



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/236/2023 -CBS

आदेश दिनांक/Date of Order: 06.02.2024

CAO No. 70/CAC/PCC(G)/SJ/CBS-Adj

जारी दिनांक/Date of issue: 06.02.2024

संख्या:

**DIN : 20240277000000497484**

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, यथोत्खंडपीठ 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 तदोउ प्रांत न्याय निर्णयन अधिकारी *functus officio* बन जाता है

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

4. यदि एक ही प्रकरण में उसी पक्षकार के विरुद्ध कई कारण बताओ नोटिस लगाकर आदेश पारित किया जाता है तो प्रत्येक प्रकरण में अलग अपील दायर की जाए।

In case where an order is passed by bunching several show cause notices on an identical issue against the same party, separate appeal may be filed in each case.

5. यह अपील फॉर्म C.A.-3 में दायर की जानी चाहिए जो कि सीमाशुल्क (अपीलस) नियमावली, १९८२ के नियम 6 के तहत निर्धारित है एवं उसी नियमावली के नियम 3 के उपनियम 2 में उल्लेखित व्यक्ति द्वारा हस्ताक्षरित एवं सत्यापित की जाएगी।

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

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

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

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

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



## **BRIEF FACTS OF THE CASE**

M/s. Atharva Logistics (PAN No. ACIPT0058R), having address registered at 2/401, Ozone Valley, Old Mumbai-Pune Road, Parsik kalwa, Thane-400605 (hereinafter referred as the Customs Broker/CB) is holder of Customs Broker License No. 11/1761, issued by the Commissioner of Customs, Mumbai under Regulation 9(1) of CHALR, 2004, [Now regulation 7(2) of CBLR, 2018] and as such they are bound by the regulations and conditions stipulated therein.

2. An offence report in the form of Show Cause Notice, bearing No. - 251/ADC/Adj(X)/2022-23 dated 01.02.2023 was received from the Additional Commissioner of Customs (Export), Air Cargo Complex, Sahar, Mumbai which revealed the fraudulent exports by an exporter, M/s. Jamilar International (IEC-AAECJ3243R) in contravention of the provisions of the Customs Act, 1962, through Air Cargo Complex, Mumbai, with the help of the Customs Broker, M/s. Atharva Logistics (11/1761).

3. The Show Cause Notice revealed that the Exporter, M/s. Jamilar International, filed three Shipping Bills at Air Cargo Complex, Sahar, Mumbai for export of goods description as "USB cable" with the help of Customs Broker M/s Ocean Air Trans Cargo Private Ltd. The exporter declared goods under RITC Code 85432090, having declared value per piece Rs. 605/- and total declared FOB value and invoice value was Rs. 72,67,500/- of 04 packages having quantity 12000 pieces in each Shipping Bill. It is observed that the goods covered under said Shipping Bills appeared to be overvalued by the exporter to get the ineligible IGST refund and also the IGST refund amount involved per Shipping Bill was substantial high i.e. amounting to Rs. 4,36,050/- per Shipping Bill and Rs. 13,08,150/- for three Shipping Bills. The details of the said Shipping Bills are as below:-

**Table-1**

Sr. No.	Shipping Bill No. /date	Description	FOB (Rs.)	IGST amount claimed (in Rs.)	MEIS	DBK
1	8986426/ 19.11.18	USB Cable	72,67,500/-	4,36,050/-	0	0
2	8986316/ 19.11.18	USB Cable	72,67,500/-	4,36,050/-	0	0
3	8986318/ 19.11.18	USB Cable	72,67,500/-	4,36,050/-	0	0
Total			2,18,02,150/ -	13,08,150/ -		

4. During the course of investigation statement of Shri Devendra Kumar Yadav, General Manager of Exporter, M/s. Jamilar International Private Limited, was recorded on 05.12.2018, wherein he stated that they were doing export as Merchant Exporter for last two months and involved in the trading of Mobile accessories by buying them locally and exporting to countries like Brunei and Dubai; that due to some inconvenience with the landlord they shifted from the address mentioned at IEC and the company was operating from the address mentioned on their GST registration certificate instead of the address mentioned on their IEC; that they did not inform DGFT about the change of address; in respect to the valuation he agreed that the export price appeared very high and that after purchasing the goods in question they had to incur other expenditure.

5. Further, Summons dated 06.02.2019, 22.03.2019 and 02.08.2019 were issued by the investigation agency to M/s. Jamilar International Private Limited and to the Directors of M/s. Jamilar International Private Limited. However, the same could not be delivered and returned by the postal authority.

The Deputy Commissioner (Gr-IV/Delta), Customs Preventive Delhi vide letter dated 01.08.2019 intimated that the two addresses mentioned at GST Registration and IEC of M/s. Jamilar International Private Limited were not traceable and therefore the Summons could not be delivered. Further, in spite of various summons, the exporter did not come forward to record his oral as well as to submit documentary evidence to proof their genuineness of business which indicates that the said IEC was obtained on fake documents and export firm was created with sole intention of availing fraudulent IGST amount or other export benefits.

6. After carrying out the market survey, the investigation agency, redetermined the transaction value of all the three shipping bills as per the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. The re-determined values of the said three shipping bills are as below:-

Total Declared FOB Value : Rs. 2,18,02,500/-

Total Re-determined FOB : Rs. 28,08,000/-

Total IGST claimed : Rs. 13,08,150/-

Total Re-determined IGST : Rs. 1,68,480/-

**Total Difference in IGST : Rs. 11,39,670/-.**

7. Accordingly, the details of past exports were also retrieved from the system and it was found that 04 shipping bills were filed by the exporter in the past. The details are as follows:



**Table-3**

Sr.No.	Shipping Bill No. /date	Description	FOB ( Rs.)	DBK	IGST ( Rs.)	Reward claimed
1	8720955/ 03.11.2018	Data cable	71,18,595/-	0	12,81,347/-	No
2	8864929/ 13.11.2018	Data cable	94,43,280/-	0	16,99,790/-	Yes
3	8880851/ 14.11.2018	Data cable	1,00,45,530 /-	0	18,08,195/-	Yes
4.	8880853/ 14.11.2018	Data cable	94,43,280/-	0	16,99,790/-	Yes
Total			3,60,50,685 /-		64,89,122/-	

Wherein, total FOB value of the goods covered in the said shipping bills was Rs. 3,60,50,685/- and IGST involved was Rs. 64,89,122/-. As per ICES system the exporter claimed IGST amount of Rs. 47,89,332/- and the same was sanctioned to the exporter. It appeared that in these past 04 consignments also the exporter had adopted the same modus operandi of overvaluing the goods to avail inadmissible IGST amount, which was adopted in the live 3 shipping Bills. Hence, it can be concluded that the past export goods were also highly overvalued by the exporter to avail inadmissible /fraudulent IGST amount.

It may be pertinent to mention that the Shipping Bills were filed as 'Free Shipping Bills' involving Foreign Exchange remittance and as per data retrieved from EDI 1.5 system, the BRC has not been realized for the above said 04 Shipping bills. Therefore, it appears that exporter violated Regulation 9 of the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015 and Section 75 (ii) of the Customs Act, 1962.

**8.** Further, on scrutiny of these past 04 shipping bills filed by the exporter M/s. M/s. Jamilar International Private Limited, it was found that out of these 04 Shipping Bills, 01 Shipping Bill, bearing no. 8720955 dated 03.11.2018, was cleared by the Customs Broker, M/s. Atharva Logistics (PAN No. ACIPT0058R), CB No. 11/1761.

**9.** Accordingly, the Statement of Shri Sudhir Thavi, Employee, of M/s. Atharva Logistics was recorded under section 108 of the Customs Act, 1962, on 25.01.2023 wherein, he *inter alia* stated that:-

- i. M/s Atharva Logistic is working from 2012 and he is working in the company since four years as an import export executive;
- ii. they were appointed as Custom Broker by exporter and submitted the authority letter for the same;
- iii. he submitted KYC details of M/s. Jamilar International Pvt Ltd;
- iv. they physically verified the address of exporter mentioned on IEC and GST registration. The address mentioned on IEC i.e. KH no 274/11, Peeragarhi, New Delhi North West Delhi 110063 and the address of the GST registration of the exporter M/s Jamilar International Pvt Ltd i.e. C1/9, Khasra No. 74/7/ 1, Ground Floor, Krishan Vihar, North West Delhi 110086 were physically verified by them;
- v. they filed only one Shipping Bill bearing No 8720955 dated 03.11.2018 for the exporter, having items data cables in it;
- vi. they received the documents Invoice and packing list by hand via exporter's representative, after receiving documents, they used to make checklist, they used to also take approval from the Exporter M/s Jamilar International Pvt Ltd, then after approval from the exporter, they used to file Shipping Bill on ICEGATE portal;
- vii. on being asked about the verification of value of goods he stated that goods were handed over to them in a tempo in packaged condition at ACC and subsequently the same were exported from ACC. Further, he stated that there was a remark on the said shipping bill number 8720955 dated 03.11.2018 that the consignment was not opened for physical examination by customs.

