



आयुक्त, सीमाशुल्क (सामान्य) का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS (GENERAL),
नवीन सीमाशुल्क भवन, बेलाई इस्टेट, मुंबई -400001. NEW CUSTOM
HOUSE, BALLARD ESTATE, MUMBAI - 400001.

संचिका सं./F. No. GEN/CB/132/2025-CBS

आदेश दिनांक/Date of Order: 10.02.2026

CAO No. 139/2025-26/CAC/CC(G)/SJS/Adj-CBS जारी दिनांक/Date of issue: 15.02.2026

संख्या:

DIN:- 202602770000006176F8

द्वारा जारी : श्रद्धा जोशी शर्मा

Issued By : Shraddha Joshi Sharma

आयुक्त, सीमाशुल्क (सामान्य)

Commissioner of Customs (Gen.)

मुंबई -400 001

Mumbai - 400 001

ORDER-IN-ORIGINAL मूल आदेश**ध्यान दीजिए/ N.B. :**

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

2. इस आदेश के विरुद्ध अपील माँगे गए राशी के 7.5% के भुगतान पर सीमाशुल्क अधिनियम, 1962 की धारा 129A(1B)(i) के संबंध में सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण में स्वीकार्य है, जहाँ शुल्क या शुल्क एवं जुर्माना विवादित हों, या जुर्माना, जहाँ सिर्फ जुर्माना ही विवादित हो। यह अपील इस आदेश के संप्रेषण की तारीख के तीन महीने के अंदर दायर की जाएगी। यह अपील सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण नियमावली (कार्यविधि), 1982, के प्रावधानों के अंतर्गत, यथोत्तरापीठ 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 the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

3. यह सूचित किया जाता है कि इस आदेश के अमल में आते ही, न्याय निर्णयन अधिकारी का अधिकार क्षेत्र समाप्त होता है और सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण, पश्चिम क्षेत्रीय यखंडपीठ, के M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai के संदर्भ में जारी आदेश क्रमांक A/86617-86619/2018 दिनांक के अनुसार न्यायिक आदेश तदोउ 31.05.2018 प्राप्त न्याय निर्णयन अधिकारी 'functus officio' बन जाता है

It is informed that the jurisdiction of the Adjudicating Authority stands alienated with the conclusion of the present adjudication order and the Adjudicating Authority attains the status of 'functus officio' as held by Hon'ble CESTAT, Mumbai in its decision in the case of M/s Knowledge Infrastructure Systems Pvt. Ltd. &

Others vs ADG, DRI, Mumbai vide Order No. A/86617-86619/2018 dated 31.05.2018.

4. यदि एक ही प्रकरण में उसी पक्षकार के विरुद्ध कई कारण बताओ नोटिस लगाकर आदेश पारित किया जाता है तो प्रत्येक प्रकरण में अलग अपील दायर की जाए।

In case where an order is passed by bunching several show cause notices on an identical issue against the same party, separate appeal may be filed in each case.

5. यह अपील फॉर्म C.A.-3 में दायर की जानी चाहिए जो कि सीमाशुल्क नियमावली (अपीलस), १९८२ के नियम में उल्लेखित व्यक्ति 2 के उपनियम 3 के तहत निर्धारित है एवं उसी नियमावली के नियम 6 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 ब्याजबलगाए गए जुर्माने की राशि रु-/1000 .पाँच लाख या इस से कम होतो रु ., (ii)यदि यह राशि रुपाँच लाख से अधिक .) एवं -/5000 .हो किंतु पचास लाख से अधिक न होतो रु(iii) यदि यह राशि रुपचास लाख से अधिक होतो . के शुल्क -/10000 .रु का भुगतान क्रॉसड बैंक ड्राफ्ट के माध्यम से अधिकरण की खंडपीठ के सहायक पंजीयक के पक्ष में जिस स्थान पर खंडपीठ स्थित है, के किसी भी राष्ट्रीय क्रत बैंक की शाखा में किया जाए एवं डिमांड ड्राफ्ट अपील के साथ संलग्न किया जाए।

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

7. अपील की एक प्रति में कोर्ट फी अधिनियम, 50 .के तहत निर्धारित रु 6 की अनुसूची मद 1870 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।

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

Brief Facts of the Case:

M/s Oriion Consultancy having registered address at 703-B, Om Shraddha Apartments, Opp. Don Bosco School, Link Road, Borivali West, Mumbai - 400091 (hereinafter referred to as Customs Broker/CB) is holder of Customs Broker License No. 11/2242, issued by the Commissioner of Customs, Mumbai under Regulation 7(1) of Customs Brokers Licensing Regulations (CBLR), 2013 [Now Regulation 7(2) of the CBLR, 2018] and as such they are bound by the regulations and conditions stipulated therein.

2. M/s. Savitri Enterprises (IEC No BJWPK4933N) (hereinafter referred to as 'the importer') having registered address at A/P Khed, (Nandgiri), Taluka-Koregaon, Dist.-Satara, Maharashtra - 415501 filed Bills of Entry No. 5517447, 5526631, 5526803 and 5527148 all dated 10.09.2024 through the Custom Broker M/s Oriion Consultancy for clearance of the imported goods declared as "Fresh Mandarin (Soft Citrus)".

2.1 The offence report in this is Show Cause Notice No. 1773(L)/2024-25/ADC/Gr.I&IA/NS-I/CAC/JNCH dated 10.03.2025 issued by the Additional Commissioner of Customs, Gr.-I, NS-I, JNCH. As per the offence report, the SIIB(I), JNCH put on hold the goods covered under the Bills of Entry No. 5517447, 5526631, 5526803 and 5527148 all dated 10.09.2024 vide Hold No. 173/2024-25 SIIB(I) dated 12.09.2024 for potential misdeclaration. Goods imported vide the aforementioned Bills of Entry were examined by officers of SIIB(I), JNCH under Panchanama dated 14-15.09.2024, 15.09.2024 and 17.09.2024. B/E wise weighment details declared and found during the examination were as below: -

Sr. No.	B.E. No. & date	B.L. No.	Total net weight declared as per B.L (in Kgs)	Total gross weight declared as per B.L (in Kgs)	Total weight found during examination
1.	5517447/10.09.2024	ZSLJEANSA000196	46,000	48,000	55,450
2.	5527148/10.09.2024	ZSLJEANSA000214	84,480	93,280	1,07,540
3.	5526803/10.09.2024	SCLJEANSA00205	46,000	48,000	54,430
4.	5526631/10.09.2024	ZSLJEANSA000212	42,000	46,000	55,700
		Total	2,18,480	2,35,280	2,73,120

2.2 As per the offence report, imported goods were declared as “Fresh Mandarin (Soft Citrus)”, however, during examination by the SIIB(I) officers, Kiwi Fruits were found concealed after 2-3 rows of fresh Mandarin in each of the containers and the same were not declared in the above said B/Es. Also, SIIB(I) officers found no marking on Kiwi Fruits as well as on its crates. Weighment details of declared goods and goods found during examination are as below: -

2.3 Net weight of declared goods i.e. mandarin (soft citrus), containers wise: -

Sr. No.	Bill of Entry No. & date	Container No. (40 Ft. refer)	Weight of Mandarin (approx. in KGS including boxes weight)	New weight of Mandarin (Approx. in KGS excluding boxes weight)
1.	5517447/10.09.2024	TEMU9211782	1430	1339
		TEMU9224774	1474	1380.2
2.	5527148/10.09.2024	TEMU9255693	1430	1339
		TEMU9208691	1232	1153.6
		TEMU9111994	1496	1400.8
		TEMU9212243	1386	1297.8
3.	5526803/10.09.2024	MORU1133366	1243	1163.9
		MORU1130109	1309	1225.7
4.	5526631/10.09.2024	DFOU6119850	1452	1359.6
		NOWU5092859	1298	1215.4
Total			13750	12875

2.4 Weight of mis-declared goods i.e. kiwi fruit, containers wise:

Sr. No.	Bill of Entry No. & date	Container No. (40 Ft. refer)	Weight of Mandarin (approx. in KGS including boxes weight)	New weight of Mandarin (Approx. in KGS excluding boxes weight)
1.	5517447/10.09.2024	TEMU9211782	25790	24655.24
		TEMU9224774	26200	25047.2
2.	5527148/10.09.2024	TEMU9255693	26200	25047.2
		TEMU9208691	25220	24110.32
		TEMU9111994	25180	24072.08
		TEMU9212243	25230	24119.88
3.	5526803/10.09.2024	MORU1133366	25120	24014.72
		MORU1130109	23210	22188.76
4.	5526631/10.09.2024	DFOU6119850	24730	23641.88
		NOWU5092859	25170	24062.52
Total			252050	240959.8

2.5 Findings of The Examination Conducted By SIIB(I), JNCH:

- i) As per Bill of Lading total weight of the imported goods was 2,35,280 KGS, while during the examination the gross weight of the imported goods found as 2,73,120 KGS, which was 37,840 kgs more than the declared weight.

- ii) Imported goods were declared as “Fresh Mandarin (Soft Citrus)”, but during examination of the imported goods, “Kiwi Fruit” was found as concealed and mis-declared goods, after 2-3 rows of fresh Mandarin in each of the containers. Also, no marking was observed on kiwi fruit and its crates.
- iii) The goods were packed in individual retail packing, however, the marking provision of RE44/LMPC were not complied with. Total Net Weight of Kiwi (approx. in Kgs) without crates was found to be 2,40,959.8 in kgs.
- iv) Total Net Weight of Fresh Mandarin (Soft Citrus) (approx. in Kgs excluding boxes weight) was found to be 12,875 in kgs.

3. INVESTIGATION INTO THE CASE BY SIIB(I), JNCH

3.1 Investigating Agency SIIB(I) JNCH requested Customs (Preventive) Commissionerate, Pune vide letter dated 19.09.2024 to verify the importer's address as mentioned in the said Bill(s) of Entry viz. C/o Shri Ganesh Bhanudas Kadam, Savitri Enterprises, Taluka Koregaon, Dist.- Satara (Maharashtra). Pune Preventive Commissionerate in their reply stated that a field visit was conducted by their team at the above-mentioned address and upon verification, they confirmed that the mentioned address was accurate and a residential house existed at the location belonging to Shri Ganesh Bhanudas Kadam and his family. They also collected a copy of electricity bill from the above said address. However, no business premises were found.

3.2 Investigating Agency sent a letter to Plant Quarantine (PQ) office for inspection and drawing of the samples of the subject goods for testing and providing the test report on whether the subject goods could be cleared for home consumption or otherwise and also to affirm the country of origin of the subject goods. In this regard, investigating agency received a deportation/destruction order dated 22.10.2024 from the Assistant Director, Plant Quarantine Authority stating that “The above-mentioned consignment/container shall be deported within 14 days from the issue of order for which the importer or his authorised agent shall submit the re-shipping bills for necessary endorsement failing which the same

shall be arranged for destruction at his own cost in manner prescribed by plant quarantine Authority”.

Further, investigation indicated that Plant Quarantine office had not given any reply regarding the country of origin of the subject goods. It is pertinent to mention that report from Assistant Director (PP) Plant Quarantine had been provided only for the declared goods i.e. for Mandarin (*Citrus Reticulata*). The PQ office has informed by email on January 16, 2025, that *“Consignment of Mandarin-Fresh Fruits along with undeclared commodity of Kiwi Fresh Fruits samples are examined in pathology Laboratory and found infestation of Quarantine Pathogen i.e. Botrytis Cinerea. This is violation of Plant Quarantine (Regulation of Import into India) order, 2003 and hence consignment is recommended for destruction/deportation”*.

3.3 SIIB(I) JNCH sent a request letter to FSSAI office for inspection and drawing of the samples of the subject goods for testing and further providing the test report whether the subject goods could be cleared for home consumption or otherwise and also to affirm the country of origin of the subject goods. The reports as per their parameters 2.3/2.3.1 (Food Products standard and Food Additives) & Table 2.1.1/2.3.1 (Contaminants, toxins & residues) of FSSR, 2011 was provided and in concluded that “The sample conforms to the specifications outlined in the Food and Safety Standards (FSS) Act, 2006 and the rules and regulations made there under”.

Further, investigation indicated that the test reports of laboratory analysis provided by GeoChem India in Test Report No 2410K35699 and 2410K35700 both dated 20.10.2024, it was observed that the Quality parameters of Copper Oxychloride (Copper determined as per elemental copper), Copper sulphate (Copper determined as elemental copper) and cuprous Oxide (Copper determined as elemental copper) were above the limit of quantification as per test report in respect of fresh Kiwi and also as per the test report of laboratory analysis in respect of Fresh Mandarin provided by Geochem India in Test Report No. 2410K35702 dated 21.10.2024, it was observed that the quality parameters of copper oxychloride (copper determined as per elemental copper), Copper sulphate (Copper

determined as elemental copper) and cuprous Oxide (Copper determined as elemental copper) were above the limit of quantification.

3.4 Further, investigation indicated that the concerned shipping lines, mentioned on the Bills of Lading of the subject Bills of Entry, had been directed to provide the container tracking details of all the ten containers w.r.t. the subject Bills of Entry through e-mail for ascertaining the port of loading, cargo details, stuffing point, vessel details and the container tracking details of the subject goods. In reply of the same only one shipping line i.e. Swen container line provided the required details (RUD-9) stating the description of cargo as Fresh Fruits, Stuffing point at B14, Pol point Jebel Ali, ETA Terminal MORU1133366/27.08.2024 ,23.45 and MORU1130109/27.08.2024,23.42, Vessel Eta 02.09.2024, ETD from Jebel Ali 03.09.2024.

3.5 The goods imported by M/s Savitri Enterprises (IEC-BJWPK4933N) vide Bill(s) of Entry Nos. 5517447, 5527148, 5526631 and 5526803 all dated 10.09.2024, filed through Customs Broker M/s Oriion Consultancy (AADPA5222DCH001) for clearance of goods, and examined under Panchanama dated 14/15.09.2024, 15.09.2024 and 17.09.2024 were found to contain fresh Kiwi mis-declared and concealed behind declared goods i.e. 'Fresh Mandarin'. Consequently, the subject goods were seized by SIIB(I) JNCH under section 110(1) of the Customs Act, 1962 vide Seizure Memo No. 82 dated 19.09.2024.

