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

संचिका सं./ F. No.- GEN/CB/ACTN/86/2021-CBS
CAO No. 17 /CAC/PCC(G)/SJ/CBS Adj
संख्या: 20220577000000444F3C

आदेश दिनांक/Date of Order: 26.05.2022
जारी दिनांक/ Date of issue: 27.05.2022

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

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

ORDER-IN-ORIGINAL मूल आदेश

ध्यान दीजिए/ N.B. :

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

The Customs Broker M/s. Total Clearance, (PAN No. ANRPB5665L), situated at 602/B Wing, Shri Dutta Towers,Talao Pali, Thane (West) - 400602, is holder of Customs Broker License No. 11/2171, issued by the Commissioner of Customs, Mumbai under Regulation7(2) of CBLR, 2018 and as such they are bound by the regulations and conditions stipulated therein.

2. The Directorate of Revenue Intelligence (DRI), MZU, Mumbai investigated a case of fraudulent availment of drawback and IGST refund by a syndicate of persons by procuring fake purchase invoices and further over-valuing the goods to avail higher drawback and inadmissible IGST refund. Modus operandi of the said syndicate was that they used to obtain IECs from different persons and with the help of another set of persons they used to procure fake purchase invoices of goods to be exported. The invoices were procured just to create a paper trail. However, no goods were actually supplied under the said fake invoices. These fake invoices were prepared showing higher values (over-valuation) so as to enable the syndicate to claim higher duty drawback and IGST refund. Verification of the declared address of some of the exporters, as given in their IECs, revealed that they never existed at the given address or in some cases the IECs were controlled by a person, other than the IEC holder.

3. During the course of investigation statement of one Shri Nilesh Gosavi, who appeared to have facilitated exports in the above mentioned fashion were recorded under Section 108 of the Customs Act, 1962 on 18.11.2020 and 19.11.2020 wherein he admitted to have dealt with exports made in the name of approx 41 entities by using the Customs Brokers Licence of M/s Total Clearance (CB No. 11/2171), which was a proprietorship concern of Shri Raj Bhanushali; that he had monetarily compensated Shri Raj Bhanushali for making use of the Customs Brokers License; that he had handed over the invoices/packing lists to Shri Raj Bhanushali in respect of these exporters through email as well as physically for filing of Shipping Bills; that IECs in respect of these entities were mainly received by him from one Shri Vinod Dubey and that he had not verified the KYC documents of these IECs; that he admitted to having been aware that the value of goods mentioned in the Shipping Bills of these exporters were mis-declared (overvalued); that he had confirmed to have received from Shri Vinod Dubey (Supplier of IECs) Rs.1000/- in cash as per Shipping Bills filed in the name of the above exporters.

4. The following 41 such IECs handled by Shri Nilesh Gosavi, were mentioned by him in his statement.

Sr No.	Exporter Name	IEC
1	Lambadusa Multiventures Private Limited	AADCL9103F
2	Star Stallion International Private Limited	515916463
3	H K Enterprises	ADYPK7312G
4	Granite International	BGXPB8307H
5	D K Traders	DLZPK2419A
6	C.P Enterprise	BTXPP8957Q
7	Expomark Multiventures Private Limited	AAFCE4687F
8	Divine Impex	FLGPS7011M
9	Gamble Multiventures Private Limited	AAICG4212B

10	Ashni International	304030821
11	Conakry Multiventures Private Limited	AAICC1201G
12	Imperial Exports	GJFPS0998B
13	Surya Enterprise	FJHPS5298K
14	Trootodo Export Private Limited	AAHCT8570E
15	Laxmi Enterprises	ADOPY5794J
16	Radius Tradcon Private Limited	315063670
17	Crazy Creation	5215011168
18	Prisha Enterprise	GBZPD8466D
19	Rohan Designs	AWKPJ5404D
20	Rishabh International	GHQPS7120L
21	Satyam Fabrics	DIMPP4566B
22	Whispering Cattles India Limited	AABCW8252G
23	Ridgewood Industries Private Limited	AAICR4477K
24	Modern Enterprises	GRIPS4315F
25	Stylfix Exim	AUSPV3485E
26	Phoenix Logistic	CXWPP2101G
27	Hridhaan International Impex	BJRPK4239C
28	Crystal Impex	AMFPK7509M
29	Aries Overseas	5216511121
30	Saahil Global Business Private Limited	316516724
31	Javi Home Private Limited	510074588
32	R S Enterprises	MLGPS6550L
33	R K Overseas	DPUPK7359E
34	Al-Johar Trading	308039556
35	M K Overseas	AVIPK5145M
36	Jhalani Apparels	1399000021
37	Fahimuddin & Shifa Dry Fish Wholeseller and Retailer	315054913
38	Ryan Overseas	AXFPM7907C
39	Votrexo Exports Pvt. Ltd.	AAHCV3909K
40	Unrivaled Design Group	2912001293
41	Prem Henna Pvt. Ltd.	1313008010

5. During the course of investigation, statement of Shri Raj Bhanushali, proprietor, M/s Total Clearance (Customs Broker License No. 11/2171) was recorded on 18.11.2020, under Section 108 of the Customs Act, 1962, wherein he inter-alia stated that he had received the job of export clearance of goods in the name of aforementioned exporters from Shri Nilesh Gosavi for a consideration of Rs. 30,000/- to Rs. 40,000/- per month through one of his acquaintances Shri Vijay Lokhande; that he has handled the clearance work without KYC verification of the exporters and without knowing any of them; that all the export related activities at CFS were taken care of by Shri Nilesh Gosavi and that he had merely handled the paper work.

6. It appeared from the preliminary investigation that Shri Raj Bhanushali, Proprietor of M/s. Total Clearance (CB License No. 11/2171) had facilitated smooth filing of the Shipping Bills and clearance of exported goods which were highly overvalued. He had accepted documents and the job from a third person without the mandatory check of the KYC documents of the IEC holders. It further appeared that Shri Raj Bhanushali

had filed the Shipping Bills and did not bother to check the credentials of the exporters. These violations from the Customs Broker appear to have resulted in huge loss to the government exchequer leading to sanction and disbursal of inadmissible drawback and IGST refund to the tune of more than Rs. 13 crores.

7. In view of the above, as per the obligations cast on Customs Broker under CBLR, it appeared that the said CB has failed in their obligations under Regulation 1(4), 10(a), 10(d), 10(e), 10(m) and 10(n) of CBLR, 2018. Thereby, the DRI MZU communicated the above information to this office vide letter F.No. DRI/MZU/E/INT-91/2020/6729 dated 16.04.2021.

SUSPENSION OF LICENSE

8. On-going through the above facts and circumstances, since prima facie it appeared that Customs Broker, M/s Total Clearance (CB No 11/2171), wilfully/intentionally did not exercise due diligence in discharging their obligation as required under Regulations 1(4), 10(a), 10(d), 10(e), 10(m) and 10(n) of the Custom Broker Licensing Regulations 2018, the license of M/s Total Clearance (CB No 11/2171) was suspended vide order No. 15/2020-21 dated 29.07.2021 under the provisions of Regulation 16(1) of CBLR, 2018. Thereafter Personal Hearing to the CB was given and suspension of M/s Total Clearance (CB No 11/2171) was continued, pending inquiry proceedings under Regulation 17 of CBLR, 2018, by the Pr. Commissioner of Customs (General), New Custom House, Mumbai vide order no. 28/2020-21 dated 21.10.2021 under the provisions of Regulation 16 (2) of CBLR, 2018.

9. A Show Cause Notice No. 23/2020-21 dated 21.10.2021 was issued in terms of Regulation 17(1) of CBLR, 2018 and vide this notice, the Customs Broker M/s Total Clearance (CB No 11/2171) were called upon to show cause, as to why the license bearing no. 11/2171 issued to them should not be revoked, 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, with pending inquiry under Regulation 17 of CBLR, 2018 being initiated by the Inquiry Officer Shri K. Ashok Chakrawarthy, Deputy Commissioner of Customs appointed in the case.

INQUIRY REPORT

10. Inquiry Officer submitted the Inquiry Report dated 07.03.2022, wherein the charges against CB i.e. violation of Regulation 10(e), 10(m)of CBLR, 2018 were held as 'not proved', Regulation 1(4), 10(a) and 10(n) of the CBLR, 2018 were held as 'proved' and Regulation 10(d) of the CBLR, 2018 as 'partly proved' by the Inquiry Officer. The inquiry report inter alia stated as below:

11.1 Regulation 1(4) of Customs Broker Licensing Regulations, 2018, stipulates that - Every license granted or renewed under these regulations shall be deemed to have been granted or renewed in favour of the licensee, and no license shall be sold or otherwise transferred.

11.2 The Inquiry Officer stated that the Customs Broker in their written submissions and submissions made during personal hearing have denied

all the allegations and contended that they have fulfilled all the obligations as per the Customs Broker Licensing Regulations, 2018.

11.3 However it is observed by the Inquiry Officer that as per the statement made by Shri Raj Bhanushali, Proprietor of M/s. Total Clearance, recorded on 18.11.2020, the Customs Broker admitted to the fact that he was promised a payment of Rs. 30,000/- to Rs.40,000/- per month (Maximum ceiling) depending on the number of shipping bills filed on behalf of Shri Nilesh Gosavi. The Inquiry Officer observed that Shri Raj Bhanushali's statement does not record that "he was sharing the profits with Shri Nilesh Gosavi as the business was provided by him during that time" as mentioned in the submission made by him. The Inquiry Officer further observed that by filing shipping bills on behalf of Shri Nilesh Gosavi, Shri Raj Bhanushali had effectively transferred his Customs Broker license.

11.4 The Inquiry Officer also observed that the Customs Broker's defense that there is no evidence in the form of Bank Account transfer or any other evidence to show that there was monthly payments for sale, sublet or transfer of the license of The CUSTOMS BROKER does not hold water as he had admitted to the fact that the amount was being paid in cash during his statement recorded on 18.11.2020. The Inquiry Officer further observed that the case law of K. S. Sawant & Co. Vs. Commissioner of Customs (General), Mumbai reported in 2012 (284) E.L.T. 363 (Tri.-Mumbai) quoted by the Customs Broker in his submission does not apply to the instant case as, in this case, it was Shri Nilesh Gosavi who had paid Shri Raj Bhanushali and not otherwise. The Inquiry Officer stated that had Shri Nilesh Gosavi been an intermediary, Shri Raj Bhanushali should have paid him for bringing in business. The Inquiry Officer further stated that he has also perused the copies of the Tax Invoices raised by the Customs Broker M/s. Total Clearance on the 36 exporters; that the Customs Broker also submitted GST Return statement to show that the GST payment pertaining to invoices raised on 36 exporters. The Inquiry Officer observed that it has no relevance to the allegation that by acting on behalf of Shri Nilesh Gosavi, he had effectively transferred his license; that it is because, the point of contention here is not whether the Customs Broker has issued invoices on the 36 exporters or not; that rather, it is about whether the Customs Broker had in essence sold or transferred his license; that the explanations provided by the Customs Broker to counter the allegation of violation of Regulation 1(4) of the CBLR, 2018 are not relevant. Accordingly, the Inquiry Officer held that the charge framed against the Customs Broker for contravention of provisions of Regulation 1(4) ofCustoms Broker Licensing Regulations, 2018 as "Proved".

12.1 Regulation 10 (a) of the Customs Broker Licensing Regulations, 2018states that -A Customs Broker shall 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 ofCustoms, as the case may be.

