



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

संचिका सं./F. No.- GEN/416/2022 -CBS

आदेश दिनांक/Date of Order: 19.01.2024

CAO No. 67/CAC/PCC(G)/SJ/CBS-Adj

जारी दिनांक/Date of issue: 19.01.2024

संख्या:

DIN : 2024017700000000009E5

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

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

**ORDER-IN-ORIGINAL मूल आदेश**

**ध्यान दीजिए/ N.B. :**

1. यह प्रति उस व्यक्ति को निजी उपयोग हेतु निःशुल्क प्रदान की जाती है, जिसे यह जारी की जा रही है।  
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2. इस आदेश के विरुद्ध अपील माँगे गए राशी के **7.5%** के भुगतान पर सीमाशुल्क अधिनियम, 1962 की धारा 129A(1B)(i) के संबंधमें सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण में स्वीकार्य है, जहाँ शुल्क या शुल्क एवं जुर्माना विवादित हों, या जुर्माना, जहाँ सिर्फ जुर्माना ही विवादित हो। यह अपील इस आदेश के संप्रेषण की तारीख के तीन महीने के अंदर दायर की जाएगी। यह अपील सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण (कार्यविधि) नियमावली, १९८२, के प्रावधानों के अंतर्गत, यथोत्तखंडपीठ में स्वीकार्य है।

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

3. यह सूचित किया जाता है की इस आदेश के अमल में आते ही, न्याय निर्णयन अधिकारी का अधिकार क्षेत्र समाप्त होता है और सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण, पश्चिम क्षेत्रीय खंडपीठ, के M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai के संदर्भ में जारी आदेश क्रमांक A/86617-86619/2018 दिनांक 31.05.2018 के अनुसार न्यायिक आदेश 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. Maa Om Business Enterprises Pvt. Ltd. (PAN: AALCM6744K) [formerly known as M/s. Shree Durga Logistics with PAN: AFXP9295D], having address registered at Unit No. 107, Plot No. 1A, Siddhivinayak complex, Sector-19C, Vashi, Navi Mumbai-400705 (hereinafter referred as the Customs Broker/CB) is holder of Customs Broker License No. 11/1772, issued by the Commissioner of Customs, Mumbai under Regulation 9(1) of CHALR, 2004, [Now regulation 7(2) of CBLR, 2018] and as such they are bound by the regulations and condition stipulated therein.

2. On the basis of specific information received by the DRI, MZU, Mumbai; investigation was conducted by SIIB (Export), Sahar, Mumbai which revealed that various export firms including M/s. Vedant Trade Impex Private Ltd. (IEC – 0312047932) were procuring fake purchase bills against the export consignment from one Mr. Suhel Ansari, through fake firms floated by him.
3. The Customs Broker M/s. Shree Durga Logistics (now Maa Om Business Enterprises Pvt. Ltd.) had filed Shipping Bills on behalf of exporter M/s. Vedant Trade Impex Private Ltd. (IEC – 0312047932) (hereinafter referred to as the exporter) for clearance of goods, from Air Cargo Complex, Sahar, Mumbai, in which DRI, MZU, Mumbai booked a case of overvaluation in export on the basis of fake invoices.
4. An Offence report in the form of Show Cause Notice No.01/ADJ(X)/2022-23 dated 25.10.2022 issued by Additional Commissioner of Customs, Export Assessment, Air Cargo Complex, Sahar, Mumbai was received in this office on 26.10.2022, wherein, it was informed that on the basis of specific information received by DRI, MZU, Mumbai, investigation was conducted which revealed that various export firms including M/s. Vedant Trade Impex Private Ltd. (IEC – 0312047932) were procuring fake purchase bills against the export consignments from one Mr. Suhel Ansari, through fake firms floated by him. Searches were conducted at the premises of Mr. Suhel Ansari, which led to the recovery of copies of bogus bills in the names of several companies issued by him.
5. During the course of investigation, statement of Mr. Suhel Parvez Ansari and Mr. Shaikh Mohammed Arshad employee of Mr. Suhel Parvez Ansari was recorded on 24.08.2015 by DRI, Mumbai wherein, they inter-alia stated that they supplied fake invoices to various export firms including M/s. Vedant Trade Impex Private Ltd.

From the investigations, scrutiny of various documents retrieved and statements recorded by DRI, MZU, Mumbai, it appears that Mr. Suhel Parvez Ansari was in the business of raising fictitious bills which involved just printing of bills in the names of various fake firms / companies which did not exist and no purchase and sale of the goods were effected as per details mentioned in the said

bills; that no purchase of any kind of goods be it in the form of garments or other goods, had been made by him and the proprietors /directors of these firms/ companies were all his friends and no sale as shown on the bills had been made to any exporters.

6. DRI vide its letter F. No. DRI/MZU/D/INT-31/2015/7766 dated 04.10.2016 mentioned that undue drawback is being claimed by the exporters by overvaluing the exports whereas cheaper material is exported and to justify the value of the goods, fake invoices from Mr. Suhel Ansari, are procured showing the higher purchase price. DRI further gave a list of exporters and stated that these exporters which included M/s. Vedant Trade Impex Private Ltd. may have also adopted similar modus operandi.

7. During investigation, the details of exports made by the exporter M/s. Vedant Trade Impex Private Ltd. (IEC - 0312047932) were retrieved from the ICES System. During the period from 2012 to 2016, the exporter has made exports of 91 shipping bills and availed total drawback of Rs. 49.30 lakhs.

Further, BRC details of defaulting IECs (FOB yet to be realized) and FOB fully realised in respect of M/s. Vedant Trade Impex Pvt. Ltd. were generated from ICES System "expected FOB realisation between 01.01.2012 to 31.03.2022 and it is found that out of 91 shipping bills, FOB has been realised in full for 85 shipping bills, and FOB is yet to be realized in 06 shipping bills wherein drawback amount of Rs.48,093/- has been paid to the exporter M/s. Vedant Trade Impex Private Ltd., which appears to be recoverable as per Rules 16/16A of the Customs, Central Excise Duties and Service Tax Drawback Rule, 1995.

8. DRI, MZU, Mumbai forwarded the report to the Special Intelligence and Investigation Branch (Exports) of Air Cargo Complex, Sahar, Mumbai for carrying out further investigation regarding the details of exporters including M/s. Vedant Trade Impex Pvt. Ltd. who have claimed undue drawback by overvaluing the exports and justifying the value of the goods by procuring fake invoices showing the higher purchase price from Mr. Suhel Ansari.

9. Further, Special Intelligence and Investigation Branch (Exports) of Air Cargo Complex, Sahar, Mumbai recorded statement of Mr. Ashok Mahadev Vange, director of M/s. Vedant Trade Impex Pvt. Ltd. under Section 108 of Customs Act, 1962 on 08.03.2022 wherein, he admitted that he was one of the directors along with Shri Ramesh P. Singh (another director); that they were merchant exporter, exporting the goods viz. readymade garments to African and Gulf countries; that all the business related activities like sourcing & purchasing of goods etc. were handled by Shri Ramesh P. Singh and that he was not involved in any business activity and hence accepted his failure in performing the duties as the director of the firm. He further stated that he did not know any Shri Suhel Ansari or Shri



Karan Ashoklal Ranka; that he came to know the involvement of M/s. Vedant Trade Impex Pvt. Ltd. with Mr. Suhel Ansari who supplied fake / bogus invoices to their company after the case was booked by DRI, MZU, Mumbai against them; that he came to know that something wrong was going in the company only after the case was booked against their company, and hence resigned from the company in June, 2017.

