



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

संचिका सं./F. No.- GEN/CB/579/2022-CBS

आदेश दिनांक/Date of Order: 27.05.2024

CAO No. 12/CAC/PCC(G)/SJ/CBS-Adj

जारी दिनांक/Date of issue: 27.05.2024

संख्या:

DIN : 20240579OC0000611236

द्वारा जारी : **सुनील जैन**

प्रधान आयुक्त, सीमाशुल्क(सामान्य)
मुंबई -400 001

Issued By : Sunil Jain

Pr. Commissioner of Customs (Gen.),
Mumbai – 400 001.

ORDER-IN-ORIGINAL मूल आदेश

ध्यान दीजिए/ N.B. :

1. यह प्रति उस व्यक्ति को निजी उपयोग हेतु निःशुल्क प्रदान की जाती है, जिसे यह जारी की जा रही है।

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2. इस आदेश के विरुद्ध अपील माँगे गए राशी के **7.5%** के भुगतान पर सीमाशुल्क अधिनियम, 1962 की धारा 129A(1B)(i) के संबंधमें सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण में स्वीकार्य है, जहाँ शुल्क या शुल्क एवं जुर्माना विवादित हों, या जुर्माना, जहाँ सिर्फ जुर्माना ही विवादित हो। यह अपील इस आदेश के संप्रेषण की तारीख के तीन महीने के अंदर दायर की जाएगी। यह अपील सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण (कार्यविधि) नियमावली, १९८२, के प्रावधानों के अंतर्गत, यथोत्तखंडपीठ में स्वीकार्य है।

An appeal against this order lies with the Customs, Central Excise and Service Tax Appellate Tribunal in terms of section 129A(1B)(i) of the Customs Act, 1962 on payment of **7.5%** of the amount demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. It shall be filed within three months from the date of communication of this order. The appeal lies with the appropriate bench of the Customs, Central Excise and Service Tax Appellate as per the applicable provisions of Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

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

It is informed that the jurisdiction of the Adjudicating Authority stands alienated with the conclusion of the present adjudication order and the Adjudicating Authority attains the status of 'functus officio' as held by Hon'ble CESTAT, Mumbai in its decision in the case of M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai vide Order No. A/86617-86619/2018 dated 31.05.2018.

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

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

5. यह अपील फॉर्म C.A.-3 में दायर की जानी चाहिए जो कि सीमाशुल्क (अपीलस) नियमावली, १९८२ के नियम 6 के तहत निर्धारित है एवं उसी नियमावली के नियम 3 के उपनियम 2 में उल्लेखित व्यक्ति द्वारा हस्ताक्षरित एवं सत्यापित की जाएगी।

The Appeal should be filed in Form C.A.-3 prescribed under Rule 6 of the Customs (Appeals) Rules, 1982 and shall be signed and verified by the person specified in sub-rule 2 of rule 3 rules ibid.

6. (i) यदि प्रतिवादित आदेश, जिसके विरुद्ध अपील की गई है, में शुल्क एवं मांगे गए ब्याजवलागाएगए जुर्माने की राशि रु. पाँच लाख या इस से कम होतो रु. 1000/-, (ii) यदि यह राशि रु. पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न होतो रु. 5000/- एवं (iii) यदि यह राशि रु. पचास लाख से अधिक होतो रु. 10000/- के शुल्क का भुगतान 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, 1870 की अनुसूची मद 6 के तहत निर्धारित रु. 50 का कोर्ट फी स्टैम्प लगा होना चाहिए एवं इसके साथ संलग्न इस आदेश की उक्त प्रति में रु. 50 का कोर्ट फी स्टैम्प लगा होना चाहिए।

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

BRIEF FACTS OF THE CASE

M/s. C.V. Karia Clearing & Forwarding Pvt Ltd, (PAN:AADCC5433F), (hereinafter referred as the Customs Broker/CB) is holder of Customs Broker License No. 11/532, issued by the Commissioner of Customs, Mumbai under regulations of CHALR, 1984, [Now regulation 7(2) of CBLR, 2018] and having address registered at 229, Sahar Cargo Estate, V.M. Shah Marg, JB Nagar, Andheri-E, Mumbai-400-099.

2. On the basis of specific information received by DRI, MZU, Mumbai investigation was conducted. Investigation revealed that various export firms including M/s World Wide Export was procuring fake purchase bills against the export consignments from one Mr. Suhel Ansari, through fake firms floated by him. Searches were conducted at the premises of Suhel Ansari, which led to the recovery of copies of bogus bills in the names of several companies issued by him.

3. The office premises of Shri Suhel Ansari, situated at Room No. 30, 4th Floor, Chunnwala Building, 38-Kolsa Street, Pydhonie, Mumbai – 400003 was searched on 14.08.2015. During the course of search of the said premises, copies of bogus bills in the names of several companies issued by him along-with certain records/documents, three laptops, one hard disk and various rubber stamps were recovered.

4. During the course of investigation statement of Shri Suhel Parvez Ansari and Shri Shaikh Mohammed Arshad employee of Shri Suhel Parvez Ansari was recorded on 24.08.2015 by DRI, Mumbai where inter-alia they stated that they supplied fake invoices to the export firms including M/s World Wide Export. Shri Shaikh Mohammed Arshad stated that there were about 22 firms in whose name fake invoices were issued.

5. DRI, MZU, Mumbai forwarded the case to SIIB(X)/ACC for carrying out further investigation along with the details of exporters, including M/s World Wide Export who have claimed undue drawback by overvaluing the exports. Cheaper material was exported, and to justify the value of the goods, fake invoices from Shri Suhel Ansari were procured showing higher purchase price.

6. Case: M/s World Wide Export:

6.1 During the course of investigation summons were issued by investigating agency SIIB(X) to directors of M/s World Wide Export. Sh.

