



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/361/2022 -CBS Pt-1

आदेश दिनांक/Date of Order: 14 .03.2024

CAO No. 83/CAC/PCC(G)/SJ/CBS-Adj

जारी दिनांक/Date of issue: 14.03.2024

संख्या:

DIN : 20240379OC0000222902

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 क्षेत्रीय खंडपीठ, 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 तदोत्त खंडपीठ 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 ब्याजवलाए 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 Merchant & Sons, (PAN- AAEFM0675K), having address registered at Sagar Classic, 703, Clare Road, Byculla, Mumbai- 400 008 (hereinafter referred as the Customs Broker/CB) holder of CB License No 11/678, issued by the Commissioner of Customs, Mumbai under regulations of CHALR, 1984, [now Regulation 7(2) of CBLR, 2018] and as such they are bound by the regulations and conditions stipulated therein.

2. On the basis of specific information received by DRI, MZU, investigation was conducted, which revealed that various export firm including M/s Fashion Fab were procuring fake purchase bills against the export consignments from one Mr. Suhel Ansari, through fake firms floated by him.
3. An offence report in the form of SCN No. 33/Commr/ADJ(X)/2022 issued by Commissioner of Customs, Export, ACC was received wherein it was mentioned that many exporters including M/s Fashion Fab were procuring fake purchase bills from the said Mr Suhel Ansari. Searches were conducted at the premises of Suhel Ansari on 14.08.2015, which led to recovery of certain records/documents, three laptops, one hard disk and various rubber stamps along-with copies of bogus bills in the names of several companies issued by him.
4. During the course of investigation, statement of Shri Suhel Parvez Ansari and Shri Shaikh Mohammed Arshad employee of Shri Suhel Parvez Ansari was recorded on 24.08.2015 by DRI, Mumbai where inter-alia they stated that they supplied fake invoices to many export firms including M/s Fashion Fab.
5. DRI, MZU forwarded the case to SIIB(X)/ACC for carrying out further investigation wherein exporters including M/s Ocean International who have claimed undue drawback by overvaluing the exports and to justify the over-value of the goods, they procured fake invoices from Shri Suhel Ansari.
6. During the course of investigation by SIIB(X), statement of Shri Nuvaidd Merchant, partner of CB firm M/s Merchant & Sons (11/678) was recorded on 16.12.2021 wherein he inter-alia stated that:
 - a) He was looking after operations of the CB including customs clearance work and Mr. Mohamed Jaffer, proprietor of firm M/s. Fashion Fab approached personally to assist in the clearance of his exports.
 - b) Before accepting the custom clearing work of the exporter, they had taken all the necessary KYC documents & verified the address of the exporter M/s. Fashion Fab as mentioned in IEC.

- c) They do not know the exact address of the exporter's warehouse, the exporter directly forwarded the goods to the Air Cargo Complex.
- d) They had no idea from where the exporter had procured the said goods.
- e) The exporter used to provide them the required documents by hand on their office address & after scrutiny of the said documents, the staff of the CB firm used to prepare the checklist and the shipping bills were filed on ICEGATE after approval of the exporter.
- f) On being asked about the value of the goods, he stated that they only verified the RITC and did not verify the item & value declared by the exporter.

7. Further, Summons dated 05.10.2017, 05.05.2018, 17.11.2018, 15.01.2019 & 24.01.2022 were issued to Mr. Mohamed Jaffer, proprietor of firm M/s. Fashion Fab but every time the exporter made excuses and did not turn up for the statement and vide letter dated 22.02.2022 submitted copies of unattested statement of Bank Realisation from DGFT.

Address of the said exporter was verified by SIIB (X) and it was found that one Mr. Altamash Khan was running a shop in that address who informed that Mohamed Jaffer is the owner of the shop and he has shifted to Dubai with his family. A fresh summon dated 04.03.2022 was issued on the name of the exporter and handed over to Mr. Altamash. In response of the summon, the exporter Mr Mohamed Jaffer submitted a letter dated 05.03.2022 vide which he informed that he was in Dubai with connection to his business and unable to appear against the summons issued to him. Further, he stated that his presence may be waived of and requested to conclude the investigation on the basis of documentary evidence available on record.

