



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

सञ्चिका सं./F.No.- S/8-24 /2011- Admn Pt-III

आदेश दिनांक/Date of Order: 05.07.2021

CAO No. : 27/CAC/PCC(G)/PS/CBS(Adj)

जारी दिनांक/Date of issue : 05.07.2021

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द्वारा जारी: प्राची सरूप

Issued By: Prachi Saroop

प्रधान आयुक्त, सीमाशुल्क (सामान्य),
मुंबई- 400001

Pr. Commissioner of Customs (G),
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 संबंध में सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवा कर 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 सेवा कर अपील अधिकरण (कार्यविधि) नियमावली, १९८२, के प्रावधानों के अंतर्गत, यथोचित खंड पीठ 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 सेवा कर अपील अधिकरण, पश्चिम क्षेत्रीय खंड पीठ, 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 तदोप्रांत न्याय निर्णयन अधिकारी 'functus officio' बनजाता 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 ब्याज व लगाए गए जुर्माने की राशि रु. पाँच लाख या इस से कम हो तो रु. 1000/-, (ii) यदि यह राशि रु. पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न हो तो रु. 5000/- एवं (iii) यदि यह राशि रु. पचास लाख से अधिक हो तो रु. 10000/- के शुल्क का भुगतान क्रॉसड बैंक ड्राफ्ट के माध्यम से अधिकरण की खंडपीठ के सहायक पंजीयक के पक्ष में जिस स्थान पर खंडपीठ स्थित है, के किसी भी राष्ट्रीयकृत 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 अनुसूचीमद 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

1. M/s Fairdeal Shipping Agency Pvt. Ltd, CB No. 11/091 (PAN No. AAACF5033H) here-in-after referred to as the Customs Broker/CB, has been granted regular CHA license at Mumbai Customs under Regulation 10(1) of CHALR, 1984 (then Regulation 9(1) of CHALR 2004, now Regulation 7(1) of CBLR, 2013) and as such they are bound by the Regulations and Conditions stipulated therein.

2. A specific intelligence was received vide Order No. 05/CHA/2011 dated 02/09/2011 from The Commissioner of Customs (Preventive), Jodhpur in respect of CB M/s Fairdeal Shipping Agency Pvt. Ltd. that they were found involved in a case of gross undervaluation of goods with the connivance of the Importer engaged in the import of Glass Chatons, Furniture and Mobile Accessories.

3. During the course of investigation, search by DRI officers of Ahmedabad Zonal Unit, of the official premises of the CB situated at G-29, Ratna Sagar, MSB ka Rasta, Johri Bazar, Jaipur, resulted in recovery of various incriminating documents. The email account of the CB was accessed and it was observed that the import invoices received from two overseas suppliers M/s Perfect Trading, Hong Kong and M/s Sunland Trading Ltd, Hong Kong in the email account of the alleged CHA were in MS-Excel format and complete in all respect, except the rate and value columns which were kept blank with some mala-fide intention. These two columns of rate and value were filled up by the CHA with grossly undervalued figures and after taking printout of such invoices, they were presented before Customs for seeking clearance of the imports.

4. Whereas Show Cause Notices were received from the Additional Director General, DRI, Ahmedabad Zonal Unit bearing F.No. DRI/AZU/INV-17/2011 (Ninewest) dated 01.11.2013., F.No. DRI/AZU/INV-17/2011 (Lokesh) dt.01.05.2014 & F.No. DRI/AZU/INV17/2011 (Golden) dated 20.05.2014 which revealed that Shri Vinod Kumar Sharma, Director of M/s Fairdeal Shipping Agency Pvt Ltd., CB No 11/091 in connivance with the trader-cum-forwarder Shri Prem Kumar Ojha @ Raju Sharma based in Guang Zhou, China, Shri Lokesh Jhalani of Jaipur and Shri Ajay Ojha of Kolkata, was engaged in the import and undervaluation of glass chatons.

5. Whereas as per SCN F.No: DRI/AZU/INV-17/2011 (Ninewest), dated 01.11.2013, the value of the imported 'Glass Chaton', declared by the importer M/s Nine West International at the time of importation in the import documents was not true, correct and actual transaction value as Shri Vinod Kumar Sharma had deliberately suppressed the actual amount paid by the overseas supplier firms in connection with import of the Glass Chaton. In the instant case, declared value of Glass Chatons was Rs. 2,31,59,936/- and re-determined assessable value was Rs.6,29,62,215/-. Therefore, total Customs duty of Rs. 1,69,04,534/- appears to be payable under the Bs/E mentioned in this SCN. However, total Customs duty paid under the bills of entry was Rs. 76,96,441/- only. Hence, short payment of duty by the importer M/s Nine West International, on account of suppression of facts and wilful mis-statement was amounting to Rs.92,08,093/-

5.1 During the course of investigation, it emerged that Shri Prem Kumar Ojha @ Raju Sharma, based in Guang Zhou, China in consultation and connivance with Shri Vinod Kumar Sharma (the CB) had floated some trading firms in China

to facilitate the fraudulent import. Shri Prem Kumar Ojha @ Raju Sharma was indulged in the modus operandi of "carrying" of imported goods, wherein as the trader cum forwarder, he picked up the goods (meant for import) at China /Hong Kong and arranged their shipment to India on commission basis. Air freight/container freight were paid by him i.e. the trader-cum-forwarder/facilitator and the CB Shri Vinod Kumar Sharma. As soon as the shipments were ready Shri Prem Kumar Ojha @ Raju Sharma, the forwarder-cum-trader based in China, prepared the commercial invoices (in MS-excel format) and packing list in the name of the IEC holders as suggested by Shri Vinod Kumar Sharma, the CB. The Terms of invoice were wrongly shown as 'CIF' on the invoices although they were actually on FOB terms. Thereafter these partially filled, mis-declared invoices and packing lists were forwarded to Shri Vinod Kumar Sharma to the email id fairdealjaipur@yahoo.co.in and/or fairdealjaipur@gmail.com using the e-mail id's miheer02@yahoo.com and/or jenica.y@hotmail.com.

6. Whereas as per SCN F.No. DRI/AZU/INV-17/2011 (Lokesh) dated 01.05.2014, the actual importer Mr. Lokesh Jhalani while importing glass chatons in the name of M/s Sai International, M/s Sai Kripa Gems, M/s Ranjan Enterprises and M/s Narendra Enterprises had declared the total value of imported glass chatons as Rs. 6,53,94,617/- only at the time of clearance of the goods in the corresponding Bs/E, as against the total actual transaction value of Rs. 13,65,45,241/- and suppressed the value amounting to Rs. 7,11,50,624/- from the customs resulting in evasion of customs duty altogether amounting to Rs. 1,91,07,804/-.

6.1 During the course of investigation prima facie, it appeared that Shri Vinod Kumar Sharma, Director M/s Fairdeal Shipping Agency, CHA firm had knowingly and deliberately abetted Shri Lokesh Jhalani for effecting imports in the firms M/s Sai International, Jaipur; M/s Sai Kripa Gems, Jaipur; M/s Ranjan Enterprises, Jaipur and M/s Narendra Enterprises, Jaipur even though he had prior knowledge about the mis-declaration of quality and value of the import consignment and had knowingly presented the fabricated documents to Customs for the import of glass chatons in the name of these firms.

7. Whereas as per SCN F No DRI/AZU/INV-17/2011 (Golden) dated 20.05.2014, the value of the imported 'glass chatons' as declared by the importer M/s Golden Agro Corporation at the time of importation in the import documents, was not correct as Shri Vinod Kumar Sharma deliberately suppressed the actual amount paid by to the overseas supplier firms in connection with import of the glass chatons. In the instant case, the declared value of glass chatons was Rs. 2,45,20,615/- and re-determined assessable value was Rs.4,77,15,258/-. Hence, short payment of duty by the importer M/s Golden Agro Corporation on account of suppression of facts and wilful mis-statement was amounting to Rs. 62,26,905/-.

7.1 During the course of investigation, it appeared that Shri Vinod Kumar Sharma, director of CB firm M/s Fairdeal Shipping Agency Pvt Ltd. Jaipur, in connivance with Shri Prem Kumar Ojha @ Raju Sharma of M/s Sunland Trading and M/s Perfect Trading both Hong Kong based companies, had aided and abetted Shri Deepak Agrawal, Proprietor of M/s Golden Agro Corporation, Jaipur in the conspiracy of mis-declaring the quality and value of the glass Chatons imported in the name of the aforesaid firm. He had knowingly and actively concerned himself in the evasion of Customs duty in a well-planned manner in

as much as he failed to give the true declarations before Customs in as much as he had signed, used false invoices other than the invoices of the actual overseas suppliers and submitted fake document by using seals and signature of IEC holder and putting fake signatures.

8. During the course of investigation, statements of concerned persons were recorded. Shri Vinod Kumar Sharma, director of CB firm M/s Fairdeal Shipping Agency Pvt. Ltd., Jaipur in his statement recorded on 03.08.2011, 04.08.2011, 05.08.2011 and 17.02.2014 under Section 108 of the Customs Act, 1962 wherein he inter alia stated that the invoice contained the item size of the goods, quantity, however the column of rate and amount were blank; that the columns of rate and amount were filled in by him as per the passing rates which were much lower than the actual rate and value; that it was done by him to facilitate the importers of paying lesser duty; that these documents also contained invoice and packing list of M/s Perfect Trading, Hong Kong and in these cases also the rates and value columns were left blank which were filled up by him showing lesser rate and value than the actual cost of the imported goods; that as per the rates and value filled up by him in these invoices, the imports of chatons had taken place; that the rates and value did not reflect the true transaction value and that based on the lesser rates and value shown in the invoices, lesser customs duty was paid at the time of clearance; that in all cases of import from M/s Perfect Trading, Hong Kong, they had adopted that modus of paying lesser duty by showing lesser rates and value in the invoices; that the firm M/s Sunland Trading Ltd, Hong Kong was also of Shri Raju Sharma, which was also functioning from the same address of M/s Perfect Trading, Hong Kong at 20-F, Champion Building, 287-291 Des Voeux Road, Central, Sheung Wan, Hong Kong; that he received extra considerations in cash for facilitating and managing such transactions for the importers; that they mis-declared the same in the customs documents to avoid payment of customs duty; that they indulged into under invoicing of the import of chatons, furniture, mobile accessories etc. by filling up the blank columns in the invoices of the overseas exporters by lesser rate and value; that they also indulged into mis-declaration of the customs documents by showing CIF value instead of FOB value in order to make lesser payment of duty; that stamp impressions of various firms were seized from CB office; that on being asked to explain the reasons for retaining such a huge number of different rubber stamps, he stated that as per the prevailing requirement with the local Customs authorities; that the documents including the Bill of Entry/Shipping Bill filed manually were required to be endorsed on the reverse side of the documents with the rubber stamp of the exporter/importer and for this reason they were keeping the rubber stamps of all the importers/exporters for they were acting as CHAs; that before filing of Bill of Entry/Shipping Bill the authorised person of their firm signed after putting the rubber stamp on behalf of the importer/exporter; that regarding the overseas suppliers, he stated that all the consignments were forwarded by Shri Raju Sharma @ Prem Kumar Ojha and invoiced by the companies owned/controlled by Shri Raju Sharma @ Prem Kumar Ojha; that as per his knowledge Shri Raju Sharma was arranging for the shipment of all these consignments of glass chatons from Hong Kong; that all the importers were in contact with Shri Raju Sharma and he had been the mediator in the import of glass chatons through Jaipur Air Cargo; that as admitted by him in his earlier statement also, he was receiving invoice, packing list for every import consignment in his office e-mail id fairdealjaipur@yahoo.com; that this e-mail was their office e-mail id; that the overseas suppliers were namely M/s Sunland Trading Limited and M/s Perfect

Trading, both based in Hong Kong; that there was a vast difference between the actual price declared in the proforma invoice and that declared in the bill of entry; that the mis-declaration of value was knowingly committed by him as per the instructions of the importer in order to evade payment of customs duty; that conscious mis-declaration of value were made by him in all the import invoices in case of all the import consignments of glass chatons imported by various importers and cleared by their CHA agency at Air Cargo Complex, Jaipur; that these undervalued prices were declared by him on behalf of the importers and as per their directions; that the figures appearing under the heading "Amount" related to the freight amount paid by Shri Raju Sharma to the shippers on behalf of the importers; that on being asked as to why such mails were being sent to him and not to the importers directly, he stated that Shri Raju Sharma was paying the freight in advance to the Chinese suppliers/forwarders/handlers and since, he did not have full trust on the importers, he (Shri Vinod Kumar Sharma) stood in between as a guarantor; that he trusted him more than the importers; that on being asked as to how the said amount was paid by him back to Shri Raju, he stated that the amounts were sometimes adjusted against some payments like clearance expenditure, custom duty etc. made by him on behalf of Shri Raju Sharma in some consignments at Jaipur; that after making such deductions the account was settled every month; that the amount to be paid to Shri Raju Sharma was paid by him in Indian money to Shri Santosh Sharma (brother-in-law of Shri Raju Sharma) at Delhi; that on being asked as to how did he send the money to Shri Santosh, he stated that many a times the money was either received by Shri Santosh Sharma directly at Jaipur or sometimes it was forwarded by angadia; that he had filled up the blank columns of value in the import invoices on behalf of the importers; that these values filled by him were mis-declared/undervalued in order to evade payment of customs duty; that by his acts of deliberate mis-declaration of the values in the import invoices he had not fulfilled the conditions as per sub regulations; that he fully agreed with the fact stated by Shri Prem Kumar Ojha @ Raju Sharma in the statement dated 02.08.2011 and 04.08.2011.

9. Statements of Shri Prem Kumar Ojha @ Raju Sharma were recorded under Section 108 of the Customs Act, 1962 on 02.08.2011, 04.08.2011, 05.08.2011 and 03.02.2014 wherein he inter alia stated that in the year 2008 and 2010 he started his own trading companies namely M/s Sunland Trading Limited and M/s Perfect Trading respectively in Hong Kong; that both companies used to forward the export goods from China to other countries; that lifting the cargo from the Warehouse in China/Hong Kong, arranging air shipment, Bill of Lading & CO certificate (certificate of origin) in addition to preparing packing list and invoice; that Ms Jenny looked after the offices of these companies including the work of signing invoices raised by them; that he was in contact with CB Shri Vinod Kumar Sharma of Jaipur; that Indian importers contacted him through the CB or directly; that the Importers intimated them about the readiness of goods at China and the name of the consignee/IEC; that the airway bill, packing list and invoice in the name of concerned consignee were prepared and sent through companies E-mail ids miheer02@yahoo.com to the CB email id fairdealjaipur@yahoo.com and sent directly to importers if CB was other than Shri Vinod Kumar Sharma; that he communicated with importers (Shri Lokesh Jhalani of Jaipur, Shri Ajay Ojha of Kolkata and Shri Harsh Kumar of Delhi) on their email ids lokeshjhalani53@gmail.com, vision.import@hotmail.com which were related to stone chatons and saamimpex@yahoo.co.in which was related to mobile accessories and footwear; that goods via air were not covered under the

insurance as importers did not prefer it due to fierce market competition that the freight was borne by the buyer chargeable on per kg basis (HKD 24 per kg equal to approx. Rs. 145/-); that as he did not believe in the buyers, who sought credit and did not make full payment in advance; in so far as the debiting of amount of freight and his commission he debited the account of Shri Vinod Sharma consignment wise and he credited his account upon receipt of fund/TT from him; that he used to keep a running account with Shri Vinod Kumar Sharma in this respect and sometimes he also had separate running account with individual buyer; that on being asked about the manner in which the financial remittances for the sales made to importers in India was completed, he stated that as per the requirement of the goods, the buyers/ importers contacted the Chinese supplier and negotiated his price; that they received advance payments from their Indian buyers which are received by way of their company account mainly M/s Sunland Trading Limited, Hong Kong; that he negotiated the sale amount with the Chinese suppliers and informed them to deliver the amount; that for such facility he was getting commission @ 1 to 1.5% of the total weight of consignment considering the value of the goods @ 20\$ per kilogram which were included in forwarded amount through TT (Telegraphic Transmission); that whenever their account was credited, they dispatched the goods i.e. Glass Chatons to India and details like packing lists, invoices (showing description and quantity and not the price) in MS Excel format along with bill of lading were forwarded; that Ms. Jenny signed the invoices keeping the unit price and value left blank as per his direction and forwarded to the CB or the importer and the CB staff filled in the blank columns as per his (Shri Vinod's) knowledge for onward submission Customs for assessment; that he identified/tallied its actual invoice/document proforma invoice no. LOKESH.CR IO-01 containing 29 cartons, dated 25.12.2010 of M/s YIWU AXU JEWELRY accessories firm, China and the said proforma invoice of the e-mail print outs taken from the e-mail account - miheer02@yahoo.com of Shri Raju Sharma under Panchanama dated 02.08.2011 by DRI; that the proforma invoice reflected actual transacted value and he was not aware which value was filed up by Shri Vinod Kumar Sharma in the invoice presented before the Customs; that he read the proforma invoice, BL No.589 9324 9925 dated 13.01.2011, Invoice No. SLO0168 dated 13.01.2011 issued by M/s Sunland Trading Limited, Hong Kong and found that it pertained to a shipment of 29 cartons of A-quality glass Chatons of different sizes which were mis-declared as B-grade; that there was a vast difference between the actual price declared in the proforma invoice and that declared in the bill of entry; that he had collected remittances and the documents presented were true, correct and acceptable to him; that due to advance freight payment to Chinese suppliers, he used to mail CB who was acting as guarantor on behalf of importers in India; that the amounts were sometimes adjusted against some payments such as clearing expenditure, Customs Duty etc. made by Shri Vinod Kumar Sharma on behalf of him and the account was settled every month; that the amount payable was adjusted from the importers at Delhi who were supposed to send the duty amount to Shri Vinod Kumar Sharma but instead of sending the duty to him it was collected by his brother in law and the amount payable to him by Shri Vinod Kumar Sharma was utilized towards duty payment by him for the importers; that sometimes it was forwarded by angadia as Shri Vinod Kumar Sharma was the guarantor on behalf of these importers.

10. Statement dated 03.08.2011 of Ms Neelam Khandelwal, Assistant Director of M/s Fairdeal Shipping Agency Pvt Ltd, Jaipur was recorded under Section 108 of the Customs Act, 1962, wherein she inter alia stated that she filled the rate

and value as per directions and instruction of Shri Vinod Kumar Sharma, their Director; that she agreed with the details after perusing the Panchanama dated 02.08.2011 drawn at their office premises containing the mails of said two companies of Shri Raju Sharma and invoices received from these companies in which places of rate and value were kept blank; that she confirmed that the same were retrieved from the inbox and were prepared in their office for submitting the same before the Customs authority as per directions of Shri Vinod Kumar Sharma.