Moize Ahmed Ali Angoothiwala, partner of M/s World Wide Export who in his statement dated 09.03.2022 stated that:-

- a) M/s. World Wide Exporters is merchant exporter & it is a partnership firm in which he and his wife Smt. Ajab Moiz Ahmedali Angoothiwala are partners but his wife is a house-wife so only he looks after the all work.
- b) Their export firm used to purchase goods from local market and complete the orders. Thereafter, they prepared packing list and invoice and handed over it to CB and Forwarding Agency for filing the shipping bill.
- c) In the present case, they had given authorisation to CB, but they didn't remember the names of the CBs but they took help from local freight forwarders who handled the documentation and further necessary procedures. Further, the CB raised the invoice containing both freight and clearance charges & the payment was made through cheque.
- d) On being asked about whether any CB/ Freight Forwarders carried out address verification of M/s. World Wide Exporter, he said physically no one came to verify the address.
- e) On being asked upon the transportation of the goods, he said that they used to send goods directly to ACC by tempo as they did not have any warehouse.
- f) On being asked about the procurement of the goods, he inter-alia stated that imitation jewellery exported were supplied by different Karigars located in the suburbs of Mumbai, as well as Jodhpur, Delhi, Agra, Rajkot etc. Further, he added that as these were small karigars, they only provided "Kaccha Bill" and were not able to provide proper invoices as they were not registered with Excise authorities.
- g) On being asked about Suhel Parvez Mohammed Sharif Ansari and whether he supplied any invoices, he replied that he did not know this person by name as there are aliases for the people in the market so he might not knew his actual name. He further added that he had not received any invoices from the said person directly. Further, he added that he might have received the invoices, it might have come through third party.

7. During investigation, the details of exports made by the exporter M/s World Wide Export, were retrieved from the ICES System. During the period from 2012-2017, the exporter made total exports of 31 shipping bills and fraudulently availed total drawback amount of Rs. 3.31 Lakhs. It was found that the Customs Broker M/s C.V. Karia Clearing &

Forwarding Pvt Ltd processed 6 shipping bills of the said exporter.

8. During the course of investigations, statement of Shri. Hari Kizhakedath Ramakrishnan, Executive of M/s. C.V. Karia Clearing & Forwarding Pvt Ltd was recorded on 24.12.2021 wherein he inter alia stated that:

- a) His company name was M/s. C.V. Karia Clearing & Forwarding Pvt. Ltd. and it was established in 1987. There were three directors namely Mr. Manish Tarunkumar Shah, Mr. Kunal Manish Shah and Mr. Premal Kantilal Shah. They had 60 employees working in Air Cargo Complex, Nhava Sheva, Ahmedabad and Delhi. The turnover was Rs. 9.5 crores (approx). They charged Rs.1500/- per shipment.
- b) When asked about his role in M/s. C.V. Karia Clearing & Forwarding Pvt. Ltd. he said that he worked as Astd. Manager and handled Custom clearance and related documents. He alone handled the custom clearance.
- c) He came in contact with M/s World Wide Export through M/s. Crosil Logistics, a freight forwarders/shipping agent. The director Mr. Manish Tarunkumar Shah contacted Mr. Angoothiwala, Partner of M/s. World Wide Export.
- d) Regarding KYC, the same was provided by M/s. World Wide Export along with authority letter and self attested copy of IEC.
- e) The physical verification of address was carried out by himself and found it to be authentic.
- f) The goods were directly sent to Air Cargo Complex in tempo by the Exporter.
- g) On being questioned about how did the exporter acquired goods he replied that he did not have any knowledge as only Annex-I & Annex-II were provided by the exporter.
- h) The normal procedure of handling export was that they received documents from Exporter and on the basis of invoice and packing list a check list was prepared then uploaded on ICEGATE after verification of details of invoice such as description, value quantity and approval of the exporter. Payment was received after the shipment.

- i) At the time of export, the exporter submits documents such as invoice, packing list, SDF form, Annex-I & Annex-II and other required documents. The invoice, packing list, RITC were prepared by the exporter. The CB firm had handled six consignments of M/s. World Wide Export and they did not print any export docket/documents and were sent by the Exporter. They verified the correctness of classification, invoice, packing list details except value of the goods.
- j) When being questioned regarding involvement of third party involved and as per RBI circular No. 70 dated 08.11.2013 and amended circular No.100 dated 04.02.2014, a Triparty Agreement is necessary into Export/Import payment realisation, he replied that the Triparty agreement was not submitted by the exporter M/s. World Wide Export. AD code registration was already done by the exporter. The exporter did not show any samples before exports. He was not aware of the value of the imitation jewellery at the time of exports. Further, he had a godown at Tejpal Industries Estate at Saki Naka.
- k) He did not notice any discrepancy during the examination of goods and on being questioned regarding use of fictitious bills by M/s. World Wide Export raised by Mr. Suhel Ansari and also his admission of the same in his statement before DRI, MZU, he replied that he did not know the correctness of the said fictitious bills.

9. During investigation DRI enquired with the Consulate General of India, Dubai, UAE who vide letter dated 08.03.2018 reported that from the scrutiny of the documents provided by Federal Customs Authority, Dubai it emerged that goods had been cleared and unit values had been much lower than what has been declared to Indian Customs. As per DRI, the instant exporter has also adopted the similar modus-operandi.

10. During investigation, a statement dated 01.07.2016 of Shri Suryabhan Eknath Dhurphate, Proprietor of M/s. Sanket Overseas, Navi Mumbai, was recorded before the DRI, MZU, who was logistics provider and was involved in clearing the consignments through CHA, M/s. Indo Foreign Agents.

From the perusal of his statement, it was disclosed that usually the cost and expenses incurred on the export material was only around 35% of the drawback amount. He also stated that the benefits availed by them and the exporter was to the extent of 65%. This was the modus-operandi which was

adopted by all such exporters including this exporter, who were exporting the goods on basis of the fake supplier's invoice

11. Further from investigation, it appears that goods were procured from Domestic Tariff Area (DTA) without any invoices, so no details of its manufacturing, production, using imported material or excisable material therein were available, so it could not be ascertained whether any duties have been paid or otherwise.

