



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

संचिका सं./F. No.- GEN/CB/ACTN/102/2021- CBS

आदेश दिनांक/Date of Order: 10.11.2023

CAO No. 48/CAC/PCC(G)/SJ/CBS-Adj

जारी दिनांक/Date of issue: 10.11.2023

संख्या:

DIN : 2023117700000000650C

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 ब्याजवलागाए गए जुर्माने की राशि रु. पाँच लाख या इस से कम होतो रु. 1000/-, (ii) यदि यह राशि रु. पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न होतो रु. 5000/- एवं (iii) यदि यह राशि रु. पचास लाख से अधिक होतो रु. 10000/- के शुल्क का भुगतान क्रॉस्ड बैंक ड्राफ्ट के माध्यम से अधिकरण की खंडपीठ के सहायक पंजीयक के पक्ष में जिस स्थान पर खंडपीठ स्थित है, के किसी भी राष्ट्रीय क्रत बैंक की शाखा में किया जाए एवं डिमांड ड्राफ्ट अपील के साथ संलग्न किया जाए।

A fee of (i) Rs. 1000/- in case where the amount of duty and interest demanded and the penalty imposed in the impugned order appealed against is Rupees Five Lakhs or less, (ii) Rs. 5000/- in case where such amount exceeds Rupees Five Lakhs but not exceeding Rupees Fifty Lakhs and (iii) Rs. 10000/- in case where such amount exceeds Rupees Fifty 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. Anusaya Air & Sea Clearing Agency, (CB No. 11/821) (PAN No. AAFFA7231E) having registered address at 5/B, Roy Apartment, Opp Sahar Air Cargo Complex, Sahar Road, Andheri (East), Mumbai-400099 (hereinafter, referred as the Customs Broker/CB) is holder of Customs Broker License No. 11/821, issued by the Commissioner of Customs, Mumbai under Regulation 8 of CHALR, 1984, [Now regulation 7(2) of CBLR, 2018] and as such they are bound by the regulations and conditions stipulated therein.

2. An offence report in the form of letter vide F. No. S/26-Misc-238/2021-22/Gr. VA dated 19.07.2021 was received in the CBS, NCH from Commissioner of Customs, NS-V, JNCH, Mumbai-II, wherein, it was informed that on the basis of the letter received from Commissioner of Customs, NS-V, Nhava Sheva, JNCH, it is observed that an importer M/s. Novex Enterprises filed a Bill of Entry No. 3278931 dated 24.03.2021 through their CHA M/s. Anusaya Air & Sea Clearing Agency (CB license NO. 11/821) for clearance of the following items: -

- i. Maxell Brand Manganese Dry Battery 71087300-X-00 R6P (AR) IBX10 NVX IND MRP (MXPCC 15 KC 317, VIETNAM ORIGIN) CTH -85061000 - Sr. No. 1320(1) of Notification No. 046/2011;
- ii. Maxell Brand Manganese Dry Battery 71087400-X-00 R03 (AR) I BXI 0 NVX IND MRP (MXPCC 24 UC 312, VIETNAM ORIGIN) CTH-85061000 Sr. No. 1320(1) of Notification No. 046/2011;

3. Thereafter, the subject Bill of Entry was routed to Faceless Assessment Group (FAG) by EDI System. The FAG officers pushed the subject Bill of Entry to PAG (INNSA1) for verification of COO certificate. The Assessing Officers raised queries w.r.t the subject Bill of Entry as under:

"THE COO NEEDS TO BE VERIFIED UNDER RULE 6 OF CAROTAR RULES, 2020, THE PROCESS WILL TAKE A CONSIDERABLE TIME, YOU MAY OPT TO CLEAR THE CONSIGNMENT PROVISIONALLY UNDER RULE 6 (4) (C) OF CAROTAR RULES, 2020.PLEASE UPLOAD CATALOGUE OF ALL ITEMS TO VERIFY CTH, NOTIFICATION EXEMPTION AND IMPORT POLICY AND ALSO UPLOAD VALUE EVIDENCES. THE BE WILL BE ASSESSED UNDER SECTION 17 (5) OF THE CUSTOMS ACT 1962. YOU MAY AVAIL PH (VIRTUAL) IN THE MATTER."

4. In this regard, the reply received from the importer/CHA is as under:

"Dear sir, Carator certificate uploaded in E-sanchit."

5. In view of above, Group VA, JNCH gave a query to the importer/CHA to submit all import documents to Group. They submitted certain documents and reply was not provided in system. On perusal of their documents, the following observations were made by Group VA, JNCH:-

- i. The Importer claimed FTA benefit for the items, but the importer submitted Form-I for one item.
- ii. As per the Form-I RVC percentage for the item were 63.82%+CTSH but the RVC percentages mentioned in the COO certificate are - 64.20% & 52.99%.
- iii. It is also observed that model nos of the batteries were not mentioned in the COO certificate.
- iv. As per BIS Certificate No. FMCD/L-4100052765 dated 23.10.2020, item description and model nos were - "Multipurpose Dry Batteries of R03, R6S & R6P as per IS 8144:2018". but the model nos of batteries actually imported were - R6P (AR) & R03 (AR).

6. In view of above observations Group VA, JNCH decided for first check examination and drawing RSS to be sent to the assessment group. But according to Group VA, JNCH, the importer/CHA knowingly did not reply to query in system till 27.03.2021 to avoid marking the Bill of Entry to Docks for first check. Therefore, the prior Bill of Entry got purged in system automatically. The importer and the CHA without informing the department, filed another Bill of Entry No. 3738395 dated 28.04.2021 for the same consignment. The said Bill of Entry was also routed to Faceless Assessment (INPTL6) by EDI system.