8. The details of exports made by the exporter M/s Fashion Fab, were retrieved from the ICES System. During the period from 2012 to 2016, the exporter made total exports of 25 shipping bills & all the said 25 Shipping Bills were cleared by CB M/s Merchant & Sons (CB No. 11/678). As stated in the Offence Report, whereas the FOB amount of Rs 1.96 Cr was not realised against these 25 shipping bills while the drawback amount of Rs. 17.18 Lacs had already been disbursed to the exporter.

9. During investigation, DRI enquired with the Consulate General of India, Dubai, UAE who vide letter dated 08.03.2018 reported that from the scrutiny of the documents provided by Federal Customs Authority, Dubai it emerged that goods had been cleared and unit values had been much lower than what has

been declared to Indian Customs. As per DRI the instant exporter i.e. M/s Fashion Fab has also adopted the similar modus operandi.

10. During investigation, statement dated 01.07.2016 of Shri Suryabhan Eknath Dhurphate, Proprietor of M/s. Sanket Overseas, Navi Mumbai, was recorded before the DRI, MZU, who was logistics provider and was involved in clearing the consignments through CHA, M/s. Indo Foreign Agents.

From the perusal of his statement, it was disclosed that usually the cost and expenses incurred on the export material was only around 35% of the drawback amount. He also stated that the benefits availed by them and the exporter was to the extent of 65%. This was the modus operandi which was adopted by all such exporters including this exporter, who were exporting the goods on the basis of fake supplier's invoice.

11. Further from the investigation, it appears that goods were procured from Domestic Tariff Area (DTA) without any invoices so no details of its manufacturing, production, using imported material or excisable material therein were available hence it could not be ascertained, whether any duties have been paid or otherwise.

During investigation, exporter could not produce any such details in respect of manufacturing, production or use of any imported material in the impugned export goods, though he was having enough opportunity as he presented himself for recording of his statement but he failed to produce any such details. Therefore, it appears from investigation that necessary ingredient of second proviso to Rule 3(1) Drawback Rule, 1995 is attracted in this case, which does not permit any amount of drawback in such cases where no duty has been paid.

"Rule 3. Drawback - (1) Subject to provisions of- Provided further that no drawback shall be allowed: -

(ii) if the said goods are produced or manufactured, using imported materials or excisable materials in respect of which duties have not been paid."

12. From investigation, it appears that the exporter M/s Fashion Fab procured invoices from Mr. Suhel Ansari, the mastermind in creating the fake companies, to issue bogus invoices from his firms & that the impugned goods have been purchased from somewhere else and not from the supplier shown on the fake invoices.

Further, it appears from the investigation that the goods were exported and purchased from local market without actual invoices and the exporter used

fake bills for the said goods to show that the said goods were covered under fake invoices.

13. On perusal of the Offence Report, it appeared that:

a) The CB did not advise the exporter about the Drawback Rules and abetted the exporter by declaring incorrect value of the goods in shipping bills against the fake invoices to avail undue drawback. Further, it is unlikely that the CB has been receiving the goods based on fictitious bills and the CB was unaware, thus appears that the CB was actively involved in this commercial fraud case to defraud the govt. exchequer. and did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. **Thus, the CB appears to have violated Regulation 10(d) of CBLR, 2018.**

b) The CB failed to exercise due diligence and aided the exporter in availing undue drawback by overvaluing the exports, whereas cheaper material was exported, and to justify the value of the goods, fake invoices from Suhel Ansari were procured showing higher purchase price. On scrutiny of the subject case, it appears that CB did not exercise due diligence and did not impart the information relating to Drawback Rules. **Thus, the CB appears to have violated Regulation 10(e) of CBLR, 2018.**

c) The CB did not inform the exporter about the instructions, circulars and public notice regarding the claiming of drawback. It was the responsibility of CB to ensure that exporter declares the name and complete address of the traders from whom goods has been purchased in order to claim Drawback. It appeared that CB did not advise the exporter to comply with Rule 3, Rule 16 and Rule 16A of Drawback Rules, 1995 and abetted the exporter by declaring incorrect value of the goods in shipping bills against fake invoices to avail undue drawback. **Thus, the CB appears to have violated Regulation 10(f) of CBLR, 2018.**

14. 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) 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 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;"

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;"

15. Suspension/Revocation of the License:

The license of the CB firm M/s. Merchant & Sons (11/678) was already suspended since 21.02.2022 in compliance to the CBIC Notification No. 62/2021 dated 23.07.2021, Para 9.2, vide which the licenses which were inactive for one year were made inoperative by system.