Therefore, it appears from investigation that necessary ingredient of second proviso to Rule 3(1) Drawback Rule, 1995 is attracted in this case, which does not permit any amount of drawback in such cases where no duty has been paid.

12. From investigations made by DRI, MZU and the investigations conducted by SIIB(X), ACC, Mumbai, it appears that M/s. Basar Jewels Pvt. Ltd. procured goods (of inferior quality and having low value) from local market and to show higher value of the goods to claim export benefits, procured fake and bogus invoices from Sh. Suhel Ansari.

13. From perusal of the Offence Report, it appears that:

- a)** The CB did not advise the exporter about the Drawback Rules and abetted the exporter by declaring incorrect value of the goods in shipping bills against the fake invoices to avail undue drawback and did not bring the matter to the notice of Deputy Commissioner of Customs or Assistant Commissioner of Customs. Thus, the CB appears to have violated Regulation 10(d) of CBLR, 2018.
- b)** The CB failed to exercise due diligence and aided the exporter in availing undue drawback by overvaluing the exports, whereas cheaper material was exported and to justify the value of the goods, fake invoices were procured showing higher purchase price. On scrutiny of the subject case, it appears that CB did not exercise due diligence and did not impart the information relating to Drawback Rules. Thus, the CB appears to have violated Regulation 10(e) of CBLR, 2018
- c)** It is the responsibility of the CB to inform the exporter about the instructions and public notice regarding the claiming of drawback. In the said matter it appears that CB has abetted the exporter by declaring incorrect value of the goods in shipping bills against the fake invoices to avail undue drawback. Thus it appears that the CB has violated the provisions of Regulation 10 (f) of the CBLR, 2018.

d) The exporter Sh Moize Ahmed Ali Angoothiwala partner of M/s World Wide Export in his statement dated 09.03.2022 stated that physically no one came for the verification of the address. Thus it appears that the CB failed to fulfill his responsibilities mentioned as under 10(n) of CBLR, 2018 and violated the said regulation.

In view of the above facts, it is evident that the CB was working in a seriously negligent manner and was in violation of the obligations casted upon them under the CBLR, 2018. By their acts of omission and commission, it appears that the said CB has violated Regulation 10(d), 10(e), 10(f) & 10(n) of the Customs Brokers Licensing Regulations, 2018. and rendered himself for penal action under Regulations 14, 17 & 18 of CBLR, 2018. The said regulation reads as :

Regulation 10 (d) of the CBLR, 2018:- *"A Customs broker shall advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;"*

Regulation 10 (e) of the CBLR, 2018:- *"A Customs broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;"*

Regulation 10(f) of the CBLR, 2018: *A Customs broker shall not withhold information contained in any order, instruction or public notice relating to clearance of cargo baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information;*

Regulation 10 (n) of the CBLR, 2018:- *verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information".*

14. SHOW CAUSE NOTICE:

M/s. C. V. Karia Clearing & Forwarding Pvt. Ltd. (11/532) was issued a Show Cause Notice (SCN) No. 44/2022-23 dated 10-03-2023 by the Principal Commissioner of Customs (General), NCH, Mumbai, Zone-I asking them to show cause as to why the licence bearing no. 11/532 issued to them should not be revoked and security deposited should not be forfeited and/or penalty should not be imposed upon them under Regulation 14 read with 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018 as elaborated in the Show Cause Notice.

Further, they were directed to appear for a personal hearing and to produce proof of evidence/documents if any, in their defense to Shri Sudhira Chandra Nanda, Deputy Commissioner of Customs who was appointed an inquiry officer to conduct inquiry under regulation 17 of CBLR, 2018.

15. INQUIRY REPORT

Inquiry Officer submitted Inquiry Report dated 08.12.2023, wherein, the charges against the CB M/s. C. V. Karia Clearing & Forwarding Pvt. Ltd. (11/532) i.e. violation of Regulation 10(d) of the CBLR, 2018 was held as 'Partly proved', 10(e) and 10(f) of CBLR, 2018 were held as 'Proved' and Regulation 10 (n) of CBLR, 2018 was held as 'Not Proved'.

15.1 Details of Personal Hearing

Inquiry officer submitted that in pursuance of the issued SCN, IO granted CB M/s. C. V. Karia Clearing & Forwarding Pvt. Ltd. an opportunity through personal hearing fixed on 14.09.2023 to submit their reply in their defence. The CB presented their submission on 20.09.2023.

15.2. COMMENTS OF THE INQUIRY OFFICER :-

The Inquiry officer in his Inquiry Report dated 08.12.2023 made following observations:

- As for M/s. World Wide Export (WWE), they are merchant exporters of goods – mainly, imitation jewellery, which they procure from local traders and manufactures from various parts of India including Mumbai. They exported these good through Air Cargo Complex, (ACC) Sahar, Mumbai. For clearance through customs, they employed few customs brokers, who on arrival of the goods along with the relevant documents at the designated place in (ACC), complete the customs formalities for clearance of the goods for export though customs.
- During investigation by SIIB (X), ACC, Sahar, it was inferred that the exporter M/s WWE had resorted to unscrupulously manipulating and procuring fake invoices and overvaluing the said export goods in the said purchase invoices. In the process, they have availed undue / inadmissible drawback against such exports, during 2012 to 2017. During investigation by SIIB (X), ACC, the role of various customs brokers, including M/s C. V. Karia (Licence No. 11 / 532), who also handled few consignments of export by M/s WWE , was taken up. Based on the investigation, by ACC, Sahar, show cause notice was issued to M/s WWE, levelling inter-alia, the charges;
(i) That M/s. World Wide Export has procured fake and bogus invoices from

Shri Suhel Ansari; (ii) Goods of inferior quality were procured from the local market without any invoice for export. (iii) Incorrect bank transactions were made with the fake suppliers, whose invoices were raised by Shri Suhel Ansari. This was done to conceal the actual transactions and give cover to the bogus transactions. (iv) This automatically explains the facts there was no physical movement of the goods against the fake invoice raised by Shri Suhel Ansari. (v) As export goods were procured from local market, which were of inferior quality and having low value, impugned export by M/s. World Wide Exports was grossly overvalued and only done for the purpose of fraudulent claim of drawback and other Export incentives.

