



प्रधानआयुक्त, 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.

संचिका सं./F. No.- GEN/CB/515/2023-CBS

आदेश दिनांक/Date of Order: 09.01.2024

CAO No. 63/CAC/PCC(G)/SJ/CBS-Adj

जारी दिनांक/Date of issue: 10.01.2024

संख्या:

DIN: 2024017700000011161F

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

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

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

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

BRIEF FACTS OF THE CASE

M/s. Muni Cargo Movers Pvt Ltd (PAN Number: AACCM3602K), having address registered at 402, Apollo Arcade, R.K. Singh Marg, Andheri (East), Mumbai – 400069 (hereinafter referred to as the Customs Broker/CB/CHA) is holder of Customs Broker License No. 11/929 issued under Regulation 10(1) of the CHALR 1984 (now Regulation 7(2) of CBLR 2018) and as such they are bound by the regulations and conditions stipulated therein.

2. An Offence Report was received from SIIB (Import), JNCH in the form of Show Cause Notice Ref. F. No. SG-Misc-285/2009-SIIB(I)-JNCH dated 15.02.2010, wherein the CB was made co-noticee in a case of improper imports of plastic flowers vide Bill of Entry No. 691317 dated 21.11.2008 in the name of M/s Raviraj Enterprises by misuse of IEC. Charges for violation of Regulations 13(a), 13(d), 13(e) & 13(n) of CHALR, 2004 were levelled against the CB which were held as proved in inquiry report.

3. The aforesaid case was adjudicated vide Order-in-Original CAO No. 87/2013/CAC/CC(G)/PKA-CHA (Admn) dated 22.07.2013 resulting in revocation of CB license along with full forfeiture of security deposit. In the said Order-in-Original, two cases involving the CB were adjudicated together, one being the aforesaid case, and another case of fraudulent availment of drawback which was remanded back by the Hon'ble CESTAT Mumbai. The aforesaid Order-in-Original was challenged in Hon'ble CESTAT Mumbai vide Appeal No. 95907/2016. The Hon'ble CESTAT vide Final Order No. A/85356/2023 dated 01.03.2023 set aside the Order-in-Original on the grounds of being compromised on account of combining the proceedings of two separate cases, based on entirely different facts, and remanded the cases back to the licensing authority for fresh decisions.

4. In pursuance of the aforesaid Order of the CESTAT Mumbai, I hereby proceed to adjudicate the instant case independently, in the light of facts and circumstances of the case.

6. On receipt of specific intelligence that certain importers were indulging in illegal imports, in the name of other IEC holders, by undervaluing / mis-declaring their import consignments, SIIB (Import) and Import Noting Cell of JNCH, Nhava Sheva initiated investigations against such importers. The details of the instant case are as under:

- a)** During the said investigation, Import Noting Department received a request dated 25.11.2008 from M/s. Oasis Shipping Pvt Ltd requesting for amendment in the consignee's name in respect of a consignment imported earlier vide B/L No. NBNHHC6332 dated 09.09.2008, IGM No.20481/365 dated 24.09.2008 from the earlier consignee M/s. Raviraj Enterprises, having address at 6- Balaji Apt, Brahman Sabha, Laxmi Naryan Niwas,

Uttan Road, Bhayandar (W), Thane to M/s. Tarang Impex, having address at 1st floor, Gala No.10, Mumbai Devi Udyog, Gas Godown Galli, G.P. Road, Bhayander (E), Thane -401105. As part of the enquiry, a letter dated 15.12.2008 was addressed to Deputy Commissioner of Customs (Preventive), R&I Wing, New Custom House, Ballard Estate, Mumbai-38 requesting to carry out verifications with regards to the IEC address of M/s. Raviraj Enterprises [IEC 0307015602] and M/s. Tarang Impex [IEC 0307079449]. Another letter dated 24.03.2009 was sent to Assistant Commissioner of Central Excise, Bhayander Division, Divine Sheraton Plaza, 1st floor, Jasal Park, Bhayander (E), Mumbai requesting to carry out verifications with regards to the IEC/ address of M/s. Raviraj Enterprises (IEC 0307015602) and M/s. Tarang Impex (IEC 0307079449).

- b)** As the investigation were being carried out Shri Jagdish Bishnoi, Proprietor of M/s.Tarang Impex filed a Bill of Entry No. 691317 dated 21.11.2008, without obtaining an amendment from Import Noting, JNCH, Nhava Sheva, in the name of M/s.Tarang Impex. Thereafter, Shri Jagdish Bishnoi filed a Writ Petition No.7674 of 2009 in the High Court of Judicature at Bombay for release of detained goods. However, the same was dismissed by the Court vide order dated 07.05.2009 as the petitioner failed to appear before the Court. The matter was forwarded to the Commissioner of Customs thereafter to act according to law.
- c)** In the meantime Central Excise, Bhayander Division, Thane –II Commissionerate carried out verification of the premises of:
 - i.M/s. Raviraj Enterprises situated at 006, Balaji Apartments, Opp. Laxmi Narayan Niwas, Uttan Road, Bhayander (W), Thane and
 - ii.M/s. Tarang Impex situated, at 1st floor, Gala No.10, Mumba Devi Udyog, Gas Godon Galli, G. P. Road, Bhayandar (E), Thane-401105.
- d)** The verification of premises of M/s. Raviraj Enterprises revealed that the said premises was a residential flat, belonging to one Smt. Roveena Dominic Misquita staying with her husband Shri Salian Harishchandra Mudara. Statement of Shri Salian Harishchandra Mudara was recorded under Section 14 of the Central Excise Act, 1944 wherein he, interalia, stated that he was working with Mahesh Lunch Home, Juhu as an Assistant Manager and had been residing at the said address for the last one year; that the said house was in his wife's name; that he was never involved in any import/export business and not concerned with M/s. Raviraj Enterprises.