11. Statements dated 27.11.2013 and 16.12.2013 of Shri Lokesh Jhalani were recorded under Section 108 of the Customs Act 1962 wherein he inter alia stated that due to good profit margin he started import of Glass Chatons using IEC of M/s Sai Kripa Gems, which was a proprietor ship firm in the name of his brother-in-law Shri Amitabh Gupta and thereafter formed a partnership firm in the name and style of M/s Sai International in 2010 along with Shri Mahesh Khandelwal and started import of Glass Chatons; that Shri Vinod Kumar Sharma helped him and introduced to Shri Prem Kumar Ojha @ Raju Sharma, who was a forwarder-cum-trader in China and arranged forwarding of goods in India; that regarding deal with overseas suppliers he stated that he used to negotiate with Shri Prem Kumar Ojha @ Raju Sharma and intimated him the grade and size of Glass Chatons and thereafter Shri Raju Sharma would purchase the goods from various overseas suppliers of China and Hong Kong; that as per his indent, Shri Prem Kumar Ojha @ Raju Sharma used to forward these goods to him; that the documents were forwarded through e-mail in the office of Shri Vinod Kumar Sharma and Shri Vinod Kumar Sharma used to file Bs/E for clearance of goods in consultation with him with reference to declaration of value of the goods and other aspects; that upon receipt of invoice and other documents along with Bills of Entry from CHA; that the amount equivalent to the invoice value were remitted through banking and non-banking channels in India as per the directions and arrangements of Shri Prem Kumar Ojha @ Raju Sharma; that he used to negotiate with supplier other than M/s Sunland Trading and Perfect Trading through Prem Kumar Ojha @ Raju Sharma regarding quantity, quality and value; that at times, full amount for the price of glass chatons was paid in India through non-banking channel; that at times, amount equivalent to the invoice value was remitted in the account number of actual overseas suppliers after consulting Shri Prem Kumar Ojha @ Raju Sharma and in addition, also paid air freight to CB for each imported consignment, which was never added in the invoice value though the term was shown as CIF in each invoice, which had been mis-declared on each occasion to evade the customs duty; that all the consignments of Glass Chatons imported by him were never insured as it would add to value for determination of the Customs duty; that sometimes approximate remittances were transferred in the account of Shri Raju Sharma's firm in advance; that he was having running account with Shri Prem Kumar Ojha @ Raju Sharma and he used to deposit the lump sum amount in his account which was adjusted towards supply and his commissions; that Shri Vinod Sharma has fixed a package rate of Rs. 100 per Kg which included CHA charges, handling charges at port plus actual freight plus amount of duty for clearance of each shipment of Glass Chatons through Jaipur; that Chatons are available in various grades and sizes and the rate was also determined on the basis of the grades/size (smaller size was costlier) and there are some branded Glass Chaton under the brand name of Srvroski (Austria), Golebuchel (Thailand), 888 (Egypt), A Star (Chinese), 3 star (Chinese) etc. and the Glass Chatons of these brands are costlier than the non-branded Glass Chatons; that he had imported Glass Chatons of different

grade/brand, however, as per their arrangements Shri Prem Kumar Ojha @ Raju Sharma always used to mention as "Grade-B' in the Packaging list in invoice to cover up the undervaluation; that he was also shown the statement dated 03.08.2011, 04.08.2011 and 05.08.2011 of Shri Vinod Kumar Sharma and agreed with the same; that he was also shown the statement dated 02.08.2011, 04.08.2011 and 05.08.2011 of Shri Raju Sharma @ Shri Prem Kumar Ojha and agreed with the same; that he had undervalued the goods i.e. Glass chatons, imported in the name of the firms owned by him as well as those controlled by him and Shri Prem Ojha by resorting to mis-declaration in terms of description and also declaring less value before the customs and suppressing the fact that the said goods were purchased on FOB basis and not CIF basis; that he also undertook to pay the differential duty in respect of the said goods.

12. The statement of Shri Deepak Agrawal, Proprietor of M/s Golden Agro Corporation was recorded under section 108 of the Customs Act, 1962 wherein he admitted that he had imported glass Chatons by resorting to undervaluation; that his negotiated price were on FOB basis whereas the same were declared as CIF in the invoice presented before Customs at the time of clearance of the glass chatons; that he had paid the differential value to Shri Prem kumar O ha @ Raju Sharma through channels other than banking channels and the extra freight charges to Shri Vinod in respect of the Imports which were not declared before the Customs at the time of import of the glass chatons.

13. The admission by the CB in his statement, of the offence of undervaluation by way of tampering of import invoices in order to enable the importers to evade Customs duty clearly points to the violation of Regulation 13(d) of CHALR, 2004. The CHA in his statement has inter-alia admitted to clearing the consignments on the basis of fabricated import documents and also admitted to the existence of a mutual deal with the importer which delineates violation of Regulation 13(e) of the CHALR, 2004. The collusion of the CHA with the overseas supplier with malafide intent is evident from the sending of invoices through email leaving the columns of rate and value blank to the email account of the Director of the CHA, in order to facilitate undervaluation, indicate the lack of efficiency of the CHA in adhering to the obligations cast on them. It is very clear that the goods were undervalued and Shri Vinod Kumar Sharma, Director of Customs Broker M/s Fairdeal Shipping Agency Pvt. Ltd. was an accomplice to the act of wrong doing and they facilitated the importers to act contrary to the provisions laid down in the CHALR 2004(now CBLR Rules, 2018). Hence, M/s Fairdeal Shipping Agency Pvt Ltd, CHA No. 11/091 (PAN No. AAACF5033H), by the afore said acts of commission and omission, has failed in the discharge of their obligations under the provisions of Regulation 13(a), 13(d), 13(e), 13(n) & 13(o) of erstwh le CHALR, 2004 (now Regulations 11(a), 11(d), 11(e), 11(m) & 11(n) of the CBLR, 2013).

14. In view of the above, the Customs Broker License No. 11/091 held by M/s Fairdeal Shipping Agency Pvt. Ltd| was suspended vide order No. 24/2011 dated 19.09.2011 passed by The Commissioner of Customs (G), NCH, Mumbai under Regulation 20(2) of CHALR 2004 (now Regulation 16(1) of CBLR, 2018). The suspension of the CB license was continued vide order No. 32/2011 dated 30.11.2011 passed by The Commissioner of Customs (G), NCH, Mumbai under Regulation 22 of CHALR 2004 (now Regulation 16(2) of CBLR, 2018). An order dated 20.11.2014 comprising Annexure-I (Grounds of Imputation), Annexure-II (Articles of Charges) and Annexure-III (Relied upon documents) were issued vide F. No. S/8-24/2011-Admn/1960 with pending inquiry against the CB by appointing Inquiry Officer and Presenting Officer to conduct inquiry against the

CB for their failure to comply with the Regulations 13(a), 13(d), 13(e), 13(n) & 13(o) of the CHALR 2004 (now Regulation 10(a), 10(d), 10(e), 10(m) & 10(n) of the CBLR, 2018). Due to administrative reasons Inquiry officer Shri D. S. Meena was replaced by Shri Gurbaz Sandhu.

INQUIRY REPORT

1. Inquiry proceedings initiated against the CB and inquiry report was submitted on 28.09.2020. The CB had filed a Writ Petition (Stamp) No. 2238 of 2019 before the Hon'ble High Court of Bombay. Vide letter addressed to Inquiry Officer dated 23.08.2019 the CB submitted that the inquiry proceedings may please be kept in abeyance till the Writ Petition is finally disposed off by the Hon'ble High Court. The case was registered vide Reg. No. WP/2903/2019 dated 23.10.2019. The High Court ordered on 30.01.2020 to complete the enquiry within a period of 12 weeks subject to availability of the witnesses and co-operation of the Petitioner, the Writ Petition was disposed off. The hearing schedule could not be held in the month of March end 2020 as a nationwide lockdown had been declared by the government due to the corona pandemic. Inquiry report was received on 28.09.2020 and the charges framed against CB i.e. violation of Regulations 13(a), 13(d), 13(e), 13(n) & 13(o) of the CHALR 2004 (now Regulation 10(a), 10(d), 10(e), 10(m) & 10(n) of the CBLR, 2018) were proved conclusively by the Inquiry Officer.

2. Inquiry Report submitted after going through the five Articles of Charge and the Grounds of Imputations of misconduct and all the supporting documents connected with the Notice dated 20.11.2014 issued to the charged Customs Broker, M/s Fairdeal Shipping Agency Pvt Ltd, CB No. 11/091. IO had gone through the records of hearings conducted during the inquiry proceedings. After examining all the records, he observed as under:

3. The Charge Memorandum in F.No. S/8-24/2014 Admn dated 20.11.2014 had been issued for violations of Regulations 13(a), 13(d), 13(e), 13(n) and 13(o) of the CHALR, 2004 which was superseded by the CBLR, 2013 vide Notification No. 65/2013-Customs (NT) dated 21.06.2013 and which in turn were superseded by the CBLR, 2018 vide Notification No. 41/2018-Customs (NT) dated 14.05.2018. Under the present CBLR, 2018 the said violations of the Obligations of the Customs Broker now fall under Regulations 10(a), 10(d), 10(e), 10(m) and 10(n).

4. Article of Charge-I: - In respect of Regulation 13(a) of the CBLR, 2013, now Regulation 10(a) of the CBLR, 2018 the Inquiry Officer observed that the retraction submitted by CB dated 08.08.2011 had been made in respect of the statements recorded under Section 108 of the Customs Act, 1962 from 02.08.2011 to 05.08.2011 by the officers of DRI, Ahmedabad and Jaipur. Another statement of Shri Vinod Kumar Sharma was recorded under the provisions of Section 108 of the Customs Act, 1962 on 17.02.2014 before the Deputy Director, Ahmedabad DRI in which the charged CB, Shri Vinod Kumar Sharma was shown his said earlier statements dated 03.08.2011, 04.08.2011 and 05.08.2011 but he had not stated that the said earlier recorded three statements were not true or had been retracted or had been given under pressure and the relevant portion of his said statement dated 17.02.2014 reads:

"I am being shown my earlier statement (s) dated 03.08.2011, 04.08.2011 and 05.08.2011 along with their annexures. I have carefully gone through the

same and on being asked to clarify regarding some of my submissions, I hereby clarify the same as follows:"

4.1 The Inquiry Officer observed on perusal of the said statement dated 17.02.2014 of Shri Vinod Kumar Sharma that it contained unambiguous admissions of his deep involvement in the undervaluation of Glass Chatons from China and in the use of blank invoices which were filled up in his office and thereafter submitted to customs as original invoices from overseas. It also brought out his knowledge that the actual importers were others and that he had tried to cover up for their actual identities by using IECs of individuals who were not the actual importers. Shri Vinod Sharma had thus disclosed knowledge about the actual importers of the Glass Chatons and far from retracting his earlier statements dated 03.08.2011, 04.08.2011 and 05.08.2011, he had inter alia admitted to their correctness and had clarified whatever discrepancies had come on record, in his said statement dated 17.02.2014. He had also admitted that he was aware of the quantum of undervaluation and the price trends of Glass Chatons in China and he had knowledge of the actual price and quality/grades of the Glass Chatons. He admitted that the prices on the invoices of the glass chatons were filled up as per normal clearing rate at the port. He also admitted the correctness of the confessed facts disclosed in the various statements of Lokesh Jhalani and Shri Deepak Agarwal and Shri Pulkit Khandelwal. Further, he had admitted that he collected freight separately from various importers on behalf of Shri Prem Kumar Ojha @ Raju Sharma.

4.2 The Inquiry Officer observed that the copy of the retraction dated 08.08.2011 submitted by Shri Vinod Kumar Sharma on 27.08.2020 along with the Defence Brief of the Charged CB about his statements recorded from 2nd August 2011 to 5th August, 2011, are not supported by his subsequent statement dated 17.02.2014 and could not be relied upon as credible evidence. The Charged CB had admitted that importers on record were not the actual importers and hence, it is established that the Charged Custom Broker did not obtain an authorisation from each of the actual companies, firms or individuals by whom he was employed as a Customs Broker and he had not produced the authorization to the customs of the actual importers. Hence, violation of Regulation 13(a) of the CBLR, 2013, now Regulation 10(a) of the CBLR, 2018 as the Charged CB had failed in his obligation under the CBLR, 2018 is proved.

5. Article of Charge-II: - In respect of Regulation 13(d) of the CBLR, 2013, now Regulation 10(d) of the CBLR, 2018 the Inquiry Officer observed that though the Charged CB had defended himself by submitting a copy of the retraction dated 08.08.2011 filed before the Addl. Chief Metropolitan Magistrate, Mirzapur Court, that his statements recorded from 02.08.2011 to 05.08.2011 were not voluntary and had been given under pressure. The Inquiry Officer observed that Shri Vinod Kumar Sharma in his subsequent statement dated 17.02.2014 had not retracted his said three earlier recorded statements but on the contrary had inter alia admitted to the contents and had further given more details of his own involvement in the undervaluation and mis-declaration in the imports of the Glass Chatons which he handled as a CB for several clients and that the actual importers were not the persons on record as the IEC holders but other persons. It is, therefore, clear that far from advising his client to comply with the provisions of the Customs Act, 1962, the Charged CB did exactly the opposite and helped them evade customs duty by undervaluing the goods and mis-declaring the grade of the Glass Chatons under import. It was his obligation to bring such undervaluation and mis-declaration to the notice of the customs

rather than be a part of the said racket and suppress such wrongdoings from the customs.

5.1 The Inquiry Officer observed that Shri Vinod Kumar Sharma in his capacity as Director of a Custom Broker firm M/s Fairdeal Shipping Agency Pvt. Ltd., Jaipur, had knowingly and actively concerned himself in the mis-declaration of value of the imported Glass Chatons and evasion of Customs duty by way of undervaluation/mis-declaration of goods in a well-planned manner in as much as he failed to give the true declarations before Customs. He had signed, used false invoices other than the invoices of the actual overseas suppliers and indulged himself in the undervaluation of the imported goods and submitted fake documents by using seals and signature of IEC holder and putting fake signatures. In other words, he had masterminded the entire conspiracy of smuggling racket. It was amply clear that the Customs Broker failed to advise his client as required under the Regulation 13(d) CBLR, 2013 and instead of informing customs of the mis-declaration and violations of the Customs Act, the Customs Broker was himself indulging in unlawful activities and violating the provisions of the Customs Act, 1962. This constitutes established violation of the Obligations of the Customs Broker of Regulation 13(d) of CHALR. 2004, now Regulation 10(d) of the CBLR, 2018.

6. Article of Charge-III: - In respect of Regulation 11(e) of the CBLR, 2013 now Regulation 10(e) of the CBLR, 2018 the Inquiry Officer observed from the defence brief dated 27.08.2020 that the charged CB had offered no defence at all. The Inquiry Officer observed that Shri Vinod Kumar Sharma admitted in his statement dated 05.08.2011 that as per Regulation 13(e) of the CHALR 2004 he was supposed to exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work-related to clearance of cargo or baggage. He (CB) admitted that by his acts of deliberate mis-declaration of the values in the import invoices, he had not fulfilled the conditions as per above sub regulation. This indicates that the Custom Broker has not exercised any due diligence to impart necessary and correct information to their client. Instead he had masterminded the entire conspiracy of smuggling racket. This has prima-facie rendered the Custom Broker liable for violation of Regulation 13(e) of CHALR 2004 which was superseded by 11(e) of CBLR, 2013 and which is now Regulation 10(e) of the CBLR 2018.

7. Article of Charge-IV: - In respect of Regulation 11(m) of the CBLR, 2013 now Regulation 10(m) of the CBLR, 2018 the Inquiry Officer observed that the Charged CB had not submitted any defence in respect of violation of this Regulation. The Inquiry Officer observed that Shri Vinod Kumar Sharma (CB) in his statement recorded under Section 108 of the Customs Act, 1962 admitted that he had filled up the blank columns of value in the import Invoices on behalf of the importers and that these values filled by him were mis-declared/undervalued in order to evade payment of customs duty. In his statement he had inter-alia admitted to clearing the consignments on the basis of fabricated import documents and also admitted to the existence of a mutual deal with the importer. It was thus seen that Shri Vinod Kumar Sharma in capacity of Director of Custom Brokers, M/s Fairdeal Shipping Agency Pvt. Ltd., Jaipur, had knowingly concerned himself in the mis-declaration of value of the imported Glass Chatons and he had knowingly and actively concerned himself in the evasion of Customs duty by way of undervaluation/mis-declaration of value in a well-planned manner; whereas he was supposed to discharge his duties efficiently. Although the CB has submitted that the contents of his

statements recorded on 03.08.2011, 04.08.2011 and 05.08.2011 were not voluntary, the Inquiry Officer observed that the CB had an opportunity to challenge all his said statements subsequently on 17.02.2014 when yet another statement was given by him to the DRI, Ahmedabad. However, instead of retracting from the voluntary nature and correctness of the contents of the earlier statements, Shri Vinod Kumar has given further clarification and admission of his involvement in the violations of the Customs Act, 1962 and consequently of the obligations cast upon them as a Customs Broker. Hence, it was clear that violation of Regulation 13(n) of CHALR 2004 now Regulation 10(m) of CBLR 2018 was established and there was no reason why the violation of this Regulation should not be held as proved.

8. Article of Charge-V: - In respect of Regulation 13(0) of CHALR, 2004, now Regulation 10(n) of CBLR, 2018 the Inquiry Officer observed that despite repeated summons and pending complaint under the provisions of IPC, 1860 against Shri Narendra Kumar Sharma, the IEC holders of Narendra Enterprises, Jaipur and M/s Sai Kripa Gems Jaipur did not come forward during the investigations for recording of their statements. The most obvious reason for them to keep away from investigations would be because they were not the actual importers. Hence, it followed that the proprietors of M/s Narendra Enterprises Jaipur and M/s Sai Kripa Gems were no way concerned with Glass Chatons imported in their firm because Shri Lokesh Jhalani was the actual importer. This indicated that the CB had not obtained the necessary KYC documents from the actual importers before handling the work of Narendra Enterprises Jaipur and M/s Sai Kripa Gems, Jaipur and other importers and also not done any verification of the importers thereby prima facie violated Regulation 13(0) of CHALR, 2004 now Regulation 10(h) of the CBLR, 2018.

9. Therefore, in view of the findings and discussions w.r.t each Article of Charges and on the basis of the Inquiry conducted by Inquiry Officer, all the Article of Charge-I, II, III, IV and V were found correct hence proved.

The inquiry report dated 28.09.2020 was shared with the CB vide this office letter of even number dated 28.10.2020.