4. Statements of concerned persons:

4.1 Statement of Shri Shivkumar Ramchandra Gupta (Authorised person in case of M/s Savitri Enterprises) recorded on 20.09.2024, 05.11.2024 under section 108 of the Customs Act, 1962, wherein, he inter-alia stated that: -

- i) He had a Custom Broker's Licence in his name; that at present, his License was suspended and the matter was pending before CESTAT.
- ii) Mr. Ganesh Kadam asked him to help him for filing the Bills of Entry for the subject consignment, so he requested the CHA M/s Oriion Consultancy to file the Bills of Entry and then after hold of the subject consignments by the SIIB(I), JNCH, the

importer M/s Savitri Enterprises (IEC: BJWPK4933N) authorised him (Shivkumar R. Gupta) to get the goods examined in the subject consignment.

- iii) He was introduced to Shri Ganesh Kadam, IEC holder of M/s Savitri Enterprises by some of his friends three to four months back; that he didn't remember the name of that friend; that he didn't have any relationship with the importer.
- iv) In the last five to six consignments, he had helped the importer but he did not remember exact number of consignments; that he did not know about how the purchase order was placed to supplier and who did the payment to the supplier for the subject consignment; that he used to get one thousand five hundred rupees per container in cash after clearance of the cargo.
- v) He had not signed any agreement or contract with the said importer.
- vi) He agreed that at the time of the examination 'Kiwi fruits' were found along with 'Mandarin fruits' and it was not in his knowledge; that he didn't know anything about the country of origin of the found concealed kiwi.
- vii) The invoice, packing list, COO Certificate and Phytosanitary certificate for Mandarin were provided by the importer before filing the said Bills of Entry, that he had checked and verified all the documents, that he had verified the phytosanitary certificate COO certificate for Mandarin.
- viii) He had not demanded any amount for the clearance of the subject Bills of Entry, that he was in that work so that he could get another job as soon as his licence was activated; that he didn't have any idea about the reason for misdeclaration of goods; that as per his say, at the time of examination, there were no marking found; that therefore, COO could not be ascertained; that in case of clearance of the said Bills of Entry, he would have applied online for taking NOCs from PQ and FSSAL.

4.2 Statement of Shri Ganesh Bhanudas Kadam, (IEC Holder of M/s Savitri Enterprises) was recorded on 23.09.2024, 14.11.2024 under section 108 of the Customs Act, 1962, wherein, he inter-alia stated that: -

- i) The Bills of Entry for the subject consignment had been filed by Shri Shivkumar Ramchandra Gupta on his request; that he had provided him copies of Bill of Lading and proforma invoice; that he was active in transport business also in APMC Market Vashi for transportation of goods; that one of his known introduced him with Shri Shivkumar Ramchandra Gupta there;
- ii) Mr. Rafik Bhai was the overseas supplier there in UAE; that there were two partners in M/s Qamar Al Madina Trading LLC; that he had known Mr Rafik for the last one and half years; that one of his known in APMC Market, Vashi had provided him his mobile number one and half years back; that he wanted to import Fruits from UAE; that they used to talk on Botim App regarding their Fruit business; that the import order regarding the present shipment was also put on Botim App during their conversation;
- iii) He placed the purchase order for Soft Citrus (Fresh Mandarin); he had made payment against the order of Fresh Mandarin; that he could provide his Bank Transaction details in support of the same,
- iv) There was not there any Official/Unofficial Agreement/MOU between him and his overseas supplier;
- v) On being asked about what was the reason for import of misdeclared goods, he replied that he had placed order for Fresh Mandarin; that the supplier had told that he had not that much of quantity of Fresh Mandarin at the time of stuffing, therefore he stuffed Kiwi in place of Fresh Mandarin in all the ten containers.
- vi) The supplier had told that he had wrongly stuffed Kiwis instead of Fresh Mandarin; that he was ready to accept his mistake through a written submission; that he (supplier) had assured that he was ready to pay the fine and penalty amount accrued on behalf of him as this was due to supplier's mistake;
- vii) He didn't know about country of origin of the Kiwi found concealed alongwith the declared goods.

4.2.1 Further statement of Shri Ganesh Bhanudas Kadam (IEC Holder of M/s Savitri Enterprises) recorded 14.11.2024 under section 108 of the Customs Act, 1962, wherein, he inter-alia stated that: -

- i) He is importer/IEC holder of M/s Savitri Enterprises, there were no other partners/beneficiaries in case of subject shipment; that the Bill(s) of Entry for the subject consignment had been filed by Shri Shivkumar Gupta on his request; that he has provided him copies of Bill of Lading and Proforma Invoice, packing list, Phytosanitary Certificates and Country of Origin Certificates before filing the Bill of Entries; that he had received all these documents by Courier, that he didn't have any record of the same till then.
- ii) They placed purchase order verbally in their Business without any agreement/MOU; he accepted that there was one shipment earlier also from Qamar Al Madina;
- iii) He agreed that the transaction amount details cannot be related with the description of commodity, however he placed as per market rate of the commodity only;
- iv) On being asked about his submission of copy of communication, whereas the supplier has claimed that the misdeclaration was at their part, while the date of e-mail was after the hold date of the subject shipment, which appeared to be afterthought, he replied that he had been informed by supplier only after examination of the goods;
- v) On being asked about did he have any export related document in support of his claim that goods were misdeclared at part of supplier, had he been provided by a copy of shipping Bill or any export related document from the supplier, did supplier provide any photographs at the time of stuffing the containers, he replied that he had not been provided with the export shipping Bill from the supplier, that he had received proforma invoice, packing list, phytosanitary certificates and Country of Origin from the supplier. The supplier did not provide any photograph related to said consignment;
- vi) He was solely responsible for the import made by M/s Savitri Enterprises.

4.3 Statement of Shri Shambhu Dayal Agrawal, Proprietor of Customs Broker M/s. Oriion Consultancy was recorded on 24.09.2024, wherein, he inter-alia stated that: -

- i) He is proprietor of CB licence No 11/2242 (Kardex No: A-998) valid upto 16.11.2026 of M/s Oriion Consultancy;
- ii) Mr Shivkumar Ramchandra Gupta requested him that he wanted to file the subject Bill(s) of Entry w.r.t. M/s Savitri Enterprises through his CB firm because Mr. Shivkumar Ramchandra Gupta's licence got suspended; that he didn't know the importer directly; that they both were Customs Broker and they used to meet occasionally at BCBA meetings, therefore, he readily agreed to file the Bill(s) of Entry for the subject consignment;
- iii) On being asked about the responsibilities of Custom Broker before filing a Bill of Entry, he replied that Customs Broker has to take all KYC Documents and Authority letter from the importer; that CB has to verify documents as per the CBLR Regulations, 2018;
- iv) On being asked about how did he come in contact with Shri Shivkumar Ramchandra Gupta, he replied that Shri Shivkumar Ramchandra Gupta used to come to him to take legal advice on custom related issues;
- v) On being asked about how was the KYC done in case of importer M/s Savitri Enterprises, he replied that KYC done as per CBLR regulations, 2018 i.e. verifying GST Filing and IEC through the portal, copies of all KYC documents along with the import documents of the above said Bills of Entry had been provided by Mr. Shivkumar Ramchandra Gupta;
- vi) On being asked about how many import shipments had been cleared for M/s Savitri Enterprises by his firm till now, he replied that they had cleared two shipments before the subject Bill(s) of Entry;
- vii) There was no Official/Unofficial agreement between him and Mr. Gupta/Importer; he charged Rs 2000/- per Bill of Entry from Mr Shivkumar Ramchandra Gupta; he didn't have any other benefit/consideration apart from his service charge.

- viii) He had no knowledge about the misdeclaration; that he came to know only after SIIB(I) examination;
- ix) On being asked about how did the importer place purchase order for the subject shipment, and how was the payment done, he replied that he didn't get any documents/information regarding this;
- x) For filing the Bills of Entry, he received invoice, Bill of Lading, Packing list, Phytosanitary certificate of the Republic of South Africa and Dubai;
- xi) On being asked about what was the country of origin of goods in case of the subject shipment. he replied that he doesn't have any knowledge about the country of origin of the said goods.

5. Valuation of the goods:

From the investigation, it appeared that the reassessed value of the misdeclared goods i.e. 'Fresh Kiwi' amounted to Rs. 2,37,05,625/- while the declared value of the subject goods was Rs. 1,05,32,551/- and the duty on the misdeclared goods was calculated to Rs. 78,22,856/-. Thus, the declared value of Rs. 1,05,32,551/- appeared liable for rejection under Rule 12 of Customs Valuation Rules, 2007. The value was then redetermined under Rule 7, Deductive value method, of the Customs Valuation Rules, 2007.

6. Arrest of the importer:

From the investigation it appeared that the value of the misdeclared goods i.e. Fresh Kiwi amounted to Rs. 2,37,05,625/- and the duty calculation on the misdeclared goods was calculated to Rs. 78,22,856/-.

Further, investigation revealed that the importer by the above acts of omissions and commissions stood liable for arrest under provisions of Section 135- "Evasion of duty or Prohibitions, para (i), as under: -

- (A) any goods the market price of which exceeds one crore of rupees, or*
- (B) the evasion or attempted evasion of duty exceeding (fifty lakhs] of rupees;"*

and also as per circular No. 13/2022-Customs issued vide F. No. CBIC-21/209/2022-INV-CUSTOMS-CBEC, para (c),

"Cases related to importation of trade goods (i.e. appraising cases) involving wilful mis-declaration in description of goods/concealment of goods/goods covered under section 123 of Customs Act, 1962 with a view to import restricted or prohibited items and where the market value of the offending goods is Rs 2,00,00,000/- (Rupees Two Crore) or more"

In view of the above, the importer was arrested under above provisions as he had accepted that he was the sole importer/beneficiary in the subject case.

7. Findings of the Investigation:

From the investigation it appeared that;

7.1 M/s. Savitri Enterprises attempted to import goods by way of mis-declaration in terms of description and quantity of the goods as they failed to provide substantial documents in support of their claim that the misdeclaration was due to mistake of the supplier, that the copy of e-mail submitted in support of this claim was generated only after examination of the subject goods by SIIB (I), JNCH and was dated post hold/examination of the subject goods, which appeared to be afterthought; that in the instant case the importer had submitted copies of invoice, packing list, Bills of Lading, country of origin and also filed Bills of Entry declaring only one item i.e. Soft Citrus (Fresh Mandarin), he had failed to produce any export related document or photographs at the time of stuffing from the supplier in support of his claim that mis-declaration was done at the part of supplier.

7.2 At the time of examination it was also observed that Kiwi fruit was concealed after 2-3 rows of declared item i.e. fresh Mandarin; that the stuffing pattern also supported the intention of concealment of the misdeclared items; that the importer had submitted Phytosanitary certificates and country of origin certificates declaring only one item; that it also appeared that the importer misdeclared the goods for duty evasion and also evade necessary compliances; that the Swift copy w.r.t. the subject shipment submitted by the importer against the purchase order produced by the importer also did not justify his claim of payment against the declared item i.e. Soft Citrus (Fresh Mandarin) as the transaction details of the related account of the importer did not support his claim, as there was earlier transaction also for debit advice for the same supplier.

7.3 Importer was responsible to provide accurate and complete information in Bill(s) of Entry, which he failed to do, therefore importer violated Section 46(4) of the Customs Act, 1962 read with Section 11(1) of Foreign Trade (Development & Regulation) Act 1992 & Rule 11 of Foreign Trade (Regulation) Rules, 1993. By the above acts of omission & commission on the part of the importer, they rendered the goods liable for confiscation under Section 111(d), Section 111(e), Section 111(1), Section 111(m) and Section 119 of the Customs Act, 1962 and consequently rendered himself liable for penal action under Section 112(a), 112(b) and/ or 114A and section 114AA of the Customs Act, 1962.

7.4 The proprietor of Custom Broker firm M/s Oriion Consultancy stated that he filed the subject Bills of Entry through his licence as per request by authorised person of importer Shri Shivkumar Ramchandra Gupta; that the proprietor of Custom Broker M/s Oriion Consultancy Shri Shambhu Dayal Agrawal accepted that for filing the Bills of Entry he received invoice, Bill of Lading, packing list, phytosanitary certificates from Republic of South Africa and Dubai, further he has added that he had no idea about the country of origin of the subject goods; he has also stated that KYC documents along with the import documents of the said Bill of Entries had been provided by Shri Shivkumar Ramchandra Gupta;

From the investigation it appeared that customs broker failed to perform his role as per the Customs Brokers Licencing Regulations (CBLR), 2018 and was liable for penal action under the CBLR, 2018.

7.5 Shri Shivkumar Ramchandra Gupta also stated in his statement that the Importer Shri Ganesh Kadam sought help for filing the Bill(s) of Entry for the subject goods and he was authorized for examination of the subject goods by the importer; that Shri Shivkumar Ramchandra Gupta had added that he had cleared five to six consignment for the same importer in past but could not recall the exact number of shipments cleared while the Custom Broker stated that he had cleared only two shipments in the past; that it appeared that the importer, the authorized person, and the customs broker wilfully colluded to import the misdeclared goods in order to evade customs duty and allied compliances.

8. On scrutiny of the Offence Report, the Role of Customs Broker emerged as below:

From the investigation, it was observed that the CB had filed the subject Bill(s) of entry on behalf of the importer. Upon examination by the officers of the SIIB(I), JNCH, gross mis-declaration was found in respect of description and weight and goods did not comply with RE-44 Notification and LMPC Rules. From the facts in the above paras, it appeared that the CB M/s Oriion Consultancy (11/2242) had failed to comply with regulations 10(a), 10 (d), 10(e), 10(f), 10(m) and 10(n) of the CBLR, 2018. The said regulations read as:

8.1 Regulation 10(a) of the CBLR, 2018

"obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be";

Statement dated 24.09.2024 of Shri Shambhu Dayal Agrawal, Proprietor of CB M/s. Oriion Consultancy was recorded under the Customs Act, 1962, wherein he stated that he did not know the importer directly and there was no official agreement between them. Also, statements dated 20.09.2024 and 05.11.2024 of Shri Shivkumar Ramchandra Gupta, were recorded under the Customs Act, 1962, wherein he Inter-alia stated that he had not signed any agreement or contract with the importer. Thus, no agreement between the CB and importer indicated that proper authorization was not obtained in the instant case. Further, importer Shri Ganesh B. Kadam in his statement dated 23.09.2024 stated that the subject consignment was filed by Shri Shivkumar Ramchandra Gupta on his request. Thus, it was amply clear that CB was never in touch with importer by any means of communication or contact which indicated that the subject Bill(s) of Entry were filed by the CB without taking proper authorization from importer/IEC holder. Hence, it appeared that the CB failed to comply with the Regulation 10(a) of CBLR, 2018.