12.2 The Inquiry Officer observed that the Show Cause Notice has alleged that the Customs Broker has violated the aforesaid Regulation 10(a)

by failing to obtain authorization from their client directly.However, in their submission dated 03.01.2022, the Customs Broker submitted that they had submitted authorization letters from all the exporters to the investigating agency on the date of summon itself and thus the allegation is not true.It is observed by IO that on going through the submissions made to the Investigating agency vide letter dated 19.11.2020 it is noticed that only 22 Letters of Authority (LoA) of exporters listed in the statement were submitted by the Customs Broker; that KYC documents were not complete in cases where Letter of Authority (LoA) were submitted. The Inquiry Officer further stated that the Customs Broker has submitted copies of the following authorization letters on02.09.2021:

Sr No.	Exporter Name	IEC	Authorisation letter dated
1	Lambadusa Multiventures Private Limited	AADCL9103F	21.09.2020 (pg 47)
2	Star Stallion International Private Limited	515916463	Letter dt. Nil (pg. 146)
3	H K Enterprises	ADYPK7312G	Letter dt. Nil (pg. 347)
4	Granite International	BGXPB8307H	Letter dated 05.10.2020 (pg. 404)
5	D K Traders	DLZPK2419A	Letter dated 15.09.2020 (pg. 457)
6	C.P Enterprise	BTXPP8957Q	Letter dated 27.10.2020 (pg. 490)
7	Expomark Multiventures Private Limited	AAFCE4687F	Letter dated 17.10.2020 (pg. 528)
8	Divine Impex	FLGPS7011M	Letter dated 15.10.2020 (pg. 564)
9	Gamble Multiventures Private Limited	AAICG4212B	Letter dated 27.10.2020 (pg. 593)
10	Ashni International	304030821	Letter dated 18.08.2020 (pg. 630)
11	Conakry Multiventures Private Limited	AAICC1201G	Letter dated 04.11.2020 (pg. 658)
12	Imperial Exports	GJFPS0998B	Letter dated 31.08.2020 (pg. 685)
13	Surya Enterprise	FJHPS5298K	Letter dated 07.09.2020 (pg.732)
14	Trootodo Export Private Limited	AAHCT8570E	Letter dated 07.09.2020 (pg.759)
15	Laxmi Enterprises	ADOPY5794J	Letter dated 27.08.2020 (pg.797)
16	Radius Tradcon Private Limited	315063670	Letter dated 26.09.2020 (pg.823)
17	Crazy Creation	5215011168	Letter dated 02.10.2020 (pg.843)
18	Prisha Enterprise	GBZPD8466D	Letter dated 05.10.2020 (pg.858)
19	Rohan Designs	AWKPJ5404D	Letter dated 21.09.2020 (pg.885)
20	Rishabh International	GHQPS7120L	Letter dated 15.09.2020 (pg.896)
21	Satyam Fabrics	DIMPP4566B	Letter dated 17.07.2020 (pg.917)
22	Whispering Cattles India Limited	AABCW8252G	Letter dated 10.09.2020 (pg.942)
23	Ridgewood Industries Private Limited	AAICR4477K	Letter dated 26.09.2020 (pg.957)
24	Modern Enterprises	GRIPS4315F	Letter dated 24.07.2020 (pg.957)

25	Stylfix Exim	AUSPV3485E	Letter dated 02.11.2020 (pg.1002)
26	Phoenix Logistic	CXWPP2101G	Letter dated 27.08.2020 (pg.1012)
27	Hridhaan International Impex	BJRPK4239C	Letter dated Nil (pg.1040)
28	Crystal Impex	AMFPK7509M	Letter dated 11.11.2020 (pg. 1062)
29	Aries Overseas	5216511121	Letter dated 27.08.2020 (pg. 1075)
30	Saahil Global Business Private Limited	316516724	Letter dated 04.08.2020 (pg.1094)
31	Javi Home Private Limited	510074588	Letter dated 01.10.2020 (pg.1127)
32	R S Enterprises	MLGPS6550L	Letter dated 13.10.2020 (pg.1136)
33	R K Overseas	DPUPK7359E	Letter dated Nil (pg.1153)
34	Al-Johar Trading	308039556	Letter dated 09.07.2020 (pg.1163)
35	M K Overseas	AVIPK5145M	Letter dated Nil (pg.1179)
36	Jhalani Apparels	1399000021	Letter dated 18.08.2020 (pg.1191)
37	Fahimuddin & Shifa Dry Fish Wholeseller and Retailer	315054913	Letter dated 14.08.2020 (pg. 1197)
38	Ryan Overseas	AXFPM7907C	Letter dated 30.08.2020 (pg.1219)
39	Votrexo Exports Pvt. Ltd.	AAHCV3909K	Letter dated 07.09.2020 (pg.1224)
40	Unrivaled Design Group	2912001293	Letter dated 01.10.2020 (pg.1233)
41	Prem Henna Pvt. Ltd.	1313008010	Letter dated 10.09.2020 (pg.1246)

12.3 Since Customs Broker has submitted only 22 Letter of Authorizations (LoA) to the investigating agency on 19/11/2020 and not the complete set of LOAS,Inquiry Officer held that the charge framed against the Customs Broker for contravention of provisions of Regulation 10(a) of Customs Broker Licensing Regulations, 2018 as "Proved".

13.1 According to Regulation 10(d) of Customs Broker Licensing Regulations, 2018- A Customs Broker shall advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be.

13.2 The Inquiry Officer observed that as per the statement of Shri Raj Bhanushali recorded on 18.11.2019 under Section 108 of the Customs Act, 1962, he did not verify KYC of any of the exporters and was also not present during the carting of the goods at the CFS. The Inquiry Officer

observed that without verification of the KYC documents, the Customs Broker was not in a position to advise his client and thus the CB had failed to advise their client to comply with the provisions of the Customs Act, 1962. The Inquiry Officer observed that the decision in the case HIM Logistics Pvt. Ltd. Vs. Commissioner of Customs, New Delhi, reported in 2016 (338) ELT 725 (Tri. Del) and affirmed by Hon'ble High Courtof Delhi, reported in 2017 (348) ELT 625 (Del.) quoted by the Customs Broker, is not relevant to the instant case.However, the Inquiry Officer also observed that with respect to the part provision of bringing non-compliance to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, there is no evidence to state that the Customs Broker was having prior knowledge of misuse of drawback scheme or ineligible IGST refund or they were hand in glove with the unscrupulous elements to report Non-Compliance to the officers of the department. Accordingly, the Inquiry Officer hold the charge framed against the Customs Broker for contravention of provisions of Regulation 10(d) of Customs Broker Licensing Regulations, 2018 as"Partly Proved".

14.1 The Regulation 10(e) of Customs Broker Licensing Regulations 2018 reads as under - "A Customs Broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage."

14.2 The Inquiry Officer stated that it was alleged in the Show Cause Notice that the Customs Broker appeared to have not worked diligently in the clearance of the said shipping bills for export consignments which were found mis-declared.According to IO, the aforesaid provision is relevant where the Customs Broker imparts false/incorrect information to the client with reference to clearance of cargo or baggage. However, in this case, there is no proof on record to show that the Customs Broker has imparted any incorrect information or has not worked diligently in providing correct information to their client with reference to any work related to clearance of cargo or baggage. The Inquiry Officer observed that the allegation can be ascertained only if there is proof that the Customs Broker has cleared the cargo or baggage without the knowledge of the Client.Accordingly, the Inquiry Officer hold the charge framed against the Customs Broker for contravention of provisions of Regulation 10(e) of Customs Broker Licensing Regulations, 2018 as "not Proved" beyond doubt.

15.1 As regards the allegation of violation of Regulation 10(m) of Customs Broker Licensing Regulations, 2018 according to which a Customs Broker shall discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay, the IOstated that the Customs Broker in their written submission dated 03.01.2022 have submitted that they have performed all the duties of Customs Broker viz. acquiring KYC, Authority Letter from exporters, KYC verification, filing of Shipping Bill and clearance of goods.IO observed that there is no specific allegation regarding inefficiency or delay during the clearance of the goods either in the Show Cause Notice or in the offence report and that there is no evidence to prove that the Customs Broker did not discharge his duties with utmost efficiency and without any delay. Accordingly, the Inquiry Officer hold the charge framed against the Customs Broker for

contravention of provisions of Regulation 10(m) of Customs Broker Licensing Regulations, 2018 as "Not Proved".

16.1 The Regulation 10(n) of Customs Broker Licensing Regulations, 2018 prescribes that a Customs Broker shall 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.

16.2 The Inquiry Officer observed that the Customs Broker had in his submissions stated that they have obtained authorization as well as KYC documents viz. PAN Card, AADHAR Card, IEC copy, GST Certificate, Bank Attested signature verification of the exporters,Electricity Bills, Income Tax Returns, RCMC, Udyog Aadhar, LUT Certificate (as applicable) from all the 41 exporters and have verified the KYC and authenticity of the said 41 exporters on the Government website viz. DGFT and GST which constitute as independent and reliable source and relied on the following case laws in support of their defense :

1. APS Freight & Travels Pvt. Ltd. Vs. Commissioner of Customs (General), New Delhi, reported in 2016 (344) ELT 602 (Tri. - Del)
2. Poonia & Brothers Vs. Commissioner of Customs (Preventive), Jaipur, reported in 2019 (370) ELT 1074 (Tri. Del)
3. HIM Logistics Pvt. Ltd. Vs. Commissioner of Customs, New Delhi, reported in 2016 (338) EaLT 725 (Tri. Del)in which various Tribunals have held that no physical verification of importer's premises is mandated in the regulations nor it is a general requirement as per business practice.

The Inquiry Officer observed that the Customs Broker has neither conducted any physical verification nor verified the KYC documents of the exporters as admitted by him in his statement recorded on 18.11.2019 under Section 108 of the Customs Act, 1962. The Inquiry Officer added that the Customs Broker also admitted to have not been present during the carting of goods. The Inquiry Officer observed that the Customs Broker has not bothered to verify the functioning of his client at the declared address; that in fact, he was able to produce only 22 Letters of Authorization (LoA) to the investigating agency on 19.11.2020 although he produced the remaining LoAs later during his personal hearing. The Inquiry Officer observed that the Customs Broker has failed in his obligation to adhere to the provisions of Regulation 10(n). Accordingly, the Inquiry Officer held that the charge framed against the Customs Broker for contravention of provisions of Regulation 10(n) of Customs Broker Licensing Regulations, 2018 as "Proved".

17.The Inquiry report was shared with the CB vide office letter dated 23.03.2022.

PERSONAL HEARING

18.1 Shri Raj Bhanushali, proprietor of CB M/s.Total Clearance, attended the personal hearing on 28.04.2022 at 12.00 pm through virtual mode. Details as summarized below;

18.2 The CB reiterated his written and oral submission recorded in the inquiry report dated 07.03.2022 which was shared with CB on 23.03.2022. He read over excerpts from the case laws relied upon by him during the course of inquiry proceedings. He submitted that he had verified all the documents like PAN, Aadhar, Electricity bill etc. for KYC verification and has done the background check of all IECs with whomsoever he had dealt. He also submitted that though there was no written agreement, the amount paid to him by Shri Nilesh Gosavi was sharing of profits. He further added that the amounts thus received were though not shown as and when received from Shri Nilesh Gosavi, they were reflected in the accounts at the end of the month. According to him, since there was no contravention of law there was nothing to notify customs authorities on these exports. He added that all the documents received by him towards KYC were valid at the time of verification and are also valid as of now. He cited the judgement of Hon'ble CESTAT Mumbai dated 17.12.2021 in the case of RR Shipping Vs. Pr. Commissioner of Customs (G) and submitted that even if invoices details were wrong, the CB cannot be held responsible. Finally, he submitted that all these issues happened during the period of Covid-19, which restricted the general movement of public at large and requested to take lenient view.