RECORDS OF THE PERSONAL HEARING AND WRITTEN SUBMISSION

Shri A. S. Sahota, consultant of the CB firm M/s Fairdeal Shipping Agency Pvt. Ltd. appeared for personal hearing before the Principal Commissioner of Customs (G) on 16.11.2020 through virtual mode. He reiterated the submissions made vide letter dated 12.11.2020 and 16.11.2020 and requested for one more submission which was allowed. He submitted further submission vide letter dated 18.11.2020 and put forth following points in his support:

1. INQUIRY REPORT IS ERRONOUS AND NOT BINDING

It is settled law that the Inquiry report is not binding on the Disciplinary Authority and the charges are to be evaluated afresh with the evidence brought on record by the department, in support of the Charges and adduced during the Inquiry and thus it is prayed that the evidence may kindly be considered objectively and independently as the Ld. Inquiry Officer had mechanically and in a predetermined manner had upheld the charges and no judicial, fair, just and impartial inquiry has been conducted as the Inquiry officer had himself led the evidence and did not conduct the inquiry, following the principles of natural justice.

2. NO EVIDENCE IN SUPPORT OF THE CHARGES

(i) It is matter of record that no documentary evidence is relied upon in support of the Articles of Charge and no document is brought on record during the Inquiry proceedings or with the Charge Sheet and thus there is no documentary evidence to prove any of the Charges.

(ii) The entire case is based on statements recorded under section 108 of the Customs Act, 1962, original of which or authenticated copies of which have not been brought on record and thus the same are inadmissible.

(iii) No prosecution document is introduced during the Inquiry also and thus the allegation in the Charges Sheet and findings in the inquiry report are not based on any documentary evidence.

(iv) Out of five prosecution witnesses, only two were presented for examination before the-Inquiry officer, which were examined by the IO and they specifically deposed that the statements are neither voluntary nor true. Other three witnesses have not been presented in the inquiry and thus the statements remain untested and thus were not admissible.

(v) Thus the only evidence, which was in the form of statements, was not admissible as the witnesses who were presented did not confirm the statements and the others were not presented and thus no evidence whatsoever was there to uphold any of the Charges and thus the entire Charge sheet deserves to be dropped in limine.

3. PREJUDICE CAUSED TO THE CB

(i) The defence documents which were specifically allowed by the inquiry officer have not been made available and thus the principles of natural justice are violated and the fair and just opportunity has not been given to present the defense and lead evidence.

(ii) The defense documents in particular the files taken over from the premises, the copies of authorization and job files having copies of invoices and other documents duly signed by the importers, would have conclusively confirmed that no blank invoices were ever used for any clearance purpose and instead the invoices were forwarded by the importers were always used.

4. EVALUTION OF EVIDENCES IN RESPECT OF INDIVIDUAL CHRGES

4.1 The Article of Charge -I

This article of charge invoke provisions of Regulation 13(a) of CHALR which stipulates that the CHA shall obtain authorization from the Companies, firms or individuals and shall produce the same on requisition.

It is put on record that no other document is relied upon in support of the Charge. It is revealed in the case that the IEC's of M/s. Sai International M/s. Sai Kripa Gems, M/s. Ranjan Enterprises and M/s. Narendra Enterprises were controlled by Mr Lokesh Jhalani of Jaipur but when it comes to the statement dated 04.08.2011, it narrows down to M/s. Nine West International Delhi and Narendra Enterprises Jaipur and no evidence is referred in respect of the remaining importers. Now coming to the statement relied upon in support of the Charge, the kind attention is invited to the Table given at page 1 and 2 of the statement and it may please be appreciated that the said Table does not even mention the names of M/s. Nine West or Narendra Enterprises and thus the

statement does not prove the charge, at all and the same is required to be dropped, being not supported with any evidence.

Now the kind attention is invited to the statement dated 03.08.2011, which is also relied upon by the Prosecution as relied upon document but not referred in this charge and the following para form the statement is reproduced herein below for ready reference:-

"On being asked I state that as per normal practice as and when a new firm approaches us for conducting their custom clearances, we call for their bank details IEC and other documents to confirm the identity of the importer / exporter. Thereafter, we call for import/export documents like invoice, packing list, airway bill / bill of lading, etc, and the authorization appointing our firm as the CHA for customs purposes. We prepare the customs documents Such as Bill of Entry/Shipping Bill and file the same with the customs authorities for clearance / export of the goods...."

Thus, the above statement clearly confirms that the proper verification of the credentials was being done and authorizations were being taken from the importers. Copies of all the KYC documents were taken over by the DRI during search. Documentary evidence on record were in possession of the prosecution. Further the Shri Vinod Kumar Sharma in the enquiry had category stated that he used to take KYC documents and authorization from the IEC holders and the controlling persons used to work with the importers and thus merely because another person is working with an importer or an IEC holder, the same cannot be held to be the violation of the Regulations.

Thus, it is submitted that there is no evidence brought on record that the CB ever handled clearances without verifying the KYC and prosecution has miserably failed to bring on record any evidence to prove the Charge and thus the same is required to be held as unproved.

4.2 The Article of Charge —II

This article of charge invokes provisions of Regulation 13 (d) of CHALR 2004 which stipulates that the CHA shall advise his clients for compliance with provisions of Customs Act, 1962 and in case the importer fails to heed to the advice given by the CHA the same should be brought to the notice of the Dy. Commissioner of Customs.

In the present case there is no evidence brought on record that the importer was not advised at any time to comply with the provisions of Customs Act, 1962. The Article of Charge relies upon only one statement stated 5th August, 2011 of Shri Vinod Kumar Sharma, so as to prove this Article of Charge and no document, in particular the alleged blank invoices and duly filled invoices, heavily referred and relied upon in the Charge are brought on record and thus the Charge is merely based on the statement dated 5th August 2011. Thus no charge can be proved on the basis of statement, which is retracted and is totally un corroborated. Further Shri Vinod Kumar Sharma, during his deposition, before the Ld. Inquiry officer had deposed that the statement is not true and voluntary and was retracted by him and he has also denied having filled up any invoices for use in clearances while filing the bills of entry at any time. He has also clarified that blank invoices, with only quantity particulars, weight, were forwarded so as to arrive at and settle the freight account, which he was maintaining, in his Individual capacity and was not at all the concern of the Custom Broker. Thus the entire charge that the blank invoices were filled in and

were signed and used for the purpose of clearances, is not supported with any evidence which can be admitted in these proceedings and the same cannot be held to be proved on the basis of retracted and uncorroborated statement which have been categorically denied and has been confirmed as, in involuntary and untrue before the Ld. Inquiry Officer and thus the Charge is not supported with any evidence and is thus required to be dropped.

Kind attention is invited to statement dated 05.08.2011 and it may please be appreciated that the proforma Invoice, which according to the prosecution gives the actual value of the consignment, was not recovered from Shri Vinod Kumar Sharma or from the Custom Broker but was taken over from the email account of Shri Raju Sharma under a panchnama dated 2nd August 2011 and the said invoice is been correlated with a bill of entry number 5225 dated 15 January 2011 and thus it cannot be alleged or proved, on the basis of the said Invoice, that Shri Vinod Kumar Sharma was aware of the actual value of the goods at the time of filing of the bill of entry and it is only in the statement after referring to the said invoice, he has just given mathematical calculations about the differential duty as per the proforma invoice and there is no violation of Regulation 13(d) and thus the Charge is not supported with any evidence and is thus required to be dropped.

Though, the notices which are issued under Section 124 of the Customs Act, 1962, were not to be used, being un-relied, in these proceedings but as, we have been deprived of the defense documents and in particular the Import Dockets, which were taken over by the DRI, during investigation and we were to use those primary documents, to defend the false allegations made against us but as the defense documents have been denied and so as to confirm beyond doubt that that all the documents for clearance were always forwarded by the respective importers, along with authority letters and all these documents were duly stamped and signed by the respective importers and the said fact has been admitted in the show Cause Notice which had been issued under section 124 of the Customs act 1962. In this regard, the kind attention of the Hon'ble Commissioner is invited to Show Cause Notice dated 1st May 2014 having number DRI/AZU/INV-17/2011(Lokesh) and in Para 9 it has been stated as under:

The Hon'ble Commissioner may kindly appreciate that all documents such as commercial invoices, packing list, AWB, IEC, Declaration form the bill of entry were signed and stamped by the respective importers and the SCN, confirms that the invoices which were filed along with the bills of entry were forwarded by the respective importers, who used to receive from overseas suppliers and the same were being filed by the Custom Broker, along with the bills of entry and thus it is wrongly being alleged that the CB or its Director has been signing after filling up blank columns of rate and value in the invoices and thus the allegation is merely based on a retracted statement and thus cannot be held to be proved and is contrary to the documentary evidence and is thus required to be dropped.

It is put on record that not a single invoice of any importer which was filled in; after filling rate and value columns, was found from the custom broker and or any of the electronic devices or emails. The blank invoices which were received by Shri Vinod Sharma having details of quantity were never used for filing any bill of entry and no such duly filled in invoice is brought on record signed by Shri Vinod Kumar Sharma or any of its employees and thus the allegation that invoices were signed by the CB and used is totally contrary to the facts on record

and is not supported with any admissible evidence and is thus required to be dropped.

The invoices, which were filed with the bills of entry were always forwarded by the respective importers and as per the procedure followed in Air Cargo Jaipur, the same were duly signed by the respective importers along with the packing list and Airway bills and thus the allegation that the CB has mis-declared or undervalued the goods is totally contrary to the facts and is not supported with any positive or cogent evidence and is merely based on retracted statement taken during illegal custody and is thus required to be dropped.

The Hon'ble Commissioner may kindly be appreciated that the SCN also confirms that the value declared was enhanced by customs officer during assessment and it is a matter of record that the Glass Chatons, were always being assessed as per the instructions issued of the Directorate of Valuations and other authorities and this resorting to any mis declaration of value or advising the importer to declare a particular value and/or to fill in a particular value in the blank columns was of no consequences, as the bills of entry were to be assessed by the proper officer as per the provisions of the Customs Act and the valuation rules and as per the instructions on record.

It is put on record that the CB had always been advising the respective importers to file documents having true and correct particulars of the goods and have never advised to declare any particular value or undervalue any consignment and the CB was not a party or a beneficiary of any mis-declaration of value and was not at all aware about the same and thus the Charge remains unsubstantiated and is thus required to be dropped.

Merely because a director, in his Individual capacity has been associating himself for collection of freight amounts on behalf of Shri Prem Kumar Sharma, the same cannot be a reason for alleging that the CB has not been advising the importers to abide by the provisions of Customs Act, Rules and Regulations made there under.

The kind attention of the Commissioner is invited to show-cause notices which are referred in the Grounds of Imputations and Annexure to these show Cause notices reveal that the importers in question, have also imported Glass Chatons, from, M/s All Husain Mohammed Trading, City International, Solar Logistics Company, Real Smart Limited Hong Kong, Xiamen International Company Limited, Friday Technology HK, Shanghai Decoration Material Company, Pacific Corp Hong Kong Limited HK, Dev Impex, Telecom Link Limited, Voltronic Limited and the details of suppliers in the case of show Cause Notice issued to Shri. Lokesh Jhalani dated 15 2014, has not been provided in the Annexure, apart from M/s. Perfect Trading and Sunland Trading of Shri Prem Kumar Ojha, and all these suppliers had shipped, majority of the goods to the Indian importers and the allegations in respect of the imports made from these suppliers are also identical without even making a whisper that how the invoices were being forwarded by these very importers to the custom broker for the purpose of clearance and the invoices from these suppliers also are having identical/similar values and other particulars, and thus it is proved beyond any doubt that the respective importers were always forwarding the invoices having full particulars including rate and total value to the Custom Broker, duly countersigned by them and on the basis of these invoices only, the bills of entry were filed by the custom broker and thus the allegation that the CB prepared

any invoice is not correct and is not proved with any admissible positive and cogent evidence and is thus required to be dropped.

The blank invoices were being forwarded only by Shri Raju Sharma in respect of the Shipments of Sunland and Perfect , for the purpose of calculating freight and settling his account with the respective importers and as the value was not the concern of Shri Vinod Sharma, he never received any such invoice for use in clearance, and also never any proforma invoice having higher value directly from the supplier but the same were always — forwarded by the respective importers along with authorization and self-attestation and the bills of entry were always filed on the basis of such invoices and thus the Charge is required to be dropped.

4.3 Article of Charge —III

This Article of Charge also relies upon this statement dated 5th August 2011 of Shri Vinod Kumar Sharma, which has already been extensively dealt with, while answering the Article of Charge-II and all submissions made there in are reiterated herein as well as if the same are part of reply to this article of Charge.

It is a matter of record that this statement dated 05.08.2011 has been retracted and the same was recorded while, Shri Vinod Kumar Sharma was under illegal custody from 2nd November to 5th November and thus the same cannot be admitted as an evidence in these proceedings. Further Shri Vinod Kumar Sharma, had also during his deposition in the Inquiry had stated that the Statements are not true and voluntary and the same were recorded by the DRI offices at their own and he has not confirmed any contents of any of the statements of Shri Vinod Kumar Sharma during his deposition and has denied preparation of any invoice after filling up rate and value columns. He has also the denied that any such invoice were submitted along with the bill of entry and Categorically stated that the invoices were always being forwarded by the respective importers and thus the Charge is not supported with any evidence and is thus required to be set aside.

No blank invoice or any filled in invoice is brought on record and is relied upon in the memorandum so as to prove any of the Article of Charge with any documentary evidence. Shri Vinod Kumar Sharma had also explained that it is only in the case of shipments from Shri Raju Sharma that the blank invoices having particulars of quantity and weight were received only for the purpose of calculation of freight, in his individual capacity. The Commissioner may please appreciate that most of the imports which are covered by the show Cause Notice, which are relied upon in the Memorandum are made from other suppliers, other than the firms of Shri Raju Sharma. Identical Invoices were filed along with the bills of entry, in respect of all the suppliers including the firms of Shri Raju Sharma and all these invoices were always forwarded by the respective importers along with authorization and after attestation and the same were only filed with the bills of entry. No copy of invoice which was allegedly filled in, was recovered from Shri Vinod Sharma or from the premises of the CB and if the invoices were being prepared by Shri Vinod Sharma, then at least a single invoice should have been recovered from the electronic devices which were thoroughly scrutinized and examined by the DRI. In the statement dated 05.08.2011, it is also recorded by DRI, that duly filled in invoice of M/s. Gems Centre was forwarded by the importer and was recovered by the DRI, thus it proves that for the purpose of filing of the bills of entry, the respective importers have been forwarding invoices

having rate and value columns duly filled in and the allegation is totally baseless and cannot be sustained.

The Commissioner may please appreciate that it has come on record that the goods were being imported by the respective importers from their suppliers after negotiating with them directly and they have been only forwarding the invoices to the custom broker for the purpose of filing of the bills of entry. The custom broker had always been filing all the documents including invoices packing list and airway bill along with the bills of entry and the same were duly scrutinized by the proper officer and the bills of entry were assessed by them and it was never the case that the custom broker was aware of any undervalued or mis-declared values and to the best of their knowledge the importers were forwarding true and correct invoices and the Custom Broker had always been accepting documents under proper authorization and all the documents duly were self-certified by the respective importers and thus due care as can be expected from a normal human being was always carried out and there was no occasion to suspect anytime that the importers are resorting to any mis-declaration or undervaluation, It is also very important to mention herein that the goods were not being assessed by directly accepting the value declared in the invoices but the same were duly scrutinized by the proper officer and in almost all the bills of entry, the declared value was rejected by the proper officer and the goods were assessed by enhancing the value. This was the normal practice in the case of assessment of Glass Chatons at Jaipur and we used to file the documents along with the bill of entry which were forwarded by the respective importers and used to co-operate fully with the department in physical examination of the goods and it used to extend full cooperation and as an when asked, all information was provided and thus the Article of Charge wrongly alleges that the custom broker did not carry out due diligence and thus the Charge is not sustainable and is thus required to be set aside.

The Custom Broker had never advised any importer to under invoice value of any of the goods and in fact all goods were assessed by the proper officer on the basis of evidence of contemporaneous import or other data or as per instructions regarding assessment of Glass Chatons.

The Commissioner may kindly appreciate that there is no evidence to prove that the custom broker did not carry out due diligence and instead the assessment of the goods by enhancing of the value clearly shows that the custom broker was cooperating with the department and was getting the goods assessed as per the instructions of the Directorate of Valuation and never insisted for assessment on the basis of invoices etc. and thus the custom broker had protected the interest of revenue and diligently complied with the provisions of Customs Act and thus the Article of Charge is merely based on assumption and presumption and is not supported with any evidence whatsoever and is this required to be dropped.

4.4 Article of Charge -IV

This Article of Charge also does not rely on any other evidence but only on the statements of Shri Vinod Kumar Sharma and the charge is framed on the ground that Shri Vinod Kumar Sharma filled in the rate and value columns in blank invoices and the used fabricated invoices in clearances and he knowingly concerned in the mis-declaration of value. All submissions made in the preceding paras while answering Articles of Charge II& III are reiterated as if the same are also part of reply to this Article of Charge as well. It is reiterated that the

statements are not true correct and voluntary which are heavily relied upon and the same are uncorroborated and further has been retracted and the maker of the statement had not confirmed any of the statements during his deposition before the Inquiry officer. Further no documentary evidence apart from the copies of statements had been relied upon in support of the charge sheet and thus no admissible piece of evidence is brought on record so as to prove this Article of Charge or any of the Article of Charge. Shri Vinod Kumar Sharma had not prepared any invoice after filling up the rate and value columns or used any such invoices for clearances and he was also not having any knowledge of any undervaluation by any of the importers and there is no evidence to prove the Article of Charge. This Article of Charge also alleges that mutual deal with the importers but no evidence of any such deal with any of the importers or details of sharing of any profits or benefits out of such deal is brought on record and/or is supported with any evidence. The charge is not based on any evidence whatsoever and the same is levelled merely on the basis of assumption and presumption that blank invoices after rate and column particulars filled-in, were used by Shri Vinod Kumar Sharma for clearance of Glass Chatons ignoring the fact that no such invoices were ever prepared by him and no such invoices are relied upon on and on the contrary the duly filled in invoices were forwarded by all the importers, which were issued by various suppliers and the same were always filed along with the bills of entry. The Id Inquiry Officer may kindly appreciate that most of the imports, which are subject matter of the present Article of Charge have been shipped by the suppliers other than Shri Prem Kumar Ojha and it is not even the case of the department that any of these suppliers ever forwarded any blank invoices to the custom broker. The invoices forwarded by these suppliers to the importers and subsequently handed over to the custom broker for the purpose of filing of the bills of entry, are identical and similar in particular and are comparable with the invoices of the firms of Mr. Prem Kumar Ojha and this clearly establishes that the invoices were always forwarded duly filled in and the same were only used for filing the bills of entry and thus the allegation that blank invoices were used after filling up rate and value columns is totally false and is thus not sustainable. Thus this Article of Charge also remains unproved as there is no evidence to sustain this Article of Charge as well and thus the same is required to be set aside.