**10.** M/s Atharva Logistics in their statement stated that they verified the address of exporter physically. However, verification report received from the Deputy Commissioner (Gr-IV/Delta), Customs, Preventive Delhi vide letter dated 01.08.2019 disclosed that the two addresses mentioned at GST Registration and IEC of M/s. Jamilar International Private Limited were not traceable and therefore the Summons could not be delivered. Further, the two addresses of the Director of M/s. Jamilar International Private Limited were also searched, the said addresses were existing but no person with the name of the directors were found residing at those addresses. Therefore, it was observed that the M/s. Jamilar International Private Limited was not found in existence at their registered place of business and the addresses of the said exporter were fake. Hence, it appears that Custom Broker did not dispose true statement and did not verify the KYC diligently as provided under section 10(n) of CBLR, 2018.

**11.** From the investigation it appears that it is unlikely that CB M/s Atharva Logistics was not aware of the modus operandi of the exporter and was receiving goods invoiced on exorbitant prices and he was not aware. Had the CB seen these documents relating to the overvalued goods and checked the correctness of



declared value of the goods, such fraudulent export could not have been possible. Therefore, under the fact and such circumstances, the CB actively connived with exporter in claiming undue IGST and over valuing the export goods in Shipping Bill.

**12.** It appears from the investigation report and facts as discussed above that the CB, M/s. Atharva Logistics (11/1761), Mumbai, helped the exporter M/s. Jamilar International Private Limited with their acts of commission / omission for having abetted the exporter for the clearing of cheaper goods through Air Cargo Complex at higher prices for availing fraudulent IGST on the goods. This fact clearly indicates that CB was hand in glove with the exporter in this modus operandi of availing ineligible IGST and therefore the CB failed to comply with the regulations 10(d), 10(e) & 10(n) of the Customs Brokers Licensing Regulations 2018 [erstwhile regulations 11(d), 11(e) & 11(n) of the Customs Brokers Licensing Regulations 2013].

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

**13. SHOW CAUSE NOTICE:** M/s. Atharva Logistics (11/1761) was issued a Show Cause Notice (SCN) No. 11/2023-24 dated 19.05.2023 asking them to show cause as to why the licence bearing no. 11/1761 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 Regulation 17 & 18 of the CBLR, 2018, for their failure to comply with the provisions of CBLR, 2018, as elaborated in the Show Cause Notice. They were also directed to appear for a personal hearing and to produce proof of evidence/documents if any, in their defence to Shri Saroj Kumar Jha, Asst. Commissioner of Customs who was appointed an Inquiry Officer to conduct inquiry under regulation 17 of CBLR,



2018.

**14. INQUIRY REPORT :-** Inquiry Officer submitted Inquiry Report dated 05.12.2023, wherein, the charges against CB M/s. Atharva Logistics (11/1761) i.e. violation of Regulation 10(d) & 10(n) of CBLR, 2018 were held as 'Partly Proved' and violation of Regulation 10(e) of CBLR, 2018 was 'Not Proved'.

**14.2 Records of Personal Hearings:** IO submitted that during the Personal hearing CB stated the following:-

A. IO submitted that Shri Umesh Thavi, Proprietor of the CB, M/s. Atharva Logistics appeared for Personal hearing on 16.06.2023 and submitted a written submission dated 15.06.2023 and requested to submit further written submission on 19.06.2023. Thereafter, he submitted a written submission vide letter dated 19.06.2023.

B. IO submitted that CB submitted copies of the following documents vide his letter dtd. 15.06.2023 which were taken on record:

IEC AAECJ3243R certificate of Jamilar International Pvt.Ltd. issued on 13.09.2018; GST Registration No. 07AAECJ3243R1Z5 certificate in the name of Jamilar International Pvt. Ltd. issued on 6.10.2018;3. PAN HTRPS7419J of Shri Anil Kumar Sharma, Director; Voter Id Card of Shri Anil Kumar Sharma, Director; Aadhaar No. 391985165528 card of Shri Akash, Director; Aadhaar No. 391985165528 card of Shri Akash, Director; Kotak Bank attested KYC letter dtd. 30.10.2018 of the exporter which was submitted to EDI section; Kotak Bank Certification dtd. 29.10.2018 regarding Current Account No. 151283213294 of Jamilar International Limited with them with PAN, IEC and address of the exporter as mentioned in their record; Kotak Bank attested Exporter's certificate for maintaining a Current account at Kotak Bank, Kirti Nagar, New Delhi; GSTR-1 and 3B for November, 2018-19 of the exporter; Invoice No. JI/01 DTD. 25.10.2018 and Packing list of 9900 pcs. of data cable; Tax Invoice No. 27 dtd. 23.10. 2018 issued by the local supplier Friends And Co. of 52000 pcs. of USB cables; Delivery Order No. DD15013843 dtd. 7.11.2018; Tax Invoice cum terminal challan dtd. 5.11.2018 and S/B No. 8720955 dtd. 3.11.2018 and its screen shots.

C. IO submitted that on 19.06.2023, Shri Umesh Thavi submitted a letter dated 19.06.2023 and also an authorization dtd. 16.06.2023 appointing and authorizing Patankar Legal Combine to act, appear and plead on their behalf in the matter through Shri Prashant Patankar, consultant and /or Mrs. Deepa Patankar, Advocate and /or Mrs. Sampada Thakur, Advocate.

D. IO further submitted that another PH was given to CB on 28.07.2023. Shri Umesh Thavi appeared along with his advocate, Shri Prashant Patankar. They reiterated their written submission dated 19.06.2023 of the CB and stated that the CB was not responsible for or authorized to verification of valuation of the



impugned goods which were meant for export and were under the Customs control. He also stated that CB had not committed any breach of obligation as a Customs Broker with regard to the impugned export consignment of the Shipping Bill No. 8720955 dtd. 03.11.2018. He stated that their written submission dtd. 19.06.2023 may be taken into consideration in reply to the impugned Show Cause Notice and for consideration for completing the inquiry proceedings under section 17 of the CBLR, 2018.

E. Further, next PH was scheduled on 16.08.2023 vide PH Notice dtd. 11.08.2023, whereby Shri Umesh Thavi was asked to appear along with Shri Sudhir Thavi and their advocate. However, the CB, Shri Umesh Thavi could not attend the same due to some urgent work.

F. Thereafter, another PH was scheduled on 01.09.2023 which was attended by Shri Umesh Thavi and Shri Sudhir Thavi, however their advocate did not attend the PH. During the PH Shri Umesh Thavi informed that his advocate Shri Prashant Patankar was not available for the PH and further stated that his advocate had informed him that whatever he had to contest in the case he had already submitted during the PH on 28.07.2023 reiterating the facts as mentioned in the written submission dtd. 19.06.2023 as submitted by the CB.

a) During the PH, Shri Umesh Thavi, Customs Broker, Atharva Logistics ( PAN - ACIPT0058R ) stated that he had obtained the CB Licence No. 11/1761 in 2012 ; that he is F-Card holder ( No. 4204/2022 ) and has 14 employees to run the business; that he has employee force of 7 H-card holders and 2 G-card holders; that the two employees having G- Card are Shri Sudhir Thavi (Card No. 4201/2022) and Shri Milind Naik (4202/2022 ). Shri Umesh Thavi, replied to the questions asked specifically during PH as under:

- i. SCN No. 251/ADC/Adj(X)/2022-23 dated 01.02.2023 issued by the Addl. Commissioner of Customs (Export), Air Cargo Complex, Mumbai was received by them.
- ii. The CB firm had handled the export cargo of the exporter, M/s. Jamilar International (IEX-AAECJ3243R) vide Shipping Bill No. 8720955 dtd. 3.11.2018.
- iii. On being asked as to how he or his firm knew the exporter, he replied that he did not know the exporter earlier before this consignment; that once, a marketing person of the exporter had come to their office along with related documents for the purpose of export and enquired with them whether they could help him in the clearance of the said export consignment; that he had shown his visiting card bearing the name of that exporter; that after that a discussion was held with him and thereafter he handed over the documents as given by the exporter's person, to his employee, Shri Sudhir Thavi , having G- Card for scrutiny of the documents and for data feeding and thereafter for dealing with assessment and clearance of



the export consignment by the Customs Department; that at this juncture of time, he didn't have his visiting card or any identity document of that person and whose name he didn't remember now, neither he could identify him now.