7. Queries by the assessing officers and Replies thereto by the importer/CHA given for the Bill of Entry are reproduced as under:-

Query 1- (28.04.2021)

1. "PL SUBMIT SUBMITTING RELEVANT DOCUMENTS (VIZ 1. DOCUMENTS DETAILING QUANTITY OF MATERIAL (LIST OF ITEMS) ARE OF NON ORIGINATING COUNTRY AND FROM WHERE THE SAME WERE IMPORTED 2. EXPLAIN THE MANUFACTURING PROCESS 3. COST SHEET INDICATING VARIOUS COMPONENTS OF VALUE ADDITION 4. PRODUCT CATALOGUE INDICATING VARIOUS COMPONENTS OF IMPORTED GOODS. 5. PROOF OF PRODUCTION/MANUFACTURING UNIT/ FACILITY IN FORM OF PHOTOGRAPHI WEBSITE ETC) REGARDING REGIONAL VALUE CONTENT USED FOR PRODUCTION OF ITEMS BY THE SUPPLIER IN



TERMS OF RULE 4 & 5 OF CAROTAR RULES, 2020 (NOTIFICATION NO 81/2020-CUS NT).

2. ALSO MENTION COO CERTIFICATE NUMBER AGAINST ITEM FOR WHICH BENEFIT HAS BEEN CLAIMED,

3. PL UPLOAD BACK SIDE OF THE COO."

Reply (04.06.2021)

1) DOCUMENTS DETAILING QUALITY OF MATERIAL [LIST OF ITEMS] ARE OF NON ORIGINATING COUNTRY AND FROM WHERE THE SAME WERE IMPORTED. ALL THE ITEMS ARE IMPORTED FROM ORIGINATING COUNTRY SHIPMENT IS DIRECTLY FROM VIETNAM UNDER FOB TERMS [PLS EXPLAIN IN NOVEX LETTER HEAD STATING THIS POINT AND UPLOAD THE LETTER] 2) EXPLAIN THE MFG.PROCESS MANUFACTURING PROCESS UPLOADED IN E SANCHIT .3) COST SHEET INDICATING VARIOUS COMPONENTS OF VALUE ADDITION MFGR.WILL NOT PROVIDE THE COST SHEET OF VARIOUS COMPONENTS AND IT IS NOT MANDATORY TO SUBMIT AS PER CARATOR. IF REQUIRED CUSTOMS CAN CONTRAT ORIGINATING COUNTRY ISSUING AUTHORITY TO GET THIS COST SHEHT OF THE PRODUCT /MANUFACTURED PRODUCT [IT IS NOT PROVIDED TO CUSTOMER AS IT WILL SHOW THE MARGIN OF PROFIT] LETTER REGARDING THE SAME UPLOADED IN E-SANCHIT 4) PRODUCT CATALOGUE INDICATING VARIOUS COMPONENTS OF IMPORTED GOODS.CATALOGUE UPLOADED IN E-SANCHIT .5) PROOF OF PRODUCTION/MFG UNIT/FACILITY IN FORM OF PHOTOGRAPH /WEBSITE ETC] REGARDING REGIONAL VALUE CONTENT USED FOR PRODUCTION OF ITEMS BY THE SUPPLIER IN TERMS OF RULE 4 & 5 IF CAROTAR RULES 2020 [NOTN NO 8112020 CUS NT]FORM I HAVE ALREADY UPLOADED IN E-SANCHIT WITH THE CARATOR CERT IN NOVEX LETTER HEAD .IT WILL SHOW THE RVC.6) ALOS MENTION COO CERT NO AGAINST ITEM FOR WHICH BENEFIT HAS BEEN CLAIMED.COO CERT NO MENTIONED AS PER ITEMS IN B.E. 7) PL UPLOAD BACK SIDE OF THE COO BACK SIDE UPLOADED IN E-SANCHIT

Query : 2 (05.06.2021)

THE VALUES OF THE ITEMS IN THE CONSIGNMENT ARE VERY LOW AS PER CONTEMPORANEOUS IMPORT DATA & APPEARS TO BE LIABLE FOR REJECTION YOU ARE REQUESTED TO KINDLY CONFIRM WHETHER YOU AGREE TO LOAD THE VALUES AS PER CONTEMPORANEOUS DATA OR OTHERWISE.IT IS SUGGESTED, IF

YOU WANT TO SEEK THE WAREHOUSING UNDER SEC 9 OF THE CA, 1962, YOU MAY APPROACH & REQUEST THE PORT ASSESSMENT GROUP FOR THE SAME, TO AVOID THE DETENTION & DEMMURAGE CHARGES.

Reply: (08.06.2021)

Dear Sir, our supplier and manufacturer are the same and they (Manufacturer) stated that the same item has been imported by other importers in other ports also. So please check the data of other importers in Maxell Brand. Moreover, Maxell is a Japanese group, never under invoice for any shipment. As well as we have uploaded Proforma Invoice and Previous Bill of entry in E-Sanchit for your reference.

Query: 3 (08.06.2021)

PLS UPLOAD VALID SVB ORDER, IF IMPORTER & SUPPLIER ARE RELATED PARTY AS PER CVR, 2007.

Reply: (09.06.2021)

SIR, [IMPORTER-NOVEX ENTERPRISES) ARE NOT RELATED TO SUPPLIER M/S. MAXELL ASIA LTD IN TERMS OF CUSTOMS VALUATION RULES. 2007 VALUE DECLARED IS CORRECT SVB ORDER IS NOT APPLICABLE REQUEST YOU TO PLS CLEAR THE SHIPMENT AT THE EARLIEST.