- e)** The verification of premises of M/s. Tarang Impex revealed that the said premises was taken on rental basis by one Shri Raju Arjun Verma, Proprietor of M/s. Suganesh Surgicals and Engineering Works; that he used to run his business of doing buffing, pressing of surgical items on labour job; that he was not aware of any Import-Export business and was not connected with either M/s. Tarang Impex or M/s. Raviraj Enterprises. The Assistant Commissioner of Central Excise, Bhayander, therefore inferred that both M/s. Raviraj Enterprises and M/s. Tarang Impex do not exist at the said addresses.
- f)** The goods imported were examined and found to contain items as declared. Since both the original as well as subsequent consignees were found to be fake and non-existent, the aforesaid goods contained in Container No. HDMU 6399970 were seized on 19.01.2010, under Section 110(1) of the Customs Act, 1962, under the reasonable belief that the importation of the consignment was being carried out by persons using someone else's name/IEC/address and hence the goods were liable to confiscation under Section 111 of the Customs Act, 1962. The seized goods were handed over to the representative of the Custodian / CFS CWC Logistics on 19.01.2010, for safe custody.
- g)** IGM details were called from Manifest Clearance Department. On scrutinizing the same it was seen that the request dated 25.11.2008 from M/s Oasis Shipping Pvt. Ltd. requesting for amendment in the consignee's name in respect of a consignment imported earlier vide B/L NBNHHC6332 dated 09.09.2008, IGM No. 20481/365 dated 24.09.2008, from the earlier consignee M/s Raviraj Enterprises to M/s Tarang Impex, was not granted and despite that, Bill of Entry No. 691317 dated 21.11.2008 was filed in the name of M/s Tarang Impex by CHA M/s Muni Cargo Movers Pvt. Ltd.
- h)** Statement of Shri Jayesh Muni, Director of M/s Muni Cargo Movers Pvt. Ltd. was recorded on 05.02.2010 under Section 108 of the Customs Act, 1962 wherein he inter alia stated that he is the Director of the said firm which was started in year 1991; that he used to handle around 40 documents per month; that he used to check the Invoice, Packing List, B/L, IEC Copy, PAN Card copy, Authority letter, importer's declaration form and other related documents as the case may be and one set of these documents were submitted in the Docks at the time of examination of the goods and one complete set of these documents were kept in their office; that in the case of first time clients he would ask the importer to submit his IEC, Office proof, and personal ID and reference of the person who recommended them as CHA.

On being shown the Bill of Entry No. 691317 dated 21.11.2008, filed in the name of M/s. Tarang Impex by his firm M/s Muni Cargo Movers Pvt. Ltd., he stated that the said importer was recommended by his friend Shri Bhavesh Thakkar who had accompanied the said importer, whose name he did not recollect at that moment. Thereafter, he checked all the documents and after assurance from his friend Shri Bhavesh Thakkar, he decided to file the Bill of Entry. He thereafter put his dated signature on the said Bill of Entry as a token of having seen the same; that this was the first import of M/s Tarang Impex, handled by them as CHA.

On being asked, whether he was aware that the said consignment had actually come in the name of M/s Raviraj Enterprises, he stated that he was not aware of the same as the importer at the time of meeting him had shown him the B/L in the name of M/s Tarang Impex. However, at the time of filing the B/E, his friend Shri Bhavesh Thakkar told him that the original B/L was in the name of M/s Raviraj Enterprises and thereafter Shri Bhavesh came to his office and collected a blank letter head for giving an amendment letter which was signed by Shri Bhavesh himself without his (Shri Muni's) knowledge; that this has come to his knowledge now after being shown the said letter. He was also shown the IGM copy wherein it is seen that the amendment has not been granted wherein he put his dated signature on the same as a token of having seen the same and stated that he was not aware whether the amendment was granted or not and also not aware as to how the system accepted the Bill of Entry in the name, of M/s Tarang Impex. He admitted some lapses on his part and requested for taking a lenient view as he was already suffering on account of his licence being under suspension.

7. From the above it appears that the CB M/s Muni Cargo Movers Pvt. Ltd. had not properly discharged their obligations as per the provisions of Regulation 13 of the CHALR, 2004 (now Regulation 10 of CBLR, 2018) by filing a Bill of Entry in the name of the second consignee without obtaining an amendment from the concerned section.

It appears that the CB had not verified the IEC holder's address personally and he had not interacted with any of the importers directly. He has purportedly relied on his friend Shri Bhavesh Thakkar. In this case, the CB also never tried to verify the genuineness of the Importer, which is in contravention of the provisions of Regulation 13(a) of the CHALR, 2004 (now Regulation 10(a) of CBLR, 2018).

It appears that the CB did not meet the Importer and therefore, the question of advising the importer to comply with the provisions of the Act does not arise. Though the CB had known all these facts. they did not inform the Customs, which is in contravention of the provisions of Regulation 13(d) of the CHALR, 2004 (now Regulation 10(d) of CBLR, 2018).

It appears that the CB was aware that Shri Bhavesh Thakkar had mis-used the IEC and filed Bill of Entry in the name of M/s Tarang Impex without amendment in IGM by appropriate Customs authority. However, in this case, the CB failed to exercise due diligence to ascertain the correctness of information to the actual importers, which is in contravention of the provisions of Regulation 13(e) of the CHALR, 2004 (now Regulation 10(e) of CBLR, 2018).