iv. He Further replied that after handing over the export documents to Sudhir Thavi, all the further actions regarding the clearance of said export consignments were done by him. In this regard he would also add the fact that since this was the first clearance job of that exporter being handled by them, Shri Sudhir Thavi was instructed to verify the KYC details of the exporter before proceeding the clearance procedure and he was assured by Shri Sudhir Thavi that he had done that.

v. He didn't remember the exporter or his representative now because they have not handled any other export or import consignment of that exporter after this subject export consignment.

vi. On being asked as to whether they complied with all the obligations of a Customs Broker in dealing with the said export consignment, as per the CBLR, 2018, he stated that they have followed the obligations of a Customs Broker as per rule 10 of CBLR, 2018; that before taking up request for export clearance by them, he had asked the exporter's representative to give the proper declaration of the goods with right classification and value so that there should not be any violation of the Customs Act 1962 and regarding the address of the exporter; that since, during the clearance work they had not observed within their limited scope to deal with the consignment for export, any fraudulent activity on their part and so nothing adverse was reported to Customs regarding the exporter; that the KYC documents such as IEC, GST registration certificate, PAN card, Bank's letter regarding address, signature and account details, GST returns, (GSTR-1 and GSTR-3B) were verified before filing the subject shipping bill number 8720955 dated 03/11/2018.

vii. On being asked as to how did he verify the genuineness of the KYC and export related documents while dealing with this export consignment, he replied that his employee Shri Sudhir Thavi had done all the required formalities for this as per the documents received from the exporter's representative.

viii. On being specifically asked whether they conducted a separate physical verification of the premises of the exporter as mentioned in their IEC and GST Registration, he replied that in general, they did not send their employee to visit physically the premises of the exporter/importer having address outside Mumbai for the purpose of address verification as it was not practically possible, though it used to be done so for the local exporter/importer; that in this case also, no physical verification was conducted, however, documents based verification for the address was very much done by his employee.

ix. On being specifically asked whether he had enquired about the contents of the export consignments and their declared FOB value, he replied that he had asked about the contents of the consignment and he thought that it was not a



restricted or banned goods for export and he didn't have any doubt about the value declared in the invoice as he had not seen the goods and moreover, he had never dealt with any other consignment of data cable and so he didn't have any specific idea for valuation of the subject goods; that he made the exporter aware about the proper declaration of the goods regarding their classification, valuation and licence requirements and provisions of Customs Act for the purpose of export.

x. On being specifically asked whether he was aware that the foreign remittance against this export consignment has been received by the exporter, he replied that they are not aware whether the foreign remittance has come against the said export consignment; that they don't have access to know about this neither the exporter had enquired about this.

xi. He stated that only one shipping bill number 8720955 dated 03/11/2018 of the exporter, Jamilar International Pvt. Ltd. (IEC-AAECJ3243R) had been dealt by them. He further added that as mentioned in the SCN No. 251/ADC/Adj(X)/2022-23 dated 01.02.2023 issued by the Addl. Commissioner of Customs (Export), Air Cargo Complex, Mumbai, the first shipping bill for the subject goods i.e. Data Cable, pertaining to this exporter was handled by them and after that he never approached them for clearance for another six shipping bills, as mentioned in the said SCN; that this shows that they were not in any way in any nexus with that exporter for clearance of such goods.

xii. On being specifically asked about the addresses declared in the IEC and GST registration certificate of the exporter Jamilar International Pvt. Ltd. (IEC-AAECJ3243R) found to be non-traceable and summons were not delivered as per the address verification report of the Preventive Commissionerate, Delhi, he replied that he didn't know this fact before the subject SCN No. 251/ADC/Adj(X)/2022-23 dated 01.02.2023 issued by the Addl. Commissioner of Customs (Export), Air Cargo Complex, Mumbai, was issued to him ; that he could not comment on this as to how it had happened; that Shri Sudhir Thavi had very much verified these addresses from the DGFT and GST websites.

xiii. He further stated that he would like to emphasize that as it was the first time exporter, they had taken initiative for submission of KYC documents in the EDI section of the Sahar Air Cargo Complex, Mumbai as per the prevailing rules and regulations and thereafter the said exporter did not come again to them as they had conducted the Customs clearance job as a Custom Broker in proper manner; that they were also submitting the photostat copy of acknowledgement dtd. 02.11.2018 from the Sahar Air Cargo Customs EDI section in this regard on the AD bank's letter dtd. 29.10.2018 regarding address of the exporter during the submission of documents for first time exporter; that since only one shipping bill of the subject exporter, that too the very first one related to the impugned goods, was handled by them and they were not having any alert or any adverse information against that exporter and also at the first instance they could not



doubt the declared value, their case may be decided with lenient view as they were not involved in the alleged fraudulent overvaluation of the export.

**b)** During the PH, Shri Sudhir Thavi stated that he was an employee having G-Card ( No. 4201/2022) of the Customs Broker, Atharva Logistics ( PAN-ACIPT0058R) and has admitted that he had handled the export consignment of Shipping Bill No. 8720955 dtd. 3.11.2018 of M/s. Jamilar International (IEX-AAECJ3243R). In relation to the said export clearance by him on behalf of the CB, on being asked, he replied as under:

i. As per the work allotted by Shri Umesh Thavi, proprietor of the CB, he handled the export cargo of the exporter, M/s. Jamilar International (IEX-AAECJ3243R) vide Shipping Bill No. 8720955 dtd. 3.11.2018.

ii. On being asked as to how he or his firm knew the exporter Jamilar International Pvt. Ltd. (IEC-AAECJ3243R), he replied that he did not know about the exporter earlier before this consignment; that once, a marketing person, of the exporter had come to their office along with related documents for the purpose of export and after discussion held with Shri Umesh Thavi, proprietor of the CB, Shri Umesh Thavi had instructed him to handle that matter and gave him the documents as given by the exporter's person, to him for scrutiny of the documents and for data feeding and thereafter for dealing with assessment and clearance of the export consignment by the Customs Department; that thereafter, he was shown a visiting card of the exporter carried by that person on behalf of the exporting firm ; that he scrutinised the KYC documents of the exporter, such as copies of PAN card, Aadhaar Card, IEC certificate, ,GST Registration certificate, Bank verification letter dtd. 29.10.2018 issued by Kotak Mahindra Bank, Voter ID cards of directors of the exporter, GST Returns copies and other documents like Export Invoice, packing list and purchase invoice; that he came to know during his interactions with the exporter's representative that it was their first export consignment and therefore KYC updation in the EDI System was also done before filing the Shipping Bill No. 8720955 dtd. 3.11.2018.

iii. He didn't remember the name of the said representative of the exporter now because they have not handled any other export or import consignment of that exporter after this subject export consignment; that he had met him only twice, once on the date of giving the documents before taking over their clearance work and once after the clearance was over and he had come to collect the copies of LEO Shipping Bills and other related documents; that he had never met any director of the exporter firm.

iv. He replied that he had followed the obligations of a Customs Broker as per rule 10 of CBLR, 2018; that before taking up his request for export clearance by them, he had asked the exporter's representative to give the proper declaration of the goods with right classification and value so that there should not be any



violation of the Customs Act 1962 and regarding the address of the exporter; that since, during the clearance work he had not observed within his limited scope to deal with the consignment for export, any fraudulent activity on their part and so nothing adverse was reported to Customs officials regarding the exporter; that the KYC documents such as IEC certificate, GST registration certificate, PAN card, Aadhaar Cards, Voter Id. Cards, Bank's letter regarding address, signature and account details, GST returns, (GSTR-1 and GSTR-3B) were verified before filing the subject shipping bill number 8720955 dated 03.11.2018.

v. On being asked as to how he verified the genuineness of the KYC and export related documents while dealing with this export consignment, he replied that he verified the exporter's details given in the Invoice for the Shipping Bill as per the name and address of the exporter as mentioned in the IEC certificate dated 8.10.2018 issued by the DGFT in the name of Jamilar International Pvt. Ltd. (IEC-AAECJ3243R) which was provided to him and the said address was also reflected in the AD Bank (Kotak Mahindra Bank) letter dtd. 29.10.2018; that both these documents carried the same address, i.e. 274/11, Peeragarhi, New Delhi, North West Delhi- 110063; that apart from this he was also given the copies of GST registration certificate, PAN and AADHAAR cards of Directors of the exporter, GST returns (GSTR-1 and GSTR-3B) before filing the subject shipping bill number 8720955 dated 03.11.2018; that he verified the addresses of the exporter through these documents only and he had also verified the address as mentioned in the IEC on the DGFT website. He stated that no physical verification of the exporter's address was made by him as he did not doubt the authenticity of valid documents issued by the DGFT.