- All the CBs including M/s. C. V. Karia Clearing and Forwarding Pvt. Ltd, who had handled the export cargo of M/s. World Wide Exports for clearance for export were made co-noticees in the said SCN.

The Inquiry Officer discussed and examined the charges made under 10 (d), 10 (e), 10 (f), and 10 (n) of CBLR 2018, and submissions by the noticee, and put findings, in the following paras.

15.3 Article of Charge-I :- Violation of Regulation 10 (d) of CBLR, 2018:

The Regulation 10(d) of CBLR, 2018 reads as: -*“A Customs broker shall advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;”*

The Inquiry officer in his report submitted that in the instant case CB in his statement stated that they received documents from Exporters and on the basis of invoice and packing list a check list is prepared by them, then uploaded on ICEGATE after verification of details of invoice such as description, value, quantity and approval of the exporter.

Further IO submitted that in case of any deficiency, infirmity, it was the duty of the CB to get it corrected and modified by the exporter, according to law / rule, before uploading in the ICEGATE. However, there appears to be lapse on the part of the CB while processing these documents at their end, more specifically, in respect of submission of appropriate Annexure and declaration as mandated under Circular No. 16/2009- Customs dated 25.05.2009, towards claim of Drawback against these exports. As per the said circular, the exporter M/s. World Wide Export were required to furnish declarations at the time of exports, in format annexed with the circular No. 16/2009-Customs dated 25.05.2009 however, during the course of investigation, M/s. World Wide Export failed to produce any such declaration.

At the same time, it is required to be known and implemented by the Customs Brokers but in this case, the CB also did not care for verifying the same. This shows the ignorance of the CB and disobedience towards the obligation to be discharged, as mandated in CBLR by the CB. Further, the CB has failed to bring this aspect to the notice of the DC/AC of Customs.

Accordingly, Inquiry Officer hold that the charges of violation of Regulation 10 (d) of the CBLR, 201B are "Partly Proved".

15.4 Article of Charge-II :- Violation of Regulation 10 (e) of CBLR, 2018:

The Regulation 10(e) of CBLR, 2018 reads as: -*"A Customs broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;"*

Inquiry officer observed that in order to claim Drawback, as per Policy, exporters are obliged to submit genuine and true declaration before the Customs authorities, while making export. But in this case, exporter did not furnish any such declarations.

IO is of the view that had the CB seen, checked and scrutinised the relevant documents submitted by the exporter along with cargo meant for export and analysed those for meeting the criteria and checked the correctness of relevant declaration dox, such a case could not have been possible.

The Inquiry Officer observed that it was the responsibility of the CB to ensure that Exporter M/s World Wide Export declares the name and complete address of the traders from whom goods has been purchased in order to claim Drawback. The Inquiry Officer observed that the CB has failed to produce any evidence regarding communicating Circular No. 16/2009- Customs dated 25.05.2009 issued under F. No. 609/137/2007 – DBK to the exporter which implicates that the CB failed to exercise due diligence in imparting information of Drawback rules to the exporter and violated the regulation 10(e) of the CBLR, 2018.

Accordingly, Inquiry Officer hold that the charges of violation of Regulation 10 (e) of the CBLR, 201B are 'Proved'.

15.5 Article of Charge-III :- Violation of Regulation 10 (f) of CBLR, 2018:

The Regulation 10(f) of CBLR, 2018 reads as: - *" A Customs broker shall 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; "*

The Inquiry Officer in his report stated that as per the provisions of Circular No. 16/2009- Customs dated 25.05.2009, issued under F. No. 609/137/2007 – DBK, the exporter should have declared the name and complete address of the trader from whom export goods have been purchased and also that he was not the manufacturer of the export goods and was not registered with central excise. The CB should have obtained and annexed this declaration with the SBs.

The Inquiry Officer further observed that the CB has not produced any evidence regarding communicating Circular No. 16/2009- Customs dated 25.05.2009 issued under F. No. 609/137/2007 – DBK to the exporter, nor did they taken care to comply the mandates of above stated circular dated 25.05.2009 on drawback. This proves that the CB themselves are not clear about the prevalent law and procedure.

In view of the above facts, the IO is of the view that the CB cannot absolve themselves from their responsibility and Obligations of Customs Broker as mandated in rule 10 (f) of CBLR 2018.

Accordingly, Inquiry Officer held that the charges of violation of Regulation 10 (f) of the CBLR, 2018 as 'Proved'.

15.6 Article of Charge-IV :- Violation of Regulation 10 (n) of CBLR, 2018:

The Regulation 10(n) of CBLR, 2018 reads as: *“Customs Broker shall verify correctness of Importer Exporter Code (IEC) number, Goods and Service 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 inquiry Officer observed that Shri Moize Ahmed Ali Angoothiwala, partner of M/s World Wide Export, under section 108 of Custom Act, 1962 that physically no one came to verify the address. Thus, it appeared that the Customs Broker M/s. C.V. Karia Clearing & Forwarding Pvt Ltd did not verify the address of the exporter M/s. World Wide Export.

IO also observed that at the same time, the CB has also stated under provisions of section 108 of Custom Act, 1962, before the investigating agency that their export manager has made personal visit to the address of the exporter. Further, the available record does not conclude, show, about coming to a conclusion to the reality, as to which version was correct.

Further, IO observed that the IEC and AD Code are PAN based identities which constitute a part of KYC and the summons issued by the investigating agencies have been responded by the exporter WWE during the investigation.

These facts implicate that the CB has fulfilled their responsibility and Obligations of Customs Broker as mandated in rule 10 (n) of CBLR 2018.