WRITTEN SUBMISSION

19. The CB M/s. Total Clearance (C.B. No. 11/2171) has made the following submissions vide their letter dated 27.04.2022 :

19.1 In respect of Regulation 1(4) of the CBLR, 2018, the inquiry officer has quoted that "Shri Raj Bhanushali had effectively transferred his Customs Broker license by filing shipping bills of behalf of Shri Nilesh Gosavi". The Inquiry Officer has drawn this conclusion on the basis of statement of Shri Raj Bhanushali, Proprietor of M/s. Total Clearance, recorded on 18.11.2020 wherein it was stated that he was promised a payment of Rs.30,000 to Rs.40,000/- per month (maximum ceiling) depending on the number of shipping bills filed on behalf of Shri Nilesh Gosavi.

19.1.1 The CB refuted this charge by submitting that the aforesaid statement dated 18.11.2020 made by me (Raj Bhanushali, Proprietor of M/s. Total Clearance) was on the basis, that the assured sum was an advance in regards to cover the operating expenses; that the assured sum was not the final payment and that the relation between the exporter and M/s. Total Clearance shall be direct; that Shri Raj Bhanushali have never used the words like 'sale, sublet or transfer of the licence' in his statement dated 18.11.2020; that all the documents were acquired before any inquiry and were presented on the first summon on the same day; that the CB has secured KYC Documents, authorization letters, duly in the name of the CB firm and not in the name of any intermediary; that no evidence has been unearthed which shows that there was transfer of CB licence based on any agreement or anything between the CB and Shri Nilesh Gosavi.

19.1.2 The CB submitted that the Inquiry Officer has drawn conclusion merely on the basis of Shri Raj Bhanushali's statement recorded on 18.11.2020; that no other parties to this case viz. Shri Nilesh

Gosavi, exporters were examined during inquiry, nor any opportunity of their cross-examination, was given.

19.1.3 The CB relied upon the case law in case of Dakor Clearing & Shipping P. Ltd. Vs. Commissioner of Customs (General), Mumbai reported in 2015 (326) E.L.T. 178 (Tri. - Mumbai), wherein the Hon'ble CESTAT observed that :

> "5. ..... Further, the statements of the persons which have been relied upon by the learned Commissioner, accepting the same as confessional in nature, but the said persons were neither examined nor cross-examined in the proceedings before the Commissioner and as such, have got no evidentiary value in terms of the provisions of Section 138B of the Customs Act. There is no evidence on record that the CHA license of the appellant have been allowed to be used by unauthorized person for monitory benefit. There is no evidence of any sale or transfer of the license and that there is no illegality in procuring work through other persons and/or referees. ..... None of the three persons namely, Javed Lalani, Salim Lalani and Vijay Manjrekar connected with Mahek Consultancy Services were examined during inquiry, nor any opportunity of their cross-examination, was given. There is no evidence on record that non-authorized persons or non-employee of the appellant CHA have handled the clearance works. The appellant through its partner had produced an authorization letter for carrying out the clearance work on behalf of the client. It is further evidence that there is no restriction on the CHA to accept the authorization of a client through the trusted intermediary. The observations of the learned Commissioner that in view of the fact that authorizations have been obtained by the appellant through the intermediary, the same are not valid. This finding is not tenable and the same is fit to be set aside. .....".

19.1.4 The CB further relied upon the case law in case of Unison Clearing Pvt. Ltd. Vs. Commissioner of Customs (General), Mumbai reported in 2015 (329) E.L.T. 269 (Tri. - Mumbai), wherein the Hon'ble CESTAT observed that :

> "5. The main violation is stated to be subletting of the license in contravention of Regulation 12. This Regulation states that "License not transferable. - Every license granted or renewed under these Regulations shall be deemed to have been granted or renewed in favour of the licensee and no license shall be sold or otherwise transferred." We find no evidence to show that there has been sale or transfer of the license. No consideration is shown for such transfer nor any transfer agreement. The only evidence is that the appellant was receiving fixed amounts per container from Shri Pandey. We find no provision in the Regulations that the CHA should receive payments directly from the importers/exporters for the services rendered. We also find that Section 147 of the Customs Act allows for an agent to work on behalf of the principal. Therefore, if the importers/exporters have contracted an intermediary person for Customs clearance - work, no contravention of the CHALR is proved if the CHA is satisfied about the credentials of the importer for whom he is doing the Customs clearance work. In fact in his examination, Shri Pal Singh Lohia stated that Mr. Vishal Madan was introduced to them by Shri Pandey who is looking after their marketing. And the check list in respect of Bills of Entry is filed from his office with the help of his (CHA's) pass holders who are his employees. He also stated that he

was compelled to sign statements before DRL. Therefore it is not strictly true to say that Lohia had transferred all the CHA work to Mr. Pandey as held by the Commissioner. The statement of Shri Pandey also does not incriminate the appellant. Shri Pandey stated that he was not associated with the Customs clearance work at the port or Custom House. He further stated that his company M/s. Suprabha Shipping Logistics used to raise bills on the importer after including all charges and for the Customs clearance work, bills were raised by the appellant on M/s. Suprabha Shipping Logistics on 'account the importer' firm. It is also to be noted that the CHA commission and other clearing charges were paid through demand drafts. The allegation of payments in cash is not proved by any supporting data.
From the above, it is clear that the entire case is based on the, original statements of Shri Vishal Madan and Shri Pal Singh Lohia and their statements at the time of cross-examination have been discarded. In the relied upon documents, only statement dated 9-10-2012 of Shri Madan is considered and his other statements have not been made relied upon documents. Therefore, unless the original statements are corroborated by other material evidence it is difficult to sustain the charge of subletting of license. More so when the Commissioner has placed no reliance in his Order on the statements of Shri Pandey, taken on 7-11-2012 and 9-11-2012, to whom the license is said to be sublet. This method of relying only on some statements lends bias to the decision. In the circumstances we are of the view that the charge of subletting of license is not proved and it cannot be said that the license was transferred".

19.1.5 In respect of the aforesaid cash payment of Rs. 30,000-40,000, The CB submitted that Shri Nilesh Gosavi used to collect the said amount from the respective exporters against agency charges; that the mentioned amount of Rs. 30,000-40,000 is just an average and not a fixed amount; that the CB used to secure the payments on the arrival of shipments for clearance at the docks; that the said payments were used for covering the operating costs of clearance as they had never cleared export shipments prior to this and were unaware of how much it should cost for the same; that all such amounts received in cash were declared in the books of accounts, which could be found from the Income Tax returns and supplementary documents. The CB enclosed copy of C. A. Certified Copy of the Income Tax Return for the A.Y. 2020-21, along with the Balance Sheet, P&L and Sundry Debtor Statement for the Assessment Year 2020-2021.

19.1.6 The CB submitted that they have submitted invoices raised against the exporters for each shipment cleared by them to which the investigating officer stated that the case is not contesting whether bills were raised or not; that it shows a direct relation between CB and the exporters; that the Invoices were raised prior to the investigation but also applicable GST was paid in a duly time bound manner. The CB enclosed copies of the GST Processed Records quoting each invoice that have been raised against the exporters. The CB also enclosed copies of GST returns filed for the period of June, September and December Quarters, 2020. The invoices raised against the exporters are as follows:

Sr No.	Exporter Name	IEC	Tax Invoice No.	GSTIN Number of the Exporters
1	Lambadusa Multiventures	AADCL9103F	EXP-021dated 30.09.2020, EXP-	27AADCL9103F1ZO

	Private Limited		033 dated 31.10.2020, EXP-043 dated 30.11.2020	
2	Star Stallion International Private Limited	515916463	050112021 dated 30.11.2020, 05212021 dated 30.11.2020, 055112021 dated 30.11.2020, 056112021 dated 30.11.2020, 057112021 dated 30.11.2020	09AAWCS0381F1ZY
3	H K Enterprises	ADYPK7312G	EXP-002 dated 31.07.2020, EXP-011 dated 31.08.2020, EXP-020 dated 30.09.2020, EXP-027 dated 31.10.202.0	27ADYPK7312G1Z6
4	Granite International	BGXPB8307H	EXP-034 dated 31.10.2020, EXP-042 dated 31.11.2020	07BGXPB8307H1Z4
5	D K Traders	DLZPK2419A	EXP-019 dated 30.09.2020	27DLZPK2419A1ZZ
6	C.P Enterprise	BTXPP8957Q	EXP-039 dated 30.11.2020	27BTXPP8957Q1ZY
7	Expomark Multiventures Private Limited	AAFCE4687F	EXP-036 dated 31.10.2020, EXP-040 dated 30.11.2020	27AAFCE4687F1ZE
8	Divine Impex	FLGPS7011M	EXP-035 dated 31.10.2020	27FLGPS7011M1ZL
9	Gamble Multiventures Private Limited	AAICG4212B	EXP-038 dated 30.11.2020	27AAICG4212B1Z4
10	Ashni International	304030821	EXP-008 dated 31.08.2020, EXP-012 dated 30.09.2020	27ADRPB8413E1ZM
11	Conakry Multiventures Private Limited	AAICC1201G	EXP-041 dated 30.11.2020	27AAICC1201G1Z7
12	Imperial Exports	GJFPS0998B	EXP-017 dated 30.09.2020	07GJFPS0998B1ZW
13	Surya Enterprise	FJHPS5298K	EXP-015 dated 30.09.2020	24FJHPS5298K1ZD
14	Trootodo Export Private Limited	AAHCT8570E	EXP-016 dated 30.09.2020	27AAHCT8570E1Z1
15	Laxmi Enterprises	ADOPY5794J	EXP-017 dated 30.09.2020	07ADOPY5794J1ZF
16	Radius Tradcon Private Limited	315063670	EXP-024 dated 30.09.2020, EXP-026 dated 31.10.2020	27AAHCR1017Q1Z2
17	Crazy Creation	5215011168	EXP-028 dated 31.10.2020	24ANEPM6741R1ZF

18	Prisha Enterprise	GBZPD8466D	EXP-032 dated 31.10.2020	24GBZPD8466D1Z5
19	Rohan Designs	AWKPJ5404D	EXP-023 dated 30.09.2020	27AWKPJ5404D1ZR
20	Rishabh International	GHQPS7120L	EXP-022 dated 30.09.2020	27GHQPS7120L1ZJ
21	Satyam Fabrics	DIMPP4566B	EXP-003 dated 31.08.2020	24DIMPP4566B1Z5
22	Whispering Cattles India Limited	AABCW8252G	EXP-018 dated 30.09.2020	24AABCW8252G1ZB
23	Ridgewood Industries Private Limited	AAICR4477K	EXP-025 dated 30.09.2020	27AAICR4477K1ZR
24	Modern Enterprises	GRIPS4315F	EXP-030 dated 31.10.2020	27GRIPS4315F1ZK
25	Stylfix Exim	AUSPV3485E	EXP-045 dated 30.11.2020	27AUSPV3485E1ZW
26	Phoenix Logistic	CXWPP2101G	EXP-007 dated 31.08.2020	27CXWPP2101G1ZB
27	Hridhaan International Impex	BJRPK4239C	EXP-009 dated 31.08.2020, EXP-013 dated 30.09.2020	07BJRPK4239C1Z5
28	Crystal Impex	AMFPK7509M	EXP-044 dated 30.11.2020	27AMFPK7509M1ZM
29	Aries Overseas	5216511121	EXP-010 dated 30.09.2020	24DISPM0011E1ZO
30	Saahil Global Business Private Limited	316516724	EXP-004 dated 31.08.2020	27AAECT1696C1ZB
31	Javi Home Private Limited	510074588	EXP-029 dated 31.10.2020	06AACCJ4722D2ZZ
32	R S Enterprises	MLGPS6550L	EXP-037 dated 30.11.2020	27MLGPS6550L1Z6
33	R K Overseas	DPUPK7359E	EXP-031 dated 31.10.2020	07DPUPK7359E1Z9
34	Al-Johar Trading	308039556	EXP-001 dated 31.07.2020	27AOHPK2567B1Z3
35	Jhalani Apparels	1399000021	EXP-006 dated 31.08.2020	08AAZPJ0012G1ZT
36	Fahimuddin & Shifa Dry Fish Wholeseller and Retailer	315054913	EXP-005 dated 31.08.2020	27AMBPM9231G2Z1

19.1.7 The CB submitted that the copies of Invoices have been annexed to the submission and the same has been duly noted by the Inquiry officer too; that all invoices raised against the aforesaid exporters have particular mentions of the respective Shipping Bills filed in the month; that in cases of sub-letting/transfer of CB license, the invoices for customs clearance are always raised by the person to whom the CB license has been transferred/leased or the invoices are raised in the name of such persons by the CB; that in the instant case, the CB's invoices reflect a direct transaction between the Customs Broker and Exporters as mandated under CBLR, 2018; that during the entire course of inquiry proceedings, not a single instance of any such invoice raised by Shri Nilesh Gosavi in the

name of any exporter has been noticed; that Shri Raj Bhanushali has never parted with his Digital Signature required for filing of shipping bills; that the IP Addresses of his phone and the filing of documents could be verified by the department.

