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/8-40/2019-20 CBS — आदेश दिनांक/Date of Order: 19.09.2022

CAO No. 40/CAC/PCC(G)/SJ/CBS Adj — जारी दिनांक/Date of issue: 20.09.2022

संख्या:
DIN : 20220927000000000C02F

द्वारा जारी : सुनील जैन — Issued By : Sunil Jain
प्रधान आयुक्त, सीमाशुल्क(सामान्य) — Pr. Commissioner of Customs (Gen.),
मुंबई -400 001 — Mumbai – 400 001.

ORDER-IN-ORIGINAL मूल आदेश

ध्यानदीजिए/ N.B. :

1. यहप्रतिउसव्यक्तिकोनिजीउपयोगहेतुनि:शुल्कप्रदानकीजातीहै,जिसेयहजारीकीजारहीहै।
This copy is granted free of charge for the private use of the person to whom it is issued.

2. इसआदेशकेविरुद्धअपीलमाँगेगएराशीके**7.5%**केभुगतानपरसीमाशुल्कअधिनियम,1962 कीधारा129A(1B)(i)केसंबंधमेंसीमाशुल्क,केंद्रीयउत्पादशुल्कएवंसेवाकरअपीलअधिकरणमेंस्वीकार्यहै,जहाँशुल्कयाशुल्कए वंजुर्मानाविवादितहों,याजुर्माना,जहाँसिर्फजुर्मानाहीविवादितहो।यहअपीलइसआदेशकेसंप्रेषणकीतारीखकेतीनमहीनेकेअंदर दायरकीजाएगी।यहअपीलसीमाशुल्क, केंद्रीयउत्पादशुल्कएवंसेवाकरअपीलअधिकरण (कार्यविधि) नियमावली, १९८२, केप्रावधानोंकेअंतर्गत, यथोतखंडपीठमेंस्वीकार्यहै।
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. यहसूचितकियाजाताहैकीइसआदेशकेअमलमेंआतेही,न्यायनिर्णयनअधिकारीकाअधिकारक्षेत्रसमाप्तहोताहैऔरसी माशुल्क, केंद्रीयउत्पादशुल्कएवंसेवाकरअपीलअधिकरण,पश्चिमक्षेत्रीयखंडपीठ,के M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbaiकेसंदर्भमेंजारीआदेशक्रमांकA/86617-86619/2018दिनांक 31.05.2018केअनुसारन्यायिकआदेशतदोउप्रांतन्यायनिर्णयनअधिकारी *functus officid* बनजाताहै
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 officid'* 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. यदिएकहीप्रकरणमेंउसीपक्षकारकेविरुद्दकईकारणबताओनोटिसलगाकरआदेशपारितकियाजाताहैतोप्रत्येकप्रकरण मेंअलगअपीलदायरकीजाए।
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. यहअपीलफॉर्मC.A.-3 मेंदायरकीजानीचाहिएजोकिसीमाशुल्क (अपीलस) नियमावली, १९८२केनियम 6 केतहतनिर्धारितहैएवंउसीनियमावलीकेनियम 3 केउपनियम 2 मेंउल्लेखितव्यक्तिद्वाराहस्ताक्षरितएवंसत्यापितकीजाएगी।
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) यदिप्रतिवादितआदेश, जिसकेविरुद्धअपीलकीगईहै, मेंशुल्कएवंमांगेगएब्याजवलगाएगएजुर्मानेकीराशिरु. पाँचलाखयाइससेकमहोतोरु. 1000/-, (ii)यदियहराशिरु. पाँचलाखसेअधिकहोकिंतुपचासलाखसेअधिकंनहोतोरु. 5000/- एवं (iii) यदियहराशिरु. पचासलाखसेअधिकहोतोरु. 10000/- केशुल्ककाभुगतानक्रॉस्डबैंकड्राफ्टकेमाध्यमसेअधिकरणकीखंडपीठकेसहायकपंजीयककेपक्षमेंजिसस्थानपरखंडपीठस्थितहै ,केकिसीभीराष्ट्रीयक्रतबैंककीशाखामेंकियाजाएएवंडिमांडड्राफ्टअपीलकेसाथसंलग्नकियाजाए।

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. अपीलकीएकप्रतिमेंकोर्टफीअधिनियम, 1870 कीअनुसूचीमद 6 केतहतनिर्धारितरु. 50 काकोर्टफीस्टैम्पलगाहोनाचाहिएएवंइसकेसाथसंलग्नइसआदेशकीउक्तप्रतिमेंरु. 50 काकोर्टफीस्टैम्पलगाहोनाचाहिए।

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. Impress Clearing & Forwarding Private Limited [Customs Broker License No. 11/1796, PAN AADC12309A], having address at 1st Floor, 18 Ganga Building, Lamington Road, Old Topiwala Lane, Mumbai- 400007, (hereinafter referred to as CB) were granted License No. 11/1796 under Regulation 7(2) of CBLR, 2018 for transacting business at the Mumbai Customs Stations, hence they are bound by the regulation & conditions stipulated therein.

2. Offence reports (Show Cause Notices) bearing no. DRI/MZU/D/INT/102/2018 (Hinal) dated 23.08.19 and DRI/MZU/D/INT/102/2018 (Batuk) dated 22.04.2019, issued by the Directorate of Revenue Intelligence, Mumbai Zonal Unit, on the importers M/s. Hinal Impex LLP and M/s Batuk Tradelink Pvt. Ltd, respectively, in the case of overvaluation in imports of 'Rough Diamonds' were received in this office proposing action against the Customs Broker M/s Impress Clearing & Forwarding (CB No. 11/1796) under CBLR 2018 who was the clearing agent on behalf of the said importers.

3. M/s Impress Clearing & Forwarding (Customs Broker for M/s Batuk Tradelink Pvt. Ltd & M/s Hinal Impex LLP) and their Director Shri Nikhlesh Kakkad and employee Shri Vishal Suresh Kakkad have been made noticee in the above mentioned Show Cause Notices for their involvement in various acts/omissions/commissions, punishable under the Customs Act, 1962.

4. On the basis of the intelligence, the officers of DRI, Mumbai Zonal Unit, initiated investigation against importers M/s. Hinal Impex LLP (IEC No. AAKFH6103M) and M/s Batuk Tradelink Pvt. Ltd (IEC No. 5216904140). Their intelligence indicated that the said two importers were importing extremely cheap quality of Rough Diamonds from Hong Kong and Dubai at Precious Cargo Customs Clearance Centre (PCCCC), Bharat Diamond Bourse (BDB), Mumbai by grossly overvaluing the consignments; that the yield which would be obtained after working on it or subjecting it to the processes of cutting and polishing would be very low; that such consignments of low and rejection quality of 'Rough Diamonds' upon its arrival at PCCCC, BDB would be cleared with the connivance of the Trade Advisory Expert Valuers (Panel Members), who in spite of their knowledge of the imports being cheap, evaluate the value declared at the time of import to be 'Fair Values' on account of monetary inducements received from the beneficial owner/ importer of the imported goods; that one Shri Girish Kadel was also facilitating the import of live consignments of such overvalued Rough Diamonds.

5. In one case, the CB M/s Impress Clearing & Forwarding Pvt. Ltd. (11/1796) filed two Bills of Entry (Bs/E) Nos. 6804082 dated 14.06.2018 and 6873260 dated 20.06.2018 on behalf of an Importer, M/s. Hinal Impex LLP for clearance of 'Rough Diamonds' imported from Dubai vide MAWB Nos. 589-9409-0710 dated 13.06.2018 and 589-9409-0754 dated 18.06.2018, respectively. Total of 944.26 Carats of Rough Diamonds were declared as imported under the said B/Es with the total declared value of Rs. 17,05,95,469/- (USD $ 25,14,303.16) and actual value of Rs. 21,62,420/- (USD $31,870.60). The said goods were seized vide Seizure Memo dated 21.08.2018 under Section 110 of the Customs Act, 1962.

6. During course of investigation, statements of the following persons were recorded under Section 108 of the Customs Act, 1962:

(a) Shri Pradeepkumar J. Jhaveri, Panel Member, in his statement on 11.07.2018 wherein it was interalia stated by him that: He had valued 14 consignments of M/s Tanman Jewels Private Limited and M/s Antique Exim Private Limited at PCCC, Mumbai, on 27.06.2018. He admitted to had faulted and had wrongly stated in his valuation report that the declared prices on the Invoices and the B/E thereof to be "fair and reasonable" and admitted that the declared prices on the Invoices and the Bs/E thereof had been overvalued to the extent of 150% on an average per Carat. Further in his statement recorded on 20.07.2018 Shri Pradeepkumar J. Jhaveri, stated that In the matter of 14 consignments imported by M/s Tanman Jewels Pvt. Ltd. and M/s Antique Exim Pvt. Ltd., he was called by the DC (Import), PCCCC, and he told him that one Panel Member has already examined the said import Rough Diamonds and had given valuation reports. Accordingly, he examined the said consignments in presence of the concerned CB at PCCCC and had given valuation reports. He stated that he did not know Mr. Girish Kadel in any manner but further, he stated that he knows Shri Girish Kadel as he had visited his residence alongwith his mother.