Accordingly, Inquiry Officer hold that the charges of violation of Regulation 10 (n) of the CBLR, 201B as "Not Proved"

16. PERSONAL HEARING AND RECORDS OF PERSONAL HEARING :-

A personal hearing was granted to Customs Broker on 12.03.2024. Adv. Shri Neerav Mainkar, authorized representative of CB firm appeared for personal hearing and submitted written submission dated 12.03.2024 and re-iterated the submissions made therein. The CB submitted the following in his written submission dated 12.03.2024: -

16.1 WRITTEN SUBMISSION OF THE CB:

- a) The CB submitted that they disagree findings & conclusions in respect of Regulation 10(d), 10(e) and 10(f) of CBLR, 2018, as it appears that the Impugned Inquiry Officer has not checked and verified the evidences submitted properly to arrive at such incorrect conclusions; that the impugned Inquiry Report also travelled beyond the scope of the Show Cause Notice No 44/2022-23 for concluding the charges as "Proved or Partly Proved".
- b) The CB carried out work of Customs clearance in respect of (06) consignments only and was supplied with Invoice, Packing List for the export commodity i.e. Imitation Jewellery of Brass (CTH 7117 19 90) for each of the consignment.
- c) The Proper Officer of the Customs after examination of (06) consignments, accepted the documents and the valuation and granted LEO which is an admitted and accepted fact in the SCN dated 15-11-2022.
- d) Since M/s. World Wide Exports (WWE) had declared to claim Drawback on All Industry Rate, the Noticee obtained Annexure-I and Annexure-II in terms of Circular No. 54/2001-Cus dated 19-10-2001, on safety grounds though for the products under Export such Annexures were not mandatory as the same were meant for Export of ready-made Garments.
- e) The CB submitted that as per the declarations under Annexure-I & Annexure-II, obtained from WWE; the supplier was one Pavni Impex Pvt. Ltd., Mumbai. located at Office No. 19, Coronation Bakery, 21, Pais Street, Byculla, Mumbai 400 011. However, no enquiry was caused with such Supplier or no statement of concerned person of said Supplier was recorded during the course of Investigation.

- f) As the exporter had claimed drawback on All Industry Rate (AIR) which is fixed by the Government through Drawback Directorate, there was no requirement to check any documents pertaining to WWE purchases, either by the Noticee or the Customs Department; that checking of input documents and its veracity and acceptability is required only in the cases where any Exporter wishes to claim Special Brand Rate and not All Industry Rate (AIR).
- g) The CB submitted that serious allegations of connivance or valuation cannot be made only on assumption and presumption or any kind on generalised allegations without cogent evidence. In support of the contentions that serious allegations cannot be based on only assumption & presumption and without cogent evidence, the CB relied upon following case laws :
- i) M/s. Classic Strips Ltd. Vs. Commissioner of Central Excise, Thane II, reported in 2016 (339) ELT (Tri. - Mumbai).
 - ii) Vishnu Fragrance Pvt. Ltd. Vs. Commissioner, CGST & C. Ex., Udaipur reported in 2022 (379) E.L.T. 621 (Tri. - Del.)
 - iii) Mayeen Uddin Vs. Commissioner of Customs (Prev.), Shillong reported in 2020 (371) E.L.T. 779 (Tri. - Kolkata)
 - iv) Commissioner of Customs (Import) Vs. Wings Electronics, reported in 2015 (323) E.L.T. 450 (S.C.)
- h) As regards, quality of the goods exported, no comments from a Customs Broker like the Noticee are warranted as neither the Investigating Agency (DRI, MZU) nor the SCN Issuing Authorities nor the Noticee can now check the Exported Material which were Exported nearly 7 years ago, as such the allegation is baseless and not sustainable. Besides, the Noticee was not required to check the quality of the goods exported beyond the declaration filed by the Exporter.
- i) The CB in view of the above submissions submits that the conclusion at Para 8 of the Impugned IR in respect of Regulations 10(d), 10(e) and 10(f) of the CBLR, 2018 are without examining the evidences properly and travelling beyond the scope of the SCN. The Impugned IR has cited and imposed non-applicable Circulars travelling beyond the scope of the Customs Act, 1962. The Noticee therefore submits that conclusion in respect of Regulations 10(d), 10(e) and 10(f) of the CBLR, 2018 are not sustainable.
- j) The CB humbly requests and submits that this Rebuttal Submissions to the Impugned IR may kindly be taken on record and the same be considered as in continuation of Reply dated 10-04-2023.

17. DISSCUSSION AND FINDINGS:-

I have gone through the case, material evidence on record, the Show Cause Notice dated 10.03.2023, and Inquiry Report dated 08.12.2023, CB submission dated 12.03.2024 presented during personal hearing on 12.04.2024.

17.1 I observe that the charges against the said CB is of violation of regulation 10(d), 10(e) 10(f) and 10 (n) of CBLR, 2018 made vide Show Cause Notice No. 44/2022-23 CBS, dated 10.03.2023 issued by Pr. Commissioner of Customs (General), NCH, Mumbai. The Inquiry Officer vide inquiry report dated 08.12.2023 held the charge of violation of Regulation 10(d) of the CBLR, 2018 as 'Partly proved', 10(e) and 10(f) of CBLR, 2018 as 'Proved' and Regulation 10 (n) of CBLR, 2018 was held as 'Not Proved'.

17.2 For brevity, I refrain from reproducing the brief facts of the case which have already being discussed above. I, now, examine the charges in the SCN sequentially.

17.2.1 With regard to violation of Regulation 10(d) of CBLR, 2018:

I observe that the said regulation 10(d) of CBLR, 2018 reads as : -*"A Customs broker shall advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;"*

I find that IO in his report held that the violation of regulation 10 (d) of CBLR, 2018 by the CB stands partly proved.

I find that the export firm M/s. World Wide Exports Pvt. Ltd had procured fake purchase bills from one Mr. Suhel Ansari against their export consignments to show the over-pricing of the goods and so as to claim higher export incentives. Further, the fact that the impugned goods were of cheaper material is also corroborated from the report of Consulate General of India, Dubai and various statements of Mr Suhel Ansari & others.

In the instance case, the CB in his statement has stated that they did not have any idea regarding procurement of the goods by the exporter andd they received the goods directly at ACC along with the documents prepared by the exporter. Further CB stated that Annex-I & Annex-II were provided by the exporter in respect of the circular 54/2001 dtd 19.10.2021.