Hence, it appears from the above that the CB failed to discharge their duties as Customs House Agent efficiently, which is in contravention of the provision of Regulation 13(n) of the CHALR, 2013 (now Regulation 10(m) of CBLR, 2018).

8. NOTICE

A Notice bearing F. No. S/8-77/2008-Admn dated 30.11.2010 was issued by the Commissioner of Customs (General), Mumbai proposing to hold an inquiry against M/s. Muni Cargo Movers Pvt Ltd (CB No. 11/929) under Regulation 22 of CHALR, 2004 (now Regulation 17 of CBLR, 2018). The Notice was annexed with the Article of Charges I, II, III & IV, which are discussed below:

8.1 Article of Charge-1: As per the provisions of Regulation 13(a) - “A Customs House Agent shall obtain an authorization from each of the companies, firms or individuals by whom he is for the time being employed as Customs House Agent and produce such authorisation whenever required by the Deputy Commissioner of Customs or the Assistant Commissioner of Customs”.

In this case, Shri Jayesh D. Muni, Director of M/s. Muni Cargo Movers Pvt Ltd, CB No. 11/929 in his statement dated 05.02.2010 recorded under Section 108 of the Customs Act, 1962 has confirmed that he was not aware as to who was the original importer of the goods and that he filed the Bill of Entry on the basis of getting a confirmation from his friend Shri Bhavesh Thakkar. Therefore, it appears that the CHA never met the importer, nor did they verify the antecedents of the importer. He blindly accepted the documents brought by Shri Bhavesh Thakkar.

It is clear from the above statement that the CB M/s. Muni Cargo Movers Pvt Ltd had not obtained the authority letters from the Importer, which is necessary as per Regulation 13(a) of the CHALR 2004 (now Regulation 10(a) of CBLR, 2018), nor did they verify the genuineness of the Importer. The CB had obtained the documents brought by one Shri Bhavesh Thakkar, who was neither the IEC Holder nor an authorised representative of the Importer.

As per Regulation 13(a) of the CHALR, 2004 (now Regulation 10(a) of CBLR, 2018), the CB should get the clearance work from the importers and they should obtain Authorisation Letters from the Importers. In this case, the CB never tried to verify the genuineness of the Importer, which is in contravention of the provisions of Regulation 13(a) of the CHALR, 2004 (now Regulation 10(a) of CBLR, 2018).

8.2 Article of Charge-II: As per the provisions of Regulation 13(d) – “A Customs House Agent shall advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or the Assistant Commissioner of Customs”.

Shri Jayesh D. Muni, Director of M/s. Muni Cargo Movers Pvt Ltd, CB No.11/929 in his voluntary statement has confirmed that the documents were brought by Shri Bhavesh Thakkar and that he did not verify the antecedents of the Importer, nor did he verify the address of the Importer. It, therefore, appears that the CB did not meet the importer and therefore, the question of advising the Importer to comply with the provisions of the Act does not arise. Though the CB had known all these facts, they did not inform the Customs, which is in contravention of the provisions of Regulation 13(d) of the CHALR, 2004 (now Regulation 10(d) of CBLR, 2018).

8.3 Articles of Charge-III: As per the provisions of Regulation 13 (e) – “A Customs House Agent should 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 baggage.”

The CB was aware that the importer had mis-used the IEC and filing Bill of entry in the name of M/s. Tarang Impex without amendment in IGM by appropriate Customs authority. However, in this case, the CB failed to exercise due diligence in ascertaining the correctness of information from the actual importers, which is in contravention of the provisions of Regulation 13(e) of the CHALR, 2004.

Thus, the CB failed to comply with the provisions of Regulation 13(e) of the CHALR (now Regulation 10(e) of CBLR, 2018).

8.4 Articles of Charge- IV: As per the provisions of per Regulation 13(n) - “A Customs House Agent shall ensure that he discharge his duties as Customs House Agent with utmost speed and efficiency and without avoidable delay”.

Since the CB did not meet the importer and did not advise the importer to comply with the provisions of the Customs Act, 1962 it appears that the CB did not discharge his duties as a Customs House Agent efficiently.

Hence, it appears from the above that the CB failed to discharge their duties as Customs House Agent efficiently, which is in contravention of the provisions of Regulation 13(n) of the CHALR, 2004 (now Regulation 10(m) of CBLR, 2018).

9. INQUIRY PROCEEDINGS

An inquiry against M/s. Muni Cargo Movers Pvt Ltd was ordered under Regulation 22 of CHALR, 2004 (now Regulation 17 of CBLR, 2018) to inquire into the Articles of Charges I, II, III & IV framed as per Notice F. No. S/8-77/2008-Admn dated 30.11.2010. Further, vide Order dated 30.11.2010, Shri V.N. Sapre, Asstt. Commissioner of Customs was appointed as Inquiry Officer and he submitted the 'Inquiry Report' vide letter F. No. S/8-77/2010-Admn dated 30.04.2012.

10. INQUIRY REPORT

The Inquiry Officer (hereinafter referred to as IO) vide letter dated 30.04.2012 submitted the Inquiry Report, wherein the findings are as below:

10.1 Article of Charge-1: Violation of Regulation 13(a) of CHALR-2004

The IO submitted that the CHA had not tendered any reply on the grounds stated in the charge to the extent that Amendment in the Bill of Entry had not been granted by the Nhava Sheva Customs. With the result, the bill of entry continued to show the name of importer M/s. Raviraj Enterprises.

The IO further submitted that the claim that Shri Bishnoi met the CHA through his friend Shri Bhavesh Thakkar and that the CHA had received the authorization from the Shri Bishnoi, copy of which has been produced during this inquiry proceedings is something which should be seen in the context of the investigations which were conducted by the SIIB. As amendment in this case

had not been granted, the question of producing authorization and bringing it on the record of the concerned bill of entry did not arise.

