



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/207/2022-CBS

आदेश दिनांक/Date of Order: 06.02.2023

CAO No. 74/CAC/PCC(G)/SJ/CBS Adj

जारी दिनांक/Date of issue: 07.02.2023

संख्या:

DIN : 2023027700000555D53

द्वारा जारी : सुनील जैन

Issued By : Sunil Jain

प्रधान आयुक्त, सीमाशुल्क(सामान्य)

Pr. Commissioner of Customs(Gen.),

मुंबई -400 001

Mumbai – 400 001.

ORDER-IN-ORIGINAL मूल आदेश

ध्यानदीजिए/ N.B. :

1. 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 माँगें गयीं 7.5% के भुगतान पर सीमाशुल्क अधिनियम, 1962 की धारा 129 A (1B)(i) के संबंध में सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवा कर 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 सेवा कर अपील अधिकरण (कार्यविधि) नियमावली, 1982, के प्रावधानों के अंतर्गत, यथोत्तर खंड पीठ 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 कि इस आदेश के अमल में आते ही, न्यायनिर्णयन अधिकारी का अधिकार क्षेत्र समाप्त होता है और सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवा कर अपील अधिकरण, पश्चिम क्षेत्रीय खंड पीठ, 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 तदोत्तरांत न्यायनिर्णयन 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, 1982 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 ब्याज व लगाए गए जुर्माने की राशि रु. पाँच लाख या इससे कम होतोरु. 1000/-, (ii) यदि यहराशि रु. पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न होतोरु. 5000/- एवं (iii) यदि यहराशि रु. पचास लाख से अधिक होतोरु. 10000/-

के शुल्क का भुगतान क्रॉस 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. Charania Associates (CB No. 11/950)(PAN No. AACFC6060E) having registered office address at 1/12, Baitul Rehmat Bldg, Nawroji Hill Road No. 19, Dongri, Mumbai -400 009, is holder of regular Customs Broker License No. 11/950, issued by the Commissioner of Customs, Mumbai under Regulation 10(1) of CHALR, 1984, (Now regulation 7(2) of CBLR, 2018) and as such they are bound by the regulations and conditions stipulated therein.

2. Pursuant to intelligence developed by SIIB (I) at Air Cargo Complex, investigations were initiated against M/s Firoza Movie International Enterprise alongwith Customs Brokers M/s. Charania Associates (CB No. 11/950).

2.1M/s Firoza Movie International Enterprise (hereafter referred to as "importer") filed Bill of Entry No. 5466407 dated 16.09.21through Customs Broker M/s M.D. Ruparel & Sons at the Air Cargo Complex, Sahar, Andheri (East) Mumbai in which goods were declared as "Blank Cartridge 9mm Kaiser (Air Gun Pellets Dummy)" under CTH 93069000. Further, M/s Firoza Movie International Enterprise had imported 3 consignments of blank cartridges vide Bills of Entry No. 3625478 dated 19.04.2021, 4368312 dated 18.06.2021, and 4963255 dated 07.08.2021. Total 78,000 blank cartridges wereimported by M/s Firoza Movie International Enterprise in three previous Bill of Entries and in one live consignment under investigation.

2.2Out of four BOEs mentioned above, two BOEs No (i) 3625478 dated 19.04.2021 & (ii) 4368312 dated 18.06.2021 were cleared by M/s Charania Associates (CB No. 11/950) on behalf of the importer.

2.3Further, as per Schedule I, Import Policy of Chapter 93, all items imported under CTH 9306 are restricted. However, policy for import of "Air Gun Pellets Dummy" is "Free". That, the importer deliberately mis-declared the goods as "Air Gun Pellets Dummy" to circumvent the restriction of import policy. That, Rule 42 of G.S.R. 701 (E) dated 15.07.2016 issued by Ministry of Home Affairs, also known as Arms Rules 2016, which mentions the requirement of license for arms and ammunitions for theatrical, film or television production. That, the importer did not produce any valid certificate for import of "blank cartridges".

2.4The officers of SIIB(I), ACC examined the consignment of the importer imported vide Bill of Entry No.5466407 dated 16.09.2021 mentioned above, cleared by CB M/s M.D. Ruparel under Panchanama dated 03.11.2021 and representative samples of the goods were drawn for testing purposes. The

samples drawn were then forwarded to Central Forensics Science Laboratory (CFSL), Hyderabad for testing purposes. CFSL, Hyderabad vide letter dated 09.03.2022 opined that "*When a blank cartridge is fired, high pressure gas is discharged from the case and progresses down the barrel. The effect of the superheated high pressure gas as well as unburnt particles of propellant can cause fatal injuries and can be dangerous to human life.*" Thus the goods were dangerous in nature and could cause fatal injuries to human life.