8.2 Regulation 10(d) of the CBLR, 2018

"advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the

matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be".

As per the offence report, M/s. Savitri Enterprises attempted to import goods by way of mis-declaration in terms of description and quantity. Also, they failed to provide the substantial documents in support of their claim that the misdeclaration was due to mistake of the supplier. Further, investigation revealed various aspects of the violations such as violation of Legal Metrology (Packaged Commodities) Rules, 2011[LMPC Rules], RE-44 Notification, potential mis-declaration w.r.t. description of the goods, gross mis-declaration w.r.t. weight of the goods. It was the responsibility of the CB to inquire about the condition (i.e. pre-packed or bulk), specification of the goods etc. with the importer and advise the importer to comply with the extant rules which was not done in the instant case. It appeared that the CB did not advise his client regarding LMPC Rules & RE-44 Notification. Thus, it was amply clear that the said CB had failed to properly advise their client M/s. Savitri Enterprises regarding Rules and Regulations of Customs and allied acts. Hence, it appeared that the CB failed to comply with the Regulation 10(d) of CBLR, 2018.

8.3 Regulation 10(e) of the CBLR, 2018

"exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage",

From the offence report, during examination of the subject consignments by the SIIB(I), JNCH, violations of LMPC Rules, RE-44 Notification, potential mis-declaration w.r.t. description of the goods, gross mis-declaration w.r.t. weight of the goods were observed. It appeared that the CB did not enquire about the condition of goods i.e. pre-packed with the importer. Investigation revealed that the Customs Broker was aware of the said requirements as per the law. However, while filing the documents, it appeared that the CB had not exercised due diligence as mandated under regulation 10(e) of the CBLR, 2018.

It was also noticed that as per the Bills of Lading total weight of the imported goods was 2,35,280 KGS, while during the examination the gross weight of the imported goods

found as 2,73,120 KGS. Hence, a total 37,840 kgs excess weight found. Thus, it was clear that the CB filed the said bills of entry without ascertaining the correct information. It was only after examination by the investigating agency i.e. SIIB(I), JNCH the violation of LMPC Rules/RE-44 Notification as well as mis-declared goods were found. If the SIIB(I), JNCH had not intervened, the mis-declared and non-compliant goods would have been cleared. Hence, it appeared that the CB had not exercised due diligence and failed to comply with the provisions of Regulations 10(e) of the CBLR, 2018.

8.4 Regulation 10(f) of the CBLR, 2018

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

From the offence report, it was noticed during the examination by the SIIB(I), JNCH, that the goods did not comply with the LMPC Rules, RE-44 Notification and were grossly mis-declared. Further, investigation revealed that the CB was aware of the said requirement as per the law. However, it appeared that the CB withheld the information regarding LMPC Rules, RE-44 notification. Thus, it appeared that the CB had failed to comply with the provisions of Regulations 10(f) of the CBLR, 2018.

8.5 Regulation 10(m) of the CBLR, 2018

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

From the offence report, it was observed that the investigation revealed various aspects of the violation of rules and regulations such as RE-44/LMPC Rules and potential mis-declaration with respect to description and weight were found. The non-compliant goods would have been cleared, if investigating agency had not intervened the subject consignments. Thus, it was amply clear that the CB has worked in the inefficient manner. Hence, it appeared that CB failed to discharge his duties efficiently and violated the regulation 10(m) of CBLR, 2018.

8.6 Regulation 10(n) of the CBLR, 2018

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

The offence report indicated that the CB failed to verify the Know Your Customer (KYC) information of the importer and did not meet them. The investigating agency i.e. SIIB(I), JNCH confirmed from the Pune Preventive Commissionerate that no business premises were found at the declared address of the importer. In this regard, Pune Preventive Commissionerate replied stating that a field visit was conducted by their team at the above-mentioned address and upon verification, they confirmed that the mentioned address was accurate and a residential house existed at the location belonging to Shri Ganesh Bhanudas Kadam and his family. However, no business premises were found at the declared address. Thus, it was amply clear that the functioning of their client at the declared address was not found. Hence, it appeared that the CB had failed to comply with the provisions of Regulation 10(n) of the CBLR, 2018.

9. Considering the observations made above, it is to mention that the Customs Broker has a very important role in customs clearances and lot of trust has been placed by the Department on the CB. In the context of trade facilitation, where an increasing number of goods are processed through Risk Management Systems without customs examination, the role of the Customs Broker has become even more critical in ensuring that the country's economic borders are effectively protected. But in the instant case, by their acts of omission and commission, it appeared that the CB M/s Oriion Consultancy had violated Regulations 10(a), 10(d), 10(e), 10(f), 10(m), and 10(n) of the CBLR, 2018.

10. In view of the above, the CB License bearing No. 11/2242 held by M/s Oriion Consultancy was suspended under Regulation 16(1) of CBLR, 2018 by the Pr. Commissioner of Customs (General) vide Order No. 02/2025-26 dated 06.05.2025 and Personal Hearing was conducted on 02.06.2025. Further, after going through the submissions of the Customs Broker and subject offence report, the subject license no.

11/2242 held by M/s Oriion Consultancy was ordered for Continuation of Suspension vide Order No. 04/2025-26 dated 03.06.2025 under Regulation 16(2) of the CBLR, 2018.

11. Thus, in view of the discussions in above paras, it appeared that the Customs Broker had failed to fulfil their obligations under the provisions of Regulations 10(a), 10(d), 10(e), 10(f), 10(m) and 10(n) of the CBLR, 2018 and contravened the same. Accordingly, a Show Cause Notice No. 09/2025-26 dated 06.06.2025 under the provisions of Regulation 17(1) of the CBLR, 2018 was issued to the Customs Broker M/s Oriion Consultancy (CB License No. 11/2242) wherein, the CB was called upon to show cause, as to why:

- i. The Customs Broker License bearing no. 11/2242 issued to them should not be revoked;
- ii. Security deposit should not be forfeited;
- iii. Penalty should not be imposed upon them under Regulation 14 read with Regulation 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of the CBLR, 2018.

11.1 Also, Shri Dharmendra Nandkumar Bhatia, Assistant Commissioner of Customs was appointed as the Inquiry Officer to conduct the inquiry proceedings against the CB M/s Oriion Consultancy (CB License No. 11/2242) under Regulation 17 of the CBLR, 2018.

APPEAL FILED IN CESTAT BY THE CUSTOMS BROKER:

12. The CB filed an Appeal under Section 129A of the Customs Act, 1962 vide Appeal No. 86420 of 2025 before the CESTAT, West Zonal Bench, Mumbai against the Suspension Continuation Order No. 04/2025-26 dated 03.06.2025. The CB prayed for setting aside the said suspension continuation order and filed an early hearing application citing one of the grounds as - Their Customs Broker License had been suspended without just cause and suspension had been confirmed without appellant being heard in person, for which livelihood of appellant's family and its employees was at stake.

12.1 The Authorized Representative, CESTAT was informed vide letter dated 18.07.2025 that the CB was granted a Personal Hearing (PH) Opportunity on 02.06.2026 before passing the said order wherein, the proprietor of the CB and their consultant

appeared for the PH. Accordingly, the Hon'ble Bench, CESTAT held that the early hearing opportunity could not be granted since the same was granted against materially false submission made by the applicant and ordered the matter to be listed in its usual course. Due to the said development, the Counsel for the Appellant and proprietor of CB, Mr. Shambhu Agrawal made a submission that the appeal should be dismissed and they did not want to continue with the appeal as there was no use of continuation of the appeal without an out of turn hearing. Consequently, the Hon'ble CESTAT dismissed the appeal as withdrawn.

INQUIRY REPORT: -

13. The Inquiry Officer (here in after referred to as the 'IO') concluded the inquiry proceedings and submitted the Inquiry Report dated 24.10.2025 on 14.11.2025, wherein the charges levelled against the CB of violation of Regulation 10(d) of the CBLR, 2018 was held as "Partially Proved" whereas violation of Regulations 10(a), 10(e), 10(f), 10(m) & 10(n) of the CBLR, 2018 were held as "Not Proved". Further, the IO stated that there was a delay in finalizing and submitting the Inquiry Report because the CB took time in furnishing the written submission. Thereafter, some time had to be given for the Personal Hearing which ultimately delayed the proceedings.

FINDINGS OF THE INQUIRY OFFICER: -

13.1 The IO found that this case pertained to misdeclared items namely Kiwis along with declared items i.e. Mandarin. The IO also found that the case of misdeclaration and undervaluation had been well established by the investigating agency and the same had not been contested by any of the accused in this case. Although, the IO found that a lame defence of exporter having loaded the undeclared consignment of Kiwis was put forth by the importer but that was not the subject of discussion in this case. The IO submitted that the main issue to be discussed was the role played by the CB and whether there had been any violation on their part.

13.2 The IO found that the CB had been charged for non-compliance of the regulations 10(a), 10(d), 10(e), 10(f), 10(m) and 10(n) of CBLR, 2018, the same had been denied by the CB as being based on assumptions and presumptions.

13.3 Violation of Regulation 10(a):

The IO found that the department had taken a stand mainly on the grounds that Shri Shambhu Dayal Agrawal, Proprietor of CB M./s. Oriion Consultancy (in his statement dated 24.09.2024) did not know the importer directly and there was no official agreement between them. There was no signed agreement or contract with the importer. Thus, no agreement between the CB and importer indicated that proper authorization was not obtained in the instant case and that CB was never in touch with importer by any means of communication or contract which indicates that the subject bills of entry filed thorough CB license without taking proper authorization from importer/IEC. Hence, it appeared that the CB failed to comply with the Regulation 10(a) of CBLR, 2018.

The IO found that Shri Shambhu Dayal Agrawal, CB, had submitted written declaration by the importer, stating as under:

"We also hereby declare that all our shipments Including our present consignment under clearance through your office, are our legitimate import/export and without any express violation of Rules & Procedures under Custom Act. 1962. Foreign Exchange Regulation Act (FERA). Foreign Exchange Management Act (FEMA) & The Foreign trade (Development and Regulation) Act. 1992 etc.

We also further declare that our shipments does /do not contain any contraband or prohibited article/s. We shall also hold ourselves responsible for any discrepancy mis-declaration found in our documents or goods for which we are seeking clearance through M/s. Orion Consultancy holding CHA License No. 11/2242 (Mumbai). In case of any legal discrepancy arising from our shipment in present as well as future, we shall hold ourselves responsible and M/s. Orion Consultancy Mumbai shall be in no way responsible including any less charges, short levy, dues of customs, port, shipping companies, transporters, Octroi etc.

We also enclose KYC form duly filled with all details and signed along with self-certified photocopies of IEC, Invoice, Packing List, Bills of Lading, Marine Insurance, etc. towards our request for clearance of consignment through you. We also further declare that we shall remain present for any hearing which custom authority may grant from time to time."

From the above, the IO observed that the CB had obtained the authorization from the importer and the authenticity of the same had not been challenged/proven to the contrary, by the Investigating/ Adjudicating authority. The IO thus concluded that the CB had complied with the provisions of Regulation 10(a) of CBLR, 2018 and therefore the charge under Regulation 10(a) was not proved.

13.4 Violation of Regulation 10(d):

In this connection, the IO found that there was no evidence to the effect that the CB had advised their client regarding LMPC Rules & RE-44 Notification. Though the same was also lacking in the Show Cause Notice as to which consignment the LMPC Rules & RE-44 Notifications were to be mentioned (i.e. in the case of declared Mandarin goods or undeclared Kiwis or both). Regardless of this, the IO found that as there was no evidence put forth by the CB of having advised their client on LMPC & RE - 44, and held the charge under Regulation 10(d) as partly proved.

13.5 Violation of Regulation 10(e):

The IO found that this was a plain presumption of the investigating agency as there had been a time gap between filing of the Bills of Entry and thereafter the arrival of the goods and the goods put on hold by the investigating agency. Under no circumstances can it be known to the CB the actual weight of the goods and misdeclared nature of goods while filing the Bills of Entry, unless the investigation agency had found some sort of evidence between the CB and importer, in the form of chats/messages/emails etc. regarding the misdeclared goods, its value and quantity, which was not evident in this case, hence the IO considered the charge of violation of Regulation 10(e) of the CBLR, 2018, as being preposterous i.e. contrary to reasoning and without any substantial evidence, and therefore the charge under Regulation 10(e) was not proved.

13.6 Violation of Regulation 10(f):

The IO found that Regulation 10 (f) of the CBLR, 2018 is different from Regulation 10 (d) in the sense that Regulation 10(d) deals with advising by the CB to his clients (which has been discussed above) whereas Regulation 10(f) deals with withholding of information

by the CB. The IO found that there was no evidence put forth by the investigating agency that the CB had on purpose and in any form withheld information from their client. The IO submitted that any charges levied should carry strong evidence for the charges to stand the test of law. Hence, the IO found that the charge under Regulation 10(f) was not proved.

13.7 Violation of Regulation 10(m):

From the offence report, the IO found that the CB had been stated to have worked in an inefficient manner due to the misdeclared and undervaluation of the goods by the investigation agency and that the non-compliant goods would have been cleared, if investigating agency had not intervened the subject consignments. Hence, it appeared that CB failed to discharge his duties efficiently and violated the Regulation 10(m) of CBLR, 2018.

The IO found that the CB had denied this allegation and the IO also found that there was no evidence put forth by the investigating agency in this issue that there was delay by the CB on any count. The IO found that though the charge against the CB of any delay were not proved, notwithstanding the above, and if at all, then the benefit of doubt goes in favour of the CB and therefore the IO found that the charge under Regulation 10(m) as not proved.

13.8 Violation of Regulation 10(n):

The IO found that the CB had submitted copy of authorization dated 02.04.2024 by the importer wherein it has interalia been stated that:

"We also hereby declare that all our shipments Including our present consignment under clearance through your office, are our legitimate import/export and without any express violation of Rules & Procedures under Custom Act. 1962. Foreign Exchange Regulation Act (FERA). Foreign Exchange Management Act (FEMA) & The Foreign trade (Development and Regulation) Act. 1992 etc.