vi. On being asked specifically whether he had conducted a separate physical verification of the premises of the exporter as mentioned in their IEC and GST Registration, he stated that in general, they did not visit physically the premises of the exporter/importer having address outside Mumbai for the purpose of address verification as it was not practically possible, though it used to be done so for the local exporter/importer; that in this case also, no physical verification was conducted, however, documents based verification for the address was very much done by him.

vii. On being asked whether he verified or had any doubt as regards the difference in the addresses of the exporter in the IEC and the GST Registration certificates as submitted to him by the exporter's representative, he replied that he mainly depended on the address as mentioned in the IEC and verified whether the same address was also mentioned in the Invoice and Shipping Bill; that the GST registration certificate was seen mainly to confirm the GSTIN for mentioning in the Shipping Bill; that he knew that the GST Registration certificate carried the address of principal place of business and he thought that the address in the GST



Regn. Certificate can be different from that in the IEC as in the IEC the address is of registered office address.

viii. He had asked about the contents of the consignment and he thought that it was not a restricted or banned goods for export as per Foreign Trade Policy and he didn't have any doubt about the value declared in the invoice as he had not seen the goods and moreover, he had never dealt with any other consignment of data cable and so he didn't have any specific idea for valuation of the subject goods.

ix. On being asked whether he made the exporter aware about the proper declaration of the goods regarding their classification, valuation and licence requirements, if any, he replied that he had explained to him regarding the provisions of Customs Act for the purpose of export.

x. On being specifically asked whether he was aware that the foreign remittance against this export consignment has been received by the exporter, he replied that they are not aware whether the foreign remittance has come against the said export consignment; that they did not have access to know about this neither the exporter had enquired about this.

xi. He stated that only one shipping bill number 8720955 dated 03.11.2018 of the exporter, Jamilar International Pvt. Ltd. (IEC-AAECJ3243R) had been dealt by him and after that the said exporter never approached them for clearance for another shipping bills.

xii. On being asked as to how he assisted the exporter in Customs clearance of the subject export consignment, he replied that he had collected all the relevant documents for export from the representative of the exporter and after a primary scrutiny of documents and after being satisfied about the genuineness of the exporter, he first of all submitted the KYC documents in the Customs EDI Section as it was a first time exporter and thereafter, the S/B was assessed and opened and examined 10% by the Customs and thereafter the S/B was given LEO; that during the assessment and examination of the subject export cargo, no exporter or their representative was present with him and he handled solely.

xiii. On being specifically asked about the addresses declared in the IEC and GST registration certificate of the exporter Jamilar International Pvt. Ltd. (IEC-AAECJ3243R) found to be non-traceable and summons were not delivered as per the address verification report of the Preventive Commissionerate, Delhi, he replied that he didn't know this fact that he could not comment on this as to how it had happened; that he had verified these addresses from the DGFT and GST websites.

xiv. He further submitted that he had taken initiative for submission of KYC documents in the EDI section of the Air Cargo Complex, Mumbai as per the prevailing rules and regulations and therefore the said exporter did not come again to them as they had conducted the Customs clearance job as a Custom Broker in proper manner. Since only one shipping bill of the subject exporter, that too the very first one, was handled by him and he was not having any alert or any adverse



information against that exporter and also at the first instance he could not doubt the declared value of the subject goods, i.e. data cable, as he had not handled any such goods in the past.

**D)** IO submitted that on being asked, Shri Umesh Thavi stated that he had not to conduct any cross examination of any person in this regard.

**E)** IO submitted that during PH, the CB also submitted two circulars, BCBA/CIR/461/2023/Knowledge Series No. 100 dtd. 15.04.23 and BCBA/CIR/699/2023/ Knowledge Series No.101 dtd. 13.06.2023 addressed to all members of the BCBA on the subjects of physical verification of business premises not an obligation on CB under Regulation 10(n) and that Customs Brokers cannot be faulted for trusting the certificates issued by a Government officer respectively, by placing reliance on the following case laws:

i. CESTAT Kolkata in the case of M/s. Sunglory Agency v/s. Commissioner of Customs (Admn. and Airport), Kolkata- 2023(4)

ii. CESTAT, New Delhi in case of M/s. Sadgati Clearing Services Pvt. Ltd. Vs. Commissioner of Customs (Airport and General), New Delhi.-2023(6). Order No. 50766/2023 dtd. 29.05.2023.

#### **14.3 Comments of the Inquiry Officer :-**

IO submitted that he had gone through the facts and circumstances of the case, CBLR, 2018, statements recorded under Section 108 of the Customs Act, 1962 under the case, charges /allegations levelled against the Customs Broker, M/s. Atharva Logistics ( PAN – ACIPT0058R ), written as well as oral submissions of the CB during inquiry proceedings. IO submitted the following:-

**a)** As per the SCN, the CB, Atharva Logistics (PAN No. ACIPT0058R) (11/1761) has dealt with only one and the earliest one export consignment of data cable of the exporter, M/s. Jamilar International (IEC- AAECJ3243R) vide S/B No. 8720955/03.11.2018. After this S/B, the exporter changed his CB and got the clearances of further six S/Bs through another CBs.

**b)** The CB in his letter dtd. 19.06.2023 has alleged that they have not received documents referred and relied upon in the SCN No. 11/2023-24 dated 19.05.2023 issued by the Principal Commissioner of Customs (General), New Custom House, Mumbai under CBLR, 2018. In this regard, IO submitted that the said SCN was issued under CBLR, 2018 by the CB Section in consequence of the SCN No. 251/ADC/Adj(X)/2022-23 dated 01.02.2023 issued by the Addl. Commissioner of Customs (Export), ACC, Sahar, Mumbai under section 124 of the Customs Act, 1962. The CB Shri Umesh Thavi during his deposition in the inquiry proceedings on 29.08.2023 has admitted that the SCN No. 251/ADC/Adj(X)/2022-23 dated 01.02.2023 issued was received by him by speed post without relied upon



documents, however, later on, on his demand, the RuDs of the said SCN were received by their email. As such their contention on this ground is unsubstantiated.

c) The EDI screenshots of the impugned Shipping Bill No. 8720955 dtd. 3.11.2018 have also been obtained by email from the AC/ Export Shed, ACC, Export regarding the claim of the CB that the goods were opened and examined and then cleared.

d) **Article of Charge-I :- Violation of Regulation 10 (d) of CBLR, 2018:** IO submitted that the violation of this regulation is mainly based upon the fact of overvaluation by the exporter which remained unchallenged and accepted by the CB while filing the documents.

i. IO submitted that the value of the export consignment of the Shipping Bill No. 8720955 dtd. 03.11.2018, handled by the CB has not been re-determined through market survey as the goods had already been exported in the past. However, it is a fact that the unit value of the goods of three live shipments were re-determined which was found to be Rs. 78 per piece as against the declared unit value of Rs.605. Based on the huge difference found in the value, it has been alleged in the SCN that it appears that the same modus operandi of overvaluation was also adopted by exporter in respect of their past exports to avail inadmissible /fraudulent IGST. The exporter did not submit any relevant document, such as Supplier's Tax invoice, bank transaction proof made with their supplier, proof of supplies of goods through documents viz, toll slip, lorry receipts and transaction documents which could vindicate that the transaction was fair and that the declared price of the export goods was genuine. It is also a fact that no market survey had been done and value re-determined per se for the consignment dealt by this CB, as the goods were already exported earlier, but it is also a fact corroborated by the statement of Shri Devendra Kumar Yadav, GM of the exporter company in his statement dtd. 05.12.2018 under section 108 of the Customs Act, 1962 before the SIIB (Export) that the consignments vide the earlier four S/Bs including the S/B dealt by this CB were the same, 'USB Cable'. Moreover, the SCN has also alleged that the foreign remittance has also not been realized against those past four Shipping Bills including the Shipping Bill No. 8720955 dtd. 03.11.2018, handled by the CB, Atharva Logistics.