2.5 Statement of Ms. Firoza Khatun, Proprietor of M/s Firoza Movie International Enterprise was recorded on 11.02.2022 under Section 108 of Customs Act, 1962 wherein she inter-alia stated that she had imported blank cartridges for film and movie shooting without valid license as required by Rule 42 of G.S.R. 701 (E) dated 15.07.2016 issued by Ministry of Home Affairs, also known as Arms Rules 2016, which mentions the requirement of license for arms and ammunition for theatrical film or television production. Further, "Air Pellet Guns Dummy" was added in the description of the goods by Customs Broker without seeking her approval.

2.6 The importer failed to explain how she utilised the goods previously imported by her. That, the premises of M/s Firoza Movie International Enterprise were searched but no document related to the import of "Blank Cartridges" was found during search.

2.7 Statement of Shri Shailesh Kathe, G-Card Holder of M/s Charania Associates (11/950), Customs Broker, who filed Bill of entry No. 3625478 dated 19.04.2021 and 4368312 dated 18.06.2021 on behalf of M/s Firoza Movie International Enterprise was recorded on 07.03.2022 under Section 108 of Customs Act, 1962 wherein, he inter-alia stated that blank cartridges were cleared by them on behalf of the importer.

2.8 During statement dated 07.03.2022, Shri Shailesh Kathe further admitted that he was aware that a license is required for the clearance of "Blank Cartridges". However, the importer did not produce any license for the clearance of the said goods. He further stated that in both Bills of Entries cleared by them, "Air Gun Pallets Dummy" was added in the description as per the direction of Ms. Firoza Khatun, the importer. Shri Shailesh Kathe agreed that the goods were mis-declared by the importer to evade policy restriction and they made the changes in the description as per the request of importer.

2.9. The above persons viz. Ms. Firoza Khatun, Proprietor of M/s Firoza Movie International Enterprise, Shri Mahendra Ruparel, F-Card Holder in M/s M. D.

Ruparel & Sons (11/244) and Shri Shailesh Kathe, G-Card Holder of M/s Charania Associates (11/950) were arrested on 25.05.2022 at 14:30 hrs under Section 104 of Customs Act, 1962 for committing offences under Section 132, and Section 135 (i) (C) of the Customs Act, 1962 which is non-bailable and cognizable offence.

2.10 From the modus operandi used in aforesaid case, it appeared that the Customs Broker M/s Charania Associates (11/950), was also involved in the clearances of the said import. The goods imported under CTH 9306 are restricted. The CB colluded with the importer and they deliberately mis-declared the goods as "Air Gun Pellet Dummy" to circumvent the restriction of import policy.

2.11 M/s Charania Associates (11/950), failed to fulfill their obligation as a Customs Broker as per the Regulation stipulated in CBLR, 2018. They were working hand in glove with the importer. They colluded with the importer in the clearance of the goods which were mis-declared and restricted. They never asked the importer for the license which was required for the clearance of the imported goods; even when they had knowledge of the same. The goods cleared by the CB can cause fatal injuries and can be a danger to human life. Thus, CB M/s Charania Associates (11/950), failed to advise his clients to comply with the provisions of the Act, other allied Acts and did not exercise due diligence while clearing of the said mis-declared and restricted goods. They also withheld the information from Customs authorities that a license is required for the clearance of the same.

2.12 Based on the above facts and applicable rules and regulations, prima facie it appeared that Customs Broker M/s Charania Associates, (AACFC6060E) having Customs Broker Licence No. 11/950 did not exercise due diligence in discharging their obligation as required under provisions 10(d), 10(e), 10(f) and 10(n) of CBLR, 2018.

“Regulation 10(d) of CBLR, 2018 *A Custom 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 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 CBLR, 2018 "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."

Regulation 10(n) of CBLR, 2018 "A CB shall verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;"

3. SUPESNSION OF LICENCE:In view of the facts stated above, CB, M/s Charania Associates (11/950) was found liable for their acts of omission and commission leading to contraventions of the provision under Regulation 10(d), 10(e), 10(f) and 10(n) of CBLR, 2018, therefore, prima facie, it appeared that the CB failed to fulfill their responsibilities as per provisions of regulations of CBLR, 2018. Hence, in exercise of powers conferred under the provisions of Regulation 16 of CBLR, 2018, license of Customs Broker, M/s Charania Associates(11/950) was suspended by Principal Commissioner of Customs, NCH, Mumbai vide order no. 18/2022-23 dated 07.07.2022 and the same was continued vide Order No. 31/2022-23 dated 19.09.2022.

4. SHOW CAUSE NOTICE:M/s Charania Associates(11/950) was issued a Show Cause Notice (SCN) No. 20/2022-23 dated 20.09.2022 by the Principal Commissioner of Customs (General), NCH, Mumbai, Zone-I asking them to show cause as to why the licence bearing no. 11/950 issued to them should not be revoked and security deposited should not be forfeited and/or penalty should not be imposed upon them under Regulation 14 read with 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018, as elaborated in the Show Cause Notice. They were directed to appear for a personal hearing and to produce proof of evidence/documents if any, in their defence to Shri P.C. Shekhar, Asstt. Commissioner of Customs, NCH, Mumbai-I who was appointed an inquiry officer to conduct inquiry under regulation 17 of CBLR, 2018.

