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.- S/8-02/2020-21 CBS

आदेश दिनांक/Date of Order: 07.10.2022

CAO No. 47/CAC/PCC(G)/SJ/CBS Adj संख्या:

जारी दिनांक/Date of issue: 07.10.2022

DIN: 20221077000000000AF13

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

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

ORDER-IN-ORIGINAL मूल आदेश

ध्यान दीजिए/ N.B. :

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

2. इस आदेश के विरुद्ध अपील माँगे गए राशी के **7.5%** के भुगतान पर सीमाशुल्क अधिनियम, 1962 की धारा 129A(1B)(i) के 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, यथोतखंडपीठ 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 क्षेत्री यखंडपीठ, के M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai के संदर्ब 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 विरुद्द 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 ब्याजवलगाएगए 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

1. M/s Sun Clearing Agency (PAN No. AIDPA8045M) (CB No. 11/2083) (hereinafter referred to as the "Custom Broker or CB) having registered office at 02, Bldg No 1. Pancharati CHS Ltd, Jivdaya Lane, Bhatwadi, Ghatkopar (W), Mumbai-400084, was issued a CB license by Principal Commissioner of Customs (General), Mumbai under regulation 7(1) of CBLR, 2013 (now regulation 7(2) of CBLR, 2018). Shri Kishore Kisan Auti is Proprietor in the CB firm. As such, bound to follow the regulation made under CBLR, 2013 (Now CBLR, 2018).

2. Intelligence received by Mumbai Zonal Unit of Directorate of Revenue Intelligence (hereinafter referred to as the "DRI, MZU") that a syndicate led by Shri Bhavik Mehta and others are involved in smuggling of E-waste i.e. old and used computers and laptops from Hong Kong which are transshipped through Dubai to Nhava Sheva. Intelligence further suggested that a live consignment is imported in the name of M/s AMP Impex vide container No. TRLU5257576 under IGM No.2237690 dated 26.10.2019. The consignment was destined to ICD Pimpri, Pune from JNCH vide Transshipment Permit Number 1826614 dated 02.11.2019. The syndicate planned to break the seal and open the doors of container in order to replace all the E-waste products and replace these with the locally procured goods i.e. '40 Rolls of Corrugation Reels 40 Inches DECKLE SPECS 140 GSM 22 BT' in the said container as per declaration, re-seal it with the duplicate seal and send the container to its destination ICD, Pimpri, Pune. The details of the declared goods as per the IGM and Bill of Lading is tabulated as under:

Table-1

Sr. No.	IGM No. &Date	Container No.	Description of items IGM and Bill of Lading	Qty (in Kgs)	CFS
1	2237690 dated 26.10.2019	TRLU 5257576	'40 Rolls of CorrugationReels 40 Inches DECKLESPECS140 GSM /22 BF'	20500Kgs-Grossweight, 20000 Kgs-Net Weight	ICD Pimpri, Pune

3. The above said container was intercepted by DRI at the entrance of a private godown situated at Gala No. 21, Plot No. 22, Harihar Corporation, Dapode, Bhiwandi on 03.11.2019 where the doors of the container were

opened and its cargo was being shifted into the above said gala. The accused, Shri Bhavik Mehta who was found to be the importer and beneficial owner and Shri Sagar Rohidas Bangar, who facilitated the diversion and had arranged for the IEC, were found at the godown premises carrying out the destuffing of the goods from the container. Two unused bottle seals with serial number 2621 and 2636 were found in the possession of Shri Bhavik Mehta. Another person named Shri Kishor Auti, a customs broker, who had facilitated Shri Bhavik Mehta and Shri Sagar Bangar was also present there. One more person, Shri Ruchit Joshi, an employee of Shri Bhavik Mehta was present at the godown at Bhiwandi. On enquiry, Shri Sagar Rohidas Bangar produced one print out of a Bill of Entry No. 4468899 dated 31.10.2019 having 3000 pcs. of desktop cabinet and 6858 pcs of Perfumes declared on it, which is found to be fake later one later on.

4. On preliminary examination, the goods in the container no. TRLU 5257576 were found to be E-Waste, i.e. Old and Used Computers/laptops. On specific query, Shri Bhavik Mehta informed that the import consignment comprised of around 1400 used laptops and 3500 used desktops without hard disks and RAM Processors. Shri Bhavik Mehta and Shri Sagar Bangar admitted that this was actually a transhipped container to ICD, Pimpri, Pune where the goods were declared as 40 Jumbo Paper roll and they diverted the said container to Gala No. 21, Plot No. 22, Harihar Corporation, Dapode, Bhiwandi with the intention to shift the used desktop cabinets/laptops into the said godown and replace them with 40 Deckles {Jumbo Rolls) of paper which they had purchased locally and were presently stored in a nearby godown premises at H.No. 1036/8, Building No. F-7, Krishna Complex, Near Monginis, Harihar Corporation, Dapode Village, Bhiwandi. Thereafter, Shri Sagar Bangar produced the transhipment related document of the container no. ZWFU8161989 pertaining to earlier consignments. The godown premises was also found to contain similar goods viz. E-Waste, i.e. Old and Used Computers/laptops which appeared to have been smuggled in a similar manner from earlier consignments. Shri Bhavik Mehta was also found to be in possession of cash currency notes of Rs. 5 Lakhs which was taken into possession by DRI, MZU considering the said currency as sale proceeds out of the smuggling of the earlier consignments. The container Number TRLU 5257576 laden on truck trailer No. MH-04 EL 8651 was shifted to CFS-Speedy Multimodes Limited, Sonari Village, Tal-Uran, Raigad Dist. for

further investigations.

5. The examination of the goods of container No. TRLU 5257576 was conducted in the presence of Shri Ruchit Joshi and representative of M/s. Speedy CFS and found to contain 3477 old & used computer cabinets and 1480 old and used Laptops of different brands in place of declared cargo. Further, the examination of the goods at the godown premises at Gala No. 21, Plot No. 22, Harihar Corporation, Dapode, Bhiwandi was conducted in the presence of Shri Ruchit Joshi and found to contain goods as detailed below in Table-2.

Table-2

Sr. No.	Description	Make	No.of Pieces
1	Old/Used Desktop Cabin /CPU (2nd Generation,3rd Generation, 4th Generation & Duo Core)	LENOVO/HP /DELL	4202
2	Old/Used Internal Hard Disks -1000 GB	Seagate	1000
3	Old/Used Internal Hard Disks - 500GB	Seagate	1250
4	Keypad	Laptop Accessories	108
5	Camera		400
6	Battery		73
7	Cleaning Foam (Bottle)		16

Furthermore, the examination of the goods at the godown premises at H.No. 1036/8, Building No. F-7, Krishna Complex Near Monginis, Harihar Corporation, Dapode Village, Bhiwandi, Thane was conducted in the presence of Shri Ruchit Joshi and found to contain goods as detailed below in Table-3.

Table-3

Sr. No.	Description	Quantit
1	Paper rolls of Corrugation Reel	68 Rolls

6. Preliminary Statement of Shri Ruchit Joshi, who was present at the Bhiwandi godown premises at the time of interception of container no. TRLU 5257576, was recorded on 03.11.2019 under Customs Act, 1962, further on 07.11.2019 and on 08.11.2019 wherein interalia, he stated that the imports of old and used computers were done by Mr Bhavik Mehta in the guise of Corrugation Reel which were being handled by one Mr Sagar R. Bangar who was arranged through one Kishor Auti; Mr

Bhavik Mehta had arranged godowns in Taloja and in Bhiwandi Taluka and the imported old and used computer CPU's were stored at these places; the invoices were made in the name of M/s Link world Technologies but most of the clearance were made by two dummy companies created in the name of M/s Sky Enterprises and M/s R.S. enterprises.