I observe that the circular 54/2001 dtd 19.10.2021 is related to RMGs only but the impugned goods were not the RMGs so this circular will not be applied in the instance case. This shows that the CB fails to inform the exporter about the Drawback Rules. Had they scrutinised the data/information before filing the SB, there would be no lapse on part of CB in respect of submission of appropriate Annexure and declaration as mandated.

I observe that the goods available in the market are deemed to be duty paid. Even if it is assumed that such goods had availed Cenvat, The only possibility of double benefit would arise only when the exporter is able to take the drawback of the central excise portion and also the rebate of terminal excise duty paid on goods at the time of their clearance to the local market. To mitigate the dual benefit, CBIC vide circular no 16/2009 dtd 25.05.2009 made it mandatory that merchant exporters who purchase goods from the local market for export shall have to declare at the time of export, the name and address of the trader from whom they have purchased the goods. They shall also have to declare that no rebate (input rebate and also the final product rebate) shall be taken against the Shipping bills under which they are exporting the goods.

From the perusal of the offence report, I find that as per the records:

- a) The CB in his statement stated that they did not have any idea regarding procurement of the goods by the exporter.
- b) The CB submitted Annex-I & Annex-II of the circular 54/2001 dtd 19.10.2021 which is related to RMGs. Impugned goods are not RMGs so this circular is not applied in this case. This shows that the CB lacks in knowledge of requirement of circular no 16/2009 dtd 25.05.2009 for availing the drawback.
- c) The export invoices did not contain name and complete address of the traders from whom impugned goods had been purchased by the exporter, as mandated in circular 16/2009 dated 25.05.2009.
- d) The CB did not ask for the details and submission of appropriate Annexure and declaration as mandated in circular 16/2009 dated 25.05.2009 and the CB did not inform the exporter about the appropriate declarations required to avail drawback.

It is imperative on CB to know every aspect of the Customs Act and other allied Acts, Rules, Circulars, Notifications and they are, also, required to communicate / explain the same to their clients i.e. exporter / importer. In case of any deviation in these aspects by the exporter/ importers, they are required to bring these infirmities to the notice of Customs officers. From the above, it appears that the CB had neither advised the exporter regarding the said circular dated 25.05.2009 nor informed the Customs authorities about the non-

compliance of the same by the exporter as mandated in regulation 10(d) of the CBLR, 2018

Thus, I am of the considerate view that the CB has violated regulation 10(d) of the said regulations.

In this context, I rely upon the judgment of Hon'ble CESTAT, Mumbai in the case of M/s Eagle Transport Services Vs Commissioner of Customs, Mumbai in 1997 (96) E.L.T. 469 (Tribunal) wherein though the matter was different yet the ratio of judgement can be applied to the present case. In this case, Hon'ble CESTAT, Mumbai has held at para no. 7 (relevant portion) that *"a Custom house agent has a very significant role to play in the clearance of goods through Customs and Port Trust. Such clearance involves application of many specialized laws and detailed procedures often contain complex statutory requirements. It is for this reason that Customs Brokers have been licensed. Before he is granted permanent license, he has to qualify an examination in which his knowledge of relevant procedures is vested."*

The object of these regulations is to ensure that the Customs Brokers acts honestly and efficiently in the conduct of their business. It is not difficult to foresee the consequences that would aim the Custom House Agent does not co-act in such a manner. The Custom House Agent makes various representations before the Custom House on behalf of the importer and exporter relating to the nature of the goods conditions under which they were imported their value etc. The statements that he makes and the information that he provides are crucial for assessing the goods to duty and deciding whether the import is prohibited or not. The Custom House Agent thus can the status of a professionally qualified person akin to an advocate, Chartered Accountant or number of other professions which requires a minimum standards of knowledge for minimum standards of conduct. If the Custom House Agent acts negligently or dishonestly, the Custom House can be defrauded money due to the Government, and in good faith permit import or export of prohibited goods."

In view of the above, **I held that the CB has violated the provisions of Regulation 10(d) of the CBLR. 2018.**

17.2.2 With regard to violation of Regulation 10 (e) of CBLR, 2018:

I observe that the said regulation 10(e) of CBLR, 2018 reads as : -*"A Customs broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;"*

I find that IO in his report held that the violation of regulation 10 (e) of CBLR, 2018 by the CB stands proved.

From the plain reading of the above said regulation, it becomes clear that it is the duty of the CB to make proper efforts to verify the information related to all the rules/regulation before providing the same to his client i.e. exporters/importers with reference to any work related to cargo.

From perusal of offence report and IO report, I find that that M/s. C. V. Karia Clearing and Forwarding Pvt. Ltd. (CB No. 11/532) was required to guide the exporter M/s World Wide Exports with respect to furnishing declarations at the time of export in format annexed to Circular No. 16/2009- Customs dated 25.05.2009 issued under F. No. 609/137/2007 – drawback and the CB was under obligation to ensure that exporter M/s World Wide Export declares the name and complete address of the traders from whom goods has been purchased and other mandates required for the export, in order to claim Drawback.

From the perusal of offence report, I observed that:

- a) The CB in his statement has stated that the normal procedure of handling export was that they received documents from Exporter and invoice, packing list, RITC were prepared by the exporter and they verified the correctness of classification, invoice, packing list details except value of the goods.
- b) These invoices did not contain declarations as mandated in circular 16/2009 dated 25.05.2009 as discussed above which shows that the CB did not verify the same with due diligence.
- c) The CB failed to impart the correct information related to drawback rules to the exporter.
- d) Had the CB verified the details of invoice, analysed those for meeting the criteria to claim drawback and guided the exporter to furnish appropriate declarations, the exporter could not have made exports based on fake invoice.
- e) In lieu of providing information related to drawback rules to the exporter, CB in the instance case, took Annexure-I & Annexure-II of the circular 54/2001 which is completely related to RMGs but in the instance case, the impugned goods were imitation jewellery. **This fact shows that the CB provided wrong information to the exporter which is a more grievous offence.**