(b) Shri Paresh D. Shah, Panel Member, on 11.07.2018, in his statement it was interalia stated by him that: he was shown the complete original documents including invoices and valuation reports of panel members of 14 import consignments imported in the name of M/s. Tanman Jewels Private Limited and M/s. Antique Exim Private Limited in respect of import of rough diamonds. He was also shown the reports that had been given by him on all said 14 import consignments pertaining to the import of Rough Diamonds. He admitted that he knowingly and willfully over valued the import rough diamonds in lieu of monetary consideration offered to me by Shri Vishal Suresh Kakkad alias Mr. Vicky, employee of the CB, M/s. Impress Clearing and Forwarding Pvt. Ltd., who was importer's CB. He had faulted and knowingly stated in his valuation report in respect of the said 14 import consignments of rough diamonds that the declared value and descriptions on the Invoices and the Bs/E thereof to be "fair". The declared value on the Invoices and the BS/E thereof had been overvalued to the extent of 200% to 300% on an average as per his knowledge and understanding. On being asked as to whether he agreed that the live consignment of M/s. Hinal Impex LLP vide B/E No. 6873260 dated 20.06.2018 had been overvalued by 13.56 times or 1357%, he stated that he had seen that the live consignment of M/s. Hinal Impex LLP vide B/E No. 6873260 dated 20.06.2018 might be overvalued by 13.56 times or 1357%.

(c) Statement of Shri Vishal Suresh Kakkad alias Vicky, employee of the CB, M/s. Impress Clearing and Forwarding Pvt. Ltd. was recorded on 11.07.2018 wherein it was interalia stated by him that, he started M/s. Impress Clearing and Forwarding Pvt. Ltd. in the year 2014 with his brother, Shri Nikilesh Kakkad and Smt. Beena Kakkad. He managed the entire affairs on behalf of his brother, Shri Nikilesh Kakkad. Smt. Beena Kakkad was a home-maker and she did not look into the affairs of the company. Shri Atul (whose full name, he did not know) approached him on 23.06.2018 by calling on his cell-phone number and had informed him that the Rough Diamonds were over-valued and inspite of it being overvalued, he was asked to clear his consignments. He had quoted Rs. 6,500/- per shipment as agency charges alongwith additional consideration which was agreed upon to be payable after the clearances of the imported consignments. The call of Shri Atul was followed by a call from a person who identified himself as Shri Girish Kadel and claimed to be the owner of the goods proposed to be imported by Shri Atul. Upon receiving his instructions, he contacted BVC/ Brinks on 25.06.2018 and had collected import documents. The job was entered into their system by Shri Percy Madon, and 14 BS/E of M/s Antique Exim Private Limited and M/s Tanman Jewels Private Limited were put for noting on 25.06.2018. It was a known practice that the aforesaid

consignments would be referred to expert valuers. He was asked by Shri Girish Kadel and Shri Atul to obtain fair values for the consignment.

Statement of Shri Vishal Suresh Kakkad alias Vicky of M/s. Impress Clearing and Forwarding Pvt. Ltd. was recorded on 27.06.2019 under section 108 of the Customs Act, 1962, wherein, he had, interalia, stated that: in the month of December 2017. Shri Nikhil Agarwal, Partner of M/s. Hinal Impex LLP, had come to his office at Bharat Diamond Bourse (BDB), Bandra-Kurla Complex, Bandra (East), Mumbai and informed him that Mr. Girish Kadel had instructed him to get the clearances of M/s. Hinal Impex LLP done through Mr. Vishal S. Kakkad. He had got the Know Your Customer (KYC) done in respect of M/s. Hinal Impex LLP. Mr. Girish Kadel had called him on his cell-phone number and had informed him that the Rough Diamonds were over-valued and in spite of it being overvalued, he was asked to clear his consignments. He had quoted Rs. 6,500/- per shipment as agency charges alongwith additional consideration which was agreed upon to be payable after the clearances of the imported consignments. Mr. Girish Kadel had claimed to be the owner of the goods proposed to be imported by Shri Nikhil Agarwal. On being asked to confirm that in respect of the aforesaid B/E No. 6804082 dt. 14.06.2018, the file was remarked to Panel Member to verify description and value' on 15.06.2018 and to confirm that Shri Pradeep Kumar Jhaveri, Panel Member had, in the presence of Shri Percy Madon, representative of M/s. Impress Clearing and Forwarding (Pass Holder: M-790), made the following remarks on the file of B/E No. 6&04032 dt. 14.06.2018: "The said Rough Diamonds in packet lot Nos. 1 & 2 have been examined Goods are of mixed sizes, qualities & colour. Many pieces have good whiteness in centre within. Few are nautical Blackish coating. However few pieces have fancy colour on top. Fewer pcs from each lot have been weighed and examined and tested on gem tester. Price appeared to be fair and reasonable" he had confirmed the same. On being shown the scanned Valuation report dated 19.07.2018 in respect of B/E No. 6804082 dt.14.06.2018, he confirmed the same to be correct as per the Valuers. On being asked to confirm that the aforesaid B/E No. 6873260 dt. 20.06.2018 was endorsed to Panel Members to 'verify description and value' on 20.06.2018, he confirmed the same. Accordingly, on 20.06.2018, Shri Paresh Shah had, examined the lots of imported goods and following remarks were made by him on the file of B/E No. 6873260 dt. 20.06.2018: "Rough Diamonds checked, some fancy colour stones and by my view description and price are fair. "He had confirmed the same and he confirmed the Panel Members report dated 19.07.2018 in respect of B/E No.6873260 dt.20.06.2018, and same to be correct as per the Valuers shown the scanned. He agreed that in respect of the both the aforesaid live consignments of M/s. Hinal Impex, it has been found that the consignments were overvalued as shown to him above. He stated it to be more than 35. consignments of Rough Diamonds had been cleared by him in the past for M/s. Hinal Impex including both, Hong Kong and Dubai. He agreed that the past consignments of M/s. Hinal Impex LLP were overvalued and Mr. Girish Kadel had told him that the consignments of M/s. Hinal Impex LLP. He stated that he did not know Mr. Girish Kadel.

(d) Statement of Shri Perey Madon Russi, employee of M/s. Impress Clearing and Forwarding Pvt. Ltd. (Kardex No. M-790) having its office at J-6, Bharat Diamond Bourse, Bandra-Kurla Complex, Mumbai- 400 051 was recorded on 01.08.2018 under section 108 of the Customs Act, 1962, wherein, he had, interalia, stated that: his career in the stream of Customs Licenced Broker (CLB) started with his job as Customs Clerk in M/s. B.V. Chinai & Co. having their office at Bharat Diamond Bourse (BDB), Lamington Road,- 400 004 in the year 1988 till 2006. Thereafter, he had changed jobs with various companies like M/s. Brinks Arya, M/s. Lee and Muirhead, M/s. Tiger Jewellery (in SEEPZ) etc. He joined M/s. Aarya Offshore Services in 2010 and served in the said company till September 2013. Thereafter, he had joined Ms. Impress Clearing & Forwarding Pvt. Ltd.

in October 2013. He left M/s. Impress Clearing & Forwarding Pvt Ltd. in May 2014 and re-joined in November 2014. Since then, he was working for M/s. Impress Clearing & Forwarding Pvt Ltd. He was shown the statements of Shri Vishal Suresh Kakkad @ Vicky recorded on 11.07.2018 and 12.07.2018 under section 108 of the Customs Act, 1962 and he confirmed of having read both the statements and stated the same to be true and correct as per his knowledge. On being asked about the status of consignments of M/s. Hinal Impex LLP. Surat, he stated that both the consignments of Rough Diamonds of M/s. Hinal Impex LLP situated at office No. 211, 2nd Floor, New DTC, Hat-faliya, Mahidharpura, Surat, Gujarat - 395 003 (IEC No. AAKFH6103M) had been given out-of-charge by Customs. The delivery of the same was pending on account of submission of Bank Release Order from Axis Bank Ltd.. Ghatkopar (West) Branch. He stated that he did not know the names and/or whereabouts of IEC holders of M/s. Hinal Impex LLP, Surat although, the KYC and A.D. Codes have been processed by M/s. Impress Clearing & Forwarding Pvt Ltd., the same was not known to him as it had been processed by other staff. But he knew that Shri Vishal Suresh Kakkad @ Vicky was constantly following up the formalities.

(e) Statement of Shri Mahesh Banshilal Sharma, Partner of M/s. Hinal Impex LLP was recorded on24.07.2018 under section 108 of the Customs Act, 1962, wherein, he had, interalia. stated that he had met one, Shri Nikhil Agarwal in December 2016 who had informed him that Shri Nikhil Agarwal worked in the field of import/export of garments and offered him to join his business. He gave his original PAN and AADHAR card and signed documents for getting IEC etc. He also signed bank account opening forms and signed cheque leaves. He accepted his mistake to allow Shri Nikhil Agarwal to use his documents for monetary consideration.