7. Preliminary statement of Shri Bhavik Mehta, the beneficial owner of the import consignment, was recorded on 03.11.2019, further on 15.11.2019, on 03.12.2019 and on 03.02.2020 under Customs Act, 1962 wherein interalia, he stated that he had imported four consignments since August, 2019 under IEC No. AAUPW 8007B of M/s AMP Impex and the items declared in all these four consignments were Corrugated Reel; that the consignments of import vide Bill of Entry No. 4952425 dated 18.09.2019 and Bill of Entry No. 5167818 dated 04.10.2019 were brought to one godown hired by Sagar at Gala No. G-24, Balaji Industrial Park, Taloja, Navi Mumbai and after destuffing the used computers, it was loaded with paper rolls and sent to ICD, Pimpri for custom clearances; that the import consignment in container TRLU 5257576 were imported by him, for which all the work of customs formalities were handled by Shri Sagar Rohidas Bangar who was introduced to him through one Kishor Auti; that he had also imported two consignments of used computers from Kolkata Port vide Bills of Entry No. 4559092 dated 19.08.2019 and 4836733 dated 09.09.2019. The said imports had been made under the IEC No. AQJP0636P and FYAPS8687G which were arranged by Kishor Auti; that he gave the payment to Shri Kishor Auti after arrival of the Container who in turn gave the same to Sagar Bangar and all the payments were made in cash; that he had given Rupees 37 lakhs to Shri Kishor Auti all in cash for the three consignments delivered at Nhava Sheva.

8. Preliminary statement of Shri Sagar Rohidas Bangar was recorded on 03.11.2019 and further on 23.01.2020 under Section 108 of the Customs Act, 1962 wherein interalia, he stated that till date, he handled four import transactions for Bhavik Mehta; that on being shown the account statement dated 16.10.2019, wherein the amount of Rupees 1,73,400/- was deposited in cash to his account he stated that the amount was given to him by Shri Kishor Auti and to the best of his knowledge this amount was received by Shri Kishor Auti from Shri Bhavik Mehta.

9. Preliminary statement of Shri Kishor Auti was recorded on 03.11.2019,

further on 07.11.2019 and on 25.11.2019 and on 13.01.2020 under Section 108 of the Customs Act, 1962 wherein interalia, he stated that:

- the container TRLU 5257576 was imported by one Bhavik Mehta and he had merely acted as the in-between and introducer of Shri Sagar Rohidas Bangar, the person who handled the work of customs formalities;
- till that date Shri Bhavik Mehta imported four imports of used computer cabinets in the IEC of M/s. AMP Impex;
- driven by the lure of money, and as he was aware that Mr. Bhavik Mehta was dealing with imports of second hand computers, he introduced Mr Bhavik Mehta to Mr Sagar Rohidas Bangar;
- he also helped Shri Bhavik Mehta in importing two consignments of used computers from Kolkata Port vide Bills of Entry No. 4559092 dated 19.08.2019 and 4836733 dated 09.09.2019. The said imports were made under the IEC No. AQJP0636P and FYAPS8687G which were arranged by his friend Shri Govind;
- he was in knowledge of one more container of similar E-Waste imported by Shri Bhavik Mehta from one private agent Jubhed Bhai, in container no. SEGU 4081890 against Bill of Entry No. 5511942 dated 01.11.2019. The said container had arrived at Ludhiana and was awaiting clearance;
- till that date he received Rs. 6 lakhs from Shri Sagar Rohidas Bangar as his commission;
- On being asked about the consignments of used computer at Ludhiana, he stated that Shri Bhavik Mehta approached him for the clearances of one consignment of used computer from Dubai to India;
- he contacted one Jubhed Bhai through Ashwin, one of his friend, for the same and he arranged the consignment of used computer;
- the deal was made with the monetary consideration of 15 lakhs which was to be paid to Jubhed Bhai after the delivery of the consignment in India and this amount was to be paid by Shri Bhavik Mehta;
- E-Way Bill No. 801066883958 dated 30.08.2019 issued by RUPAK, Chanditala, West Bengal to M/s Linkworld Technologies / Global Imports, Kandivali (West), Mumbai was for the delivery of the goods from Kolkatta to Mumbai and it was sent to him by Shri GovindKautkar;
- Shipping Order No. FSEA/AHEAD-13429 wherein Shipper was mentioned as HongKong BTS Technology Ltd., HongKong was the draft copy of the Bill of Lading No. FSEA/AHEAD-13429 in

respect of the Mother board for consignment to Kolkata and forwarded to me by Shri GovindKautkar.

10. Preliminary statement of Shri Manoj Laxman Waghmare (IEC holder) was recorded on 05.11.2019 and on 03.12.2019 under Customs Act, 1962 wherein interalia, he stated:

- that due to financial difficulties, he discussed with his brother-in-law Shri Allwin Saldana expecting some help who introduced him with Shri Sagar Rohidas Bangar in Borivali in July, 2019 who gave him a proposal that if he opened a company and obtained an IEC-Code in his name, then they would give him Rs. 25,000/- per each import consignment imported in his company;
- that, in the month of August 2019, he applied for and on 08.08.2019, obtained an IEC code MUPW8007B in the name of M/s. AMP Impex. Similarly, he also applied for GST No. and got registered under the Shops and Establishment Act in the name of M/s. AMP Impex;
- that, on 13.08.2019, himself, in the name of his company, M/s. AMP Impex-First Party, executed an agreement with M/s. Revanshi Enterprises (Proprietor/ Partners- Sagar Rohidas Bangar- Second party);
- that all the payments regarding commission and customs clearance charges were paid to him by Sagar Rohidas Bangar in his bank account;
- that the Invoice, packing list and bill of lading were forwarded to him by Sagar Rohidas Bangar which were then forwarded to Shri R. B. Indore of CB Firm M/s Global Ocean Clearing Pvt. Ltd. who then approached ICD Pimpri, Pune for obtaining Transhipment Permit (TP) ;
- that when the container used to arrive at NhavaSheva Port, Sagar Rohidas Bangar used to arrange for some driver, who would get the delivery of the container from the port by producing the TP code. The container was then transhipped to ICD, Pimpri for clearance;
- that for the customs duties and other charges in respect of the consignments imported in the name of M/s AMP Impex, amount was transferred by Shri Sagar Rohidas Bangar in the account of M/s AMP Impex;
- that initially he had transferred the amount of Rs. 1,00,000 / - on 24.09.2019 by NEFT and then on 09.10.2019, Shri Sagar Rohidas Bangar, again transferred an amount of Rs. 4,50,000/- from M/s R. E.

Enterprises for the payment of Customs duties and other charges. Shri Sagar Rohidas Bangar had also transferred Rs. 1,73,400/- on 16.10.2019 and Rs. 3,00,000/-on 30.10.2019;

- that all these payments made by Shri Sagar Rohidas Bangar had been used for payment of Customs duties, Transportation charges to A.S. Logistics and CHA Charges.

11. Preliminary Statement of Shri Anand Gulab Adhal, caretaker of gala situated at F-7, Gala No. 8, Krishna Complex, Dapode Village, Bhiwandi, was recorded on 11.11.2019. In his statement, he interalia stated that Shri Bhavik Mehta, Shri Kishor Auti&, Shri Sagar Rohidas Bangar met him in the last week of September to enquire about the gala and they finalized one at F-7, Gala No. 8, Krishna Complex, Dapode Village, Bhiwandi on rent of Rs. 40000/- per month and deposit of three months' rent in advance; till date he did not receive any rent or deposit for the said gala; Rs. 1,20,000/-were transferred by Shri Bhavik Mehta in the Account of Shri Somnath Patil, the Godown owner.

12. Arrest of Shri Bhavik Mehta, Shri Sagar Bangar and Shri Kishor Auti and subsequent release on Bail: Based on various evidences such as their presence at the crime scene, recovery of duplicate bottle seal bearing the same number with the one which was found cut from the container TRLU 5257576, recovery of old and used computer desktops and laptops in the said container on inspection, recovery of Rs. 5 Lacs in Cash from Shri Bhavik Mehta, presence of cover cargo at the Bhiwandi godown, recovery of incriminating documents/records from the residence of Shri Bhavik Mehta and from their voluntary admission, it appeared that Shri Bhavik Mehta and Shri Sagar Bangar were involved in the smuggling of old and used computer desktops and laptops valued at around Rs.2.35 Crores. Shri Bhavik Mehta and Shri Sagar Bangar were therefore arrested on 04.11.2019 under the provisions of Section 104 of the Customs Act, 1962 and produced before the Court of Hon'ble First Class Judicial Magistrate, Uran Court, where they were remanded to Judicial Custody at Taloja Central Jail. Subsequently, considering the active role of Shri Kishor Auti and his participation in crime and his voluntary admission, it appeared that he was also involved in the smuggling of old and used computer desktops and laptops and was therefore arrested on 07.11.2019 under the provisions of Section 104 of the Customs Act, 1962 and produced before the Court of Hon'ble First Class Judicial Magistrate, Uran Court where he was remanded to Judicial Custody at Taloja Central Jail. Shri Kishor Auti was subsequently released on bail vide Order dated 18.11.2019 whereas

Shri Bhavik Mehta & Shri Sagar Bangar were released on bail vide order dated 26.11.2019.