ii. IO further submitted that the CB has denied the allegation and contended that it is merely a speculative proposition alleged in the SCN and that only because the CB handled the export consignment does not mean that the CB facilitated / abetted the exporters in claiming undue IGST refund. In this context, he has referred to the decision of Tribunal in the case of Deepankar Sen Vs Commissioner of Customs, Kolkata reported in 2003 (159) ELT 260 (Tri. Kolkata) wherein it has been held that merely acting as a Customs House Agent for the exporters, does not, ipso facto,



lead to an inevitable conclusion that he was hand in glove with the exporters in absence of any record to that effect. He submitted that the charge of overvaluation of the exported goods is unsubstantiated as the SCN did not establish any alternate value of the exported goods. Even if it is presumed for the sake of argument that the exported goods were overvalued, the SCN does not appreciate that only the exporter was responsible for the value declarations in the Shipping Bill and the Customs Broker was duty bound to file the Shipping Bill on the basis of the documents given by the exporter and as advised by the exporter. The exporter's GM, Mr. Devendra Kumar Yadav has not in his statement blamed the CB for the declaration of value of the export goods.

iii. IO in his report submitted that CB further contended that Regulation 10(d) does not contemplate that CB should advise the exporter about the export values negotiated by the exporter with the overseas customers; that the CBLR do not require the CB to get involved in the nitty gritty of the commercial terms of the transactions of the exporter and to get in the role of an investigating agency and probe the exporter; that the responsibility of the truthful declarations in the shipping bill including the correct declaration of invoice prices (the transaction value) was of the exporter and not of the Customs Broker whose job was confined to the submission of documents given by the exporter.

iv. IO submitted that the CB has cited observations of the CESTAT, Chennai in the case of CC, Tuticorin vs Moriks Shipping and Trading Pvt. Ltd. 2008 (227) E.L.T. 577 (Tri. - Chennai) read with the case of Vetri Impex Vs CC, Tuticorin [(2004 (172) ELT 347 (Tri. Chennai)] and of the CESTAT, Delhi in Akanksha Enterprises Vs CC, Mumbai-I [2006 (203) ELT 125 (Tri. Delhi)] wherein the Tribunal set aside the penalty imposed on the CHA holding that the Customs House Agent was not required to go into the authenticity of declarations made by exporter in export documents; the job of CHA is confined to submission of documents given by the exporter as also to identify the exporter to the Customs Authorities.

v. The CB has submitted that they cannot be alleged for lack of advice to the exporter when the CB placed complete information and documents as supplied by the exporter before the Customs authorities for clearance of the consignment and they could report overvaluation to the Customs authorities only if they were aware about the overvaluation whereas they could not have judged the correctness of the declared value on the basis of the available documents; that since the CB had no role in procurement, packing or transport of the subject export goods, so as to judge the fairness of declared invoice values and moreover, the CB was neither supposed to nor had any occasion in the present case to inspect the export goods prior to examination by officers of Customs, they could not suspect the declared value of the export goods and therefore could not inform the Customs Authorities about overvaluation; that Shri Sudhir Thavi, the employee of the CB, has in his statement



dated 25.01.2023 recorded under section 108 of the Customs Act, 1962 that the goods were handed over to them in a tempo in packaged condition at ACC. The CB has cited decision in Hon'ble CESTAT, Mumbai vide Order No. A/85026/2019 dated 08.04.2019 in case of CB, East West Freight Carriers Pvt. Ltd. in Appeal No. C/516/2012 wherein the Hon'ble Bench has noted that no CHA can empower any employee to open any package, which comes in sealed condition, to check the contents therein because then there would be complaints and allegations of theft etc. CB submitted that it is unreasonable to suggest that the CB failed to report over-valuation to the Customs authorities, thereby violating the provisions of Regulation 10(d) of CBR, 2018.

vi. Further, CB submitted that the SCN under reference does not point out any incorrect advice given by the Noticee CB to the exporter, nor has the exporter accused the Customs Broker of any misguidance, as may be noted from the statement recorded on 05.12.2018 under section 108 of the Customs Act, 1962 of the General Manager of the exporter, Mr. Devendra Kumar Yadav; that the advice of the CB would be in general nature, limited to advise the exporter to declare the correct transaction values with correct INCOTERMS, however, the CB had no authority to judge if the invoice values were correct or otherwise. The subject consignment covered under shipping bill no. 8720955 dated 03.11.2018 was granted LEO by the proper officer after examining the documents, and understandably after physical examination of goods and if they did not suspect the declared value of the export goods, the Noticee CB could not be expected to suspect any irregularity.

vii. The CB has further contested the allegation of 'abetting' the exporter in clearing the cheaper goods at very higher value, by stating that they had no role and no knowledge of the overvaluation of the goods under clearance and were not benefitted in any manner from the alleged overvaluation and therefore cannot be considered to have 'abetted' the exporter in overvaluation. Only because the Noticee CB handled the clearance of export consignment, it does not mean that they abetted the overvaluation. The CB has contended that 'abetment' presupposes 'knowledge of the proposed offence' and also presupposes 'benefit to be derived by the abettors there-from'. In this context, they have referred to the decisions in the case of CC, Mumbai Vs M. Vasi reported in 2003 (151) ELT 312 (Tri. - Mumbai) and of High Court of Judicature at Bombay in case of Amritlakshmi Machine Works Vs CC (Import), Mumbai reported in 2016 (335) ELT 225 (Bom.) wherein it has been observed inter alia that an abetment would include by definition intentional aiding and that mere facilitation without knowledge would not amount to abetting an offence and that imposing penalty upon an abettor without any mens rea on his part would bring all business to a halt as even innocent facilitation provided by a



person which has made possible the act or omission to act possible could result in imposing of penalty.

viii. IO submitted that having gone through the facts as mentioned above, it is observed that the allegation is levelled mainly due to very high value declared by the exporter in the Shipping Bill to take undue benefit of refund of IGST. The CB has contended that they had no knowledge of the exact valuation of the goods and they also therefore did not doubt about the declared value. Further they also contended that they generally do not resort to investigate the value declared by the exporter as they are supposed to carry out the filing of documents and getting the clearance of goods from Customs. Since they themselves did not have any doubt, they did not bring the matter of valuation to the notice of Dy/Asstt. Commissioner of Customs.

ix. IO submitted that the investigation has not pin- pointed any fact which can indicate that the CB was very much aware of the actual value of the impugned goods and despite that he let the exporter declare very higher value of the goods with an intention to gain undue advantage. It has also not been discovered during the investigation that the CB had earlier cleared consignments of the identical goods, i.e. the data cable, which could be a base to indict the CB that despite being aware of the proper value of the goods in question, they either ignored or remained silent with a motive of gaining undue benefit, about the high declared value of the export consignment and thereby abetted the exporter in claiming undue refund of IGST.

x. IO further submitted that it was also found from the EDI records as evidenced by the screenshots of Shipping Bill No. 8720955 dtd. 3.11.2018 that the goods were opened and examined 10% by the Customs officers and the goods were cleared by giving LEO despite there being a general RMS instruction regarding the export consignment appearing to be overvalued to claim higher drawback/export related rewards.

xi. IO further submitted that the contention by the CB that their job was limited to filing the documents as given by exporter without questioning the true declaration of description, classification, licensing compliance and valuation is not sustainable as they are the interface between the trade and the Customs department and they are issued Customs Broker's licence which essentially require them to ensure on behalf of the exporter/importer, as they are authorised so by them, that the exporters or importers have given true declarations w.r.t. classification, qty., valuation and other particulars of the goods under the Customs Act, 1962 and if they are ignorant or fraudulent the CB should advise them and caution them before accepting their documents for filing them for Customs clearance and to inform the Customs department. To that extent, any CB cannot



escape the allegation of their failure for diligence and proper advice to the exporter or their complicity in effecting the fraud, as they are not obliged to act only as a rubber stamp to endorse whatever declared or produced by the exporters to them for the Customs clearance.

xii. IO submitted that on going through the elaborate explanation and contentions of the CB and in the factual matrix of the case, it is observed from the SCN issued after SIIB(Export) investigation in this case that this is the very first S/B of the impugned goods of the exporter and after this, no other consignment of the same goods has been dealt by this CB. This is a fact that the same exporter continued their export of the same goods with the same modus operandi of overvaluation, but through other CBs. Besides, the investigation could not bring about any evidence that this CB had earlier dealt with these goods for either this exporter or any other ones. As such, the excuse of the CB of ignorance of the proper valuation of the impugned goods as they had no chance to open the packages and inspect the goods physically before filing of documents for export and prior to examination of the goods by the Customs, cannot be ruled out in the absence of any facts in the contrary during investigation. Thereby, the allegations of abetment also does not sustain in view of lack of evidence gathered during investigation about the intentional aiding to and complicity with the exporter by this CB by having 'knowledge of the proposed offence' and 'benefit to be derived by the abettors therefrom' as held as ingredients for the offence of abetment.

xiii. IO submitted that since this was the very first consignment of the exporter, M/s. Jamilar International whom the CB did not purportedly know earlier and as stated by the CB that they had not dealt earlier with the goods 'data cable' and so not having knowledge of its proper value, the CB was more so required to be cautious and curious about the proper value range of goods so as to advise and ensure the correct declaration of value, before accepting the documents for Customs clearance. The CB cannot feign their ignorance of the value of the goods as a prudent CB. Before accepting the documents for filing S/B, the CB should have been much more diligent about the proper declaration of description, ITC HS classification and unit price of the goods for export. The CB was bound to know about the prevailing practice of overvaluation of goods for export to take undue benefit of various export promotion schemes and IGST refund. During the investigation or even during the deposition of the CB during inquiry proceedings, nothing has been produced to substantiate that the CB was diligent enough to have enquired into the declared value.