(f) Statement of Shri Nikhil Sushil Kumar Agarwal, designated Partner of M/s. Hinal Impex LLP was recorded on 14.05.2019 under section 108 of the Customs Act, 1962, wherein, he had, interalia, stated that he had offered his friend. Shri Mahesh Banshilal Sharma, a monthly amount of Rs. 15,000/- to become his Partner of M/s. Hinal impex LLP and he obtained his identity documents. He had obtained the IEC of M/s. Hinal Impex LLP in the month of November 2017.. During the same time, he had also become Partner of M/s. Hetvi Trading LLP alongwith Shri Sourabh Sethi and on account of a dispute over profit. He (Nikhil Agarwal) left M/s. Hetvi Trading LLP. He had also started M/s. Chamak Impex LLP for earning commission by import of diamonds. The office of M/s. Hinal Impex LLP was at MB 7 B, Flox Chambers, Opera House, M.P. Road, Near Roxy Cinema, Mumbai which was also the office of M/s. Chamak Impex LLP. He, alongwith Shri Gaurav Sanjeev Bansal were the Partners in M/s. Chamak Impex LLP. He managed the day-to-day affairs of M/s. Hinal Impex LLP and M/s. Chamak Impex LLP. He was introduced to Shri Girish Kadel by Shri Sanjay Jain, a broker. Mr. Girish Kadel had offered him a business plan in which all the imports of Rough Diamond sand natural rough (semi) precious stones like Emeralds, Rubies etc., would be that of Mr. Girish Kadel and the Importing Company would be his. Mr. Girish Kadel had offered that the sales of such imported diamonds would also be arranged by him.

(g) Statement of Shri Vijen Girish Chandra Jhaveri, Director of Dynasty Trading (HK) Ltd, Hong Kong, was recorded on 27.03.2019 under Section 108 of the Customs Act, 1962, wherein, he had, interalia, stated that In September 2014, he created another firm by the name, Dynasty Trading (HK) Ltd. from the same address of Room 1502, 15/F, Lee Wai commercial Building, 1-3 Hart Avenue, Tsim Sha Tsui (TST). Kowloon, Hong Kong. During the year 2017, he got introduced to one person by the name Sanju who offered him a business plan which would earn him Rs. 0.20 for every 1 USD for use of his

companies by Sanju. Sanju had informed him that he had to raise Invoices of in the name of his companies showing consigning of carats of Rough Diamonds to the Indian customers at the rates prescribed by Sanju. These rates would be heavily overvalued. The names and addresses of Indian Customers would be given by Sanju. Since he was in need of money, he accepted the plan. Accordingly, he started preparation of the fake / fictitious Invoices in the names of his companies viz. Creator Universal (HK) Ltd. and Dynasty Trading (HK) Ltd with enhanced values of Rough Diamonds, Shri Vijen Girish Chandra Jhaveri, Director of Dynasty Trading HK Ltd. the Hong Kong based supplier had in his statements recorded on 27.03.2019 and 05.04.2019 under section 108 of the Customs Act, 1962 stated that (forged Invoices) of export shipments of Rough Diamonds were generated in the names of his Hong Kong based companies viz. Dynasty Trading (HK) Limited. He had himself admitted that on account of monetary inducements at the rate of Rs. 0.20 for every 1 USD as offered to him by various brokers, he used to raise inflated Invoices of his companies for supplies of Rough Diamonds to various Indian Importers. Shri Naren Gedia, Director of Merit Asia Limited, Hong Kong had admitted to have authorized Mr. Mohamed Basheer to transact on his behalf in respect of Merit Asia Limited. He had admitted that Merit Asia Limited was indulged in overvaluing in the export of cheap quality reject Rough Diamonds to bring-in huge remittances from India. He had admitted to the overvaluation of Rough Diamonds imported by M/s. Hinal Impex LLP from Merit Asia Limited Hong Kong at enhanced rate of US $ 432per Carat (11.68 times or 1068%) & US $ 406 per Carat (10.98 times or 998%) which were found to be earlier exported by M/s. Panash Impex. Surat at a rate of US $ 36.97 to Hong Kong.

7. Further it was found that M/s Hinal Impex LLP had imported Rough Diamonds in the past from R Impex limited. The analysis of HK KPC (Export) submitted by M/s Hinal Impex LLP at the time of import in India and corresponding HK KPC (Import) submitted by the freight forwarders to this office revealed that Ideal Traders, Hong Kong had bought Rough Diamonds at a US $ 23.58 from Shivani Gems CVA, Belgium and out of this consignment R Impex, Hong Kong had exported Rough Diamonds to M/s. Hinal Impex LLP vide 6 different Bs/E at enhanced rates ranging from a minimum of US $ 2.203rat to a maximum of US $ 5.578 per Carat. Both ideal traders, Hong Kong and R Impex, Hong Kong appears to be managed by Shri Girish Kadel.

8. Further the shipping documents submitted by the Freight Forwarders, Hong Kong KPC(Import) and Hong Kong KPC(Export) of the live consignments of Rough Diamonds imported by M/s. Hinal Impex LLP under seizure and being investigated by DRI were analyzed and it was found that the consignment was earlier imported by Nishal International (HK) Limited into Hong Kong from Trade Time Enterprises, Switzerland at a rate of USS 171.36 per Carat The values of these Rough Diamonds had been enhanced by Nishal International (HK) Limited from US $ 171.36 per Carat to US $ 2325.32when it was sold to Oriental Trading FZE, Ajman and from US $ 171.36 per Carat to USS 2999 when it was sold to Wise Ways Trading FZE, Ajman and thereafter these consignments were imported into India by M/s. Hinal Impex LLP without any further enhancement in value.

9. Mr. Girish Kadel appears to be the mastermind of this syndicate. He appears to have engaged M/s. Hinal Impex LLP for importing rejected quality Rough Diamonds against a pre decided monetary consideration. Shri Girish Kadel appears to have engaged CHA firm and one of the representative of Shri Girish Kadel was taking delivery of the imported rough diamonds once the goods were cleared from customs. Shri Nikhil Agarwal Director of M/s. Hinal Impex LLP had admitted of issuing sale invoices of the imported rough diamonds without physically taking delivery of rough diamonds under the

instructions of Shri Girish Kadel. Shri Nikhil Agarwal had further admitted of forging signature of the other director Shri Mahesh Bansilal Sharma on some sale invoices. Further, Shri Girish Kadel appears to have arranged the finance of the overvalued imports by using dummy or non-existent firms / companies. Shri Nikhil Agarwal and Shri Vishal Kakkad employee of the CHA firm appears to be well aware of the modus operandi of overvaluation of the Rough diamonds and they were active members of the organized syndicate. The live consignment were valued by the Panel members Shri Pradeepkumar J. Jhaveri, Shri Paresh Dalpatlal Shah before DRI intercepted the consignments. From the investigation and statements of these Panel members it appears that both of them were in touch with Shri Girish Kadel and were following his instructions against monetary consideration. Various suppliers based in Hong Kong or Dubai were found to be either managed by himself or they were issuing overvalued invoices under his instructions. Suppliers in the Hong Kong R Impex, RAA Impex and Ideal Traders were apparently controlled by Shri Girish Kadel. Shri Vijen Girish chandra Jhaveri, Director of Dynasty Trading (HK) Ltd. had admitted that on the basis of oral pre-negotiated commission he had issued overvalued invoices. Shri Naren Gedia, Director of Merit Asia Limited, Hong Kong admitted to the overvaluation of Rough Diamonds imported by M/s. Hinal Impex LLP from his firm based in Hong Kong.

10. It, therefore, appears that Shri Girish Kadel, M/s. Hinal Impex LLP. Shri Nikhil Agarwal and Shri Mahesh Banshilal Sharma (both Partners of M/s. Hinal Impex LLP), Shri Vishal Sursh Kakkad alias Vicky representative of M/s. Impress Clearing and Forwarding Pvt. Ltd. (the CB), Shri Vijen Girish Chandra Jhaveri (Director of Dynasty Trading (HK)Ltd., Hong Kong). Shri Naren Gedia, Panel member Shri Pradeepkumar J. Jhaveri and Panel Member Shri Paresh Dalpatlal Shah, all have entered into a criminal conspiracy to defraud the Government Exchequer of precious foreign exchange and had imported overvalued rough diamonds for the purpose of remitting huge amount of unaccounted ill-gotten money out of India to infuse the illegal money in banking system. In view of the same, M/s, Hinal Impex LLP has attempted to clear and also cleared overvalued Rough Diamonds which they had every reason to believe that the same were being imported at the highly exaggerated rates which is in contravention of 111(d) and111(m) of the Customs Act, 1962. From the foregoing investigation and analysis it appears that these were not legitimate transactions of business but were only a large scale attempt involving non operating firms/ non-functional firms/Firms operating at fictitious addresses, both here in India and at Dubai and Hong Kong to camouflage illegal fund transfers through the methods described above. The enormous volume, as well as exorbitant values, of trade flows obscures individual transactions, and it is not possible to delineate these with mathematical precision. Therefore it appears that this entire Trade Based Money Laundering racket was used to park funds abroad for their use in illicit activities like funding of undervalued imports into India etc.