**10.** Further, on scrutiny of the shipping bills filed by the exporter M/s. Vedant Trade Impex Pvt. Ltd., it was found that the Customs Broker M/s. Shree Durga Logistics (now, reconstituted as M/s. Maa Om Business Enterprises Pvt. Ltd.)(CB No. 11/1772) had cleared consignments/shipping bills of the said exporter. Therefore, various Summons were issued to the Customs Brokers M/s. Shree Durga Logistics (now reconstituted as M/s. Maa Om Business Enterprises Pvt. Ltd.), however, nobody turned up for the statement.

**11.** During the investigation DRI enquired with the Consulate General of India, Dubai, UAE who vide their letter dated 08.03.2018 reported that from the scrutiny of the documents provided by Federal Customs Authority, Dubai it emerged that goods had been cleared and unit values had been much lower than what has been declared to Indian Customs. As per DRI, the instant exporter has also adopted the similar modus-operandi.

**12.** During investigation, statement dated 01.07.2016 of one Shri Suryabhan Eknath Dhurphate, Proprietor of M/s. Sanket Overseas, Navi Mumbai, was recorded before the DRI, MZU, Mumbai who was logistics provider and was involved in clearing the consignments through CHA M/s. Indo Foreign Agents. From the perusal of his statement, it was disclosed that usually the cost and expenses incurred on the export material was only around 35% of the drawback amount. He also stated that the benefits availed by them and the exporter was to the extent of 65%. This was the modus operandi which was adopted by all such exporters including this exporter, who were exporting the goods on the basis of fake supplier's invoice.

**13.** Further from the investigation, it appears that goods were procured from Domestic Tariff Area (DTA) without any invoices, so no details of its manufacturing, production, using imported material or excisable material therein were available. Hence, it could not be ascertained whether any duties have been paid or otherwise. During investigation, exporter could not produce any such details in respect of manufacturing, production or use of any imported material in impugned export goods, though he was having enough opportunity as he presented himself for recording of his statement, but he failed to produce any such details. Therefore, it appears from investigation that necessary



ingredient of second proviso to Rule 3(1) Drawback Rule, 1995 is attracted in this case which does not permit any amount of drawback in such cases where no duty has been paid.

*"(l) Drawback Rule, 1995 is attracted in this case which does not permit any amount of drawback in such cases where no duty has been paid. Rule 3 of the Drawback Rules 1995 reads as under; "Rule 3. Drawback – (1) Subject to provisions of -----Provided further that no drawback shall be allowed: -*

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

14. As stated in the Show Cause Notice (offence report) dtd. 25.10.2022, it appears that the goods exported by M/s. Vedant Trade Impex Pvt. Ltd. have been supplied on fake and bogus supplier invoices, therefore, it appears that by non-production/submission of required documents the department could not verify whether goods were duty paid or whether any duty had been suffered while manufacturing, producing and processing them. This appears to be a case of complete fake and bogus transactions only made with an intention to claim undue and inadmissible drawback. Therefore, it appears that by furnishing fake and bogus invoices, exporter M/s. Vedant Trade Impex Pvt. Ltd. had made the entire export illegal and thus goods appear not to be qualified for entitlement of any drawback or any other export incentive.

15. As per the Offence report, the exporter M/s. Vedant Trade Impex Pvt. Ltd. had grossly overvalued the impugned goods which were of very inferior quality by way of procuring fake invoices and defrauded the exchequer by fraudulently availing drawback of Rs. 49.30 lacs by way of overvaluation. The exports were fictitious as purchase bills were fictitious made by Shri Suhel Ansari. Actual movements of goods is always under cover of Challan and Invoices. There are other requirements of local Government which prevent movement of goods without documentation. It is also unlikely that the Customs Broker was unaware that they have receiving goods based on fictitious Bills. Further, the Customs Broker has responsibility to guide exporter and inform about the requirement that only in certain cases, both types of Drawback can be claimed by the exporter. Had the Customs Broker M/s. Shree Durga Logistics(now reconstituted as M/s. Maa Om Business Enterprises Pvt. Ltd.) seen these documents relating to meeting the criteria to claim both types of Drawback and checked the correctness of relevant declaration, such fraudulent export could not have been possible. Therefore, under the fact and such circumstances, the Customs Broker M/s. Shree Durga Logistics (now reconstituted as M/s. Maa Om



Business Enterprises Pvt. Ltd.) actively connived with exporters in claiming undue drawback and over valuing the export goods and mis-declaring in Shipping Bill. Therefore, CB has rendered themselves liable for Penal action under Section 114(i) and/or 114(iii) and also under (114 AA) of Customs Act, 1962.

**16.** On perusal of the Show Cause Notice issued by SIIB(X), Air Cargo Complex, Sahar, Mumbai dated 25.10.2022 it appears that the CB did not advise the exporter and abetted the exporter by declaring the incorrect value of the goods in shipping bills against the fake invoices to avail undue drawback and did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Further, in terms of Boards Circular No. 5 of 2009 Customs dated 02.02.2009 vide F. No. 609/167/2003-DBK, the exporter is required to submit the proof of export realization to the Custom House within the stipulated time-limit. It further appears that CB did not guide the exporter with respect to realization of export proceeds within stipulated time frame allowed under Foreign Exchange Management Act, 1999 in order to claim drawback. Thus, the CB appears to have violated Regulation 10(d) of CBLR, 2018.

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

**18.** It appears that CB did not inform the exporter about the instructions, circulars and public notice regarding the claiming of drawback. It further appears that CB did not guide the exporter with respect to furnishing declarations at the time of export in format annexed to Circular No. 16/2009- Customs dated 25.05.2009 issued under F. No.609/137/2007 – DBK. It was the responsibility of the CB to ensure that exporter declares the name and complete address of the traders from whom goods has been purchased in order to claim Drawback. It appears that CB did not advise the exporter to comply with Rule 3, Rule 16 and Rule 16A of Drawback Rules, 1995. It appears that CB has abetted the exporter by declaring incorrect value of the goods in shipping bills against the fake invoices to avail undue drawback. Thus, the CB appears to have violated Regulation 10(f) of CBLR, 2018.

**19.** It appears that the CB, M/s. Maa Om Business Enterprises Pvt. Ltd. (erstwhile M/s. Shree Durga Logistics) (11/1772), failed to verify the identity and

functioning of his client M/s. Vedant Trade Impex Pvt. Ltd., as no manufacturing or trading activity was done by his client as they used to procure the goods from the Domestic Tariff Area (DTA) from local suppliers and used to obtain fake invoices for the same from Shri Suhel Ansari. Thus, the CB appears to have violated Regulation 10(n) of CBLR, 2018.

**20.** Whereas in the instant case, M/s. Maa Om Business Enterprises Pvt. Ltd. (erstwhile M/s. Shree Durga Logistics) (11/1772) have failed to co-operate with the customs authorities as during the course of investigation, many Summons were issued to the CB to record their statement in the said matter, however, no one turned up for the statement from the CB firm. Hence, the CB failed to co-operate with the Customs authorities and did not join the investigation, and therefore, appears to have violated the regulation 10(q) of the CBLR, 2018.