IO submitted that in view of above facts, he was of the opinion that the allegation of the abetment on the part of the CB is not established in the factual matrix of the case, though they were required to exercise more diligence and caution about the proper declaration of the value declaration in the Shipping Bill



and accordingly would have advised the exporter before filing the documents for Customs clearance. Therefore, IO held that the violation of Regulation 10(d) as 'Partly Proved'.

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

IO submitted that the CB has contested the allegation by stating that the SCN under reference has mis-interpreted the expression 'due diligence' used in Regulation 10(e) and has confused 'due diligence' in ascertaining the correctness of information imparted by CB to the client and the 'due diligence' in ascertaining the information imparted by the client to CB related to valuation of exported goods. Presuming that the declared export values were not correct, the information related to the export values was not imparted by the CB to the exporter (the client) so as to attract the violation of Regulation 10(e) of CBLR, 2018. The Regulation 10(e) did not require the CB to ascertain the correctness of declaration made by the client exporter. There is no allegation in the SCN that any information given by CB to the exporter was incorrect. CB did not impart any incorrect information to the exporter.

IO submitted that regulation 10(e) of the CBLR, 2018 casts a responsibility upon the CB to be diligent enough that any information which he imparts to the client shall be correct. However, in this case, the SCN has not pin-pointed any particular information which has been incorrectly imparted by the CB to the client, i.e. the exporter in this case. This allegation could have been sustained only when it could have been established during the investigation that the CB had misguided the exporter to declare very high value of the impugned goods and to share the unlawful gain out of it. Whereas, it is observed that the exporter's representative Shri Devendra Kumar Yadav has never stated that the value was declared high as per the information and guidance from the CB. As a part of abundant caution and diligence in taking over only those clearance job where the declared valuation was perfectly correct and beyond doubt, the CB might be held as failed on this count. However, this is not covered under this regulation, rather under the Regulation 10(d) which is already discussed and deliberated above. Therefore, IO held that the violation of Regulation 10(e) as 'Not Proved'.

**f. Article of Charge-III :- Violation of Regulation 10 (n) of CBLR, 2018:**

i. IO submitted that the CB stated during the inquiry proceedings that they obtained the documents viz. IEC, GST Registration Certificate, PAN of Director Anil Kumar Sharma, Aadhar of Director Akash, KYC & Bank Account Verification by Kotak Mahindra Bank. The CB believed that the DGFT and GST authorities have registered the exporter after due process of verification and the IEC and GST certificates serve as the reliable source of information. In this context, they have referred to the decision in case of Prefect Cargo & Logistics Vs CC (Airport & General), New Delhi reported in 2021 (376) ELT 649 (Tri. Delhi) which refers to



CBEC Circular No. 9/2010-Cus. dated 08/04/2010 wherein the Hon'ble Bench has observed inter alia that there is no obligation on the Customs House Agent to look into the information made available by importer/ exporter; that he is merely a processing agent of documents with respect to clearance of goods through Customs House and he is not an inspector to weigh the genuineness of the transaction; that when the Importer/Exporter Code Number was provided and before this code was issued a background check of the said importer/exporter was undertaken by the Customs Authority, there should be no doubt about the identity of the said exporter; that it would be too onerous to expect a Customs House Agent to inquire into what is stated in the documents when there is a presumption that an appropriate background check is done by the Customs Authorities. In fact, the grant of Importer/Exporter Code Number is a proof regarding verification of facts and if the grant of such a code number to an entity at the address mentioned is in doubt, then for such erroneous grant of the Importer/Exporter Code Number, the Appellant cannot be faulted.

ii. IO submitted that the CB relied upon the decision of various case laws : CESTAT Kolkata- 2023(4) in case of M/s. Sunglory Agency vs. Commissioner of Customs (Admn. and Airport) and CESTAT, New Delhi in case of M/s. Sadgati Clearing Services Pvt. Ltd. vs. Commissioner of Customs (Airport and General), New Delhi.-023(6) which were in line with the earlier observations of CESTAT, New Delhi in case of M/s. Anax Air Services Pvt. Ltd. vs. Commissioner of Customs, New Delhi (Airport and General) and M/s. CRM Logistics Pvt. Ltd. Vs. Commr. of Customs, New Delhi (Airport and General). In these CESTAT Orders, it was held that physical verification of the business premises is not an obligation cast upon the CB, under Regulation 10(n) of the CBLR; that so long as he can find some documents which are independent, reliable and authentic to establish the identity of his client, this obligation is fulfilled; nothing in this clause requires the Customs broker to physically go to the premises of the client to ensure that they are functioning at the premises; that if there are documents issued by the Govt. officers which show that the client is functioning at the address, it would be reasonable for the CB to presume that the officer is not wrong and that the client is indeed functioning at that address and CBLR, 2018 can not be read to mean that the CB has to ensure that the officers have correctly issued these documents as it would amount to treating the CB as one who is responsible to oversee and ensure the correctness of the actions by the Govt. officers. Besides, the responsibility of the CB under Regulation 10(n) does not include keeping a continuous surveillance on the client to ensure that he continues to operate from that address and has not changed his operations. Therefore, once verification of the address is complete, if the client moves to a new premises and does not inform the authorities or get his documents amended, such act or omission of the client cannot be held against the CB; that



the appellant has verified all the documents such as IEC, GSTIN, Aadhar, PAN etc. submitted by the exporters before processing their shipping bills and later if they were not found to be existing in the said addresses, the appellant cannot be held responsible for that as held by the principal bench in the case of Anax Air Services, under similar facts and circumstances. A reference has also been cited of a case of Kunal Travels, 2017(3) TMI 1494 wherein the Hon'ble Delhi High Court held that the CHA (now CB) is not an inspector to weigh the genuineness of the transaction; it is a processing agent of documents with respect to clearance of goods through Custom House; it would be far too onerous to expect the CHA to inquire into and verify the genuineness of the IE code given to it by a client for each import/export transaction; when such code is mentioned, there is a presumption that an appropriate background check in this regard, i.e. KYC etc. would have been done by the Customs authorities.

iii. IO submitted that there are plethora of Judicial orders and observations to the contrary of the belief that a CB before taking up any case of Customs clearance of export or import, is essentially required to conduct a physical verification of the registered premises as mentioned in the documents submitted to them to ascertain whether they are functioning at these addresses. It has been held that if their clients have submitted the IEC, GST Registration certificates or bank certified documents of their address, the CB can trust upon them and may verify the address details as mentioned in the export / import documents with those Govt- issued certificates.

iv. IO further submitted that it is also a fact found from the numerous investigations in Customs and GST fraud cases that the addresses mentioned in the IEC and GST certificates duly issued by the DGFT and GST officers have been found to be fake and the fraudsters are largely resorting to this practice to escape their apprehension in the event of unearthing of their modus operandi. It is also a fact that all addresses in the IEC or GST certificates are not necessarily physically verified before their issue. In this scenario it is very hard to accept that the CB should blindly believe the addresses declared on the export /import documents and be satisfied if these are verified with the above said documents only. However, it is also practically an onerous task and also as held by the Appellate and Judicial judgments that the CB shall be enjoined upon to physically verify each and every address existing at far flung areas.

v. The CB in their statement during the inquiry proceeding, has stated that in general, they did not send their employee to visit physically the premises of the exporter/importer having address outside Mumbai for the purpose of address verification as it was not practically possible, though it used to be done so for the local exporter/importer; that in this case also, no physical verification was



conducted, however, documents based verification for the address was very much done by his employee.