11. M/s. Hinal Impex LLP had imported 944.26 Carats of Rough Diamonds from Dubai vide Bs/E No. 6804082 dated 14.06.2018 and 6873260 dated 20.06.2018. Further in the past, M/s. Hinal Impex LLP has imported Rough Diamonds from various suppliers based in Hong Kong and Dubai. From the investigation so far, it appears that Shri Nikhil Agarwal and Shri Mahesh Banshilal Sharma, both partners allowed Shri Girish Kadel to use name of M/s. Hinal Impex LLP for import of overvalued Rough Diamonds for live consignment as well for the past consignments of Rough Diamonds. Therefore, it appears to be a pre-planned conspiracy of M/s. Hinal Impex LLP to import grossly overvalued Rough Diamonds from overseas supplier so as to transfer huge amount of outward remittances, from India to Dubai and Hong Kong in a fraudulent manner and to infuse unaccounted money into banking system. Further, M/s. Hinal Impex LLP failed to give a true & correct

declaration in respect of value of the subject imported goods in terms of Section 46(4) of the Customs Act, 1962 and committed offence under the provisions of the Customs Act, 1962. Therefore, it appears that M/s. Hinal ImpexLLP, Shri Nikhil Agarwal and Shri Mahesh Banshilal Sharma, partners of M/s. Hinal Impex LLP, Shri Girish Kadel, Shri Vijen Girish Chandra Jhaveri, Shri Naren Gedia and Shri Pradeepkumar Jhaveri, Shri Paresh Dalpatlal Shah, both Panel Members and Shri Vishal Suresh Kakkad. authorized representative of the Customs Licenced Broker firm namely M/s. Impress Clearing and Forwarding were part of a pre-planned conspiracy of sending ill-gotten money outside India in the guise of remittances of import of overvalued Rough Diamonds. Imports made by M/s. Hinal Impex LLP on the strength of false declarations of Hong Kong and Dubai-based suppliers by suppressing the actual value are in contravention to provisions of Section 111(d) and 111(m) of the Customs Act, 1962.

12. It appears that Shri Nikhil Agarwal & Shri Mahesh Banshilal Sharma knowingly and willfully had allowed mis-use of the IEC of M/s. Hinal Impex LLP for import of grossly overvalued Rough Diamonds by another person named Shri Girish Kadel and Shri Prakash (associate of Shri Girish Kadel) for monetary benefits by way of commission of 0.25% of the value of the import Invoice after its clearance from Customs. He appears to have full knowledge of the fact that overvalued Rough Diamonds were imported; however he never raised any objection with Shri Girish Kadel. He appears to have ensured that upon importation. Rough Diamonds were handed over back to Shri Girish Kadel. He used to prepare various fictitious invoices in the name of M/s. Hinal Impex LLP under the instructions of Shri Girish Kadel to show the sale of imported Rough Diamonds. He appears to have forged signatures of Shri Mahesh Banshilal Sharma on the Sale Invoices of Rough Diamonds of M/s. Hinal Impex LLP on few occasions. Therefore, he appears to be active member of organized syndicate involved in sending ill-gotten money outside in the guise of remittances of import of overvalued Rough Diamonds. Shri Nikhil Agarwal, designated Partner of M/s. Hinal Impex LLP, appears to have been aided and abetted by Shri Girish Kadel, Shri Pradeepkumar, Shri Paresh Dalpatial Shah, both Panel Members and Shri Vishal Suresh Kakkad, authorized representative of the Customs Licenced Broker firm namely M/s. Impress Clearing and Forwarding. Shri Girish Chandra Jhaveri, Shri Naren Gedia in the fraudulent import of highly over-invoiced roughs allowing the use of IEC of his firm by other persons for monetary benefits and thereby making the said imported goods liable for confiscation in contravention to provisions of Section 111 (d) & 111 (m) of the Customs Act, 1962.

13. Shri Girish Kadel appears to be master-mind of organized syndicate indulged in transfer of ill-gotten money outside India in the guise of remittances of overvalued Rough Diamonds. During the course of investigation, it had emerged that Mr. Girish Kadel had taken upon himself the recruitment of persons for obtaining IECs of dummy firms like M/s. Hinal Impex LLP. It has come on record that he had assured the Partner of M/s. Hinal Impex LLP that the Rough Diamonds and the amounts of remittances would belong to him, however imports would be done in the name of M/s. Hinal Impex LLP with them not doing anything. This had been admitted by Shri Nikhil Agarwal, designated Partner of M/s. Hinal Impex LLP in his statement recorded on 14.05.2019 under section 108 of the Customs Act, 1962. Shri Girish Kadel appears to have engaged the services of Shri Vishal Kakkad and CB Firm Ms. Impress Clearing and Forwarding. He appears to have been actively in touch with the Panel Members who were going to do the valuation of the Live Consignment of M/s. Hinal Impex LLP. Further, he appears to be controlling various overseas Rough Diamond Supplier Firms in Hong Kong i.e. R Impex, RAA Impex, Ideal Traders and Diamond Vault. It appears that Mr. Girish Kadel (de-facto owner of M/s. Hinal Impex LLP) entered into criminal conspiracy with Shri Nikhil Agarwal, designated Partner

of M/s. Hinal Impex LLP, Shri Pradeep kumar Jhaveri and Shri Paresh Shah, both Panel Members, Shri Vishal Suresh Kakkad, representative of Customs Broker firm viz. (M/s. Impress Clearing and Forwarding) to cause imports of cheap and reject quality Rough Diamonds in the firms controlled by him at highly inflated value, with a motive to open a channel for siphoning the excess foreign exchange overseas in guise of such dubious overvalued imports. Even though the importing company viz. M/s. Hinal Impex LLP had some other persons as Partners, Mr. Girish Kadel appears to be the beneficial owner of the imported goods including the goods imported vide Bs/E No. 6804082 dated 14.06.2018 and 6873260 dated 20.06.2018 under seizure and the past imports of Rough Diamonds from Dubai and Hong Kong by M/s. Hinal Impex LLP. He is the king pin and the mastermind, as per the analysis of statements given by Shri. Nikhil Agarwal, designated Partner of M/s. Hinal Impex LLP and Shri Pradeepkumar Jhaveri, Panel Member and he controlled both supplier firms in Hong Kong and Dubai and importing firms in India as evident in the statements of various persons and documents related to the same.

14. Shri Pradeepkumar Jayantl bhai Jhaveri with full conscious knowledge of the consignments of M/s. Hinal Impex LLP being overvalued proceeded to certify the value of the consignments to be 'fair' and thereby willfully and knowingly became part of an organized syndicate indulged in overvaluation of Rough Diamonds. He had valued the consignment of M/s. Hinal Impex LLP imported vide B/E No.6804082 dated 14.06.2018 having 472.292 carats of Rough Diamonds having declared value of Rs.9,62,30,778/-. Upon revaluation in the presence of DRI officers, this consignment value was redetermined at Rs. 9,62,628/- vide Valuation Report dated 19.07.2018. He appears to have been approached by Mr. Girish Kadel who was the actual owner of Rough Diamonds being imported in the name of M/s. Hinal Impex LLP. Thus, it appears that for monetary consideration, he had suppressed the true and correct description and value of the goods and had consciously overlooked the overvaluation indulged into, for remitting huge amounts outside India. Thus, it appears that he had consciously overlooked the overvaluation in the live consignment of M/s. Hinal Impex LLP. Therefore, the acts of Shri Pradeepkumar Jayantibhai Jhaveri had rendered the said imported goods liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. Considering the aforesaid, he appears liable for imposition of penalty under the provisions of Section 112(a) and / or 112 (6) and 114AA of the Customs Act, 1962.

15. Shri Paresh Dalpatlal Shah with full conscious knowledge of the consignments of M/s. Hinal Impex LLP being overvalued proceeded to certify the value of the consignments to be 'fair' and thereby wilfully and knowingly became part of an organized syndicate indulged in overvaluation of Rough Diamonds. He had valued the consignment of M/s. Hinal Impex LLP imported vide B/E No.6873260 dated 20.06.2018 having 471.34 Carats of Rough Diamonds having declared value of Rs. 7.43.64,691/-. Upon revaluation in the presence of DRI officers, this consignment value was re-determined at Rs.11,99,792/- vide Valuation Report dated 19.07.2018. He appears to have been approached by Shri Vishal Suresh Kakkad and Mr. Girish Kadel (the actual owner of Rough Diamonds being imported in the name of M/s. Hinal Impex LLP) to influence his knowledge and thereby suppress the true and correct description and value of the goods imported. Thus, it appears that he had consciously overlooked the overvaluation in the live consignment of M/s. Hinal Impex LLP. Therefore, the acts of Shri Paresh Dalpatlal Shah had rendered the said imported goods liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. Considering the aforesaid, he appears liable for imposition of penalty under the provisions of Section 112(a) and / or 112 (b) and 114AA of the Customs Act, 1962.