The IO further submitted that the investigations revealed that both the firms in question did not exist at the addresses mentioned in the IEC. In his statement dated 05.02.2010, Shri Muni, director of the CHA had admitted that he was not aware that the consignment had come in the name of M/s. Raviraj Enterprises and that no amendment had been granted.

The IO further submitted that CHA has claimed that acceptance of IEC of M/s. Tarang Impex by EDI system is sufficient to prove genuineness of IEC. However, the question here is not that of genuineness of IEC Certificate but the circumstances under which the entire transaction took place and the subsequent revelation of facts. The transaction entered into by the importer with M/s. Tarang Impex had been found to be bogus. Not only that Shri Jayesh Muni has stated that he was not aware of any amendment having been carried out in the EDI System. In sum total, it can be inferred that the CHA did not receive the authorization from the importer M/s. Tarang Impex.

Accordingly, the IO rejected the submissions made by the CHA as an afterthought and also held the authorization to have been created after the SIIB began their investigations in the case. The IO accordingly incorporated Article of Charge I as having been established and held the charge of violation of Regulation 13(a) as proved.

10.2 Article of Charge-II: Violation of Regulation 13(d) of CHALR-2004

The IO submitted that the CHA had accepted the documents of M/s. Tarang Impex without an authorization and without conducting verification of their whereabouts. The fact that the firm was not in existence at the time of visit by the officers, had not been denied by the CHA, rather, the CHA had accepted the same to be a lapse. Further, the bill of entry was amended without the permission of the Customs and such amendment was not even in the knowledge of the CHA. It simply means that the CHA had performed his duty and responsibility in a very perfunctory and casual manner. Therefore, to attribute the nature of omission on the part of the CHA to be a mere lapse cannot be accepted. The omission is serious enough and there is evidence that the CHA has not advised the importer M/s. Tarang Impex about the non-compliance of statutory requirement under the Customs Act, 1962 that prior permission is required for amendment of Bill of Entry.

The IO further submitted that the CHA appeared to have proceeded to process import documents of M/s. Tarang Impex solely on the strength of faith

and assurance in his friend Bhavesh Thakkar. The absence of authorisation as well as amendment, is relevant to this charge also. The Custom House cannot run on faith and assurance about the genuineness of importer given by third-party. Such assurances are implied as far as the CHA is concerned because it is precisely for these reasons that services of CHA are employed by the customs to carry out such examination and compliances which otherwise the Importer may not be aware of. It is the duty and responsibility of the CHA to bring all acts of non-compliances by the importer and the CHA cannot be a mute or a mere spectator.

The IO further submitted the stand of the CHA, regarding prior knowledge or any misdoing of the importer, is not necessary because the duty and responsibility of the CHA is to properly advise the importer of the consequences. Such advise under Regulation 13(d) includes verification of basic documents which unfortunately had not been done by the CHA.

The IO accordingly incorporated Article of Charge II as having been established and held the charge of violation of Regulation 13(d) as proved.

10.3 Articles of Charge-III: Violation of Regulation 13 (e) of CHALR-2004

The IO submitted that the Importer IEC address was found to be bogus, and the goods were pending out of charge during the investigation conducted by the SIIB. Admittedly, no authorisation copy nor an amendment in the bill of entry was found to have been carried out prior to processing of the goods by the CHA. Further, the CHA had acted on the basis of advice tendered by his friend which cannot be accepted as compliance of CHALR, 2004.

The IO further submitted that the CHA cannot disassociate himself from the outcome of investigation conducted by the SIIB for the sake of avoiding a possible action for violation of the CHALR, 2004. The CHA has admittedly failed to exercise due diligence to ascertain the correctness of import information that he was required to provide at the time of amendment of bill of entry.

The IO accordingly incorporated Article of Charge III as having been established and held the charge of violation of Regulation 13(e) as proved.

10.4 Articles of Charge- IV: Violation of Regulation 13(n) of CHALR, 2004

The IO submitted that the omission on the part of the CHA resulted into failure to discharge his duties as a CHA . The failure of processing the documents correctly and to providing guidance to the importer resulted in the consignment being investigated by the SIIB. One of the reasons why appointment of CHA is considered to be in the interest of the Importer is to ensure that the goods are

not held up for any reason whatsoever because the job of the CHA is to facilitate clearance and to ensure that the CHA discharges his duties as a Custom House Agent with utmost speed and efficiency and without avoidable delay.

The IO further submitted that in the instant case, it can be easily seen that because of the fact that the CHA failed to comply with the Regulation 13(a), 13(d) and 13(e), the net cumulative effect has resulted in avoidable delay of the clearance of the goods in question.

The IO accordingly incorporated Article of Charge IV as having been established and held the charge of violation of Regulation 13(n) as proved.

11. RECORD OF PERSONAL HEARING

At the outset the CB reiterated their submission made in the written reply dated 17.07.2012. The CB further submitted that his licence has been revoked, in an earlier case and the appeal is pending in CESTAT. He requested to drop the present proceedings. Further, in pursuance of CESTAT Final Order No. A/85356/2023 dated 01.03.2023, a fresh opportunity of personal hearing was granted to the CB on 22.12.2023, wherein the CB reiterated their earlier submissions and cited case laws in favour of their defense.

12. CB'S DEFENSE REPLY DT 17.07.2012

The CHA submitted their written submissions dated 17.07.2012 against Inquiry officer's report, major points of which are reproduced below:

12.1 Article of Charge I

The Presenting Officer was unable to muster up any evidence contrary to the documentary and oral evidence submitted by the CHA.