5. INQUIRY REPORT

Inquiry Officer submitted inquiry report dated 08.12.2022 wherein the charges against CBM/s Charania Associates(11/950) i.e. violation of Regulation 10(d), 10(e), 10(f) of CBLR, 2018 were held '**Proved**' and Regulation 10(n) was held '**Not Proved**'.

5.1The Inquiry Officer submitted that the personal hearings were granted to the CB on 21.10.2022, 28.10.2022 & 09.11.2022. Finally, on 09.11.2022 Shri Zulfikar Charania, Partner of CB along with his advocate Shri Vikram Naik, Advocate appeared for the hearing.

5.2During the course of personal hearing when asked as to how they defend themselves against the charges of violation of Regulations 10 (d), 10(e), 10(f) & 10(n) of CBLR 2018 levelled against them vide above mentioned show cause notice, the advocate on record submitted that since the importer was present during the statements before SIIB(I), therefore, 10 (n) is not applicable to them at all and only because of their intimation to the Department, the then DC carried out 100 % examination of goods before the clearance of the imported goods. He added that the importer himself agreed in his statement that they had instructed the CHA to change the description of goods from “Blank Cartridge 9 mm Kaiser” to “Blank Cartridge 9 mm Kaiser (Air Gun Pellets Dummy)” and thus they had correctly declared the goods initially but additions were made at the behest of the importer. However, no proof to the extent of such communication was produced but CB added that the fact is admitted in the statement of their G-card holder and that of the importer. He went on adding that there is no such requirement of having written communication as per the provisions of Regulation 10 (d) & 10 (e). His client had orally informed the authorities due to which the consignments were examined 100% on both the occasions. As far as the charge of violation of Regulation 10 (f) is concerned it was submitted that there was no withholding of any information contained in any order, instruction or public notice relating to the cargo but that the entire issue is of mis-declaration. Further, he added that from the statement of importer where it was admitted that they had knowledge of policy conditions subsequent to the service provided by his client for the first consignment, it indicated that CB had indeed informed them dutifully.

As to the question when he was well aware of the proper description of the goods imported and that the importer was seeking an amendment which was leading to mis-declaration why he had filed the said BE and cleared the goods, he added that the addition in the description was only the term “Air Gun Dummy Pellet” within parenthesis and thus since it emphasized the empty cartridge term, CB had carried out the amendment as given out by the importer.

When he was further asked as to why he had not called for license to import such goods as per the policy condition, he agreed that it was a serious

lapse on his part. However, he added that the importer had played a foul and misrepresented to him.

At the end he submitted that a detailed written submission would be made in two days along with further documentary proof if any, available with CB in support of their defense.

However, no written submissions were received by the Inquiry Officer. Hence Inquiry was concluded based on the submissions made during the course of personal hearing.

5.3 COMMENTS OF INQUIRY OFFICER: - Inquiry Officer discussed the charge as under: -

5.3.1 ARTICLE OF CHARGE -I(Regulation 10(d) of the Customs Act, 1962):

The Inquiry Officer submitted that it was within the knowledge of the Customs Broker that the goods imported were "Blank Cartridges". The examination of the goods revealed that dangerous and restricted goods "Blank Cartridges" were imported vide B/E No. 3625478 dated 19.04.2021 and B/E No. 4368312 dated 18.06.2021. It was submitted by the CB that they added "Air Pellet Guns Dummy" in the description of goods "Blank Cartridges 9mm Kaiser" and declared as "Blank Cartridges 9mm Kaiser (Air Pellet Guns Dummy)" under CTH 9306 at the behest of the importer even though he was aware of the Arms Rules 2016 and Customs Act, 1962 and that such an import is restricted and requires a certificate. The importer in her statement stated that these changes were made by CB without seeking her approval. Thus, it appeared that the CB had not advised their client importer M/s Firoza Movie International Enterprise to comply with the provisions of Customs Act, 1962 and Arms Rules 2016 under which import license is compulsory for the import of arms and ammunition for theatrical, film or television productions.

Even assuming that they had notified but the importer had not complied with the regulations, the same should have been brought to the notice of Deputy Commissioner or Assistant commissioner of Customs, as the case may be. However, in the present case instead of bringing it to the notice of the authorities, the CB added the description in parenthesis "Air Pellet Guns Dummy" to import Blank Cartridges 9mm Kaiser. It was the argument of the CB that due to their information only, 100% examination of the goods were carried out at the time of their clearance. However, there is nothing on record to prove that in fact the CB had informed the department about this aspect. Had it been the case the department would have stopped its clearance in the very first instance for the want of required certificate. Only because in the

description "Air pellet Guns Dummy" was added which is free from such restrictions, had misled the authorities and thus the clearances took place. Thus the CB's submission that 100% examination was a result of their notifying the Department is only an afterthought. Accordingly, IO held the article of charge alleging violation of Regulation 10(d) as 'Conclusively Proved'.