Further, in pursuance of the offence report received in the said matter, the CB license no. 11/678 was deemed suspended vide Order No. 85/2022-23 dated 09.03.2023 in contravention of Regulations 10(d), 10(e), & 10(f) of CBLR, 2018.

After giving the PH opportunity to the CB firm, the Suspension of the CB license was continued vide Order No 03/2023-24 dated 20.04.2023 as per Regulation 16(2) of the CBLR, 2018.

16. Show Cause Notice:

Inquiry Proceedings were initiated against CB M/s. Merchant & Sons (CB No.11/678) vide Show Cause Notice No.08/2023-24 dated 10.05.2023 issued under Regulation 17 of CBLR 2018 and vide the said notice, CB M/s. Merchant & Sons (CB No.11/678) were called upon to show cause as to why the licence bearing no. 11/678 issued to them should not be revoked and security deposited should not be forfeited and/or penalty should not be imposed upon them under Regulation 14 read with 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018, as elaborated in the Show Cause Notice.

Further, they were directed to appear for a personal hearing and to produce proof of evidence/documents if any, in their defence to Shri V.S. Teotia, Asst. Commissioner of Customs who was appointed an inquiry officer to conduct inquiry proceedings under regulation 17 of CBLR, 2018.

17. INQUIRY REPORT:

Inquiry officer submitted his report dated 12.12.2023 wherein the charges against the said CB M/s Merchant & Sons in respect of violation of Regulation 10(d), 10(e), & 10(f) of CBLR, 2018 were held as "Proved".

17.1 Details of Personal Hearing:

In the report, Inquiry officer has stated that in compliance of the SCN No. 10/2023-24 dtd 10.05.2023, the said CB firm was directed to appear for hearing & submit the evidences/documents in their defence on 21.07.2023 but neither CB nor their representative appeared for the PH. The CB firm was again directed to appear for PH on 09.08.2023 & 04.09.2023. On both the occasion, the CB failed to appear for PH and also failed to submit evidences/document in his defence.

Since the CB firm failed to appear in any of the three hearings & did not submit any written representation either, the matter was decided ex-parte without further delay.

17.2 Comments of the Inquiry Officer:

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

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

In his report, IO submitted that since the CB didn't appear for PH, based on the material evidence on record, the IO observed that the CB failed to advise the exporter and abetted the exporter by declaring incorrect value of the goods in the SBs against the fake invoices to avail undue drawback.

Further, the CB never verified the genuineness of the invoices, bills & value declared by the exporter indicating that the CB was actively involved in this commercial fraud to defraud the government exchequer.

Inquiry officer concluded that the CB violated the regulation 10(d) of CBLR, 2018 by abetting the exporter and not bringing the matter to the notice of the Dy. Commissioner of Customs. Accordingly, **the Inquiry Officer held the charges as "Proved".**

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

As per Regulation 10(e) of CBLR, 2018- "*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*"

Inquiry Officer submitted that the CB failed to exercise due diligence as the goods were offloaded at Air Cargo Complex and the CB attended all the customs clearance work. Whenever required, the exporter showed them the sample of the goods still they did not notice any over-valuation of the goods as the goods of cheaper material were exported.

The Inquiry Officer further stated that the exporter knowingly and deliberately submitted bogus invoice CB used to prepared invoices, which proves that the CB is actively involved in the said fraud and aided the exporter for availing the undue drawback by the exporters by overvaluing the exports and to justify the higher purchase price/value of the goods, fake invoices were procured from Suhel Ansari. Accordingly, **the Inquiry Officer held the charges as "Proved."**

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

As per Regulation 10(f) of CBLR, 2018- "*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;*"

Inquiry Officer submitted that it is the responsibility of the CB to inform the exporter about the instructions and public notice regarding the claiming of drawback as per Drawback Rules. But in the given case the exporter exported inferior quality goods by producing fake bills and invoices and the CB has abetted the exporter by declaring the incorrect value of the goods in shipping bills against the fake invoices to avail undue drawback. Thus, CB has failed to provide complete information to the exporter regarding instructions and public notice for the claiming of drawback as per Drawback Rules & has violated the provisions of the Regulation 10(f). Accordingly, **the Inquiry Officer held the charges as "Proved."**

