



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

सचिका सं / F. No - GEN/221/2023 - CBS

आदेश दिनांक/Date of Order: 12.03.2024

CAO No. 82/CAC/PCC(G)/SJ/CBS-Adj

जारी दिनांक/Date of issue: 12.03.2024

संख्या:

DIN : 20240177000000338806

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

Issued By : Sunil Jain
Pr. Commissioner of Customs(Gen).
Mumbai - 400 001.

ORDER-IN-ORIGINAL मूल आदेश

ध्यान दीजिए/ N.B. :

1. यह प्रति उस व्यक्ति को निजी उपयोग हेतु निःशुल्क प्रदान की जाती है, जिसे यह जारी की जा रही है।
This copy is granted free of charge for the private use of the person to whom it is issued.

2. इस आदेश के विरुद्ध अपील 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 सेवाकर अपील अधिकरण में स्वीकार्य है, जहाँ शुल्क या शुल्क एवं जुर्माना विवादित हों, या जुर्माना, जहाँ सिर्फ जुर्माना ही विवादित हो। यह अपील इस आदेश के संप्रेषण की तारीख के तीन महीने के अंदर दायर की जाएगी। यह अपील सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण (कार्यविधि) नियमावली, १९८२, के प्रावधानों के अंतर्गत, यथोत्तराधिकार में स्वीकार्य है।

An appeal against this order lies with the Customs, Central Excise and Service Tax Appellate Tribunal in terms of section 129A(1B)(i) of the Customs Act, 1962 on payment of **7.5%** of the amount demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. It shall be filed within three months from the date of communication of this order. The appeal lies with the appropriate bench of the Customs, Central Excise and Service Tax Appellate as per the applicable provisions of Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

3. यह सूचित किया जाता है की इस आदेश के अमल में आते ही, न्याय निर्णयन अधिकारी का अधिकार क्षेत्र समाप्त होता है और सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण, पश्चिम क्षेत्रीय खंडपीठ, के M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai के संदर्भ में जारी आदेश क्रमांक A/86617-86619/2018 दिनांक 31.05.2018 के अनुसार न्यायिक आदेश तदोउ प्रांत न्याय निर्णयन अधिकारी *functus officio* बन जाता है।

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

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

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

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

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

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

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

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

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

BRIEF FACTS OF THE CASE

M/s. Star India Logistics, (PAN: AAZFS0504QCH001), having address registered at 12A, Mahendra Industrial Premises Next to WF Co., Sion(East), Mumbai – 400 059 (hereinafter referred as the Customs Broker/CB) are holder of Customs Broker License No. 11/976, issued by the Commissioner of Customs, Mumbai under CHALR, 1984, [Now regulation 7(2) of CBLR, 2018] and as such they are bound by the regulations and conditions stipulated therein.

2. The Customs Broker M/s Exim Management Services (CHA-PNR -54) filed 01 Shipping Bill No. 8692568 dtd. 29.11.2013 on behalf of M/s Star India Logistics for exporter M/s Kinjal Enterprises (hereinafter referred to as the exporter) for clearance of goods, from Nhava Sheva Port, in which SIIB(X) JNCH booked a case of export of “Red Sanders”. After investigation SCN dated 21.12.2016 was issued.

3. An Order-in-Original No. 1106/2022-23/ADC/NS-II/JNCH/CAC in accordance with SCN dated 21.12.2016 was issued on 20.01.2023 by Additional Commissioner of Customs CAC(NS-II) , JNCH, Nhava Sheva, wherein, following has been stated:

3.1 A specific intelligence developed by the officers of SIIB(X) JNCH revealed that “Red Sanders” were smuggled in the guise of export of some other good, viz. Craft Paper (Packing) in Container No. PMLU-9008054 from Nhava Sheva Port to Jebel Ali Port, UAE against S/Bill No. 8692568 dtd. 29.11.2013 filed by M/s Kinjal Enterprises, Pune through CHA M/s Exim Management Services (CHA-PNR -54). Examination of the said container was carried out under Panchnama dated 12.12.2013, which revealed that instead of the declared goods, the container was fully loaded with Red Sander wood having net weight of 24.770 MTs having estimated value of Rs. 2,47,70,000/-. The said container was handed over to M/s. Skanda Navia Logistics Pvt. Ltd., a container forwarded, who in turn handed over it to CHA M/s. Star India Logitiscs (11/976), a customs broker. The Shipping Bill No. 8692568 dated 29.11.2013 was filed online by M/s. Exim Management Services(CHA No. PNR-54) who were transacting entire business of M/s. Star India Logistics, Mumbai at Pune.