It is evident that the CB was working in a seriously negligent manner and was in violation of the obligations casted upon them under the CBLR, 2018. By their acts of omission and commission, it appears that the said CB has violated Regulations 10(d), 10(e), 10(f), 10(n) and 10(q) of the Customs Brokers Licensing Regulations, 2018 and rendered himself liable for penal action under Regulations 14, 17 & 18 of CBLR, 2018.

**21.** As per Order-in-Original CAO No./ADC/PKK/27/2022-23 Adj(X) ACC dated 01.05.2023 issued by Additional Commissioner of Customs (Export), ACC, Sahar, Mumbai, a penalty of Rs. 5,00,000/- under Section 114(i), a penalty of Rs. 5,00,000/- under Section 114(iii) and a penalty of 3,00,000/- under Section 114AA of the Customs Act, 1962 was imposed on the Customs Broker M/s. Shri Durga Logistics (now reconstituted as M/s. Maa Om Business Enterprises Pvt. Ltd.)

#### **Legal Provision of the CBLR, 2018:-**

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

**Regulation 10 (e) of the CBLR, 2018:-** *“A Customs broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;”*

**Regulation 10(f) of the CBLR, 2018:-** *“A Customs broker shall not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information;”*

**Regulation 10(n) of the CBLR, 2018:-** *“A 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”.*

**Regulation 10(q) of the CBLR, 2018: -:** “A Customs Broker shall co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees.”

**22. SUSPENSION/REVOCAION OF LICENSE:** In view of the facts stated above, CB M/s. Maa Om Business Enterprises Pvt. Ltd. (11/1772) was found liable for their acts of omission and commission leading to contraventions of the provision under Regulations 10(d), 10(e), 10(f), 10(n) and 10(q) of the Customs Brokers Licensing Regulations, 2018. Therefore, prima facie, it appeared that the CB failed to fulfill their responsibilities as per provisions of Regulations of CBLR, 2018. Hence, the licence of CB was put under immediate suspension vide Order No. 47/2022-23 dated 01.12.2022. The suspension of CB licence was revoked vide Order No. 73/2022-23 dated 02.02.2023 under Regulation 16(2) of the CBLR, 2018.

**23. SHOW CAUSE NOTICE:** M/s. Maa Om Business Enterprises Pvt. Ltd. (erstwhile, M/s. Shree Durga Logistics) (11/1772) was issued a Show Cause Notice (SCN) No. 48/2022-23 dated 17.03.2023 by the Principal Commissioner of Customs (General), NCH, Mumbai, Zone-I asking them to show cause as to why the licence bearing no. 11/1772 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 R. Guruwa Reddy, Deputy Commissioner of Customs, who was appointed an Inquiry Officer to conduct inquiry under regulation 17 of CBLR, 2018.

#### **24. INQUIRY REPORT**

Inquiry Officer submitted Inquiry Report dated 20.10.2023, wherein, the charges against CB M/s. Maa Om Business Enterprises Pvt. Ltd. (CB No. 11/1772) in respect of violation of Regulations 10(d), 10(e), 10(f), 10(n) and 10(q) of CBLR, 2018 were held as 'Not Proved'.

##### **24.1 CB's WRITTEN SUBMISSION :**

Inquiry Officer submitted that personal hearing was granted to the CB on 07.06.2023. Shri Rajesh Bhanushali, export-import executive for M/s. Maa Om Business Enterprises Pvt. Ltd. appeared on behalf of the CB firm and submitted copy of their reply dated 15.05.2023 and reiterated their

submissions.

The CB has given following submission in the reply letter dated 15/05/2023:

- a. During the period from 2012 to 2016, 91 Shipping Bills were filed by M/s. Vedant Trade Impex Pvt. Ltd., through the Customs broker M/s. Shree Durga Logistics and availed total drawback of Rs. 49.30 lacs;
- b. that the original license holder Shri Harish G. Kuppikar, proprietor of M/s. Shree Durga Logistics, expired on 18.01.2015;
- c. that two major constitutional changes had been taken place in CB licenses after the death of Shri Harish G. Kuppikar;
- d. Shri Ashok Mahadev Vange, who was one of the director in M/s. Vedant Trade Impex Pvt. Ltd., in his statement accepted that they could not sense the conspiracy between Shri Suhel Parvez Ansari and Shri Ramesh P. Singh;
- e. that the charges against them for violation of Regulations 10(d), 10(e), 10(f), 10(n) & 10(q) of CBLR, 2018 were on the basis of presumptions, that there was no evidence brought on record to show that the CB had imparted any wrong information to the exporter;
- f. that the noticee should not be held responsible for the act of exporter in submitting overvalued bills and documents, about which they were not aware;
- g. hence, the noticee had not violated the Regulations 10(d) of CBLR, 2018;
- h. that in spite of scrutiny of drawback claims by the department, there is no evidences of any intimation to the noticee in regard to non-submission of the information by the exporter;
- i. that the notices refereed in the above SCN were not received by them as the same were sent to their old office address, which was closed down due to the death of the proprietor, Shri Harish G. Kuppikar;
- j. that the notices were not sent to their registered mail or personally to Noticee or to their employee to make their presence to attend any investigation;
- k. that now, the noticee had received SCN copy through e-mail on 18.04.2023, after lapse of one month;
- l. that the Joint Commissioner, SIIB(X), JNCH, Nhava Sheva issued Show Cause notice dated 27.08.2014 to Shri Harish G. Kuppikar for violations of Regulations of 11(b), 11(d), 11(m) & 11(n) of CBLR, 2013 and the said license was also suspended on 02.09.2014;
- m. as inquiry was in progress, Harish G. Kuppikar expired on 18.01.2015;
- n. the Joint Commissioner issued final order no. 174/2015-16 dated 01.10.2015 dropping the proceedings initiated as no mens-rea established against the exporter M/s. Rush exports.

**24.2. COMMENTS OF THE INQUIRY OFFICER: -**

- i) Inquiry Officer(IO) has observed that the modus operandi of exporting goods with over-valuation by getting fake purchase orders from the market was passed



on by the DRI to the SIIB (X), JNCH, Nhava Sheva. During the investigation, the SIIB(X), JNCH has recorded statement of the exporter M/s. Vedant Trade Impex Pvt. Ltd. (IEC No. 0312047932), they have filed 91 shipping bills and availed total drawback of Rs. 49.30 Lakhs. These Shipping Bills were filed and processed by the Customs Broker, M/s. Shree Durga Logistics (now reconstituted as M/s. Maa Om Business Enterprises Pvt. Ltd.). Out of 91 Shipping Bills, in 85 Shipping Bills, the exporter has realized the export proceeds in full and in 6 Shipping Bills, the export proceeds are yet to be realized. The drawback amount involved in these 6 Shipping Bills is Rs. 48,093/-. The SIIB (X) has recorded a statement of Shri Ashok Mahadev Vange, director of M/s. Vedant Trade Impex Pvt. Ltd. under section 108 of the Customs Act, 1962 wherein, he inter-alia stated that he was not involved in any business activity and that he came to know the involvement of M/s. Vedant Trade Impex Pvt. Ltd. with Mr. Suhel Ansari who supplied fake / bogus invoices to their company, after the case was booked by DRI, MZU, Mumbai against them.

