason that Custom House Agents have been licensed. The Regulations of 1984 provide for stringent conditions to be fulfilled before a person is appointed as licensee. The applicant must be financially sound. He must have experience of clearance through Customs. Before he is granted permanent licence he has to qualify an examination in which his knowledge of relevant procedures is vested. Regulation 14 places various obligations on a Custom House Agent. The object of these to ensure that the Custom House Agent acts honestly and efficiently in the conduct of his business. It is not difficult to foresee the consequences that would arise if the Custom House Agent does not co-act in such a manner. The Custom House Agent makes various representations before the Custom House on behalf of the importer and exporter relating to the nature of the goods conditions under which they were imported their value etc. The statements that he makes and the information that he provide are crucial for assessing the goods to duty and deciding whether the import is prohibited or not. The Custom House Agent thus can the status of a professionally qualified person akin to an advocate, Chartered Accountant or number of other professions which requires a minimum standards of knowledge for minimum standards of conduct. If the Custom House Agent acts negligently or dishonestly, the Custom House can be defrauded money due to the Government, and in good faith permit import or export of prohibited goods. The damage done to innocent importers by misleading their documents for such purposes by Custom House Agent would be enormous'. [ Para 7]*

In view of the aforesaid case law, it is clear that the clearance of goods involves application of specialized laws and detailed procedures; that for this reason that Custom Broker have been licensed. Therefore, having the full knowledge of false/fabricated documents provided by them to the Exporter and wrongful availment of export credits/discounting from Banks by the Exporter (AJ/ABCCPL), the CB cannot delink or distance himself from the obligations under Regulations to advise his client to work within the purview of the law and to bring the matter to the notice of Dy./Asst. Commissioner of Customs of such wrongful act committed by its client. On the basis of above facts, I find that the CB has failed to advise his client thereby failing to fulfill the obligation of regulation 10(d) of CBLR, 2018.

- ii. I note that it is a recorded fact that, the CHA failed to verify the credentials of his client; that the CHA neither restricted the Freight Forwarder or the exporter for wrong doing nor informed the department about the misuse of checklists, House BLs/MTDS. Further, it is observed that the Customs Broker instead of exercising due diligence, colluded with and aided M/s. ABCCPL to misrepresent before banks for obtaining credit facilities. The CHA clearly, knowingly aided and abetted the offence and facilitated the same through deliberate layering of intermediaries as he was part of the gang of the fraudsters. It is clearly evident that the CHA deliberately processed the Checklist without exercising due diligence to ascertain the correctness

of the information and impart the same to the exporter. Despite knowing this fact, they neither took any corrective measures nor exercised any restraint on issuance of Checklist and the related House BL/MTD after noticing the frequent delays in shipments during the later part of 2012-13 and throughout the financial year in 2013-14. Their active involvement is established by the fact that this was not a onetime act but done frequently from later part of 2012-13 onwards. Thus, it is clear that the CB has deliberately not carried out obligation cast on him so as to feign innocence later. Hence, he concluded that the CB has intentionally violated the provisions of Regulation 10(e) of CBLR, 2018.

- iii. I observe that the CHA contended in their submissions that they were not aware that a Checklist would be used for discounting of export bills with banks as they had neither such advance knowledge of modus operandi of ABCCPL nor they had been accused of the same. The CHA further contended that their role was limited to generating checklists and examination of cargo if arrived at the port of shipment. The submissions of the CHA does not appear to be sustainable. The Freight Forwarders and CB indulged in illegal practice of issuance of House BLs/MTDs without receipt of merchandise. As per the statements of Mr. Hardik (CHA and the Authorised Signatory of the CHA), they were fully aware of the use of the documents generated by them for discounting of the export bills with the banks by AJ/ABCCPL. Further, they were also aware that the checklist generated on the basis of invoice and packing list gets purged in system after 15 days, as per the prevailing guidelines, if the exports are not made by the exporters and on expiry of such shipping bill number a fresh shipping bill number has to be filed. The CHA, M/s. Kotak Multilink Logistix, indulged in practice of issuing checklists and continued this practice despite knowing the fact that actual exports were not happening. They never verified the non-completion of exports for previously issued House BLs/MTDs, rather, they continued to issue checklists for fresh invoices. The CHA never sought return of House BLs/MTDs from ABCCPL to prevent misuse by them. The BLs for exports which never happened were wrongly stamped as "Shipped on Board". Further, it is observed that, had the CHA asked for return of BLs/MTDs issued on the basis of checklists generated by them, further misuse of checklists and wrongly stamped BLs could be stopped. Therefore, this act on the part of CHA proved to be far from being efficient as the CHA failed to use requisite knowledge and skill in the instant case to be a reliable CHA under the Regulations. Therefore, I find that the CB has failed to fulfil its obligation under Regulation 10(m) of CBLR, 2018.

50. 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 fairly 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 advise 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:

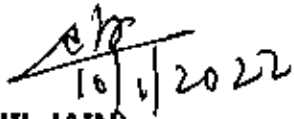
*“A Custom Broker occupies a very important position in the customs House and was supposed to safeguard the interests of both the importers and the Customs department. A lot of trust is kept in CB by the Government Agencies and to ensure made under CBLR, 2013 and therefore rendered themselves liable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

I rely on the above cited judgements and hold that in the instant case, CHA/CB, M/s. Kotak Multilink Logistix (CB No. 11/1688) has advertently violated the trust and obligations required to be carried by them in terms of the Regulations made under CBLR, 2018 and therefore rendered themselves liable for penal action under CBLR, 2018. Accordingly, I am inclined to revoke the CB Licence and pass the following order.

#### **ORDER**

1. I, Principal Commissioner of Customs (General), In exercise of the power conferred upon me under Regulation 20(7), of the CBLR, 2013 [Now Regulation 17(7) of the CBLR, 2018], pass the following order:
  - a. I hereby impose penalty of Rs. 50,000/- ( Rupees Fifty Thousand only) on CB, M/s. Kotak Multilink Logistix (CB License No. 11/1688; PAN- APDPK3682A), under Regulation 22 of the CBLR, 2013 (now Regulation 18 of the CBLR, 2018).
  - b. I hereby order for forfeiture of entire amount of security deposit furnished by the CB, under Regulation 18 of the CBLR, 2013 (now Regulation 14 of the CBLR, 2018).
  - c. The CB License No.11/1688 is ordered to be revoked under Regulation 18 of the CBLR, 2013 (now Regulation 14 of CBLR, 2018).
  - d. The CB directed to surrender the original License as well as all the 'F', 'G' & 'H' cards issued thereunder immediately.

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

  
10/1/2022  
(SUNIL JAIN)

Principal Commissioner of Customs (Gen)  
New Custom House  
Mumbai Customs Zone-I.

**To**

M/s. Kotak Multilink Logistix  
715, B-Wing, Damji Shamji Corporate Square  
Behind Everest Gardens, Opp. Kanara Business Centre  
Laxmi Nagar, Ghatkopar (East), Mumbai-400 077.

**Copy to:**

1. Serious Fraud Investigation Office, Ministry of Corporate Affairs, New Delhi.
2. The Chief Commissioner of Customs, Mumbai Customs Zone-I, II & III.
3. Commissioner of Customs (Gen), JNCH, Mumbai Customs Zone-II.
4. CIUs of Mumbai Customs Zone-I, II & III.
5. EDIs of Mumbai Customs Zone-I, II & III.
6. Notice Board
7. Office Copy.