16. Shri Vishal Suresh Kakkad, authorized representative of M/s. Impress Clearing and Forwarding Pvt Ltd. (the CB), acted as an interface between Customs and M/s. Hinal Impex LLP. The CLB is duly bound to verify the credentials of M/s. Hinal Impex LLP as per Regulation 10(n) of Customs Brokers Licensing Regulations, 2013. It appears that CLB was engaged by Shri Girish Kadel and Shri Vishal Suresh Kakkad appears to be fully aware about the fact that Mr. Girish Kadel is the actual owner of the goods imported by M/s. Hinal Impex LLP and he had admitted that he had knowledge of the fact that goods were overvalued as the same was conveyed to him by Mr. Girish Kadel. Therefore, it appears that he had suppressed the true and correct value for the offer of monetary consideration, overlooked the overvaluation indulged into by M/s. Hinal Impex LLP, Shri Vishal Suresh Kakkad alongwith Shri Girish Kadel, the mastermind and king-pin and owners of Rough Diamonds, Shri Pradeepkumar Jhaveri and Shri Paresh Dalpatlal Shah and M/s. Hinal Impex LLP alongwith Shri Nikhil Agarwal and Shri Mahesh Banshilal Sharma, both the Partners of M/s. Hinal Impex LLP, Shri Naren Gedia, Director of Merit Asia Limited and Shri Vijen Girish Chandra Jhaveri, Director of Dynasty Trading (HK) Ltd., Hong Kong was part of pre-planned conspiracy of import of rough diamonds for the purpose of making a channel of transferring remittances out of India by way of conniving in clearing grossly overvalued Rough Diamonds. Thus, it appears that Shri Vishal Suresh Kakkad was apparently involved in the illegal import clearance of grossly overvalued Rough Diamonds by way of giving false and incorrect declaration in import documents and by not revealing the aspect of overvaluation of Rough Diamonds to the Customs officers which have made imported goods liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962.in over valuation of 37 past consignments of 9,339.48 Carats of Rough Diamonds having declared value of Rs. 150,87,29,576/- and re-determined value of Rs. 4,88,215/- and respect of two live consignments of 944,26 Carats of Rough Diamonds having declared value of Rs.17.05,95,469/- and re-determined at Rs. 21,62,420/- by two Panel Members in accordance of the Customs Valuation Rule(CVR), 2007. Consequently, Shri Vishal Suresh Kakkad also appears liable for imposition of penalty under the provisions of Section 112(a) and/or 112 (b) of the Customs Act, 1962.

17. Another case of M/s Batuk Tradelink private limited, the Statement of Shri Vishal Suresh Kakkad, employee of M/s. Impress Clearing and Forwarding Private Limited, the Customs Licenced Broker (CB) firm was recorded on 26.03.2019 under Section 108 of the Customs Act, 1962, wherein he had, interalia, stated that: entire affairs of M/s. Impress Clearing and Forwarding Pvt. Ltd. were managed by him on behalf of his brother, Shri Nikhlesh Kakkad, who started the CLB firm. On being asked as to who had introduced Shri Mohanlal Kumhar, Director of M/s. Batuk Tradelink Private Limited, he stated that one, Shri Kailash Tiwari whom he had met at Customs Area of BDB, BKC Complex, Mumbai had introduced him in November 2016. Shri Mohan had submitted the KYC documents of M/s. Batuk Tradelink Private Limited and he had never visited the office of M/s. Batuk Tradelink Private Limited. He (Shri Vishal Suresh Kakkad) had never done KYC verification of M/s. Batuk Tradelink Private Limited. There had been imports of 55 consignments of Rough Diamonds by M/s. Batuk Tradelink Private Limited prior to the live consignments seized by the department. On being asked about the owner of the past consignments imported by M/s. Batuk Tradelink Private Limited, he stated that Shri Mohan used to come to his office to enquire about Customs clearance status of parcels imported by M/s. Batuk Tradelink Private Limited. Statement of Shri Mohanlal kumhar, Director of M/s. Batuk Tradelink Pvt. Ltd was recorded on 19.03.2019, wherein he had, interalia, stated that: In respect of past imports, he had taken services of one Mr. Vicky Of M/s. Impress Clearing and Forwarding Pvt. Ltd. whom he had known for last 8-9 years.

Shri Vishal Suresh Kakkad, Employee of M/s. Impress Clearing and Forwarding Pvt. Ltd. and In-charge of entire affairs of M/s. Impress Clearing and Forwarding Pvt. Ltd. (the CLB firm), acted as an interface between Customs and M/s. Batuk Tradelink Private Limited. The CB is duly bound to verify the credentials of M/s. Batuk Tradelink Private Limited as per Regulation 10(n) of Customs Brokers Licensing Regulations, 2018. However, Shri Vishal Suresh Kakkad in his statement. had admitted that he had never visited the office of M/s. Batuk Tradelink Private Limited and he (Shri Vishal Suresh Kakkad) had never done KYC verification of M/s. Batuk Tradelink Private Limited. It also appears that he had suppressed the true and correct value for the offer of monetary consideration, overlooked the overvaluation indulged into by various overseas suppliers of Hong Kong. Shri Vishal Suresh Kakkad along with Shri Sanjeev Chain Raj Lodha, the mastermind and king-pin and owners of Rough Diamonds along with his associate, Shri Chirag Patel and M/s. Batuk Tradelink Private Limited along with Shri Mohanlal Kumhar and Shri Naveen Sharma, both the Directors of M/s. Batuk Tradelink Private Limited were part of pre-planned conspiracy of import of Rough Diamonds for the purpose of making a channel of transferring remittances out of India by way of conniving in clearing grossly overvalued Rough Diamonds. Thus, it appears that Shri Vishal Suresh Kakkad was apparently involved in the illegal import clearance of grossly overvalued Rough Diamonds by way of giving false and incorrect declaration in import documents and by not verifying the credential of M/s. Batuk Tradelink Private Limited in respect of past 58 consignments aggregating to a total of 1,51,249.39 Carats of Rough Diamonds valued at Rs. 3,02,499/ and thereby rendering the goods liable for confiscation under section 111(m) of the Customs Act, 1962. He appears liable for imposition of penalty under the provisions of Section 112(a) and/or 112 (b) and 114AA of the Customs Act, 1962.

SUSPENTION OF LICENSE

18. On going through the above facts and circumstances, prima facie it appeared that Customs Broker, M/s. Impress Clearing & Forwarding Pvt. Ltd, Customs Broker Licence No. 11/1796 (PAN No. AADC12309A) did not exercise due diligence in discharging their obligations as required under Regulation 10(a) (d) (f) (g) & 10(n) of CBLR, 2018 and for the willful/intentional violation, the license of the CB was suspended vide order No. 34/2019-20 dated 30.07.2019 and PH was granted to CB on 19.08.2019, 05.09.19. 10.10.19, 31.10.19, 12/14.11.2019, 28.11.2019 & 09.12.2019. However, the CB did not appear and requested for postponing the PH and finally the CB appeared for PH on 09.12.2019, the CB submitted the written and oral submission. The Pr. Commissioner Of Customs (G) on going through the facts and circumstances of the case, continued the Suspension of the CB License vide Order No. 74/2019-20 dated 03.01.2020, with immediate effect, pending inquiry being initiated.

19. A Show Cause Notice No. 40/2019-20 dated 17.01.2022 was issued in terms of Regulation 17(1) the CBLR, 2018 and vide this notice, the Customs Broker M/s. Impress Clearing & Forwarding Pvt. Ltd were called upon to show cause, as to why the licence bearing no. 11/1796 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 above in this show cause notice, with pending inquiry under Regulation 17 of the CBLR, 2018 being initiated by the Inquiry Officer Sh. PM Dahiwale, Assistant Commissioner, appointed in the case.

INQUIRY REPORT

20. Inquiry Officer submitted Inquiry Report dated 31.05.2022, wherein the charges against the CB i.e. violation of Regulations 10(a), 10(d), 10(f) & 10(n) of CBLR were held as **'proved'** and violation of Regulation 10(g) of CBLR was held as **'not proved'**.

20.1 For the sake of clarity the relevant extracts of Regulation 10 of the CBLR 2018 are reproduced hereinafter:

(a) obtain an authorization from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorization whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;
(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;
(f) not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information:
(g) promptly pay over to the Government, when due, sums received for payment of any duty, tax or other debt or obligations owing to the Government and promptly account to his client for funds received for him from the Government or received from him in excess of Governmental or other charges payable in respect of cargo or baggage on behalf of the client;
(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;

20.2 The contents of the inquiry report inter alia stated are as under:

20.2.1 The Inquiry Officer stated that during the course of Personal Hearing dated 27.11.2020 the CB submitted that they had gone through the Show Cause Notices and they do not accept any of the charges levelled in either of the Show Cause Notices issued by the DRI or customs department and they will file their written reply in a week. However, they had never filed the written reply.