vi. IO submitted that the addresses mentioned in the IEC and GST Registration Certificates of the same exporter are different. The CB, on being asked during the inquiry whether he verified or had any doubt as regards the difference in the addresses of the exporter in the IEC and the GST Registration certificate as submitted to him by the exporter's representative, stated that he mainly depended on the address as mentioned in the IEC and verified whether the same address was also mentioned in the Invoice and Shipping Bill and that the GST registration certificate was seen mainly to confirm the GSTIN for mentioning in the Shipping Bill; that he knew that the GST Registration certificate carried the address of principal place of business and he thought that the address in the GST Regn. Certificate can be different from that mentioned in the IEC as in the IEC the address is of registered office address. He admitted that this difference in address was in his knowledge but he did not find it worth making further inquiry. IO submitted that if the CB were diligent enough, he should have alerted himself about possibility of some fraudulent intention of the exporter and should have satisfied himself about the genuineness of the address mentioned in the IEC after verification of address by conducting independent inquiry through some prudent ways and if required, could conduct physical verification also. This lapse on the part of the CB exhibits either his imprudence in disregard to the obligations of a Custom Broker or his acquiescence to carry out the fraudulent export.

vii. IO further submitted that in this regard, he had found that the CB have not followed the KYC norms for identification of clients as per the CBIC circular No. 9/2010-Cus dtd. 8.04.2010 to the extent that they have not submitted any proof that they had obtained a photograph of the authorised signatory of the exporter company and any two of the listed documents of the prescribed Annexure, i.e. Certificate of incorporation, Memorandum of Association, Articles of Association, Power of Attorney granted to its managers, officers or employees to transact business on its behalf, copy of PAN allotment letter and copy of telephone bill. These documents should have to be seen for verification of the name of the company, principal place of business, mailing address of the company and telephone, fax number and e-mail address.

viii. IO submitted that in view of above facts and case laws cited, he found that the CB's contention that he mainly depended on the address particulars as mentioned in the IEC certificate which was declared in the Shipping Bill and in the Bank KYC Certificate and so he was not bound to conduct physical verification cannot be declined in toto as he has obtained documents indicating the address as declared in the Shipping Bill before taking up the job of Customs clearance from the exporter. As such, IO held that the part of allegation of his failure to conduct



physical verification of the premises as a routine manner is not sustainable. However, CB should have been more cautious and diligent towards the scrutiny and verification of documents submitted to them for identification of his client and functioning of his client at the declared address. Therefore, IO held that the violation of regulation 10(n) of the CBLR, 2018 is 'Partly proved'.

#### **15. PERSONAL HEARING AND RECORDS OF PERSONAL HEARING :-**

A personal hearing was granted to Customs Broker on 16.01.2024. Shri Ajinkya Vaishampayan, CA appeared for personal hearing and represented the CB. Wherein, he stated that:

- i. CB has no role in valuation part and export value was negotiated by the exporter with its customer and exporter nowhere stated that value was declared on the basis of advise or guidance of the CB
- ii. In SCN regulation 10(e) of CBLR, 2018 was misinterpreted and it says that information imparted by the CB must be correct.
- iii. Documents was verified as per Circular No. 09/2010-Cus dated 08.04.2010. Exporter in his statement stated that they shifted from the address mentioned in the IEC because of inconvenience with the landlord.
- iv. They will submit their written submission in 3-4 days.

#### **16. DISCUSSION AND FINDINGS:-**

I have gone through the case, material evidence on record, the Show Cause Notice dated 19.05.2023, and Inquiry Report dated 05.12.2023, written and oral submissions of the said CB.

**16.1** I observe that the charges against the said CB is of violation of regulation 10(d), 10(e) and 10(n) of CBLR, 2018 made vide Show Cause Notice No. 11/2023-24 dated 19.05.2023 issued by Pr. Commissioner of Customs (General), NCH, Mumbai. The Inquiry Officer vide inquiry report dated 05.12.2023 held the charges of violation of regulations 10(d) and 10(n) of CBLR, 2018 as "Partly Proved" and violation of regulations 10(e) of CBLR, 2018 as "Not Proved"

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

##### **16.3.1 With regard to violation of Regulation 10(d) of CBLR, 2018:**

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

*"A Customs broker shall advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-*



*compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;"*

**16.3.1.2** IO in his report submitted that the unit value of the goods of three live shipments were re-determined which was found to be Rs. 78/- per piece as against the declared unit value of Rs.605/-. The same modus operandi of overvaluation was also adopted by exporter in respect of their past exports to avail inadmissible /fraudulent IGST. The exporter did not submit any relevant document, such as Supplier's Tax invoice, bank transaction proof made with their supplier, proof of supplies of goods through documents viz, toll slip, lorry receipts and transaction documents which could vindicate that the transaction was fair and that the declared price of the export goods was genuine. IO submitted that it was corroborated by the statement of Shri Devendra Kumar Yadav, GM of the exporter company in his statement dtd. 05.12.2018 under section 108 of the Customs Act, 1962, before the SIIB (Export), that the consignments vide the earlier four Shipping Bills including the Shipping Bill dealt by this CB were the same, 'USB Cable'. It was also found that the foreign remittance has not been realized against those past four Shipping Bills including the Shipping Bill No. 8720955 dtd. 03.11.2018, handled by the CB, Atharva Logistics.

IO submitted that the investigation has not pin- pointed any fact which can indicate that the CB was very much aware of the actual value of the impugned goods and despite that he let the exporter declare very higher value of the goods with an intention to gain undue advantage. It has also not been found during the investigation that the CB had earlier cleared consignments of identical goods, i.e. the data cable, which could be a base to indict that the CB despite being aware of the proper value of the goods in question, have either ignored or remained silent with a motive of gaining undue benefit of the high declared value of export consignment and thereby abetted the exporter in claiming undue refund of IGST. IO submitted that this is the very first Shipping Bill of the impugned goods of the exporter and after this, no other consignment of the same goods has been dealt by this CB.

IO also submitted that since this was the very first consignment of the exporter, M/s. Jamilar International whom the CB did not purportedly know earlier and as stated by the CB that they had not dealt earlier with the goods 'data cable' and so not having knowledge of its proper value, the CB was more so required to be cautious and curious about the proper value range of goods, so as to advise and ensure the correct declaration of value, before accepting the documents for Customs clearance. The CB cannot feign their ignorance of the value of the goods as a prudent CB. Before accepting the documents for filing Shipping Bill, the CB should have been much more diligent about the proper declaration of description, ITC HS classification and unit price of the goods for export. The CB was bound to



know about the prevailing practice of overvaluation of goods for export to take undue benefit of various export promotion schemes and IGST refund. During the investigation or during inquiry proceedings, nothing has been produced to substantiate that the CB was diligent enough to have enquired into the declared value.

IO submitted that in view of above facts, he was of the opinion that the allegation of the abetment on the part of the CB is not established in the factual matrix of the case, though they were required to exercise more diligence and caution about the proper declaration of the value declaration in the Shipping Bill and accordingly would have advised the exporter before filing the documents for Customs clearance. Therefore, IO held that the violation of Regulation 10(d) as 'Partly Proved'.

**16.3.1.3** CB in his defence submitted that they could not have judged the correctness of the declared value on the basis of the available documents as the CB had no role in procurement, packing or transport of the subject export goods. They did not inspect the export goods prior to examination by officers of Customs, therefore, they could not suspect the declared value of the export goods and could not inform the Customs Authorities about overvaluation. The subject consignment covered under the said shipping bill was granted LEO by the proper officer after examining the documents and physical examination of goods. CB also submitted that their job was limited to filing the documents as given by exporter. They had no knowledge of the exact valuation of the goods, therefore, they did not doubt about the declared value.

**16.3.1.4** I find that during the inquiry proceeding the exporter failed to submit any relevant document, such as Supplier's Tax invoice, bank transaction proof made with their supplier, proof of supplies of goods through documents viz, toll slip, lorry receipts and transaction documents which could vindicate that the transaction was fair and that the declared price of the export goods were genuine. The investigation agency revealed that the exported goods were overvalued to avail undue IGST refund. I note that this was the first consignment of the exporter, M/s. Jamilar International whom the CB did not know earlier and as stated by CB that they had not dealt earlier with the goods 'data cable' and so not having knowledge of its proper value. Hence, the CB was required to be more cautious and curious about the proper value of the goods so as to advise and ensure the correct declaration of value, before accepting the documents for filing Shipping Bill. I also find that CB cannot shy away from the responsibilities cast upon them under the Regulation 10(d) of the CBLR, 2018 by stating that determining the mis-declaration in terms of valuation is the officer's responsibility as the CB can the status of requires a minimum standards of knowledge for minimum standards of



conduct and CB should be well versed in the provisions and regulations of the Acts, allied act. Therefore, it is clear that there is no contention in the CB's submission.