8. The goods were examined on first check basis under DC/docks supervision. The examination order and examination report is as under: -

Examination Order: -

"Open and examine all package (100% at item level). look for concealment and mis declaration of quantity and value. verify that goods are as per invoice, p/l, b/l. vfy description, quantity. exmn wrt targeted instrns, if any and ensure compliance of rms, ogd/ccr insrt. pl vrfy that igst is levied correctly in the system in terms of notification no. 01/2017 boc. pl vfy that goods are as per the declaration only. the coo certificate in terms of rules of determination of origin issued under pta/fta, and the relevant trade agreement may be checked scrupulously for its genuineness/applicability. verify benefit claimed is actually available to the goods under the specific sr.no. of the notfn. Please vfy declaration of coo debits the coo before ooc, wherever applicable. in case of any discrepancy, please send the b/e back to group hoc. Pls verify value fairness of the goods wrt physical examination of goods. pls

vfy coo is vietnam and upload examination pics in e-sanchit. pls examine under de/shed supervision & endorsement thereof"

Examination report: -

"opened and examined 13 pkgs in the presence of cha. inspected lot, checked marks and numbers. opened and examined all under de/dock's supervision, checked description and quantity of the goods as per invoice, packing list and other import documents. Followed rms/ccr instrn, uploaded the photos of the goods. "

9. Thereafter, the FAG officers pushed the Bill of Entry to PAG (INNSA1) with following department comments: -

"Importer appears to be related with supplier, accordingly BE forwarded to PAG"

10. In view of the above, it is observed that the Customs Broker Firm M/s. Anusaya Air & Sea Clearing Agency (CB license NO. 11/821) was handling the import clearance of the subject consignment on behalf of the importer M/s. Novex Enterprises. As per the query raised by the FAG officers in the EDI system for verification of COO Certificate when the CB firm filed the subject Bill of Entry No. 3278931 dated 24.03.2021, the importer/CHA was directed by Group VA, JNCH to submit catalogue of all items along with value evidences with regard to the subject B/E. Subsequently, as per the documents submitted by the importer/CHA, some discrepancies were found in goods declaration as stated in Para 5 above. Accordingly, with the approval of the Competent Authority the assessment group was directed for first check examination and drawing RSS. However, it was observed that neither the CB firm nor the importer gave reply to the query in the system till 27.03.2021. It appears that the importer/CHA wanted to avoid marking the B/E to the Docks for first Check. On behalf of the importer, it is the responsibility of the Customs Broker to cooperate with the department in compliance with the rules/regulations of the Customs Act, 1962 and the CBLR, 2018. However, in the instant matter, they did not cooperate properly with FAG Officers as well as with Group VA, JNCH. Due to lack of diligence and efficiency, the subject Bill of Entry No. 3278931 dated 24.03.2021 got purged in the system automatically.

11. Further, it is observed that without informing the department, the CB firm filed another Bill of Entry No. 3738395 dated 28.04.2021 for the same consignment which is in violation of import policy. It appears that they filed 2 Bill of Entries for the same consignment to bypass the import policy and customs procedures. Moreover, on 05.06.2021, a further query was raised by FAG officers stating that the value of the items in Bill of Entry No. 3738395 dated 28.04.2021



were appeared to be low as per contemporaneous import data and thereby liable for rejection. In this regard, the importer/CHA was directed to upload the values as per contemporaneous import data or to choose warehousing in terms of Section 49 of the Customs Act, 1962. In reply, the importer/CHA intimated that the supplier and the manufacturer were the same. However, when they were directed to upload SVB order as per Customs Valuation Rules, 2007 if the supplier & importer were related party, the importer/CHA submitted that the importer M/s. Novex Enterprises and the supplier M/s. Maxell Asia Ltd. were not related. Once they stated that the supplier and the manufacturer were the same, on the other hand they stated that the importer and the supplier were not related. From the submissions of the importer/CHA it is observed the CHA who was handling the import clearance of this consignment tried to misguide the department by hiding the fact about the relationship between the importer and the supplier. It is the obligation of the Customs Broker to advise the importer to comply with the provisions of the Customs rules/regulations. However, in the instant case, the Customs broker filed 2 Bill of Entries for the same consignment and further tried to misguide the department in respect to the relationship of the importer and the supplier in terms of Rule 3 of the Customs Valuation Rules, 2007. Moreover, all the truthful facts were not brought to the notice of the department.

**12.** Based on the facts on record and applicable Laws, Rules and Regulations, *prima facie*, it appears that CB have violated certain provisions of Regulation 10 of CBLR, 2018 in import of goods vide Bill of Entry No. 3278931 dated 24.03.2021.

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(m) of the CBLR, 2018 and rendered himself for penal action under Regulations 14, 17 & 18 of CBLR, 2018.

**Legal Provision of the CBLR, 2018:-**

***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 (m) of the CBLR, 2018:-** "A Customs Broker shall discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay".

**13. SHOW CAUSE NOTICE:** M/s. Anusaya Air & Sea Clearing Agency (11/821) was issued a Show Cause Notice (SCN) No. 25/2022-23 dated 11.11.2022 by the Principal Commissioner of Customs (General), NCH, Mumbai, Zone-I asking them to show cause as to why the licence bearing no. 11/821 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 Arun Choudhary, Dy. Commissioner of Customs who was appointed an inquiry officer to conduct inquiry under regulation 17 of CBLR, 2018.

#### **14. INQUIRY REPORT**

Inquiry Officer submitted Inquiry Report dated 10.08.2023, wherein, the charges against CB M/s. Anusaya Air & Sea Clearing Agency (11/821) i.e. violation of Regulation 10(d), 10(e) and 10(m) of CBLR, 2018 were held as 'Not Proved'.

**14.2 RECORDS OF THE PERSONAL HEARINGS** IO in his report submitted that three personal hearings were conducted during the inquiry proceedings. On first 2 hearings dated 9.2.2023 and 29.3.2023, Shri Jaywant Sawant, Partner, M/s. Anusaya Air & Sea Clearing Agency appeared for the hearing and sought additional time and another hearing date on the pretext that his authorized representative is not available to explain the matter with additional submissions and case laws. IO further submitted that Shri Sawant was clearly explained that inquiry proceedings were time-bound as per Regulation 17(5) of CBLR, 2018. Shri Sawant assumed full responsibility for any delay in time-bound completion of inquiry proceedings. IO submitted that the Final hearing in the matter was conducted on 8.6.2023. Shri Sanjay Singhal, Advocate on behalf of M/s. Anusaya Air & Sea Clearing Agency CB No. 11/821 and Shri Jaywant Sawant, Partner of the CB appeared for the Personal Hearing and stated that they assume full responsibility for the delay in time-bound completion of inquiry proceedings.