3.2. Statement of Shri A.V. Parapanje, Proprietor of M/s. Exim Management Services (CHA No. PNR-54) was recorded on 14.02.2014 under section 108 of the Customs Act, 1962 wherein he inter-alia stated that the impugned Shipping Bill was filed online from his office at the behest of M/s. Star India Logistics, Mumbai-400059 as the entire business of M/s. Star India Logistics relating to clearance at Pune was looked after by him. He had not personally met Shri

Durgesh P. Chavan of M/s. Kinjal Enterprises as the job of clearance was sub-contracted through M/s. Star India Logistics. The stuffing of the Container was done at Private Bonded Warehouse, Dynamic Logistics Pvt. Ltd., known as ICD Dighi, Pune. The impugned consignment was examined by the Customs Authority and thereafter stuffed in the Container no. PMLU-9008054 (40") under their supervision; that he was present while stuffing the impugned goods in the above said container.

3.3. Statement of Shri Mahadev Pandurang Khot, Export Manager of M/s Star India Logistics was recorded on 21.02.2014 under section 108 of the Customs Act, 1962 wherein he inter-alia stated that the business relating to the impugned consignment was obtained by their erstwhile Business Development Manager, Shri Gopinath Patil who had left the job some time ago. They received the E-mail copies of invoices and packing list from Shri Durgesh Chavan, Proprietor of M/s. Kinjal Enterprises, Pune and they also received KYC norms of M/s Kinjal Enterprises from the proprietor, Shri Durgesh Chavan. The transportation was arranged by Shri Durgesh Chavan as he was also proprietor of M/s. Durga Transport. The container No. PMLU-9008054 (40") was passed out from ICD, Dighi, Pune on 02.12.2013 and reached at the JNPT on 04.12.2013 at 10.00 AM; that the normal time required to reach the JNPT from Pune is 4 to 5 hours. In the light of delay, the driver carrying the container on Vehicle No. MH-06 AC-9142 having mobile no. 9664321502 was contacted who in turn informed that it was getting delayed owing to breakdown of the vehicle and that he would reach JNPT by 04.12.2013 in the morning.

3.4. Statement of Shri Subrata Neogi, Manager-Operation of M/s Perma Shipping Line(India) Pvt. Ltd. was recorded on 24.02.2014 under section 108 of the Customs Act, 1962 wherein he inter-alia stated that the said Container was opened and examined under Panchanama by the officers of SIIB in his presence on 12.12.2013; on examination Red-Coloured wooden logs were recovered from the said container. They never had any correspondence with the exporter M/s. Kinjal Enterprises as they got this business from M/s. Skanda Navia Logistics India Pvt. Ltd.

3.5. During further investigation conducted by SIIB(X), JNCH, it was observed that the Shri Durgesh P. Chavan, Proprietor of M/s. Kinjal Enterprises, who is absconding and not known, appears to be an exporter. He had sent the Invoice and packing list to M/s Star India Logistics who again transmitted them through E-mail to M/s. Exim Management Services for filing the Shipping Bill. The transportation of the container from ICD Dighi to Port was arranged by Shri Durgesh P. Chavan after the cargo was stuffed into the container. Thus, Shri Durgesh P. Chavan managed to arrange for the transportation and the driver for

the said cargo. He managed to take over the original shipment from ICD Dighi and on the way to the Port, the said cargo was replaced with Red Sanders, which is prohibited for export. Shri Durgesh P. Chavan had mastermind and devised the modus operandi ingeniously to succeed in the export of prohibited goods.

4. Vide said Order-in-Original dated 31.12.2022 issued by Additional Commissioner of Customs NS-II, CAC, JNCH, a penalty of Rs. 2,50,000/- under Section 114(i), of the Customs Act, 1962 was imposed on the Customs Broker M/s Star India Logistics.