18. Submission of the CB & Records of the Hearing:

In pursuance to suspension order no. 83/2022-23 dated 09.03.2023, CB M/s. Merchant & Sons submitted their written submission vide letter dated 25.01.2024 and Mr. N.D. George, advocate appeared on behalf of CB for Personal hearing on 25.01.2024 and gave following submissions: -

- i. The license bearing No. 11/678 was suspended vide order No. 85/2022-23 dated 09.03.2023 on the basis of investigation carried out by DRI/MZU, Mumbai and SIIB(X), ACC, into the exports made by M/s. Ocean International.
- ii. Statement of the CB was also recorded wherein he inter-alia stated that the staff member completed the KYC formalities before accepting the customs clearance work and they used to prepare the check list and upload it in the system for generating for Shipping Bills. Further, the exporter himself prepares all the required documents such as invoice, packing list etc; that they never printed any export documents in their office.
- iii. The exporter filed 25 Shipping Bills out of which drawback has been disbursed & the drawback amount has been claimed by the exporter for which the CB is not liable.
- iv. Shipping Bills are filed on the basis of documents given by the exporter & the said Shipping Bills were processed, goods were examined and LEO were granted so the value declared has been accepted by the department & inquiry has been conducted purely on the basis of assumptions and presumptions.
- v. The SCN is barred by limitation as the Shipping Bills pertains to the year 2012 to 2016 and the SCN has been issued on 10.05.2023, which is after period of 8 years. Therefore, the said SCN is not maintainable and liable to be withdrawn. In this Context, the CB rely on the judgment of the Hon'ble High Court in the case of the Principal Commissioner of Customs (General) versus Mehul & Co reported in 2022 (5) TMI 30 - Bombay High Court.
- vi. The investigations by DRI with the Consulate General of India, Dubai, UAE cannot be relied upon as the department has not furnished a copy of the letter received from the Indian Consulate, Dubai. Further, the exports pertain to Garments to African Countries.
- vii. The CB denied the IO report wherein it has been stated that they did not attend the Hearing as the CB was out of station and the office is non-operational as the license has been suspended.
- viii. The CB denies all the charges levelled against their firm and submitted that their firm has not violated the regulations mentioned as 10(d), 10(e) & 10(f) of CBLR, 2018. In so far as the charge of violation of regulations 10(d), 10(e) & 10(f) of CBLR, 2018 is concerned, the CB submitted following submissions.

- a) The CB submitted that Shipping Bills were filed as per the documents given by the exporter. The said documents are whether genuine or fake cannot be decided by the CB. Further, the document given by the exporter is deemed to be correct and genuine as the same has been accepted by the officers of the department. The CB's are not experts to identify whether the documents are genuine or not. Further, the statements are exculpatory in nature and there is no material evidence against the CB. Therefore, the charge under Regulation 10(d) of CBLR, 2018 fails.
 - b) The CB submitted that the documents were given by the exporter and after due verification & compliance of KYC the Shipping Bill was filed and the Shipping Bills were duly assessed by the assessing officer and thereafter LEO were granted. Therefore, there is no case of over valuation and the CB seek to cross examine the officers who have examined the goods before grant of LEO therefore, the charge of over-valuation and charge under Regulation 10(e) does not survive and merits to be withdrawn.
 - c) The CB submitted that they fail to understand how the CB was responsible for informing the exporter about the instructions and public notice regarding claiming of drawback. Therefore, the question of abetting the exporter does not survive as the SCN itself records that the CB was unaware of the fictitious bills. Therefore, the SCN merits to be withdrawn as the charge under regulation 10(f) doesn't survive.
- ix. The CB firm M/s Merchant & Sons seeks cross examination of Shri. Mansurali liyakatali Khan, Shri. Suryabhan Eknath Dhurphate and the Customs officers who assessed the Shipping Bills in this regard. We crave leave to file further reply after the cross examination and receipt of the relied upon documents
 - x. The CB submitted that in the circumstances, the SCN is unsustainable in law and the CB is liable to be discharged from the charges levelled against their firm under regulation of 10(d), 10(e) & 10(f) of CBLR, 2018.