ii) IO also observed that on DRI enquiry with Consulate General of India, Dubai, UAE, the unit values of the exported goods involved had been much lower than the values declared to the Indian Customs. As per the DRI, the instant exporter has also adopted similar modus operandi. As per the modus operandi given by the DRI, the cost and expenses incurred on the export material was only around 35% of the drawback amount.

iii) IO has observed that the investigation could not record a statement of another director, Shri Ramesh P. Singh of M/s. Vedant Trade Impex Pvt. Ltd. who is the main culprit in this case. Except the evidence given by the DRI, MZU, Mumbai regarding the value of the exported goods, no evidence is available to show that the exporter has overvalued the goods with an intention to avail more drawback amounts. Further, there is no evidence to show that the CB was involved in the modus operandi except the filing and processing of the Shipping Bills.

iv) The documents filed by the CB with the Customs authorities after obtaining the same from the exporter were scrutinized by the Customs Officers. On perusal of the records, anybody can consider the documents as genuine documents.

v) IO observed that in the instant case, no efforts were made by the SIIB(X) to prove that the fake purchase documents submitted by the exporter are not genuine by way of visiting the premises who have supplied the purchase orders and obtaining statements from the concerned persons. In case of non-existence of the premises, the same can be recorded by way of panchanama. Without giving the role of the CB in the modus operandi in a specific activity, proposals have been made to impose penal provisions by way of revoking the licence and forfeiture of the security deposit.

IO has further mentioned the events in chronological order, as under:

- a. The Joint Commissioner SIIB (X), JNCH, Nhava Sheva, Navi Mumbai issued Show Cause Notice dated 27.08.2014 to Shri Harish G Kuppikar (proprietor

M/s Shree Durga Logistics) for violation of Regulations 11(b), 11(d), 11(m) & 11 (n) of CBLR-2013. The said license was also suspended on 02.09.2014 by Joint Commissioner.

- b. As the inquiry was in progress, Shri Harish G Kuppikar proprietor of M/s Shree Durga Logistics expired on 18.01.2015.
- c. The Joint Commissioner issued final Order No. 174/2015-16 dated 01.10.2015 dropping the proceedings against the CB as no mens-rea has been established against him and also against the forwarder.
- d. The Principal Commissioner Customs (General), Mumbai, after considering the order 174 dated 01.10.2015 and facts of the case revoked the suspension of (CB License No. 11/1772) of Custom Broker M/s Shree Durga Logistics with immediate effect on 12.01.2016.
- e. On application for change in the name of the proprietor, the department carried out the second constitutional change in the License No. 11/1772 by replacing the name of late Harish G Kuppikar with Ms Mansi Kuppikar as Proprietor of M/s Shree Durga Logistics.
- f. The department, after completing all the required formalities, has approved and carried out the third constitutional change in CB License No. 11/1772 by replacing name of M/s Shree Durga Logistics (Proprietorship) with M/s Maa Om Business Enterprises Pvt. Ltd. (Company) with effect from 05.04.2018.
- g. The license of Customs Broker, M/s. Shree Durga Logistics (now reconstituted as M/s Maa Om Business Enterprises Pvt. Ltd.) (PAN: AALCM6744 K) (CB No. 11-1772) was suspended vide Order No. 47/2022-28 dated 01.12.2022 and was given opportunity of 'Personal Hearing' in this matter on 28.12.2022, and the suspension of CB License was revoked vide Order No. 73/2022-23 dated 02.02.2023, pending further inquiry proceedings under CBLR, 2018.
- h. IO has observed that during the relevant period, the company was proprietary company and late Sri Harish G Kuppikar was the proprietor. Though the legacy and liabilities will carry forward to the successors of the proprietor, the allegations made against a proprietor of the company after death of the proprietor cannot be carried forward. If any liability has arisen and was pending before the death of the Proprietor, definitely the same can be recovered from the heirs/successors of the business. In the instant case, it is only allegation against the company, when the dead proprietor was holding charge. IO has relied upon the judgement in the case of Commissioner of Central Excise, Chandigarh Vs. Shree Ambica Steel Industries, the CESTAT, New Delhi Bench vide final Order No. A/1168/2012-EX (BR) in Appeal No. E/1501 of 2012 dated 13.09.2012.
- i. IO has also referred OM No. 11012/7/99-Estt (A) dated 20.10.199, where a government servant dies during the pendency of the inquiry i.e., without charges being proved against him, imposition of any of the penalties prescribed



under the CCS(CCA) Rules, 1965, would not be justifiable. Therefore, disciplinary proceedings should be closed immediately on the death of the alleged Government servant.

- j. IO submitted that applying the same analogy, it is not proper to issue the Show Cause Notice to the firm/company, wherein allegations were made against the dead Proprietor, who was in charge of the firm during the relevant period. In the instant case, Sri Harish G Kuppikar was the proprietor during the period from 2012 to 2014. The SCN was issued to the company, M/s Maa Om Business Enterprises Pvt. Ltd. (formerly known as M/s Shree Durga Logistics (Proprietorship)) on 17.03.2023 covering the period from 2012 to 2016 proposing to revoke the Licence No. 11/1772.

IO has observed that SCN has not brought any fact or allegation on the role of the CB in issue of the fake purchase orders received from the exporter viz. M/s. Vedant Trade Impex Pvt. Ltd. The fake documents were processed by the CB but he did not observe any doubt on the genuinity of the documents. Further, these documents were scrutinized by the customs officers during the process of export, and did not get any doubt on the genuinity of the invoices. In the case of fake documents, sometimes, the fraudsters prepare fake documents in such a way that it is very difficult to differentiate the same with the originals. In such a case, only through the intelligence or information from third party, the ingenuity of the documents comes into the light. In the instant case also, only through the intelligence from the DRI, this fraud has come into the light. Further, as seen from the Show Cause Notice, DRI has not found any role of the CB in the fraud against the exporter, M/s. Vedant Trade Impex Pvt. Ltd., in obtaining the fake purchase orders. In the Show Cause Notice dated 21.03.2023 issued to M/s. Shree Durga Logistics (now reconstituted as M/s. Maa Om Business Enterprises Pvt. Ltd.), no direct or indirect role of the CB in the fraud of getting fake purchase orders by the exporter has brought in. Therefore, it is opined that the CB has complied the guidelines while processing the Shipping Bills but could not notice the fraud made by the exporter. However, the CB M/s. Shree Durga Logistics (now reconstituted as M/s. Maa Om Business Enterprises Pvt. Ltd.) would have been careful while scrutinizing the documents and would have been kept an eye on the activities of the exporter as he had ample opportunity for doing the same. Thus, it is observed that there is carelessness on the part of the CB.

Based on the above findings, IO held that the allegations of non-compliance of due care by Customs Broker, M/s. Shree Durga Logistics (now reconstituted as M/s. Maa Om Business Enterprises Pvt. Ltd.) by the department in verifying the KYC norms of the exporter and processing the documents, in giving information to the exporter relating the export procedures, verifying identity & functionality of the exporter as alleged in the subject SCN are not proved.

Further, issue of Show Cause Notice to the company for the allegations against the dead proprietor for the period is not proper, not logical and legally not correct. Accordingly, the proceedings initiated in the Show Cause Notice dated 21.03.2023 are liable to be dropped.