#### **14.3 Written Submissions by Customs Broker**

IO submitted that CB submitted his submission vide letter dated 11.01.2023. CB's Submissions dated 11.01.2023 are reproduced as below:

**14.3.1** CB submitted that it is necessary to put forth the facts of the case as it happened, since the sequence of events narrated in the Show Cause Notice do not reflect the actual manner in which the events took place, leading to the filing of two Bills of Entry for the same consignment. The crux of the notice is that (a) they have filed two Bills of Entry to avoid presenting the first Bill of Entry for examination and that (b) they have mislead the department with reference to the relationship between the importer and the supplier.

**14.3.2** IO submitted that the CB submitted that exact sequence of events that occurred leading to the filing of two Bills of Entry for the same consignment is as follows -

- i. A Bill of Entry No. 3278931 dated 24.03.2021 was filed for clearance of Maxell Brand Battery Cells. It bears mention therein that the invoice was that of Maxell Asia Pte Ltd, Singapore and importer is one Novex Enterprises.
- ii. The Bill of Entry gets routed to the Faceless Assessment Group (FAG), who pushed it to the Port Assessment Group (PAG) as "the COO was sought to be verified under Rule 6 of the Carotar Rules, 2020 and hence the importer may be allowed provisional assessment and it was also asked to upload catalogue and upload value evidences."
- iii. The importer replied that "Carotar Certificate has already been uploaded in e-sanchit".
- iv. The PAG i.e. Group VA, JNCH issued a fresh query asking to "submit all import documents to Group." It may be noted from Para 5 of the SCN that the documents were submitted to Group but no reply was provided in the system. So, there is no dispute that documents as required were submitted to the PAG.
- v. Upon perusal of the documents, the Group decided to give first check examination order for drawing RSS to group. It is alleged that reply was not given in the statement thereby avoiding movement of the bill to Docks for examination.

Pausing here for a moment, it may be seen that the query raised in the system was that the documents to be submitted to group, which we have done faithfully and in complete accordance with the query raised viz., "Submit all documents in Group." There is no instruction that we have to reply that documents submitted in group and hence we were waiting for further instruction from Group officers so that they scrutinize the documents and thereafter, we file the reply in system.

- vi. The CB were following up, with the group officers for completing the scrutiny of the documents. The Group made a file which was moving between the then Group AC and then Group Appraiser. Finally, when the

- group decided to give first check order, they were called on 26nd April 2021 to file a reply in system so that the Bill of Entry can move to docks.
- vii.** When the CB attempted to file the reply, the system was not taking the reply since the Bill of entry already got purged in the system.
- viii.** Accordingly, they thereafter i.e. on 28.04.2021 filed another Bill of Entry bearing No. 3738395 dated 28.04.2021. It bears mention herein that the said Bill of Entry was filed only after taking approval under Section 48 from the then Group AC since after filing, no Bill of Entry number was being generated. The reason being that, the goods have already landed 30 days before. Therefore, the CB approached the Group AC to give permission under Section 48 so that number could be generated. The Group AC permitted Section 48. Only after permission from Group AC, the said Bill of Entry No. 3738395 got generated on 28.04.2021. Thus the Group AC was well aware of the nuances of the case.
- ix.** The said Bill of Entry got marked once again to the FAG.
- x.** Now, in this Bill of Entry, the FAG Group asked on 28.04.2021 for "submitting the details of Annexure I and upload backside of COO certificate."
- xi.** Reply was given on 04.06.2021 that the "Annexure I have already been submitted with the manufacturing process and other details. The Carotar certificate has also been submitted in e-sanchit."
- xii.** A different query was raised by the FAG on 05.06.2021 stating that "the value is low and whether loading is agreed to and to warehouse the goods under section 49 and approach the Port Assessment Group."
- xiii.** Reply was given on 08.06.2021 stating that "the supplier and manufacturer are the same and that they (manufacturer) stated that the same item has been supplied to other importers in other ports. It was requested to check the data of other importers of Maxell brand. Proforma Invoice and previous Bill of Entry also uploaded in e-sanchit."
- Pausing here for a moment, it may be noted from the above reply that they nowhere stated that the importer and supplier (manufacturer) are related. It can be clearly seen from the above line that what was stated is that, SUPPLIER and MANUFACTURER are same and not IMPORTER AND SUPPLIER. Therefore, there cannot be question of SVB angle to the import.
- xiv.** However, the FAG, by misinterpreting the above reply, issued a fresh query dated 08.06.2021 to "Upload valid SVB Order, if IMPORTER AND SUPPLIER are related party".
- xv.** The CB replied on 09.06.2021 that "Importer (Novex Enterprises) are not related to supplier M/s Maxell Asia Ltd."
- xvi.** Thereafter the FAG give 100% examination order to look for concealment and misdeclaration of quantity and value. A number of other details were



also asked to be looked at by the examination officers and the FAG ordered that the examination be done under AC Docks supervision.

- xvii.** The goods were examined by Docks on first check basis by AC docks, who reported that "goods checked and description, quantity were as per invoice, packing list and other import documents. Followed RMS/CCR instruction and uploaded photos of the goods".
- xviii.** Thereafter, the FAG officers pushed the Bill of Entry to the PAG with the comments, "Importer appears to be related to the supplier, accordingly B/E forwarded to PAG".
- xix.** The PAG based on the detailed examination order and the AC Docks, report, assessed the Bill of Entry on the declared invoice value and allowed the Country-of-Origin Notification benefit to the goods.