13. Forensic examination of contents of mobile phones withdrawn during investigations mobile phones taken over from Shri/s Bhavik Mehta, Sagar Bangar and Kishor Auti were forensically examined. The data retrieved from these mobile phones contained interalia, images of old and used computer cabinets presumably from the earlier consignments, images of cover cargo, i.e. corrugated paper reel, images of duplicate bottle seals, commercial invoices, packing lists, Several Whatsapp conversations between all these three pointing to the smuggling of E-wastes.

14. Evidences from mobile phones retrieved from Shri Kishor Auti: Shri Kishor Auti's phones were found to contain several WhatsApp conversations with persons identified by him as Shri Bhavik Mehta and Shri Sagar Bangar. These Whatsapp conversations clearly show how he was closely monitoring with Shri Sagar Bangar as well as shri Bhavik Mehta about the status of packing of the cover cargo, status of the import container, etc. He has also transferred the amount of Rs. 52,500/- via UTR No. JSVP• 19187002542 dated 28.08.2019 which has been used for the purpose of the payment of Rent at the godown at Taloja by Shri Sagar Bangar. These WhatsApp conversations appear to be crucial evidences establishing the conspiracy of smuggling E-Wastes by the consortium of Shri Bhavik Mehta, Shri Kishor Auti and Shri Sagar Bangar in smuggling of E-wastes.

15. From the investigation in the above-mentioned case done by DRI, MZU, it appeared that Shri Kishore Auti, Proprietor of Customs Broker, M/s Sun Clearing Agency (CB No. 11/2083) (PAN No. AJDPA8045M) acted as a member of syndicate to smuggle the E-waste in guise of declared goods. For which, SCN vide file no. DRI/MZU/NS/ENQ-145/2019 dated 22.09.2020 was issued by DRI, MZU and Shri Kishore Auti, Proprietor of Customs Broker, M/s Sun Clearing Agency was also made noticee.

15.2 Whereas, in the instant case, it appears that CB failed in its obligation as Shri Kishore Auti, Proprietor of CB, M/s Sun Clearing Agency knew that E-waste i.e. old and used computers and laptops, in place of declared item, are being imported by syndicate. He was very well aware and involved in this illegal import for lure of money. He has accepted in his statement that he is the middle man of Shri Bhavik Mehta (beneficial owner of the consignment) and Shri Sagar Rohidas Bangar (handler of customs formalities); that Shri Bhavik Mehta also

imported four such consignments before in the IEC of M/s AMP Impex; that for lure of money, he helped Shri Bhavik Mehta in import of two consignment of used computers from Kolkata port as well as he was aware of such import being done from Ludhiana port; that he received Rs. 6 Lakh from Shri Sagar Rohidas Bangar as commission. Hence, it appears that Shri Kishore Auti, Proprietor of CB, is regularly involved in such illegal import of e-waste. CB failed to bring this matter to the notice of concerned customs authorities.

15.3 Whereas in the instant case, it appears that CB, M/s Sun Clearing Agency failed to exercise due diligence. The criminal conspiracy was hatched by Shri Bhavik Mehta, Shri Sagar Rohidas Bangar, Shri Kishore Auti, Proprietor of CB firm and others to defraud the Government of India by causing import of prohibited items, E-waste i.e. old and used computers and laptops by resorting to mis declaration of the goods by manipulation and fabrication of import invoices.

15.4 Whereas in the instant case, it appears that the CB, M/s Sun Clearing Agency failed to discharge it duty as a Customs Broker. It is apparent that Shri Kishore Auti, Proprietor of CB was aware about manipulation and fabrication of import invoices. Investigation has revealed that the CB was involved in the improper importation through mis declaration of the goods which proofs that CB failed to discharge its duty as a Customs Broker and the CB took no step to stop/restrict the illegal imports even after knowing all the facts i.e. import of E-waste in place of declared goods and forgery &fabrication of import invoices.

15.5 Whereas in the instant case, it appears that CB, M/s Sun Clearing Agency failed to verify correctness of Importer Exporter Code (IEC) number, GSTIN, identity of his client and functioning of his client at the declared address by using reliable, independent authentic documents, data or information. The verification of IEC and its holder is very necessary however, IEC of M/s AMP Impex was being used by Shri Sagar Rohidas Bangar in place of Shri Manoj Laxman Waghmare (actual IEC holder) and same was accepted by Shri Manjon Laxman Waghmare. Shri Kishore Auti, Proprietor of CB was also helping Shri Sagar Rohidas Bangar in import of the E-waste i.e. old and used computers and laptops in place of declared goods and he also knew that Shri Sagar Rohidas Bangar is not actual IEC holder.

15.6 From the facts stated above, it appeared that the CB failed in fulfilling the obligation of a Customs Brokers as mandated under CBLR, 2018 and appeared to have violated the regulation 10(d), 10(e), 10(m) and 10(n) of CBLR, 2018.

> **Regulation-10(d):** *"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):** *"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(m):** *"discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay."*
>
> **Regulation- 10(n):** *"verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information."*

16. SUSPENSION OF LICENCE: -

In view of the facts stated above, CB, M/s Sun Clearing Agency (CB No. 11/2083) (PAN No. AJDPA8045M) was found liable for their acts of omissions and commissions leading to contraventions of the provision under Regulation 10 (d), (e), (m) and (n) of the Customs Brokers Licensing Regulations, 2018 which amounts to breach of trust and faith reposed on the CB by the Customs. M/s Sun Clearing Agency (CB No. 11/2083) (PAN No. AJDPA8045M) have, therefore, prima facie, failed to fulfil their responsibilities as per provisions of regulations of CBLR, 2018. Hence, in exercise of powers conferred under the provisions of Regulation of CBLR, 2018, license of Customs Broker, M/s Sun Clearing Agency (CB No. 11/2083) (PAN No. AJDPA8045M) was suspended by Principal Commissioner of Customs, NCH, Mumbai vide order no. 37/2021-22 dated 20.01.2022 and the same was continued vide Order No. 43/2021-22 dated 24.03.2022.

17. SHOW CAUSE NOTICE: -

M/s Sun Clearing Agency (PAN No. AIDPA8045M) (CB No. 11/2083)was issued a Show Cause Notice (SCN) No. 36/2021-22 dated 31.03.2022 by the Principal Commissioner of Customs (General), NCH, Mumbai, Zone- I asking them to show cause as to why the licence bearing no. 11 /2083 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, as elaborated in the Show Cause Notice. They were directed to appear for a personal hearing and to produce proof of evidence/documents If any, in their defence to Shri P. Digvijayam Assistant Commissioner of Customs, Admin, Export, New Customs House, Mumbai who was appointed an inquiry officer to conduct inquiry under regulation 17 of CBLR, 2018.

18. INQUIRY REPORT

Inquiry Officer submitted inquiry report dated 13.06.2022 wherein the charges against CB M/s Sun Clearing Agency (CB No. 11/2083) i.e. violation of Regulation 10 (d), 10(e),10(m) and 10(n) of CBLR,2018 were held '**proved**'.

18.2 Inquiry officer mentioned that a letter dated 19.04.2022 & 12.05.2022 were sent to the Customs Broker M/s Sun Clearing Agency (CB No. 11/2083) to appear for personal hearing before him on 25.04.2022 &19.05.2022 respectively in connection with the inquiry.

In reply to the subject Notice, M/s Sun Clearing Agency through his learned Advocate tendered a letter dated 25.04.2022. Vide the letter all the charges levelled against the CB were completely denied as the same are devoid of facts and merits. Learned Advocate further submitted that the charges levelled are also not sustainable in law as CB, M/s Sun Clearing Agency have not contravened any provisions of the Customs Broker Licensing Regulation, 2018 or Customs Act, 1962 or any other law for time being in force and refuted each of the charges in details.