Without prejudice to the above, it is submitted that the regulation 13 (n) states that the Custom Broker shall discharge his functions and duties with utmost speed and efficiency and so as to prove violation of Regulation 13 (n), it is essential that the ingredients of Regulation 13 (n) are proved and in the present case there is not even a mention that the custom broker did not carry out the duties and functions with speed and efficiency and there is no evidence that the CB ever delayed filing of any bills of entry and or delayed any clearances of the goods and or the duties were not being discharged in an efficient manner, which are expected from a person of average intelligent and expertise. Thus the Article of Charge is not alleging violation of any of the ingredients of Regulation 13 (n) and thus the same is otherwise required to be held as unproved as no material is produced' to prove any of the ingredients of Regulation 13 (n) and thus the charge is required to be set aside.

4.5 Article of Charge -V

This Article of Charge is mainly based on the ground that Proprietor of Narendra Enterprises and M/s. Sai Kripa Gems, Shri Narendra Kumar Sharma, did not appear for recording of their statements. It is put on record that non-appearance of any person in compliance to the summons issued under section 108 of the Customs Act, 1962 or in response to a complaint filed under the IPC before a Court, cannot be a reason for taking any action under the provisions of Customs Act 1962 or Rules and Regulations made there under, even against the person who fails to comply with such summons, and he is liable to be finalized for non-appearance as per the provisions of the IPC, Thus not only the person who does not comply with the summons, cannot be punished under the Customs Act, 1962 but no other person also can be proceeded against in any manner under the provisions of Customs Act or Rules or Regulations made there under and thus the very ground for alleging violation of regulation 13 (0) is without jurisdiction and/or is in excess of jurisdiction and thus the Article of Charge is required to be dropped and is required to be held as unproved. Reliance in this regard is placed on the judgment in the case of Jaswinder Singh-1996 (83) ELT 175 (T).

We find from the perusal of the impugned order that the case against the appellant is based upon the statement of Shri N.C. Jain who has stated in his statement recorded on 9-9-1983 that the gold biscuits belonged to him; that one Sardarji whose name he did not know was the main recipient of the foreign currency from him in exchange for Indian currency and that he often used to collect US \$ from him. In his subsequent statement of 11-9-1993 he has stated that he has identified the Sardarji from the photograph shown to him by the DRI Officers and has also furnished the address of the Sardarji i.e. B-44, Krishna Nagar. The appellant herein has not incriminated himself in any statement. The learned Counsel is correct in pointing out that the appellant's involvement in smuggling cannot be upheld merely on the basis of a statement of co-noticee in the absence of any other evidence. The adjudicating authority has also relied upon the non-appearance of the appellant herein and response to DRI summons as a factor to establish the guilt of the appellant herein. However, in addition to this finding not being an allegation in the show cause notice, we are of the view that non-appearance in response to summons cannot be a factor or criterion in determining the guilty conduct on the part of the appellant. It is a well settled legal position that statement of a co-noticee or co-accused without any independent corroboration cannot form the basis of formation of a charge of involvement in smuggling activities.The penalty imposed on the appellant is also set aside.

The Article of Charge also alleges that necessary KYC documents were not obtained by the Custom Broker and antecedents and credentials were not verified and in this regard the allegations are identical to the allegations leveled in article of Charge-I and all submissions made in-reply-to Article of Charge-I are reiterated herein also as if the same are part of this reply as well. It is a matter of record that due authorizations were always obtained and all verification including verification of signatures by the bankers and verification of IEC was carried out before filing any documents for clearance. All KYC documents were duly submitted before the DRI and it is not even the case of the department that any of the documents including IEC, is not correct and/or is fabricated in any manner. All KYC documents are found to be genuine. It is also a matter of record that all IEC holders had personally met Shri Vinod Kumar Sharma and had handed over the authorization and other documents for the purpose of clearance.

It is also a matter of record that Shri Lokesh Jhalani and some other persons used to come with the IEC holders, as representatives or as authorized persons and the IEC holders never informed that they are not they importers.

Regarding verification of the credentials and antecedents of the importers all KYC documents were taken and were submitted when called for and no IEC or any KYC document is alleged to be not genuine and thus the case of the CB is squarely covered by the following judgments of the Hon'ble High Court and in view of these judgments the charge is required to be dropped.

2019 (365) E.L.T.392 (Del.) - KVS CARGO

4. *The Court is of the opinion that there is some merits as far as the appellant's argument is concerned. In this case the Customs Authorities have not held that any clandestine material was brought or that the goods were misdeclared or the contraband was the subject matter of the Bill of Entry in question. The role of the appellant was merely one of a facilitator. There is no material on record to show that the KYC documents were fraudulent or incorrect or in any manner irregular. In these circumstances, to expect the CB holder to carry out further investigations and independent inquiry not only about the existence of importing firm but also about its real owner is beyond the mandate of the law.*

5. *In view of the above findings, the question of law is answered in favor of the appellant. The concurrent findings of the Commissioner and the CESTAT are hereby set aside. The appeal is allowed.*

2019 365 E.L.T .395 (Del.) -KVS CARGO

COMMISSIONER OF CUSTOMS (GENERAL) Versus KVS CARGO

3. *The adjudicating or appellate authorities were thus not afforded the option of picking up the one element from the revocation and forfeiture option and imposing penalty along with forfeiture. To that extent, the CESTAT clearly went beyond the Regulations. However, this Court is not persuaded to exercise jurisdiction to set aside the order entirely because the role ascribed to the CB holder was one of carelessness and negligence. In this regard the Court notices that both the authorities - the Commissioner as well as he CESTAT appeared to have imposed almost impossibly high standards upon the CB holder who is expected to not only verify the correctness of the documents with reference to the publically available material but also carry out independent investigations. No doubt, the CB holder acts as an interface between the Customs Authorities and facilitates the task of a consignee/importer, yet to expect such an independent agent - who is not a public servant or in any way connected with the Customs Department to act as a public trustee (an expression used by the Commissioner), is beyond what is contemplated.*

4. *For the above reasons, the appeal is dismissed.*

Merely because, some IEC holders, so as to absolve themselves are making false statements disowning the imports, without any corresponding evidence, the same cannot be admitted as an evidence as it is settled law that any statement where a person absolves himself totally and shifts the entire button to others. so as to absolve himself, cannot be admitted as an evidence. As these IEC holders are now Shifting the entire burden and guilt to others this further erodes the value of the statements/evidences and thus it is required that no cognizance of

such statements is taken. The reliance is placed on the judgment of the Hon'ble Tribunal in the matter of Shri Rajendra Prasad Vs. Commissioner of Customs, Patna ~ 2001 (136) E.L.T. 925 (Tri.-Kolkata), and Vanamala Jagadeshwariah — 2001 (127) E.L.T. 28 (A.P.),.

Thus merely because the IEC holders, who have made imports were subsequently subjected to investigation by DRI are denying imports simply to avoid liability of Duty and other penal consequences, it cannot be held that that the imports are not made by such persons. As matter of fact that all IEC holders have met Shri Vinod Kumar Sharma and have duly authorized the custom broker to file the documents on their behalf and the custom broker firm has taken all KYC documents and have verified the credentials of the importers and thereafter have filed the bills of entry. Thus merely because either the DRI could not enforce and ensure their attendance and compliance with summons or before the court and this failure on the part of the DRI or noncompliance of the summons by such persons, the same cannot be said to be a violation by the Custom Broker of Regulation 13 (o) of the Regulation, 2004 and thus the none of the ingredients of Regulation 13 (o) are proved and thus the Article of Charge -V is required to be dropped.

5. Without prejudice to the above, it is submitted that though Shri Vinod Sharma was inducted as Director and an application was made for including him as Director in the CB License in 2011 itself but no communication is received till today about the approval and thus he was working in the capacity of Manager only as far as the CB License is concerned and thus he was an employee of the Company. Without admitting any wrongdoing or any of the Charges, strictly for the purpose of legal position, it is submitted that there is no allegation or evidence to show that his alleged acts were ever authorized by the Company (M/s. Fairdeal) and thus the CB cannot held liable for his unauthorized acts at all. Reliance in this regard is placed on the judgment of the Hon'ble Tribunal in the matter of G.M. Export-2006 (198) ELT 354 (T), U. Shiva Subramaniam-2004(165) ELT 97 (T), wherein it was held that acts of employees behind the back of the employer without authorization do not justify penal action against the employer.

In view of the above, the Hon'ble Commissioner may please appreciate that there is no legally sustainable evidence to prove any of the Article of Charge and thus it is prayed that the Article of Charge I to V may please be dropped.

Further the case of the CB may kindly be viewed sympathetically and with leniency for the following reasons: -

ALREADY SUFFERED HUGE PUNISHMENT DUE TO SUSPENSION FOR ABOUT AN YEAR

OPERATIONS STOPPED AND LICENSE SURRENDERED IN RESPECT OF JAIPUR COMMISIQNERATE

SERVICES OF SHRI VINOD KUMAR REMOVED IMMIDITELY IN 2011 ITSELF

NO UNDUE BENFITS

MATTER OF LIVELIHOOD

DISCUSSION AND FINDINGS

1. I have gone through the case, material on records, Inquiry Report, oral and written submissions made by the CB through his consultant during the personal hearing held on 16.11.2020 and examined the role and conduct of CB in the case before me.

2. Briefly, information was received vide Order No. 05/CHA/2011 dated 02/09/2011 from the Commissioner of Customs (Preventive), Jodhpur in respect of CB M/s Fairdeal Shipping Agency Pvt. Ltd. that they were found involved in a case of gross undervaluation of goods with the connivance of the Importer engaged in the import of Glass Chatons, Furniture and Mobile Accessories. Accordingly, search conducted by DRI officers of Ahmedabad Zonal Unit of the official premises of the CB situated at G-29, Ratna Sagar, MŞB ka Rasta, Johri Bazar, Jaipur resulted in recovery of various incriminating documents. The email account of the CB was accessed and printouts of various mails were retrieved from the inbox folder and the sent folder of the said mail account. It was observed that the import invoices, from two overseas suppliers M/s Perfect Trading, Hong Kong and M/s Sunland Trading Ltd, Hong Kong were received in the inbox folder of the email account of the alleged CHA from the e-mail of the overseas supplier. The invoices received from the overseas supplier were in MS-Excel format and complete in all respect, except of the rate and value columns which were kept blank. Investigation revealed that these two columns of Rate and Value were later filled up by the CHA with grossly undervalued figures which were presented before Customs for seeking clearance of the imports.

3. In the instant case, the license of Customs Broker M/s Fairdeal Shipping Agency Pvt. Ltd. (11/091) was suspended vide Order no. 24/2011 dated 19.09.2011 based on the Order No. 05/CHA/2011 dated 02.09.2011 from the Commissioner of Customs (Preventive), Jodhpur. The Suspension of the CB license was continued vide Order No.32/2011 dated 30.11.2011, passed by the Commissioner of Customs (G), NCH, Mumbai under Regulation 22 of CHALR 2004(now Regulation 16(2) of CBLR, 2018). The CB had filed an appeal before CESTAT, WZB, Mumbai and the Tribunal had set aside the impugned order and revoked the suspension of CHA Licence No. 11/91 with direction to complete the enquiry within 90 days vide order No. A/385/12/CSTB/C-I//M/582/12/CSTB/C-I dated 09.05.2012. An order dated 20.11.2014 comprising Annexure-I (Grounds of Imputation), Annexure-II (Articles of Charges) and Annexure-III (Relied upon documents) were issued vide F. No. S/8-24/2011-Admn/1960 wherein charges of contravention of Regulations 13(a), 13(d), 13(e), 13(n) & 13(o) of the CHALR 2004 (now Regulation 10(a), 10(d), 10(e), 10(m) & 10(n) of the CBLR, 2018), were framed against M/s Fairdeal Shipping Agency Pvt. Ltd. (11/91). For the inquiry against the CB Shri D. S. Meena was appointed as Inquiry Officer and Shri Manoj Lakra as Presenting Officer. Due to administrative reasons Inquiry officer Shri D. S. Meena was replaced by Shri Gurbaz Sandhu. The CB had filed a Writ Petition (Stamp) No. 2238 of 2019 before the Hon'ble High Court of Bombay. Vide letter addressed to Inquiry Officer dated 23.08.2019, the CB submitted that the inquiry proceedings may please be kept in abeyance till the Writ Petition is finally disposed off by the Hon'ble High Court. The case was registered vide Reg. No. WP/2903/2019 dated 23.10.2019. The High Court ordered on 30.01.2020 to complete the enquiry within a period of 12 weeks subject to availability of the witnesses and co-operation of the Petitioner, the Writ Petition was disposed off. The hearing schedule could not be held in the month of March end 2020 as a nationwide lockdown had been declared by the

government due to the corona pandemic. Inquiry report was received on 28.09.2020 and the charges framed against CB i.e., violation of Regulations 13(a), 13(d), 13(e), 13(n) & 13(o) of the CHALR, 2004 (now Regulation 10(a), 10(d), 10(e), 10(m) & 10(n) of the CBLR, 2018) were held as 'proved' by the Inquiry Report.

3.1 I rely on the apex court judgement in the in the case of Surjeet Singh Chhabra Vs. Union of India reported in 1997 (89) E.L.T. 646 (S.C.) and in the case of Systems & Components [2004 (165) E.L.T. 136 (S.C.)] respectively, which states as under:

"The Customs officials are not police officers. The confession, though retracted, is an admission and binds the petitioner".

"It is a basic and settled law that what is admitted need not be proved".

Accordingly, all the portions of the CB statements dated 03.08.11, 04.08.11, 05.08.11 and 17.02.2014 and of Shri Prem Kr. Ojha statements dated 02.08.2011, 04.08.2011, 05.08.2011, 03.02.2014 and of Shri Lokesh Jhalani statements dated 27.11.2013, 16.12.2013 hold the evidentiary value for this adjudication to bring this case to a conclusion fairly.

4. I now examine the charges in the SCN sequentially. It has been alleged that CB had not obtained authorisation from each of the companies, firms or individuals by whom he was for the time being employed as a Customs Broker and did not in position to produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be.

4.1 In respect of Regulation 13(a) of CHALR 2004, the defence submission stated that there was no evidence brought on record that the CB ever handled clearances without verifying the KYC and without taking authorization and instructions from the importers. They had reproduced the para from the statement of CB dated 03.08.2011 which was as under:-

"On being asked I state that as per normal practice as and when a new firm approaches us for conducting their custom clearances, we call for their bank details IEC and other documents to confirm the identity of the importer / exporter. Thereafter, we call for import/export documents like invoice, packing list, airway bill / bill of lading, etc. and the authorization appointing our firm as the CHA for customs purposes. We prepare the customs documents Such as Bill of Entry/Shipping Bill and file the same with the customs authorities for clearance / export of the goods..." In this regard, I find that beside the dealing with above firms Shri Vinod Sharma accepted in his statement dated 05.08.2011 recorded under section 108 of the Customs Act 1962, that apart from Glass Chatons he also handled the import clearance of Mobile Accessories, Memory Cards, iPads etc.; that he had handled clearance of Memory Cards from Air Cargo Complex, Jaipur, on behalf of Shri Lilaram Asudani of Ahmedabad. Shri Lilaram contacted him over phone and told that his employee Shri Sarav Suthar would send him email regarding IEC details of M/s D. K. Enterprises, Ahmedabad and blank authorization of M/s D. K. Enterprises, Ahmedabad and told that his import consignment had to be cleared in the IEC of M/s D. K. Enterprises, Ahmedabad. Shri Lilaram told the CB that he would send the import documents along with cash amount for making duty payment, CHA charges etc. at the time of arrival of consignments, @ Rs. 2500/- per consignment. I also note that Stamp

impressions of various firms were seized from CB' office; that on being asked to explain the reasons for retaining such a huge number of different rubber stamps, he stated that as per the prevailing requirement with the local Customs authorities, all documents including the Bill of Entry/Shipping Bill filed manually were required to be endorsed on the reverse side of the documents with the rubber stamp of the exporter/importer and for this reason they were keeping the rubber stamps of all the importers/exporters for they were acting as CHAs; that before filing of Bill of Entry/Shipping Bill the authorised person of their own firm signed after putting the rubber stamp on behalf of the importer/exporter. This clearly shows that CB was also indulging in forging the signatures of the importers/exporters and actually did not have their authorization.

4.2 In this regard, I find through the Statement of Shri Lokesh Jhalani which was recorded on 27.11.2013 under section 108 of the Customs Act, 1962 that beside the IECs of two firms viz. M/s Sai International, M/s Sai Kripa Gems he imported glass chatons in the name of M/s Ranjan Enterprises and M/s Narendra Enterprises by using their IECs. He further clarified that the M/s Ranjan Enterprises, Jaipur was formed at his instructions and M/s Narendra Enterprises, Jaipur also belonged to his acquaintances. He used these IECs for the import of glass chatons with the help of the CB Shri Vinod Kumar Sharma and for using the IEC of others, he used to pay them @ Rs. 10 per kg. On being asked Shri Lokesh revealed that the CB Shri Vinod Kumar Sharma had fixed a package rate of Rs. 100 per kg plus actual freight plus amount of duty for clearance of each shipment of glass chatons through Jaipur. The above said statement of Shri Lokesh was shown to Shri Vinod Kumar Sharma while recording his (Shri Vinod) statement on 17.02.2014 under section 108 of the Customs Act 1962. Shri Vinod Kumar Sharma agreed with the facts narrated therein and he put his dated signature on last page of the statement which affirmed the evidences on record.

4.3 The defence vides letter dated 18.11.20 submitted that Shri Vinod Kumar Sharma during his deposition in the enquiry had category stated that IEC holders, always used to come for the purpose of clearances and he used to take KYC documents and authorization from the IEC holders and the controlling persons named as these people used to work with the importers and thus merely because another person is working with an importer or an IEC holder, the same cannot be held to be the violation of the Regulations.

4.4 In this regard, I find that the charges framed are established by the department on the basis of corroborative statements of Shri Ranjan Jain dated 21.08.2012 which was recorded under customs Act, 1962 wherein he stated that Shri Lokesh Jhalani has carried out the imports in the name of his firm i.e. M/s Ranjan Enterprises ; that he never signed any documents in this regard and the signature appearing on all the documents as proprietor of M/s Ranjan Enterprises were not his signature; that he had not authorized any person to sign on such import documents on his behalf; that in this regard he had never transacted any transaction from the bank and whole transactions pertains to the import of glass chatons which were carried out by Shri Lokesh Jalani; that he had not printed any letter head in the name of his firm M/s Ranjan Enterprises, Jaipur; that he did not aware from the firm or companies by the names M/s Sethi International, Hong Kong, M/s Sunland Trading Ltd., Hong Kong, M/s Wonderock Trading International, Hong Kong and he never contacted them any time; that the remittances shown in the bank documents of the bank

account of M/s Ranjan Enterprises was managed by Shri Lokesh Jhalani and he was not aware of any of the transactions.