20.2.2 The Inquiry Officer concluded the inquiry proceedings as under.

20.2.3 In respect of contravention of **Regulation 10 (a) of CBLR 2018** the Inquiry Officer observed that Shri Vishal Suresh Kakkad alias Vicky of the Custom Broker Firm M/s. Impress Clearing & Forwarding Pvt. Ltd. in his statement recorded on 11.07.2018 under Section 108 of the Customs Act, 1962 inter-alia admitted that Shri Girish Kadel was actual owner of the goods proposed to be imported by a person by name Shri Atul who contacted him on 23.06.2018 (Shri Vishal Suresh Kakkad) over phone. Shri Girish Kadel further admitted that he cleared their import consignments covered under 14 Bills of Entry of M/s. Antique Exim P. Ltd. And M/s Tanman Jewels P. Ltd. as per instructions of Shri Atul and Shri Girish Kadel. The Custom Broker neither during the course of investigation non in the course of this inquiry has produced proper authority letters from the designated persons or designated IEC holders of M/s. Antique Exim P. Ltd. And M/s Tanman Jewels P. Ltd. Thus, it is apparent that Shri Vishal Suresh Kakkad, employee of Custom Broker M/s. Impress Clearing and Forwarding P. Ltd. facilitated the Customs clearance of

aforesaid shipment without obtaining proper authorization from the designated IEC holders of M/s. Antique Exim P. Ltd. And M/s Tanman Jewels P. Ltd.

20.2.4. Further the Inquiry Officer finds that Shri Mahesh Banshilal Sharma, Partner of M/s. Hinal Impex LLP, in his statement recorded on 24.07.2018 under Section 108 of the Customs Act, 1962, has admitted that he gave his original PAN, AADHAR card and signed documents for getting his business done and that he also signed bank account opening forms and signed cheques to Shri Nikhil Agarwal, designated Partner of M/s. Hinal Impex LLP. In his statement recorded on 14.05.2019 under Section 108 of the Customs Act, 1962, Shri Nikhil Sushil Kumar Agarwal, designated Partner of M/s. Hinal Impex LLP has admitted that he allowed imports rough diamonds and natural (semi) precious stones like emeralds, rubies etc. Shri Girish Kandel against IEC of M/s. Hinal Impex LLP for monetary consideration, which reveals that Shri Nikhil Sushil Kumar Agarwal was not the actual importer but he has only lent his name. The IEC code number of M/s. Hinal Impex LLP was allowed to be utilized for the import. As per the statement of Shri Vishal Suresh Kakkad, employee of M/s. Impress Clearing & Forwarding Pvt. Ltd. recorded on 27.06.2019, Shri Nikhil Agarwal, Partner of M/s Hinal Impex LLP had come to his office in the month of December 2017 and conveyed the message of Shri Girish Kadel to get the clearances of M/s. Hinal Impex LLP through him. Thus, it is apparent that Shri Vishal Suresh Kakkad, employee of Custom Broker M/s. Impress Clearing and Forwarding P. Ltd. facilitated the Customs clearance of M/s. Hinal Impex LLP inspite of knowing that Shri Girish Kadel was actual owner of the goods. Thus, the Customs Broker has intentionally violated the Regulation 10(a) of the CBLR, 2018, which clearly proves contravention of provisions of Regulation 10(a) of the CBLR, 2018. Accordingly, Inquiry Officer held that the Article of Charge alleging violation of Regulation 10(a) of CBLR, 2018 stands **"Proved"**.

20.2.5 In respect of contravention of **Regulation 10 (d) of CBLR 2018** the Inquiry Officer observed that Shri Vishal Suresh Kakkad, employee of the CB M/s. Impress Clearing and Forwarding Pvt. Ltd. in his statement recorded on 11.07.2018, under Section 108 of the Customs Act, 1962 admitted that Shri Atul approached him on 23.06.2018 by calling on his cell phone number and had informed him that the Rough Diamonds were over-valued and inspite of it being overvalued, he was asked to clear his consignments. Shri Vishal Suresh Kakkad further admitted that for monetary consideration he agreed to proposal of Shri Atul and later as per instructions received from Shri Girish Kadel who was the actual owner of the goods he facilitated clearances of overvalued consignments covered under 14 Bill of Entry of M/s. Antique Exim P. Ltd. and M/s. Tanman Jewels P. Ltd.

20.2.6. Further the inquiry officer finds that Shri Vishal Suresh Kakkad, employee of the CB M/s. Impress Clearing & Forwarding Pvt. Ltd. in his statement recorded on 27.06.2019, under Section 108 of the Customs Act, 1962 also admitted Shri Girish Kadel had called him on his cell phone number and had informed that the Rough Diamonds were over-valued. that despite knowing the fact that the consignments ate overvalued he was indulged in clearance of more than 35 consignments of Rough Diamonds imported in the name of M/s. Hinal Impex LLP. He further admitted that the past consignments of M/s. Hinal Implex LLP which were already cleared were also overvalued and in case of M/s. Batuk Tradelink P. Ltd., Shri Vishal Suresh Kakkad, employee of M/s. Impress Clearing & Forwarding Pvt. Ltd., in his statement recorded on 26. 03.2019 under Section 108 of the Customs Act, 1962 admitted that one Shri Kailash Tiwari whom he had met at Customs Area of BDB complex, Mumbai had introduced him to Shri Mohan in November 2016; that Shri Mohan had submitted the KYC documents of M/s. Batuk Tradelink P. Ltd. And that he had never visited the office of M/s. Batuk Tradelink P Ltd.; that he had never

done KYC verification of M/s. Batuk Tradelink Pvt. Ltd. Thus from voluntary statements of Shri Vishal Suresh Kakkad, employee of M/s. Impress Clearing & Forwarding Pvt recorded on 26.03.2019, Inquiry Officer find that the Custom Broker has deliberately dealt with a person who was not related to the importer nor was an employee of the importer. The Custom Broker did not bring the matter of dealing with a person not connected with the IEC holder for importing goods to the knowledge of Customs authorities, the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be.

Thus the CB was aware of the fact that the consignment of M/s. Antique Exim P. Ltd., M/s Tanman Jewels P. Ltd., M/s. Hinal Impex LLP and M/s. Batuk Tradelink Pvt. Ltd shall be overvalued which is against the act and did not advise their client to comply with the Act neither informed the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, and therefore has intentionally committed violation the Regulation 10(d) of the CBLR, 2018. Accordingly, Inquiry Officer held that the Article of Charge alleging violation of Regulation 10(d) of CBLR, 2018 stands "**Proved**".

20.2.7 In respect of contravention of **Regulation 10 (f) of CBLR 2018** the Inquiry Officer observed that Shri Vishal Suresh Kakkad, employee of the CB M/s. Impress Clearing and Forwarding Pvt. Ltd. in his voluntary statement recorded on 11.07.2018, under Section 108 of the Customs Act, 1962 admitted that Shri Atul approached him on 23.06.2018 by calling on his cell-phone number and had informed him that they would overvalue the consignments of Rough Diamonds and he was asked to clear his overvalued consignments. Shri Vishal Suresh Kakkad further admitted that he had knowingly admitted the proposal of Shri Atul for monetary consideration He also knew the fact that the actual owner of these overvalued rough diamonds was Shri Girish Kadel. He admitted that he received instructions from Shri Girish Kadel for clearances of overvalued consignments covered under 14 Bill of Entry of M/s. Antique Exim P. Ltd. and M/s. Tanman Jewels P. Ltd.

20.2.8. Further the inquiry officer finds Shri Vishal Suresh Kakkad, employee of the Custom Broker M/s. Impress Clearing & Forwarding Pvt. Ltd. in his voluntary statement recorded under Section 108 of the Customs Act, 1962 on 27.06.2019, admitted that Shri Girish Kadel had called him on his cell phone number and had informed that the Rough Diamonds were over valued and that more than 35 consignments of Rough Diamonds had been cleared by him in the past for M/s. Hinal Impex LLP. He further admitted the fact that the past consignments of M/s. Hinal Implex LLP were also overvalued and that in case of M/s. Batuk Tradelink P. Ltd., Shri Vishal Suresh Kakkad, employee of M/s. Impress Clearing and Forwarding P. Ltd., in his voluntary statement recorded under Section 108 of the Customs Act, 1962 on 26. 03.2019, admitted that one Shri Kailash Tiwari whom he had met at Customs Area of BDB complex, Mumbai had introduced him to one Mr Mohan in November 2016; that Shri Mohan had given him the KYC documents of M/s. Batuk Tradelink P. Ltd. but he had never visited the office of M/s. Batuk Tradelink P Ltd. to physically verify the KYC details and that he had never done KYC verification of M/s. Batuk Tradelink Pvt. Ltd.

This clearly indicates that the Custom Broker willfully and deliberately withheld the information contained orders, instructions or public notices relating to clearance of cargo from the importer of the goods, which led to the duty evasion in the said case. Thus, the charge of Custom Broker have violated the provisions of Regulation 10 (f) of CBLR, 2018 is proved beyond doubt. Accordingly, the Inquiry Officer holds that the Article of Charge alleging violation of Regulation 10(f) of CBLR, 2018 as "**Proved**".

20.2.9 In respect of contravention of **Regulation 10 (g) of CBLR 2018** the Inquiry Officer observed that the chargesheet has not clearly spelt out as to exactly what charges which were received by the CB from his clients and were not paid over to the Government and submitted that there is not such indication in the Relied Upon documents neither investigation points out to the same. Accordingly, the Inquiry Officer holds that the Article of Charge alleging violation of Regulation 10(g) of CBLR, 2018 as "**not proved**".