19.1.8 The CB relied upon the case law in case of K. S. Sawant & Co. Vs. Commissioner of Customs (General), Mumbai reported in 2012 (284) E.L.T. 363 (Tri.-Mumbai) , wherein the Hon'ble CESTAT observed that :

> "5.1 From the records, it is clear that the business in respect of the client M/s. Advanced Micronics Devices Ltd., was brought in by Shri Sunil Chitnis, who claims himself to be a sub-agent of the appellant CHA. The statements of Shri Badrinath and Shri Sunil Chitnis amply proves this fact. The question is, merely because the appellant procured the business through an intermediary who is not his employee, can it be said that he has sub-let or transferred the business to intermediary. The Tribunal in the case of Commissioner of Customs v. Chhaganlal Mohanlal & Co. Ltd. [2006 (203) E.L.T. 435 (Tri. - Mum.)], held that if the Customs clearance has been done through intermediary and business was got through intermediary, the same is not barred by the provisions of CHALR, 2004 and it cannot be stated that the appellant has sub-let or transferred his licence. In the case of Krishan Kumar Sharma v. Commissioner of Customs, New Delhi reported in 2000 (122) E.L.T. 581 (Tri.), this Tribunal held that the mere fact of bills raised on the intermediary cannot be held against the CHA firm to prove that the CHA licence was sub-let or transferred. Therefore, in the light of the judgments cited above, the charge of violation of Regulation 12 is not established".

19.1.9 CB also relied upon the judgement in case of Thawerdas Wadhoomal Vs. Commissioner of Customs (General), Mumbai reported in 2008 (221) E.L.T. 252 (Tri. - Mumbai), in support of their argument wherein the Hon'ble CESTAT observed that :

> 7..... The Commissioner, inter alia, invoked Regulation 12 of the CHALR, 2004 which stipulates that no CHA licence shall be sold or otherwise transferred. In the instant case, we find that the appellant has not sold/sub-let or otherwise transferred his licence to any other person. The, invoking of the said regulation, is, therefore, not in order. The reliance placed by the Commissioner on the judgment of the Tribunal in the case of Noble Agency v. Commissioner of Customs, Mumbai - 2002 (142) E.L.T. 84 is misplaced as the appellants has not sub-let his licence. Procuring work on commission basis does not amount to sub-letting or otherwise transferring the CHA licence to other persons as per the decision of the Tribunal in the case of Crown Shipping Agency v. Commissioner of Customs - 2004 (178) E.L.T. 885. The CHA is not responsible, if during the course of examination by the customs officers, any mis-declaration of the goods resulting in the loss of Revenue is detected. It does not warrant suspension of the licence of the CHA. In this connection, reliance is placed on the judgment of the Tribunal in the case of KMS Cargo Pvt. Ltd. v. Commissioner of Customs, New Delhi - 2005 (182) E.L.T. 382".

The CB stated that the above order has been upheld by the Hon'ble High Court and subsequent appeals by the Revenue have been rejected. CB further added that ratio of the aforesaid judgements are applicable in the instant case; that they have not violated any of the provisions of Regulation 1(4) of the CBLR, 2018; that it has been purely an allegation based on assumption that since the business was brought by Shri Nilesh Gosavi, the CB license has been leased to him; that it is not the case, as the facts submitted above contradict the conclusion in the Inquiry Report dated 07.03.2022.

19.2 The CB submitted that in respect of the Regulation 10(a) of the CBLR, 2018, the inquiry officer has observed that the Customs Broker has submitted only 22 letters of Authorization (LOA) to the investigating agency on 19.11.2020 and not the complete set of LOAs and accordingly, the Inquiry Officer held that CB has violated the provisions of Regulation 10 (a) of the CBLR, 2018.

19.2.1 In this regard, the CB submitted that they have effected Customs clearance of 36 exporters out of 41 exporters referred in the Show Cause Notice No. 23/2021-22 dated 21.10.2021 vide F.No. GEN/CUSTOMS BROKER/ACTN/86/2021-CUSTOMS BROKER; that it was subject matter of the Inquiry Proceedings whether the Customs Broker is in possession of the Authority Letter and whether Authority Letters are authenticate; that the Inquiry Officer has failed to appreciate the fact that they were in possession of all the authority letters; that the inquiry officer has never disputed the authenticity of the all 36 authority letters in the inquiry proceedings.

19.2.2 The CB further added that they have submitted copies of the authorizations obtained from all the exporters, to the Inquiry Officer at the time of personal hearing held on 03.01.2022; that the inquiry officer has drawn the conclusion on the basis of the 22 letter of Authorization (LOA) submitted to the investigating agency on 19.11.2020 by them; that they had voluntarily submitted all the original KYC documents pertaining to exports and imports cleared by them, to the investigating agency; that at the time of investigation, they kept some documents with them as per their requirement and returned the rest to them. The CB enclosed copy of the letter dated 19.11.2020 addressed to DRI, Mumbai duly acknowledged by the Intelligence Officer, DRI, Mumbai. The CB submitted that they have never been asked by the Investigating Agency to produce any specific document neither in the summon nor after the hearing, that they have failed to provide, till date. The CB enclosed copy of the Summons dated 18.11.2020. The CB stated that the investigating officer has mentioned the list ofAuthority letters provided to him at the time of Personal Hearing on 03.01.2022; that the Inquiry Officer has failed to appreciate the evidence viz. all the KYC documents and authority letters pertaining to 36 exporters, produced during the personal hearing and he has adversely reported it against them. The LOA's submitted to the inquiry officer that are duly noted by him are as follows:

Sr No.	Exporter Name	IEC	Authorisation letter dated
1	Lambadusa Multiventures Private Limited	AADCL9103F	21.09.2020 (pg 47)
2	Star Stallion International	515916463	Letter dt. Nil (pg. 146)

	Private Limited		
3	H K Enterprises	ADYPK7312G	Letter dt. Nil (pg. 347)
4	Granite International	BGXPB8307H	Letter dated 05.10.2020 (pg. 404)
5	D K Traders	DLZPK2419A	Letter dated 15.09.2020 (pg. 457)
6	C.P Enterprise	BTXPP8957Q	Letter dated 27.10.2020 (pg. 490)
7	Expomark Multiventures Private Limited	AAFCE4687F	Letter dated 17.10.2020 (pg. 528)
8	Divine Impex	FLGPS7011M	Letter dated 15.10.2020 (pg. 564)
9	Gamble Multiventures Private Limited	AAICG4212B	Letter dated 27.10.2020 (pg. 593)
10	Ashni International	304030821	Letter dated 18.08.2020 (pg. 630)
11	Conakry Multiventures Private Limited	AAICC1201G	Letter dated 04.11.2020 (pg. 658)
12	Imperial Exports	GJFPS0998B	Letter dated 31.08.2020 (pg. 685)
13	Surya Enterprise	FJHPS5298K	Letter dated 07.09.2020 (pg.732)
14	Trootodo Export Private Limited	AAHCT8570E	Letter dated 07.09.2020 (pg.759)
15	Laxmi Enterprises	ADOPY5794J	Letter dated 27.08.2020 (pg.797)
16	Radius Tradcon Private Limited	315063670	Letter dated 26.09.2020 (pg.823)
17	Crazy Creation	5215011168	Letter dated 02.10.2020 (pg.843)
18	Prisha Enterprise	GBZPD8466D	Letter dated 05.10.2020 (pg.858)
19	Rohan Designs	AWKPJ5404D	Letter dated 21.09.2020 (pg.885)
20	Rishabh International	GHQPS7120L	Letter dated 15.09.2020 (pg.896)
21	Satyam Fabrics	DIMPP4566B	Letter dated 17.07.2020 (pg.917)
22	Whispering Cattles India Limited	AABCW8252G	Letter dated 10.09.2020 (pg.942)
23	Ridgewood Industries Private Limited	AAICR4477K	Letter dated 26.09.2020 (pg.957)
24	Modern Enterprises	GRIPS4315F	Letter dated 24.07.2020 (pg.957)
25	Stylfix Exim	AUSPV3485E	Letter dated 02.11.2020 (pg.1002)
26	Phoenix Logistic	CXWPP2101G	Letter dated 27.08.2020 (pg.1012)
27	Hridhaan International Impex	BJRPK4239C	Letter dated Nil (pg.1040)
28	Crystal Impex	AMFPK7509M	Letter dated 11.11.2020 (pg. 1062)
29	Aries Overseas	5216511121	Letter dated 27.08.2020 (pg. 1075)
30	Saahil Global Business Private Limited	316516724	Letter dated 04.08.2020 (pg.1094)
31	Javi Home Private Limited	510074588	Letter dated 01.10.2020 (pg.1127)
32	R S Enterprises	MLGPS6550L	Letter dated 13.10.2020

			(pg.1136)
33	R K Overseas	DPUPK7359E	Letter dated Nil (pg.1153)
34	Al-Johar Trading	308039556	Letter dated 09.07.2020 (pg.1163)
35	M K Overseas	AVIPK5145M	Letter dated Nil (pg.1179)
36	Jhalani Apparels	1399000021	Letter dated 18.08.2020 (pg.1191)
37	Fahimuddin & Shifa Dry Fish Wholeseller and Retailer	315054913	Letter dated 14.08.2020 (pg. 1197)
38	Ryan Overseas	AXFPM7907C	Letter dated 30.08.2020 (pg.1219)
39	Votrexo Exports Pvt. Ltd.	AAHCV3909K	Letter dated 07.09.2020 (pg.1224)
40	Unrivaled Design Group	2912001293	Letter dated 01.10.2020 (pg.1233)
41	Prem Henna Pvt. Ltd.	1313008010	Letter dated 10.09.2020 (pg.1246)

19.2.3 The CB submitted that the charge of contravention of provisions of Regulation 10(a) of the CBLR, 2018 is completely baseless as they have produced and submitted all the letters of authorization, issued by the exporter for handling the export consignment during the inquiry proceedings, which should suffice the requirement laid down by customs; that there is no corroborative evidence against the allegation that they have effected the export clearance without any authorization from the exporters. The CB submitted copies of all the letters of authorization. The CB submitted that the Article of Charge that they have contravened the provisions of Regulation 10(a) of CBLR, 2018, is baseless, blatant falsehood and without substantiating with corroborative independent and valid evidence.

19.3 The CB submitted that in respect of Regulation 10(d) of the CBLR, 2018 the inquiry officer has observed that without verification of the KYC documents, the Customs Broker was not in a position to advise his client and therefore they had failed to advice their client to comply with the provisions of the Customs Act.