The Article of Charge I only alleges failure to obtain authorisation from the importer which the CHA had done and evidence of the same was tendered to the Inquiry Officer.

If the IO had any doubts about any fact or documentary evidence submitted by the CHA, he had full liberty to seek clarifications during the Inquiry Proceedings so that the CHA would have fair opportunity to respond to his queries. Rather the IO held back his doubts till the Inquiry was over and pen them in his report. In doing so, the IO rendered his report as biased and unreliable.

The IO cannot hold the CHA responsible for fake addresses given in the IEC Certificate as the IEC certificate are issued by the DGFT and the CHA has no role to play either in issue of these certificates or in the verification of their addresses. Even when the IECs are registered by the Customs in the EDI System, the CHA has no role to play nor is required to conduct verification of the addresses given therein. There is also no duty cast upon the CHA to verify each and every IEC address given by the importer as per the Customs Act, 1962 or the CHALR, 2004 unless there appears some suspicion or doubt about the certificate. The IO failed to appreciate that the IEC code can be checked online. The CHA is not required to make physical verification of the address of the importer.

The CHA took authorisation from the importer, verified the documents submitted by him like PAN Card, IEC Certificates etc. The authority letter given by Shri Jagdish Bishnoi on behalf of Tarang Impex (in original) has already been submitted to the Inquiry Officer during these proceedings on 7.7.2011 along with copy of the IEC certificate of Tarang Impex. If actual investigations by SIIB revealed that importers did not exist at the addresses given in the IEC, then it can not be held against the CHA unless the CHA can be proved to have prior knowledge of the bogus nature of the importers.

The IO is amiss in his findings when he says that since both these firms were not traceable at their given IEC addresses, the CHA could not have obtained their authorisation. It is not laid down that authorisations should be obtained at the given addresses. The importer had approached us for clearance and not vice versa and further we were not required to verify the given IEC addresses in absence of anything suspicious.

It is improper on part of the Inquiry Officer to expect that the CHA should trace and produce the proprietor of M/s. Tarang Impex to substantiate CHA's claim before the Inquiry Officer. The onus of producing any witness does not lie upon the charged CHA.

The IO failed to pay attention to CHA's statement dated 5.2.10, which clearly shows that the CHA had met the said importer Shri Jagdish Bishnoi and had personally checked all the documents and after receiving assurance from Shri Bhavesh that he knew the importer, CHA had filed the Bill of Entry in question. The relevant part of the statement is reproduced below:

Q. On being shown Bill of Entry No 691317 dated 21. 11.2008 filed in the name of M/s Tarang Impex by your firm M/s Muni Cargo Movers Pu Ltd, what do you have to say about the same?

A. The said importer was recommended by my friend Shri Bhavesh Thakkar who accompanied the said importer whose name I do not recollect at the moment.

Thereafter, I checked all the documents and after assurance from my friend Shri Bhavesh Thakkar, I decided to file the document. I put my dated signature on the said Bill of Entry as token of having seen the same

In view of CHA's aforesaid statement, it is erroneous on part of the Inquiry Officer to keep insisting without any evidence to substantiate his assumption that CHA had not met the importer Shri Jagdish Bishnoi.

It is not for the CHA to launch investigations into the details given in the documents submitted by the Importer like his office address and PAN numbers. These details were already verified by the issuing Authority which in this case were the DGFT and the Income Tax. In any case, if the IEC was not genuine, the EDI System would not have accepted the Bill of Entry filed in the name of Tarang Impex by me. Therefore, the genuineness of the IEC certificate should not be in doubt here.

Therefore, in light of hard documentary evidence of proof of authority and IEC certificate copy being obtained from the Importer, it is clear that the CHA had complied with the requirement of Regulation 13 (a) of the CHALR Act, 2004.

12.2 Article of Charge-II

No evidence had come up during the Inquiry Proceedings to even remotely suggest that the CHA had not advised their client to comply with the provisions of the Act. The allegation is based on the fact that CHA did not meet the importer and therefore the question of advising the Importer to comply with the provisions of the act did not arise.

The IO failed to appreciate the fact that the CHA had very explicitly stated in his statement that he had met the importer who had been accompanied by Shri Bhavesh Thakkar. Therefore, when the very basis of allegation is wrongly inferred by the IO, the charge of not advising the importer properly automatically fails to be proved.

It is also not brought out by the department during investigations or by the Presenting Officer during the Inquiry proceedings that CHA had any prior knowledge of any misdoing of the Importer – Tarang Impex. Mere upholding the allegation by the IO that CHA failed to inform the department without substantiation makes the charge dangle in mid-air without any support. The IO did not bring out and show which suspicious fact was known to the CHA that was not intimated to the department.

The IO states that "Examination of witnesses in this case was not required on the face of the documents not tendered by the Importer in question." If

the IO is of the opinion that examination of witnesses is not required, then there is no need to hold any Inquiry. All statements and documents are available with the department and decision to punish and penalize can be taken without examining witnesses. However, it would constitute grave injustice to the charged CHA and would be against the guidelines and principles of a free and fair inquiry where the charged CHA is provided proper opportunity to defend himself by cross-examining the witnesses.

Hence, the Disciplinary Authority is requested to hold that the allegation in Article of Charge-II be held as Not Proved.

12.3 Article of Charge-III

The IO assumes that the CHA failed to exercise due diligence in ascertaining the correctness of information from the actual importers. However, the IO failed to appreciate that the CHA was unaware of the fact that the importer had misused the IEC and had filed Bill of Entry in the name of Tarang Impex without amendment in IGM by appropriate customs authority.