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

**16.3.2 With regard to violation of Regulation 10(e) of CBLR, 2018:**

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

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

**16.3.2.2** IO in his report submitted that regulation 10(e) of the CBLR,2018 casts a responsibility upon the CB to be diligent enough that any information which he imparts to the client shall be correct. However, in this case, it was found that has no information has been incorrectly imparted by the CB to the client, i.e. the exporter. IO also submitted that it was observed that the exporter's representative Shri Devendra Kumar Yadav has never stated that the value was declared high as per the information and guidance from the CB. As a part of abundant caution and diligence in taking over only those clearance job where the declared valuation was perfectly correct and beyond doubt, the CB might be held as failed on this count. However, this is not covered under this regulation, rather under the Regulation 10(d). Therefore, IO held that the violation of Regulation 10(e) of CBLR,2018 as 'Not Proved'.

**16.3.2.3** CB in his defence submitted that the allegation by stating that the SCN under reference has mis-interpreted the expression 'due diligence' used in Regulation 10(e) and has confused 'due diligence' in ascertaining the correctness of information imparted by CB to the client and the 'due diligence' in ascertaining the information imparted by the client to CB related to valuation of exported goods. Presuming that the declared export values were not correct, the information related to the export values was not imparted by the CB to the exporter (the client) so as to attract the violation of Regulation 10(e). The Regulation 10(e) did not require the CB to ascertain the correctness of declaration made by the client exporter. There is no allegation in the SCN that any information given by CB to the exporter was incorrect. CB did not impart any incorrect information to the exporter.

**16.3.2.4** I find that the regulation 10(e) of the CBLR,2018 casts a responsibility upon the CB 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. In the instant case, I find from the offence report that there is



no evidence to substantiate that CB imparted any incorrect information to the client, i.e. the exporter. I also find that the exporter's representative Shri Devendra Kumar Yadav in his statement recoded under section 108 of the Customs Act, 1962 has never stated that the value was declared high as per the information and guidance from the CB. Therefore, I find that CB has not violated the regulation 10(e) of the CBLR, 2018.

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

### **16.3.3 With regard to violation of Regulation 10(n) of CBLR, 2018:**

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

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

**16.3.3.2** IO in his report submitted that the CB stated during the inquiry proceedings that they obtained the documents viz. IEC, GST Registration Certificate, PAN of Director Anil Kumar Sharma, Aadhar of Director Akash, KYC & Bank Account Verification by Kotak Mahindra Bank. The CB submitted that the DGFT and GST authorities have registered the exporter after due process of verification and the IEC and GST certificates serve as the reliable source of information.

IO submitted that the addresses mentioned in the IEC and GST Registration Certificates of the same exporter are different. The CB, on being asked during the inquiry whether he verified or had any doubt as regards the difference in the addresses of the exporter in the IEC and the GST Registration certificate as submitted to him by the exporter's representative, CB stated that he mainly depended on the address as mentioned in the IEC and verified whether the same address was also mentioned in the Invoice and Shipping Bill and that the GST registration certificate was seen mainly to confirm the GSTIN for mentioning in the Shipping Bill. CB also stated that he knew that the GST Registration certificate carried the address of principal place of business and he thought that the address in the GST Registration Certificate can be different from that mentioned in the IEC as in the IEC the address is of registered office address. CB admitted that this difference in address was in his knowledge but he did not find it worth making further inquiry. IO submitted that if the CB were diligent enough, he should have alerted himself about possibility of some fraudulent intention of the exporter and should have satisfied himself about the genuineness of the address mentioned in



the IEC after verification of address by conducting independent inquiry through some prudent ways and if required, could conduct physical verification also. This lapse on the part of the CB exhibits either his imprudence in disregard to the obligations of a Custom Broker or his acquiescence to carry out the fraudulent export.

IO submitted that the CB's contention that he mainly depended on the address particulars as mentioned in the IEC certificate which was declared in the Shipping Bill and in the Bank KYC Certificate and so he was not bound to conduct physical verification cannot be declined in toto as he has obtained documents indicating the address as declared in the Shipping Bill before taking up the job of Customs clearance from the exporter. As such, IO held that the part of allegation of his failure to conduct physical verification of the premises as a routine manner is not sustainable. However, CB should have been more cautious and diligent towards the scrutiny and verification of documents submitted to them for identification of his client and functioning of his client at the declared address. Therefore, IO held that the violation of regulation 10(n) of the CBLR, 2018 is 'Partly proved'.

**16.3.3.3** The CB in their statement before the inquiry officer stated that in general, they did not send their employee to visit physically the premises of the exporter/importer having address outside Mumbai for the purpose of address verification as it was not practically possible, though it used to be done so for the local exporter/importer. CB further stated that in present case, no physical verification was conducted, however, documents based verification for the address was very much done by his employee. The CB submitted that the DGFT and GST authorities have registered the exporter after due process of verification and the IEC and GST certificates serve as the reliable source of information.

**16.3.3.4** I find that the addresses mentioned in the IEC and GST Registration Certificates of the same exporter are different. CB admitted before IO that this difference in address was in his knowledge but he did not find it worth making further inquiry. I find that the verification report received from the Deputy Commissioner (Gr-IV/Delta), Customs, Preventive Delhi vide letter dated 01.08.2019 disclosed that the two addresses mentioned at GST Registration and IEC of M/s. Jamilar International Private Limited were not traceable and therefore the Summons could not be delivered. Further, the two addresses of the Director of M/s. Jamilar International Private Limited were also searched, the said addresses were existing but no person with the name of the directors were found residing at those addresses. Therefore, it was observed that the M/s. Jamilar International Private Limited was not found in existence at their registered place of business and the addresses of the said exporter were fake. Therefore, I find that if the CB was diligent enough, he should have alerted himself about possibility of some



fraudulent intention of the exporter and should have satisfied himself about the genuineness of the address mentioned in the IEC after verification of address by conducting independent inquiry through some prudent ways and if required, could conduct physical verification also but CB has completely failed in his duties.

CB stated before the IO that in present case, no physical verification of the exporters address was conducted, however, documents based verification for the address was very much done by his employees and they had verified the IEC and GST Registration certificate through online mode. The casual approach of the CB to verify the address of the exporter from documents and through online mode is not acceptable because Regulation 10(n) of CBLR, 2018 is specially prescribed to verify identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information, wherein, it is very clear from the records that the CB has not verified the business premises of the exporter. Therefore, I find that CB has violated the regulation 10(n) of CBLR, 2018.

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

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

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

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

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

- i. *The very purpose of granting a licence to a person to act as a Customs House Agent is for transacting any business relating to the entry or departure of conveyance or the import or export of goods in any customs station. For that purpose, under Regulation 9 necessary examination is conducted to test the*



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

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

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

"Para 6.1 These provisions require the Customs Broker to exercise due diligence to ascertain the correctness of any information and to advice the client accordingly. Though the CHA was accepted as having no mensrea of the noticed mis-declaration /under- valuation or mis-quantification but from



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

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

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

**20.** I hold that the proof of charges in inquiry are partially 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. Atharva Logistics (11/1761) 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), and 10(n) of CBLR, 2018 and is liable for penal action. Accordingly, I pass the following order.

#### **ORDER**

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

(i) The CB License No. 11/1761 is ordered to be revoked under Regulation 14 of the CBLR, 2018.

(ii) I hereby order for forfeiture of entire amount of security deposit furnished by the CB, under Regulation 14 of the CBLR, 2018.

(iii) I hereby impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on M/s. Atharva Logistics (11/1761) (PAN No. ACIPT0058R) under Regulation 18 of the CBLR, 2018.



(iv) I hereby order that the CB surrender the original License as well as all the 'F', 'G' & 'H' cards issued there under immediately.


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

  
(SUNIL JAIN)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)  
MUMBAI ZONE-I

To,

M/s. Atharva Logistics (11/1761) (PAN No. ACIPT0058R)  
2/401, Ozone Valley, Old Mumbai- Pune Road  
Parsik Kalwa, Thane – 400 605

 Em 158950497IN

Copy to,

1. The Pr. Chief Commissioner/Chief Commissioner of Customs, Mumbai I, II, III Zone.
2. All Pr. Commissioners/Commissioners of Customs, Mumbai I, II, III Zone
3. SIIB(X), ACC, Sahar, Mumbai
4. CIU's of NCH, ACC & JNCH
5. EDI of NCH, ACC & JNCH
6. ACC (Admn), Mumbai with a request to circulate among all departments.
7. JNCH (Admn) with a request to circulate among all concerned.
8. Cash Department, NCH, Mumbai.
9. Notice Board
10. Office Copy
11. Guard File (Admin)

o/c