4.5 This statement recorded under Customs Act, 1962 has evidentiary value in the court of law. I find that Shri Lokesh Jhalani with the connivance of CB imported the goods without authorization from the IEC holder. From the above para, I find that the CB was not carrying out his obligations regarding the KYC diligently and had no authorisation from the importers. They also had rubber stamps in huge quantity which confirmed their involvement in forging signatures as brought out during the investigation. The CB was well aware of the IEC holder and beneficial importer and he was actively involved in the fraud being committed by the importers. It is clear that the CB was working without authorization of the IEC holder and acting as controller of declaration of goods & valuation. This is completely against the very letter & spirit of CHALR, 2004 and such type of involvement with the non IEC holder/importer, only to mislead the department by deliberately misusing the license of a CB is unacceptable.

4.6 The Inquiry Report dated 28.09.2020 also found that the Charged CB had admitted that importers on record were not the actual importers. Thus based on the corroborative statements recorded during investigation it is established that the Custom Broker did not obtain an Authorisation from each of the actual companies, firms or individuals by whom he was employed as a Customs Broker and he did not produce the said authorization to the customs of the actual importers. Inquiry Report also found that as there was deep involvement of the CB in the fraud on the basis of statement dated 17.02.2014 of Shri Vinod Kumar Sharma recorded under Section 108 of the Customs Act, 1962 in the undervaluation of Glass Chatons from China and in the use of blank invoices in his office which were thereafter submitted to customs as original invoices from overseas. This actively also brings out his full knowledge of the fact that the actual importers were not the IEC holders who were importing the goods. The CB Shri Vinod Sharma had tried to mask the actual importers by using IECs of individuals who were not the actual importers. Shri Vinod Sharma had disclosed knowledge about the actual importers of the Glass Chatons and far from retracting his earlier statements dated 03.08.2011, 04.08.2011 and 05.08.2011, he had inter alia in fact self-attested to their correctness and had clarified whatever discrepancies had come on record, in his statement dated 17.02.2014. I agree with the findings of the IO in this regard. I find that CB has not produced any authorisation from the actual importers.

4.7 I find that this being the case, the whole purpose of obtaining authorization is defeated i.e. to ensure that the CB has interacted with the genuine exporter/importer and is aware of the goods to be cleared on behalf of the client. The evidence also indicates that the Customs Broker has not obtained authorization from the actual importer deliberately and knowingly thereby violating Regulation 13(a) of CHALR, 2004 as they had malafide intention.

5. It has been alleged that CB had not advised 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, did not bring the matter to the notice of DC/AC against the Regulation 13(d) of CHALR, 2004 (Regulation 10(d) of CBLR, 2018).

5.1 I find that statement of Shri Vinod Kumar Sharma which was recorded under Section 108 of the Customs Act, 1962 on 05.08.2011 wherein he inter alia admitted that in the case of import of Glass Chatons by various importers through his CB firm he had filled up the blank columns of Value in the import

Invoices on behalf of the importers; he had also admitted that these values filled by him were mis-declared/undervalued in order to evade payment of customs duty. Thus, it is clear that the CB was actively involved in perpetrating the fraud on the government. The CB was acting contrary to the role assigned by the CHALR, 2004 and was very much hand in glove with the importer while transacting their business against the spirit of the law of the land and failed to advise his clients i.e. the importers to comply with the provisions of Customs Act, 1962 and that the importer should be filing true and correct declaration before the Customs authority at the time of filing of the Bill of entry.

5.2 Defence invited attention to statement dated 05.08.2011 and said that the proforma Invoice, which according to the prosecution gives the actual value of the consignment, was not recovered from Shri Vinod Kumar Sharma or from the Custom Broker but was taken over from the email account of Shri Raju Sharma under a panchnama dated 2nd August 2011 and thus it cannot be alleged or proved, on the basis of the said Invoice, that Shri Vinod Kumar Sharma was aware of the actual value of the goods at the time of filing of the bill of entry. In this regard, I find that the statement of Shri Prem Kr. Ojha @ Raju Sharma which was recorded on 05.08.2011 under Section 108 of the Customs Act, 1962 reveals that he used to keep the columns pertaining to price/value blank as per the direction of CB, Shri Vinod Sharma, and stated that said columns would be filled up by him (Shri Vinod Kumar Sharma, CB); that he (Shri Prem Kumar Ojha) did not know what amount had been filled up by him (CB) but he confirmed that he had received payments of the glass chatons as per the actual transacted value i.e. as per the value depicting in the price list after deducting discount; that he produced printout of mail message sent by him (Shri Prem Kumar Ojha) to Shri Vinod Sharma on 14.01.2011 containing total three attachments i.e. Airway Bill, Invoice, Packing list. The attachment containing invoice would contain blank columns viz. rate and amount; that the proforma invoice depicts actual transacted value and he did not know which value was filled up by Shri Vinod Sharma in the invoice presented before the Customs; that he stated that there was a vast difference between the actual price declared in the proforma invoice and that declared in the bill of entry and he quantified that whereas the actual value of the shipment was USD 53704.72 the same was declared as USD 17054.40. Shri Prem Kr. Ojha concluded that the CB Shri Vinod Sharma had used the blank invoices sent by him to suppress the actual value of the glass chatons from the Customs authorities and to evade payment of Customs duties. In this way Shri Prem Kr. Ojha facilitated Indian importers in duty evasion. Shri Prem Kr. Ojha further stated that towards his commission, price was calculated @ 20 USD per kg and amount of air freight from Hong Kong to Jaipur from Shri Vinod Sharma in majority of cases and in few cases from the Indian importers. I also find that statement of Shri Prem Kumar Ojha recorded under Section 108 of the Customs Act, 1962 revealed that Ms Jenny looked after the offices of these companies including the work of signing invoices raised by them; that Ms. Jenny signed the invoices keeping the unit price and value left blank as per his direction and forwarded to the CB or the importer and CB staff filled in the blank columns as per his (Shri Vinod's) knowledge for onward submission Customs for assessment.

5.3 I find that Shri Vinod Kumar Sharma (CB) in his statement dated 05.08.2011 recorded under Section 108 of the Customs Act, 1962 admitted that the figures appearing under the heading "Amount" related to the freight amount paid by Shri Raju Sharma to the shippers on behalf of the importers. On being asked as to why in this regard mails were being sent to him and not to the

importers directly, the CB stated that Shri Raju Sharma was paying the freight in advance to the Chinese suppliers/forwarders/handlers and since he did not have full trust on the importers he stood in between as a guarantor as he trusted the CB more than the importers. On being asked as to how the said amount was paid by him back to Shri Raju, he stated that the amounts were sometimes adjusted against some payments like clearance expenditure, custom duty etc. made by him on behalf of Shri Raju Sharma in some consignments at Jaipur and after making such deductions the account was settled every month. On being asked he stated that the amount to be paid to Raju Sharma was paid by him in Indian money to Shri Santosh Sharma (brother-in-law of Shri Raju Sharma) at Delhi; on being asked as to how did he sent the money to Santosh he stated that many a times the money was either received by Shri Santosh Sharma directly at Jaipur or sometimes it is forwarded by angadia which is clearly not lawful. I also find that, the CB Shri Vinod Kumar Sharma, vide his statement dated 03.08.2011 recorded under Section 108 of the Customs Act, 1962 stated that as per the rates and value, filled up by him in these invoices, the imports of chatons had taken place; that the rates and value did not reflect the true transaction value and that based on the lesser rates and value shown in the invoices, lesser customs duty was paid at the time of clearance and admitted that in all cases of import from M/s Perfect Trading, Hong Kong, that they had adopted this modus of paying lesser duty by showing lesser rates and value in the invoices; that M/s Perfect Trading in addition to supply of chatons, had also exported mobile accessories, furniture, etc. to the Indian importers at a lesser rate and value and accordingly, the lesser amount of duty was paid at the time of clearances; that while recording statements the officials showed him the print out of e-mail messages dated 23.12.2010 from Shri Raju Sharma where under he had forwarded invoice No. SL 00142 dated 19.12.2010 of M/s Sunland Trading Ltd., Hong Kong, issued to M/s Golden Agro Corporation and the CB stated that the rate and amount column in the above invoice had been left blank for him to fill up the same; that he had received extra considerations in cash for facilitating and managing such transactions for the importers; that the CB further stated that the firm M/s Sunland Trading Ltd., Kong Kong, was also a firm of Shri Raju Sharma, which was also functioning from the same address of M/s Perfect Trading, Hong Kong, at 20-F, Champion Building, 287-291 Des Voeux Road, Central, Sheung Wan, Hong Kong.

5.4 I find that as per statement of Shri Lokesh Jhalani dated 27.11.2013 recorded under Section 108 of the Customs Act 1962 he stated that he used to negotiate with Shri Prem Kumar Ojha @ Raju Sharma and intimated him the grade and size of Glass Chatons and thereafter Shri Raju Sharma would purchase the goods from various overseas suppliers of China and Hong Kong. That as per his indent, Shri Prem Kumar Ojha @ Raju Sharma used to forward these goods to him; the documents were forwarded through e-mail in the office of Shri Vinod Kumar Sharma and Shri Vinod Kumar Sharma used to file Bs/E for clearance of goods in consultation with him with reference to declaration of value of the goods and other aspects; that upon receipt of invoice and other documents alongwith Bills of Entry from CHA, the amount equivalent to the invoice value were remitted through RTGS in the bank account of Shri Prem Kumar Ojha @ Raju Sharma in HSBC Bank and difference amount was paid in India through non-banking channels in India as per the directions and arrangements of Shri Prem Kumar Ojha @ Raju Sharma or to the person of overseas suppliers in cases of supplies other than the firms of Shri Prem Kumar Ojha @ Raju Sharma i.e M/s Sunland Trading and M/s Perfect Trading; on being

specifically asked regarding suppliers other than M/s Sunland Trading and Perfect Trading he stated that he came in contact with these through Shri Prem Kumar Ojha @ Raju Sharma and he used to negotiate with them through Prem Kumar Ojha @ Raju Sharma regarding quantity, quality and value; he further stated that at times full amount for the price of glass chatons was paid in India through non-banking channel: he further stated that at times amount equivalent to the invoice value was remitted in the account number of actual overseas suppliers after consulting Shri Prem Kumar Ojha @Raju Sharma; he further stated that in addition to the above payment he had also paid air freight to Shri Vinod Sharma for each imported consignment, which was never added in the invoice value though the term was shown as CIF in each invoice, which had mis-declared on each occasion to evade the customs duty; that Shri Lokesh Jhalani had being shown the statement dated 03.08.2011,04.08.2011 and 05.08.2011 of Shri Vinod Sharma, he had read and understood the same and put his dated signatures on the last page of the same.

5.5 The three importers viz. M/s Golden Agro Overseas, M/s Rashi International and M/s Sai Kripa Gems, imported their goods viz. Chatons from M/s Perfect Trading, Hong Kong. During the course of investigation CB informed that invoice No. PF 01106 dated 09.07.2011 of M/s Perfect Trading, HongKong, raised on M/s Golden Agro Corporation, Jaipur regarding supplies of Chatons. The said invoice contains the item size of the goods, quantity, however, the column of rate and amount is left blank. Similarly, column of the brand is left blank in the packing list of the above invoice. Vide statement dated 05.08.2011 CB accepted that the columns of rate and amount were filled in by him as per the passing rates, which was much lower than the actual rate and value. On being asked the CB accepted that this was done by him to facilitate the importers to be paying lesser duty. The above discussions establish means rea conclusively. I find that the defence submission is thus not sustainable.

5.6 Defence invited attention to statement dated 05.08.2011 and said that the proforma Invoice, which according to the prosecution gives the actual value of the consignment, was not recovered from Shri Vinod Kumar Sharma or from the Custom Broker but was taken over from the email account of Shri Raju Sharma under a panchnama dated 2nd August 2011 and thus it cannot be a alleged or proved , on the basis of the said Invoice , that Shri Vinod Kumar Sharma was aware of the actual value of the goods at the time of filing of the bill of entry.

In this regard, I note that the statement of Shri Prem Kr. Ojha@ Raju Sharma recorded on 05.08.2011 under Section 108 of the Customs Act 1962 reveals that he used to keep the columns pertaining to price/value blank as per the direction of CB, Shri Vinod Sharma, and stated that said columns would be filled up him (Shri Vinod); that he(Shri Prem Kr Ojha) did not know what amount had been filled up by him but he confirmed that he had received payments of the glass chatons as per the actual transacted value i.e as per the value depicting in the price list after deducting discount; that he produced printout of mail message sent by him to Shri Vinod Sharma on 14.01.2011 containing total three attachments i.e Airway Bill, Invoice, Packing list. The attachment containing invoice would be containing blank columns viz. rate and amount; that the proforma invoice depicts actual transacted value and he did not know which value was filled up by Shri Vinod Sharma in the invoice presented before the Customs; that he stated that there was a vast difference between the actual price declared in the proforma invoice and that declared in the bill of entry and he

quantify that whereas the actual value of the shipment was USD 53704.72 the same was declared as USD 17054.40. Shri Prem Kr. Ojha concluded that Shri Vinod Sharma had used the blank invoices sent by him to suppress the actual value of the glass chatons from the Customs authorities and to evade payment of Customs duties. In this way Shri Prem Kr. Ojha facilitated Indian importers in duty evasion. Shri Prem Kr. Ojha further stated that towards his commission price was calculated @20 USD per kg and amount of air freight from Hong Kong to Jaipur from Shri Vinod Sharma in majority of cases and in few cases from the Indian importers; that he did not know what amount were filled up by Shri Vinod Sharma in the blank invoices sent by him through email; that he did not agree with the version of Shri Vinod Sharma that the firms viz. M/s Exclusive Jewels, M/s Manu Traders, M/s Rector Electricals P. Ltd., M/s Vikas Enterprises, M/s Manish Enterprises are being controlled by him. In this regard he clarified that the said firms were being controlled by Shri Paritosh Yadav of Jaipur. He had met Shri Paritosh in China around one year back. Shri Paritosh is importer of Automobile parts and had stayed with him for some 20 days in China. Thereafter Shri Paritosh Yadav contacted him and informed that he had been referred to him by Shri Vinod Sharma and wanted to import automobile parts and chatons and therefore he facilitated Shri Paritosh Yadav also. He further stated that just like in cases of other imports, he used to send documents in respect of firms controlled by Shri Paritosh Yadav, to Shri Vinod Sharma and he used to receive remittance, freight, commission, from Shri Paritosh Yadav through TT in his HSBC account. On being asked as to how did Shri Vinod Sharma sent the money to Shri Santosh, he stated that the amount payable were adjusted from the importers at Delhi who were supposed to send the duty amount to Shri Vinod Sharma but instead of sending the duty to him it was collected by his brother in law and the amount payable to him by Shri Vinod Sharma was utilized towards duty payment by him for the importers; sometimes it was forwarded by angadia. On being asked to explain retrieved email dated 16th& 17th May 2011 correspondence he stated that since he was supplying all Grades of Glass Chatons but invoicing the same as B Grade, Shri Lokesh had instructed him to make the said marking on each carton in order to undervalue the said goods before the Indian Customs. Accordingly, he had forwarded the same to the supplier from whom the Glass Chatons were being purchased. Thereafter he had adopted a modus of marking the said marks on the cartons in order to facilitate the Indian Importers declare less value before Customs and pay less duty leviable thereon. In token of having explained the said email correspondence, he put his dated signature on the body of the said email.

5.7 Defence stated that the Hon'ble Commissioner may kindly appreciate that all documents such as commercial invoices, packing list, AWB, IEC, Declaration form the bill of entry were signed and stamped by the respective importers and the SCN, confirms that the invoices which were filed along with the bills of entry were forwarded by the respective importers, who used to receive from overseas suppliers and the same were being filed by the Custom Broker, along with the bills of entry and thus, it is wrongly being alleged that the CB or its Director has been signing after filling up blank columns of rate and value in the invoices and thus, the allegation is merely based on a retracted statement required to be dropped. The allegation that invoices were signed by the CB and used is totally contrary to the facts on record and is not supported with any admissible evidence and is thus required to be dropped. In this regard, I find that Stamp impressions of various firms were seized from CB's office during investigation and that the CB was accepting blank authorization and dealing with the beneficial importers

without any authorization from the IEC holders as discussed in paras above. I also find that the CB vide statement dated 04.08.2011 recorded under Section 108 of the Customs Act, 1962 stated that the value of the invoice is only on FOB terms, however invoice value was shown to be on CIF basis and they had mis-declared the same in the customs documents to avoid payment of customs duty. The CB accepted in the statement dated 05.08.2011 recorded under Section 108 of the Customs Act, 1962 stated that they had indulged into under invoicing of the imports of chatons, furniture, mobile accessories, etc. by filling up the blank columns in the invoices of the overseas exporter by lesser rate and value and also indulged in mis-declaration of the customs documents by showing CIF value instead of FOB value in order to make lesser payment of duty. The CB stated that the price which was negotiated with Shri Prem Ojha in respect of imports from M/s Sunland & M/s Perfect Trading was on FOB basis and he was aware that Shri Prem was facilitating the importers to get the goods cleared in India through him. Thus, it is evident and without doubt that the CB was indulging in malpractices and was doing so knowingly and with malafide intent.

5.8 The CB has accepted in his statement dated 05.08.2011 recorded under Section 108 of the Customs Act 1962 that conscious mis-declaration of value were made by him in all the import invoices in case of all the import consignments of glass chatons imported by various importers and cleared by his CHA agency at Air Cargo Complex, Jaipur. He further stated that these undervalued prices were declared by him on behalf of the actual importers and as per their directions and further informed that extent of undervaluation was not fixed for every consignment. However, The CB roughly estimated that about 55% undervaluation had been committed in the imports. He was well aware of the price trend of glass chatons in China. Considering the quantum, the actual assessable value for the 133 import consignments was approximately Rs. 30 Crores against the declared value of USD 35.3 lakhs. The prices were filled up by CB in the blank columns of the invoices as per the instructions of the actual importers with whom the CB had unholy nexus.

5.9 I find that inquiry report correctly, did not buy the defence concept that he was collecting freight charges from importers in his personal capacity which amounts to knowledge of undervaluation and mis-declaration. Since as the CB was handling those very same importers, it was his obligation under CHALR 2004 to bring such undervaluation and mis-declaration to the notice of the customs rather than be a willing and active participant in the said racket and mask such malpractice from the customs.