5. **SHOW CAUSE NOTICE:** *Star India Logistics (11/976) was issued a Show Cause Notice (SCN) No. 19/2023-24 dated 08.06.2023 by the Principal Commissioner of Customs (General), NCH, Mumbai, Zone-I asking them to show cause as to why the licence bearing no. 11/976 issued to them should not be revoked and security deposited should not be forfeited and/or penalty should not be imposed upon them under Regulation 14 read with 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018. They were directed to appear for a personal hearing and to produce proof of evidence/documents if any, in their defense to Shri Yogesh kumar, Deputy Commissioner of Customs who was appointed an Inquiry Officer to conduct inquiry under regulation 17 of CBLR, 2018.*

6. INQUIRY REPORT

Inquiry Officer submitted Inquiry Report dated 31.10.2023, wherein, the charges against CB M/s. Star India Logistics (11/976) in respect of violation of Regulation 10(d) and 10(n) of CBLR, 2018 were held as 'Proved'.

6.1 CB's WRITTEN SUBMISSION :

Inquiry Officer submitted that personal hearing was granted to the CB on 21.07.2023. Shri R. K. Tomar, Advocate for M/s. Star India Logistics (11/976) appeared on behalf of the CB firm and submitted copy of their reply dated 21.07.2023 and reiterated their submissions. They have submitted that the Show Cause Notice, the contentions raised therein, and the action proposed by the Show Cause Notice are totally unsustainable in law.

The following submission was given in the reply dated 21/07/2023: –

i. The SCN is not at all applicable to them as they have not acted as Customs Broker for the exporter Shri Durgesh Chavan and his company/firm M/s. Kinjal Enterprises. The provisions of CBLR 2018 would have been attracted had the Noticee acted as Customs Broker for the exporter.

ii. The Noticee, through one of their employees, was approached by the exporter for assistance in export of his goods being craft paper (packing) from ICD Dighi, Pune. Since the Noticee did not have any facilities for Customs Clearance at Pune, the matter was referred to M/s. Exim Management Services (Custom Broker) having facilities for Customs Clearance at ICD Dighi, Pune. The role of the Noticee ended with such reference of the matter to M/s. Exim Management Service (Customs Broker), Pune. Therefore, the Noticee has not acted as Customs Broker in the present matter at all. Accordingly, the provisions of the CBLR 2018 are not applicable to the Noticee herein.

iii. It is further submitted that the Public Notice No. 17/2012 dated 02.03.2012 issued by the Commissioner of Customs (Exports), JNCH in F.No. SG/MISC-36/2011-12/SIIB Export JNCH is also not applicable in the matter of Noticee herein as the same relates to the Shipping Lines and Freight Forwarders. The Noticee herein is neither a Shipping Line nor a Freight Forwarder nor they have acted as Shipping Line or a Freight Forwarder for the said exporter.

iv. It is further submitted that the Public Notice No. 17/2012 dated 02.3.2012 does not invoke provisions of CBLR 2018 or the earlier CHALR, it invokes provisions of the Customs Act, 1962. Penal proceedings have already been taken by way of issuance of the said SCN dated 21.12.2016 and which is subsequently adjudicated vide the said O-in-O dated 31.12.2022 whereby penalty of Rs. 2,50,000/- has already been imposed and which is pending before the Hon'ble Commissioner of Customs (Appeals), JNCH.

v. It is further submitted that notwithstanding the above submissions that neither the provisions of the CBLR 2018 nor the said Public Notice No. 17/2012 is applicable, the provisions of the Regulation 10(d) and 10(n) are not at all violated by the Noticee herein. It is submitted that the violation of provisions of the CBLR 2018 cannot take place until the said exporter is a client of the Noticee herein. The said exporter was never a client of the Noticee in their capacity as such Customs Broker nor the Noticee has acted as a Customs Broker for the said exporter.

vi. Regulation 10(d) speaks that the Customs Broker has not 'advise his client.....'. When the Noticee has not acted as a Customs Broker for the said exporter, there is no relationship of 'client-service provider' between the said exporter and the Noticee herein. The Noticee herein having not acted as the Customs Broker for the said exporter, there is nothing that the Noticee has to advise anyone or report any such non-compliance to the DC/AC, as the case may be.