20.2.10 In respect of contravention of **Regulation 10 (n) of CBLR 2018** the Inquiry Officer observed that Shri Vishal Suresh Kakkad, employee of the Custom Broker M/s. Impress Clearing & Forwarding Pvt. Ltd. in his voluntary statement 11.07.2018, under Section 108 of the Customs Act, 1962 admitted that Shri Atul approached him on 23.06.2018 by calling on his cell phone number and had informed him that the Rough Diamonds were over-valued and inspite of it being overvalued, he was asked to clear his consignments. Shri Vishal Suresh Kakkad further admitted that for monetary consideration he agreed to proposal of Shri Atul and later as per instructions received from Shri Girish Kadel who was the actual owner of the goods, facilitated clearances of overvalued consignments covered under 14 Bill of Entry of M/s. Antique Exim P. Ltd. and M/s. Tanman Jewels P. Ltd.

20.2.11 Further the Inquiry Officer finds that Shri Vishal Suresh Kakkad, employee of the CB M/s. Impress Clearing and Forwarding Pvt. Ltd. in his statement recorded on 27.06.2019, under Section 108 of the Customs Act, 1962 admitted Shri Girish Kadel had called him on his cell phone number and had informed that the Rough Diamonds were over-valued. that more than 35 consignments of Rough Diamonds had been cleared by him in the past for M/s. Hinal Impex LLP. He further agreed that the past consignments of M/s. Hinal Implex LLP were overvalued and in the case of M/s. Batuk Tradelink P. Ltd., Shri Vishal Suresh Kakkad, employee of M/s. Impress Clearing and Forwarding P. Ltd., in his statement recorded on 26. 03.2019 under Section 108 of the Customs Act, 1962 admitted that one Shri Kailash Tiwari whom he had met at Customs Area of BDB complex, Mumbai had introduced him in November 2016; that Shri Mohan had submitted the KYC documents of M/s. Batuk Tradelink P. Ltd. And he had never visted the office of M/s. Batuk Tradelink P Ltd.; that he (Vishal Suresh Kakkad) had never done KYC verification of M/s. Batuk Tradelink Pvt. Ltd.

Thus there is no denying the fact that Shri Vishal Suresh Kakkad, employee of the CB M/s. Impress Clearing & Forwarding Pvt. Ltd. has not been careful and not diligent in undertaking the KYC of the background of importer and accepted documents, which he did not verify and therefore made himself liable for penal action for violation of Regulation 10(n) of the CBLR, 2018. Accordingly, the Inquiry officer holds that the Article of Charge alleging violation of Regulation 10(n) of CBLR, 2018 as "**Proved**".

21. The Inquiry report was shared with the Customs Broker.

WRITTEN SUBMISSION

22. The CB in their written submission dated 17.08.2022 inter-alia stated that:

a. They were appointed customs clearing agent by M/s Batuk Tradelink Pvt Ltd. and M/s Hinal Impex LLP. Letter for delivery of parcels and appointment of customs clearing agent were given to consol agent BVC Logistics Pvt Ltd /Brinks Arya India for giving documents to them and this was first time import through them. This

party was regularly importing through custom clearing agents B. V. Chinai & Co & Jasraj Kalianji & Company. Both companies were export trading houses.

b. They were no where involved in valuation of the said goods as stated in report by DRI para 5. They have stated that importers were in connivance with trade panel members along with one Shri Girish Kadel & Atul Paldecha.

c. Statement of Mr Vishal Kakkad was recorded forcefully at 2 AM at Night & was forced to write by officers of DRI (department of revenue intelligence) which was later retracted by my brother in Hon'ble Court.

d. As per DRI, CB were having knowledge about diamonds said consignment being overvalued. CB denied this charge and claimed that they had no knowledge about the overvaluation of the said goods also we have not charged or talked about any money for clearing goods in cash or any other form. They only charge their importers in bill as per GST norms and normal invoice only.

e. The said clients M/s Batuk Tradelink Pvt Ltd and M/s Hinal Impex LLP had given letter to consol agent M/s BVC Logistics/Brinks Arya India on 25/6/2018 as appointed clearing agent and then handover the said documents to them.

f. After receiving the import document that is kimberley copy, invoice, master airwaybill and house airwaybill, they then filed the same documents to Gem & Jewellery Export Council for verification of kimberley and KYC norms (know your customer). Both the clients were members of Gem and Jewellery Export Council and Gem and Jewellery Council approved their KYC and also issued Kimberley Certificate verified copy for custom clearance.

g. Customs at Precious Customs Clearance Centre that is PCCCC used to verify all the KYC before allowing any clearance of import & exports. M/s Batuk Tradelink Pvt Ltd and M/s Hinal Impex LLP were regular importers through other custom clearing agent B.V. Chinai and Company and Jasraj Kalyanji Private Limited. They had verified the same also. These both companies were also export trading houses certified by Gem and Jewellery Council.

h. After receiving confirmation from customs they then filed the import bill of entry in the customs system along with Kimberley certificate verified by customs, invoice, master airwaybill, house air way bill.

i. As per procedure at PCCCC customs than allocate the appraising officers and examining officer. The goods were than examined and shown to customs appraising officer for valuation. Appraising officers then opined to show to Panel members for valuation.

j. Customs officers than showed the goods to Shri Paresh Shah and Shri Pradeep Zaveri who were appointed panel members by Customs & Gem and Jewellery council. Customs Dy Commissioner Shri Patel sir also told them to show only to rough diamond panel member. One Shri Mahesh Vaghani who was panel member in cut and polished diamond category only and not in rough diamonds panel member list insisted my brother Vishal Kakkad to show this rough diamonds consignment to him. He also threatened his brother to throw him out of customs and also cancel our custom clearance licence if he was not shown the same.

k. His brother Vishal Kakkad had informed him about harrasment and bad attitude by Shri Mahesh Vaghani panel member and threatening him to not work in customs and cancel their customs clearing licence. He had called and informed Shri Naresh Mehta, Bharat Diamond Bourse Official Conveyer for same. He assured him that he will look into the matter.

l. After seeing the goods, panel members Shri Paresh Shah and Shri Pradeep Zaveri gave opinion about fair value and informed customs officer and fair value on bill of entry which were then cleared by customs officers. After obtaining out of charge as per customs procedure they then went for delivery from the said

custodian. Custodian then informed about this parcels being recalled by Deputy Commisioner Shri Manikanhaiya.

m. Deputy Commisioner Shri Manikanhaiya referred these 14 bill of entries to SIIB office at Awas Corporate Park, Marol, Andheri, Mumbai. These 14 parcel goods were than showed to panel member Shri Naresh Mehta in presence of SIIB Officers by Deputy Commisoner Shri Manikanhaiya, his brother Vishal Kakkad was asked to wait outside while showing the parcel panel member Shri Naresh Mehta gave the fair valuation report and out of charge was given subsequently by Deputy Commisioner Shri Manikanhiya.

n. DRI officers then stopped these parcels which were out for delivery. His brother Vishal Kakkad was taken to DRI office at marine lines. He was harrased and forced to write the false statement by DRI officers which was later retracted in court.

o. His brother Vishal Kakkad along with panel members Shri Paresh Shah, Shri Pradeep Zaveri and Shri Naresh Mehta was arrested by DRI. One person who was employee of importer was let off by DRI officers and not arrested. They were later released on bail by Bombay High Court on 19.09.2018.

p. The said parcels of Batuk Trading Pvt Ltd & Hinal Impex LLP were cleared by Customs and given out of charge by customs.

q. M/s Batuk Trading Pvt Ltd & M/S Hinal Impex LLP failed to give bank release order for 30 days after which their staff Percy Madon himself gave DRI these two companies documents for enquiry into this matter. If they were involved in such matter why would they submit the documents themselves for enquiry to DRI.

r. They denied allegation against them. They were not knowing regarding any over valuation. They also stated that they followed all the rules and regulations as in Custom Act. They had verified KYC norms by customs at PCCCC and also GJEPC had verified KYC of both companies. Kimberley certificate was also certified and verified by GJEPC and customs at PCCCC before filing bill of entry. They followed all the guidelines and rules as per Customs Act. They denied all the allegations against Vishal Kakkad, Nikhlesh Kakkad and Impress Clearing & Forwarding Pvt Ltd. They also requested to reinstate their CB licence for M/s. Impress Clearing And Forwarding Pvt Ltd.

PERSONAL HEARING

23. Shri Nikhlesh Kakkad, Director of M/s Impress Clearing and Forwarding Pvt. Ltd. (CHA No. 11/1796) attended the personal hearing on 22.08.2022 at 12.30 hrs. During the course of personal hearing he reiterated submissions made by them in written reply. They denied all allegation against him, his brother and the CB.

DISCUSSION AND FINDINGS:

24. I have carefully gone through the facts of the case, material on record, Inquiry Report, oral/written submission made by the CB during the personal hearing held on 22.08.2022 and examined the role and conduct of CB in the case before me.

24.1 I now examine the charges in the SCN sequentially. It has been alleged that CB did not exercise due diligence in discharging their obligation as required under Regulation 10(a), 10(d), 10(f), 10(G) & 10(n) of the CBLR, 2018.