18.3 Submission by CB in defence: - The following facts in defence of M/s Sun Clearing Agency were submitted by the CB:

18.3.1 In defence of the violation of Regulation 10(d) of CBLR, 2018:

It was submitted that the license of M/s. Sun Clearing Agency is not connected with the alleged matter. No such Bill of Entry, where goods were mis-declared, was filed through his CB license in the name of M/s Sun Clearing Agency.

Moreover, Shri Bhavik Mehta and Shri Sagar Bangar are common friend of Shri Kishor Auti. Hence, he exchanged their mobile number in good faith. He did not anticipate whether any mis-declaration of goods could have been occurred by them. Furthermore, Shri Kishor Auti did not know about any activities by Shri Bhavik Mehta and Shri Sagar Bangar.

Shri Kishor Auti did not know anything about M/s APM Impex and he did not know the owner of M/s. APM Impex. Moreover, there is not such direct evidence that Shri Kishor Auti, Proprietor of M/s Sun Clearing Agency was involved in the smuggling of computer parts etc. Since, Shri Kishor Auti did not know about anything regarding this case, the question of informing Deputy Commissioner does not arise.

Further, it was contended that Shri Kishor Auti never took any money in the subject matter and also there is no evidence in this regard with the department. Therefore, there is no *mensrea,* or a gross and flagrant violation of Regulation 10(d) of the CBLR, 2013 and cannot be faulted with the present charges.

18.3.2 <u>In defence of the violation of Regulation 10(e) of CBLR, 2018:</u>

The learned Advocate denied the allegation suggesting that proprietor of M/s Sun Clearing Agency was neither the importer, nor the CB nor the financial beneficiary in those 04 Bills of Entry as mentioned in the SCN as the same are not relevant with the CB. Hence, the question of manipulation or fabrication of documents by Shri Kishor Auti does not arise.

Further, argued that if there is any mis-declaration of the goods in all or any of the four Bills of Entry, M/s Sun Clearing Agency, even though they are Customs Broker, cannot be held responsible for the same as there was no evidence that M/s Sun Clearing Agency had done mis-declaration of the goods in the impugned consignments. There is no evidence on record to show the involvement of the CB in the present case.

In this context, the CB relied on the following case laws:

(i) **Thawerdas Wadhoomal V/s CC (General) Mumbai, [2008(221) ELT 252 (Tri.-Mumbai)] -**

"It was inter-alia held that CHA files shipping documents on the basis of material given to him by his clients & if in case of such exercise of his functioning, he believes in good faith that these documents were genuine, he is not liable for penal action."

(The said case was approved by Hon'ble Bombay High Court, in 2009 (240) ELT, A 143 (Bombay High Court).

(ii) **Manjunatha Shipping Pvt. Ltd. Versus Commr. Of Customs, Bangalore [2019(369) E.L.T. 1010 (Tri. - Bang.)]** -Customs House Agent - Forfeiture of security deposit and penalty - Classification declared by appellant as per direction of importer - Importer being solely

responsible for the classification and not the appellant who has limited role in filing the documents as per the advice of the importer, action should be taken against the importer for any wrong classification - Address filed by Customs Broker as appearing in the IEC Code which can be corrected only by DGFT - Further, impugned order passed without giving proper opportunity of hearing to the appellant, violative of principles of natural justice - No serious allegation against appellant - Therefore, forfeiture of security and imposition of penalty set aside - License having already expired and appellant having already applied for renewal as per appellant, Commissioner directed to examine his application for renewal of license and decide the same in accordance with law - Regulations 21 and 23 of Customs House Agent Licensing Regulations, 1984. *[paras 6, 7]*

(iii) WCI Shipping Pvt. Ltd. Versus Commissioner of Customs, Chennai [2020 (372) E.L.T. 369 (Tri. - Chennai) -

Penalty on Customs Broker - Facilitation/Abatement of concealment of good/non-declaration of restricted items imported by importer, Allegation of - Antecedents or whereabouts of importer verified by looking into DGFT website and no attempts made to meet importer in person - HELD : When Ministry of Commerce granting IE license exhibited details of IEC holders in Website, appellant cannot be found fault for accepting same to be true and correct - Also, apart from statement of employees that previous consignment of same importer also comprised of non-declared goods, no evidence on record to doubt previous consignments Also, statements retracted and not subjected to cross-examination - Apart from allegation that appellant ought to have been cautions, no evidence on record to show that appellant had any knowledge of import of undeclared goods - When importer consciously conceals certain facts from Customs Broker, it cannot be presumed that Customs Broker abetted in such offence merely because he has not met importer face-to-face - Nothing to hold that appellant intentionally connived or abetted in non-declaration/concealment of the goods - Impugned order is set aside - Sections 112(a) and 114AA of Customs Act, 1962. *[paras 5, 6, 7]*

18.3.3 <u>In defence of the violation of Regulation 10(m) of CBLR, 2018:</u>

It has been advocated that Shri Kishor Auti, Proprietor of CB had no connection with the alleged mis-declared import. There is no such evidence that M/s Sun Clearing Agency was involved in the improper importation through mis-declaration of the goods.

Therefore, the charges labelled on M/s Sun Clearing Agency that the CB has discharged inefficiently its duty as a Customs Broker and the CB took no step to stop/restrict the illegal imports even after knowing all the facts i.e. import of E-waste in place of declared goods and forgery and fabrication of import invoices, is absolutely irrelevant and not legally tenable. Shri Kishor Auti neither the importer, nor the CB or the financial beneficiary in those 04 matters. The question of manipulation or fabrication of documents by Shri Kishor Auti does not arise.

18.3.4 <u>In defence of the violation of Regulation 10(n) of CBLR, 2018:</u>

In defence against the mentioned charge, it was contested that though, M/s Sun Clearing Agency was a Customs Broker, but they are not connected with any of the Four Bills of Entry for which the SCN was issued by the DRI. Then the question of having knowledge by M/ s Sun Clearing Agency about mis-declaration made by the importer should not arise. Shri Kishor did not know about the activities done by Shri Sagar Bangar. Actually, the charged CB had no knowledge about any mis-declaration of the goods. In this situation, the question of verification of IEC number, GSTIN, Identity of the Importer should not arise.

Thus, all the charge against the CB has been categorically denied.

18.3.5 Besides of the abovementioned submission, Shri Kishor Auti, Proprietor of M/ s Sun Clearing Agency, further submitted the following arguments in his defence:

- The statement given by Shri Bhavik Mehta, Shri Kishor Auti and Shri Sagar Bangar were retracted.
- The whole case made out on the basis of merely "Confessional Statements" of the several people.
- The statement given by Shri Bhavik Mehta, Shri Kishor Auti and Shri Sagar Bangar was given under fear, force, intimidation and coercion. Such statements may not be taken as evidence.
- Since, the doctrine of promissory estoppels is not applicable in taxation matters and therefore confessional statements cannot be relied upon to fasten liability upon the Appellant especially when the department has failed to establish that the goods imported and declared by the Appellant are not of the declared value and

quality.

- The statements recorded under Section 108 of the Customs Act, 1962 are not comparable to the confession recorded by the Magistrate under Section 164 of the Cr.P.C. and as such the statements recorded under Section 108 of the Customs Act, 1962 are required to be corroborated by supportive documentary evidences and thus the statements recorded by the Investigating Agency cannot be given any credence until it passes the test in inquiry proceedings.

18.3.6 Shri Kishor Auti further submitted that he is neither the importer, nor the CB nor any beneficiary in the subject Bills of Entry. Moreover, he didnot do any monetary transaction with Shri Bhavik Mehta and Shri Sagar Bangar.

18.3.7 Learned Advocate of the proprietor of M/s Sun Clearing Agency argued that though Shri Kishor Auti known to Shri Bhavik Mehta, but it does not mean that Shri Kishor Auti has abetted Shri Bhavik Mehta in their imports. Moreover, contended that CB is not linked with the cases and the license was not used in this case and therefore, the suspension of the CB license is too harsh to him. In this context, the CB relies on the following case laws:

(1) Order passed by the Commissioner of Customs (General), NCH, Mumbai - I in the matter of M/s Odharam Bulchand clearing and Forwarding Pvt. Ltd. (CB No. $1^1/_166$) vide CAO No. ^{111}/CAC/CC(G)/SRP/CBS (Admn) dated 22.10.2014 issued under F. No. S/8-55/2013-14-CBS/ 1667 dated 22.10.2014.