The IO did not assess CHA's submission that the IEC submitted by the Importer Tarang Impex had not been found to be forged. It is not the case that this IEC had not been issued by the DGFT or had not been issued to Tarang Impex. Therefore, what was verifiable from the system was whether this IEC was registered, whether it was issued by DGFT and whether it was issued in the name of Tarang Impex. This verification was required to be done by the CHA and was done.

The shipping agents, Oasis Shipping Pvt Ltd had already intimated that they were in receipt of a message from the load port that the name of the consignee in the IGM should be amended from Raviraj Enterprises to Tarang Impex. Based on this information and the NOC from Raviraj Enterprises that had been produced by Shri Jagdish Bishnoi, the CHA had filed the Bill of Entry in the name of Tarang Impex. Subsequently, Oasis Shipping Pvt Ltd also submitted a letter dated 25.11.08 to the Noting Section to the effect that they were in receipt of the Manifest Corrector for amending the name of the consignee in the IGM from Raviraj Enterprises to Tarang Impex and requesting AC/Noting for allowing the said amendment. In such circumstances, any other responsible CHA would have done the same.

Thus, it can be seen that at all stages, CHA had acted as per law and in complete good faith. The CHA had taken all reasonable precautions that a CHA normally would have under the circumstances. It is another matter that investigations later established that IECs of both Raviraj Enterprises and Tarang Impex had been obtained from the DGFT by using fake addresses, but this was

never in the knowledge of CHA, nor can CHA be held responsible for such aberration by the importers.

Therefore, it is clear that the CHA have not failed in exercising due diligence and have hence not violated Regulation 13(e) of the CHALR Act, 2004 as has been alleged in Article of Charge-III.

12.4 Article of Charge-IV

This charge is based on the mistaken notion that the CHA had not met the importer. Here too, the CHA's statement dated 5.2.2010 states otherwise, but the IO has disregarded the same. The CHA reiterates that Oasis Shipping Pvt Ltd also submitted a letter dated 25.11.08 to the Noting Section to the effect that they were in receipt of the Manifest Corrector for amending the name of consignee in the 1GM from Raviraj Enterprises to Tarang Impex and requesting AC/Noting for allowing the said amendment. In such circumstances, any other responsible CHA would have done the same.

Thus, it can be seen that at all stages, CHA had acted as per law and in complete good faith. The CHA had taken all reasonable precautions that a CHA normally would have under the circumstances. It is another matter that investigations later established that IECs of both Raviraj Enterprises and Tarang Impex had been obtained from the DGFT by using fake addresses.

Therefore, it is clear that the CHA have hence not violated Regulation 13(n) of the CHALR, 2004 as has been alleged in Article of Charge IV and upheld by the IO.

In such circumstances, where none of the four Articles of Charge can be held as proved as absolutely no evidence in their support could be brought on record by the department, it is clear that the CHA had not violated or contravened any provisions of the CHALR Act, 2004. All the four Articles of Charge leveled against CHA need to be therefore necessarily dropped to provide much needed relief and the CHA may be exonerated of all the charges.

13. DISCUSSIONS AND FINDINGS

13.1 I have carefully gone through the records of the case, material evidence on record, the Inquiry Report, the submissions made during the personal hearing held on 01.08.2012 and 22.12.2023 as well as the CB's written submission dated 17.07.2012.

13.2 I observe that based on offence report received from the Special Intelligence and Investigation Branch (Import), Nhava Sheva, Articles of Charges were framed

in this case for violation of Regulations 13(a), 13(d), 13(e) & 13(n) of CHALR, 2004 (now Regulations 10(a), 10(d), 10(e) & 10(m) of CBLR, 2018), and Inquiry was initiated vide Notice of Inquiry dated 30.11.2010. The Inquiry Officer submitted the Inquiry Report vide letter dated 30.04.2012 holding all four charges of violations as 'Proved'.

13.3 For brevity, I refrain from reproducing the brief facts of the case which have already been discussed above. I, now, examine the charges against the CB sequentially.

13.3.1 With regard to violation of Regulation 13(a) of CHALR 2004 (now Regulation 10(a) of CBLR, 2018):

13.3.1.1 The said Regulation 13(a) of CHALR 2004 reads as:-

“A Customs House Agent shall obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as Customs House Agent and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs;”

13.3.1.2 The CB have contended in their defense that no evidence was brought out by IO to establish that their assertions were not true; that the IO cannot challenge the authenticity of the documents presented before him after conclusion of inquiry; that the CB cannot be held responsible for fake addresses given in the IECs as they had no prior knowledge of the bogus nature of the importers and they are not required to verify the address in the IEC; that even if the firms did not exist at the given IEC addresses, it does not detract from the fact that importer Jagdish Bishnoi approached them and handed over the IEC certificates, Bill of Lading, NOC from original importer and authorization.

13.3.1.3 I observe that Shri Jayesh D Muni, Director of the CB has stated in his statement dated 05.02.2010 that in the case of first time clients he would ask the importer to submit his IEC, office proof and personal ID and reference of the person who has recommended them; that the importer was recommended by his friend Shri Bhavesh Thakkar who had accompanied the importer, whose name he did not recollect; that while filing B/E, Shri Bhavesh Thakkar informed the CB that the original Bill of Lading was in the name of a different importer (M/s Raviraj Enterprises) and thereafter Shri Bhavesh came to his office to collect a blank letterhead for giving amendment letter which was signed by Shri Bhavesh himself without the CB's knowledge.