5.10 The defence further submitted that the SCN also confirmed that the value declared was enhanced by customs officer during assessment and it was a matter of record that the Glass Chatons, were always being assessed as per the instructions issued of the Directorate of Valuations and other authorities and this resorting to any mis declaration of value or advising the importer to declare a particular value and/or to fill in a particular value in the blank columns was of no consequences, as the bills of entry were to be assessed by the proper officer as per the provisions of the Customs Act and the valuation rules and as per the instructions on record. The defence claimed that the CB had always been advising the respective importers to file documents having true and correct particulars of the goods and had never advised to declare any particular value or undervalue any consignment and the CB was not a party or a beneficiary of any mis-declaration of value and was not at all aware about the same and thus the Charge remains unsubstantiated and is thus required to be dropped.

5.11 In this regard, I find that the CB made every effort to suppress the true value of goods and the description despite having been in business for long. He did not put the correct value and description of goods before customs assessment authorities and used to file under invoiced Bs/E with incorrect grade of the chatons. Thus, CB has failed in exercising due diligence in ascertaining the information of assessment of the imported goods while filing the B/E and is later feigning innocence regarding the clearance of the consignments. On being asked about the quality of the chatons supplied to the Indian buyers, Shri Prem Kr Ojha stated vide his statement dated 05.08.2011 recorded under Section 108 of Customs Act 1962 that although the quality of chatons declared in the invoice was "Glass Chatons "B" Grade", he used to supply Branded/Unbranded Spl. A Grade & B Grade Glass Chatons to the Indian Buyers. This statement was confirmed by the CB in his statement dated 03.02.2014 recorded under Section 108 of Customs Act 1962.

5.12 Shri Lokesh Jhalani also stated vide his statement dated 27.11.2013 recorded under Section 108 of the Customs Act 1962 that the smaller size is costlier than the bigger one; on being asked he stated that there are some branded Glass Chaton under the brand name of: Srvroski (Austria). Golebuchel (Thailand), 888 (Egypt), A Star (Chinese), 3 star (Chinese) etc. and the Glass Chatons of these brands were costlier than the non-branded Glass Chatons; on being asked he stated that he had imported Glass Chatons of different grade/brand, however, as per their arrangements Shri Prem Kumar Ojha @ Raju Sharma always used to mention as "Grade-B' in the Packaging list in invoice to cover up the undervaluation; he was also shown the statement dated 03.08.2011, 04.08.2011 and 05.08.2011 of Shri Vinod Kumar Sharma and agreed with the same. I find that the CB, importer along with the suppliers mislead the Customs authorities deliberately and did not bring the fact to the notice of the Customs authority, being an active member of the gang of people indulging in fraud. I also find that the CB in his statement dated 05.08.11 has admitted that as per Regulation 13(d) of CHALR, 2004 he needed to advise his client to follow the provisions of the Customs Act, 1962 and bring non-compliance to notice of Customs authority. He also stated that he is deliberately indulged in under valuation and mis-declaration.

5.13 The Inquiry Officer has in his Inquiry Report reported that Shri Vinod Kumar Sharma in capacity of Director of a Custom House Agent firm. M/s Fairdeal Shipping Agency Pvt. Ltd, Jaipur, had knowingly and deliberately concerned himself in the mis-declaration of value of the imported Glass Chatons and he had knowingly and actively concerned himself in the evasion of Customs duty by way of undervaluation/mis-declaration of value in a well-planned manner in as much as he failed to give the true declarations before Customs as he had signed, used false invoices other than the invoices of the actual overseas suppliers and indulged himself in the undervaluation of the imported goods and submitted fake document by using seals and signature of IEC holder and putting signatures. He had masterminded the entire conspiracy of smuggling racket. Based on that evidence reported I also note that the CB was an active link in the smuggling racket involving the importers in India and the exporters in China through china based forwarding company M/s Perfect trading run by Shri Prem Kumar Ojha, a partner of CB Shri Vinod Kumar Sharma in fraud. I also find no evidence of CB's interaction with the IEC holders, who were supposed to be the importers. I infact find that the CB knowingly aided and abetted the offence and facilitated the smuggling based on discussions above. The CB deliberately failed to bring the fact of noncompliance of the proper Rules & procedure to the notice

of the Customs Authorities as they were hand in glove with the perpetrators of the fraud. Shri Vinod K Sharma intentionally kept himself away from the IEC holders and hence there was no interaction, which means no advice could be given. Thus, the Customs Broker has intentionally violated the Regulation 13(d) of the CHALR 2004, which clearly proves contravention of provisions of Regulation 13(d) of CHALR 2004.

6. It has been alleged that CB had failed to exercise due diligence to ascertain the correctness of any information which CB imparts to a client with reference to any work related to clearance of cargo or baggage against the Regulation 13(e) of CHALR, 2004 (10(e) of CBLR, 2018).

6.1 I find that Shri Vinod Kumar Sharma, Director of CB firm, in his statement dated 05.08.2011 recorded under section 108 of the Customs Act, 1962 inter alia admitted that he deliberately mis-declared the values in the import invoices and had actively indulged in the conspiracy of smuggling racket. From the investigation and statements, it is revealed that the CB has not been diligent in clearance of the import consignments. They also had not interacted with their clients as they were well aware of the imports being done by proxy. On being asked, Shri Lokesh Jhalani revealed, in his statement recorded on 27.11.2013 under section 108 of the Customs Act, 1962 that Shri Vinod Sharma had fixed a package rate of Rs. 100 per kg plus actual freight plus amount of duty for clearance of each shipment of glass chatons through Jaipur. Considering the blank invoices, huge no. of imported consignments of chatons and other articles, the CB should have exercised a careful approach in the clearance of the consignments. The CB has in fact abused the access to Customs related process, procedure and knowledge by misleading the authorities. The CB deliberately undervalued goods through under invoiced Bs/E. The CB also did not correctly describe the grade of the chatons while filing Bs/E. Thus, the CB has miserably failed in exercising due diligence in ascertaining the information of assessment of the imported goods while filing the B/E since they were actively involved in fraud. It is clear that, the CB as admitted vide statement above, did not 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.

6.2 Defence has submitted that Shri Vinod Kumar Sharma had explained that it is only in the case of shipments from Shri Raju Sharma that the blank invoices having particulars of quantity and weight were received only for the purpose of calculation of freight, which he was to collect from the respective importers in his individual capacity and was not the concern of the CB. No copy of invoice which was allegedly filled in, was recovered from Shri Vinod Sharma or from the premises of the CB and if the invoices were being prepared by Shri Vinod Sharma, then at least a single invoice should have been recovered from the electronic devices which were thoroughly scrutinized and examined by the DRI. In the statement dated 05.08.2011, it is also recorded by DRI, that duly filled in invoice of M/s. Gems Centre was forwarded by the importer and was recovered by the DRI. Thus, it proves that for the purpose of filing of the bills of entry, the respective importers have been forwarding invoices having rate and value columns duly filled in and the allegation is totally baseless and cannot be sustained.

6.3 In this regard, I find that the three importers viz. M/s Golden Agro Overseas, M/s Rashi International and M/s Sai Kripa Gems, imported their goods viz. Chatons from M/s Perfect Trading, Hong Kong. During the course of

investigation, the CB vide statement dated 03.08.2011 recorded under Section 108 of the Customs Act, 1962 stated that invoice No. PF 01106 dated 09.07.2011 of M/s Perfect Trading, Hong Kong, was raised on M/s Golden Agro Corporation, Jaipur regarding supplies of Chatons; that the said invoice contained the item, size of the goods, quantity, however, the column of rate and amount was left blank; that similarly the column of the brand was left blank in the packing list of the above invoice; that the columns of rate and amount were filled in by them as per the passing rates, which was much lower than the actual rate and value; that this was done by them to facilitate the importers to pay lesser duty.

6.4 I find that Shri Prem Kumar Ojha @ Raju Sharma in his statement dated 05.08.2011 recorded under Section 108 of the Customs Act, 1962 stated that the figures appearing under the heading "Amount" relates to the freight amount paid by him to the shippers on behalf of the importers and mails were being sent to CB directly and not to the importers; that he was paying the freight in advance to the Chinese suppliers/forwarders/handlers and since he did not have full trust on the importers, the CB stood in between as a guarantor. He further stated that the said amount was paid by CB back to him, sometimes by being adjusted against some payments like clearance expenditure, custom duty etc. made by him on behalf of Shri Raju Sharma in some consignments at Jaipur and after making such deductions the account was settled every month. On being asked, he stated that the amount to be paid to him was paid by Shri Vinod Sharma in Indian money to Shri Santosh Sharma (brother-in-law of Shri Raju Sharma) at Delhi; on being asked as to how did Shri Vinod Sharma sent the money to Shri Santosh, he stated that many a times the money was either received by Shri Santosh Sharma directly at Jaipur or sometimes it is forwarded by angadia. I also find that Shri Vinod Kr Sharma in his statement dated 05.08.2011 recorded under Section 108 of the Customs Act, 1962 corroborated the statement of Shri Raju Sharma that their accounts were settled with the help of non-banking transactions. Shri Vinod Kumar Sharma stated in his statement dated 03.08.2011 recorded under Section 108 of the Customs Act, 1962 that as per the rates and value filled up by him in these invoices, the imports of chatons had taken place; that the rates and value does not reflect the true transaction value and that based on the lesser rates and value shown in the invoices, lesser customs duty was paid at the time of clearance and admitted that in all cases of import from M/s Perfect Trading, Hong Kong, he had adopted this modus of paying lesser duty by showing lesser rates and value in the invoices. On being asked he further stated that M/s Perfect Trading in addition to supply of chatons, had also exported mobile accessories, furniture, etc. to the Indian importers at a lesser rate and value and accordingly, the lesser amount of duty was paid at the time of clearances. Thus, it is very clear that the purpose to receive blank invoices was not calculation of freight. It instead was to keep the government authority in dark by undervaluation and mis-declaration to evade due Customs duties. It is also revealed that the CB was not just indulging actively in Customs duty evasion but also using illegal non-banking channels to settle their accounts.

6.5 The defence has submitted that the goods were being imported by the respective importers from their suppliers after negotiating with them directly and importers have been only forwarding the invoices to the custom broker for the purpose of filing of the bills of entry. The custom broker had always been filing all the documents including invoices, packing list and airway bill along with the bills of entry and the same were duly scrutinized by the proper officer and the bills of entry were assessed by them and it was never the case that the custom

broker was aware of any undervalued or mis-declared values and to the best of their knowledge. The importers were forwarding true and correct invoices and the Custom Broker had always been accepting documents under proper authorization and all the documents were duly self-certified by the respective importers and thus due care as can be expected from a normal human being was always carried out and there was no occasion to suspect anytime that the importers are resorting to any mis-declaration or undervaluation. Thus the Article of Charge wrongly alleges that the Custom Broker did not carry out due diligence and the Charge is not sustainable and is thus, required to be set aside.

6.6 In this regard, I find that as per the Regulation 13 (e) of CHALR, 2004 the CB is to advise to exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage. Instead, here is a case of CB, actively being involved in fraud being perpetrated on the govt. exchequer. I find that the CB has accepted in his statement dated 05.08.2011 recorded under Section 108 of the Customs Act, 1962 that conscious mis-declaration of value were made by him in all the import invoices in case of all the import consignments of glass chatons imported by various importers and cleared by his CHA agency at Air Cargo Complex, Jaipur. He further stated that these undervalued prices were declared by him on behalf of the importers and as per their directions and further informed that extent of undervaluation was not fixed for every consignment. However, The CB roughly estimated that about 55% undervaluation had been committed in the imports. He was aware about the price trend of glass chatons in China. Considering the quantum, the actual assessable value for the 133 import consignments may arrive at approximately Rs. 30 Crores against the declared value of USD 35.3 lakhs. The prices were filled up by CB in the blank columns of the invoices as per the instructions of the importers. The CB has confessed to have not exercised due diligence in his statement dated 05.08.11.

6.7 The Defence submitted that Custom Broker had never advised any importer to under invoice value of any of the goods and in fact all goods were assessed by the proper officer on the basis of evidence of contemporaneous import or other data or as per instructions regarding assessment of Glass Chatons. The defence further stated that there was no evidence to prove that the custom broker did not carry out due diligence and instead the assessment of the goods by enhancing of the value clearly shows that the custom broker was cooperating with the department and was getting the goods assessed as per the instructions of the Directorate of Valuation. In this regard, I find that CB has failed in exercising due diligence in ascertaining the information relating to assessment of the imported goods while filing the B/E while actually working actively with syndicate that facilitated fraud with mis-declaration & undervaluation of goods. On being asked about the quality of the chatons supplied to the Indian buyers, Shri Prem Kumar Ojha stated vide statement dated 03.02.2014 recorded under Section 108 of the Customs Act, 1962 that although the quality of chatons declared in the invoice was "Glass Chatons "B" Grade", he used to supply Branded/Unbranded Spl. A Grade & B Grade Glass Chatons to the Indian Buyers. Shri Lokesh Jhalani vide statement dated 27.11.2013 recorded under Section 108 of the Customs Act, 1962 also stated that the smaller size is costlier than the bigger one; that there are some branded Glass Chatons under the brand name of: Srvroski (Austria), Golebuchel (Thailand), 888 (Egypt), A Star (Chinese), 3 star (Chinese) etc. and the Glass Chatons of these brands were costlier than the non-branded Glass Chatons; that he had imported Glass Chatons of different grade/brand, however, as per their

arrangements Shri Prem Kumar Ojha @ Raju Sharma always used to mention as "Grade B' in the Packaging list in invoice to cover up the undervaluation; that he was also shown the statements dated 03.08.2011, 04.08.2011 and 05.08.2011 of Shri Vinod Kumar Sharma and agreed with the same.

Statement of Shri Lokesh Jhalani dated 16.12.2013 recorded under Section 108 of the Customs Act, 1962 wherein on being asked as to why Glass Chatons C grade were also declared to the Customs at the time of import, he stated that the same was done to hide the actual grade of the Glass chatons imported by him in the firms controlled by him; that this was done with an intent to under value the said goods and evade payment of Customs duty on the said goods; that on being asked to explain about why only glass chatons were mentioned as description in the said packing list and no size was mentioned, he stated that this was done to mis-lead the customs department and hide the true value of the goods since the size and quality of the glass chatons determine the actual valuation of the glass chatons; that on being asked about the actual size of the glass chatons imported under the Bills of Entry, he stated that in these bills of entry only some sizes of glass chatons were imported; that he had told Shri Prem Ojha @ Raju Sharma to adopt a modus to mark all the cartons with 'B' Grade and Made in China so as to get the goods easily cleared from Customs at undervalued rates; that he had undervalued the goods i.e. Glass Chatons imported in the name of the firms owned by me as well as those controlled by him, by resorting to mis-declaration in terms of description and also declaring less value before the customs and suppressing the fact that the said goods were purchased on FOB basis and not CIF basis; that he also undertook to pay the differential duty in respect of the said goods. I find that the CB, importer along with the supplier worked together to mislead the assessment procedure and did not bring this fraud to the notice of the Customs authority, as they had mens-rea.

6.8 I find that Shri Lokesh Jhalani in his statement dated 27.11.2013 recorded under Section 108 of the Customs Act, 1962 stated that the documents were forwarded through e-mail in the office of Shri Vinod Kumar Sharma (CB) and the CB used to file Bs/E in consultation with him with reference to declaration of value of the goods and other aspects; that upon receipt of invoice and other documents along with Bills of Entry from CB, the amount equivalent to the invoice value were remitted through banking services and difference amount was paid in India through non-banking channels as per the directions of Shri Prem Kumar Ojha @ Raju Sharma; that at times once negotiation completed, amount equivalent to the invoice value was also remitted in the account number of actual overseas suppliers after consulting Shri Prem Kumar Ojha @ Raju Sharma; that in addition to the above payment, he had also paid air freight to Shri Vinod Sharma for each imported consignment which was never added in the invoice value though the term was shown as CIF in each invoice, which had been mis-declared on each occasion to evade the customs duty; that he had been shown the statements dated 03.08.2011, 04.08.2011 and 05.08.2011 of Shri Vinod Kumar Sharma and he had read and understood the same and put his dated signatures on the last page of the same. I also find that Shri Vinod Kumar Sharma in his statement dated 05.08.2011 accepted that he had not exercised any due diligence to impart necessary and correct information to their client by acts of deliberate mis-declaration of the values in the import invoices and masterminded the entire conspiracy of smuggling racket. Hence, it is evident from the above facts that the CB has contravened the provisions of Regulation 13(e) of CHALR, 2004 (Regulation 10 (e) of the CBLR, 2018).

7. It has been alleged that the CB had failed to discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay as per the Regulation 13(n) of CHALR, 2004 (now Regulation 10(m) of CBLR, 2018).

7.1 In respect of Regulation 13(n) of CHALR 2004, the defence submission stated that this Article of Charge also relied on the statements of Shri Vinod Kumar Sharma and the charge is framed on the ground that Shri Vinod Kumar Sharma filled in the rate and value columns in blank invoices and he used fabricated invoices in clearances and he knowingly concerned in the mis-declaration of value and also stated that no evidence of any mutual deal with the importers or details of sharing of any profits or benefits out of such deal is brought on record and/ or is supported with any evidence. This clearly establishes that the invoices were always forwarded duly filled in and the same were only used for filing the bills of entry and thus, the allegation that blank invoices were used after filling up rate and value columns is totally false and is thus, not sustainable and required to be set aside.

7.2 In this regard, I find that the CB Shri Vinod Kumar Sharma clearly accepted vide statement dated 05.08.2011 recorded under Section 108 of the Customs Act, 1962 that as per the rates and value filled up by him in these invoices, the imports of chatons had taken place; that the rates and value did not reflect the true transaction value and that based on the lesser rates and value shown in the invoices, lesser customs duty was paid at the time of clearance; that in all cases of import from M/s Perfect Trading, Hong Kong, they had adopted this modus of paying lesser duty by showing lesser rates and value in the invoices; that M/s Perfect Trading in addition to supply of chatons, had also exported mobile accessories, furniture, etc. to the Indian importers at a lesser rate and value and accordingly, the lesser amount of duty was paid at the time of clearances; that while recording statements, the officials had shown him the print out of e-mail messages dated 23.12.2010 from Shri Raju Sharma where under he had forwarded invoice No. SL 00142 dated 19.12.2010 of M/s Sunland Trading Ltd., Hong Kong, issued to M/s Golden Agro Corporation; that the rate and amount column in the said invoice had been left blank for him to fill up the same; that on being asked the CB further revealed that he had received extra consideration in cash for facilitating and managing such transactions for the importers; that the firm M/s Sunland Trading Ltd., Hong Kong, was also a firm of Shri Raju Sharma, which was also functioning from the same address of M/s Perfect Trading, Hong Kong, at 20-F, Champion Building, 287-291 Des Voeux Road, Central, Sheung Wan, Hong Kong; that on being asked, the CB stated that the value of the invoice is only on FOB terms, however invoice value was shown to be on CIF basis and they had mis-declared the same in the customs documents to avoid payment of customs duty; that he accepted that they had indulged into under invoicing of the imports of chatons, furniture, mobile accessories etc. by filling up the blank columns in the invoices of the overseas exporter by lesser rate and value and also indulged into mis-declaration of the customs documents by showing CIF value instead of FOB value in order to make lesser payment of duty; that he confirmed that the rates & value shown in the invoice declared to the Customs did not reflect the true transaction value.