vii. The Regulation 10(n) also refers to verify facts about 'his client' whereas in the present case there is no client of the Noticee herein. This being the case, the Regulation is not violated at all.

viii. The definition of Customs Broker as per Regulation 2(d) of the CBLR, 2018 is as under:

2. Definitions- (1) In these regulations, unless the context otherwise requires,

Customs Broker means a person licensed under these regulations to act as an agent on behalf of the importer or an exporter for purposes of transaction of any business relating to the entry or departure of conveyances or the import or export of goods at any customs station including audit.

ix. The above definition of Customs Broker clarifies that a Customs Broker is a person who is licensed under the CBLR, 2018 to act as an agent on behalf of the importer or an exporter. In the present case, the Noticee has not acted as a Customs Broker for any exporter or importer. He has only referred the exporter to another Custom Broker for necessary action without taking up any responsibility as Customs Broker.

x. Further, the Customs Broker has to act for the purposes of transaction of any business relating to the entry or departure of conveyances or the import or export of goods at any customs station including audit. The Noticee herein has not filed any documents for the customs purpose for the said exporter at any place at any time. Therefore, the Noticee has not acted as Customs Broker for the said exporter.

xi. It is further submitted that the said exports had taken place in the year 2013 and the proceedings are initiated in the year 2023 i.e. after 10 years. The initiation of these proceedings is too belated and definitely beyond the limitations provided under the CBLR, 2018. Any penal action after 10 years for something that the Noticee has not done, will not only be illegal but also they will be blatantly against the principles of natural justice.

xii. A part SCN dated 13.10.2014 was issued under Section 124 of the Customs Act, 1962 for confiscation of the said goods and for imposition of penalty under Section 114(i) of the Customs Act. Another SCN dated 21.12.2016 on the very same facts was also issued. The Customs Authorities knew all along about the proceedings, still the said SCN dated 8.6.2023 has been issued after more than 06 years of the last SCN issued in the matter. The issuance of the said SCN dated 8.6.2023 is definitely beyond the limitations provided under Regulation 17 of the CBLR, 2018. In view of the above, they prayed to drop the proceedings.

6.2. COMMENTS OF THE INQUIRY OFFICER :-

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

Regulation 10(d) of CBLR, 2018 reads as "A Customs Broker shall advise his client to comply with the provisions of the Act, other allied Acts and the rules

and regulations thereof, and in case of noncompliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be."

Department's contention: -

As per the statement of Shri Mahadev Pandurang Khot, Export Manager of M/s Star India Logistics which was recorded on 21.02.2014 the transportation was arranged by Shri Durgesh Chavan as he was also proprietor of M/s. Durga Transport. The container No. PMLU-9008054 (40) was passed out from ICD, Dighi, Pune on 02.12.2013 and reached at the JNPT on 04.12.2013 at 10.00 AM; that the normal time required to reach the JNPT from Pune is 4 to 5 hours. CB did not bring this delay matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Thus, it appears that the CB has violated 10(d) of CBLR, 2018.

Defence of the Customs Broker:

The CB in their defense tried to establish that they had delegated this work to other CB i.e M/s Exim Management Services, and they had filed the S/B and stuffing was also taken place before them only, therefore the CB had no role in clearance work, therefore they should not be obligated as a Custom Broker in this case and the CBLR 2018 should not be invoked upon them. Public notice 17/2012 does not invoke provisions of CBLR 2018 not earlier CHALR. They further argued that as the said exporter was never a client of the Noticee neither the provisions of CBLR 2018 nor Public notice 17/2012 is applicable on them.

Inquiry Officer's report:

The IO found that the argument had no weightage. Shri AV Parapanje of M/s. Exim Management Services in his statement had clearly stated that they had filed the shipping bill online at the behest of M/s. Star India Logistics as the entire business of M/s. Star India Logistics relating to clearance at Pune was looked after by him. This statement evidenced that M/s. Exim Management Services acted as per the directions given by M/s. Star India Logistics. It was the case that they used to file shipping bill on regular basis, whenever the clearance work to be done at Pune. He further found that Shri Mahadev Pandurang Khot of M/s. Star India Logistics in his statement had clearly stated that the container was passed out from Dighi, Pune on 2.12.2013 and reached JNPT on 04.12.2013. It was evident from the above that though the shipping bill was filed by M/s. Exim Management Services, the other clearance work at JNPT was undertaken by M/s. Star India Logistics. The normal time to reach JNPT from Pune would be around 4 to 5 hours. However, the container reached