13.3.1.4 I find that despite the strong claims of the CB that he used to verify the IEC, address, identity, references of first-time importers, the CB did not

check the office address proof of the importers, M/s. Raviraj Enterprises and M/s. Tarang Impex. These addresses were found to be fake/bogus during the premises verifications conducted by Central Excise, Bhayander Division, Thane - II Commissionerate. I find that the address of Ms Raviraj Enterprises was a flat in a residential building, which in itself should have aroused the suspicion of the CB, if his claims of ignorance are indeed true. The CB's claim that he did not recollect the name of the importer also gives credence to the possibility that the CB never interacted with the importer and had merely relied on the recommendation of his friend Shri Bhavesh Thakkar. I find that while the CB was admittedly made aware by Shri Bhavesh that the original Bill of Lading was in the name of M/s Raviraj Enterprises, the CB chose to ignore this fact and allowed Shri Bhavesh Thakkar to take a blank letterhead from his office. Thus, it is clear that the CB never met the importer and blindly accepted the documents from Shri Bhavesh Thakkar who was neither the IEC holder nor the authorized representative of the importer.

13.3.1.5 The CB has further claimed that he received authorization from the importer who was accompanied by Shri Bhavesh Thakkar. This claim, in view of the facts and circumstances of the case, rings false, as authorization in the name of a party cannot be given before the grant of amendment to file the Bill of Entry in the name of that party. I find that the authorization letter submitted by the CB during the inquiry proceedings is not genuine as it bears a bogus address and does not have any landline/cellular phone number or any reference number. There is also no date or serial number or acknowledgement stamp of the CB which can prove that the letter was received before undertaking clearance. This makes it obvious that the authorization has been created as an afterthought to cover up their culpability for violation of the charge. Therefore, I hold that the CB has violated the provisions of Regulation 13(a) of CHALR, 2004 (now Regulation 10(a) of CBLR, 2018).

13.3.2 With regard to violation of Regulation 13(d) of CHALR 2004 (now Regulation 10(d) of CBLR, 2018):

13.3.2.1 The said Regulation 13(d) of CHALR 2004 reads as:-

“A Customs House Agent shall advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs;”

13.3.2.2 The CB has submitted that no evidence came up during the inquiry proceedings to even remotely suggest that they had not advised the importer; that the CB had met the importer and it cannot be said that he did not advise the importer as he had not met them; that if he had known any suspicious fact

about the importer at the time of filing Bill of Entry or even later, it would have been his foremost duty to bring the same to the knowledge of the Customs department.

13.3.2.3 I find that the CB did not bother to verify the address or the antecedents of the importer and merely relied on the documents brought by his friend Shri Bhavesh. It also cannot be proven that the CB met the importer. The CB was admittedly aware that the name of importer was different in the Bill of Lading and the amendment permission had not been granted. In spite of this, the CB did not advise the importer regarding the necessity of obtaining amendment and instead went ahead and filed the Bill of Entry in the name of M/s. Tarang Impex. The fact that the name of importer was different in the Bill of Lading was also not brought to the notice of Customs by the CB. Therefore, I hold that the CB has violated the provisions of Regulation 13(d) of CHALR, 2004 (now Regulation 10(d) of CBLR, 2018).

13.3.3 With regard to violation of Regulation 13(e) of CHALR 2004 (now Regulation 10(e) of CBLR, 2018):

13.3.3.1 The said Regulation 13(e) of CHALR 2004 reads as:-

“A Customs House Agent 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;”

13.3.3.2 The CB has contended that he was unaware of the fact that the importer had misused the IEC and filed Bill of Entry in the name of M/s Tarang Impex without amendment in IGM by Customs; that what was verifiable about the IEC from the system was done; that in the circumstances any responsible CB would have done the same as done by them and they have not failed in exercising due diligence. The CB has further stated that M/s Oasis Shipping Pvt Ltd also submitted a letter dated 25.11.08 to Noting Section for amending the name of the consignee in the IGM from M/s Raviraj Enterprises to M/s Tarang Impex and requesting AC/Noting to allow the said amendment.

13.3.3.3 I observe that the CB had allowed Shri Bhavesh to take away blank letterhead for amendment. Thus the CB was indeed aware that B/E was being filed in the name of M/s Tarang Impex without amendment in IGM by Customs. The CB filed Bill of Entry in the name of another consignee without obtaining necessary amendment thereby committing gross misconduct.

13.3.3.4 Despite CB's claims that they have acted in complete good faith, the CB has failed to establish that reasonable steps were taken by them in the

context of the case. It cannot be a blind faith or belief as observed by the Hon'ble CESTAT, Mumbai in the case of Interscape (2006 (198) ELT 275]. In the present instance the CB's faith / belief in the correctness of their work appears to have been misplaced faith or blind belief as the facts above amply demonstrate.

13.3.3.5 Thus, the CB has failed to exercise due diligence in ascertaining the information to be imparted to the importer that filing of Bill of Entry without carrying out amendment in name of consignee amounts to non-compliance of statutory requirement under the Customs Act, 1962. Therefore, I hold that the CB has violated the provisions of Regulation 13(e) of CHALR, 2004 (now Regulation 10(e) of CBLR, 2018).

13.3.4 With regard to violation of Regulation 13(n) of CHALR 2004 (now Regulation 10(m) of CBLR, 2018):

13.3.4.1 The said Regulation 13(n) of CHALR 2004 reads as:-

“A Customs House Agent shall ensure that he discharges his duties as Customs House Agent with utmost speed and efficiency and without avoidable delay.”

13.3.4.2 The CB has contended in his defense that this charge is based on the mistaken notion that the CB had not met the importer whereas his statement recorded by Customs on 05.02.2010 states otherwise and it should have been taken into account.

13.3.4.3 I find that the CB has shown casual approach in carrying out their work in the case of the impugned imports. The amendment request from M/s Oasis Shipping Pvt Ltd, for the consignment imported earlier by M/s Raviraj Enterprises, to M/s Tarang Impex was not granted. However, the Bill of Entry No, 691317 dated 21.11.2008 was filed in the name of M/s Tarang Impex by the charged CB.