19. Discussions & Finding:

I have gone through the case, material evidence on record, the Show Cause Notice, dated 10.05.2023, Inquiry Report dated 12.12.2023 & CB Submission dated 25.01.2024.

19.1 I observe that the charges against the said CB is of violation of regulation 10(d), 10(e) & 10(f) of CBLR, 2018 made vide Show Cause Notice No. 08/2023-24 dtd 10.05.2023.

The Inquiry Officer vide inquiry report dtd 12.12.2023 held the charges of violation of regulation 10(d), 10(e) & 10(f) of CBLR, 2018 as "Proved".

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

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

I observe that the said regulation 10(d) of CBLR, 2018 reads as: -

"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 find that IO in his report held that the violation of regulation 10 (d) of CBLR, 2018 by the CB stands proved.

From the offence report, I find that export firm M/s. Fashion Fab procured fake purchase bills from one Mr. Suhel Ansari against their export consignments to show the over-pricing of the goods. Further, the fact that the impugned goods were of cheaper material is also corroborated from the report of Consulate General of India, Dubai.

The exporter did not appear for the statement before investigation agency so from the scrutiny of the offence report, I find that these invoices did not contain details of the name and complete address of the traders from whom impugned goods had been purchased as mandated in circular 16/2009 dated 25.05.2009.

From perusal of offence report, I find that the exporter showed the sample of the goods to the CB whenever required but the CB firm never noticed over-pricing of the goods or they chose to be silent, hence the role of the CB was established. Hence, it was not possible for exporter to export the impugned goods without wilful collusion with the custom broker & it appears that the CB was well aware of the over-pricing of the goods as samples were seen by them. Still the CB did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

Hence, the CB cannot shy away from the responsibilities & obligations cast upon them under regulation 10(d) of CBLR, 2018.

In this context, I rely upon the judgment of Hon'ble CESTAT, Mumbai in the case of M/s Eagle Transport Services Vs Commissioner of Customs, Mumbai in 1997 (96) E.L.T. 469 (Tribunal) wherein

though the matter was different yet the ratio of judgement can be applied to the present case. In this case, Hon'ble CESTAT, Mumbai has held at para no. 7 (relevant portion) that *"a Custom house agent has a very significant role to play in the clearance of goods through Customs and Port Trust. Such clearance involves application of many specialized laws and detailed procedures often contain complex statutory requirements. It is for this reason that Customs Brokers have been licensed. Before he is granted permanent license, he has to qualify an examination in which his knowledge of relevant procedures is vested."*

The object of these regulations is to ensure that the Customs Brokers acts honestly and efficiently in the conduct of their 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 provides 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."

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 Commission of Customs or Assistant Commissioner of Customs. **Therefore, I held that the CB has violated the provisions of Regulation 10(d) of the CBLR. 2018.**

19.2.2 With regard to violation of Regulation 10(e) of CBLR, 2018

I observe that 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;"

I find that the inquiry officer in his report held that the violation of regulation 10(e) of CBLR, 2018 stands proved.

From the perusal of offence report, CB statements, I find that on being asked about the over-valuation of the goods, the CB in his statement has stated that they only verified the RITC of the goods and did not verify the value of the goods and later it was found that the goods are over-valued to claim higher drawback. Further, the exporter also did not furnish the declarations at the time of exports in format annexed with the circular No. 16/2009-Customs dated 25.05.2009. It indicates that the CB has failed to impart correct information to the exporter regarding details of invoice & the value of the goods which are directly related to Drawback Rules.

I also find that the CB can not shy away from the responsibility cast upon them under the regulation 10(e) of the CBLR, 2018 by stating that determining the mis-declaration in terms of valuation is the officer's responsibility. Therefore, I found that there is no merit in CB's submission in this regard.

In view of the above, 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 held that the CB has violated the provisions of Regulation 10(e) of the CBLR, 2018.**

19.2.3 With regard to violation of Regulation 10(f) of CBLR, 2018:

I observe that the said regulation 10(f) of CBLR, 2018 reads as :-

"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;"

I find that the inquiry officer in his report held that the violation of regulation 10(f) of CBLR, 2018 by the CB stands proved.

From the perusal of the offence report, I find that the exporter is a merchant exporter and procured goods from someone else and exporter did not furnish the declarations at the time of exports in format annexed with the circular No. 16/2009-Customs dated 25.05.2009. As per the said format exporter were inter-alia required to declare the name and complete address of the traders from whom export goods had been purchased.