5.3.2 ARTICLE OF CHARGE - II (Regulation 10(e) of the Customs Act, 1962):

The Inquiry Officer submitted that during the course of the personal hearing it was added by the CB that initially they had correctly declared the goods as "Blank Cartridge 9 mm Kaiser" but later on changed to "Blank Cartridge 9 mm Kaiser (Air Gun Pellets Dummy)" as per the amendment given out by the importer orally. When CB was further asked as to why he had not called for license to import such goods as per the policy condition, he agreed that it was a serious lapse on his part. Ms. Firoza Khatun, Proprietor of M/s Firoza Movie International Enterprise in her statement dated 11.02.2022 admitted that she wanted to import blank cartridge for film and movie shooting and she was not aware that any license is required for import of blank cartridges. She also disclosed that the addition of the term "Air Gun Pellets Dummy" was done in the description by CB M/s Charania Associates. Thus the CB had not only failed to impart correct information to the importer but by withholding the information from the importer, they had intentionally and willingly imported restricted goods i.e. "Blank Cartridge" in guise of "Air Pellet Guns Dummy" to circumvent the restriction imposed vide Arms Rules, 2016. Therefore, IO was clear that Customs Broker had not exercised due diligence in import of Blank Cartridges on behalf of importer M/s Firoza Movie International Enterprise. Accordingly, IO held the article of charge alleging violation of Regulation 10(e) as 'Conclusively Proved'.

5.3.3 ARTICLE OF CHARGE - III (Regulation 10(f) of the Customs Act, 1962):

The Inquiry Officer submitted that as per the statement of G-card holder of the CB M/s. Charania Associates, Shri Shailesh Kathe, he was aware that goods were blank cartridges which are importable into India under a valid license issued under Arms Rules, 2016. During the course of Personal hearing also when the partner of the CB who had appeared in inquiry on behalf of CB was asked as to why they had not called for license to import such goods as per the policy condition, he agreed that it was a serious lapse on his part

In addition, Ms. Firoza Khatun, Proprietor of M/s Firoza Movie International Enterprise, the importer, in her statement dated 11.02.2022 stated that she wanted to import Blank Cartridge but as she had no valid license, her CHA M/s Charania Associates added 'Air-Pellets Guns Dummy' in the description of goods for importing the goods. Further as an answer to the Q. 7 of her statement dated 11.02.2022 she deposed that she did not think that license is required for import of blank cartridges. During the course of Personal hearing it was submitted by the Advocate on record on behalf of M/s. Charania Associates that "from the statement of importer where it was admitted that they had knowledge of policy conditions subsequent to the service provided by his client for the first consignment, it indicated that CB had indeed informed them dutifully". However, this deposition of the Importer does not make it clear as to when they came to know about the policy condition. Further, just because the importer had a knowledge of the law it does not mean that the CB fulfilled his duty properly and appraised the importer. Moreover, in the same statement the importer also deposed that they did not think that the license was necessary for such an import. Thus it is obvious that CB had withheld information contained in Section 132 & 135 (i) (C) of the Customs Act, 1962 and Rule 42 of GSR 701 E dated 15.07.2016 i.e. Arms Rules, 2016 from the importer M/s Firoza Movie International Enterprise. Accordingly, IO held the article of charge alleging violation of Regulation 10(f) as 'Conclusively Proved'.

5.3.4 ARTICLE OF CHARGE – IV Regulation 10(n) of the CBLR, 2018:

The Inquiry Officer submitted that nowhere during the course of investigation, it is brought on record that the Importer was not functioning from the declared premises. Only thing mentioned in the show cause notice is that the SIIB(I) in their offence report dated 31.05.2022 mentioned that the premises of M/s Firoza Movie International Enterprise were searched but no document related to the import of "Blank Cartridges" were found during the search.

Further it is not the case where the importer is either a dummy importer or at large. The importer was well available to the investigation and appeared before the authorities and statements of Ms. Firoza Khatun, Proprietor of M/s Firoza Movie International Enterprise, the importer, was recorded on 11.02.2022.

Thus it is not the case where the IEC code, GSTIN number, identity and functioning of the client at the declared address were not verified by the CB by using reliable, independent, authentic documents, data or

information. Accordingly, IO held the article of charge alleging violation of Regulation 10(n) as 'Not Proved'.

5.4 Therefore, Inquiry Officer held that Articles of charges viz. 10(d), 10(e) and 10(f) of the CBLR, 2018 stands "Proved" and the charges under Regulation 10(n) stands "Not Proved" against the CB M/s Charania Associates (11/950).