**14.3.3** CB submitted that it may be seen that after failing to make a case of misdeclaration against the importer, the FAG found that there is no reason for holding the assessment. However, to avoid assessing the Bill of Entry, they made the remark that the importer and supplier appears to be related, in spite of a specific query on this aspect on 08.06.2021 and their specific reply denying any relationship vide reply dated 09.06.2021.

**14.3.4** The CB invited attention to Para 10 of the Show Cause Notice, wherein it is alleged that they had delayed filing of reply in system to the first Bill of Entry to avoid marking the Bill of Entry to docks for first check examination and to let the Bill of Entry purge. The CB submitted that as already stated above, the Group had merely asked to submit documents in Group, which they did and were awaiting further instructions from Group so that reply can be filed as per Group Instructions or to submit further documents, if any required by the group. But the Group officers never instructed them to file reply as they were examining the documents and to decide on further course of action (i.e. first check examination). It was only when the Group took their orders in file from higher authorities, that they called the CB and instructed them to file the reply so that first check can be given. It was, when they attempted to file reply, that the EDI system refused to take reply, as the Bill of Entry got purged in the meantime. Therefore, the allegation that they were waiting for the Bill of Entry to get purged is completely incorrect and not borne by facts.

**14.3.5** CB submitted that ultimately, even when the second Bill of Entry was examined under AC Docks Supervision for 100% examination at item level and it was asked to be checked as follows –

- i. To look for concealment
- ii. To look for misdeclaration of quantity and value
- iii. Verify goods as per invoice, packing list and bill of lading



- iv. Verify description
- v. Verify quantity
- vi. Examination to be done w.r.t targeted instructions and RMS/CCR instructions
- vii. To verify whether IGST has been correctly levied in terms of notification
- viii. Verify whether the goods are as per declaration only
- ix. Verify COO certificate in terms of Rules of Origin issued under PTA/FTA and relevant trade agreement to checked scrupulously for genuineness and applicability
- x. Verify benefit claimed is actually available
- xi. Verify debit of COO debits before out of charge
- xii. Verify value fairness w.r.t physical examination of goods
- xiii. Verify COO is Vietnam and upload examination pics in e-sanchit

**14.3.6** The CB submitted that when the whole of the assessment was shifted to the Docks DC and the Docks found that all parameters including the COO certificate, duty benefit and IGST rate are correct, there is absolutely no reason for the CB to fear to put the goods to first check examination as being imputed in the Show Cause notice. In fact, if the goods were first checked in the very instance, they would have been released months earlier to the satisfaction of customer. Therefore, the basic allegation that the reply was delayed by them to avoid first check examination is completely far-fetched and not borne by the examination report.

**14.3.7** The CB submitted that in Para 11 of the Show Cause Notice, it is alleged that the CB has filed the second Bill of Entry without informing the department. As stated above, the second bill number could not be generated without Section 48 permission of the Group AC and the Group AC was pleased to allow Section 48 permission so that the second Bill of Entry could be generated. This clearly shows that the department was not only aware of the second Bill of Entry and but also gave explicit approval so that the Bill of Entry could be generated. Therefore, the allegation is completely without basis. The so-called allegation that it was filed to bypass import policy and custom procedures does not bear out from the fact that, when the goods were subjected to 100% examination, not a single discrepancy was found therein. Therefore, there is no need for the CB to bypass the system as alleged, which is again far-fetched and without basis.

**14.3.8** The CB submitted that in the said Para, the allegation is made – “once they (CB) stated that supplier and manufacturer were the same, on the other hand they (CB) stated that the importer and supplier were not related”.

CB submitted that the allegation that the supplier and importer are related, whereas as clearly brought out above, it was specifically replied that

they are not related. What was stated was MANUFACTURER AND SUPPLIER are same (meaning thereby that the invoice is a manufacturer invoice and hence value is fair) and NOT that SUPPLIER AND IMPORTER are same. The CB cannot be blamed for the poor grasp of the English language by the officers of the FAG. While the word SUPPLIER is common in both sentences, the word MANUFACTURER is distinct from the word IMPORTER. It is not known as to why the show cause notice also fails to understand the difference in the word, MANUFACTURER from the word IMPORTER. Therefore, this allegation is only an alibi by the FAG officers to avoid assessing the Bill of Entry and to push it to the PAG. Unfortunately, the Group AC also fell into the trap laid down by the FAG officers. There is absolutely no truth in the allegation that the CB tried to misguide the department by hiding the fact of the relationship between importer and the supplier. Hence the allegations do not contain an iota of truth in them.

**14.3.9** CB submitted that the said SCN alleges contravention of provisions of Regulations 10 (d), 10 (e) and 10 (m) of the CBLR, 2018. At the outset, CB denied all the allegations made in the SCN and further submit that the allegations made are baseless and not sustainable, on both facts and law. The CB submitted that nothing that is alleged in the SCN is admitted or deemed to have been admitted unless specifically admitted.

**14.3.10 In Defence of violation of Regulation 10(d) of CBLR, 2018:** The CB submitted that the said article of charge has been levelled against Customs Broker firm on the following ground:

“As per the query raised by FAG officers in the system when the CHA filed Bill of Entry No. 3278931 dated 24.03.2021, the CB firm needed to give reply or submit documents as suggested within time period. However, it is observed that the said Bill of Entry No. 3278931 dated 24.03.2021 got purged automatically due to late reply by the importer/ CHA. Further, without informing the Customs Department, the CB filed another Bill of Entry No. 3738395 dated 28.04.2021 for the same consignment. However, in the instant case, during the import clearance, the Customs broker did not perform their duties properly by satisfying the queries of the department within time period. Moreover, it is the responsibility of the Customs Broker to advise their client / importer not to violate the Customs rules and regulations by filing 2 B/Es for the same consignment without getting prior permission of the department. However, in this matter, they have violated the rules of import policy as well as the customs and even they did not try to bring the facts to the notice of the Dy. / Asst. Commissioner of Customs. Hence, it appears that the Customs Broker firm has violated the provisions of the Regulation 10 (d) of the CBLR, 2018”.