(ii) Order passed by the Commissioner of Customs (General), NCH, Mumbai - I in the matter of M/s D R Soneta 86 Sons (CHA No. $1^1/_674$) (Now known as M/s Soneta Logistics Private Ltd), Mumbai vide CAO No. 110/2013 /CAC/CC(G)/PKA/CBS(Admn) dated10.09.2013 issued under F. No. S/8-24/2013 Admn(CHA) dated 16.09.2013.

18.3.8 Apart from the abovementioned arguments/case laws, the Noticee also relied on the following case laws in support of dropping of the charges and reinstate of the CB License:

(^{1}) Jaiswal Import Cargo Servies Ltd. Versus Commr. Of Cus., New Delhi [2019 (370) E.L.T. 1366 (Tri. - Del.)].

(ii) Fairdeal Shipping Agency Pvt. Ltd. Versus C.C. (General), Mumbai [2019 (370) E.L.T. 451 (Tri. - Mumbai)].

(iii) Ace Global Logistics Versus Commissioner of Customs, Chennai-VIII [2018 (364) E.L.T. 841 (Tri. - Chennai)].

(iv) Apson Enterprises Versus Commissioner of Customs (EP), ACC, Mumbai [2017 (358) E.L.T. 817 (Tri. - Mumbai)].

(v) Bajaj Enterprises Versus Commissioner of Customs (General), Mumbai [2017 (347) E.L.T. 675 (Tri. - Mumbai)].

18.3.9 The Noticee/CB further requested to grant permission to cross examine Shri Bhavik Mehta, Shri Ruchit Joshi and Shri Sagar Bangar before inquiry officer.

18.3.10 The CB submitted that there is no substance in any of the charges levelled against the charged CB i.e. Regulation 10(d), 10(e), 10(m) & 10(n) of CBLR, 2018 and thus requested to drop the charges & not to be revoked the CB license. Furthermore, requested that the security amount deposited in the department by the CB should not be forfeited and no penalty should be imposed on the CB under Regulation 14 read with 17 86 18 of the CBLR, 2018.

18.4 Opportunity of the Personal Hearing was given to the CB on 19.05.2022 which was attended by the CB along with his learned Advocate Shri Aswani Kumar Prabhakar on the same day whereby the Noticee again categorically denied all the charges made against him as denied vide his reply received on 26.04.2022 to the SCN No. 36/2021-22 dated 31.03.2022. He further requested to allow him to cross examine Shri Bhavik Mehta, Shri Ruchit Joshi and Shri Sagar Bangar before inquiry officer at inquiry stage, as he has not been given opportunity as was requested, for during the Personal Hearing before the Principal Commissioner of Customs (General), NCH, Mumbai - I on 02.03.2022. Records of the Personal Hearing are enclosed herewith as Annexure.

18.5 Discussion and findings of inquiry officer: -

In counter of the defence submitted in regards to the allegation of the violation of Regulation of CBLR, 2018, Inquiry officer submitted following facts:

(I) During the course of interception by the officers of DRI of Container No. TRLU 5257576, Shri Kishor Auti, proprietor of M/s Sun Clearing Agency, who facilitated Shri Bhavik Mehta and Shri Sagar Bangar was found actively present at the place of incident i.e. a private godown premise viz. Gala No. 21, Plot No. 22, Harihar Corporation, Dapode,

Bhiwandi.

(II) Here, it was relevant to emphasize that M/ s Sun Clearing Agency has submitted in his defence that Shri Bhavik Mehta, Shri Kishor Auti and Shri Sagar Bangar have retracted their statements and deserve no evidentiary value.

However, on the contrary, I find that the facts submitted by Shri Bhavik Mehta, Shri Kishor Auti and Shri Sagar Bangar during the course of preliminary statements are in proper confirmative with each other and internally co-related.

(III) Inquiry submitted that he finds that the address i.e. F-7, Gala No. 8, Krishna Complex, Dapode Village, Bhiwandi, is the same place where locally purchased Jumbo Rolls Paper were stored with the intention to replace the consignment imported in Container No. TRLU 5257576. At this juncture, it is required to highlight the following two facts:

(i) Shri Kishor Auti along with Shri Bhavik Mehta and Shri Sagar Bangar met Shri Anand Gulab Adhal, caretaker of gala situated at F-7, Gala No. 8, Krishna Complex, Dapode Village, Bhiwandi in the last week of September (as stated by Shri Anand Gulab Adhal) just prior to the incidence, clearly reflects the act of preparation and intrinsic mensrea of the alleged.

(ii) As per the records, it is evident that Shri Anand Gulab Adhal has not retracted his statement till date.

(IV) Investigation carried out by DRI suggested that one more consignment of old and used computer cabinets were being imported by this group from the ICD Ludhiana. Shri Kishor Auti in his statement dated 25.11.2019 admitted that Shri Bhavik Mehta approached him for the clearance of one consignment of used computer from Dubai to India.

(V) During the course of investigation conducted by DRI, it revealed that four more consignments of old and used computer cabinets were being imported vide Bills of Entry No. 4350056 dated 03.08.2019, 4382711 dated 06.08.2019, 4559097 dated 19.08.2019 and 4836458 dated 09.09.2019 by the trio of this group from Kolkatta Port. The said imports had been made under the IEC No. AQJP0636P and FYAPS8687G of M/s Rupak and M/s VPS International respectively which were arranged by Shri Kishor Auti and these facts were also admitted by Shri Kishor Auti.

(VI) Forensic examination of the contents of Mobile phones of Shri

Bhavik Mehta, Shri Sagar Bangar and Shri Kishor Auti resulted in inter-alia retrieving of images of old and used computer cabinets presumably from the earlier consignments, images of cover cargo (i.e., corrugated paper reel), images of duplicate bottle seals, commercial invoices, packing lists, Several Whatsapp conversations amongst all these three persons pointing to the smuggling of E-waste.

(VII) Mobile phones of Shri Bhavik Mehta were found to have several images of bottle seals, commercial invoices, packing lists, private chits containing detailed accounts of receipts and expenditures of cash, containers with old and used computer desktops and laptops. Most importantly, Shri Bhavik Mehtas's phones were found to contain recorded audio conversations which included conversations with person identified by him as Shri Kishor Auti, in which intricate details covering the smuggling of old and used computer desktops and laptops were discussed.

(VIII) Shri Kishor Auti's phones were found to contain several WhatsApp conversations with persons identified by him as Shri Bhavik Mehta and Shri Sagar Bangar. These WhatsApp conversations clearly show how he was closely monitoring with Shri Sagar Bangar as well as Shri Bhavik Mehta about the status of packing of the cover cargo, status of the import container, etc. He has also transferred the amount of Rs. 52,500/- via UTR No. JSVP 19187222542 dated 28.08.2019 which has been used for the purpose of the payment of Rent at the godown at Taloja by Shri Sagar Bangar.

Inquiry officer relied on the digital evidences which are corroborative in nature and suggest that Shri Kishor Auti is one of the conspirators in smuggling of E-waste which is also admitted by the trio in their statements and further established through Whatsapp chats and images.

On the basis of above discussions, Inquiry officer found that the WhatsApp conversations are crucial evidences in establishing the conspiracy of smuggling of E-Wastes by the syndicate of Shri Bhavik Mehta, Shri Kishor Auti and Shri Sagar Bangar.

(IX) Financial Investigation carried out in the matter also suggest that smuggling and subsequent trade of E-waste involve only cash transactions and no receipts or invoices are generated as entirely carried out by several agents in illicit market. In the voluntary submissions made under the Customs Act, 1962, Shri Kishor Auti and Shri Sagar Bangar admitted that Shri Bhavik Mehta used to give them the cash and Shri Bhavik Mehta also

admitted that he received cash through Hawala agents which was utilized for smuggling.