We also further declare that our shipments does /do not contain any contraband or prohibited article/s. We shall also hold ourselves responsible for any discrepancy mis-declaration found in our documents or goods for which we are seeking clearance through M/s. Oriion Consultancy holding CHA License No. 11/2242 (Mumbai). In case of any legal discrepancy arising from our shipment in present as well as future, we shall hold ourselves responsible and M/s. Oriion Consultancy Mumbai shall be in

no way responsible including any less charges, short levy, dues of customs, port, shipping companies, transporters, Octroi etc.

We also enclose KYC form duly filled with all details and signed along with self-certified photocopies of IEC, Invoice, Packing List, Bills of Lading, Marine Insurance, etc. towards our request for clearance of consignment through you. We also further declare that we shall remain present for any hearing which custom authority may grant from time to time."

The IO also found that the CB had submitted the following KYC documents of the importer, namely

- i. Copy of IEC No. BJWPK4933N of M/s. Savitri Enterprises.
- ii. Copy of Form GST REG-06 No. 27BJWPK4933N1ZA of M/s. Savitri Enterprises with Annexure A and B.
- iii. Copy of PAN Card No. BJWPK4933N of Shri Ganesh Bhanudas Kadam,
- iv. Proprietor of M/s. Savitri Enterprises.
- v. Electricity Bill No. 000002545213142 issued by Mahavitaran

From the above, the IO found that the CB had acted diligently and had got the details of KYC form duly filled with all details and signed along with self-certified photocopies of IEC, Invoice, Packing List, Bills of Lading, Marine Insurance, etc. towards their request for clearance of consignment through the CB. It is important to mention that during the entire investigation, the importer was available all the times and hence the genuineness regarding the importer's existence and address was not questionable. Even Pune Customs Preventive to the extent of existence of importer's premises in actual, established that there was no question of fraudulent address. The IO submitted that the photographs of the shutter submitted in this regard also gave benefit of doubt that the establishment with shutter cannot be residential but commercial. Further, the IO found that in the DGFT FAQs it is clarified that licence can be issued on residential premises subject to other documents being proper. Further, the IO found that there was no mandated obligation on the part of the CB to personally visit the premises of the importer as the importer can have all India presence and therefore personal visit by CB to their premises has not been indoctrined in the Rules and Regulations. Moreover, there has been interaction by the CB with the authorised person Shri Shivkumar Ramchandra Gupta from beginning and at regular frequent intervals who has also signed the Panchanama dated 14/15.09.2024, 15.09.2024 and 17.09.2024 (relied

upon documents), in the capacity of Authorized Representative of M/s. Savitri Enterprises. Hence, the charge Regulation 10(n) of the CBLR, 2018, did not survive. The IO stated that, notwithstanding the above, and if at all, then the benefit of doubt went in favour of the CB and therefore the IO found that the charge under Regulation 10(n) was not proved.

14. SUMMARY OF THE FINDINGS:

From the aforesaid discussions as mentioned above, the IO concluded his findings as under:

Sr. No.	Charges against the CB	Findings
1.	Violation of Regulation 10 (a) of the CBLR, 2018	Not Proved
2.	Violation of Regulation 10 (d) of the CBLR, 2018	Partly Proved
3.	Violation of Regulation 10 (e) of the CBLR, 2018	Not Proved
4.	Violation of Regulation 10 (f) of the CBLR, 2018	Not Proved
5.	Violation of Regulation 10 (m) of the CBLR, 2018	Not Proved
6.	Violation of Regulation 10 (n) of the CBLR, 2018	Not Proved

15. DISAGREEMENT MEMO: - The Inquiry Officer in his report dated 24.10.2025 submitted on 14.11.2025 held the Charges for violation of Regulations 10(a), 10(e), 10(f), 10(m) and 10(n) as 'Not Proved' and 10(d) as 'Partly Proved'. Commissioner of Customs (Gen.), Mumbai-I disagreed with the Inquiry Officer's report in light of the available evidences on record. Therefore, a Disagreement Memo dated 07.01.2026 was issued by the Commissioner of Customs (Gen.), Mumbai-I.

15.1 Under the provisions of Regulation 17(6) of the CBLR, 2018 a copy of the Inquiry Report dated 24.10.2025, Disagreement Memo dated 07.01.2026 was shared with the CB vide letter dated 12.01.2026 and further, to uphold the Principle of Natural Justice an opportunity of personal hearing was granted to the CB on 22.01.2026.

RECORDS OF PERSONAL HEARING: -

16. The personal hearing in the matter was held on 22.01.2026. Shri Prashant Kubal, consultant and Shri Shambhu D. Agrawal, proprietor of the CB, appeared for the hearing. They submitted a written reply dated 22.01.2026 and reiterated the facts of the same and requested to take a lenient view in the matter. Their submission was taken on record.

WRITTEN SUBMISSION OF THE CB: -

17. The CB made a written submission dated 22.01.2026 during the PH, the main contentions and defence of which is summarized below:

17.1 At the outset, the CB denied the allegations levelled against them in the Show Cause Notice No. 09/2025-26 dated 06.06.2025, as baseless, as the same was not supported with documentary or oral evidence. The CB submitted that the observations made by the Hon'ble Commissioner of Customs (General) in the Disagreement Memo were contrary to the facts of the case and legal position as laid down by various judicial pronouncements given on the issues similar to this case. The CB submitted that the Disagreement Memo sought to impose the entire burden of the Importer's alleged violations under the Customs Act, 1962 upon the CB, which was not only beyond the scope of the CBLR, 2018 but also traversed beyond the Show Cause Notice.

17.2 The CB submitted that the Inquiry Proceedings under provisions of Regulation 17 of CBLR, 2018 were initiated against them on the basis of an Offence Report in the form of SCN No. 1773(L)/2024-25/ADC/Gr.I & IA/NS-I/CAC/JNCH dated 10.03.2025 issued by the Additional Commissioner of Customs, NS-I, JNCH.

17.3 The CB submitted that the said Show Cause Notice dated 10.03.2025 (Offence Report) has been adjudicated and Order-in-Original No. 146/2025-26/Gr.I&IA/ADC/NS-I/CAC/JNCH dated 01.05.2025, wherein penalties under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 proposed in SCN No. 1773(L)/2024-25/ADC/Gr.I&IA/NS-I/CAC/JNCH dated 10.03.2025, SIIB(I) JNCH (Offence Report) had been dropped by the Adjudicating Authority. Relevant paras 39 and 40 of the said Order-in-Original are re-produced below:

"I find that Customs Broker's role with regard to being actively involved in the purported mis-declaration of country of origin has not been brought out on record during investigation. I find that no evidence of nexus and connivance have been revealed in the SCN. Also, the CBIC Board vide Instruction No. 20/2024 dated 03.09.2024 clarified that Customs Broker as co-notice in a routine matters must be avoided unless the element of abetment of the Customs Brokers in the investigation

is established. In the instant case, the investigating unit has not established any element of abetment. Without animus on the part of Customs Broker, it is not appropriate to invoke Section 112(a), Section 112(b) & Section 114AA of the Customs Act, 1962. Hence I refrain from imposing penalty under 112(a) and /or 114A and/or Section 114AA of the Customs Act, 1962 against the Customs Broker M/s. Oriion Consultancy”.

17.4 The CB submitted that the Disagreement Memo dated 07.01.2026 was completely devoid of merits and does not in any way considered the findings of the Inquiry Report dated 24.10.2025 in the right spirit, wherein it was found that all charges framed under Regulation 10(a), 10(e), 10(f), 10(m) and 10(m) of the Customs Broker Licensing Regulations (CBLR), 2018, were “Not Proved”. The CB submitted that the Inquiry Officer (IO), after a thorough evaluation of the evidence and CB’s detailed reply dated 21.08.2025, rightly concluded that the CB acted with due diligence and that no lapse was attributable to them.

17.5 The CB submitted that the impugned Show Cause Notice No. 09/2025-26 dated 06.06.2025 was issued on the basis of an Offense Report in the form of SCN No. 1773(L)/2024-25/ADC/Gr.I&IA/NS-I/CAC/JNCH dated 10.03.2025, SIIB(I) JNCH, which was received in the Customs Broker Section, New Custom House, Mumbai on 10.03.2025 through an email. The CB submitted that inquiry proceedings had not been completed within stipulated 90 days under Regulation 17(5) of CBLR, 2018. The CB submitted that the Inquiry Officer after considering facts of the case and reply filed by them submitted Inquiry Report dated 24.10.2025. However, the said Inquiry Report was received in the Centralized Receipt Unit (General), NCH, Mumbai on 14.11.2025. Thus, it took 20 days to reach to CRU, NCH, Mumbai i.e. in the same building. The Inquiry Officer’s report dated 24.10.2025 was communicated to them vide a letter dated 07.01.2026. The CB submitted that the Inquiry Officer was bound to issue an Inquiry Report within 90 days from the issuance of the said Show Cause Notice. The CB submitted that the Inquiry Officer had not followed the timeline set forth in Regulation 17(5) of the CBLR, 2018. On this ground itself the impugned Show Cause Notice is liable to be dropped. The CB placed reliance upon the following caselaws:

- I. *The Hon'ble High Court Delhi in case of LEO Cargo Services vs. Commissioner of Customs, Airport & General, New Delhi, reported in 2022 (385) E.L.T. 30 (Del.).*
- II. *the Hon'ble High Court, Madras in case of KTR Logistics Solutions Pvt. Ltd. Vs. Commissioner of Customs, Chennai, reported in 2020 (371) E.L.T. 685 (Mad.)*
- III. *the Hon'ble High Court, Madras in case of M/s. Sea Queen Shipping Services Pvt. Ltd. Vs. Commissioner of Customs, Chennai, in W. P. Number 27243 of 2025 & WMP.Nos.30622 & 30624 of 2025.*

17.6 The CB further submitted that it is a settled position of law, consistently upheld by the Hon'ble High Courts and the Hon'ble Tribunal, that non-adherence to even a single timeline under Regulation 17 vitiates the entire proceedings, irrespective of the nature of allegations or merits of the case. Consequently, the present proceedings are liable to be quashed and set aside in toto as void ab initio, with all consequential benefits, including restoration of licence and privileges, as continuation of such proceedings would amount to an arbitrary and unconstitutional restriction on the Customs Broker's fundamental right to carry on trade and profession under Article 19(1)(g) of the Constitution of India.

17.7 Submission against charge of violation of Regulation 10(a):

- i. The CB submitted that they had obtained the authorization from the importer and the authenticity of the same had not been challenged/proven to the contrary, by the Investigating/Adjudicating authority. Thus, the CB submitted that they had complied with the provisions of Regulation 10(a) of CBLR, 2018 and therefore the charges under Regulation 10(a) were 'NOT PROVED'.
- ii. The CB submitted that as per provisions of Regulation 10(a) of CBLR, 2018 CB is under obligation to obtain authorization from their client and produce the same whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs. It is alleged in the said impugned Show Cause Notice that there was no official agreement between them and importer M/s. Savitri Enterprises. The CB submitted that the said allegation is totally baseless as there is no requirement under any Regulation of CBLR, 2018 or any other law for the time being in force which stipulates that the Customs Broker has to enter into contract or agreement with their client. The CB submitted that it is not mandatory under the law for customs broker to enter into agreement with importer or exporter.
- iii. The CB submitted that the Importer M/s. Savitri Enterprises in the said Authority Letter had stated that all their shipments including their present consignment under

clearance through their office, were their legitimate import/export and without any express violation of Rules & Procedures under Custom Act.1962. Foreign Exchange Regulation Act (FERA). Foreign Exchange Management Act (FEMA) & The Foreign trade (Development and Regulation) Act.1992 etc. The CB submitted that the importer had taken responsibility of the any discrepancy by stating in the Authority Letter that they undertake that they are solely responsible and liable for any action that Department may choose to take in this regard and absolve them (CB) for any responsibility whatsoever. Thus, they had the authority to work on behalf of the importer.

- iv. The CB submitted that as per the offence report viz. Show Cause Notice No. 1773(I)/2024-25/ADC/Gr.I&IA/CAC/JNCH dated 10.03.2025 Shri Shivkumar Ramchandra Gupta is referred as 'Authorized person in case of M/s. Savitri Enterprises'.
- v. The CB respectfully submitted that as per provisions of Regulation 10(a) of CBLR, 2018, they had obtained authorisation from importer M/s. Savitri Enterprises and thus they had complied with provisions of Regulation 10(a) of CBLR, 2018. Thus, the CB stated that they had not failed to comply with the requirement of Regulation 10(a) of CBLR, 2018.

17.8 Submission against charge of violation of Regulation 10(d):

- i. The CB stated that in order to establish the charge under Regulation 10(d) of CBLR, 2018, it is required to point out specific instances when the CB had failed to advise their clients to comply with the provisions of the Act or when he had failed to report the non-compliance of the provisions of the Act by his clients to the Customs authorities. The CB submitted that there was no default on their part as they had filed the said four Bills of Entry as per the Invoice/Packing List, Bill of Lading and other documents submitted by the importer M/s. Savitri Enterprises.
- ii. The CB submitted it is not clear from the offence report whether there was alleged violation of provisions of RE-44 / LMPC in declared consignment of 'Fresh Mandarin (Soft Citrus)' or alleged concealed 'Kiwi' fruits. The CB submitted that while levelling any charges against them, the Department had to be very specific. Also, the CB submitted that no photographs of the same consignment had been provided as Relied Upon Documents (RUDs) to the Show Cause Notice No 1773(I)/2024-25/ADC/Gr.I&IA/CAC/JNCH dated 10.03.2025, which is an offence report in the instant case. The CB submitted that in absence of specific details of fruits or photographs, allegation of violation of RE-44/LMPC were not sustainable.
- iii. The CB submitted that it is apparent from the impugned Show Cause, which is 'offence report' that violation of RE-44/LMPC against the importer have neither

been investigated by SIIB(I), JNCH, Nhava Sheva nor such violation of RE-44/LMPC have been levelled against the importer M/s. Savitri Enterprises in the impugned Show Cause Notice (offence report). It is pertinent to mention that when such alleged violation of RE-44/LMPC do not exist in offence report, then such violation of RE-44/LMPC cannot be levelled neither against the importer nor against them in the impugned Show Cause Notice No. 09/2025-26 dated 06.06.2025.