19.3.1 Against this allegation CB submitted that Regulation 10(d) of the CBLR, 2018 is not about procuring KYC documents but to advise his client to comply with the provisions of the Act and other Allied Act and the Rules and Regulations thereof, and in case of non-compliance shall bring to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be.

19.3.2 The CB submitted that physical verification of premises of exporters and knowledge of actual of person exporting the goods are two different concepts; that the Inquiry Officer has concluded on the basis of the statement given to investigating agency that Shri Raj Bhanushali was not personally present during the carting of all the shipments at the CFS; that no irregularity has ever been noticed by any Customs Officer during the clearance of any of the export shipments; that observations of the Inquiry Officer are totally baseless as there is no relation between presence

of 'F' card holder during carting of the goods and advising the client as per the requirement of provisions of Regulation 10(d) of the CBLR, 2018.

19.3.3 The CB submitted that the Inquiry Officer has specifically observed in his Inquiry Report that they had no prior knowledge of misuse of drawback scheme of ineligible IGST refund or that we were hand in glove with the unscrupulous elements to report non-compliance to the officers of the Department; that there is no corroborative evidence to prove that they as a Customs Broker, have ever given wrong advice to their clients.

19.3.4 The CB relied upon the decision in the case of HIM Logistics Pvt. Ltd. Vs. Commissioner of Customs, New Delhi, reported in 2016 (338) ELT 725 (Tri. Del), wherein the Hon'ble Tribunal held that :

'7.....There is no stipulation or legal requirement to physically verify the business premises or residential premises of the importer and also to have a personal meeting with the importer before taking up the work for any importer".

19.3.5 The CB submitted that the aforesaid decision of the Hon'ble Tribunal was affirmed in the Hon'ble High Court of Delhi, reported in 2017 (348) ELT 625 (Del.)

19.3.6 The CB also relied upon the case law in case of Dakor Clearing & Shipping P. Ltd. Vs. Commissioner of Customs (General), Mumbai reported in 2015 (326) E.L.T. 178 (Tri. - Mumbai), wherein the Hon'ble CESTAT observed that :

> "5.1 We further find that so far Article of Charge under Regulation 13(d) is concerned, there is no finding or admission of any person that there have been lack of advice or any mis-advice from the CHA. No specific instance of violation of advice has come on record. Further, no discrepancies have been found by the Customs authorities in the documents filed by the appellant-CHA. So far the mis-declaration is concerned, as regards the goods under Bill of Entry, it has no way come on record that the same was with the knowledge or abetment of the CHA".

The CB submitted that ratio of the said judgement is applicable in the instant case and they have not violated the provisions of Regulation 10(d) of the CBLR, 2018. The CB further submitted that they have not contravened the provisions of Regulation 10(d) of CBLR, 2018 as the findings of Inquiry Officer and the provisions laid down in the Regulation are contradicting within itself.

19.4 The CB submitted that In respect of Regulation 10(n) of the CBLR, 2018 the inquiry officer has observed that the Customs Broker has not conducted physical verification, not verified KYC documents, CB was not present during the carting of goods, the CB has not verified the functioning of clients at declared address and lastly the CB has produced only 22 letters of authorizations to the investigating agency on 19.11.2020 although the Customs Broker produced the remaining LOA later during his personal hearing.

19.4.1 Refuting this article of charge, the CB submitted that they have submitted copies of the KYC documents from 36 exporters, to the Inquiry Officer at the time of personal hearing held on 03.01.2022; that

they had voluntarily carried all the original KYC documents pertaining to exports and imports cleared by them. The CB enclosed copy of the letter dated 19.11.2020 addressed to DRI, Mumbai duly acknowledged by the Intelligence Officer, DRI, Mumbai. The CB submitted that they have never been asked by the Investigating Agency to produce any specific document that they have failed to provide till date. The CB submitted copy of the Summons dated 18.11.2020. The CB submitted that the Inquiry Officer has failed to appreciate the evidence viz. all the KYC documents pertaining to 36 exporters, produced during the personal hearing; they have also submitted IEC copy duly verified from the DGFT website, GST certificate duly verified from the GST website.

19.4.2 The CB submitted that the Inquiry Officer has concluded on the basis of the statement given to investigating agency that Shri Raj Bhanushali was not personally present during the carting of all the shipments at the CFS; that observations of the Inquiry Officer were totally baseless as there is no relevance between presence of Customs Broker during carting of the goods and KYC norms as per the requirement of provisions of Regulation 10(n) of the CBLR, 2018.

19.4.3 The CB submitted that the Inquiry Officer has concluded that they have not bothered to verify their client's declared address; that they have obtained KYC documents viz. PAN Card, AADHAR Card, IEC copy, GST Certificate, Bank Attested signature verification of the exporters, Electricity Bills, Income Tax Returns, RCMC, Udyog Aadhar, LUT Certificate from all the 41 exporters mentioned in the show cause notice. The CB further submitted that no physical verification of the importer's/exporter's premises is mandated in the CBLR, 2018.

19.4.4 The CB submitted that at the time of exports, as per P.N. No. 93/2020 dt. 29.07.2020 issued vide F.No. EDI/Misc.-154/2017/JNCH (copy encl.) it is mandatory to submit all KYC documents, failing which, Export documents cannot be filed. The CB further submitted that the said Pubic Notice prescribes the documents to be collected from the exporter; that in the instant case, the procedure laid down in the said Public Notice has been completed in respect of all the exporters; that as per Paras 2.3 and 3 of the said Public Notice, the Customs department requires Bank verification for A.D. Code registration from the official e-mail id of the bank; that the prescribed procedure has been completed by proving Banking authenticity at the time of exports; that they believe that all the verifications have been duly completed by the authorities as per the procedure and nothing adverse has been noticed.

19.4.5 The CB relied upon the decision in the case of APS Freight & Travels Pvt. Ltd. Vs. Commissioner of Customs (General), New Delhi, reported in 2016 (344) ELT 602 (Tri. – Del) wherein the Hon'ble Tribunal held that :

> "4. We have heard both the sides and examined appeal records. The license of the appellant stands revoked only on the ground that they have failed in their obligation of verifying the identity of his client and their existence in the given address. The admitted facts of the case are that the importer's details as available in IEC, PAN Cards, Bank Account and electricity have been checked by the appellant. No physical verification of importer's premises is mandated in the regulations nor it is a general requirement as per business practice.

No violations have been noticed in respect of transactions with Customs with reference to consignment cleared through the appellants. As such the order of revocation of license, only on the ground that on later verification the importer was not found in the indicated premises, is not justifiable".

19.4.5 The CB further relied upon the decision in the case of Poonia & Brothers Vs. Commissioner of Customs (Preventive), Jaipur, reported in 2019 (370) ELT 1074 (Tri. Del), wherein the Hon'ble Tribunal held that :

"6..... The CHA is not supposed to verify the each and every aspect about the business of importer as the Inspector of Department or investigating agency. From the submission made by the ld. Advocate and fact on record, it is apparent that the appellant has taken due diligence while verifying the KYC of the appellant based on the record submitted by him. We also find that the KYC is required to be done on the basis of following guidelines prescribed by the Central Board of Excise & Customs which are as under :

No.	Form of organisation	Features to be verified	Documents to be obtained
1.	Individual	(i) Legal name and any other names used (ii) Present and Permanent address, in full, complete and correct.	(i) Passport (ii) PAN card (iii) Voter's Identity card (iv) Driving licence (v) Bank account statement (vi) Ration card Note : Any two of the documents listed above, which provides client/customer information to the satisfaction of the CHA will suffice
2.	Company	(i) Name of the company (ii) principal place of business (iii) mailing address of the company (iv) telephone, fax number, e-mail address.	(i) Certificate of incorporation (ii) Memorandum of Association (iii) Articles of Association (iv) Power of Attorney granted to its managers, officers or employees to transact business on its behalf. (v) Copy of PAN allotment letter

			(vi) Copy of telephone bill
3.	Partnership firm	(i) Legal name (ii) Permanent address, in full, complete and correct. (iii) Name of all partners and their addresses, in full complete and correct. (iv) telephone, fax number, e-mail address of the firm and partners	(i) Registration certificate, if registered (ii) Partnership deed (iii) Power of Attorney granted to a partner or an employee of the firm to transact business on its behalf (iv) Any officially valid document identifying the partners and the person holding the Power of Attorney and their addresses. (v) Telephone bill in the name of firm/partners.
4.	Trusts, Foundations	(i) Name of trustees, settlers, beneficiaries and signatories (ii) Name and address of the founder, the managers, Directors and the beneficiaries, in full, complete and correct. (iii) Telephone and fax number, e-mail address of the trust, founder and trustees.	(i) Certificate of Registration, if registered. (ii) Power of Attorney granted to transact business on its behalf (iii) Any officially valid document to identify the trustees, settlers, beneficiaries and those holding the Power of Attorney, founders/ Managers, Directors and their addresses (iv) Resolution of the managing body of the foundation/association (v) Telephone bill.

These guidelines nowhere prescribe that C.B., before taking the job of Customs clearance is required to be physically verify the existence of importer/exporter. If the required documents as prescribed above is made available to C.B., job for KYC norms, is fulfilled. The appellant has fulfilled these requirements as is apparent from the case record".

The CB submitted that in the instant case they also rely upon the decision in the case of HIM Logistics Pvt. Ltd. Vs. Commissioner of Customs, New Delhi, reported in 2016 (338) ELT 725 (Tri. Del), wherein the Hon'ble Tribunal held that :

'7.....There is no stipulation or legal requirement to physically verify the business premises or residential premises of the importer and also to have a personal meeting with the importer before taking up the work for any importer".

The CB submitted that the aforesaid decision of the Hon'ble Tribunal was affirmed in the Hon'ble High Court of Delhi, reported in 2017 (348) ELT 625 (Del.)

19.4.6 The CB in addition placed reliance upon the decision in case of Kunal Travels (Cargo) Vs. CC (I & G), IGI AIRPORT, 2017 (354) E.L.T. 447 (Del.) wherein it was held that :

> "12. ...The CHA is not an inspector to weigh the genuineness of the transaction. It is a processing agent of documents with respect to clearance of goods through customs house and in that process only such authorized personnel of the CHA can enter the customs house area. What is noteworthy is that the IE Code of the exporter M/s. H.M. Impex was mentioned in the shipping bills, this itself reflects that before the grant of said IE Code, the background check of the said importer/exporter had been undertaken by the customs authorities, therefore, there was no doubt about the identity of the said exporter. It would be far too onerous to expect the CHA to inquire into and verify the genuineness of the IE Code given to it by a client for each import/export transaction. When such code is mentioned, there is a presumption that an appropriate background check in this regard i.e. KYC etc. would have been done by the customs authorities. There is nothing on record to show that the appellant had knowledge that the goods mentioned in the shipping bills did not reflect the truth of the consignment sought to be exported. In the absence of such knowledge, there cannot be any mens rea attributed to the appellant or its proprietor. Whatever may be the value of the goods, in the present case, simply because upon inspection of the goods they did not corroborate with what was declared in the shipping bills, cannot be deemed as misdeclaration by the CHA because the said document was filed on the basis of information provided to it by M/s H.M. Impex, which had already been granted an IE Code by the DGFT. The grant of the IE Code presupposes a verification of facts etc, made in such application with respect to the concern or entity. If the grant of such IE Code to a non-existent entity at the address WZ-156, Madipur, New Delhi - 63 is in doubt, then for such erroneous grant of the IE Code, the appellant cannot be faulted. The IE Code is the proof of locus standi of the exporter. The CHA is not expected to do a background check of the exporter/client who approaches it for facilitation services in export and imports Regulation 13(e) of the CHALR, 2004 requires the CHA to: "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" (emphasis supplied). The CHAs due diligence is for information that he may give to its client and not necessarily to do a background check of either the client or of the consignment. Documents prepared by a CHA are on the basis of instructions/documents received from its client/importer/exporter Furnishing of wrong or incorrect information cannot be attributed to the CHA if it was innocently filed in the belief and faith that its client has furnished correct information and veritable documents. The misdeclaration would be attributable to the client if wrong information were deliberately supplied to the CHA. Hence there could be no guilt, wrong, fault or penalty on the appellant apropos the contents of the shipping

bills. Apropos any doubt about the issuance of the IE Code to M/s. H. S. Impex, it was for the respondents to take appropriate action. Furthermore, the inquiry report revealed that there was no delay in processing the documents by the appellant under Regulation 13(n)".