18.6 COMMENTS OF THE INQUIRY OFFICER: -

18.6.1 Inquiry officer found that during the course of investigations, the Investigating Officers have recorded various statements including Shri Ruchit Joshi, Shri Bhavik Mehta, Shri Sagar Rohidas Bangar, Shri Anand Gulab Adhal and Shri Kishor Auti. These statements were recorded under the provisions of Section 108 of the Customs Act, 1962. On perusal of these statements it is noticed that all the statements are voluntary in nature and corroborated the facts about the roles played by various persons including Shri Bhavik Mehta, Shri Sagar Rohidas Bangar and Shri Kishor Auti in smuggling of E-waste.

18.6.2 With respect to contention of denial of statements and filing of retraction is concerned, Inquiry officer found that these statements were recorded by the Investigating Officer, which have evidentiary value and can be used against the said person or any other person in any judicial or quasi-judicial proceedings. The officer who recorded the statements is not a police officer and he had informed them that their statements may be used in any judicial/quasi-judicial proceedings. Further, on perusal of each of the statements of Shri Kishor Auti, it is observed that at the end of the certificate in his own handwriting written that the statement given by him is voluntarily without any force, threat or coercion. Further, in his subsequent statements, he admitted about his consequent statement was his true and correct statement recorded as per his say. Further, as per submission, Shri Bhavik Mehta, Shri Sagar Rohidas Bangar and Shri Kishor Auti retracted their statements. However, the corroborative evidences including statement of Shri Anand Gulab Adhal, Forensic evidences, circumstantial evidences and Financial Investigation are crucial evidences establishing the conspiracy of smuggling of E-waste by the syndicate of Shri Bhavik Mehta, Shri Sagar Rohidas Bangar and Shri Kishor Auti. Therefore, it is pretty clear that the statements recorded by Investigating Agency having evidentiary value are substantiating the charges framed against the Charged CB firm of contravention of provisions of CBLR, 2018.

18.6.4 In this regard, Inquiry officer mentioned plethora of judicial pronouncements on the issue of acceptability of statement recorded

under provisions of section 108 of Customs Act, 1962. Inquiry officer placed reliance on following case laws:

(i) Ram Chandra Mehta V/s. the State of West Bengal (1969) 2 S.C.R. 461, A.I.R. 1970 S.C. 940 and in the case of Percy Rustomji Basta V/s. the State of Maharashtra A.I.R. 1971 S.C. 1087;

(ii) Hon'ble Supreme Court in the matter of Badaku Jyoti Savant V/ s. State of Mysore [1966 AIR 1746 = 1978 (2) ELT J 323 (SC 5 member bench)] laid down that statement to a customs officer is not hit by section 25 of Indian Evidence Act, 1872 and would be admissible in evidence and in conviction based on it is correctness.

(iii) BhanaKhalpaBhai Patel Vs. Asstt. Collector of Customs, Bulsar [1997 (96) E.L.T. 211 (SC)];

(iv) Kanhaiya Lal Vs. UOI reported in 2008 -TIOL-06-SC-NDPS;

(v) Percy Rustomji Basta V/s. State of Maharashtra [AIR-1971-SC-1087]

(vi) Commissioner of C. Ex., Madras Vs. Systems & Components Pvt. Ltd. [2004 (165) E.L.T. 136 (S.C.)] at Para 5 observed that:-"It *is* a *basic and settled law that what is admitted need not be proved".*

(vii) Assistant Collector of Central Excise, RajamundryV/s. Duncan Agro Industries Ltd. [(2000) 7 SCC 53];

(viii) C. Sampath Kumar V/s. The Enforcement Officer, 1997 (96) ELT 511 (SC);

(ix) NareshSukhwaniV/s. Union of India, 1996 (83) E. L. T. 258 (S C);

(x) Kishan Chand and Others V/s. Collector of Central Excise 1987 (29)ELT 198;

18.6.5 Further, the Charged CB in their written submission and during the course of Personal hearing keep instance in calling for witnesses and allow them to cross-examine. In this regard, inquiry officer found that the statements of Shri Kishor Auti have the evidentiary value and can be used as evidence in substantiating the charges levelled against the firm. His statements were corroborated with the statements of Shri Bhavik Mehta and Shri Sagar Rohidas Bangar. Also it was corroborated with circumstantial evidences in form of forensic evidences retrieved by the investigating agency which made it pretty clear that Shri Kishor Auti is co-conspirator in importation of E-waste. Further, the SCN issued by the Principal Commissioner of Customs (G), NCH, Mumbai does not have any list of witnesses to whom to be examined during the course of Inquiry Proceedings.

Hence, inquiry officer could not go beyond the four corners of the SCN. Further, it is matter of fact that the witnesses, the Charged CB desired to be cross-examined in the present proceedings are Co-accused/Co-noticees in the SCN issued by the Investigating Agency, therefore, the testimony given by them should not be credential to be used in present proceedings. Therefore, inquiry officer was of the opinion that cross-examination of three witnesses sought by the Charged CB firm is not relevant at this juncture and therefore denied.

18.6.7 Inquiry officer relied upon certain case laws w.r.t. denying permission for cross-examination of the co-accused/co-noticees, which are as follows:

(i) Commissioner of Customs, Hyderabad V/ s. M/ s. TallajaImpex reported in 2012 (279) ELT 433 (Tri. Bangalore);

(ii) Jagdish Shakar Trivdi V/ s. Commissioner of Customs, Kanpur reported in 2006 (194) ELT 290 (Tri. Delhi)

(iii) N.S. Mahesh V/ s. Commissioner of Customs, Cochin reported in 2016 (331) ELT 402 (Kerala)

(iv) M/s. Sridhar Paints V/ s Commissioner of Central Excise, Hyderabad reported in 2006(198) ELT 514 (Tri-Bang);

18.6.8 In view of the facts above and judicial pronouncements, inquiry officer held that the cross-examination of the co-accused/co-noticee in the same case, is ought to be denied, being there are substantial evidence in form of voluntary statement of Shri Kishor Auti which was further corroborated by Shri Bhavik Mehta, Shri Sagar Rohidas Bangar and Shri Anand Gulab Adhal is available in record. Further, the investigating agency with help of Forensic evaluation of the mobile phones taken during investigation brought on record that Shri KishorAuti was closely monitoring with Shri Sagar Bangar as well as Shri Bhavik Mehta about the status of packing of the cover cargo, status of the import container, etc.

18.7 <u>ARTICLES OF CHARGES: -</u>

Inquiry Officer now discussed the charge as under:

18.7.1 <u>ARTICLE OF CHARGE - I:</u> As per Regulation 10 (d) of CBLR, 2018 *"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".*

A. In the instant case, inquiry officer submitted that the import was carried out using IEC of M/s AMP Impex. However, facts uncovered during investigation clearly indicated that the beneficial owner of the said goods is Shri Bhavik Mehta. Shri Manoj Laxman Waghmare, IEC holder expressed complete ignorance about such imports of E-waste of old and used computer cabinets/laptops. Shri Bhavik Mehta in his statement inter-alia accepted that the import consignment in container TRLU 5257576 had been imported by him, for which all the work of customs formalities was handled by Shri Sagar Rohidas Bangar who introduced to him through one Mr. Kishor Auti.

B. Investigation in the matter revealed that Shri Kishor Auti was very well aware and involved in the illegal importation of E-waste for lure of money. He also accepted that he is the middle man of Shri Bhavik Mehta (beneficial owner of the consignment) and Shri Sagar Rohidas Bangar (handler of Customs formalities). Shri Kishor Auti had also helped Shri Bhavik Mehta in import of two consignment of used computer from Kolkata port and Ludhaina port in the past.

C. Shri Kishor Auti had received Rs. 6 Lakh from Shri Sagar Rohidas Bangar as commission. Here, inquiry officer relied on the Judgement of the Hon'ble Supreme Court in the case of Commissioner of Customs V/s. K. M. Ganatra and Co. in Civil Appeal No. 2940 of 2008 wherein the following observation of Hon'ble CESTAT Mumbai in M/s. Noble Agency V/ s. Commissioner of Customs, Mumbai was approved:

"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)".*

Here, it is pertinent to highlight that despite a license holder of CB, Shri Kishor Auti not only derelict his duty but also found to be a conspirator of the syndicate. In nutshell, CB failed to bring this matter to the notice of concerned Customs Authorities.