JNPT from Pune after 2 days, which is considered to be an abnormal delay. In such situations, the CB should have acted diligently and should have informed the same to the Customs Authority for further investigations. However, the CB failed to do so and he kept himself silent and tried to clear the consignment for export.

ii. The CB defended that Public Notice No. 17/2012 dated 2.3.2012 does not invoke provisions of CBLR 2018 or the earlier CHALR, it invokes provisions of the Customs Act, 1962 and Penal proceedings had already been taken by way of issuance of the said SCN dated 21.12.2016 and which was subsequently adjudicated vide the said OIO dated 31.12.2022 whereby penalty of Rs. 2,50,000/- had already been imposed and which was pending before the Hon'ble Commissioner of Customs (Appeals), JNCH.

iii. The IO found that this is a fallacious argument. CBLR comes into effect when the CB violated the provisions of the Customs Act. In this case, the goods were confiscated absolutely and penalty of Rs.2,50,000 was imposed on the CB under Section 114 of the Customs Act for violation of the provisions of the Customs Act, 1962.

iv. The CB further argued that notwithstanding the above submissions neither the provisions of the CBLR 2018 nor the said Public Notice No. 17/2012 is applicable, the provisions of the Regulation 10(d) and (n) are not at all violated by the Noticee herein. It is submitted that the violation of provisions of the CBLR 2018 cannot take place until the said exporter is a client of the Noticee. Herein the said exporter was never a client of the Noticee in their capacity as such Customs Broker nor the Noticee has acted as a Customs Broker for the said exporter.

v. IO found that this argument has no weightage. The Shipping Bill was filed by the other CB at the behest of the charged CB, M/s Star India Logistics. This fact was confirmed from the statement of Shri AV Parapanje of M/s. Exim Management Services, wherein he stated that they had filed the shipping bill online at the behest of M/s, Star India Logistics, and the entire business of M/s. Star India Logistics relating to clearance at Pune was looked after by them. On the other hand, I find that though the shipping bill was filed by M/s. Exim Ma Services, the clearance work at JNPT was undertaken by the charged CB. He was aware that container had reached JNPT after two days. However, he did not inform the same to the concerned AC/DC of Customs, which is in violation of Regulation 10(d) of CB therefore, this charge levelled against the CB is 'Proved' beyond doubt.

6.2.2 Article of Charge-II :- Violation of Regulation 10 (n) of CBLR, 2018:-

Regulation 10(n) of CBLR, 2018 reads as -" verify correctness of Importer Exporter Code (IEC Goods and Services Tax Identification Number (GSTIN), identity of his functioning of his client at the declared address by using reliable, independent documents, data or information".

Department's contention:

The CB M/s Star India Logistics had received invoice and packing list via email from Shri Durgesh Chavan, Proprietor of M/s Durga Enterprises. It appears that they had not physically verified the addresses of Exporter and they had not met the exporter.

Defence of the Customs Broker:

CB did not defend this allegation in their defence reply.

Inquire Officer's report:

IO found that it is a fact that the CB did not meet the exporter at any point of time and they had documents in KYC through online only and the clearance business was obtained by erstwhile employee. These facts were admitted by Shri Mahadev Pandurang Manager of M/s Star India Logistics in his statement recorded on 21.02.2014, wherein he stated that the business relating to the impugned consignment was obtained by their erstwhile Development Manager, Shri Gopinath Patil who had left the job some time ago. They received the E-mail copies of invoices and packing list from Shri Durgesh Chavan, Proprietor Kinjal Enterprises, Pune and they also received KYC norms of M/s Kinjal Ente proprietor, Shri Durgesh Chavan.

ii. IO further found that the charged CB did not provide any documentary evidence that they had met the exporter and received documents directly from the exporter. further not provided any documentary evidence establishing that they had verified the credentials of the exporters at the given address, he further found that the charged CB even did not counter this fact in their defence.