19.4.7 The CB also relied upon the decision in Final Order No.50002/2022 dated 3.1.2022 in the case of Anax Air Services Pvt.Ltd. V/s Commissioner of Customs, New Delhi (Airport and General) wherein the Hon'ble CESTAT, New Delhi held that :

"22. ..... We now proceed to examine the scope of the obligations of the Customs Broker under Regulation 10(n). It requires the Customs Broker to 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. This obligation can be broken down as follows:

a) Verify the correctness of IEC number

b) Verify the correctness of GSTIN

c) Verify the identity of the client using reliable, independent, authentic documents, data or information

d) Verify the functioning of the client at the declared address using reliable, independent, authentic documents, data or information.

23. Of the above, (a) and (b) require verification of the documents which are issued by the Government departments. The IEC number is issued by the Director General of Foreign Trade and the GSTIN is issued by the GST officers under the Central Board of Indirect Taxes and Customs of the Government of India or under the Governments of State or Union territory. The question which arises is has the Customs Broker to satisfy himself that these documents or their copies given by the client were indeed issued by the concerned government officers or does it mean that the Customs Broker has to ensure that the officers have correctly issued these documents. In our considered view, obligations under Regulation 10(n) of CBLR cannot be read to mean the latter as it would amount to treating the Customs Broker as one who is responsible to oversee and ensure the correctness of the actions by the Government officers. It would also mean that the Regulations under the Customs Act prevail over the actions under the Foreign Trade (Development and Regulation) Act, 1992 under which the IEC is issued by DGFT and the Central Goods and Services Tax Act (or state GST Act) under which the GSTIN is issued by the GST officers which is not a correct construction of the legal provisions. Therefore, the verification of certificates part of the obligation under Regulation 10(n) on the Customs Broker is fully satisfied as long as it satisfies itself that the IEC and the GSTIN were, indeed issued by the concerned officers. This can be done through online verification, comparing with the original documents, etc. and does not require an investigation into the documents by the Customs Broker. The presumption is that a certificate or registration issued by an officer or purported to be issued by an officer is correctly issued. Section 79 of the Evidence Act, 1872 requires even Courts to presume that every certificate which is purported to be issued by the Government officer to be genuine.

32. ..... The Customs Broker is not Omniscient and Omnipotent. The responsibility of the Customs Broker under Regulation 10(n) does not extend to ensuring that all the documents issued by various officers of various departments are issued correctly. The Customs Broker is not an overseeing authority to ensure that all these documents were correctly issued by various authorities. If they were wrongly issued, the fault does not lie at the doorstep of the Customs Broker and it is not up to the Customs Broker to doubt the documents issued by the authorities and he cannot be faulted for believing them to be correct.

46. .....Thus, both the financial gain to an individual and the aggregate financial impact on the budget are large but the policy and schemes are not designed mainly to facilitate the good guys and genuine exporters and not to keep the crooks out. This balance is a matter of policy. Learned departmental representative was correct in stating that the officers work within their mandate which may not include physical verification of the premises of the exporters. Nevertheless, the burden of this very liberal, open, scheme and its potential misuse cannot be put at the doorstep of a Customs Broker. Just as the officer's responsibility ends with doing his part of the job (which may be issuing a registration without physical verification or allowing exports without assessing the documents or examining the goods), the Customs Broker's responsibility ends with fulfilling his responsibilities under Regulation 10 of the CBLR, 2018. In dispute in this case is CBLR 10(n) which, as we have discussed above, does not require any physical verification of the address of the exporter/importer and the appellant has fully met his obligations under Regulation 10(n)".

19.4.8 Additionally, the CB relied upon the decision in Final Order for Customs Appeal No. 50389 of 2021 with customs cross objection no. 50408 OF 2021 in the case of Commissioner of Customs, New Delhi (Airport and General) V/s M/s CRM Logistics Private Limited wherein the Hon'ble CESTAT, New Delhi held that :

"32.....The SCN and the impugned order ignore several documents which were obtained by the appellant, which were issued by the various Government departments and authorities to the exporter with the same address. We find no reason to disbelieve all these officers of various government departments and believe only the verification report by the jurisdictional officer who submitted RUD2. We also find that this report is defective inasmuch as it does not say when the verification was carried out and when the exporter stopped operating from the premises or if the exporter never operated from the premises at all and the GST Registration and all the other documents issued by various government officers were issued carelessly or fraudulently or without any verification at all. If the exporter ceased to operate from that premises subsequent to the issue of GST Registration, the report does not say whether the exporter ceased to operate prior to the date of export or after that date. Even if the exporter had ceased to operate from that premises and had not got amendments made in the official documents issued by various authorities, this cannot be held against the appellant Customs Broker to say that it violated Regulation 10(n) of the CBLR, 2018. For these reasons, RUD-2 also does not support the case of the Revenue".

19.4.9 At last, the CB submitted that all the shipping bills were filed between the period July, 2020 to November, 2020; due to Covid-19

pandemic situation and disruption, because of complete lock down imposed by Central as well as State Government, it was impossible to visit and personally meet the individual exporters. The CB requested that sympathetic view may be taken in respect of physical verification of address while all other KYC norms are fulfilled by them. The CB further submitted that the case laws relied upon by them in respect of Regulation 10(n) of the CBLR, 2018 are self-explanatory; that they not contravened the provisions of Regulation 10(n) of CBLR, 2018.

19.5 With reference to the observations that there are no violations of Regulation 10 (e) and 10 (m) of CBLR 2018, the CB submitted that they are in total agreement with the observations of the Inquiry Officer.

19.6 The CB submitted following Pointers for Facts of the Case from the detailed submissions against the allegations levelled in the said case:

i) Charge of Violation of Regulation 1(4)

- "Shri Raj Bhanushali had effectively transferred his Customs Broker license by filing shipping bills of behalf of Shri Nilesh Gosavi" against a payment of Rs. 30,000-40,000 monthly.
- The stated amount for covering operating cost for clearance of export shipments is construed to be the Final payment by the inquiry officer. The post-clearance invoices raised to the exporters are completely dis-regarded during the inquiry.
- There has never been a cross-examination to any other party to this case. There is no other evidence or statement that prove the case against us otherwise.
- The said sum of Rs. 30,000-40,000 is an average of the amount required for clearance. The said amount was collected by Mr. Nilesh Gosavi, only as an intermediary, specifically on behalf of my firm, as the business was brought by him. These amounts were purely utilized for covering the operating expenses for clearance of export shipments. All such amounts are also mentioned in the books of accounts at the time of filing Income Tax Returns.
- (Encl. C.A. Certified copies of ITR, Balance Sheet, P&L and Sundry Debtors for ready reference.)
- All the invoices are effected by timely GST Payments and GST returns which have been filed prior to the investigation. Such invoices have been ignored stating it not the case to contest whether invoices were raised or not. These invoices prove a direct transaction between the CB and their exporter thereby eliminating any allegation that the license has been transferred or lease.
- (Encl. Copies of all GST Returns for invoices raised against the exporters)

ii) Charge of Violation of Regulation 10(a)

- The Customs Broker has submitted only 22 letters of Authorization (LOA) to the investigating agency on 19.11.2020 and not the complete set of LOAs.
- It is pertinent to submit that export clearance of only 36 exporters have been effected. Hence, C.B. Authorization Letters of only 36 Exporters are relevant to the case.

- The inquiry officer has held "voluntary submissions" to the investigating agencies, against us. We have never been asked to submit any document by any investigating agency. Rather, we carried the documents, that were handy at the time, to help the investigation and have later submitted all the required Letters of Authorization to the inquiry officer which have been duly acknowledged.
- (Encl. Copy of Summon from the Investigating Agency and acknowledgement of our voluntary submission of documents)
- The charge is completely baseless as we are required to submit the Letters of Authorization when asked for. The inquiry officer has completely ignored the fact that we have satisfactorily submitted all such required letters, at the time of inquiry, as required by the inquiry officer.
- (Encl. Copies of all the letters of Authorization from Exporters for ready reference.)

iii) Charge of Part-violation of Charge 10(d)

- Without verification of the KYC documents, the Customs Broker was not in a position to advise his client and therefore they had failed to advice their client to comply with the provisions of the Customs Act.
- The Regulation 10(d) of the CBLR, 2018 states that :
- "A Customs Broker shall advise his client to comply with the provisions of the Act and other Allied Act and the Rules and Regulations thereof, and in case of non-compliance shall bring to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be".
- The inquiry officer has only emphasized that physical verification was not carried of the exporter's premises and that the CB was not personally present at the time of carting of goods. None of the two things are mandated by the regulations of any law neither do they prove that we have failed in any way to advise our clients about the customs procedures and law. No irregularity in the shipments have ever been noticed by any officer at the time of assessment or inspection of goods at the time of clearance.
- The Inquiry officer has specifically cleared us from any wrong-doing or knowledge of any misuse of the law as per the specific regulation wherein we shall be required to inform the authorities about the same.

iv) Charge of Violation of Regulation 10(n) of CBLR, 2018

- The Customs Broker has not conducted physical verification, not verified KYC documents, CB was not present during the carting of goods, the CB has not verified the functioning of clients at declared address and lastly the CB has produced only 22 letters of authorizations to the investigating agency on 19.11.2020.
- The Inquiry officer has completely ignored our submissions in appreciating that we have never failed to produce any document that we are mandated to possess. We have verified IEC, GST Certificates from DGFT, GST websites respectively. We have produced electricity bills, Bank verified signatures, Cheques of the exporting firms for address proof as their KYC documents.
- Raj Bhanushali's statement that he was not personally present at the time of carting does not depict in any way that we had not done

verification of the correctness of the IEC number, GST Identification number. All the export clearance was only done between 20th July, 2020 to 18th November, 2020. During this entire period there were travel restrictions and due to the nature of the trade that client's are based Pan India, it was not possible to physically verify the addresses.

- Although we have provided documents like their electricity bills, banking documents where the banks must have done their KYC verification to show that the addresses are legit. The "voluntary submission" is again being questioned whereas the fact that all the documents are produced when required is blatantly ignored.
- In all the charges mentioned above, the Inquiry Officer has blatantly ignored the facts and proofs provided by us while the inquiry has not shown a single piece of corroborative evidence that, in any way, proves any wrong-doing on our part.
- Violation of Regulation 10(e), 10(m) of CBLR, 2018 are observed as "Not Proved" by the Inquiry Officer.

19.7 The CB submitted that there is no corroborative evidence on any of the charges levelled against them (M/s Total Clearance); that the Inquiry Officer has blatantly ignored the facts, submission and various case laws that were placed before him; that they pray for dropping the charges and allegations framed up on them without any evidence on records; that they have relied upon the various decisions of the Tribunals, as well as High Courts; that the suspension of the license has endangered the livelihood of all the families related to our business's operating status. It is thus prayed that a sympathetic view may kindly be taken in the matter.

DISCUSSION AND FINDINGS

20. I have gone through the case, material on records, Inquiry Report, oral submission made by the CB during the personal hearing held on 28.04.2022 and examined the role and conduct of CB in this case before me.