24.2 In respect of Regulation 10(a) of the CBLR 2018 it has been alleged that the CB did not obtain an authorization from each of companies, firms or individuals by whom they were employed as a Customs Broker and did not produce such authorization whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. I find that during the course of investigation as well as in the inquiry proceedings the CB has deliberately dealt with a person who was not related to the importer and the CB did not have any interaction with the importers and had not produced any copy of the valid authorisations from the M/s. Antique Exim P. Ltd, M/s. Tanman Jewels P. Ltd. and M/s. Hinal Impex LLP or from their designated persons. I also find that the CB deliberately aided and abetted the offence and facilitated the same. The Inquiry Officer has also proved the same. Hence, I am of the considered opinion that M/s. Impress Clearing & Forwarding Pvt. Ltd. had prima-facie, failed to obtain an authorisation from the importers and did not provide the same during the PH also. Thus I hold that the CB has violated provisions of Regulation 10(a) of the CBLR, 2018, which proves the contravention of provisions of Regulation 10(a) of the CBLR, 2018.

24.3 In respect of Regulation 10(d) of CBLR 2018 it has been alleged that the CB did not advise their client to comply with the provisions of the Act, other allied Acts and the Rules and Regulations thereof, and in case of non-compliance, did not bring the matter to the notice of the DC/AC of Customs. I find that during the course of investigation as well as in the inquiry proceedings, it is established that the CB has deliberately dealt with a person who was not related to the importer nor was an employee of the importer. The CB did not bring the matter of dealing with a person not connected with the IEC holder for importing goods to the knowledge of Customs authorities. It is undisputed fact that there was no interaction between the Customs Broker and the IEC holder of the importing firm's M/s. Antique Exim P. Ltd., M/s Tanman Jewels P. Ltd, M/s Hinal Impex LLP and M/s. Batuk Tradelink Pvt. Ltd. for the Customs Broker to give proper advice and it is also clear from the above that the CB deliberately suppressed the information of the overvaluation of the rough diamonds from the Customs Authorities. I also find that the CB knowingly aided and abetted the offence and facilitated the same. The CB deliberately did not bring the matter of dealing with a person not connected with the IEC holder for importing goods and the fact of noncompliance of the proper Rules & procedure to the notice of the Customs Authorities as they were hand in glove with the perpetrators of the fraud. Further it is also clear from the investigation that the address given by the importer was fictitious which automatically lead to the conclusion that the CB has not exercised due diligence in knowing about his client and since the address itself is false, CB meeting his client and properly advising him did not arise at all. Hence, from available record, and as proved by the Inquiry Officer also, I am of the considered opinion that M/s Impress Clearing & Forwarding Pvt. Ltd had prima-facie, failed to advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations. Had they performed their obligations properly, the overvaluation of goods would not have taken place. Thus I hold that the CB has violated the provisions of Regulation 10 (d) of CBLR, 2018, which proves the contravention of provisions of Regulation 10 (d) of the CBLR, 2018.

24.4 In respect of Regulation 10(f) of the CBLR 2018 it has been alleged that the CB withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information. I find that the CB never met IEC holders of M/s. Antique Exim P. Ltd., M/s Tanman Jewels P. Ltd., M/s. Hinal Impex LLP and M/s. Batuk Tradelink Pvt. Ltd. in person to disclose the relevant information, provisions of acts, rules, regulations and instruction contained in orders in relation of clearance of

consignments that he was required to clear on behalf of the said importers. There is no documentary evidence submitted by the Customs Broker at the time of investigation or in the course of personal hearing to suggest that he had disclosed the said information to the purported or real importers in any manner whatsoever. The Panel member, Shri. Paresh D. Shah, is statement recorded under section 108, admitted that he knowingly and wilfully over valued the imported rough diamonds in lieu of the monetary consideration offered to him by Mr. Vishal Kakkar, employee of the CB. This clearly indicates that the Custom Broker wilfully and deliberately withheld the information contained orders, instructions or public notices relating to clearance of cargo from the importer of the goods, which led to the duty evasion in the said case. Thus I hold that the CB has violated the provisions of Regulation 10 (f) of CBLR, 2018, which proves the contravention of provisions of Regulation 10 (f) of the CBLR, 2018.

24.5 In respect of Regulation 10(g) of the CBLR 2018 it has been alleged in the Show Cause Notice that the CB did not promptly pay over to the Government, when due, sums received for payment of any duty, tax or other debt or obligations owing to the Government and promptly account to his client for funds received for him from the Government or received from him in excess of Governmental or other charges payable in respect of cargo or baggage on behalf of the client. I find that the Chargesheet has not clearly spelt out as to exactly what charges which has been received by the Custom Broker from his clients are not paid over by the Custom Broker to the Government and the charge has not been proved by the Inquiry Officer as well. There is no such indication in the Relied upon documents neither investigation points out to the same. Thus I hold that the CB has not violated the provisions of Regulation 10 (g) of CBLR, 2018.

24.6 In respect of Regulation 10(n) of the CBLR, 2018, it is alleged that the CB did not verify antecedent, correctness of Importer Exporter Code (IEC) Number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. In respect of Regulation 10(n) of the, CBLR, 2018, 1 find that Shri Vishal Suresh Kakkad, employee of the CB M/s. Impress Clearing and Forwarding Pvt. Ltd. in his statement recorded under Section 108 of the Customs Act, 1962 had admitted that Shri Atul approached him on 23.06.2018 by calling on his cell-phone number and had informed him that the Rough Diamonds were over-valued and inspite of it being overvalued, he was asked to clear his consignments. He also admitted that for monetary consideration he agreed to proposal of Shri Atul and later as per instructions received from Shri Girish Kadel who was the actual owner of the goods, facilitated clearances of overvalued consignments covered under various Bill of Entry of M/s. Antique Exim P. Ltd., M/s. Tanman Jewels P. Ltd. M/s. Hinal Impex LLP and M/s. Batuk Tradelink Pvt. Ltd. The said facts were also admitted by Shri Percy Madon Russi, Employee of M/s Impress Clearing & Forwarding Pvt. Ltd. in his statement recorded on 01.08.2018 under Section 108 of the Customs Act, 1962. Shri Percy Madon Russi also admitted that they had not verified and processed the KYC and Authorized Dealer Code of the importers. Investigation also revealed that the address given by the importers were fictitious which automatically lead to the conclusion that the CB has not exercised due diligence in knowing about his client and since the address itself is false. These facts make it clear that Customs Broker has not made any attempts to verify the antecedents and correctness of actual Importer Exporter, identity of his client and functioning of his client at the declared address by using reliable, independent means. Rather he intentionally connived with the syndicate in order to illegitimate money, which also proves the mens rea conclusion. Thus I hold that the CB has violated the provisions of Regulation 10 (n) of CBLR, 2018, which proves the contravention of provisions of Regulation 10 (n) of the CBLR, 2018.

25. I rely on the following judgements and hold that in the instant case, CB, M/s. Impress Clearing & Forwarding Pvt. Ltd., CB No. 1796 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.

25.1 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 fairly 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".*

25.2 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)".*

26. 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 have 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. They failed to bring the malpractice adopted by their client to notice 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 department. The facts on record prove that CB violated various provisions of CBLR 2018 with mens rea.

27. I also hold that the charges held as proved and not proved in inquiry are acceptable and tenable under the facts and circumstances of the case and certainly warrant penal action against the CB for their involvement in the illegal clearance of grossly overvalued Rough Diamonds by way of giving false and incorrect declaration in import documents and by not verifying the credentials of M/s. Antique Exim P. Ltd. M/s.

Tanman Jewels P. Ltd. M/s Hinal Impex LLP and M/s. Batuk Tradelink Pvt. Ltd. If CB, M/s Impress Clearing & Forwarding Pvt. Ltd., CB No. 1796 had acted in a diligent manner and has performed his duties efficiently, the improper imports would not have taken place. The above evidence on record clearly indicates that the CB was indulged in nefarious activities and thereby I am of the firm belief and opinion that the CB has failed to 'discharge duties cast on him under Regulation 10(a), 10(d), 10(f) and 10(n) of the CBLR 2018, and is liable for penalty. Accordingly, I am inclined to revoke the CB Licence and pass the following order.

ORDER

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 Impress Clearing & Forwarding Pvt. Ltd., CB No. 1796 [PAN No. AADC12309A)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. 1796 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 against the Customs Broker and their employees under the Customs Act, 1962, or any other act fo the time being in force in the Union of India.

19/9/2022

(SUNIL JAIN)
PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
MUMBAI ZONE-I

To,

M/s Impress Clearing & Forwarding Pvt. Ltd., (PAN No. AADC12309A),
CB License No. 11/1796,
1st floor, 18 Ganga Building,
Lamington Road, Old Topiwala Lane,
Mumbai-400007

Copy to:-

1. The Pr. Chief Commissioner/Chief Commissioner of Customs, Mumbai I,II,III Zone.
2. All Pr. Commissioners/Commissioners of Customs, Mumbai I, II, III Zone
3. Commissioner of Customs (NS-II), SIIB (Export), JNCH, Raigad, Maharastra-400707
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)