6. SUBMISSION OF CB :- CB submitted written submission dated 23.01.2023 as a response to the Inquiry Report wherein, they reiterated the facts and circumstances as stated earlier. Further, relevant portion of the submission with respect to findings of Inquiry Report was as under;

(i) Ms Firoza Khatun, Proprietor of M/s. Firoza Movie International Enterprises had approached the CB personally with original documents relating to import and KYC. She agreed to pay Rs.4,000/- for agency charges for clearing the goods. This being first import by the importer, CB verified the KYC documents and submitted a file of KYC documents to the Group for approval. After the KYC file was approved, Shri Shailesh Kathe, an employee of CB firm and G-Card holder was asked to process the documents.

(ii) As regards to the findings of learned Inquiry officer that Shri Shailesh Kathe, employee of the CB firm had added the word "Air Gun Pellets Dummy" in the description of goods. It was submitted that in the findings Learned Inquiry officer took note of statement of Shri Shailesh Kathe, employee of the CB stating that Ms. Firoza Khatun, Proprietor of the M/s. Firoza Movie International Enterprises had asked him to add 'Air Gun Pellets Dummy' to the description of the goods. IO also referred to statement Ms. Firoza Khatun that the addition of "Air Gun Pellets Dummy" in the description was done by CB without her approval. Therefore, it is a case where two persons related with clearance of goods were placing the onus of adding of the term "Air gun pellets dummy" on the other person. In such circumstances learned Inquiry officer should have examined Shri Shailesh Kathe and Ms Firoza Khatun himself, which he failed to do. Further out of the two statements if he relied on statement of Ms. Firoza Khatun and used it against the CB, he was expected to make Ms. Firoza Khatun available for cross examination. Learned Inquiry officer failed to record any reason as to why he was relying upon the statement of Ms Firoza Khatun and not of Shri Shailesh Kathe. Further, in this regard, it was mentioned that the CB had also been issued a show cause notice under Section 124 of the Customs Act, 1962 along with other CB who had filed bill of entries for two consignments imported subsequent to two imports mentioned above and cleared by CB. On perusal of the said SCN it was seen that the term "Air Gun Pellets Dummy" was added in the description of imported goods "Blank Cartridges 9 mm Kaiser". In statement of other CB's

F-Card holder Shri Mahendra Ruparel, he also stated that "Air Gun Pellets Dummy" was added at the behest of importer Ms. Firoza Khatun. Thus, there was corroboration to the statement of Shri Shailesh Kathe by the other CB. Therefore, addition in description of the goods viz. "Air Gun Pellets Dummy" was done at behest of Ms Firoza Khatun. The contention of Ms. Firoza Khatun that she was not informed of the change in description is false and baseless. Had Shri Shailesh Kathe, done the addition on his own and without knowledge or approval of Ms. Firoza Khatun, she could have brought this to the notice of CB or to the Customs Authorities, therefore, the learned Inquiry officer erred in his findings that addition of the "Air Gun Pellets Dummy" was done by CB without any approval of importer. This finding of learned Inquiry office is also bad in law as it was given without quoting the reason as to why he failed to accept the statement of Shri Shailesh Kathe and without examining the importer and CB and also not giving an opportunity to CB to cross examine the importer.

(iii) CB submitted the fact that as per Schedule I, Import Policy of Chapter 93, all items imported under CTH 9306 are restricted. However, in this case the importer mis-represented to the employee of Customs Broker that the goods imported by her were "Air Gun Pellets Dummy" and that the same are meant for making sound for theatrical, film or television production and are like those used by farmers for scaring away the animals and no licence is required. CB did not have any knowledge about arms and ammunitions therefore they trusted the instructions of the importer and as "Air Gun Pellets Dummy" are freely importable, CB filed the bill of entry and for this reason CB also did not insist for license under Arms Rule.

(iv) As regards report of CFSL, CB submitted that in their report CFSL clearly mentioned that goods were blank cartridges. As regards findings of CFSL that it could cause injury to a person if fired from close range it is like telling that paper weight or paper knife are dangerous goods as these can also harm a person if used in close range. Further in the show cause notice issued to CB under section 124 of the Customs Act, 1962, department recorded two statements of Shri Nadeem Khan as prosecution witness, wherein he stated that he is General Secretary of Movie Action Dummy Effect Association and Proprietor of M/s. Wave Special Effect and Fireworks. It could be seen from the statement that he works in film industry as a Gun Master eg. Dummy Guns, Blasting, Fire, Body Fire, Artificial Rain, Fogging, Color Smoke, hanging etc; that he is fully involved in special effect activities in film industry and award show events. During recording of his statement on 06.06.2022 vide Q.No.12 he was shown report of C.F.S.L. Hyderabad which stated that "Blank Cartridges" which he had purchased from M/s. Firoza Khatun are lethal and

can endanger human life. He was asked to comment on the report. In reply he stated that in his experience of using blank cartridges "he has never seen anyone getting injured".