IO has found that in absence of any role of the Customs Broker in the offence did by the exporter viz., M/s. Vedant Trade Impex Pvt. Ltd., in the investigation conducted by the DRI against the exporter and in subsequent enquiry or investigation by the Customs Department against the Customs Broker, it is not proper to conclude that the Customs Broker:-

- (i) actively connived with exporters in claiming undue Drawback and over-valuing the export goods and mis-declaring in Shipping Bill;
- (ii) failed to exercise due diligence and aided the exporter in availing the undue drawback by the exporters by overvaluing the exports;
- (iii) did not advise the exporter and abetted the exporter by declaring the incorrect value of the goods in shipping bills against the fake invoices to avail undue drawback and did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs;
- (iv) did not inform the exporter about the instructions, circulars and public notice regarding the claiming of drawback and
- (v) failed to verify the identity and functioning of his client M/s. Vedant Trade Impex Pvt. Ltd.

Further, IO has observed that the communication regarding the initiation of investigations and summons issued to the CB were not sent to the proper address thereby, the noticee did not receive the communication. In such circumstances, it is not proper to conclude that the noticee have failed to co-operate with the customs authorities during the course of investigation. Hence, IO hold that all the allegations made against Customs Broker M/s. Shree Durga Logistics (now reconstituted as M/s. Maa Om Business Enterprises Pvt. Ltd.) are "Not Proved".

Further, the Inquiry Officer has submitted that Inquiry Report could not be submitted within the timelines as the relied upon documents were provided to the noticee belatedly so, they could furnish their reply during May, 2023 and in between, the Inquiry Officer was transferred to Hyderabad during AGT, so it took more time to complete the inquiry.

**25. DISAGREEMENT MEMO:** - The Inquiry Officer in his report dated 20.10.2023 held the charges for violation of Regulations 10(d), 10(e), 10(f), 10(n) and 10(q) of CBLR, 2018 as 'Not Proved'. Pr. Commissioner of Customs (G), Mumbai-I, disagreed with the Inquiry Officer's report in respect of the charges under Regulations 10(d), 10(e), 10(f) and 10(n) of CBLR, 2018 in the light of available



evidences on record. Therefore, a Disagreement Memo dated 07.12.2023 was issued.

**26. PERSONAL HEARING & WRITTION SUBMISSION OF THE CB:-**

A personal hearing was granted to Customs Broker on 09.01.2024. Shri Manoj Lakhani, authorized representative of CB firm appeared for personal hearing and submitted written submission dated 08.01.2024 and re-iterated the submissions made therein. The CB submitted the following in his written submission dated 08.01.2024: -

1. They have not been provided any relied upon documents (RUDs) by the department in which the name of CB M/s Shree Durga Logistics or its Proprietor late Shri Harish Kuppihar is mentioned. Shri Suhel Ansari, the main conspirator in the referred case, or his employees Sheikh Mohammad Arshad or Karan Ashoklal Ranka has nowhere mentioned the name of CB M/s Shree Durga Logistics or the exporter M/s Vedant Trade Impex Pvt. Ltd., for whom the referred S/bills were processed by CB, in their statement provided to the department in the month of July 2015, which are part of RUDs provided to the applicant.
2. As per SCN of DRI letter F. No. DRI/MZU/D/INT- 31/2015/7766 dated 01.04.2016, it was mentioned that exporter M/s Vedant Trade Impex Pvt. Ltd. may also have adopted similar modus operandi and requested that the same may be investigated. This offence report was submitted in April 2016. Thereafter, whether any investigation was made against M/s Vedant Trade Impex Pvt. Ltd. and department found any adverse evidences on the part of the CB, is either not documented or not provided to the applicant. However, the department directly issued the Show Cause Notice to the applicant on 01.12.2022. Further, there is no justification as how it took more than five years to investigate and file the charge-sheet, when the offence report was already received by the department in the month of April 2016 provided by the DRI. Therefore, the issuance of SCN itself is unlawful, as it is time barred as per Regulation 17(1) of CBLR 2018 and liable to be drop on the ground of limitation period itself.
3. There is no evidence brought on record to show that the CB has imparted any wrong information to the exporter or he had supported the exporter with any mala-fide intention or vested interest in this case. Further, in the investigation carried out by DRI, the name of CB M/s Shree Durga Logistics or its deceased proprietor Late Shri Harish Kuppihar is nowhere mentioned in their letter. As a matter of facts, there is no basis or grounds on which the charges are framed against the CB. Therefore, issuance of SCN is totally incorrect and unlawful.
4. There is no law which permits to allege and prosecute the person other

than the person who is guilty (even the guilt is not yet proved). As they have already submitted that the proprietor Shri Harish G Kuppikar died on 15.01.2015, as he had solely handled all the referred deals and was solely responsible and supposed to face this inquiry process, submit documents and evidences in his defense. As he is dead, doesn't allow the department to prosecute existing CB i.e. M/s Maa Om Business Enterprises Pvt. Ltd. for the allegation made against dead person.

5. The original license (CB No. 11/1772) was constituted in the name of Shri Harish G Kuppikar, as proprietor of M/s Shree Durga Logistics (who died on 15.01.2015). The said license was reconstituted by the department after carrying out all the required formalities on 5th April 2018 in the name of existing company M/s. Maa Om Business Enterprises Pvt. Ltd., which is all together a different entity. The license was inactive from the death of Shri Harish G Kuppikar i.e. 15.01.2015 and since then not a single deal happened till the reconstitution of license.

6. Further, the appellant also relies upon the following judgments of the Hon'ble Courts, in support of their contention and time limitation periods:

- i) M/s. Ayushi Logistic Company V/s Commissioner of Customs (Airport & Administration), Kolkata (FO 75215 of 2023 Tribunal), CESTAT Kolkata.
- ii) M/s Perfect Cargo & Logistics V/s Commissioner of Customs, New Delhi (Airport and General) (CESTAT New Delhi CUSTOMS APPEAL NO. 50875 OF 2021)
- iii) Access World Wide Cargo V/s Commissioner of Customs, Bangalore (CESTAT Bangalore Final Order No. 20666/2021, dated 10- 8-2021 in Appeal No. C/20444/2021)
- iv) Tran speed Logistics Pvt Ltd V/s Commissioner of Customs (Airport & General) New Delhi (CESTAT New Delhi Customs Appeal No. 51729 OF 2019)
- v) M/s Sai Chhaya Impex Pvt. Ltd. V/s Commissioner of Customs, (Airport and General) New Delhi (CESTAT New Delhi Customs Appeal No. 51029 OF 2021)
- vi) In the matter of limitation period: HIM LOGISTICS PVT. LTD. V/S COMMISSIONER OF CUS. (AIRPORT & GENERAL) New Delhi (HC New Delhi-W.P. (C) No. 505 of 2021 and C.M. No. 1317 of 2021, decided on 2-2-2023)
- vii) In the matter of suit against the Dead Person: Hon'ble Supreme Court Judgement in the matter of Ashok Transport Agency Vs. Awadhesh



Kumar and Another (Civil Appeal No. 1873 of 1998, arising out of SLP (C) No. 24241 of 1996)

7. Proprietor of CB Shri Harish G Kuppikar was the only person to answer all the allegations made in SCN, however, he died on 18.01.2015. The fraud if any in this case, was solely carried out by the exporter M/s Vedant Trade Impex Pvt. Ltd. to claim the duty drawback benefits. There was no role of CB M/s Shree Durga Logistics or its proprietor and no evidences which may prove them guilty., the proprietor conducted all the business transactions/acts in good faith and without any mala-fide intention.