iii. He relied upon the decision of the Hon'ble High Court of Judicature at Patna in the case of Bhaskar Logistic Services Pvt. Ltd. Versus Union of India, reported in 2016 (340) E.L.T. 17 (Pat.), wherein it has been observed that:

" As regards the role and responsibility of a CHA/Customs Broker in such clearance, Regulation 11(n) of CBLR clearly provides that Customs Broker shall verify the antecedent, correctness of IEC, identity of his client and functioning of his client at the given address by using reliable

independent authentic documents/data/information. Identical provision was there under CHALR under Regulation 13(o) of the CHALR. Thus, if a Customs Broker facilitates the filing processing of a Bill of Entry by a person other than a valid IEC holder using IEC of different person, it will amount to violation of the provisions of Regulation 11(n) CBLR/Regulation 13(o) of CHALR

iii. Considering the above, the charge leveled against the CB. The above facts established beyond doubt that the CB has violated the provisions of Regulation 10(n) of CBLR 2018, and therefore, the charge levelled against the CB 'Stands Proved' beyond doubt.

7. PERSONAL HEARING AND RECORDS OF PERSONAL HEARING :-

A personal hearing was granted to Customs Broker on 29.01.2024. Shri Shashikant K ashinath Mali, Director and Sh. Sanjeev Nair Advocate of the CB firm appeared for personal hearing and submitted written submission dated 29.01.2024 and re-iterated the contents therein.

8. DISCUSSION AND FINDINGS: -

I have gone through the facts of the case, material evidence on record, the Show Cause Notice 19/2023-24 dated 08.06.2023, Inquiry Report dated 31.10.2023 and written and oral submissions of the said CB.

8.1 I observe that the charges against the said CB is for violation of Regulation 10(d) and 10(n) of CBLR, 2018 made vide Show Cause Notice No. 19/2023-24 dated 08.06.2023. The Inquiry Officer vide inquiry report dated 31.10.2023 held the charges of violation of Regulations 10(d), and 10(n) of CBLR, 2018 as "proved".

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

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

8.3.1 *The Regulation 10(d) of CBLR, 2018 reads as: -*

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

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

M/s. Star India Logistics in his various submissions has tried to establish that in the instant case they have not worked as CB, they have only referred the exporter to M/s. Exim Management Services, Pune as they were not providing services in Pune. As such the exporter was not their client and they have not worked as CB for them the provisions of CBLR 2018 does not invoke on them at all. However from the statement of Shri AV Parapanje of M/s. Exim Management Services it is clear that M/s. Exim Management Services were providing services at Pune on behest of M/s. Star India Logistics. From the offence report, I find that Shri Mahadev Pandurang Khot erstwhile export manager of M/s. Star India Logistics forwarded the invoice and packing list via e-mail to M/s. Exim Management Services which inturn filed S/B online on behest of M/s. Star India Logistics for M/s Kinjal Enterprises.

From the offence report and statement of Shri AV Parapanje of M/s. Exim Management Services, I find that M/s. Exim Management Services used to file shipping bill on behest of M/s. Star India Logistics on regular basis, whenever the clearance work to be done at Pune and clearance work at JNPT used to be undertaken by M/s. Star India Logistics. And as such CBs claim that exporter was never a client of CB is non acceptable. The container reached JNPT from Pune after 2 days, instead of normal time 4 to 5 hours. Even in such situations, the CB failed to inform such in-ordinate delay to the Deputy/Assistant commissioner of Customs.

I find that M/s. Star India Logistics were aware that container reached JNPT from Pune after 2 days, instead of normal time 4 to 5 hours, they failed to inform such in-ordinate delay to the Deputy/Assistant commissioner of Customs, thereby contravening the provision of Regulation 10(d) of CBLR, 2018.

In this context, I rely upon the judgment of Hon'ble CESTAT, Mumbai in the case of M/s Eagle Transport Services Vs Commissioner of Customs, Mumbai in 1997 (96) E.L.T. 469 (Tribunal) (though the matter was different yet the ratio of judgement may be applied to the present case). In this case, Hon'ble CESTAT, Mumbai has held in para no. 7 (relevant portion) that:

"a Custom house agent has a very significant role to play in the clearance of goods through Customs and Port Trust. Such clearance involves application of many specialized laws and detailed procedures often contain complex statutory requirements. It is for this reason that Customs Brokers have been licensed. Before he is granted permanent license, he has to qualify an examination in which his knowledge of relevant procedures is vested.