(v) CB further submitted that though the bill of entry was assessed by the system. Under the caption compulsory compliance, it was stated "Mandatory compliance Requirements Examination Instructions (CTH)-930690 00 As per ITC HS Import Policy, import under this CTH is restricted. As per ITC HS Policy conditions of Sl. No. 5 to CH 93, import of arms and related material from Iraq shall be prohibited".The Shed Officer who examined the imported restricted goods, allowed clearance of the goods without insisting for a licence. CB therefore submitted that even as per shed officer there was no mis-declaration in description.

(vi) CB submitted that the facts detailed above clearly indicated that the term "air gun pellets dummy" were added at the behestof importer. As import policy of "air gun pellets" is free CB filed the bill of entry without insisting for license. The goods "blank cartridge" are not dangerous goods and that shed officer who examined these goods was also of the similar view. The learned Inquiry officer, therefore erred in his findings.

(vii) CB submitted that he had no reason to believe that the instructions given by the importer to his employee were misleading. Had the CB got an inklingthat the importer was attempting to breach the provisions of law he would have withheld the filing of BE and brought the fact to the notice of the Customs authorities. They acted bonafideand therefore, humbly prayed to hold that charges of violating of Regulation 10(d), 10(e), 10(f) and 10(n) are not proved and drop the present proceedings.

7. PERSONAL HEARING & RECORDS OF PERSONAL HEARING

The CB was granted opportunity of personal hearing on 25.01.2023 thorough virtual mode, however, CB vide letter dated 23.01.2023 submitted that their written submission dated 23.01.2023 may be considered for personal hearing.

8. DISCUSSIONS AND FINDINGS: -

I have gone through the case, material evidence on record, the show cause notice dated 20.09.2022, Inquiry Report dated 08.12.2022and written submission made by the CB and examined the role and conduct of CB in the case before me.

8.1 The charges against the CB i.e. violation of Regulation 10(d), 10(e), 10(f), and 10(n) of CBLR, 2018 were made vide Show Cause Notice No. 20/2022-23 dated 20.09.2022 issued by Pr. Commissioner of Customs (General), NCH,

Mumbai. Inquiry Officer in his report held the charges for violation of Regulation 10(d), 10(e) and 10(f) of CBLR, 2018 as "Proved" and charge for violation of Regulation 10(n) of the CBLR, 2018 as "Not Proved".

8.2 From the facts stated in SCN and the outcome of the investigation report, it appeared that the CB M/s Charania Associates (11/950) had failed in fulfilling the obligation of a Customs Brokers as mandated under CBLR, 2018 and has violated the regulation 10(d), 10(e), 10(e) and 10(n) of CBLR, 2018.

8.3 I refrain from reproducing the brief facts of the case which have already been discussed above for the sake of brevity. I now examine the charges in the SCN sequentially. It has been alleged that the CB did not exercise due diligence in discharging their obligation as required under Regulation 10(d), 10(e), 10(f) and 10(n) of CBLR, 2018.

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

"A Custom 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"

Examination of the impugned goods revealed that dangerous and restricted goods "Blank Cartridges" were imported vide B/E No. 3625478 dated 19.04.2021 and B/E No. 4368312 dated 18.06.2021. On perusal of statement of the importer Ms. Firoza Khatun, Proprietor of M/s Firoza Movie International Enterprise recorded on 11.02.2022 under section 108 of the Customs Act, 1962, wherein she stated that she had imported blank cartridges for film and movie shooting without valid license as required by Rule 42 of G.S.R. 701 (E) dated 15.07.2016 issued by Ministry of Home Affairs, also known as Arms Rules 2016, which mentions the requirement of license for arms and ammunition for theatrical film or television production. Further, "Air Pellet Guns Dummy" was added in the description of the goods by Customs Broker without seeking her approval.

The CB in his defense submitted that the contention of Ms. Firoza Khatun that she was not informed regarding the change in description of imported goods is false and baseless. In this regard, I find that during the course of the personal hearing held by Inquiry Officer, it was stated by the CB that initially they had correctly declared the goods as "Blank Cartridge 9 mm Kaiser" but later on changed to "Blank Cartridge 9 mm Kaiser (Air Gun Pellets Dummy)" as per the amendment given out by the importer orally but I find that the CB has not produced any evidence in the form of letter or email

correspondence or any other communication mode in support of their submission that addition was done at the behest of the importer orally. Thus, it is apparent that CB did not advise their importer M/s Firoza Movie International Enterprise to comply with the provisions of Customs Act, 1962 and Arms Rules, 2016 under which import license is compulsory for import of arms and ammunition for theatrical film or television productions. Investigation revealed that only because the description "Air pellet Guns Dummy" was added in the description of imported goods which is free from such restrictions, had misled the authorities and thus the clearances took place. I find that CB's defense that 100% examination was a result of their notifying the Department is only an afterthought.