21. The issue in brief is that The Directorate of Revenue Intelligence (DRI), MZU, Mumbai investigated a case of fraudulent availment of drawback and IGST refund by a syndicate of persons by procuring fake purchase invoices and further over-valuing the goods to avail higher drawback and inadmissible IGST refund. Modus operandi of the said syndicate was that they used to obtain IECs from different persons and with the help of another set of persons they used to procure fake purchase invoices of goods to be exported. The invoices were procured just to create a paper trail. However, no goods were actually supplied under the said fake invoices. These fake invoices were prepared showing higher values (over-valuation) so as to enable the syndicate to claim higher duty drawback and IGST refund. Verification of the declared address of some of the exporters, as given in their IECs, revealed that they never existed at the given address or in some cases the IECs were controlled by a person, other than the IEC holder.

22.During the Course of investigation, statement of Shri Raj Bhanushali, proprietor of the CB M/s. Total Clearance (CB No.11/2171) was recorded on 18.11.2020, under Section 108 of the Customs Act, 1962 and statement

of Shri Nilesh Gosavi, who appeared to have facilitated exports were recorded under Section 108 of the Customs Act, 1962 on 18.11.2020 and 19.11.2020.

23.Based on offence report it appeared that CB M/s Total Clearance (CB No 11/2171), have contravened provisions of Regulation 1(4), 10(a), 10(d), 10(e), 10(m) and 10(n) . Accordingly, Order No. 15/2020-21 dated 29.07.2021 was issued suspending the Customs Broker License No. 11/2171 of M/s. Total Clearance and subsequently vide Order 28/2020-21 dated 21.10.2021 the suspension was continued with pending inquiry.

24.I find that charges against CB i.e. violation of Regulation 10(e) and 10 (m) of the CBLR, 2018 were held as "Not Proved", Regulation 1(4) 10(a), 10(n) of the CBLR, 2018 as "Proved" and Regulation 13(d) of CBLR, 2018 were held as 'Partly Proved' by the Inquiry Officer.

25.I now examine the charges in the Charge Notice sequentially.

25.1.1 **In respect of Regulation 1(4) of CBLR 2018**, it is alleged that the CB has sold or transferred Customs Broker License. I find that the charge has been proved by the Inquiry Officer. As per the statement of Shri Raj Bhanushali, Proprietor of M/s. Total Clearance, recorded on 18.11.2020, under section 108 of Customs Act, 1962, wherein he admitted that he was promised a payment of Rs. 30,000/- to Rs.40,000/- per month (Maximum ceiling) depending on the number of shipping bills filed on behalf of Shri Nilesh Gosavi. The Inquiry Officer observed that Shri Raj Bhanushali's statement does not record that "he was sharing the profits with Shri Nilesh Gosavi as the business was provided by him during that time" as mentioned in the submission made by him; that by filing shipping bills on behalf of Shri Nilesh Gosavi, Shri Raj Bhanushali had effectively transferred his Customs Broker license; that there is no evidence in the form of Bank Account transfer or any other evidence to show that there was monthly payments for sale, sublet or transfer of the license of Customs Broker does not hold water as he had admitted to the fact that the amount was being paid in cash during his statement recorded on 18.11.2020. The Inquiry Officer further observed that the case law of K. S. Sawant & Co. Vs. Commissioner of Customs (General), Mumbai reported in 2012 (284) E.L.T. 363 (Tri.-Mumbai) quoted by the Customs Broker in his submission does not apply to the instant case as, in this case, it was Shri Nilesh Gosavi who had paid Shri Raj Bhanushali and not otherwise; that had Shri Nilesh Gosavi been an intermediary, Shri Raj Bhanushali should have paid him for bringing in business.

25.1.2 The defense submission stated that the statement dated 18.11.2020 made by him was on the basis, that the assured sum was an advance in regards to cover the operating expenses; that the assured sum was not the final payment and that the relation between the exporter and M/s. Total Clearance shall be direct; that Shri Raj Bhanushali have never used the words like 'sale, sublet or transfer of the licence' in his statement dated 18.11.2020; that the CB has secured KYC Documents, authorization letters, duly in the name of the CB firm and not in the name of any intermediary; that no evidence has been unearthed which shows that there was transfer of CB licence based on any agreement or anything between the CB and Shri Nilesh Gosavi.

25.1.3 In respect of the aforesaid cash payment of Rs. 30,000-40,000, the CB in their defense submission stated that Shri Nilesh Gosavi used to collect the said amount from the respective exporters against agency charges; that the mentioned amount of Rs. 30,000-40,000 is just an average and not a fixed amount; that the CB used to secure the payments on the arrival of shipments for clearance at the docks; that the said payments were used for covering the operating costs of clearance as they had never cleared export shipments prior to this and were unaware of how much it should cost for the same; that all such amounts received in cash were declared in the books of accounts, which could be found from the Income Tax returns and supplementary documents. I find that the CB has enclosed copy of C. A. Certified Copy of the Income Tax Return for the A.Y. 2020-21, along with the Balance Sheet, P&L and Sundry Debtor Statement for the Assessment Year 2020-2021, GST returns filed for the period of June, September and December Quarters, 2020. The aforesaid documents submitted by the CB. The CB has filed the GST returns and shown the transactions in Income Tax returns. All invoices raised against the aforesaid exporters have particular mentions of the respective Shipping Bills, which showing transactions between the Customs Broker entity and exporters.

25.1.4 The Customs Broker relied upon the following case laws :

i) Dakor Clearing & Shipping P. Ltd. Vs. Commissioner of Customs (General), Mumbai reported in 2015 (326) E.L.T. 178 (Tri. - Mumbai)

ii) Unison Clearing Pvt. Ltd. Vs. Commissioner of Customs (General), Mumbai reported in 2015 (329) E.L.T. 269 (Tri. - Mumbai)

iii) K. S. Sawant & Co. Vs. Commissioner of Customs (General), Mumbai reported in 2012 (284) E.L.T. 363 (Tri.-Mumbai)

iv) Thawerdas Wadhoomal Vs. Commissioner of Customs (General), Mumbai reported in 2008 (221) E.L.T. 252 (Tri. - Mumbai)

25.1.5 It is undisputed that the export clearance business was procured through intermediary viz. Shri Nilesh Gosavi. Neither Shri Raj Bhanushali, proprietor of the CB M/s. Total Clearance nor Shri Nilesh Gosavi have denied this fact. As per the aforesaid decision of the Hon'ble Tribual, procuring work on commission basis does not amount to sub-letting or otherwise transferring the CB licence to other persons. However, in the present case it is on record that Shri Raj Bhanushali, proprietor of the CB M/s. Total Clearance (CB No.11/2171) in his statement recorded on 18.11.2020, under Section 108 of the Customs Act, 1962 stated that he was receiving an average amounts of Rs. 30,000 - 40,000 per month from Nilesh Gosavi for filing the Bills brought by him. Had it been a profit sharing it should have been other way round. Had it been on Commission basis also the money should have been paid to Nilesh Gosavi by CB but not that shri Nilesh Gosavi pays amount of Commission to Raj Bhanushali. Further, the CB failed to explain the arrangement of payment of money from Nilesh Gosavi and if the same is reflected on daily basis and as and when received into their accounts. Thus it is clear that for using the license of the CB certain amounts were paid to the CB depending on the volume of transactions, since the amount paid is in the range of Rs. 30,000-40,000 but not a fixed amount. It tantamount to nothing but sublet or transfer of

the CB license and thereby I hold that article of charge of contravention of provisions of Regulation 1(4) of the CBLR, 2018 by the Customs Broker M/s. Raj Clearance (CB No. 11/2171) is **"Proved"**.

25.2.1 **In respect of Regulation 10(a) of CBLR 2018**, it is alleged that the CB did not obtain an authorization from the companies, firms or individuals by whom he was for the time being employed as a Customs Broker and did not produce such authorisation to the DC/AC of Customs. I find that the charge has been proved by the Inquiry Officer.

25.2.2 The Inquiry Officer observed that in their submission dated 03.01.2022, the Customs Broker submitted that they had submitted authorization letters from all the exporters to the investigating agency on the date of summon itself which is not true. The Inquiry Officer further observed that on going through the submissions made to the Investigating agency by CB vide letter dated 19.11.2020 and which was acknowledged by the agency, only 22 Letters of Authority (LoA) of exporters listed in the statement were submitted by the Customs Broker; that KYC documents were not complete in cases where Letter of Authority (LoA) were submitted.

25.2.3 The defense submission stated that they have submitted copies of the authorizations obtained from all the exporters, to the Inquiry Officer at the time of personal hearing held on 03.01.2022; that the inquiry officer has drawn the conclusion on the basis of the 22 letter of Authorization (LOA) submitted to the investigating agency on 19.11.2020 by them; that they had voluntarily submitted all the original KYC documents pertaining to exports and imports cleared by them, to the investigating agency; that at the time of investigation, they kept some documents with them as per their requirement and returned the rest to them. The CB enclosed copy of the letter dated 19.11.2020 addressed to DRI, Mumbai duly acknowledged by the Intelligence Officer, DRI, Mumbai.

25.2.4 The defense submission further stated that they have never been asked by the Investigating Agency to produce any specific document neither in the summon nor after the hearing, that they have failed to provide, till date. The CB enclosed copy of the Summons dated 18.11.2020 and added that the Inquiry Officer has failed to appreciate the evidence viz. all the KYC documents and authority letters pertaining to 36 exporters, produced during the personal hearing and he has adversely reported it against them.

I have perused the copy of the letter dated 19.11.2020 addressed to DRI. I have also perused copy of the summons dated 18.11.2020 wherein no specific documents were call for. I find that there is no corroborative evidence against the allegation that they have effected the export clearance without any authorization from the exporters. It is observed that none of the exporters have implicated the Customs Broker M/s. Total Clerarance (11/2171) that they have not authorized the said CB. Further, the Inquiry Officer has not challenged the authenticity of the Letter of Authorizations. After perusing the copies of authorization letter submitted by the CB, I find that the CB had acted on the authorization letter received, though the means of receipt of such authorization letters is not mentioned. Hence, I hold that the article of charge of contravention of provisions of Regulation 10(a) of the CBLR, 2018 by the Customs Broker M/s. Raj Clearance (CB No. 11/2171) is **not sustainable**.

25.3.1 **In respect of Regulation 10(d) of CBLR 2018**, which stipulates that Customs Broker shall advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. It is alleged that the CB has failed on this count. I find that the charge has been 'partly proved' by the Inquiry Officer.

25.3.2 I find that Shri Raj Bhanushali as per his statement recorded on 18.11.2019 under Section 108 of the Customs Act, 1962, admitted that he did not verify KYC of any of the exporters and was also not present during the carting of the goods at the CFS. The Inquiry Officer observed that without verification of the KYC documents, the Customs Broker was not in a position to advise his client. The Inquiry Officer further observed that the CB had failed to advise their client to comply with the provisions of the Customs Act, 1962. The Inquiry Officer observed that the decision in the case HIM Logistics Pvt. Ltd. Vs. Commissioner of Customs, New Delhi, reported in 2016 (338) ELT 725 (Tri. Del) and affirmed by Hon'ble High Courtof Delhi, reported in 2017 (348) ELT 625 (Del.) quoted by the Customs Broker, is not relevant to the instant case. The Inquiry Officer further observed that with respect to the part provision of bringing non-compliance to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, there is no evidence to state that the Customs Broker was having prior knowledge of misuse of drawback scheme or ineligible IGST refund or they were hand in glove with the unscrupulous elements to report Non-Compliance to the officers of the department.

25.3.3 The defense submission stated that in respect of Regulation 10(d) of the CBLR, 2018 the inquiry officer has observed that without verification of the KYC documents, the Customs Broker was not in a position to advise his client and therefore they had failed to advice their client to comply with the provisions of the Customs Act. I find the CB has not contacted the IEC holders in any manner. The CB could have contacted the exporters over phone and advised them properly. However, CB has neglected this duty. I agree with the findings of the Inquiry Officer that there was no scope of CB advising his clients at all.