8. No law permits to prosecute another person in lieu of a dead person, as liability of any individual or a firm can be shifted to the beneficiaries/successors, but allegation cannot be shifted in the same manner.

9. CB is providing unblemished services to the clients with support and excellent coordination with the department for last five years. They are providing livelihood to their staff and family members and many other families through their business transactions. CB request to drop all the charges alleged under various Regulations under CBLR, 2018.

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

I have gone through the facts of the case, material evidence on record, the Show Cause Notice 48/ 2022-23 dated 17.03.2023, Inquiry Report dated 20.10.2023 and written and oral submissions of the said CB.

**27.1** I observe that the charges against the said CB is of violation of Regulations 10(d), 10(e), 10(f), 10(n) and 10(q) of CBLR, 2018 made vide Show Cause Notice No. 48/2022-23 dated 17.03.2023. The Inquiry Officer vide inquiry report dated 20.10.2023 held the charges of violation of Regulations 10(d), 10(e), 10(f), 10(n) and 10(q) of CBLR, 2018 as "Not Proved". A Disagreement Memo dated 17.12.2023 was issued with respect to charge under Regulations 10(d), 10 (e), 10(f) & 10(n) of the CBLR, 2018.

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

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

*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) IO in his report submitted that except the evidence given by the DRI regarding the value of the goods exported, no evidence is available to show that the exporter had overvalued the goods with an intention to avail more drawback amounts. Further, there is no evidence to show that the CB was involve in the modus operandi except the filing and processing the shipping bills. The documents filed by the CB with the Customs authorities after obtaining the same from the exporter were scrutinized by the customs officers, on perusal of the records anybody can consider the documents as genuine documents. Accordingly, IO proved that CB had not violated the Regulation 10(d) of the CBLR, 2018.
- (ii) The CB in his submissions has stated that the Inquiry Officer has made detailed observation and findings in respect of all the allegations made in the SCN dated 21.03.2023. Issue of SCN to the company for allegation against the dead proprietor for the period during which the dead proprietor was responsible is not proper, not logical and legally not correct and SCN is liable to be dropped. CB has submitted that Shri Suhel Ansari or his employee has nowhere mentioned the name of CB or the exporter M/s. Vedant Trade Impex Pvt. Ltd., in their statement provided to the department in the month of July, 2015 and there is no justification to investigate and file the charge-sheet after five years as the DRI provided offence report in the month of April 2016.
- (iii) I find that this office has received Offence Report (Show Cause Notice) vide SCN No. 01/ADJ(X)/2022-23 dated 25.10.2022 issued from Additional Commissioner of Customs, ACC, Sahar, Mumbai on 26.10.2022 and license of CB was suspended vide Order No. 47/2022-23 dated 01.12.2022 with intimation of personal hearing to CB on 14.12.2023.
- (iv) I find that the exporter firms including M/s. Vedant Trade Impex Pvt. Ltd. was procuring fake purchase invoices against the export consignments from one Mr. Suhel Ansari. M/s. Vedant Trade Impex Pvt. Ltd. claimed undue export benefits by overvaluing the exports, whereas cheaper material was exported and to justify the value of goods, fake invoices from Suhel Ansari were procured showing the higher purchase price. Vide letter dated 08.03.2018, the Consulate General of India, Dubai, UAE had informed that “from the scrutiny of the documents provided by Federal Customs Authority, Dubai it emerged that original/actual unit value of the exported goods were found abnormally low compared to declared value in the Shipping Bills”. Further as per the investigation, the instant exporter has also adopted the similar modus-operandi. During investigation, the exporter failed to produce any documents in respect of manufacturing, production or use of any imported material in impugned export goods and thus violated the provisions of the



Drawback Rules, 1995. Also, the exporter failed to produce any documents related to transportation and delivery of goods, bank transactions details, invoices. Moreover, Shri Ashok Mahadev Vange, director of exporter M/s. Vedant Trade Impex Pvt. Ltd. in his statement recorded under Section 108 of the Customs Act, 1962 submitted that they were merchant exporter and he was one of the directors alongwith Shri Ramesh P. Singh; all the business related activities like sourcing & purchasing of goods etc. were handled by Shri Ramesh P. Singh and he was not involved in any business activity and hence, accepted his failure in performing the duties as director of the firm, he came to know something wrong was going in the company only after the case was booked. Various Summons were issued to the another director Shri Ramesh P. Singh, but he never appeared for recording of statement nor any documents, bank statements, purchase bills were submitted during investigation.

- (v) Export consignment of some of these exporters were made through M/s. Sanket Overseas, who is the logistics provider. Statement of Shri Suryabhan Eknath Dhurphate, Proprietor of M/s. Sanket Overseas, Navi Mumbai, was recorded under Section 108 of the Customs Act, 1962 by the DRI vide which he inter alia stated that he was into the business of arranging of export material by way of purchases from open market and arranging to export the same to the overseas buyers of M/s. Vedant Trade Impex Pvt. Ltd. and others, he further stated that usually the cost and expenses incurred on the export material is only around 35% of the drawback amount; that in other words the benefits availed by them and the exporter was to the extent of 65%; that on being asked to confirm the benefit percentage of 65% of the drawback amount, he confirms the same.
- (vi) Total 91 S/Bills were filed by the CB on behalf of exporter from 2012-16, but, they never tried to confirm the genuineness of the invoice, as the exporter failed to produce any such document during investigation, even the slightest effort by the CB to verify the genuineness of the invoice had revealed these forged documents.
- (vii) Further, in terms of Boards Circular No. 05 of 2009 –Customs dated 02.02.2009, vide F. No. 609/167/2003-DBK, the exporter is required to submit the proof of export realization to the Customs House within the stipulated time period. So, the CB has not guided the exporter about the same.
- (viii) Further, the CB who is obliged to bring any non-compliance of rules/act to the notice of the Deputy Commissioner of Customs, in the instant case, the CB did not comply his act and never informed the fact to the Deputy/ Assistant Commissioner that the goods are being exported on the basis of fake invoices.
- (ix) Hence, it is impossible to assume that the exporter without wilful collusion

with CB could have exported the impugned goods, hence, the CB cannot shy away from the responsibilities & obligations cast upon them under the CBLR, 2018.

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

*"a Custom house agent has a very significant role to play in the clearance of goods through Customs and Port Trust. Such clearance involves application of many specialized laws and detailed procedures often contain complex statutory requirements. It is for this reason that Customs Brokers have been licensed. Before he is granted permanent license, he has to qualify an examination in which his knowledge of relevant procedures is vested. The object of these regulations is to ensure that the Customs Brokers acts honestly and efficiently in the conduct of their business. It is not difficult to foresee the consequences that would 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 provides are crucial for assessing the goods to duty and deciding whether the import is prohibited or not. The Custom House Agent thus can the status of a professionally qualified person akin to an advocate, Chartered Accountant or number of other professions which requires a minimum standards of knowledge for minimum standards of conduct. If the Custom House Agent acts negligently or dishonestly, the Custom House can be defrauded money due to the Government, and in good faith permit import or export of prohibited goods."*

- xi) From the above facts and circumstances, I am of the considered view that the said Custom Broker failed to advise the exporter to dissuade away from such overvaluation in order to avail undue export benefit. Further, the CB did not bring the said discrepancy 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.