From the above facts in the instant case, I observe that the CB has acted in a very callous and negligent manner. It has been established from the investigation conducted by DRI, MZU and subsequently by ACC, Mumbai, that the exporter used fake invoices supplied by one Shri Suhel Ansari to over value the export goods so as to claim undue export incentives. I find that the CB has not exercised due diligence to provide correct information regarding drawback

rules to the exporter which shows that the CB has not fulfilled his responsibilities casted upon them under regulation 10(e) of CBLR, 2018

In view of the above, it is apparent that the CB had failed to exercise due diligence and to sensitize the exporter to make proper declaration in terms of value & the details of procurement of the goods. Thus, I am of the considerate view that the CB has violated regulation 10(e) of the CBLR, 2018. **Therefore, I hold that the CB has violated the provisions of Regulation 10(e) of the CBLR, 2018.**

17.2.3 With regard to violation of Regulation 10(f) of CBLR, 2018:

I observe that the said regulation 10(f) of CBLR, 2018 reads as: - "A Customs broker shall *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;* "

I find that IO in his report held that the violation of regulation 10 (f) of CBLR, 2018 by the CB stands proved.

From the perusal of the offence report and the other records, I find that employee of Shri Suhel Ansari, Shri Mohammed Arshad in his statement before DRI has stated that they had supplied fake invoices to 22 exporters including M/s WWE exports.

Further, the exporter Shri Angoothiwala, in his statement has accepted that they procured the goods for export from local Karigars, located in the suburbs of Mumbai, as well as Jodhpur, Delhi, Agra, Rajkot etc. Further, he submitted that as these were small time Karigars, they only provided "Kaccha Bill" and were not able to provide proper invoices as they were not registered with Excise authorities.

As per the provisions of Circular No. 16/2009- Customs dated 25.05.2009, issued under F. No. 609/137/2007 – DBK, the CB were required to obtain and annexe with the shipping bill the following:

(a) the Annexures mentioning inter-alia the Name and complete address of the trader from whom export goods have been purchased.

(b) Declaration under their seal and signature as below- " I, _____ hereby declare that I am not the manufacturer of the export goods and am not registered with central excise. I have purchased these goods from a trader who is also not registered with the central excise. I declare that no rebate (input rebate or/and final product rebate) shall be taken against the export (s) made against this shipping bill."

From the above facts and offence report, I observe that:

- a) It was the responsibility of the CB to ensure that exporter M/s World Wide Export declares the name and complete address of the traders from whom goods has been purchased in order to claim Drawback.
- b) The CB in his statement has accepted that they did not know about the procurement of the goods and the invoice, packing list, RITC were prepared by the exporter and they verified the correctness of classification, invoice, packing list details except value of the goods
- c) Since these invoices did not contain declarations as mandated in circular 16/2009 dated 25.05.2009 as discussed above, which shows that the CB did not verify the same with due diligence .
- d) Further, in lieu of providing information related to drawback to the exporter, CB in the instance case, took Annexure-I & Annexure-II of the circular 54/2001 (which is completely related to RMGs) which shows that the CB themselves are not clear about the prevalent law and procedure.

From the above, I find that the CB not only withheld information related to Drawback Rules but also provided wrong information/circular to his client i.e. exporter.

In view of the above facts and circumstances, I am of the considered view that the CB failed to inform the exporter about the instructions/public notices of the drawback rules & withheld information in this regard, thus failing to fulfil his responsibilities as a CB mandated as per regulation 10(f) of CBLR, 2018.

Therefore, I hold that the CB has violated the provisions of Regulation 10(f) of the CBLR, 2018.

17.2.4 With regard to violation of Regulation 10(n) of CBLR, 2018:

I observe that the said regulation 10(n) of CBLR, 2018 reads as: -*“A Customs Broker shall verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information”*.

I find that IO in his report held that the violation of regulation 10 (n) of CBLR, 2018 by the CB stands not proved.

From the perusal of offence report, I find that IEC of the exporting firm was nowhere in question as the exporter himself was very much available at the declared premises and the exporter has timely responded the summons and appeared before investigation agency whenever required. Therefore, I find that

the exporter though involved in the substantiated fraud however, as per available records, exporter was in existence and available at the declared address during the export.

From the above facts and circumstances, I am of the considered view that the exporter in the present case was in existence during the export of the goods. Therefore, I hold that the CB has not violated the provisions of Regulation 10(n) of the CBLR, 2018.

18. I find that CB has placed his reliance on certain case laws in his defence. I have gone through such cases laws like *Mayeen Uddin vs Commissioner of Customs (Prev.), Shillong*, *Vishnu Fragrance Pvt. Ltd. Vs. Commissioner, CGST & C. Ex., Udaipur*, *M/s. Classic Strips Ltd. Vs. Commissioner of Central Excise, Thane II*, reported in 2016 etc.

I find that these case laws are related to imposition of penalty/demand of duty under provision of Customs Act, 1962 and the matter has been decided on the fact that allegations can not be decided only on assumption and presumption or without cogent evidence.

But the instance case is related to CBLR, 2018 which mandates the responsibility of the customs broker and in this case, However, I observe that in the instance case, there are ample evidence or discussed supra which prove that the CB has failed to fulfil his responsibilities under CBLR, 2018. Thus, I observe that the facts of the case are different and therefore the ratio of the judgement is not squarely applicable.

CB further relied upon the case of *Gupta H.C. Overseas Pvt. Ltd., 2019 (369) E.L.T. 1685 (G.O.I.) & M.F. RINGS & BEARING RACES LTD VS COMMISSIONER OF CUSTOMS*. In both the cases, the subject matter was denial of drawback by the Ld Adjudicating Authority but the present case is related to fraudulent export by using fake invoice and over-valuing the goods. So, the facts of the case are different in the instant case and therefore the ratio of the judgement is not squarely applicable.