- iv. The CB further submitted that they did not physically see the impugned goods before the same were received in custom area. The CB submitted that they had filed the said four Bills of Entry on behalf of M/s. Savitri Enterprises on the basis of document supplied to them. In this regard the CB submitted that they had placed reliance on the decision of the *Hon'ble Tribunal, Kolkata in the case of Advent Shipping Agency Versus Principal Commissioner of Customs (A & A), Kolkata, reported in (2023) 2 Centax 157 (Tri.-Cal)*.
- v. The CB submitted that there was no evidence in the form of statement or any corroborative evidence to prove that they had given wrong advice or that they had knowledge of the alleged mis-declaration by the importer M/s. Savitri Enterprises.
- vi. The CB submitted that the subject Checklist in respect of the 4 (four) Bills of Entry were generated by them on behalf of the M/s. Savitri Enterprises on the basis of the documents furnished by them. Further, the impugned goods covered under the aforesaid four Bills of Entry neither physically handled by them nor examined prior to examination by Customs Authority, therefore, the CB submitted that they had no opportunity to ascertain the value/quantity/description of the goods. The CB submitted that they had had no reason to suspect or know that the export goods were under-valued/mis-declared, when they had no occasion to examine the said goods, before the Customs officers did. The CB placed reliance upon the following caselaws:
 - a. M/s. L. M. S. Transport Co. V/s Commissioner of Customs (G) Mumbai, 2014(229) E.L.T.368 (Tri-Mumbai)
 - b. Akanksha Enterprises Vs. Commissioner of Customs [2006 (203) ELT 125 (Tri-Del), Hon'ble Tribunal
 - c. Hon'ble CESTAT in the case of Parvath Shipping Agency Vs. Commissioner of Customs (Gen.), Mumbai [2017(357) ELT. 296(Tri. Mumbai)]
- vii. The CB submitted that the said offence report was issued by the Additional Commissioner of Customs, Appraising Group -I, JNCH, Nhava Sheva, which was the basis for institution of inquiry proceedings under Regulation 17 of CBLR, 2018. The CB submitted that the Charges of violation of Regulation 10(d) of CBLR, 2018 was levelled against them. Subsequently, the same authority has observed that they

had not failed in advising the importer. Hence, the CB stated that the Charges Regulation 10(d) of the CBLR, 2018, does not survive. The CB submitted that they had not violated the provisions of Regulation 10(d) of the CBLR, 2018.

17.9 Submission against charge of violation of Regulation 10(e):

- i. The CB submitted that from the Show Cause Notice No. 09/2025-26 dated 06.06.2025, it is seen that charges of violation of Regulation 10(e) of the CBLR, 2018 had been levelled for not exercising due diligence while filing the Bills of Entry. As far as the allegation of excess weight of 37,840 Kgs than the declared weight found in the said consignments is concerned, the CB submitted that they had filed the said Bills of Entry Nos. 5517447, 5526631, 5526803 and 5527148 dated 10.09.2024 prior to arrival of the import shipment at Nhava Sheva Port. The CB submitted that they had filed the said four Bills of Entry as per the invoice/packing list and Bill of Lading given by the importer M/s. Savitri Enterprises. It is common sense that Customs Broker files documents viz. Bills of Entry/Shipping as per the documents given by importer/exporter respectively. If any discrepancy in quantity, weight etc. found during the examination of the goods, no allegation can be levelled against the Customs Broker. Hence, such allegations were not sustainable.
- ii. The CB submitted that the findings of the Inquiry Officer were reasoned, factually correct, and legally sound, and should be upheld. At the outset, the said Disagreement Memo is misconceived by assuming and denying for the sake of argument, that they had not exercised due diligence. The CB submitted that only because they had handled the import consignment covered under Bills of Entry Nos. 5517447, 5526631, 5526803 and 5527148 dated 10.09.2024 does not mean that they had facilitated/ abetted the importer M/s. Savitri Enterprises in alleged concealment of 'Kiwi Fruits' in the said consignments. The CB therefore submitted that they had not failed to comply with the requirement of Regulation 10(e) of CBLR, 2018. Therefore, the allegation of violation of Regulation 10(e) of CBLR, 2018 levelled against them had no leg to stand.

17.10 Submission against charge of violation of Regulation 10(f):

- i. The CB submitted that the role of Customs Broker is limited to filing of the documents as received from the exporter/importer. The Customs Broker cannot be expected get in the role of an investigating agency and probe the exporter/exporter. Also, the CB submitted that they did not have the expertise and the resources to cause such investigations. Therefore, the proposition of involvement of the Customs Broker in facilitating importer is speculative of its role and therefore cannot be sustained. Only because they handled the import consignment covered under Bills of Entry Nos. 5517447, 5526631, 5526803 and 5527148 dated 10.09.2024 does not

mean that they facilitated/ abetted the importer M/s. Savitri Enterprises in alleged concealment of 'Kiwi Fruits' in the said consignments.

- ii. The CB submitted that the Inquiry Officer had rightly observed that was no evidence put forth by the investigating agency that the CB had on purpose withheld any information from their client. The CB submitted that allegation of violation of Regulation 10(f) of CBLR, 2018 levelled against them is based on assumption and presumption. Specifically, violation of LMPC Rules and RE-44 Notification, which was never levelled against the importer in the impugned Offence Report/Show Cause Notice. The CB submitted that the Department had levelled such allegations against them by travelling beyond offence report. They submitted that therefore, there was no violation of the said Regulation and they had not failed to comply with the requirement of Regulation 10(f) of CBLR, 2018. Therefore, the CB submitted that the allegation of violation of Regulation 10(f) of CBLR, 2018 levelled against them had no leg to stand.

17.11 Submission against charge of violation of Regulation 10(n):

- i. The CB submitted that they had verified the IEC, GSTIN, PAN card, Electricity Bill of the importer M/s. Savitri Enterprises online in DGFT and GST website. The CB stated to find enclosed herewith copy following KYC documents: Copy of IEC No. BJWPK4933N of M/s. Savitri Enterprises, Copy of Form GST REG-06 No. 27BJWPK4933N1ZA of M/s. Savitri Enterprises with Annexure A and B and Copy of PAN Card No. BJWPK4933N of Shri Ganesh Bhanudas Kadam, Proprietor of M/s. Savitri Enterprises.
- ii. The CB submitted that the existence and functioning of the exporter was verified online with the above documents. It has not been alleged in the impugned Show Cause Notice that IEC was forged. It can be seen that M/s. Savitri Enterprises is a Proprietorship concern, whose proprietor is Shri Ganesh Bhanudas Kadam. The Department failed to appreciate that a Sole Proprietorship concern is considered as a kind of business that is owned, controlled and operated by an individual. Also, Proprietorship Concern is not a separate legal entity apart from its owner. As per the DGFT, a sole proprietorship business can be started from home.
- iii. The CB submitted that the Pune, Preventive Commissionerate verified the address and they have stated that it is accurate. It is also stated in in the Article of Charge that the address was found accurate. Also, they have taken two photograph of office premises of M/s. Savitri Enterprises taken on 26.09.2024 showing marking viz. 'Khed Pune Division Maharashtra'. Thus, it is apparent that the photos were taken by GST Officials. These two photographs were Relied Upon Documents in Show Cause Notice No. 1773(I)/2024-25/ADC/Gr.I&IA/NS-I/CAC/JNCH dated

10.03.2025, which is the offence report. From the said two photographs it can be seen that there is proper sign board of Savitri Enterprises with GST No. Address. Also, it can be seen that there is proper shutter for office premises of the importer M/s. Savitri Enterprises. Thus, it is perfectly office premises. The CB submitted that the Customs Broker section failed to appreciate that it is office premises. Otherwise, who stays in the house/residence with shutter and half partition glass and door with transparent glass. The CB submitted that they are totally surprised with the findings of the Pune Preventive authorities that it was residential premises. Copies of the both photographs are enclosed herewith for ready reference. The CB submitted that the Directorate General of Foreign Trade, who is Competent Authority to issue IEC permits residential address to be considered as 'Business Address' then Customs Authorities cannot raise any objection that it was 'residential premises' and not 'business premises'. Thus, there is no violation of regulation 10(n) of CBLR, 2018.

17.12 The CB submitted that the punishment meted out to the Customs Broker should be commensurate with the violation committed. It is a settled law that penalty should be proportionate to the offence committed. The CB submitted that it would be too harsh to revoke the license of them and to leave the right to livelihood of the Customs Broker as well as his employees. For the said proposition, the CB had placed reliance upon the following case laws:

- a. HIM Logistics Pvt. Ltd. v. CC, New Delhi - 2016 (338) E.L.T. 725 (Tri. - Del.):
- b. Ashiana Cargo Services v. CC (I &G) , Delhi in their Final Order No. Cus.AA. 24/2012; C.M. APPL. 19694/2012, dated 14-3-2014 [2014 (302) E.L.T. 161 (Del)]

17.13 The CB concluded the submission stating that the suspension of their licence has gravely endangered the livelihood of them and all the families dependent upon their business. The CB submitted that such suspension has the effect of depriving them of their fundamental right guaranteed under Article 19(1)(g) of the Constitution of India, namely, the right to practise any profession or to carry on any occupation, trade or business, and consequently the right to earn livelihood. In these circumstances, the CB humbly requested the Adjudicating Authority to take a lenient and sympathetic view in the matter and to kindly restore the licence forthwith, in the interest of justice and equity.

DISCUSSIONS AND FINDINGS: -

18. I have gone through the facts and records of the case; the Offence Report in the form of SCN vide no. 1773(L)/2024-25/ADC/Gr.I&IA/NS-I/CAC/JNCH dated 10.03.2025 issued by the Addl. Commissioner of Customs, NS-I, JNCH, Mumbai – II; Suspension Order No. 02/2025-26 dated 06.05.2025; Suspension Continuation Order No. 04/2025-26 dated 03.06.2025; Show Cause Notice No. 09/2025-26 dated 06.06.2025 issued under Regulation 17(1) of the CBLR, 2018; Inquiry Report dated 24.10.2025 and the CB's written submission dated 22.01.2026.

19. I find that the action matter in the instant case emanates from a case booked by SIIB(I), JNCH. The importer, M/s Savitri Enterprises, filed four Bill(s) of Entry (Nos. 5517447, 5526631, 5526803, and 5527148 all dated 10.09.2024) for the clearance of goods declared as "Fresh Mandarin (Soft Citrus)". Upon physical examination by SIIB(I), JNCH, mis-declared goods i.e. Kiwi fruit was found concealed behind rows of Fresh Mandarin in all the containers. While the first few rows of the containers contained the declared Mandarins, the remaining area was packed with Fresh Kiwis, imported in violation of the Plant Quarantine Restrictions. The investigation found Shri Ganesh Kadam, proprietor of M/s Savitiri Enterprises to be evasive during questioning and owing to the huge quantum of misdeclaration i.e. more than Rs. Two Crores in value, he was arrested. The investigation into the Customs Broker (CB), M/s Oriion Consultancy, revealed a systemic failure of regulatory oversight since, they took the clearance work from a third party i.e. Shri Shivkumar Ramchandra Gupta. It was discovered during the investigation that Shri Shivkumar Ramchandra Gupta managed the entire clearance process, handled the documents, and communicated with the importer's representatives, paying the CB a fixed commission. The CB's 'F' card holder admitted to never meeting the importer or verifying their functioning at the declared address, relying entirely on the intermediary i.e. Shivkumar Ramchandra Gupta. Consequently, the CB was charged with violations of Regulations 10(a), 10(d), 10(e), 10(f), 10(m), and 10(n) of the CBLR, 2018.

19.1 I observe that an Order-in-Original No. 146/2025-26/Gr.I&IA/ADC/NS-I/CAC/JNCH dated 01.05.2025 was passed against the Offence Report i.e. Show Cause Notice No. 1773(L)/2024-25/ADC/Gr.I&IA/NS-I/CAC/JNCH dated 10.03.2025 wherein, the Adjudicating Authority has noted that, 'I find that Customs Broker's role with regard to being actively involved in the purported mis-declaration of country of origin has not been brought out on record during investigation. I find that no evidence of nexus and connivance have been revealed in the SCN. Also, the CBIC Board vide Instruction No. 20/2024 dated 03.09.2024 clarified that Customs Broker as co-notice in a routine matters must be avoided unless the element of abetment of the Customs Brokers in the investigation is established. In the instant case, the investigating unit has not established any element of abetment. Without animus on the part of Customs Broker, it is not appropriate to invoke Section 112(a), Section 112(b) & Section 114AA of the Customs Act, 1962. Hence, I refrain from imposing penalty under 112(a) and /or 114A and/or Section 114AA of the Customs Act, 1962 against the Customs Broker M/s Oriion Consultancy'. Citing these grounds, the Adjudicating Authority dropped the proceedings against the CB under the Customs Act, 1962.

20. I find that 06 articles of charges have been framed against the CB i.e. violation of Regulations 10(a), 10(d), 10(e), 10(f), 10(m) and 10(n) of the CBLR 2018. Now, I proceed to discuss the articles of charges, sequentially.

20.1 Violation of Regulation 10(a) of the CBLR, 2018:

(a) I find that the charge of violation of Regulation 10(a) of the CBLR, 2018 has been levelled against the CB on the grounds that, 'Statement dated 24.09.2024 of Shri Shambhu Dayal Agrawal, Proprietor in CB M/s. Oriion Consultancy was recorded under the Customs Act, 1962, wherein he stated that he did not know importer directly and there is no official agreement between them. Also, statements dated 20.09.2024 and 05.11.2024 of Shri Shivkumar Ramchandra Gupta, were recorded under the Customs Act, 1962, wherein, he inter-alia stated that he has not signed any agreement or contract with the importer. Thus, no agreement between the CB and importer indicates that proper authorization was not

obtained in the instant case. Further, importer Shri Ganesh B. Kadam in his statement dated 23.09.2024 stated that the subject consignment was filed by Shri Shivkumar Ramchandra Gupta on his request. Thus, it is amply clear that CB was never in touch with importer by any means of communication or contact which indicates that the subject bills of entry filed through CB license without taking proper authorization from importer/IEC. Hence, it appears that the CB failed to comply with the Regulation 10(a) of CBLR, 2018.'