IO submitted that the CB in his defence of violation of Regulation 10(d) of CBLR, 2018 submitted the following :-

**i.** CB submitted that as regards to the allegation of violation of Regulation 10(d) of CBLR 2018, there has been no violation of Regulation 10(d) of CBLR, 2018 in the instant case. The CB submitted that in order to establish the charge under Regulation 10(d) of CBLR, 2018, it is required to point out specific instances where the CB has failed to advise its clients to comply with the provisions of the Act or when the CB has failed to report any non-compliance of the provisions of the Act by its clients to the Customs authorities. The CB submitted that there is no evidence in the form of statement of the importer M/s. Novex Enterprises or any corroborative evidence to prove that M/s. Anusaya Air & Sea Clearing Agency, as the Customs Broker, have ever given wrong advice or that they did not try to bring the facts to the notice of the Dy./ Assistant Commissioner of Customs.

**ii.** The CB submitted that it is alleged in the said show cause notice that the said Bill of Entry No. 3278931 dated 24.03.2021 got purged automatically due to late reply by the importer/ CHA. The CB submitted that the said Bill of Entry got purged due to automated EDI system which purge the Bill of Entry automatically after 30 days and not due to late reply by the importer / Customs Broker. As It has already been submitted hereinabove, that the query raised by PAG was "submit documents in group" and the documents were submitted. Unless the documents are scrutinized and if required, further documents are not submitted, the CB cannot be expected to file the reply in system that "documents submitted in group". The CB submitted that they were waiting for go-ahead from group, which informed that the file was being processed by the Group AC and is with him only. it was only, when they were informed by the group to file reply in system so that first check can be given, that they attempted to file reply in system but the EDI system did not pick it up as the B/E got purged in meantime. Therefore, the purging of the B/E was not due to delay on their part but due to the fact that the group was processing the case.

**iii.** The CB submitted that as far as reply to queries are concerned, the queries and the replies are already reproduced in the Show Cause Notice. It may be seen that the replies are correct reflection of the import documents and the docks DC also verified the valuation and notification benefit to the group in spite of the numerous doubts by the FAG.

**iv.** The CB submitted that they have followed the procedure as per provisions of Section 48 of the Customs Act, 1962 and filed the second Bill of Entry No. 3738395 dated - 28.04.2021 as the first Bill of Entry No. 3278931 dated 24.03.2021 got purged as detailed in foregoing paras.



**V.** Provisions of Section 48 of the Customs Act, 1962 are re-produced for ready reference:

*"48. Procedure in case of goods not cleared, warehoused or transshipped within thirty days after unloading.*

*If any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transshipped within thirty days from the date of the unloading thereof at a customs station or within such further time as the proper officer may allow or if the title to any imported goods is relinquished, such goods may, after notice to the importer and with the permission of the proper officer, be sold by the person having the custody thereof:*

*PROVIDED that -*

*(a) Animals, perishable goods and hazardous goods, may, with the permission of the proper officer, be sold at any time;*

*(b) Arms and ammunition may be sold at such time and place and in such manner as the Central Government may direct".*

**vi.** The CB submitted that Bill of Entry No. 3738395 dated 28.04.2021 was generated in the EDI system only after following the procedure under Section 48 of the Customs Act, 1962. Therefore, not only was the second Bill of Entry brought to the notice to Group AC but also the Group AC gave specific approval for generation of the Bill of Entry. Moreover, the system has calculated charges for filing late Bill of Entry of Rs.3,35,000/- for late filing the Bill of Entry, which has been paid by the importer M/s. Novex Enterprises (copy enclosed). Hence, there was no suppression of fact or violation rules of import policy as alleged in the said Show Cause Notice. Moreover, no specific sections of the Act, rules/regulation / notification / public notice/ instructions etc. has been quoted in the said show cause notice.

**vii.** The CB submitted that it is alleged in the said show cause notice that without informing the Customs Department, the CB filed another Bill of Entry No. 3738395 dated 28.04.2021 for the same consignment, however, in the instant case, during the import clearance, the Customs Broker did not perform their duties properly by satisfying the queries of the department within time period. CB submitted that they had filed an Advance Bill of Entry No. 3278931 dated 24.03.2021 for the shipment of M/s Novex Enterprises, which went for faceless clearance. A query was raised on the Bill of Entry stating that "RVC Percentage was mismatched in the COO under rule 6 and clarification regarding



BIS Certificate was needed.” The Bill of Entry was pushed to JNCH PAG group for query reply management.

**viii.** The CB submitted that these events happened in March April 2021 when 2<sup>nd</sup> wave of Covid19 was at its peak and customs was also working with depleted strength.

**ix.** The CB further submitted that during the Covid-19 period, Ministry of Home Affairs issued order no. 40-3/2020-DM-I(A) Dated 17<sup>th</sup> May, 2020 for along with the guidelines on the measures to be taken by Ministries/ Departments of Government of India, State/ UT Governments and State/ UT Authorities for containment of COVID-19 in the country up to 31st May, 2020. As per Ministry of Home Affairs (MHA) Order No. 40-3/2020-DM-I (A) dated 17th May, 2020 the following activities were continued to remain prohibited throughout the country:

**a.** All domestic and international air travel of passengers, except for domestic medical services, domestic air ambulance and for security purposes or purposes as permitted by MHA.

**b.** Metro rail services

**x.** The CB enclosed copy of the Order No. 40-3/2020-DM-I(A) dated 17th May, 2020.

**xi.** The CB submitted that the Ministry of Railways issued a letter dated 28.02.2022 (copy enclosed), enclosing copies of the letters dated 25.02.2022 from the Ministry of Home Affairs and letter dated 18.02.2022 from the Hon’ble Secretary, Ministry of Health and Family Welfare. At para 6(I)(vii) of the letter dated 18.02.2022 from the Hon’ble Secretary, Ministry of Health and Family Welfare were issued instruction regarding restoration of various transportation modes, which is re-produced as under :

“There shall be no restrictions on inter-state and intra-state movement including Transportation of essential goods”.