25.3.4 I rely on the decision of the Hon'ble CESTAT, Mumbai in the case of Ajay Clearing Enterprise Vs. Commissioner of Customs (General), Mumbai, reported in 2016 (343) E.L.T. 475 (Tri. - Mumbai).

The relevant para 5.3 of the said judgement is as under:

"5.3 .....The second charge of contravention of Regulation 13(d) of advising the client to comply with the provisions of the Customs Act and in case of non-compliance to bring the matter to the notice of the Customs Authorities is also established for the reason that to advise the client, the CHA should know the client. In the present case, they have not met the client at all and they have received the documents through a freight forwarder. Therefore, the question of advising the client would not arise at all.....".

I find that the ratio of the aforesaid judgement is squarely applicable in the instant case. Thus I hold that CB, M/s. Total Clearance, CB No. 11/2171 has failed to adhere to the responsibilities as was expected in terms of the Regulations made under Regulation 10(d) of the CBLR, 2018 and thus the Charge stands **"Proved"**.

25.4.1 **Regulation 10(e) of CBLR 2018** states that the Custom Broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage. I find that the charge has been **'not proved'** by the Inquiry Officer. The Inquiry Officer observed that it was alleged in the Show Cause Notice that the Customs Broker appeared to have not worked diligently in the clearance of the said shipping bills for export consignments which were found mis-declared. The Inquiry Officer observed that the aforesaid provision is relevant where the Customs Broker imparts false/incorrect information to the client with reference to clearance of cargo or baggage, however, in this case, there is no proof on record to show that the Customs Broker has imparted any incorrect information or has not worked diligently in providing correct information to their client with reference to any work related to clearance of cargo or baggage. The Inquiry Officer rightly observed that the allegation can be ascertained only if there is proof that the Customs Broker has cleared the cargo or baggage without the knowledge of the Client. I agree with the findings of the Inquiry Officer. Hence, I hold that the article of charge of contravention of provisions of Regulation 10(e) of the CBLR, 2018 by the Customs Broker M/s. Raj Clearance (CB No. 11/2171) is **not sustainable**.

25.5.1 **In respect of Regulation 10(m) of CBLR 2018**, it has been alleged in the Show Cause Notice that the CB has not discharged his duties as a Customs Broker with utmost speed and efficiency and without any delay.

25.5.2 The Inquiry Officer observed that the Customs Broker in their written submission dated 03.01.2022 have submitted that they have performed all the duties of Customs Broker viz. acquiring KYC, Authority Letter from exporters, KYC verification, filing of Shipping Bill and clearance of goods. I find that the charge has been **'not proved'** by the Inquiry Officer. The Inquiry Officer observed that there is no specific allegation regarding inefficiency or delay during the clearance of the goods either in the Show Cause Notice or in the offence report. The Inquiry Officer observed that there is no evidence to prove that the Customs Broker did not discharge his duties with utmost efficiency and without any delay. I concur with the findings of the Inquiry Officer. And hold that the article of charge of contravention of provisions of Regulation 10(m) of the CBLR, 2018 by the Customs Broker M/s. Raj Clearance (CB No. 11/2171) is **not sustainable**.

25.6.1 **In respect of Regulation 10(n) of CBLR 2018** it has been alleged that the CB did not 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. I find that the charge has been 'proved' by the Inquiry Officer.

25.6.2 The Inquiry Officer observed that the Customs Broker has neither conducted any physical verification nor verified the KYC documents of the exporters as admitted by him when his statement was recorded on 18.11.2019 under Section 108 of the Customs Act, 1962. The Inquiry Officer added that the Customs Broker also admitted to have not been present during the carting of goods. The Inquiry Officer observed that the

Customs Broker has not bothered to verify the functioning of his client at the declared address; that in fact, he was able to produce only 22 Letters of Authorization (LoA) to the investigating agency on 19.11.2020 although he produced the remaining LoAs later during his personal hearing.

25.6.3 The defense submission stated that they have submitted copies of the KYC documents from 36 exporters, to the Inquiry Officer at the time of personal hearing held on 03.01.2022; that they had voluntarily carried all the original KYC documents pertaining to exports and imports cleared by them; that they have never been asked by the Investigating Agency to produce any specific document that they have failed to provide till date. The CB submitted copy of the Summons dated 18.11.2020; that the Inquiry Officer has failed to appreciate the evidence viz. all the KYC documents pertaining to 36 exporters, produced during the personal hearing; that the Inquiry Officer has concluded on the basis of the statement given to investigating agency that Shri Raj Bhanushali was not personally present during the carting of all the shipments at the CFS; that observations of the Inquiry Officer were totally baseless as there is no relevance between presence of Customs Broker during carting of the goods and KYC norms as per the requirement of provisions of Regulation 10(n) of the CBLR, 2018.

25.6.4 The CB in their defense submission also stated that the Inquiry Officer has concluded that they have not bothered to verify our client's declared address but that they have obtained KYC documents viz. PAN Card, AADHAR Card, IEC copy, GST Certificate, Bank Attested signature verification of the exporters, Electricity Bills, Income Tax Returns, RCMC, Udyog Aadhar, LUT Certificate from all the 41 exporters mentioned in the show cause notice; that no physical verification of the importer's/exporter's premises is mandated in the CBLR, 2018.

25.6.5 The defense submission further stated that at the time of exports, as per P.N. No. 93/2020 dt. 29.07.2020 issued vide F.No. EDI/Misc.-154/2017/JNCH (copy encl.) it is mandatory to submit all KYC documents, failing which, Export documents cannot be filed. The CB further submitted that the said Pubic Notice prescribes the documents to be collected from the exporter; that in the instant case, the procedure laid down in the said Public Notice has been completed in respect of all the exporters; that as per Paras 2.3 and 3 of the said Public Notice, the Customs department requires Bank verification for A.D. Code registration from the official e-mail id of the bank; that the prescribed procedure has been completed thereby proving Banking authenticity at the time of exports; that CB submitted that they believe that all the verifications have been duly completed by the authorities as per the procedure and nothing adverse has been noticed.

25.6.6 The CB relied upon following case laws :

i) APS Freight & Travels Pvt. Ltd. Vs. Commissioner of Customs (General), New Delhi, reported in 2016 (344) ELT 602 (Tri. – Del) :

ii) Poonia & Brothers Vs. Commissioner of Customs (Preventive), Jaipur, reported in 2019 (370) ELT 1074 (Tri. Del)

iii) HIM Logistics Pvt. Ltd. Vs. Commissioner of Customs, New Delhi, reported in 2016 (338) ELT 725 (Tri. Del) The CB submitted that the aforesaid decision of the Hon'ble Tribunal

was affirmed in the Hon'ble High Court of Delhi, reported in 2017 (348) ELT 625 (Del.)

iv) Kunal Travels (Cargo) Vs. CC (I & G), IGI AIRPORT, 2017 (354) E.L.T. 447 (Del.)

v) Anax Air Services Pvt.Ltd. V/s Commissioner of Customs, New Delhi (Airport and General)

vi) Commissioner of Customs, New Delhi (Airport and General) V/s M/s CRM Logistics Private Limitedand

Vii) Hon'ble Tribunal, New Delhi in Final Order No.50002/2022 dated 3.1.2022 in the case of Anax Air Services Pvt.Ltd. V/s Commissioner of Customs, New Delhi (Airport and General)

25.6.7 It is undisputed that the export clearance business was procured through intermediary viz. Shri Nilesh Gosavi. Even though as per the aforesaid decisions of the Hon'ble Tribual and Hon'ble High Court, there is no stipulation or legal requirement to physically verify the business premises or residential premises of the importer/exporters, the obligation stipulates that of Verifying the identity of the client and Verify the functioning of the client at the declared address using reliable, independent, authentic documents, data or information. Shri Raj Bhanushali, Proprietor of M/s. Total Clearance (CB License No. 11/2171) had facilitated smooth filing of the Shipping Bills and clearance of exported goods which were highly overvalued. He had accepted documents and the job from a third person without the mandatory check of the KYC documents of the IEC holders. Had he performed the verification of KYC properly without leaving it into the hands of Nilesh Gosavi and file the documents with customs for a consideration ranging between 30,000-40,000, huge loss to the government exchequer leading to sanction and disbursal of inadmissible drawback and IGST refund to the tune of more than Rs. 13 crores.

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

> *"33. As regards the role and responsibility of a CHA/Customs Broker in such clearance, Regulation 11(n) of CBLR clearly provides that Customs Broker shall verify the antecedent, correctness of IEC, identity of his client and functioning of his client at the given address by using reliable independent authentic documents/data/information. Identical provision was there under CHALR under Regulation 13(o) of the CHALR. Thus, if a Customs Broker facilitates the filing/processing of a Bill of Entry by a person other than a valid IEC holder using IEC of a different person, it will amount to violation of the provisions of Regulation 11(n) of CBLR/Regulation 13(o) of CHALR".*

I find that the ratio of the aforesaid judgement is applicable in the instant case. Thus it is clear that Shri Raj Bhanushali had filed the Shipping Bills and did not bother to check the credentials of the exporters. Thus I hold that CB has violated the obligation cast on them under Regulation 10 (n) of CBLR 2018 and thus the charge is held as **"Proved"**.

26. Thus in summation, in view of the above discussions and findings, out of the Charges in the Show cause notice alleging violation of Regulations

1(4), 10(a), 10(d), 10(e), 10(m) and 10(n) of the Custom Broker Licensing Regulations 2018, the violations of Regulations 1(4), 10 (d), and 10 (n) of CBLR 2018 are held as **"proved"**

27. 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)".

I further rely on the following judgements and hold that in the instant case, CB M/s. Total Clearance, (PAN No. ANRPB5665L) 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.

27.1.1 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 is 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".*

28. The inquiry proceedings are beyond the limitation period of 90 from the date of issuance of show cause notice. The normal time limit for completion of entire proceedings is of 09 months from the date of receipt of offence report. However, these guidelines are directory but not mandatory. In this regard, I rely on the judgement in the case of M/s Unison Clearing P. Ltd. reported in 2018(361)E.L.T. 321 (Bom.) which stipulates that the time lines stipulated in Regulations are directory in nature and not mandatory.

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

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

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

In view of the above, I find that though the delay has occurred in completion of proceedings, the delay is owing to unavoidable administrative reasons viz. national wide as well as state wide lockdown due to Covid-19 restrictions. However, such delay cannot be fatal to outcome of inquiry and cannot neutralise the acts of omission and commission already committed by the CB. Hon'ble High Court of Judicature at Bombay also observed that the time limit contained in Regulation 20 cannot be construed to be mandatory and is held to be directory.

29. 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 means rea.

30. I also hold that the charges held as proved in inquiry are acceptable and tenable under the facts and circumstances of the case and certainly warrant penal action against the CB. If CB, M/s. Total Clearance., (CB No. 11/2171) had acted in a diligent manner and has performed his duties efficiently, the improper export 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 1(4), 10(d), & 10(n), 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 on M/s. Total Clearance , CB No. 11/2171 [PAN No. ANRPB5665L] 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.11/2171 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 for the time being in force in the Union of India.

26/5/2022

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

To,
M/s. Total Clearance, (PAN No. ANRPB5665L),
CB License No. 11/2171,
602/B Wing, Shri Dutta Towers,
Talao Pali, Thane (West) - 400602.

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. CIU's of NCH, ACC & JNCH
4. EDI of NCH, ACC &JNCH
5. ACC (Admn), Mumbai with a request to circulate among all departments.
6. JNCH (Admn) with a request to circulate among all concerned.
7. Cash Department, NCH, Mumbai.
8. Notice Board
9. Guard File (Admin)