(b) I find that the Inquiry Officer, in this regard, has observed that, the department has taken a stand mainly on the grounds that Shri Shambhu Dayal Agrawal, Proprietor in CB M/s. Oriion Consultancy (in his statement dated 24.09.2024) did not know the importer directly and there was no official agreement between them. There was no signed agreement or contract with the importer. Thus, no agreement between the CB and importer indicated that proper authorization was not obtained in the instant case and that CB was never in touch with importer by any means of communication or contract which indicated that the subject bills of entry filed thorough CB license without taking proper authorization from importer/IEC. Hence, it appeared that the CB failed to comply with the Regulation 10(a) of CBLR, 2018.

The IO found that Shri Shambhu Dayal Agrawal, CB, had submitted written declaration by the importer, stating as under:

"We also hereby declare that all our shipments Including our present consignment under clearance through your office, are our legitimate import/export and without any express violation of Rules & Procedures under Customs Act, 1962, Foreign Exchange Regulation Act (FERA), Foreign Exchange Management Act (FEMA) & The Foreign trade (Development and Regulation) Act, 1992, etc.

We also further declare that our shipments does /do not contain any contraband or prohibited article/s. We shall also hold ourselves responsible for any discrepancy mis-declaration found in our documents or goods for which we are seeking clearance through M/s. Orion Consultancy holding CHA License No. 11/2242 (Mumbai). In case of any legal discrepancy arising from our shipment in present as well as future, we shall hold ourselves responsible and M/s. Orion Consultancy Mumbai shall be in no way responsible including any less charges, short levy, dues of customs, port, shipping companies, transporters, Octroi etc.

We also enclose KYC form duly filled with all details and signed along with self-certified photocopies of IEC, Invoice, Packing List, Bills of Lading, Marine Insurance, etc. towards our request for clearance of consignment through you. We also further declare that we shall remain present for any hearing which custom authority may grant from time to time."

From the above, the IO found that the CB had obtained the authorization from the importer and the authenticity of the same has not been challenged/proven to the contrary, by the Investigating/ Adjudicating authority. The IO thus found that the CB had complied with the provisions of Regulation 10(a) of CBLR, 2018 and therefore the charge under Regulation 10(a) is not proved.

(c) The CB in his written submission categorically denied the charge of failing to obtain proper authorization from the importer, M/s. Savitri Enterprises. They submitted that they were in possession of a valid authorization letter and requisite documents, which were presented to the Department. The CB further submitted a copy of Authorization dated 02.04.2024 from the importer, and cited the excerpts from it which is also discussed in the IO's findings. The CB submitted that the Importer M/s. Savitri Enterprises in the said Authority Letter has stated that all their shipments including their present consignment under clearance through our office, were their legitimate import/export and without any express violation of Rules & Procedures under Customs Act, 1962, Foreign Exchange Regulation Act (FERA), Foreign Exchange Management Act (FEMA) & The Foreign trade (Development and Regulation) Act, 1992, etc. The importer has taken responsibility of the any discrepancy by stating in the Authority Letter that they undertook that they were solely responsible and liable for any action that Department may choose to take in this regard and absolves them (CB) of any responsibility whatsoever. They also submitted that as per the offence report dated 10.03.2025, Shri Shivkumar Ramchandra Gupta is referred as 'Authorised person in case of M/s. Savitri Enterprises'.

The CB further added drew attention the Panchanamas dated 14/15.09.2024, 15.09.2024 and 17.09.2024 (which is relied upon documents in the said offense report) in respect of the impugned consignments covered under said four Bills of Entry, wherein.

Shri Shivkumar Ramchandra Gupta signed the said Panchanamas in capacity of Authorized Representative of M/s. Savitri Enterprises. He was allowed to sign the panchanama by the SIIB(Import), JNCH, Nhava Sheva. The CB re-iterated that Customs Authority only allows authorized persons of the importers/exporters to witness examination and sign panchanama on behalf of importer/exporter. If Shri Shiv Kumar Gupta was not authorized person of importer M/s. Savitri Enterprises then SIIB(I), JNCH officers would not have allowed him to witness the said examination of the goods under said panchnamas. He was allowed to participate in examination of the impugned goods only after scrutiny of identity of Shri Shiv Kumar Gupta in capacity of Authorized Representative of importer M/s. Savitri Enterprises. They further contend that the Department has failed to provide any evidence or statement from the importer suggesting that the authorization was forged or that the CB acted without the importer's knowledge. The CB emphasized that at the time of filing, they had no reason to doubt the authenticity of the documents provided by the client's representative. They argued that once a CB receives documents that appear genuine on their face, they have fulfilled their obligation under this Regulation.

(d) I have meticulously perused the Offence report, the IO's findings, the CB's submissions, the available facts and evidences on record. I find that the CB submitted an authorization from the importer, explicitly expressing the ownership of responsibility of the goods importer by M/s Savitri Enterprises. Further, the CB submitted that they had received all documents from authorized representative of the importer i.e. Shri Shivkumar Gupta and that he had attended the examination proceedings and tendered statement to the investigating agency in the capacity of Authorized Representative of the Importer. Having gone through the Offence Report in detail and the IO's findings I find that the Investigation does suggest that Shri Shivkumar Gupta was an authorized representative of the importer. Statements of Shri Ganesh Kadam, proprietor of M/s Savitri Enterprises, Shri Shivkumar Gupta and Shri Shambhu Agrawal, proprietor of CB recorded under the Customs Act do not establish anything to the contrary to what the CB has stated. In view of these, I do not find grounds to differ from the IO's findings and concur with the same. Hence, in view of the aforementioned findings, I am of the considered view that the defence arguments

of the CB with respect to charge of violation of Regulation 10(a) of the CBLR, 2018 have some force and accordingly applying the principle of benefit of doubt I do not find the case fit to establish the charge of violation of Regulation 10(a) and I drop the same. In this regard, I place reliance on the following caselaws:

- (i) Hon'ble CESTAT Mumbai, in the Final Order No: 85745-85747/2024 Date of hearing: 07/02/2024 Date of decision: 05/08/2024 in the matter of H G Mehta & Co Pvt Ltd vs Commissioner Of Customs-Mumbai, wherein under para 6, it is held that:**

"The purpose of 'authorization' is to establish that 'customs broker' is contacted agent of importer or exporter for each transaction and, thereby, bring section 147 of Customs Act, 1962 into play. The manner in which it is to be obtained is not set out in regulation 10(a) of Customs Broker Licensing Regulations, 2018 and, obviously, considering its purpose, is only required to be produced when asked for. It is not open to the licensing authority to insinuate more stipulations into this obligation than contemplated in the Regulation".

- (ii) Hon'ble Tribunal in case of K.S. Sawant & Co. Vs. Commissioner of Customs (General), Mumbai reported in 2012 (284) E.L.T. 363 (Tri. – Mumbai):**

"5.1 Obtaining an authorisation from the importer does not mean that the same should be obtained directly; so long as the concerned import documents were signed by the importer, it amounts to authorisation by the importer and, therefore, it cannot be said that there has been a violation of Regulation 13 (a)".

20.2 Violation of Regulation 10(d) of the CBLR, 2018:

(a) I find that the charge of violation of Regulation 10(d) of the CBLR, 2018 has been levelled against the CB on the grounds that, 'As per offence report, M/s. Savitri Enterprises attempted to import goods by way of mis-declaration in terms of description and quantity of the goods as they failed to provide the substantial documents in support of their claim that the misdeclaration was due to mistake of the supplier. Further, investigation revealed various aspects of the violation such as violation of LMPC Rules, RE-44 Notification, potential mis-declaration w.r.t. description of the goods, gross mis-declaration w.r.t. weight of the goods. It is the responsibility of the CB to inquire about the condition (i.e. pre-packed or bulk), specification of the goods etc. with the importer and advise the importer to comply

with the extant rules which was not done in the instant case. It appears that the CB did not advise his client regarding LMPC Rules & RE-44 Notification. Thus, it is amply clear that the said CB has failed to properly advise their client M/s. Savitri Enterprises regarding Rules and Regulations of Customs and allied acts. Hence, it appears that the CB failed to comply with the Regulation 10(d) of CBLR, 2018.’

(b) I find that the Inquiry Officer, in this regard, has observed that, M/s. Savitri Enterprises attempted to import goods by way of misdeclaration in terms of description and quantity of the goods as they failed to provide the substantial documents in support of their claim that the misdeclaration was due to mistake of the supplier. Further, investigation revealed various aspects of the violation such as violation of LMPC Rules, RE-44 Notification, potential mis-declaration w.r.t. description of the goods, gross misdeclaration w.r.t. weight of the goods. It is the responsibility of the CB to inquire about the condition (i.e. pre-packed or bulk), specification of the goods etc. with the importer and advise the importer to comply with the extant rules which was not done in the instant case. It appears that the CB did not advise his client regarding LMPC Rules & RE-44 Notification. Thus, it is amply clear that the said CB had failed to properly advise their client M/S. Savitri Enterprises regarding Rules and Regulations of Customs and allied acts. Hence, it appeared that the CB failed to comply with the Regulation 10(d) of CBLR, 2018. In this connection, the IO found that there is no evidence to the effect that the CB had advised their client regarding LMPC Rules & RE-44 Notification. Though the same is also lacking in the Show Cause Notice as to which consignment the LMPC Rules & RE-44 Notifications are to be mentioned (i.e. in the case of declared Mandarin goods or undeclared KIWIs or both). Regardless of this, the IO found that as there is no evidence put forth by the CB of having advised their client on LMPC & RE-44, the charge under Regulation 10(d) is partly proved.

(c) The CB in this regard submitted that the role of Customs Broker is limited to filing of the documents as received from the exporter/importer. The Customs Broker cannot be expected get in the role of an investigating agency and probe the exporter/exporter. Also, they do not have the expertise and the resources to cause such investigations. Therefore,

the proposition of involvement of the Customs Broker in facilitating importer is speculative of its role and therefore cannot be sustained. The CB categorically denied Specifically, the violation of LMPC Rules and RE – 44 Notification. They further added that only because they handled the import consignment covered under Bills of Entry Nos. 5517447, 5526631, 5526803 and 5527148 dated 10.09.2024 does not mean that they facilitated/ abetted the importer M/s. Savitri Enterprises in alleged concealment of 'Kiwi Fruits' in the said consignments. The CB further added that the impugned Show Cause Notice No. 09/2025-26 dated 06.06.2025 failed to appreciate that the Customs Broker is neither responsible for the value/weight declared in the Bills of Entry nor any concealment found in the consignment and that they did not have any prior knowledge about the mis-declaration; that it was practically/theoretically not possible; that they did not physically see the impugned goods before the same were received in custom area; that they filed the said four Bills of Entry on behalf of M/s. Savitri Enterprises on the basis of document supplied to them. Finally, the CB submitted that they had not failed to comply with the requirement of Regulation 10(d) of CBLR, 2018.

(d) Having gone through the facts and records of the case I find that the IO found this charge only "Partly Proved." I find that the evidence points to a dereliction of professional duty on the part of the CB. A Customs Broker is expected to be a subject matter expert. The misdeclaration of Kiwis as Mandarin in four separate consignments filed on a single day is not a minor clerical error; I find that the investigation has clearly brought out the violation of LMPC Rules, RE – 44 Notification compliance and Plant Quarantine Regulations. Considering the significantly high volume of the consignment being filed at once, the CB should have sought additional documents with respect to the consignment so as to ascertain the packing condition of the goods and check for other allied acts compliance. The same would have enabled the CB to advise the client better to comply with the relevant regulations and allied acts. I find that the Plant Quarantine (PQ) Authority ordered for destruction/ re-export noting that – *"Consignment of Mandarin-Fresh Fruits along with undeclared commodity of Kiwi Fresh Fruits samples are examined in pathology Laboratory and found infestation of Quarantine Pathogen i.e. Botrytis Cinerea. This is*

violation of Plant Quarantine (Regulation of Import into India) order, 2003 and hence consignment is recommended for destruction/deportation”.

The findings of the PQ authority rendered the goods unfit for human consumption. It was the positive duty of the CB to advise the client on the legal requirements of accurate declaration. In view of the aforementioned findings and the facts brought out in the offence report I find the CB guilty of violation of Regulation 10(d) of the CBLR, 2018.

20.3 Violation of Regulation 10(e) of the CBLR, 2018:

(a) I find that the charge of violation of Regulation 10(e) of the CBLR, 2018 has been levelled against the CB on the grounds that, ‘From the offence report, during examination of the subject consignments by the SIIB(I), JNCH, violations of LMPC Rules, RE-44 Notification, potential mis-declaration w.r.t. description of the goods, gross mis-declaration w.r.t. weight of the goods were observed. It appeared that the CB did not enquire about the condition of goods i.e. pre-packed with the importer. Investigation revealed that the Custom Broker was aware of the said requirements as per the law. However, while filing the documents, it appeared that the CB has not exercised due diligence as mandated under regulation 10(e) of the CBLR, 2018. It is also noticed that as per the Bills of Lading total weight of the imported goods was 2,35,280 KGS, while during the examination the gross weight of the imported goods found as 2,73,120 KGS. Hence, a total 37,840 kgs excess weight found. Thus, it is amply clear that the CB filed the said bills of entry without ascertained the correct information. It was only after examination by the investigating agency i.e. SIIB(I), JNCH, violation of LMPC Rules/RE-44 Notification as well as mis-declared goods were found. If the SIIB(I), JNCH had not intervened, the mis-declared and non-compliant of LMPC Rules & RE-44 goods would have been cleared. Hence, it appears that CB has not exercised due diligence and failed to comply with the provisions of Regulations 10(e) of the CBLR, 2018.’

(b) I find that the Inquiry Officer, in this regard, has observed that, during examination of the subject consignments by the investigation agency, violations of mis-declaration w.r.t. description of the goods, gross mis-declaration w.r.t. weight of the goods were observed.

It was held that the CB did not enquire about the condition of goods i.e. pre-packed with the importer. While filing the documents, it appeared that the CB has not exercised due diligence as mandated under regulation 10(e) of the CBLR, 2018 Excess weight of 37,840 kgs and misdeclared goods were found. Thus, it was held that the CB filed the said bills of entry without ascertained the correct information and that CB had not exercised due diligence and failed to comply with the provisions of Regulation 10(e) of the CBLR, 2018.

The IO found that it a plain presumption of the investigating agency as there has been a time gap between filing of the Bills of Entry and thereafter the arrival of the goods and the goods putting on hold by the investigating agency. Under no circumstances can it be known to the CB the actual weight of the goods and misdeclared nature of goods while filing the Bills of Entry, unless the investigation agency had found some sort of evidence between the CB and importer, in the form of chats/messages/emails etc. regarding the misdeclared items and value and quantity, which is not evident in this case, hence the IO consider this Charge of violation of Regulation 10(e) of the CBLR, 2018, as being preposterous i.e. contrary to reasoning and without any substantial evidence, and therefore the charge under Regulation 10(e) is not proved.