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

The Regulation 10(e) of CBLR, 2018 reads as: -

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



*related to clearance of cargo or baggage;"*

- (i) I observe that IO in his report has not discussed anything substantially and held that CB had not violated the Regulation 10(e) of the CBLR, 2018.
- (ii) The CB submitted that there is no evidence to show that the CB has imparted any wrong information to the exporter or he had supported the exporter with any mala-fide intention in the case. There is no basis on which the charges are framed against the CB, moreover, the proprietor of the CB firm died in the year 2015. The CB firm M/s. Maa Om Business Enterprises (new name) can't be sued for the act of previous CB firm M/s. Shree Durga Logistics (previous name) in case proprietor (late) Harish G Kuppikar, of M/s Shree Durga Logistics died. So, the CB has not violated the said provision in as much as there is nothing on record to suggest that CB has furnished incorrect information.
- (iii) I find from the offence report that as per Consulate General of India, Dubai, UAE enquiry report, original/actual unit value of the exported goods were found abnormally low compared to the declared value in the Shipping Bills, which clearly shows that transaction value is incorrect, inflated, and mis-declared by the exporter. The exporter M/s Vedant Trade Impex Pvt. Ltd. had produced fake invoices/ purchase bills showing higher purchase price against the export consignments from one Mr. Suhel Ansari. It is obligations and duty of the CB to exercise due diligence to ascertain the correctness of information imparted to a client with reference to any work related to cargo, the CB failed to do so, otherwise exporter could not have made an attempt to export goods at such high valuations on the basis of fake invoices, which is a gross violation on the part of the CB under the provisions of Regulation 10(e) of the CBLR, 2018. I also find that, the CB cannot shy away from the responsibilities cast upon them under CBLR, 2018 by stating that determining the mis-declaration in terms of valuation is the officer's responsibility. Therefore, I find that there is no merit in the CB's submission in this regard.
- (iv) From the above facts and circumstances, I am of the considered view that the CB failed to exercise due diligence to ascertain the correctness of information in respect of fraudulent exported goods. Therefore, I hold that the CB has violated the provisions of Regulation 10(e) of the CBLR, 2018.

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

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

*" A Customs broker shall not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information; "*

- (i) From the investigation, it is revealed that goods were procured from Domestic Tariff Area (DTA) without any invoices so no details of its manufacturing, production, using imported material or excisable material therein were available, so it could not be ascertained whether any duties have been paid or otherwise.
- (ii) During investigation, exporter could not produce any such details in respect of manufacturing, production or use of any imported material in impugned export goods, though they were having enough opportunity. Shri Ashok Mahadev Vange, director of exporter M/s. Vedant Trade Impex Pvt. Ltd. in his statement submitted that they were merchant exporter and he was one of the directors alongwith Shri Ramesh P. Singh; all the business related activities like sourcing & purchasing of goods etc. were handled by Shri Ramesh P Singh and he was not involved in any business activity and hence, accepted his failure in performing the duties as director of the firm, he came to know something wrong was going in the company only after the case was booked by DRI.
- (iii) Various Summons were issued to the director Shri Ramesh P. Singh, but he never appeared for recording of statement.
- (iv) Further, it also revealed from the investigation that exporter M/s. Vedant Trade Impex Pvt. Ltd. had declared high value of the goods to avail higher amount of export benefits which is clear violation of the Customs Valuation (Determination of value of export goods) Rules, 2007.
- (v) CB in his submission argued that the SCN does not mention which instruction or public notice he had not informed to the exporter.
- (vi) I find that exporter did not furnish the declarations at the time of exports in format annexed with the circular No. 16/2009-Customs dated 25.05.2009, which is mentioned in the SCN. As per the said format, exporter was inter-alia required to declare the name and complete address of the traders from whom export goods had been purchased. The exporter also required to declare that they were not the manufacturer of the export goods and were not registered under the erstwhile Central Excise Act, 1944 and they had purchased these goods from a trader who was also not registered under the erstwhile Central Excise Act, 1944. They were also required to declare that no rebate (input rebate or/ and final product rebate) would be taken against the exports made against the Shipping Bills. However, during the course of investigation M/s. Vedant Trade Impex Pvt. Ltd. failed to produce any such declaration. Thus, the CB failed to verify the declarations at the time of exports in format annexed with the circular No.16/2009-Customs dated 25.05.2009, which is gross negligence on the part of the CB.
- (vii) From the above facts, I am of the considered view that the CB failed to inform the exporter about the circular No.16/2009-Customs dated 25.05.2009. Therefore, I hold that the CB has violated the provisions of



Regulation 10(f) of the CBLR, 2018.

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

*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.*

- (i) I observe that IO in his report has not discussed anything substantially and held that CB had not violated the Regulation 10(n) of the CBLR, 2018.
- (ii) CB submitted that they are invariably doing KYC and other related checks for the bona-fide details of all the clients. They are adhering to regulation 10(n).
- (iii) From the records of the case, I observe that the Customs Broker did not verify the identity and functioning of the exporter M/s. Vedant Trade Impex Pvt. Ltd. at the declared address by using reliable, independent, authentic documents, data or information.
- (iv) I observe that the CB did not verify the antecedent of the exporter. Summons to Shri Ramesh P. Singh (one of the two directors) could not be delivered at the given address. CB also failed to submit any documentary proof to substantiate that they had verified the credentials of the said exporter including functioning of client at the declared address using reliable & independent information such as speed post etc.
- (v) From the above facts and circumstances, I am of the considered view that the CB has failed to fulfil 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.

**27.7 With regard to violation of Regulation 10(q) of CBLR, 2018:**

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

*"A Custom Broker shall cooperate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees".*

- (i) IO in his report mentioned that "the communication regarding the initiation of investigation and Summons issued on the CB were not sent to the proper address thereby the notice did not receive the communication. In such circumstances, it is not proper to conclude that the noticee have failed to co-operate with the Customs authorities as during the course of investigation". So, IO held that charge of violation of 10(q) of CBLR 2018 is not proved.
- (ii) The CB has changed its address as per Notice No. 12/2022-23 dated 13.09.2022 issued vide F. No. S/6-110/2012/Admin. Earlier, the SCN issued by the Additional Commissioner of Customs, Export Assessment, ACC, Sahar

Mumbai was sent to CB M/s. Shree Durga Logistics (previous name) at his old address at 14, Tulsi Terrace, Fort, Mumbai in October, 2022.

- (iii) On analysis of the case, I agree with the IO that no such record is provided to establish the non-cooperation by the CB firm. Therefore, I hold that the CB has not violated the provisions of Regulation 10(q) of the CBLR, 2018.