7.3 The three importers viz. M/s Golden Agro Overseas, M/s Rashi International and M/s Sai Kripa Gems, imported their goods viz. Chatons from M/s Perfect Trading, Hong Kong. Vide statement dated 03.08.2011, the CB stated that invoice No. PF 01106 dated 09.07.2011 of M/s Perfect Trading, Hong Kong, raised on M/s Golden Agro Corporation, Jaipur contained the item size of

the goods, quantity, however, the column of rate and amount was left blank. Similarly, column of the brand was left blank in the packing list of the above invoice. The CB accepted that the columns of rate and amount were filled in by him, which was much lower than the actual rate and value. On being asked the CB accepted that this was done by him to facilitate the beneficial importers of paying lesser duty. Stamp impressions of various firms were also seized from CB's office; before filing of Bill of Entry/Shipping Bill the authorised person of the CB firm signed after putting the rubber stamp on behalf of the importer/exporter which amounts to forging signatures of the importers/exporters. Thus, it is clear that the CB not just indulged in evasion of Customs duty through undervaluation & mis-declaration of goods but also in forging of signatures. Since, he was an active member of syndicate that was indulging in fraud.

7.4 The defence further stated that there was no evidence that the CB ever delayed filing of any bills of entry and or delayed any clearances of the goods and or the duties were not being discharged in an efficient manner, which are expected from a person of average intelligent and expertise. Thus, the Article of Charge Regulation 13 (n) required to be set aside. In this regard, I find that the CB accepted in his statement dated 05.08.2011 recorded under Section 108 of the Customs Act, 1962 that conscious mis-declaration of value was made by him in all the import invoices in case of all the import consignments of glass chatons imported by various importers and cleared by his CHA agency at Air Cargo Complex, Jaipur; that these undervalued prices were declared by him on behalf of the beneficial importers and as per their directions and further informed that extent of undervaluation was not fixed for every consignment; that the figures appearing under the heading "Amount" relates to the freight amount paid by Shri Raju Sharma to the shippers on behalf of the importers; that on being asked as to why in this regard mails were being sent to him and not to the importers directly, he stated that Shri Raju Sharma was paying the freight in advance to the Chinese suppliers/forwarders/handlers and since he did not have full trust on the importers he stood in between as a guarantor. I find that Shri Lokesh Jhalani in his Statement dated 27.11.2013 recorded under Section 108 of the Customs Act, 1962 stated that he used to negotiate with Shri Prem Kumar Ojha @ Raju Sharma and Shri Raju Sharma would purchase the goods from various overseas suppliers of China and Hong Kong; that as per his indent, Shri Raju Sharma used to forward these goods to him; that the documents were forwarded through e-mail in the office of Shri Vinod Kumar Sharma (CB) and the CB used to file Bs/E for clearance of goods in consultation with him with reference to declaration of value of the goods and other aspects; that upon receipt of invoice and other documents along with Bills of Entry from CHA, the amount equivalent to the invoice value were remitted through RTGS in the bank account of Shri Prem Kumar Ojha @ Raju Sharma in HSBC Bank and difference amount was paid in India through non-banking channels in India as per the directions and arrangements of Shri Prem Kumar Ojha @ Raju Sharma or to the person of overseas suppliers in cases of supplies other than the firms of Shri Prem Kumar Ojha @ Raju Sharma i.e. M/s Suniland Trading and M/s Perfect Trading; that he used to negotiate through Shri Prem Kumar Ojha @ Raju Sharma regarding quantity, quality and value; that at times full amount for the price of glass chatons was paid in India through non-banking channel; that at times amount equivalent to the invoice value was remitted in the account number of actual overseas suppliers after consulting Shri Prem Kumar Ojha @ Raju Sharma; he further stated that in addition to the above payment he had also paid air freight

to Shri Vinod Sharma for each imported consignment, which was never added in the invoice value though the term was shown as CIF in each invoice, which had been mis-declared on each occasion to evade the customs duty; that he had been shown the statements dated 03.08.2011, 04.08.2011 and 05.08.2011 of Shri Vinod Sharma, he had read and understood the same and put his dated signatures on the last page of the same.

7.5 I find that Shri Vinod Kumar Sharma, Director of M/s Fairdeal Shipping Agency Pvt. Ltd. in his statement recorded under Section 108 of the Customs Act, 1962 inter alia admitted that he had filled up the blank columns of Value in the import Invoices on behalf of the importers; that these values filled by him were mis-declared/undervalued in order to evade payment of customs duty; that he roughly estimated that about 55% undervaluation had been committed in the imports; that he was aware about the price trend of glass chatons in China; that considering the quantum, the actual assessable value for the 133 import consignments may arrive at approximately Rs. 30 Crores against the declared value of USD 35.3 lakhs; that the prices were filled up by CB in the blank columns of the invoices as per the instructions of the beneficial importers; that he had cleared the consignments on the basis of fabricated import documents and also admitted to the existence of a mutual deal with the importer. It is clear from the above Paras that in the present case, the CB deliberately & actively participated in the fraud being perpetrated through their clients and overseas suppliers. Thus, I find that the CB did not show the efficiency in handling the responsibility given through the CHALR, 2004 for monetary gains.

7.6 It is thus seen that Shri Vinod Kumar Sharma in capacity of Director of Custom Brokers, M/s Fairdeal Shipping Agency Pvt. Ltd, Jaipur, had knowingly participated in the evasion of Customs duty by way of undervaluation/mis-declaration of value in a well-planned manner; whereas he was bound to discharge his duties efficiently without detriment to the govt. exchequer. Hence, it appears that the Customs Broker is liable for violation of Regulation 13(n) of CHALR, 2004.

8. It has been alleged that CB had not verified correctness of IEC No., GSTIN, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information required as per the Regulation 13(0) of CHALR, 2004 (Regulation 10(n) of CBLR 2018).

8.1 I find that, Shri Vinod Sharma in his statement dated 03.08.2011, 04.08.2011, 05.08.2011 and 17.02.2014 recorded under section 108 of the Customs Act, 1962 revealed the details of IEC Code, IEC holder and their actual importers. This clearly indicates that he was fully aware that the person he was dealing with were not the genuine importers and the lure of extra consideration induced him to commit huge undervaluation about 55% in favour of the beneficial importers. Shri Lokesh Jhalani in his statement dated 27.11.2013 recorded under section 108 of the Customs Act, 1962 clearly said that M/s Ranjan Enterprises, Jaipur (IEC No. 1309006318) and M/s Narendra Enterprises, Jaipur (IEC No. 1309015031) belonged to his acquaintances, that he used these IEC firms for import of Glass Chatons on payment to IEC holder @ Rs. 10/- per Kg; that the CB was fully aware that the persons like Shri Lokesh Jhalani were actual beneficial importers were using someone's IEC for importing the undervalued and mis-declared goods. As per the statement of Shri Ranjan dated 21.08.2012 recorded under Section 108 of the Customs Act, 1962, it was

confirmed that the IEC was used without his (Shri Ranjan) consent and he had nothing to do with the imported goods.

8.2 Shri Vinod Sharma in his statement dated 05.08.2011 recorded under section 108 of the Customs Act, 1962 accepted that apart from Glass Chatons, he also handled the import clearance of Mobile Accessories, Memory Cards, I-Pads etc.; that he had handled clearance of Memory Cards from Air Cargo Complex, Jaipur on behalf of Shri Lilaram Asudani of Ahmedabad; that Shri Lilaram contacted him over phone and told that his employee Shri Sarav Suthar would send him e-mail regarding IEC details of M/s D. K. Enterprises, Ahmedabad and blank authorization of M/s D. K. Enterprises, Ahmedabad; that though Shri Dhiraj Solanki is a proprietor of M/s D. K. Enterprises, memory cards imported in the name of the said firm were pertaining to Shri Lilaram Asudani and he clearly accepted that he had not verified genuineness of M/s D. K. Enterprises, Ahmedabad; that the documents pertaining to such imports were being sent by him at the address given by Shri Lilaram Asudani which was pertaining to M/s Suraj Traders. This clearly indicates that the CB did not verify the credentials of his client before taking up their work. The investigation had found that almost importers were using IEC that did not belong to them and they were paying the IEC holder as well. CB was not bothered to find out the existence of the IEC firm at the declared address and actively participated in fraud with the beneficial importer. It is, thus, clear that there is no effort made by the CB to ascertain the genuineness of the importer and their business functions through authentic and reliable means as required by the Regulations of CHALR, 2004 thereby violated Regulation 13(0) of CHALR, 2004 (Regulation 10(n) of 8BLR, 2018).

8.3 In this regard, I rely on the Hon'ble CESTAT's judgement in the case of HLPL Global Logistics Pvt. Ltd. Versus Commissioner of Customs, New Delhi reported in 2019 (370) E.L.T. 501 (Tri. - Del.) wherein it was held that -

[Para 8] "...The adjudicating authority also found that the IEC of the importer revealed that no firm/business enterprises in the name of M/s. Neotex Exim Pvt. Ltd. existed at the given address and the enquiries conducted at the declared residential premises revealed that the said address was incomplete or fictitious. Under the circumstances, we are in agreement with the finding of the Ld. Adjudicating authority that CHA helps not properly verified the functioning of the client from at the declared address by using reliable independent and authenticate documents. This was a serious lapse on part of the CHA in verifying the KYC before taking up the Customs clearance of consignment of rough diamond imported by M/s. Neotex Exim Pvt. Ltd. The appellants, considering the nature of the imported goods i.e. rough diamond, would have exercised more vigilant approach before taking up the consignment for Customs clearance after verification of KYC norms of the importer, which has not been done in this case."

As it is evident from the discussions & findings above, the CB had done no verification of the IEC holders/importers. Instead, he indulged in the fraud by actively facilitating the undervaluation & mis-declaration of goods along with forging of signatures for monetary gains. There is no evidence of the CB using reliable, independent, authentic means for verification of imports by the CB and their business functioning. Thus, the CB has done no verification of his client or functioning of their business at the declared address using reliable, independent,

authentic documents, data or information which was against the Regulation 13(0) of CHALR 2004 (Regulation 10(n) of CBLR 2018), Hence Charge proved conclusively.

9. Investigation also revealed that the CB, when asked to give the complete details of the declared and assessed values of all the import consignments as well as the details of the overseas suppliers and on being asked to identify the actual importers and other dummy IEC holders from among all the importers as well as the consignments supplied by Shri Raju Sharma @ Shri Prem K Ojha, agreed to provide the details. Shri Prem Kumar Ojha in his statement dated 03.02.2014 recorded under Section 108 of the Customs Act 1962 inter alia the major parties for whom they undertake work are:

1. M/s Golden Agro Corporation
2. M/s Manish Enterprises
3. M/s Narendra Enterprises
4. M/s Manu Traders
5. M/s Plasto & Co
6. M/s Pulkit International
7. M/s Ranjan Enterprises
8. M/s Rector Electricals P. Ltd.
9. M/s Rashi International
10. M/s Sai Enterprises
11. M/s Sai International
12. M/s Sai Kripa Gems
13. M/s Sun International, Delhi
14. M/s Vikas Enterprises
15. M/s Navneet Enterprises, Jaipur

In respect of the above mentioned firms, he (Shri Raju Sharma) stated that he had only forwarded some of the consignments, which were bought by the Indian buyer from suppliers of Hong Kong; that in these cases, he had not issued any invoices but had acted as a forwarder of goods; that blank invoice of the actual supplier was also obtained and forwarded to the Indian buyers so as to enable them to mis-declare the value and description of the glass chatons; that the price declared with Indian Customs was also FOB not CIF, whereas the same was bought by the importer; that the price of the Glass Chatons were stable during the period 2010-2012 and the price at which he had negotiated with the Indian buyers in case of the aforesaid 15 firms, could be taken as the price for the firms M/s Friendship Gemco and M/s Eureka Impex; that in case of these two firms, he had only forwarded 2-3 consignments and 1 consignment respectively, wherein freight was recovered separately from them through Shri Vinod Sharma (CHA); that he did not know the quality of the consignment since he had only forwarded the same; that he had charged the freight separately and the same was collected by Shri Vinod Sharma (CHA) in India and was either handed over to him or anybody sent by him to Shri Vinod Sharma for collecting the said amount; that in order to declare less value to the Indian Customs, a Blank invoice showing description as Glass chatons "B" Grade, was sent to either the buyer or Shri Vinod Sharma (CHA) who used to fill in lower value of the goods and get the same cleared from Customs by way of paying less duty; that in token of having seen and accepted the undervaluation, he put this dated signature on the said report; that the freight collected by him through Shri Vinod Sharma was in respect of the consignments where the invoice was raised by him either through M/s Sunland Trading or M/s Perfect trading; that in case of Glass

Chatons supplied by him (through M/s Sunland or M/s Perfect) to the firms owned and /or controlled by Shri Deepak and Shri Lokesh, the transaction value was made on FOB basis whereas the invoice sent to them was showing terms as CIF; that the extra amount towards freight/insurance was collected from them by Shri Vinod and sent to him either in his account or handed over to someone sent by him to Shri Vinod; that he also agreed that he used to collect the full price of the glass chatons from the Indian buyers which included some amount sent through banking channels and some through other than banking channels but the same was credited to his account of M/s Sunland Trading or M/s Perfect Trading.

10. The defense submitted that the entire case is based on statements recorded under section 108 of the Customs Act, 1962, original of which or authenticated copies of which have not been brought on record and thus the same are inadmissible.

In this regard, I find that the Charged CB had submitted before Inquiry Officer a copy of the retraction dated 08.08.2011 filed before the Addl. Chief Metropolitan Magistrate, Mirzapur Court that his statements recorded from 02.08.2011 to 05.08.2011 were not voluntary and had been given under pressure. I find that DRI had called for Shri Vinod K Sharma for the recording of further statements on 17.02.14 wherein the officials showed him his earlier statements dated 03.08.11, 04.08.11 and 05.08.11 before proceeding to record his statement. I find that he has not retracted his earlier statements even after completion of recording the statement and infact has given only some clarifications, which show his clear involvement in the undervaluation, mis-declaration and willingly dealing with non IEC holders for monetary gains. He also put his dated signature on each page of the statement. These statements corroborate the commission and deliberate violations of CBLR, 2013 & CHALR, 2004 by the CB by Shri Vinod K Sharma. This being the case, the defence that CBs statement dated 03.08.2011, 04.08.2011 and 05.08.2011, was retracted, has no basis and cannot be taken into account. The CB is thus found liable for violation of Regulation 13(d) of CHALR. 2004.

As defense submitted that he had retracted his statements, I rely on the Hon'ble Supreme Court judgement in the case of Surjeet Singh Chhabra Vs. Union of India reported in 1997 (89) E.L.T. 646 (S.C.), wherein it has been held that -

"The Customs officials are not police officers. The confession, though retracted, is an admission and binds the petitioner".

Also, the Hon'ble Supreme Court held in the judgement in the case of Systems & Components [2004 (165) E.L.T. 136 (S.C.)] that -

"It is a basic and settled law that what is admitted need not be proved".

Accordingly, all the portions of the statement dated 03.08.11, 04.08.11, 05.08.11 and 17.02.2014 hold the evidentiary value for this adjudication.

The defence submission dated 12.11.2020, 16.11.2020 and 18.11.2020 inter alia among all things relied on the following case laws

- a. Jaswinder Singh-1996 (83) ELT 175 (T),
- b. 2019 (365) E.L.T.392 (Del.) - KVS CARGO,
- c. 2019 365 E.L.T .395 (Del.) -KVS CARGO,

- d. Shri Rajendra Prasad Vs. Commissioner of Customs, Patna ~ 2001 (136) E.L.T. 925 (Tri. -Kolkata),
- e. Vanamala Jagadeshwariah — 2001 (127) E.L.T. 28 (A.P.),
- f. G.M. Export-2006 (198) ELT 354 (T), U. Shiva Subramaniam-2004(165) ELT 97 (T),

11. I find that CB has relied on the further case laws viz.

11.1 Jaswinder Singh vs. CC reported in 1996 (83) ELT 175 (Del). where the Hon'ble Tribunal had made the following observation :

We find from the perusal of the impugned order that the case against the appellant is based upon the statement of Shri N.C. Jain who has stated in his statement recorded on 9-9-1983 that the gold biscuits belonged to him; that one Sardarji whose name he did not know was the main recipient of the foreign currency from him in exchange for Indian currency and that he often used to collect US \$ from him. In his subsequent statement of 11-9-1993 he has stated that he has identified the Sardarji from the photograph shown to him by the DRI Officers and has also furnished the address of the Sardarji i.e. B-44, Krishna Nagar. The appellant herein has not incriminated himself in any statement. The learned Counsel is correct in pointing out that the appellant's involvement in smuggling cannot be upheld merely on the basis of a statement of co-noticee in the absence of any other evidence. The adjudicating authority has also relied upon the non-appearance of the appellant herein and response to DRI summons as a factor to establish the guilt of the appellant herein. However, in addition to this finding not being an allegation in the show cause notice, we are of the view that non-appearance in response to summons cannot be a factor or criterion in determining the guilty conduct on the part of the appellant. It is a well settled legal position that statement of a co-noticee or co-accused without any independent corroboration cannot form the basis of formation of a charge of involvement in smuggling activities.The penalty imposed on the appellant is also set aside.

11.1.1 I find that, the subject matter of the case at hand is distinguishable from the above cited case law, the Tribunal pointing out that the appellant's involvement in smuggling cannot be upheld merely on the basis of a statement of noticee in the absence of any other evidence. In the present case the CB is the main accused (noticee) and he has accepted in his statements dated 03.08.2011, 04.08.2011, 05.08.2011 and 17.02.2014 that all the wrong doings were actively committed by him for clearance of the consignment which include undervaluation, mis-declaration & forgery. Hence, ratio of the Judgment relied by the CB is not applicable in the instant case.

11.2 The CB has quoted KVS CARGO vs Commissioner of Cus.(GENERAL),NCH, NEW DELHI, reported in 2019 (365) E.L.T.392 (High Court)

4. The Court is of the opinion that there is some merits as far as the appellant's argument is concerned. In this case the Customs Authorities have not held that any clandestine material was brought or that the goods were mis-declared or the contraband was the subject matter of the Bill of Entry in question. The role of the appellant was merely one of a facilitator. There is no material on record to show that the KYC documents were fraudulent or incorrect or in any manner irregular. In these circumstances, to expect the CB holder to carry out further investigations and independent inquiry not only about the existence of importing firm but also about its real owner is beyond the mandate of the law.