(c) The CB in this regard submitted that from the Show Cause Notice No. 09/2025-26 dated 06.06.2025, it is seen that charges of violation of Regulation 10(e) of the CBLR, 2018 has been levelled for not exercising due diligence while filing the Bills of Entry. As far as the allegation of excess weight of 37,840 Kgs than the declared weight found in the said consignments is concerned, the CB stated that they had filed the said Bills of Entry Nos. 5517447, 5526631, 5526803 and 5527148 dated 10.09.2024 prior to arrival of the import shipment at Nhava Sheva Port. They filed the said four Bill(s) of Entry as per the invoice/packing list and Bill of Lading given by the importer M/s. Savitri Enterprises. The CB further added that if any discrepancy in quantity, weight etc. found during the examination of the goods, no allegation can be levelled against the Customs Broker; that they had not not imparted any incorrect information to the importer M/s. Savitri Enterprises

with regard to the clearance of the said import cargo, therefore there was no contravention of Regulation 10(e) of CBLR, 2018.

(d) I have gone through the offence report, the Inquiry Report, the CB's submissions and the facts and available evidences on record. I find that the IO dropped this charge by suggesting the CB is not an inspecting officer. This is a misinterpretation of the "due diligence" requirement. Regulation 10(e) requires the CB to exercise due diligence while acting in his capacity as a representative of the importer/ exporter and an intermediary between the trade and Customs. The law does not require the CB to be a detective, but it does require them to be a prudent professional. I find that the importer's and the CB's own statements recorded during the investigation has clearly brought out the fact that the CB was working for the importer through an intermediary Shri Shivkumar Gupta and never met the proprietor, Shri Ganesh Kadam of M/s Savitri Enterprises directly. Further, it is also on record that the CB had taken up the clearance work for the said importer fairly recently before filing the Bill(s) of entry for the consignments in the instant case. Considering that the CB was working for a fairly new client and that too through an intermediary, it called for heightened due diligence on the part of the CB to prevent any lapses with respect to the genuineness and compliant nature of the imports.

The investigation has clearly established the non-compliance of LMPC rules and RE-44 Notification. Further, the PQ authority reported the consignment being infested with pathogens thus rendering the goods unfit for human consumption. Had the goods been cleared if the investigating agency had not intervened timely, it could have led to a major public health hazard. I observe that the CB relied blindly on documents that were patently false. In view of the aforementioned facts, I am of the firm opinion that the CB failed to tender diligent advice to the client by acting in negligent manner. I, therefore, uphold the charge of violation of Regulation 10(e).

20.4 Violation of Regulation 10(f) of the CBLR, 2018:

(a) I find that the charge of violation of Regulation 10(f) of the CBLR, 2018 has been levelled against the CB on the grounds that, 'From the offence report, it is noticed during

the examination by the SIIB(I), JNCH, officers that goods were not compliant with the LMPC Rules, RE-44 Notification and also potential mis-declaration w.r.t. description of the goods, gross mis-declaration w.r.t. weight of the goods were observed. Further, investigation revealed that the CB was aware of the said requirement as per the law. However, it appears that the CB withheld the information reg. LMPC Rules, RE-44 notification. Thus, it appears that CB has failed to comply with the provisions of Regulations 10(f) of the CBLR, 2018.'

(b) I find that the Inquiry Officer, in this regard, has observed that, from the offence report, it is noticed during the examination by the SIIB(I), JNCH officers that the goods were not compliant with the LMPC Rules, RE-44 Notification and also potential misdeclaration w.r.t. description of the goods, gross mis-declaration w.r.t. weight of the goods were observed. Further, investigation revealed that the CB was aware of the said requirement as per the law. The IO submitted that Regulation 10(f) of the CBLR, 2018 is different from Regulation 10(d) in the sense that Regulation 10(d) deals with advising by the CB to his clients (which has been discussed above) whereas Regulation 10(f) deals with withholding of information by the CB. The IO found that there is no evidence put forth by the investigating agency that the CB has on purpose and in any form withheld information from their client. The IO submitted that any charges levied should carry strong evidence for the charges to stand the test of law. Hence, the IO found that the charge under Regulation 10(f) is not proved.

(c) The CB in this regard submitted that the Customs Broker cannot be expected get in the role of an investigating agency and probe the exporter/exporter; that they did not have the expertise and the resources to cause such investigations and therefore, the proposition of involvement of the Customs Broker in facilitating importer was speculative of its role and therefore cannot be sustained; that only because they handled the import consignment covered under Bills of Entry Nos. 5517447, 5526631, 5526803 and 5527148 dated 10.09.2024 did not mean that they facilitated/abetted the importer M/s. Savitri Enterprises in alleged concealment of 'Kiwi Fruits' in the said consignments. The CB further added

that the Inquiry Officer rightly observed that no evidence was put forth by the investigating agency that the CB had withheld any information from their client on purpose; that the Inquiry Officer had rightly observed that any charges levied should carry strong evidence for the charges to stand the test of law; that the findings of the Inquiry Officer are reasoned, factually correct, and legally sound, and should be upheld; that the allegation of violation of Regulation 10(f) of CBLR, 2018 levelled against them is based on assumption and presumption. Therefore, the CB submitted that there was no violation of the said Regulation and they had not failed to comply with the requirement of Regulation 10(f) of CBLR, 2018. Therefore, the allegation of violation of Regulation 10(f) of CBLR, 2018 levelled against us them had no leg to stand.

(d) I find that the IO held this charge as not proved. Having gone through the facts and records of the case I observe that the CB's conduct has been lacking of diligence and due caution while taking up clearance work the importer. I have gone through Regulation 10(f) of the CBLR, 2018 which states that – *“not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information”*. From the facts of the investigation, it has been established beyond doubt that the imported goods i.e. Fresh Mandarin and Kiwi Fruits were non-compliant with LMPC Rules and RE-44 notification. Further, the Plant Quarantine Authority found the goods to be infested with pathogens and hence, unfit for consumption. I also observe that the CB had recently started filing documents for the instant importer. It goes without saying that while the importer is the owner of the goods, the CB is the authorized agent whose primary role is to ensure that the clearance process is legally compliant. Regulation 10(f) prohibits the withholding of information regarding instructions or public notices. The CB's defence that nothing in the investigation established that the CB withheld information from their client does not hold water under the circumstances of the case.

The fact that the importer was a newly acquired client, the CB was duty bound to bring the order, public notice, etc relevant to the goods being imported to the notice of the

client. Withholding information from a client also includes the failure to tender necessary correct and legal information. By failing to inform the importer about correct applicability of LMPC Rules, RE-44 Notification and necessary Plant Quarantine Regulations, the CB effectively withheld vital procedural requirements from their client. Consequently, I uphold the charge of violation of Regulation 10(f).

20.5 Violation of Regulation 10(m) of the CBLR, 2018:

(a) I find that the charge of violation of Regulation 10(m) of the CBLR, 2018 has been levelled against the CB on the grounds that, 'From the offence report, investigation revealed various aspects of the violation of rules and regulations such as RE-44/LMPC Rules and potential mis-declaration with respect to description and weight were found. The non-compliant goods would have been cleared, if investigating agency had not intervened the subject consignments. Thus, it is amply clear that the CB has worked in the inefficient manner. Hence, it appears that CB failed to discharge his duties efficiently and violated the regulation 10(m) of CBLR, 2018.'

(b) I find that the Inquiry Officer, in this regard, has observed that the CB has been stated to have worked in an inefficient manner due to the misdeclared and undervaluation of the goods by the investigation agency and that the non-compliant goods would have been cleared, if investigating agency had not intervened the subject consignments. Hence, it appeared that CB failed to discharge his duties efficiently and violated the Regulation 10(m) of CBLR, 2018. The IO found that the CB had denied this allegation and the IO also found that there was no evidence put forth by the investigating agency that there was delay by the CB on any count. The IO found that though the charges against the CB of any delay were not proved, notwithstanding the above, and if at all, then the benefit of doubt goes in favour of the CB and therefore the IO found that the charge under Regulation 10(m) was not proved.

(c) The CB submitted that the Inquiry Officer has rightly held the Article of Charge as "Not Proved" and the Department has accepted the analysis and reasoning of the Inquiry

Officer. Accordingly, the CB stated that there was no need to submit a written submission in respect of violation of Regulation 10(m) of CBLR, 2018.

(d) I have perused the Disagreement Memo dated 07.01.2026 issued against the Inquiry Report. Further, having gone through the facts of the case and the available evidences on record, I find that the Inquiry Officer has held the charge of violation of Regulation 10(m) as 'Not Proved'. Keeping in view all the aspects of the Inquiry Report, I find substance in the Inquiry Officer's findings and concur with the same. Accordingly, I drop the charge of violation of Regulation 10(m) of the CBLR, 2018 levelled against the CB.

20.6 Violation of Regulation 10(n) of the CBLR, 2018:

(a) I find that the charge of violation of Regulation 10(n) of the CBLR, 2018 has been levelled against the CB on the grounds that, 'The offence report indicates that the CB failed to verify the Know Your Customer (KYC) information of the importer and did not meet with them. As the investigating agency i.e. SIIB(I) JNCH has confirmed from the Pune Preventive Commissionerate that no business premises was found at the declared address of the importer. As the Pune Preventive Commissionerate was requested to verify the importer's address as mentioned in the said bills of entry. In this regard, Pune Preventive Commissionerate has replied stating that a field visit was conducted by their team at the above-mentioned address and upon verification, they confirmed that the mentioned address is accurate and a residential house exists at the location belonging to Shri Ganesh Bhanudas Kadam and his family. However, no business premises were found at the declared address. Thus, it is amply clear that the functioning of their client at the declared address was not found. Hence, it appears that the CB failed to comply with the provisions of Regulation 10(n) of CBLR, 2018.'

(b) I find that the Inquiry Officer, in this regard, has observed that, the CB had submitted copy of authorization letter dated 02.04.2024 by the importer. The IO also found that the CB had submitted the KYC documents of the importer, namely copy of IEC No. BJWPK4933N of M/s. Savitri Enterprises; copy of Form GST REG-06 No. 27BJWPK4933N1ZA of M/s. Savitri Enterprises; copy of PAN Card No. BJWPK4933N

of Shri Ganesh Bhanudas Kadam - proprietor of M/s. Savitri Enterprises: Electricity Bill No. 000002545213142 issued by Mahavitaran.

The IO found that the CB had acted diligently and had got the details of KYC form duly filled with all details and signed along with self-certified photocopies of IEC, Invoice, Packing List, Bills of Lading, Marine Insurance, etc. towards their request for clearance of consignment. The IO emphasized that during the entire investigation, the importer was available all the times and hence the genuineness of the importer's existence and address was not questionable. Even Pune Customs Preventive to the extent of existence of importer's premises in actual, established that there was no question of fraudulent address. The IO submitted that the photographs of the shutter submitted in this regard also gave benefit of doubt that the establishment with shutter cannot be residential but commercial. Further, the IO found that in the DGFT FAQs it is clarified that licence can be issued on residential premises subject to other documents being proper. Further, the IO found that there was no mandated obligation on the part of the CB to personally visit the premises of the importer as the importer can have all India presence and therefore personal visit by CB to their premises has not been mandated in the Rules and Regulations. Moreover, there has been interaction by the CB with the authorised person Shri Shivkumar Ramchandra Gupta from beginning and at regular frequent intervals. who has also signed the Panchanama dated 14/15.09.2024, 15.09.2024 and 17.09.2024 (relied upon documents), in the capacity of Authorized Representative of M/s. Savitri Enterprises. Hence, the charge under Regulation 10(n) of the CBLR, 2018, does not survive. Here again, notwithstanding the above, and if at all, then the benefit of doubt goes in favour of the CB and therefore the IO found that the charge under Regulation 10(n) was not proved.

(c) The CB in this regard argued that they fulfilled all Know Your Customer (KYC) requirements. They highlighted that the Pune Preventive Commissionerate had conducted a physical address verification and found the importer's address to be accurate. Furthermore, they pointed to photographs taken by GST officials on 26.09.2024 (RUD-14 to the offence report) showing a functional office, which proves the entity was not

fictitious. They also argued that they verified the IEC, GST, and PAN through official government portals. The CB further placed reliance on the case of Hon'ble CESTAT, New Delhi in the case of - *M/s. Selected Cargo Services Pvt. Ltd. Vs. Commissioner of Customs (Airport & General)*, NCH, New Delhi, Final Order No. 57977/2024 dated 06.08.2024 in Customs Appeal No. 50480 Of 2024, wherein, it was observed that -

"25. As has been decided in several orders, Regulation 10(n), verification of the client operating from the address can be done by the Customs Broker through independent and authentic documents, data or information. The importer exporter code (IEC) issued by the Director General of Foreign Trade and the GSTIN issued by the GST department both qualify as authentic documents. They are deemed to be reliable because they are issued by Government officers. Since the officers are not expected to have any bias, they are also independent documents. It is reasonable for the Customs Broker to trust that these documents have been correctly issued by the officers and proceed accordingly."

(d) I have gone through Offence Report, the fact and records of the case, available evidences and the CB's submission in detail. I find that during the investigation, a letter to Customs (Preventive) Commissionerate, Pune was sent requesting them to conduct a search at the premises of the Importer i.e. M/s Savitri Enterprises. In this regard, Pune Preventive Commissionerate replied that field visit was conducted by their team at the said address. Upon verification, it was confirmed that the mentioned address was accurate and a residential house belonging to Shri Ganesh Kadam (proprietor of M/s Savitri Enterprises) and his family existed at the location. The said findings confirm that the Importer under consideration is not a dummy entity. Further, the CB was in direct contact with Shri Shivkumar Gupta, authorized representative of the Importer. The CB also stated to have verified the IEC, GST, and PAN through the official ICEGATE and GST portals. Since, the address was physically verified by the Department's own preventive wing, I find that the CB cannot be held liable for a failure of KYC verification. In light of the findings available on record, the IO's detailed report I am inclined to concur with the IO's findings. Consequently, I drop the charge of violation of Regulation 10(n) levelled on the CB M/s Oriion Consultancy.