CB submitted that the aforesaid letter was issued on 25.02.2022. Hence, there were various COVID-19 restrictions on transportation prior to the issuance of the letter (i.e. before 25.02.2022) i.e. from the period 17.05.2020 to 18.02.2022.

**xii.** The CB further submitted that Shri Sunil M Kolge of the CB Firm, who was looking after Nhava Sheva (JNCH) Customs clearance passed away on 3<sup>rd</sup> April on account of Covid 19 complications (Copy of Death Certificate attached) and the same was intimated to Customs Broker Section, New Customs House.

Unfortunately, the other working Partner of the CB firm, Mr. Jaywant V Sawant and JNCH staff Mr. Mahendra Walunj (copies of their Test Report attached for ready reference) were also tested Covid Positive and quarantined during the period. Hence the reply got delayed.

**xiii.** The CB enclosed copy of a letter dated 23.06.2021 addressed to the Commissioner of Customs (NS V), Group 5A, Nhava Sheva (JNCH) wherein they have submitted the query reply and intimated the Customs Department regarding filing the second Bill of Entry no. 3738395 dated 28.04.2021 with the reasons. It is pertinent to mention that the out of charge was given to second Bill of Entry No. 3738395 28.04.2021 on 05.10.2021 and they had informed the Customs Department vide letter dated 23.06.2021 i.e. prior to obtaining out of charge. The goods were correctly declared by them and the Customs authorities at no point of time have alleged any mis-declaration / misuse of Notification. In fact, the case was not adjudicated by the Appraising Group 5A. Hence there is no misconduct of any kind by Customs Broker firm. CB submitted that they have not violated the provisions of Regulation 10(d) of the CBLR, 2018.

**14.3.11 In Defence of violation of Regulation 10(e) of CBLR,**

**2018:** The CB submitted that the said article of charge has been levelled against Customs Broker firm on the following grounds:

“In reply to query dated 05.06.2021 raised by FAG officers in respect to Bill of Entry No. 3738395 dated 28.04.2021, as per the directions of FAG officers the importer/ CHA needed to upload the value as per contemporaneous import data or to choose warehousing in terms of Section 49 of the Customs Act, 1962. However, the importer/ CHA replied that the supplier and the manufacturer were the same. Further, when they were directed to upload SVB order as per Customs Valuation Rules, 2007 if the supplier & importer were related party, the importer / CHA submitted that the importer M/s. Novex Enterprises and the supplier M/s. Maxell Asia Ltd. are not related. Once they stated that the supplier and the manufacturer were the same, on the other hand they stated that the importer and the supplier were not related. From the submissions, it is observed the CB firm, who was handling the import clearance of this consignment, tried to misguide the department by hiding the fact about the actual relationship between the importer and the supplier. It is the obligation of the Customs broker to exercise due diligence to ascertain the correctness of the information relating to importer and supplier in terms of Rule 3 of the Customs Valuation Rules, 2007 during clearance of the import consignment. However, in the instant case, it appears that the Customs

Broker has contravened the provisions of the Regulation 10 (e) of the CBLR, 2018".

IO submitted that the CB in his defence of violation of Regulation 10(e) of CBLR, 2018 submitted the following :-

- i.** The CB submitted that it is alleged that the regulation 10(e) of CBLR 2018 is violated since in reply to query dated 05.06.2021 of FAG officers to upload value of contemporary imports or choose warehousing under Section 49, the CB stated that manufacturer and supplier are same and when further asked to upload SVB order, the CB stated that supplier and importer are not related.
- ii.** The CB clarified that Para 14 of the SCN is incorrect. The FAG officers never asked the CB to upload contemporary values since the importer/CB cannot have contemporary values, which would be available in the NIDB, that is available to FAG officers. What the query actually said was that since the contemporary values is higher, either accept loading or store goods under Section 49 of Customs Act, 1962.
- iii.** The CB submitted that as seen from Para 14 of the SCN, the allegation is that the CB hide the fact of relationship between the importer and the supplier. CB submitted that the CB had never stated that the importer and supplier are related. It was only stated that the supplier and manufacturer are same, meaning thereby that the invoice is a manufacturer invoice and merits acceptance for valuation purposes.
- iv.** CB further submitted that besides, what was stated is Supplier and Manufacturer is same and not that Supplier and Importer are same. It is simple English Language which the FAG officers failed to grasp. In fact, when the FAG officers once again raised query on 08.06.2022 to upload SVB Order, a categorical reply was given on 09.06.2022 that Importer and Supplier are not related.
- v.** The CB enclosed copies of the email communication with the importer and Customs Broker firm. It is pertinent to mention that they had replied to the query as per the reply to the query forwarded by the importer. The said Show Cause Notice issued to the Customs Broker does not point out any such information imparted to his client. Therefore, the question of exercising due diligence to ascertain the correctness of any information imparted to the importer does not arise at all.
- vi.** CB submitted that, when it was categorically stated that importer and supplier are not related and the relationship was also examined and verified by the Docks AC as per specific query of the learned FAG officers reproduced in

Para 7 hereinabove, hence the allegation that the CB tried to hide the relationship is completely false and incorrect. The goods were correctly declared by them and the Customs authorities at no point of time have alleged any mis-declaration / misuse of Notification. In fact, the case was not adjudicated by the Appraising Group 5A. Hence there is no mis-conduct of any kind by their Customs Broker firm.

**vii.** The CB relied upon the decision in the case of Kunal Travels (Cargo) Vs. CC (I & G), IGI AIRPORT, 2017 (354) E.L.T. 447 (Del.).

**viii.** The Customs Broker submitted that no mala-fide intention is attributable in as much as the no pecuniary gain occurred to appellant in the instant case.