The object of these regulations is to ensure that the Customs Brokers acts honestly and efficiently in the conduct of their business. It is not difficult to foresee the consequences that would aim the Custom House Agent does not co-act in such a manner. The Custom House Agent makes various representations before the Custom House on behalf of the importer and exporter relating to the nature of the goods conditions under which they were imported their value etc. The statements that he makes and the information that he provide are crucial for assessing the goods to duty and deciding whether the import is prohibited or not. The Custom House Agent thus can the status of a professionally qualified person akin to an advocate, Chartered Accountant or number of other professions which requires a minimum standards of knowledge for minimum standards of conduct. If the Custom House Agent acts negligently or dishonestly, the Custom House can be defrauded money due to the Government, and in good faith permit import or export of prohibited goods."

From the above facts and circumstances, I am of the considered view that the said Custom Broker failed to discharge his responsibilities mandated on them under 10(d) of CBLR 2018. The CB did not bring the said discrepancy of inordinate delay of reaching the container from Pune to JNPT to the notice of the Deputy or Assistant Commissioner of Customs. Therefore, I hold that the CB has violated the provisions of Regulation 10(d) of the CBLR, 2018.

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

8.4.1 *The Regulation 10(n) of CBLR, 2018 reads as:*

"Customs Broker shall verify correctness of Importer Exporter Code (IEC) number, Goods and Service 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."

From the offence report I find that the business relating to the impugned consignment was obtained by their erstwhile Development Manager of M/s Star India Logistics Shri Gopinath Patil, who received the e-mail copies of invoices and packing list from Shri Durgesh Chavan, Proptietor Kinjal Enterprises, Pune.

In this regard, I observed that the CB did not provide any documentary evidence that they had met the exporter and received documents directly from the exporter. Further the CB has not provided any documentary evidence establishing that they had verified the credentials of the exporters at the given address.

From the above facts and circumstances, I am of the considered view that the CB has failed to fulfil the obligation casted upon him under regulation 10(n) of the CBLR, 2018. Therefore, I hold that the CB has violated the provisions of Regulation 10(n) of the CBLR, 2018.

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

10. While deciding the matter, I rely upon judgements of the Hon'ble Supreme Court in the case of Commissioner of Customs V/s. K. M. Ganatra and Co. in civil appeal no. 2940 of 2008 upheld the observation of Hon'ble CESTAT Mumbai in M/s. Noble Agency V/s. Commissioner of Customs, Mumbai that:

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

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

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

12. In a regime of trade facilitation, a lot of trust is placed on the Customs Broker who acts as a vital link between Customs Authorities and importers/exporters. Failure to comply with regulations by the CB mandated in the CBLR,2018 gives room for unscrupulous persons to get away with import-export violations and revenue frauds. The CB has a prominent role in advising the exporter to mention the correct transaction value in the export document and to bring the matter to

the notice of the Customs authorities wherever discrepancy is noticed.

13. In view of above facts and circumstances, I hold that the charges against the CB under Regulation 10(d), & 10(n) of the CBLR, 2018 are proved, and the CB is liable for penal action under the CBLR, 2018. Accordingly, I pass the following order: -

ORDER

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

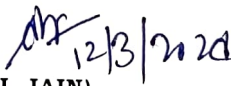
(i) I hereby order revocation of the CB License No.11/976 under Regulation 14 of the CBLR, 2018.

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

(iii) hereby impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on M/s. Star India Logistics, (PAN: AAZFS0504QCH001) (CB No. 11/976) under Regulation 18 of the CBLR, 2018.

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

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.


(SUNIL JAIN)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)

MUMBAI ZONE-I

To,

M/s. Star India Logistics

Customs Broker License No. 11/976 (PAN No. AAZFS0504QCH001)

12A, Mahendra Industrial Premises Next to WF Co.

Sion(East), Mumbai - 400 059,

Copy to: -

1. 1.The Pr. Chief Commissioner/Chief Commissioner of Customs, Mumbai

1, II, III Zone

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