13.3.4.4 I find that the Bill of Entry was filed without obtaining amendment from Import Noting in contravention of the provisions of Section 30 of the Customs Act, 1962 in another firm's name which happened to be a fake IEC, again in contravention of the Rules resulting in illegal imports. This renders the CB accountable for their inefficiency in the discharge of the obligations cast upon them under the CHALR, 2004. Therefore, I hold that the CB has violated the provisions of Regulation 13(n) of CHALR, 2004 (now Regulation 10(m) of CBLR, 2018).

13.4 I find that the defense of the CB is on a single motive of finding faults in the Inquiry Report. However, the CB was not able to bring substantial evidence

to establish that the allegations were wrong. Such defense is not acceptable particularly in view of the incriminating evidences, which has been clearly brought out above. The acts of the CB display gross misconduct in the discharge of their obligations towards the Customs and the violation of the impugned Regulations by the CB is clearly brought out above.

13.5 It is also seen that the CB was found to be involved in another case of export of rags/tailorwaste for fraudulent availment of drawback. Thus, the CB appears to be a habitual offender and has no regard for the obligations laid out in the CHALR 2004 (now CBLR 2018), and as such is not worthy of sympathetic consideration.

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

14.1 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.....The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed.....Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations.....”

14.2 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.*

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

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

14.4 Further, the CB during personal hearing conducted on 22.12.2023 stated that once authorisation letter was produced, all other charges stand disapproved, and submitted several case laws in his support. These case laws mainly cover the following issues:

- (i) Authorisation not required to be obtained directly from importer, such a discrepancy not sufficient to revoke license/forfeit security.
- (iii) non-compliance of time schedule under Licensing Regulations.

14.5 I have gone through the various Case Laws referred by the said CB and observed that the ratios of the judgment are not squarely applicable in the instant case, as the facts and circumstances are different and clearly distinguishable. As already discussed above, the claim of submitting authorisation letter by the CB is inconsistent as authorisation in the name of a party cannot be given before the grant of amendment permission to file Bill of Entry in the name of that party. Further, the authorisation letter not only bears a bogus address but also does not carry any contact/reference number, date/serial number, acknowledgement stamp of CB to prove that the same was accepted by the CB before undertaking clearance.

14.6 With regard to matter of time-limits under CHALR/CBLR Regulations, I rely on the decision of Hon'ble High Court of Judicature at Bombay in the case of Principal Commissioner of Customs (General), Mumbai Versus Unison Clearing P. Ltd. reported in 2018 (361) E.L.T. 321 (Bom.), which stipulates that:

“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.”.

In view of the above, I find that the IO has stated in the Inquiry Report that the CB neither submitted his written submission within stipulated period, nor appeared for hearing on 25.02.2011 and 25.03.2011. Further, the CB informed vide letter dated 28.03.2011 that they require copies of relied upon documents to file their defence statement, and later vide letter dated 02.05.2011 requested additional documents/witnesses in support of defence, which was subsequently withdrawn by the CB. The Inquiry was further delayed as in spite of efforts by the CB and the Presenting Officer, the owner of M/s. Tarang Impex could not be traced for examination. Therefore, I hold that such delay cannot be attributed to the Inquiry Officer alone and even so cannot be fatal to outcome of inquiry and cannot neutralise the acts of omission and commission already committed by the CB. Hon'ble High Court of Judicature at Bombay also observed that the time limit contained in Regulation 20 cannot be construed to be mandatory and is held to be directory.

15. In a regime of trade facilitation, a lot of trust is being placed on the Customs Broker who directly deals with the importers/exporters. Failure to comply with regulations mandated for the CB gives room for unscrupulous persons to get away with import-export violations and revenue frauds. The CB deliberately and knowingly indulged himself in filing the Bill of Entry using bogus IEC of M/s. Tarang Impex in spite of the fact that the request for amendment of consignee name in IGM from M/s. Raviraj Enterprises to M/s. Tarang Impex was not granted by the Customs. The facts on record prove that CB had violated various provisions of CHALR, 2004 (now CBLR, 2018) with mensrea.

16. I hold that the proof of charges in inquiry are acceptable and tenable based on the available evidence, the facts and circumstances of the case, which certainly warrant penal action against the CB. Therefore, for their acts of omission and commission, CB M/s. Muni Cargo Movers Pvt Ltd (11/929) is held liable and guilty for violating the provisions of CHALR, 2004 (now CBLR, 2018). I hold that the CB has failed to discharge his duties cast upon him with respect to Regulation 13(a), 13(d), 13(e) & 13(n) of CHALR, 2004 (now Regulation 10(a),

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10(d), 10(e) & 10(m) of CBLR, 2018), and is liable for penal action. Accordingly, I pass the following order.

ORDER

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

(i) The CB License No. 11/929 is ordered to be revoked under Regulation 14 of the CBLR, 2018 (earlier Regulation 20(1) of CHALR 2004).

(ii) I hereby order for forfeiture of entire amount of security deposit furnished by the CB, under Regulation 14 of the CBLR, 2018 (earlier Regulation 20(1) of CHALR 2004).

(iii) I refrain from imposing penalty due to lack of relevant provision in CHALR 2004, which were effective at the time of commission of offence.

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

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


(SUNIL JAIN)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
MUMBAI ZONE-I

To,
M/s. Muni Cargo Movers Pvt. Ltd., (CB No. 11/929),
402, Apollo Arcade, R.K. Singh Marg,
Andheri (E), Mumbai-400 069

Copy to:-

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