In view of the facts above, it appears that the Charged CB firm did not fulfil its obligation reposed under Regulation 10(d)

of CBLR, 2018 and thus, the Article of Charge-I for contravention of Regulation 10 (d) of CBLR, 2018 framed against the Charged CB firm appears to have been **PROVED** conclusively.

18.7.2 ARTICLE OF CHARGE - II: As per Regulation 10 (e) of CBLR, 2018 *"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".*

A. In the present case, it is a matter of fact that CB, M/ s Sun Clearing Agency failed to exercise the due diligence reposed on. The criminal conspiracy was hatched by Shri Bhavik Mehta, Shri Sagar Rohidas Bangar , Shri Kishore Auti (Proprietor of CB firm) and others to defraud the Government of India by causing import of prohibited items, E-waste i.e. old and used computers and laptops by resorting to mis-declaration of the goods by manipulation and fabrication of import invoices. It is evident that the Customs Broker processed the documents even after being aware of the information.

B. IO also relied on the Judgement of the Hon'ble Madras High Court in case of M/s Cappithan Agencies Versus Commissioner of Customs, Chennai-Viii, (2015(10) LCX 0061), wherein the following observation was made:

13. The very purpose of granting a license 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 license 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 license 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 license 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 license has been passed.

14. 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 license of the petitioner is sustainable in law, which warrants no interference by this Court. Accordingly, this writ petition is dismissed.

C In a regime of trade facilitation, a lot of trust is placed on the Customs Broker who directly deals with the importers/exporters. Failure to comply with regulations by the CB mandated in the Regulations give room for unscrupulous persons to get away with import-export violations and revenue frauds. The CB failed to bring the malpractice adopted by the importer to the notice of the Customs. All the persons including the CB involved knowingly abetted/ supported the illegal

activity of unscrupulous persons in order to earn money by unfair means. Thus, there is clear intent of malafide exhibited by the CB who participated in the fraud. As brought out in discussions above, there is all round failure of the CB. The infraction would have resulted in undesirable consequences if the consignment had been cleared without intervention of the DRI. The facts on record prove that CB violated various provisions of CBLR 2018 with mensrea.

D. In view of the facts above, it appears that the Charged CB firm did not accomplish his obligation reposed under Regulation 10(e) of CBLR, 2018 and thus, the Article of Charge for contravention of Regulation 10 (e) of CBLR, 2018 framed against the Charged CB firm appears to have been **PROVED** conclusively.

18.7.3 ARTICLE OF CHARGE - III: As per Regulation 10 (m) of CBLR, 2018 "*discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay*"

A. Enquiry carried out in the matter clearly divulges that Shri Kishor Auti, Proprietor of CB was aware about manipulation and fabrication of import invoices.

B. Investigation further reveals that the CB was involved in the improper importation through mis-declaration of the goods which proves that CB discharged inefficiently its duty as a Customs Broker and the CB took no step to stop/restrict the illegal imports even after knowing all the facts i.e. import of E-waste in place of declared goods and forgery & fabrication of import invoices.

C. The investigation established that Shri Kishor Auti not only one was of the beneficiaries but also the conniver of the subject improper importation. The facts cannot be ignored that Shri Kishor Auti's phones were found to contain several WhatsApp conversations with persons identified by him as Shri Bhavik Mehta and Shri Sagar Bangar. These WhatsApp conversations clearly show how he was closely monitoring with Shri Sagar Bangar as well as Shri Bhavik Mehta about the status of packing of the cover cargo, status of the import container, etc.

D. In view of the facts above, it appears that the Charged CB firm did not fulfil his obligation reposed under Regulation 10(m) of CBLR, 2018 and thus, the Article of Charge for contravention of

Regulation 10 (m) of CBLR, 2018 framed against the Charged CB firm appears to have been **PROVED** conclusively.

18.7.4 ARTICLE OF CHARGE - IV: As per Regulation 10 (n) of CBLR, 2018 *"verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information."*

A. Inquiry officer submitted in his report that it is crystal clear that Shri Kishor Auti as being a Customs Broker did not verify the IEC holder which was reposed on him under the Regulation.

B. In the present matter, IEC of M/s. Impex was being used by Shri Sagar Rohidas Bangar in place of Shri Manoj Laxman Waghmare who is actual IEC holder and the fact has been accepted by Shri Manoj Laxman Waghmare in his statement. Further, it is beyond doubt that Shri Kishor Auti, proprietor of CB was not only helping Shri Sagar Rohids Bandar but also was actively participated in illegal importation of E-waste. In fact, he acted as an accomplice in this illegal activity.

C. It was well known fact to Shri Kishor Auti that Shri Sagar Rohidas Bangar is not an actual IEC holder as he was monitoring all the activities very closely to avoid any unforeseen consequences.

D. Thus the Article of Charge framed for contravention of Regulation 10 (n) of CBLR, 2018 against the CB firm appears to have been **PROVED** conclusively.

In view of the above discussions and findings, Inquiry officer submitted that it the Charged CB firm contravened the provisions of Regulations 10 (d), (e), (m), & (n) of CBLR, 2018 and consciously aided and abetted the wrong-doings.

19. PERSONAL HEARING & RECORDS OF PERSONAL HEARING: -

A personal hearing was granted by Principal Commissioner of Customs, NCH, Mumbai and Shri Sanjay Kalra, Advocate, on behalf of the CB appeared before Principal Commissioner of Customs, NCH, Mumbai through virtual mode representing the CB on 18.08.2022. He reiterated and summarised the brief facts of the case and his written submissions dated 12.08.2022. He denied all charges levelled against the CB under regulations 10(d), 10(e), 10(m) and 10(n) of CBLR 2018.

It is submitted by the CB that Inquiry officer simply reproduced the allegations and the statement whatever mentioned in SCN. Also the Inquiry

Officer did not give any chance for cross examination. Even inquiry officer did not call for the deposition also. He simply recorded all his findings based on the statements already on record, based on the SCN already given by the investigation agency. This is sheer violation of Regulation 17(4) of the CBLR 2018. Regulation 17(4) which says that *"The Customs Broker shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings, and where the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines permission to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing." Therefore, it is not will of Inquiry Officer's whether examination is to be denied or accepted.*

The whole case was never handled by his client and also the particular container was not handled by the CB. The IEC holder and beneficiary are not his client. He did not file any Bill of Entry, therefore they denied having violated the provisions of CBLR 2018.

20. DISCUSSION AND FINDINGS: -

I have carefully gone through the case, the show cause notice dated 31.03.2022, material facts on record, DRI SCN dated 22.09.2020, Submissions of CB and examined the role and conduct of CB in the case before me.

20.2.The charges against the CB i.e. violation of Regulation 10(d), 10(e), 10(m) and 10(n) of CBLR, 2018 made vide Show Cause Notice No. 36/2021-22 dated 31.03.2022 issued by Pr. Commissioner of Customs (General), NCH, Mumbai were held as proved by the Inquiry Officer.

20.3 From the facts stated in SCN dated 31.03.2022 and the outcome of the investigation, it appeared that the CB M/s Sun clearing agency (11/2083) failed in fulfilling the obligation of a Customs Brokers as mandated under CBLR, 2018 and violated the regulation 10(d), 10(e), 10(m) and 10(n) of CBLR, 2018.

20.4 CB relied upon various case laws in their favour of arguments but it is found that in the instance case, CB was present at offence scene, recovery of duplicate bottle seals from offence scene, recovery of cash from the offence scene, whatsapp conversations of CB with Shri Bhavik Mehta and Shri Sagar Bangar, Transfer of money by CB for the payment of rent at the godown at taloja, voluntary statements of CB, the data retrieved from mobile phones contained interalia, images of old and used computer cabinets presumably from the earlier consignments, images of cover cargo, i.e. corrugated paper reel, images of duplicate bottle seals, commercial invoices, packing lists, Several Whatsapp conversations pointing to the

smuggling of E-wastes. The CB was clearly involved in facilitating the import and with an intention to avail undue benefit. He supressed the information from DC/AC of Customs. It proves that the CB was involved in the smuggling of old and used computers and laptops.

Thus, the ratio of the judgements sought to be relied upon by the CB are not applicable in the present case as the facts and circumstances are different and clearly distinguishable.