5. In view of the above findings, the question of law is answered in favor of the appellant. The concurrent findings of the Commissioner and the CESTAT are hereby set aside. The appeal is allowed.

KVS CARGO vs. CC, New Delhi, reported in 2019 365 E.L.T .395 (High Court) -

3. The adjudicating or appellate authorities were thus not afforded the option of picking up the one element from the revocation and forfeiture option and imposing penalty along with forfeiture. To that extent, the CESTAT clearly went beyond the Regulations. However, this Court is not persuaded to exercise jurisdiction to set aside the order entirely because the role ascribed to the CB holder was one of carelessness and negligence. In this regard the Court notices that both the authorities - the Commissioner as well as the CESTAT appeared to have imposed almost impossibly high standards upon the CB holder who is expected to not only verify the correctness of the documents with reference to the publically available material but also carry out independent investigations. No doubt, the CB holder acts as an interface between the Customs Authorities and facilitates the task of a consignee/importer, yet to expect such an independent agent - who is not a public servant or in any way connected with the Customs Department to act as a public trustee (an expression used by the Commissioner), is beyond what is contemplated.

4. For the above reasons, the appeal is dismissed.

11.2.1 In the present case as brought out in earlier paras, there is clear connivance and active involvement of the CB in perpetrating fraud on govt. exchequer. Hence this judgement is not applicable in the instant case. In this regard, I rely on the Hon'ble Tribunal's judgement in the case of Rubal Logistics Pvt. Ltd. Vs. Commr. of Cus. (General), New Delhi reported in 2019 (368) E.L.T. 1006 [Tri. - Del.]. The relevant para 6.2 of the said judgement is as under:

"6.1 These provisions require the Customs Broker to exercise due diligence to ascertain the correctness of any information and to advise the client accordingly. Though the CHA accepted as having no mens rea of the noticed misdeclaration/under-valuation or mis-quantification but from his own statement acknowledging the negligence on his part to properly ensure the same, we are of the opinion that CHA definitely has committed violation of the above mentioned Regulations. These Regulations caused a mandatory duty upon the CHA, who is an important link between the Customs Authorities and the importer/exporter. Any dereliction/lack of due diligence since has caused the Exchequer loss in terms of evasion of Customs Duty, the original adjudicating authority has rightly imposed the penalty upon the appellant herein."

11.2.2 I also rely on the Hon'ble CESTAT's judgment in the case of HLPL Global Logistics Pvt. Ltd. Versus Commissioner of Customs, New Delhi reported in 2019 (370) E.L.T. 501 (Tri. - Del.) wherein it was held that -

[Para 8]"...The adjudicating authority also found that the IEC of the importer revealed that no firm/business enterprises in the name of M/s. Neotex Exim Pvt. Ltd. existed at the given address and the enquiries conducted at the declared residential premises revealed that the said address was incomplete or fictitious. Under the circumstances, we are in agreement with the finding of the Ld. Adjudicating authority that CHA helps not properly verified the functioning of the client from at the declared address by using reliable independent and authenticate documents. This

was a serious lapse on part of the CHA in verifying the KYC before taking up the Customs clearance of consignment of rough diamond imported by M/s. Neotex Exim Pvt. Ltd. The appellants, considering the nature of the imported goods i.e. rough diamond, would have exercised more vigilant approach before taking up the consignment for Customs clearance after verification of KYC norms of the importer, which has not been done in this case."

11.2.3 I find that ratio of the aforesaid judgements are squarely applicable in the instant case since as brought out in foregoing paras, in case of many importers the CB used to collect invoices from Shri Prem kumar Ojha keeping item size of the goods, quantity same however, the column of rate and amount was left blank which was filled in by the CB Shri Vinod Kumar Sharma, which was much lower than the actual rate. Even though the better quality/grades of Chatons he declared the Glass Chatons were of inferior quality i.e. B grade to mislead the assessment authority. Shri Vinod Sharma received extra gratifications in cash for facilitating and managing illegal transactions for the importers. Through this modus oprendi he facilitated the importers in evasion of Customs duty through mis-declaration and undervaluation. There was not just lack of due diligence, infact they willingly accepted documents from persons & e-mails unrelated to the IEC holder. They were well aware of the mis-declaration, since they were actively involved in the duty evasion fraud. The CB had malafide intention to not verify the 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.

All these point to clear complicity in unlawful activity by the CB, who needed to examine the details of IEC with due diligence before taking up work of the Customs clearance of goods. A Customs Broker is obliged to enquire with the importer to verify the declaration and then authorization to file the documents and ensure no room for the fraudsters.

11.3 The CB has relied upon the case of Shri Rajendra Prasad Vs. Commissioner of Customs, Patna ~ 2001 (136) E.L.T. 925 (Tri.-Kolkata)

5. *After hearing both sides and on going through the Order-in-Original and the Order-in-Appeal, it is observed that the appellants were penalised solely on the statement of Shri Shiv Kumar Sharma, the driver. Except the statement of Shri Shiv Kumar Sharma, there is no other independent evidence to corroborate the statement of the co-accused. It is an accepted legal proposition which has been accepted by the Apex Court in various judgments that the statement of co-accused, when not corroborated by any independent evidence, cannot be taken as a Gospel Truth. Therefore, reliance on the statement of the co-accused without corroboration is unacceptable in law. The reliance of Revenue on the judgment of the Hon'ble Supreme Court in Naresh J. Sukhawani is of no avail inasmuch as the statement of the co-accused in that case inculcates himself as well as the petitioner. In the instant case, the co-accused shifted the entire guilt on the appellants. In view thereof, the personal penalties imposed on the appellants are not warranted. Therefore, I have no hesitation in holding that the personal penalties are required to be set aside. Accordingly, I do so.*

11.4 Vanamala Jagadeshwariah — 2001 (127) E.L.T. 28 (A.P.),

21. *In fact, during the course of arguments, in an answer to a query the learned Standing Counsel for the Customs Department has stated that except this evidence by way of a confessional statement of a co-accused, the Customs Department has been unable to secure any other evidence connecting the petitioner with the alleged offence. At any rate, the complaint which I have read carefully does not disclose any other evidence which appears to be available against the accused.*

22. *In the result, it is futile to expect that any criminal court would be able to record a conviction against the petitioners on the basis of the evidence consisting solely of a confessional statement of a co-accused. The learned Standing Counsel for the Customs Department, Sri Gopala Krishna, however, made a feeble attempt to contend that the confessional statement of one of co-accused (Accused no. 2) is corroborated by a similar statement by another co-accused A4. It is well settled that tainted evidence cannot boost or enhance the evidentiary value of another piece of similarly tainted evidence.*

23. *Thus, considering the special circumstances of this case, there is no escape from holding that in the absence of any evidence apart from the confession of the co-accused connecting the petitioners with the alleged offence, it will be abuse of process of law to continue the criminal proceedings against the petitioners.*

24. *In the result, this petition is allowed and the proceedings against A1 and A3 in CC. No. 3 of 1997 on the file of the Special Judge for Economic Offences, Hyderabad are quashed.*

11.5 I find that, the case on hand is distinguishable from the above cited case laws, the Tribunal and the High Court in their verdict clearly said that the appellant's involvement in smuggling cannot be upheld merely on the basis of statement of co-accused without any corroborative evidence. In the present case the CB is the main accused (noticee) and has himself accepted his all the wrong doings committed by him while clearance of the consignment before Customs in the Statement dated 05.08.2011 recorded under Section 108 of the Customs Act 1962 before DRI Officials. This is corroborated with the recovered emails, blank authorization forms, the stamp impressions of the importers/exporters and the statements of Shri Vinod Kr Sharma dated 03.08.2011, 04.08.2011, 05.08.2011 & 17.02.2014. Thus, ratio of the Judgments relied by the CB is not applicable in the instant case.

11.6 G.M. Export Vs Commissioner of Customs, Bangalore-2006 (198) ELT 354 (T),

Penalty on Custom House Agent - Three employees of agency helped appellant in producing computer generated invoice - CHA terminated services of said employees - No evidence that CHA themselves involved in generation of invoices in computer for helping appellants - Employees committed improper acts without approval and blessings of CHA - CHA having good track record in different ports for about 25 years - Penalty on CHA set aside. [para 6]

11.7 U. Shiva Subramaniam Vs Commissioner of Customs, Trichy-2004(165) ELT 97 (T),

5. On a careful consideration of the submissions, and on perusal of records, we notice that the show cause notice has proceeded against the appellant solely on the ground that he had appended his signature on the documents without asking anything since Ramesh was well known person and that the shipping bill was filed with customs on the same day. It has been clearly recorded in the statement of the appellant that he had no knowledge and had no connection with the sandal wood seized. It was submitted by the appellant-CHA that acting on bona fide belief of the statement of Ramesh, he signed the shipping bill. It has not been shown from the show cause notice or from any statement that Ramesh had informed the appellant about the sandal wood having been concealed. The only ground on which the appellant is found guilty of the offence is that he had signed the documents without verification. The penultimate Para 29 of the show cause notice also states that appellant had assisted Ramesh in filing the shipping bill by signing the shipping bill without verifying the contents of the cargo. There was no allegation that appellant had knowledge and he had abetted in the committal of the offence. The penalty has also been imposed solely on the ground that appellant had appended his signature in various documents without due verification of the contents of the goods which was later found to be other than what was declared in violation of provisions of Customs Act. The Tribunal judgment which has been referred to by the Counsel that some degree of knowledge of contravention of law on the part of the abettor must be shown for imposition of penalty under Section 112 of Customs Act as held in the case of *Liladhar Pasoo Forwarders Pvt. Ltd. v. CC, Mumbai (supra)* also would apply to the facts of the case. The Tribunal also likewise held in the case of *Shaikh & Pandit v. CC, Calcutta (supra)* that penalty under Section 114 cannot be imposed on CHA who is in pursuance of Regulation 10(2) (b) of CHALR'84 merely assisted in storing goods and rendering services required under aforesaid Regulation, thereby concluding that, in the absence of any evidence on record it cannot be suggested that agent played any active role in attempting to export prohibited goods. This judgment also applies to the facts of the case. The case law cited by the Counsel in the case of *Syndicate Shipping Services Pvt. Ltd. v. CC, Chennai (supra)* on identical facts also applies to the present case. This Bench in the aforesaid case clearly noted that no positive evidence on record had been produced to show any mala fide intention on the part of CHA or that he was an accomplice or abettor and, therefore, held that penalty was not imposable. Same view has been expressed by the Calcutta Bench in the case of *Jha Shipping Agency v. CC (Port) Calcutta (supra)*. In view of these catena of judgments relied upon by the appellants, which are on identical score, the penalty of Rs. 5 lakhs on the appellant is required to be set aside by allowing the appeal and we order accordingly.

11.8 I find that, Shri Vinod Sharma was one of the Director of the CB firm M/s Fairdeal Shipping Agency Pvt. Ltd.; initially he had joined the CB firm as an employee in the year 2005, He could not exercise his G card because of an investigation going on against his earlier employer CB firm M/s Ganesham Cargo. Later, upon conclusion of the inquiry against M/s Ganesham Cargo, the Customs Authorities validated his G card in M/s Fairdeal Shipping. In the year 2008 he passed the Rule 8 exam and got Form-F identity card by the Commissioner of Customs, Jodhpur (Headquarters at Jaipur). In the year 2010, he was made a director of M/s Fairdeal Shipping under the Companies Act, by transferring 33% shares of M/s Fairdeal Shipping in his name. Hence, I find that

the subject matter is different and clearly distinguishable, the fraud committed in the case at hand was not the employee of the firm, infact he was one of the Director appointed under the Companies Act and by transfer of shares. The subject matter in the case at hand is not the acts of employees behind the back of the employer without authorization, do not justify penal action against the employer. Hence the ratio of the judgement was not applicable in the present case.

Inter alia among all things the defence alleged that Inquiry was not conducted properly; in this regard I find that in the line of judgement delivered by the High Court, Inquiry Officer was conducted the inquiry keeping in mind the deadline of 12 weeks for the submission of Inquiry Report as directed by the High Court. In between nationwide lockdown announced by the Govt. of India due to Covid Pandemic and the report were submitted by 28.09.2020 only. The Inquiry Report was prepared on the basis of facts on record and regular hearing/daily order sheet. While the hearing the request of CB has been taken into account in all respects. I find that the IO report is prepared properly with cogent reasoning hence the allegation that it is prepared mechanically and in a predetermined manner is not correct.

12. In the regime of trade facilitation a lot of trust is placed on the Customs Broker who deal with the importers/exporters. Failure to comply with regulations by the CB as mandated in the Regulations gives room for unscrupulous persons to get away with import-export violations, revenue frauds. It is clear from the investigation and the statements recorded that the CB deliberately connived with overseas supplier/intermediaries while transacting business and colluded with the fraudsters to avoid due duty payment in favour of beneficial importer and himself for monetary gains. Thus, it is clear that Customs Broker M/s Fairdeal shipping Agency Pvt. Ltd. failed to discharge their responsibilities as a Customs Broker properly by failing to verify the antecedents, the genuineness of the importer and their background and not guiding them properly since they had no contact with the importer/IEC holder. Infact contrary to this obligation, the director of the CB himself became the part of the fraud which resulted in heavy loss to the government exchequer. They also failed to bring the wrong doings to notice of the Customs, as they were actively involved in the fraud. All the persons involved knowingly abetted/supported the illegal activity in order to earn money by unfair means. Thus, there is clear intent of malafide by the CB who participated in the fraud.

13. Shri Vinod Kumar Sharma, Director of M/s Fairdeal Shipping Agency Pvt. Ltd. failed to discharge his responsibilities as a Director of Customs Broker firm properly by involving himself in the fraud inspite of knowing the functioning, antecedents and import activities of the beneficial importers. The CB used to receive email of invoices (MS-Excel format) from the overseas supplier (M/s Perfect Trading, Hong Kong and M/s Sunland Trading Ltd, Hong Kong) which were complete in all respect, except the rate and value columns which were kept blank with some mala-fide intention. These two columns of Rate and Value were filled up by the CB with grossly undervalued figures and after taking a printout of such invoices they were presented before Customs for seeking clearance of the imports. For the clearance, the director of the CB firm had fixed a package rate of Rs. 100 per kg plus actual freight plus amount of duty for clearance of each shipment of glass chatons through Jaipur. They did not acquire insurance cover for their goods and yet declared the goods on FOB basis. He was involved with the fraudulent activities and the fraudsters played an active role in respect of

mis-declaration of value, and description (Grade of Glass Chatons) of the subject import goods, which warrants penal action. As brought out in discussions as above there is no denying the fact that the CB was an active member of the syndicate and was not diligent in following the provisions of CHALR, 2004 (now CBLR, 2018). It is evident from facts on record that the CB has violated various provisions of CHALR 2004(now CBLR 2018) with mens rea.

14. I find that Shri Vinod Kumar Sharma being active member of syndicate was accepting work from beneficial importers without proper verification of the IEC Holders/clients and knowing full well the mis-declaration which lead to violation of the Regulations 13(a), 13(d), 13(e), 13(n) & 13(o) of the CHALR, 2004 (now Regulation 10(a), 10(d), 10(e), 10(m) & 10(n) of the CBLR, 2018). This is unacceptable and warrants penal action against the CB. It is very clear from the above paras that CB connived with Shri Prem Kumar Ojha @ Raju Sharma, beneficial importers and participated in the modus-operandi of under invoicing and mis-description of goods. Beside the loss to the government exchequer such activities could have serious outcomes in terms of healthy business environment. The honest and genuine importers may get motivated towards the malpractices, thus rotting a healthy system of taxation. I also find that in another case, the License of the CB M/s Fairdeal Shipping Agency Pvt. Ltd., CB No. 11/091 had been suspended vide Order No. 11/2018-19 dated 11.05.2018 and the said case is still pending. It indicates that the CB M/s Fairdeal Shipping Agency Pvt. Ltd. is habituated to fraud.

There is no denying the fact that the CB was an active member of the syndicate causing loss to govt. exchequer and not at all diligent in following the provisions of CHALR 2004(now CBLR 2018). As is evident from the discussions & findings above. The Hon'ble Supreme Court in the case of Commissioner of Customs V/s. K. M. Ganatra and Co. in civil appeal no. 2940 of 2008 approved the observation of Hon'ble CESTAT Mumbai in M/s. Noble Agency V/s. Commissioner of Customs, Mumbai that:

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

I rely on the above cited judgment. I find that in the instant case, the CB M/s Fairdeal Shipping Agency Pvt. Ltd. (CB No. 11/91) has failed to adhere to the responsibilities as was expected in terms of the Regulations made under CHALR 2004 (now CBLR, 2018) and therefore rendered themselves liable for penal action under CHALR 2004(now CBLR, 2018).

15. Therefore, for their acts of omission and commission, CB is held liable and guilty for facilitating and indulging in fraud perpetuated on government with the various dummy importers rather than actual IEC holders. In view of the above discussions & findings, the Customs Broker M/s Fairdeal Shipping Agency Pvt. Ltd. (CB No. 11/91) (PAN No. AAACF5033H) have, therefore, failed to fulfil their responsibilities as per Regulations 13(a), 13(d), 13(e), 13(n) & 13(o) of the CHALR, 2004 (now Regulation 10(a), 10(d), 10(e), 10(m) & 10(n) of the CBLR, 2018) and acted with mens rea. Accordingly, I am inclined to revoke the CB Licence and pass the following order.

ORDER

1. I, Principal Commissioner of Customs (General), in exercise of the power conferred upon me under Regulation 22(7), of the CHALR, 2004 (Now Regulation 17(7) of the CBLR, 2018), pass the following order:

- (i) I hereby order for forfeiture of entire amount of security deposit furnished by the CB, under Regulation 20(I) of the CHALR, 2004 (now Regulation 14 of the CBLR, 2018), furnished by the CB.
- (ii) The CB Licence No.11/091 is ordered to be revoked under Regulation 20 of the CHALR, 2004 (now Regulation 14 of CBLR, 2018).
- (iii) That the CB surrender the original Licence as well as all the 'F', 'G' & 'H' cards issued there under immediately.

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


(PRACHI SAROOP)

PRINCIPAL COMMISSIONER OF CUSTOMS (G)
MUMBAI ZONE-I

To,
M/s Fairdeal Shipping Agency Pvt. Ltd (CB No. 11/91),
601, Sujata Chambers C. H. S. A.G. Marg
(Off NarshinNatha Street), Near Railway Station,
Masjid Bunder(West)
Mumbai-400009

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