The exporter was also required to declare that they were not the manufacturer of the said export goods and were not registered under the erstwhile Central Excise Act, 1944 and that they had purchased these goods from a trader who was also not registered under the erstwhile Central Excise Act,

1944. They were also required to declare that no rebate (input rebate or/ and final product rebate) would be taken against the exports made against the Shipping Bills.

However, the exporter M/s. Fashion Fab did not appear before investigation authority and failed to produce any such declaration. Thus, the CB failed to verify the declarations at the time of exports in format annexed with the circular No.16/2009-Customs dated 25.05.2009, which is gross negligence on the part of the CB.

From the above facts, I find that the CB would be well aware of the facts that the goods sought to be exported under the drawback scheme are required to be compliant with the provisions of the scheme and should be backed by appropriate documentation, it was imperative that the CBs to have informed the exporter of the requirements of Customs Law and conveyed the details of all the instructions, orders and public notices issued by the Customs authorities from time to time in respect of claims of drawback on exported goods. The fact that the exporter exported goods in violation of the Customs law indicates that the CB had withheld information to the exporter regarding value of the goods & content in the invoice details alongwith the requirement & declaration as per circular

In view of the above, I am of the considered view that the CB failed to inform the exporter about the instructions/public notices & thus the CB failed to exercise his duties as CB violated the Regulation 10(f) of CBLR, 2018.

20. I find that CB has further relied on the following case law of Hon'ble High Court in the case of the Principal Commissioner of Customs (General) versus Mehul & Co reported in 2022 (5) TMI 30 - BOMBAY HIGH COURT.

I find that the above judgments relied upon by the CB in their defence is not squarely applicable in the matter as there has not been any delay in ordering of Suspension as per Regulation 16 of CBLR 2018 on receipt of Offence Report, further the CB has been granted opportunity of personal hearing post the suspension of the license.

21. In this regard, I find that the CB's request for cross-examination is devoid of any cogent and valid reason and therefore the same is not tenable under CBLR, 2018 read with the Customs Act, 1962. In this context, I rely upon the following judgment in the matter:

i. In the case of Fortune Impex Vs. Commissioner of Customs, Calcutta [2001(138) E.L.T.556 (Tri. -Kolkata)], Hon'ble Tribunal observed at Para 12 that:

“...it is not required that in each and every case, cross-examination should necessarily be allowed. There is no absolute right of cross-examination provided in the Customs Act. The Advocate had given a list of 26 persons for cross-examination without indicating the specific reasons for cross-examining the...it cannot be said that there was violation of principles of natural justice.”

22. The CB argued that Shipping Bills pertains to the year 2012 to 2016 and the SCN has been issued on 10.05.2023 which is after a period of 8 years. In this regard, I find that these guidelines are directory but not mandatory & 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 (Born.), which stipulates that:

"15. In view of the aforesaid discussion, 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."

23. I've gone through all the case laws submitted by the CB. While deciding the matter, I rely upon following judgements: -

23.1 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)”.

23.2 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.

23.3 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 mens rea 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."

24. 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 indulged himself in declaring higher value of the goods using fake invoices, to avail higher export benefits. The facts on record prove that CB had violated various provisions of CBLR, 2018 with mens rea.

25. 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. Merchant & Sons (11/678) 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) & 10(f) of CBLR, 2018 and is liable for penal action. Accordingly, I pass the following order.

ORDER

26. 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. 11/678 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/- (Fifty Thousand Rupees Only) on M/s Merchant & Sons (11/678) (PAN – AAEFM0675K) 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 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(G)
NCH, Mumbai-I

To,

M/s Merchant & Sons (PAN: AAEFM0675K)
Sagar Classic 703,
Clare Road, Byculla
Mumbai – 400008.

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. DRI, MZU, Mumbai.
4. SIIB (X), ACC, Sahar, Mumbai.
5. CIUs of NCH, ACC & JNCH
6. EDI of NCH, ACC & JNCH
7. ACC (Admn), Mumbai with a request to circulate among all departments.
8. JNCH (Admn) with a request circulate among all the concerned.
9. Cash Department, NCH, Mumbai.
10. Notice Board
11. Office Copy
12. Guard File (Admn)