21. I find that a Customs Broker occupies a very important position in the Custom House and is supposed to safeguard the interests of both the importers/exporters and the Customs Department. A lot of trust is kept in CB by the Government Agencies; however, by their acts of omission and commission, the Customs Broker M/s. Oriion Consultancy (CB License No. 11/2242) has violated Regulations 10(d), 10(e), and 10(f) of the CBLR, 2018. I find that for the violation of obligations provided under the CBLR, 2018 and for their acts of omission and commission, the Customs Broker M/s. Oriion Consultancy (CB License No. 11/2242) has rendered itself liable for penal action under the CBLR, 2018. Hence, while deciding the matter, I rely on the following caselaws:

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

"the CB occupies a very important position in the Custom House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CB is supposed to safeguard the interest of both the importers and the Customs. A lot of trust is kept in CB by the importers/exporters as well as by the government agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CB Licensing Regulations lists out obligations of the CB. Any contravention of such obligations even without intent would be sufficient to invite upon the CB the punishment listed in the Regulations".

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

"6.1 These provisions require the Customs Broker to exercise due diligence to ascertain the correctness of any information and to advise the client accordingly. Though the CB was accepted as having no mensrea of the noticed mis-declaration /under- valuation or mis-quantification but from his own statement acknowledging the negligence on his part to properly ensure the same, we are of the opinion that CH definitely has committed violation of the above mentioned Regulations. These

Regulations caused a mandatory duty upon the CB, 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."

22. Further, I have gone through the Board's Instruction No. 20/2024 - Customs dated 03.09.2024. The crux of the said Instruction is that –

"proceedings contemplated against a Customs Broker should be done as per the provisions contained in the CBLR, 2018 and must be distinguished from the proceedings for demand of duty/interest/imposing penalty under Customs Act, 1962."

Having taken into cognizance of the above cited Board's Instruction it is pertinent to note that the proceedings under CBLR are distinct, separate and independent from that under Customs Act, 1962. Hence, the proceedings and penal actions under CBLR should not be determined and influenced by that under the Customs Act, 1962. The proceedings under CBLR, 2018 involve the violations of the stipulated obligations, roles and responsibilities of the Customs Brokers under CBLR only, however the proceedings under Customs Act, 1962 involve the violations of the provisions of the Customs Act, 1962 and other allied Acts. Hence, for the sake of Principle of Natural Justice, which aims to prevent arbitrary actions and ensure fair decision-making process allowing everyone a chance to be heard and to be treated without bias to safeguard impartial decision making, the disciplinary proceedings contemplated against a Customs Brokers should be done as per the provisions contained in the CBLR, 2018 and must be distinguished from the proceedings for demand of duty/interest/imposing penalty under Customs Act, 1962.

23. As discussed above, I conclude that the CB is guilty of violations of Regulations 10(d), 10(e) and 10(f) of the CBLR, 2018. In view of the detailed discussion and analysis above, it is established that the CB, M/s. Oriion Consultancy (CB License No. 11/2242) has failed to discharge the professional and statutory obligations mandated under the Customs Brokers Licensing Regulations, 2018. The findings demonstrate a grave dereliction of duty as the CB failed to advise the client regarding mandatory compliance of

regulations with respect to the goods being cleared. Further, I note that the Adjudication Authority under the Customs Act dropped the proceedings against the CB recording the observation that, *"I find that Customs Broker's role with regard to being actively involved in the purported mis-declaration of country of origin has not been brought out on record during investigation. I find that no evidence of nexus and connivance have been revealed in the SCN."* Hence, under the factual matrix of the case and considering the defence arguments of the CB, to some extent and applying the principle of proportionate punishment I am not inclined to revoke the License of the CB as the punishment of revocation of license is much harsher and disproportionate to the offence committed. Also, it is pertinent to note here that the license of the CB is already under suspension for more than 09 months i.e. since 06.05.2025 and the CB has been unable to work for these 09 months and thus has been already penalised in this manner. However, I am of the considered view that the ends of justice will be met by forfeiture of security deposit and imposing a penalty on the CB which suffices both as a punishment for the infraction and as a deterrent to future violations. In this regard, I place reliance on the following caselaws:

- a) **Delhi High Court has, in the case of Falcon Air Cargo and Travels (P) Ltd [2002 (140) ELT 8 (DEL)] held as follows:**

"13. By order dated 15-7-2000, licence was revoked. It is not clear how there could be revocation when the licence itself was not functional after 13-1-2000. Licence can be suspended or revoked on any of the grounds as mentioned in Regulation 21. It is, therefore, clear that if any of the grounds enumerated existed, two courses are open to the Commissioner. One is to suspend the licence and the other is to revoke it. Suspension would obviously mean that licence would be for a particular period inoperative. An order of revocation would mean that licence is totally inoperative in future, it loses its currency irretrievably. Obviously, suspension/revocation, as the case may be, has to be directed looking to the gravity of the situation in the background of facts. For minor infraction or infraction which are not of very serious nature order of suspension may suffice. On the contrary, when revocation is directed it has to be only in cases where infraction is of a very serious nature warranting exemplary action on the part of the authorities, otherwise two types of actions would not have been provided for. Primarily it is for the Commissioner/Tribunal to decide as to which of the actions would be appropriate

but while choosing any of the two modes, the Commissioner/Tribunal has to consider all relevant aspects and has to draw a balance sheet of gravity of infraction and mitigating circumstances. The difference in approach for consideration of cases warranting revocation or suspension or non-renewal has to be borne in mind while dealing with individual cases. In a given case the authorities may be of the view that non-renewal of licence for a period of time would be sufficient. That would be in a somewhat similar position to that of suspension of licence though it may not be so in all cases. On the other hand, there may be cases where the authorities may be of the view that licensee does not deserve a renewal either. Position would be different there. Though we have not dealt with the question of proportionality, it is to be noted that the authorities while dealing with the consequences of any action which may give rise to action for suspension, revocation or nonrenewal have to keep several aspects in mind. Primarily, the effect of the action vis-a-vis right to carry on trade or profession in the background of Article 19(l)(g) of the Constitution has to be noted. It has also to be borne in mind that the proportionality question is of great significance as action is under a fiscal statute and may ultimately lead to a civil death."

b) Delhi High Court has in case of Ashiana Cargo Services [2014 (302) ELT 161 (DEL)] held as follows:

"11. Viewing these cases, in the background of the proportionality doctrine, it becomes clear that the presence of an aggravating factor is important to justify the penalty of revocation. While matters of discipline lie with the Commissioner, whose best judgment should not be second-guessed, any administrative order must demonstrate an ordering of priorities, or an appreciation of the aggravating (or mitigating) circumstances. In this case, the Commissioner and the CESTAT (majority) hold that —there is no finding nor any allegation to the effect that the appellant was aware of the misuse of the said G cards, but do not give adequate, if any weight, to this crucial factor. There is no finding of any mala fide on the part of the appellant, such that the trust operating between a CB and the Customs Authorities (as a matter of law, and of fact) can be said to have been violated, or be irretrievably lost for the future operation of the license. In effect, thus, the proportionality doctrine has escaped the analysis".

c) In the case of ACE Global Industries [2018 (364) ELT 841 (Tri Chennai)], Hon'ble Tribunal observed as follows:

"6. We are unable to appreciate such a peremptory conclusion. The CBLR, 2013 lays down that stepwise procedures are to be followed before ordering any

punishment to the Customs broker. True, the said regulations do contain provisions for revocation of the license and for forfeiture of full amount of security deposit, however these are maximum punishments which should be awarded only when the culpability of the Customs broker is established beyond doubt and such culpability is of very grave and extensive nature. In case of such fraudulent imports, for awarding such punishment, it has to be established without doubt that the Customs broker had colluded with the importer to enable the fraud to take place. No such culpability is forthcoming in respect of the appellant herein.....”

d) Hon’ble CESTAT, Mumbai in the matter of Setwin Shipping Agency Vs. CC (General), Mumbai – 2010 (250) E.L.T 141 (Tri.-Mumbai) observed:

“it is a settled law that the punishment has to be commensurate and proportionate to the offence committed”.

24. I find that the Inquiry Report in the present case was received on 14.11.2025. The Inquiry Officer explained the reasons for the delay which has been elaborated in Para 13 above. Further, with respect to the timelines prescribed under Regulation 17 of the CBLR, 2018, relying on the following caselaws, I observe that the timelines under CHALR/CBLR are directory in nature and not mandatory:

a) 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 (Born.), 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.”

b) The Hon'ble High Court of Telangana, in the matter of M/s. Shasta Freight Services Pvt Ltd vs Principal Commissioner of Customs, [Writ Petition No. 29237 of 2018] held that: -

"42. Therefore, if the tests laid down in Dattatreya Moreshwar, which have so far held the field, are applied, it would be clear (i) that the time limit prescribed in Regulation 20 (7) is for the performance of a public duty and not for the exercise of a private right; (ii) that the consequences of failure to comply with the requirement are not spelt out in Regulation 20(7) (iii) that no prejudicial consequences flow to the aggrieved parties due to the non-adherence to the time limit; and

(iii) that the object of the Regulations, the nature of the power and the language employed do not give scope to conclude that the time limit prescribed is mandatory. Hence, we hold that the time limit prescribed in Regulation 20 (7) is not mandatory but only directory. "

(c) The Hon'ble High Court of Karnataka, in the matter of The Commissioner of Customs vs M/s. Sri Manjunatha Cargo Pvt Ltd on 12 January [C.S.T.A. No. 10/2020] held that: -

"13. A reading of Regulation 17 of the C.B.L.R., 2018 makes it very clear that though there is a time limit stipulated in the Regulations to complete a particular act, non-compliance of the same would not lead to any specific consequence.

14. A reading of the Regulation 17 would also go to show that the Inquiry Officer during the course of his inquiry is not only required to record the statement of the parties but also to give them an opportunity to cross-examine and produce oral and documentary evidence. In the event of the respondents not co-operating, it would be difficult for the Inquiry Officer to complete the inquiry within the prescribed period of 90 days, as provided under Regulation 17(5). Therefore, we find force in the argument of the learned counsel for the appellant that the Regulation No.17 is required to be considered as directory and not mandatory. Though the word "shall" has been used in Regulation 17, an overall reading of the said provision of law makes it very clear that the said provision is procedural in nature and non-compliance of the same does not have any effect. If there is no consequence stated in the Regulation for non-adherence of time period for conducting the inquiry or passing an order there afterwards, the time line provided under the 22 statute cannot be considered as fatal to the outcome of inquiry.

15. Under the circumstances, we are of the considered view that the provisions of Regulation 17 of the C.B.L.R., 2018 is required to be considered as directory and

not mandatory and accordingly, we answer the substantial questions of law Nos. 1 to 3 in favour of the appellant and against the respondent.”

(d) The Hon’ble CESTAT Mumbai in the matter of M/s. Muni Cargo Movers Pvt. Ltd. Vs. Commissioner of Customs (General), Mumbai [Order No. A/996/13CSTB/C-I dated 23.04.2013] held that: -

“Para 4.2:- As regards the third issue regarding non-adherence to the time-limit prescribed in CBLR, there is some merit in the argument. But nevertheless, it has to be borne in mind that time-limit prescribed in the law though required to be followed by the enforcement officers, at times could not be adhered to for administrative reasons. That by itself does not make the impugned order bad in law”.

25. Having gone through the facts of the case and evidences on record, it is noted that the proceedings do not establish conclusive evidence of deliberate abetment or mens rea on the part of the Customs Broker. The role of the CB, though marked by negligence and lack of professional caution, appears to be one of omission and failure to adhere to prescribed standards rather than active complicity in the fraud perpetrated by the importer. This distinction is of material importance while determining the proportionality of punishment under the licensing regulations. The objective of action under the CBLR is not punitive alone but also corrective and deterrent, aimed at ensuring that Customs Brokers adhere to the high standards of diligence and responsibility expected of them as licensed intermediaries.

I note that the Adjudication Authority under the Customs Act dropped the proceedings against the CB recording the observation that, *“I find that Customs Broker’s role with regard to being actively involved in the purported mis-declaration of country of origin has not been brought out on record during investigation. I find that no evidence of nexus and connivance have been revealed in the SCN”*. I thus observe that in the present case, the regulatory lapses established on record justify imposition of a monetary penalty under Regulation 18 of the CBLR, 2018, so as to underscore the seriousness of the obligations violated and to deter recurrence of such lapses in future. Consequently, having regard to the absence of proven abetment, the nature of the violations, and the fact that revocation of licence would have severe and disproportionate consequences on the

livelihood of the CB and its employees, the extreme penalty of revocation of license is not warranted.

26. In view of the above judgements and the 'Doctrine of Proportionality' which propagates the idea that a punishment for an offence should be proportional to the gravity of the offence, I am not inclined to revoke the license of the CB M/s. Oriion Consultancy (CB License No. 11/2242). However, for their acts of omission and commission, the Customs Broker M/s. Oriion Consultancy is held liable and guilty for violating the provisions of the CBLR, 2018 as mentioned above. Accordingly, I pass the following order:

ORDER

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

(i) I, hereby revoke the suspension of CB License held by M/s. Oriion Consultancy (CB License No. 11/2242), which was suspended vide Order No. 02/2025-26 dated 06.05.2025 and continued vide Order No. 04/2025-26 dated 03.06.2025.

(ii) I hereby order for forfeiture of Rs. 1,00,000/- (Rs. One Lakh Only) from the security deposit furnished by the CB M/s. Oriion Consultancy (CB License No. 11/2242) under Regulation 14 of the CBLR, 2018.

(iii) I, hereby impose a penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on M/s. Oriion Consultancy (CB License No. 11/2242) under Regulation 18(1) of the CBLR, 2018.

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


 (Shraddha Joshi Sharma)
 Commissioner of Customs (Gen.)
 NCH, Mumbai-I

To,

M/s. Oriion Consultancy (CB License No. 11/2242)

703-B, Om Shraddha Apartments,
Opp. Don Bosco School, Link Road,
Borivali West, Mumbai - 400091.

Copy to:

1. The Pr. Chief Commissioner/ Chief Commissioner of Customs, Mumbai - I, II, III Zone.
2. The Pr. Commissioner of Customs, NS-I, JNCH, Mumbai - II.
3. EDI of NCH, ACC & JNCH
4. ACC (Admn), Mumbai with a request to circulate among all departments.
5. JNCH (Admn) with a request circulate among all the concerned.
6. Cash Department, NCH.
7. Office copy.