**28.** In addition, the Inquiry Officer at para No. 28 of the IR has quoted a SCN dated 27.08.2014 issued by the Joint Commissioner of Customs SIIB(X), JNCH later on the joint commissioner issued final order No. 174/2015 dated 01.10.2015 and thereby dropped the proceedings against the CB as no mens-rea was established against the CB, and the principal Commissioner of Customs revoked the suspension of the license of the CB. The facts were checked and found that it was altogether a different case of the exporter M/s. Rush Exports, and the instant case is of exporter M/s. Vedant Trade Impex Pvt. Ltd.

**29.** In para 31 of the IR, the Inquiry Officer has emphasized that during the offence the CB firm was a proprietorship under the proprietor Shri Harish G. Kuppikar, now after his death in the year 2015 and reconstitution of the CB firm, allegation against the company should not carry forward, in support of his argument he has quoted the order of the CESTAT, New Delhi Bench vide final Order No. A/1168/2012- EX (BR) in Appeal No. E/1501 OF 2012 dated September 13, 2012, case of Commissioner of Central Excise, Chandigarh Versus Shree Ambica Steel Industries, held as under:

*"8. Coming to the undertaking by the legal heir of sole proprietor of the respondent firm, on perusal of the undertaking reproduced above, we find that legal heir of the deceased sole proprietor of the respondent firm had undertaken to pay all the pending central excise liability of the respondent firm as and when the dues are finally settled. From this it is evident that the undertaking was given in respect of pending dues under dispute. In the instant case, the show cause notice raising demand was issued almost three years after the undertaking on 2.4.2009. This imply that the dispute pertaining to the demand in question was raised much after the undertaking as such the demand which is subject matter of the show cause notice cannot be termed as pending as covered by the undertaking given by the legal heir. That being the case, we are of the view that there was no reason for issue of show cause notice against non-existing firm. As such, the demand confirmed on the basis of aforesaid show cause notice cannot be sustained. We do not find any infirmity in the order in appeal setting aside the order in original and dropping the demand"*

In this regard, I find that this order is with respect to carrying forward of liability of central excise tax and not in respect of offence cases under CBLR, 2018, hence this argument has no bearing on this case.



**30.** In para 32 of the IR, the Inquiry Officer has quoted the OM No.11012/7/99-Estt (A) dated 20.10.199.

*The same is reproduce below:*

*\*In OM No.11012/7/99-Estt (A) dated 20.10.199, it is clarified that share a government servant dies during the pendency of the inquiry is without charges being proved against him, imposition of any of the penalties prescribed under the CCS(CCA) Rules, 1965, would not be justifiable. Therefore, disciplinary proceedings should be closed immediately on the death of the alleged Government servant. Similar logic can applied here in the instant case."*

Ongoing through the said O.M., I find that this O.M. is with respect to central government employee and limited to them only, the CCS(CCA) Rules, 1965 cannot be extended to CB hence this argument also has no bearing on this case.

**31.** 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.

**32.** CB submitted that the SCN dated 17.03.2023 was issued after lapse of 90 days' time limit as provided in the Regulation 17 of CBLR 2018 and Inquiry Report was not submitted within time. CB requested to drop the proceedings initiated under Regulation 17(1) of CBLR, 2018.

However, in this context, I rely on the judgement in the case of M/s Unison Clearing P. Ltd. reported in 2018 (361) E.L.T. 321 (Bom.) which stipulates that the time lines stipulated in Regulations are directory in nature and not mandatory.

The decision of Hon'ble High Court of Judicature at Bombay in the case of Principal Commissioner of Customs (General), Mumbai Versus Unison Clearing P. Ltd. reported in 2018 (361) E.L.T. 321 (Bom.), which stipulates that:

*"15. In view of the aforesaid discussion, the time limit contained in Regulation 20 cannot be construed to be mandatory and is held to be directory. As it is already observed above that though the time line framed in the Regulation need to be rigidly applied, fairness would demand that when such time limit is crossed, the period subsequently consumed for completing the inquiry should be justified by giving reasons and the causes on account of which the time limit was not adhered to. This would ensure that the inquiry proceedings which are initiated are completed expeditiously, are not prolonged and some checks and balances must be ensured. One step by which the unnecessary delays can be curbed is recording of reasons for the delay or non-adherence to this time limit by the Officer conducting the inquiry and making him accountable for not adhering to the time schedule. These reasons can then be tested to derive a conclusion whether the deviation from the time line*

prescribed in the Regulation, is "reasonable". This is the only way by which the provisions contained in Regulation 20 can be effectively implemented in the interest of both parties, namely, the Revenue and the Customs House Agent.

In the light of the aforesaid discussion, the appeals filed by the Revenue succeed and the question of law framed in the appeals is answered by holding that the CESTAT was not justified in setting aside the order or suspension of the Customs Brokers' Licence on the ground of delay between suspension and the notice of deviation or omission and it cannot be laid down as an absolute proposition of law that delay in taking immediate action of suspension or initiation of inquiry within a period of 90 days would vitiate the action of the Commissioner. ....".

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

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

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

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

- i. *The very purpose of granting a licence to a person to act as a Customs House Agent is for transacting any business relating to the entry or departure of conveyance or the import or export of goods in any customs station. For that purpose, under Regulation 9 necessary examination is conducted to test the capability of the person in the matter of preparation of various documents determination of value procedures for assessment and payment of duty, the extent to which he is conversant with the provisions of certain enactments, etc. Therefore, the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as CHA, it is seen that while CHA should be in a position to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an Agent for*



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

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

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

"Para 6.1 These provisions require the Customs Broker to exercise due diligence to ascertain the correctness of any information and to advise the client accordingly. Though the CHA was accepted as having no 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."

**34.** 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. The facts on record prove that CB had violated various provisions of CBLR, 2018 with mens rea. Hence, the decision of above case law is squarely applicable in the present case.

**35.** In view of above facts and circumstances, I hold that the charges against the CB under Regulation 10(d), 10(e), 10(f) & 10(n) of the CBLR, 2018 are proved, and the CB is liable for penal action under the CBLR, 2018. Therefore, for their acts of omission and commission, CB M/s. Maa Om Business Enterprises Pvt. Ltd. (CB Licence no. 11/1772) is held liable and guilty for violating the provisions of CBLR, 2018 as mentioned above. Accordingly, I pass the following order:-

**ORDER**

**36.** 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. 11/1772 under Regulation 14 of the CBLR, 2018.
- (ii) I hereby impose penalty of Rs. 50,000/- (Rupees Fifty Thousands only) on CB M/s. Maa Om Business Enterprises Pvt. Ltd. (CB no. 11/1772) under Regulation 18 of the CBLR, 2018.
- (iii) I hereby order for forfeiture of entire amount of security deposit furnished by CB under Regulation 14 of the CBLR, 2018.
- (iv) I hereby order that the CB surrender the original License as well as all the 'F', 'G' & 'H' cards issued there under immediately.

This order is passed without prejudice to any other action which may be taken 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. Maa Om Business Enterprises Pvt. Ltd.,

Unit No. 107, Plot No. 1A,

Siddhi vinayak-complex,

Sector-19C, Vashi, Navi Mumbai-400705

Customs Broker License No. 11/1772 (PAN No. AALCM6744K)

Speed post No:  
EM 683080 663  
IN.

Copy to: -

1. The Pr. Chief Commissioner/Chief Commissioner of Customs, Mumbai I, II, III Zone
2. All Pr. Commissioners/Commissioners of Customs, Mumbai I, II, III Zone
3. 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)