20.5 I now examine the charges in the SCN sequentially. It was alleged that CB did not exercise due diligence in discharging their obligation as required under Regulation10(d), 10(e), 10(m) and 10(n) of CBLR, 2018.

20.5.1 ***Regulation 10(d) of CBLR, 2018:*** **-**

"the CB 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;

It is evident from the Investigation report that Shri Kishor Auti was very well aware and involved in the illegal importation of E-waste for lure of money. He also accepted that he was the middle man of Shri Bhavik Mehta (beneficial owner of the consignment) and Shri Sagar Rohidas Bangar (handler of Customs formalities). Shri Kishor Auti in statements dated 03.11.2019 & 07.11.2019 stated that he helped Shri Bhavik Mehta in import of two consignment of used computer from Kolkata port and Ludhaina port in the past.

Inquiry officer in his report observed that the import was carried out using IEC of M/s AMP Impex. However, facts uncovered during investigation clearly indicated that the beneficial owner of the said goods was Shri Bhavik Mehta. Shri Manoj Laxman Waghmare, IEC holder expressed complete ignorance about such imports of E-waste of old and used computer cabinets/laptops. Shri Bhavik Mehta in his statements inter-alia accepted that the import consignment in container TRLU 5257576 was imported by him, for which all the work of customs formalities was handled by Shri Sagar Rohidas Bangar who was introduced to him through one Mr. Kishor Auti.

Inquiry officer also highlighted that despite a license holder of CB, Shri Kishor Auti not only derelicted his duty but was also found to be a conspirator of the syndicate.

I find that since the CB was very well aware and involved in the illegal importation of E-waste for lure of money and failed to bring this matter to the concerned Customs Authorities. Therefore, I find that the

charge against the Customs Broker for violation of the Regulation 10(d)of CBLR, 2018 as **proved** and thus I hold that the CB has violated the provisions of Regulation 10(d)of CBLR, 2018.

20.5.2 *Regulation 10(e) of CBLR, 2018: -*

"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".

From the investigation report, it appeared that the criminal conspiracy was hatched by Shri Bhavik Mehta, Shri Sagar Rohidas Bangar, Shri Kishore Auti, Proprietor of CB firm and others to defraud the Government of India by causing import of prohibited items, E-waste i.e. old and used computers and laptops by resorting to mis-declaration of the goods by manipulation and fabrication of import invoices.

IO also relied on the Judgement of the Hon'ble Madras High Court in case of M/s Cappithan Agencies Versus Commissioner of Customs, Chennai-Viii, (2015(10) LCX 0061).

I find that since the CB was involved in the illegal importation of E-waste with malafide intention. He should have advised the importer about restriction on import of old and used computers rather to avail monetary benefit. All messages / documents exchange on whatsapp, various statements and disguise of real CB prove that the CB conspired the modus operandi with others. Therefore, I find that the charge against the Customs Broker for violation of the Regulation 10(e) of CBLR, 2018 as **proved** and thus I hold that the CB has violated the provisions of Regulation 10(e) of CBLR, 2018.

20.5.3*Regulation 10(m) of CBLR, 2018: -*

"discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay"

Investigation reveals that the CB was involved in the improper importation through mis-declaration of the goods which proves that CB discharged inefficiently its duty as a Customs Broker and the CB took no step to stop/restrict the illegal imports even after knowing all the facts i.e. import of E-waste in place of declared goods and forgery & fabrication of import invoices. Rather involved in the conspiracy of illegal importation of old and used computers i.e. E-waste.

The investigation established that Shri Kishor Auti was not only one of the beneficiaries but also the conniver of the subject improper importation. The facts cannot be ignored that Shri Kishor Auti's phones were found to contain several WhatsApp conversations with persons identified by him as Shri Bhavik Mehta and Shri Sagar Bangar. These WhatsApp conversations clearly show how he was closely monitoring with Shri Sagar Bangar as well as Shri Bhavik Mehta about the status of packing of the cover cargo, status of the import container, etc.

IO in his report submitted that Enquiry carried out in the matter clearly divulges that Shri Kishor Auti, Proprietor of CB was aware about misdeclaration of goods by manipulation and fabrication of import invoices.

I find that since the CB took no step to stop/restrict the illegal imports even after knowing all the facts i.e. import of E-waste in place of declared goods and forgery & fabrication of import invoices. Therefore, I find that the charge against the Customs Broker for violation of the Regulation 10(m) of CBLR, 2018 as **proved** and thus I hold that the CB has violated the provisions of Regulation 10(m)of CBLR, 2018.

20.5.4*Regulation 10(n) of CBLR, 2018: -*

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

It is clear from Inquiry officer's report and investigation report that IEC of M/s. AMP Impex was being used by Shri Sagar Rohida Bangar in place of Shri Manoj Laxman Waghmare who is actual IEC holder and the fact was accepted by Shri Manoj Laxman Waghmare in his statement. Further, it is beyond doubt that Shri Kishor Auti, proprietor of CB was not only helping Shri Sagar Rohids Bandar but also was actively participated in illegal importation of E-waste. In fact, he acted as an accomplice in this illegal activity.

It was well known fact to Shri Kishor Auti that Shri Sagar Rohidas Bangar is not an actual IEC holder as he was monitoring all the activities very closely to avoid any unforeseen consequences.

I find that since the CB was aware that IEC of M/s. AMP Impex was being used by Shri Sagar Rohida Bangar in place of Shri Manoj Laxman

Waghmare who is actual IEC holder. CB was not only helping Shri Sagar Rohids Bandar but also was actively participated in illegal importation of E-waste. Therefore, I find that the charge against the Customs Broker for violation of the Regulation 10(e) of CBLR, 2018 as **proved** and thus I hold that the CB has violated the provisions of Regulation 10(n)of CBLR, 2018.

20.6 I rely on the following judgements and hold that in the instant case, CB, M/s Sun Clearing Agency (CB No. 11/2083) has failed to adhere to the responsibilities as was expected in terms of the Regulations made under CBLR, 2018 and therefore rendered themselves liable for penal action under CBLR, 2018.

Ratio of The Hon'ble Tribunal judgement in the case of Rubal Logistics Pvt. Ltd. Vs. Commr. of Cus. (General), New Delhi reported in 2019 (368) E.L.T. 1006 [Tri. – Del.] is applicable in the present issue. The relevant para 6.1 of the said judgement are as under:

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

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

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

20.7 In a regime of trade facilitation, a lot of trust is placed on the Customs Broker who directly deals with the importers/exporters as the department does not interface with the importers/exporters. Failure to comply with regulations by the CB mandated in the Regulations gives room for unscrupulous persons to get away with import-export violations and revenue frauds. In this case, there was involvement of CB with others

persons in illegal import of goods. The facts on record prove that CB violated various provisions of CBLR 2018 with mens rea.

20.8 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 and judicial pronouncement mentioned supra which certainly warrant penal action against the CB. Therefore, for their acts of omission and commission, CB M/s. Sun Clearing Agency (CB No. 11/2083) is held liable and guilty for involving in smuggling of importation of E-waste i.e. old and used computer cabinets and laptops. I fully agree with the findings of the Inquiry Officer and hold that the CB has failed to discharge duties cast on them with respect to Regulation 10(d), 10(e), 10(m) and 10(n) of CBLR,2018 and are liable for penal action. Accordingly, I pass the following order.

ORDER

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

(i) I hereby impose penalty of Rs. 50,000/-(Rupees Fifty Thousand only) on M/s. Sun Clearing Agency, CB No. 11/2083 (PAN No.AIDPA8045M) under Regulation 18 of the CBLR, 2018.

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

(iii) The CB License No.11/2083 is ordered to be revoked 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 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 M/s. Sun Clearing Agency (PAN No. AIDPA8045M)
CB LicenceNo.(11/2083)

02, Bldg No 1. Pancharati CHS Ltd,
Jivdaya Lane, Bhatwadi,
Ghatkopar (W), Mumbai-400084

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. Directorate of Revenue Intelligence, Mumbai Zonal Unit wrt DRI F.No.DRI/MZU/NS/ENQ-145/2019 dated 22.09.2020.
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)

रोकड़ विभाग
Cash Department
11 OCT 2022
New Custom House, Mumbai
नवीन सीमाशुल्क सदन, मुंबई -1.