From the above facts, it is clear that the charged CB failed to advise his client to comply with the provisions of the Customs Act and other allied Acts, rules and regulations thereof, and in case of non-compliance, the CB shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, therefore, I hold that the CB has violated the provisions of Regulation 10(d) of the CBLR, 2018.

8.3.2 With regard to violation of Regulation 10(e) of 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;"

I find that during the inquiry proceedings, it was added by the CB that initially they had correctly declared the goods as "Blank Cartridge 9 mm Kaiser" but later on changed to "Blank Cartridge 9 mm Kaiser (Air Gun Pellets Dummy)" as per the amendment given by the importer orally. IO also submitted that when CB was further asked as to why he did not call for license to import such goods as per the policy condition, it was admitted by the CB that it was a serious lapse on his part.

Ms. Firoza Khatun, Proprietor of M/s Firoza Movie International Enterprise in her statement dated 11.02.2022 admitted that she wanted to import blank cartridge for film and movie shooting and she was not aware that any license is required for import of blank cartridges. Thus it is apparent that the CB colluded with the importer and they had deliberately mis-declared the goods as "Air Gun Pellet Dummy" to circumvent the restriction of import policy.

In this context, I rely on The Hon'ble Supreme Court in the case of **Commissioner of C. Ex., Madras Vs. Systems & Components Pvt. Ltd. [2004 (165) E.L.T. 136 (S.C.)** at Para 5 held that: *"it is a basic and settled law that what is admitted need not be proved"*,

Going by the ratio of the above decisions of Hon'ble Supreme Court, the statements of the CB Authorized Representative and IEC holder of importing

firm are credible evidence to support the allegations levelled in the SCN against the CB.

From the above discussion and findings, it is clear that the charged CB failed to exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage, therefore, I hold that the CB has violated the provisions of Regulation 10(e) of the CBLR, 2018.

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

"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."

On perusal of statement of the importer Ms. Firoza Khatun, Proprietor of M/s Firoza Movie International Enterprise recorded on 11.02.2022 under section 108 of the Customs Act, 1962, wherein she stated that she wanted to import Blank Cartridge but as she had no valid license and her CHA M/s Charania Associates added 'Air-Pellets Guns Dummy' in the description of goods for importing the goods. I find that importer also deposed that they do not think that the license was necessary for such an import. It is apparent that CB withheld information contained in Section 132 & 135 (i) (C) of the Customs Act, 1962 and Rule 42 of GSR 701 E dated 15.07.2016 i.e. Arms Rules, 2016 from the importer M/s Firoza Movie International Enterprise.

I find that during the inquiry proceedings and personal hearing by the Inquiry Officer, it was added by the CB that initially they had correctly declared the goods as "Blank Cartridge 9 mm Kaiser" but later on changed to "Blank Cartridge 9 mm Kaiser (Air Gun Pellets Dummy)" as per the amendment given out by the importer orally. When CB was further asked as to why he did not call for license to import such goods as per the policy condition, it was admitted by the CB that it was a serious lapse on his part. Ms. Firoza Khatun, Proprietor of M/s Firoza Movie International Enterprise in her statement dated 11.02.2022 admitted that she wanted to import blank cartridge for film and movie shooting and she was not aware that any license is required for import of blank cartridges.

From the above facts, it is evident that CB M/s Charania Associates withheld information from importer regarding to import policy of the imported goods i.e. of Blank Cartridges imported vide B/E No. 3625478 dated 19.04.2021 and B/E No. 4368312 dated 18.06.2021. Hence, I hold that the CB has failed to fulfill the obligation of Regulation 10(f) of CBLR, 2018.

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

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

From the Offence Report, it is alleged that CB pretended to ensure procedural regularity as per regulation 10(n) while acting in connivance with the importer to illegally import restricted goods as the premises of M/s Firoza Movie International Enterprise were searched by SIIB(I) but no documents related to the import of "Blank Cartridges" were found during the search. The importer failed to explain how she has utilised the goods previously imported by her.

IO mentioned in his report that nowhere during the course of investigation it was brought on record that the Importer was not functioning from the declared premises. Further the importer was available during the investigation process and appeared before the authorities. Thus, the IEC code, GSTIN number, identity and functioning of the client at the declared address were verified by the CB by using reliable, independent, authentic documents, data or information.

In this regard, I agree to the Inquiry Report and CB submission as the IEC code, GSTIN number, identity and functioning of the client at the declared address were verified by the CB by using reliable, independent, authentic documents, data or information. Hence, I find that CB has not violated the provisions of Regulation 10(n) of CBLR, 2018.