Further, I find that it is pertinent to state that the CBLR, 2013 is a self contained code regulating the issue of Customs Broker Licence. Actions taken under the CBLR, 2018 are without prejudice to the action that may be taken under Customs Act, 1962, thereby making it explicit that the proceedings under the Act as well as the Regulation are distinct and separate. I therefore find that the case laws relied upon by the CB regarding the violation of the provisions of the Customs Act, 1962 viz Section 114 or any other Section of the Customs Act, 1962 does not have any bearing on the action CBLR, 2018 at this stage

19. The CB argued that Shipping Bills pertains to the year 2012 to 2016 and the SCN has been issued on 10.03.2023 which is after a period of 7 years. In this regard, I observe that the matter was under investigation stage & the investigation against the CB was started on receiving of said SCN in the office. Under the CBLR, 2018 the timelines to start inquiry and others is computed from the date of receipt of the offence report only. Further, I find that there are plethora of judgements which have pronounced that, these guidelines are directory but not mandatory & I rely on the decision of Hon'ble High Court of Judicature at Bombay in the case of Principal Commissioner of Customs (General), Mumbai Versus Unison Clearing P. Ltd. reported in 2018 (361) E.L.T. 321 (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.

20. I've gone through all the case laws submitted by the CB. While deciding the matter, I rely upon following judgements: -

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

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

20.2 In case of M/s Cappithan Agencies Versus Commissioner Of Customs, Chennai-Viii, (2015(10) LCX 0061), the Hon'ble Madras High Court had opined that: -

i. *The very purpose of granting a licence to a person to act as a Customs House Agent is for transacting any business relating to the entry or departure of conveyance or the import or export of goods in any customs station. For that purpose, under Regulation 9 necessary examination is conducted to test the capability of the person in the matter of preparation of various documents determination of value procedures for assessment and payment of duty, the extent to which he is conversant with the provisions of certain enactments, etc. Therefore, the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as CHA, it is seen that while CHA should be in a position to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an Agent for carrying on certain illegal activities of any of the persons who avail his services as CHA. In such circumstances, the person playing the role of CHA has got greater responsibility. The very description that one should be conversant with the various procedures including the offences under the Customs Act to act as a Custom House Agent would show that while acting as CHA, he should not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as CHA by taking advantage of his access to the Department. The grant of licence to a person to act as CHA is to some extent to assist the Department with the various procedures such as scrutinizing the various documents to be presented in the course of transaction of business for entry and exit of conveyances or the import or export of the goods. In such circumstances, great confidence is reposed in a CHA. Any misuse of such position by the CHA will have far reaching consequences in the transaction of business by the customs house officials. Therefore, when, by such malpractices, there is loss of revenue to the custom house, there is every justification for the Respondent in treating the action of the Petitioner Applicant as detrimental to the interest of the nation and accordingly, final order of revoking his licence has been passed.*

ii. In view of the above discussions and reasons and the finding that the petitioner has not fulfilled their obligations under above said provisions of the Act, Rules and Regulations, the impugned order, confirming the order for continuation of prohibition of the licence of the petitioner is sustainable in law, which warrants no interference by this Court. Accordingly, this writ petition is dismissed.

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

"Para 6.1 These provisions require the Customs Broker to exercise due diligence to ascertain the correctness of any information and to advise the client accordingly. Though the CHA was accepted as having no mens rea 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 CHA, who is an important link between the Customs Authorities and the importer/exporter. Any dereliction/lack of due diligence since has caused the Exchequer loss in terms of evasion of Customs Duty, the original adjudicating authority has rightly imposed the penalty upon the appellant herein."

21. In a regime of trade facilitation, a lot of trust is being placed on the Customs Broker who directly deals with the importers/exporters. Failure to comply with regulations by the CB mandated in the CBLR, 2018 gives room for unscrupulous persons to get away with import-export violations and revenue frauds. The CB deliberately and knowingly indulged himself in declaring higher value of the goods using fake invoices, to avail higher export benefits. The facts on record prove that CB had violated various provisions of CBLR, 2018 with mens rea.

22. I hold that the proof of charges in inquiry are acceptable and tenable based on the available evidence, the facts and circumstances of the case, which certainly warrant penal action against the CB. Therefore, for their acts of omission and commission, CB M/s. C.V. Karia Clearing & Forwarding Pvt Ltd, (PAN: AADCC5433F) is held liable and guilty for violating the provisions of CBLR, 2018 as mentioned above. I hold that the CB has failed to discharge his duties cast upon him with respect to Regulation 10(d), 10(e) & 10(f) of CBLR, 2018 and is liable for penal action. Accordingly, I pass the following order.

ORDER

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

- (i) I hereby order revocation of the CB License No. 11/532 under Regulation 14 of the CBLR, 2018.

- (ii) I hereby impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on CB M/s. C.V. Karia Clearing & Forwarding Pvt Ltd (CB no. 11/532) under Regulation 18 of the CBLR, 2018.
- (iii) I hereby order for forfeiture of entire amount of security deposit furnished by CB under Regulation 14 of the CBLR, 2018.
- (iv) I hereby order that the CB surrender the original License as well as all the 'F', 'G' & 'H' cards issued there under immediately.

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

SR
29/5/2024

(SUNIL JAIN)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
MUMBAI ZONE-I

To,

M/s. C.V. Karia Clearing & Forwarding Pvt Ltd,
(PAN: AADCC5433F),
229, Sahar Cargo Estate,
V.M. Shah Marg,
JB Nagar, Andheri-E,
Mumbai-400-099

Copy to,

1. The Pr. Chief Commissioner/Chief Commissioner of Customs, Mumbai I, II, III Zone.
2. All Pr. Commissioners/Commissioners of Customs, Mumbai I, II, III Zone
3. DRI, MZU, Mumbai.
4. SIIB(X), ACC, Sahar, Mumbai
5. CIU's of NCH, ACC & JNCH
6. EDI of NCH, ACC & JNCH
7. ACC (Admn), Mumbai with a request to circulate among all departments.
8. JNCH (Admn) with a request to circulate among all concerned.
9. Cash Department, NCH, Mumbai.
10. Notice Board
11. Office Copy
12. Guard File (Admin)