8.4 The CB in his submission argued that the Inquiry has been conducted without providing the relied upon documents. Inquiry Officer conducted only one hearing on 09.11.2022 wherein the Inquiry Officer did not ask the CB about admission or denial or acceptance of charges. CB also submitted that neither IO has examined the person whose statement has been relied by him while recording his findings nor did he allow the CB to cross examine such witnesses. The proceedings were conducted in violation of the Principles of Natural Justice and not maintainable in law.

In this context, I find that the Inquiry was concluded after the personal hearings were granted to the CB on 21.10.2022, 28.10.2022 & 09.11.2022. Further, the Inquiry Officer submitted that during the final PH i.e. 09.11.2022, the CB submitted that a detailed written submission would be made in two days along with further documentary proof if any available with CB in support of their defense. However, no written submissions were received by the the Inquiry Officer.

In view of above, I find that enough opportunities were given to CB for the submission hence I don't find that there is any violation of the Principles of Natural Justice as discussed above. Further, in the context of opportunity was denied to CB to cross examine witness during the inquiry, I find that as per the provisions of Regulation 17(4) of the CBLR, 2018 "the Customs Broker shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings" but I find that there is nothing on record to support that the CB has given any request to invoke the aforesaid provisions. As the CB did not follow the procedure as per provisions of the CBLR, 2018, therefore, I conclude that there is no contention in CB submission in this context.

8.5 I rely on the following judgements and hold that in the instant case, CB, M/s Charania Associates, CB No.11/950 have failed to adhere to the responsibilities as was expected in terms of the Regulations made under CBLR, 2018 and therefore rendered themselves liable for penal action under CBLR, 2018.

8.5.1 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 approved, the following observation of Hon'ble CESTAT Mumbai in M/s. Noble Agency V/s. Commissioner of Customs, Mumbai:

"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)".

8.5.2. Similarly, in case of M/s Cappithan Agencies Versus Commissioner Of Customs, Chennai-Viii, (2015(10) LCX 0061), the Hon'ble Madras High Court had found that

"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.”

“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.”

8.5.3 Further, I rely upon the judgment of Hon'ble CESTAT Delhi in case of M/S. Rubal Logistics Pvt. Ltd. Versus Commissioner of Customs (General) wherein in para 6.1. Hon'ble Tribunal held as under:

"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 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 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."

9. In a regime of trade facilitation, a lot of trust is placed on the Customs Broker who directly deals with the importers/exporters as the department does not have interface with the importers/exporters. Failure to comply with regulations by the CB mandated in the Regulations give room for unscrupulous persons to get away with import-export violations and revenue frauds. The CB failed to bring the malpractice adopted by their client to the notice of the Customs. All the persons including the CB involved knowingly abetted/supported the illegal activity of unscrupulous persons in order to earn money by unfair means. Thus, there is a clear malafide intention exhibited by the CB who colluded with the importer and deliberately mis-declared the goods as "Air Gun Pellet Dummy" to circumvent the restriction of import policy. As brought out in discussions above, there is all round failure of the CB. The infraction would have resulted in undesirable consequences if the consignment had been cleared without intervention of the department. The facts on record prove that CB has violated various provisions of CBLR 2018 with means rea.

10. I also hold that the charges held as proved in inquiry are acceptable and tenable under the facts and circumstances of the case and certainly warrant penal action against the CB. If CB, M/s Charania Associates, CB No. 11/950 had acted in a diligent manner and had performed his duties efficiently, the improper attempt to import the restricted and dangerous impugned goods without the valid license would not have taken place. The above evidence on record clearly indicates that the CB has indulged in nefarious activities and thereby I am of the firm belief and opinion that the CB has failed to discharge duties cast on them under 10(d), 10(e) and 10(f) of CBLR, 2018 and are liable for penalty. Therefore, there is an apprehension that the Custom Broker may adopt similar modus operandi in future and department cannot remain oblivious to the danger posed by such an eventuality. Accordingly, I am inclined to revoke the CB Licence and pass the following order.

ORDER

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

- (i) I hereby impose penalty of Rs. 50,000/- (Fifty Thousand Rupees Only) on M/s Charania Associates (CB No. 11/950) (PAN No. AACFC6060E) under Regulation 18 of the CBLR, 2018.
- (ii) I hereby order for forfeiture of entire amount of security deposit furnished by the CB, under Regulation 14 of the CBLR, 2018.
- (iii) The CB License No.11/950 is ordered to be revoked under Regulation 14 of the CBLR, 2018.
- (iv) I hereby order that the CB surrender the original License as well as all the 'F', 'G' & 'H' cards issued there under immediately

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

Ab
6/2/2023
(SUNIL JAIN)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
MUMBAI ZONE-I

To,

M/s. Charania Associates (CB No. 11/950)
(PAN No. AACFC6060E)
1/12, Baitul Rehmat Bldg,
Nawroji Hill Road No. 19, Dongri,
Mumbai -400 009

Em 127827209IN

Copy to: -

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