**ix.** For the above proposition following case law is relied upon by the CB:

(i) Dex Logistics P. Ltd. Vs. Commissioner of Customs, New Delhi reported in 2019 (369) E.L.T. 1168 (Tri. Del.).

CB submitted that the allegation of violation of Regulation 10(e) of Customs Broker Licensing Regulations, 2018 is incorrect and cannot be sustained.

**14.3.12 In Defence of violation of Regulation 10(m) of CBLR, 2018:** The CB submitted that the said article of charge has been levelled against their Customs Broker firm on the following grounds:

“One of the obligations of the Customs Broker is to perform their duties with speed and efficiency and without any delay. However, in the instant case, the CB firm has failed to submit reply on queries raised by FAG officers in the system within time period with regard to Bill of Entry No. 3278931 dated 24.03.2021. They have replied late in the system and due to lack of efficiency the subject Bill of Entry got purged in the system automatically. Hence, it appears that the Customs Broker who has the knowledge of the Customs Act, 1962 as well as CBLR, 2018, might be aware the discrepancies found in the declaration of the goods and hence knowingly avoided sending replied on the subject queries. Thus it appears that the CB has contravened the provisions of Regulation 10 (m) of the CBLR, 2018”.

IO submitted that the CB in his defence of violation of Regulation 10(m) of CBLR, 2018 submitted the following :-

**i.** The CB submitted that it is alleged in the said show cause notice that the said Bill of Entry No. 3278931 dated 24.03.2021 got purged automatically due to late reply by the importer/ CHA. The CB submitted that the said Bill of Entry got purged due to automated EDI system which purge the Bill of Entry



automatically after 30 days and not due to late reply by the importer / Customs Broker. As it has already been submitted hereinabove, that the query raised by PAG was "submit documents in group" and the documents were submitted. Unless the documents are scrutinized and if required, further documents are not submitted, the CB cannot be expected to file the reply in system that "documents submitted in group". The CB submitted that they were waiting for go-ahead from group, which informed that the file was being processed by the Group AC and is with him only. It was only, when they were informed by the group to file reply in system so that first check can be given, that they attempted to file reply in system but the EDI system did not pick it up as the B/E got purged in meantime. Therefore, the purging of the B/E was not due to delay on their part but due to the fact that the group was processing the case.

ii. As far as reply to queries are concerned, the queries and the replies are already reproduced in the Show Cause Notice. It may be seen that the replies are correct reflection of the import documents and the docks DC also verified the valuation and notification benefit to the group in spite of the numerous doubts by the FAG.

iii. The CB submitted that they have followed the procedure as per provisions of Section 48 of the Customs Act, 1962 and filed the second Bill of Entry 3738395 dated - 28.04.2021 as the first Bill of Entry No. 3278931 dated 24.03.2021 got purged as detailed in foregoing paras.

iv. CB submitted that it is pertinent to mention that Bill of Entry No. 3738395 dated 28.04.2021 was generated in the EDI system only after following the procedure under Section 48 of the Customs Act, 1962. Therefore, not only was the second Bill of Entry brought to the notice to Group AC but also the Group AC gave specific approval for generation of the Bill of Entry. Moreover, the system has calculated charges for filing late Bill of Entry of Rs.3,35,000/- for late filing the Bill of Entry, which has been paid by the importer M/s. Novex Enterprises (copy enclosed). Hence, there was no suppression of fact or violation *rules of import policy* as alleged in the said Show Cause Notice. Moreover, no specific sections of the Act, rules/ regulation / notification / public notice/ instructions etc. has been quoted in the said show cause notice.

a. The first allegation relates to delays in filing replies to queries raised by FAG officers. It may be seen that the first Bill of Entry was pushed to PAG, who raised the first query to submit documents to group. The CB submitted the documents to group and was waiting for go-ahead after due scrutiny by group so that he can file reply, "*documents submitted in group*". There is nothing in this query to hide from the department or keep delaying. It was the group which created the file and kept processing the file for so many days

that the delay occurred. It was only when the group Appraiser called the CB to tell him file reply in system so that first check can be given that it came to knowledge that the Bill of Entry got purged. Therefore, the delay is not on part of CB but due to processing in the Group File. It bears mention that it was peak covid19 second wave period, when the group officers were also working at reduced strength.

**b.** As far as giving replies to queries is concerned, it may be seen from the second Bill of Entry that when first query was raised by FAG on 28.04.2021, it was replied on 04.06.2021, when second query was raised by FAG on 05.06.2021, it was replied on 08.06.2021 and when third query was raised by FAG on 08.06.2021, it was replied on 09.06.2021, and thereafter the FAG pushed the Bill of Entry to PAG. Therefore, not only the FAG officers in default of CBIC circular that mandated not to raise multiple piecemeal queries but all the replies were given within 3-4 days. Therefore, the charge that the clearance was not done with utmost speed and efficiency is not correct.

**c.** As far as the CB knowingly avoiding replies due to discrepancies in the declaration of goods, as may be seen from the detailed examination order reproduced in Para 7 and the AC docks examination report, who did 100% examination at item level and not only approved classification and notification benefit but also found value to be fair and that the goods were as per description and quantity. Therefore, the allegation that there was any kind of discrepancy either in the goods or the declaration is not borne by facts. It is a complete lie.

**v.** The CB submitted that the allegation that the CB has not acted with utmost efficiency and led to delay in clearance is false. The delay in clearance was due to repeated unwarranted queries by the FAG officers, due to delay in processing of the documents in the Assessment Group where the file was lying with the Group AC and due to Covid19 situation prevailing in the country, wherein the partner, who was handling Nhava Sheva imports also passed away due to Covid-19 on 3<sup>rd</sup> April 2021 (death certificate enclosed).

**vi.** The CB submitted that there is no corroborative evidence on any of the charges levelled against them (M/s Anusaya Air & Sea Clearing Agency).

**vii.** IO submitted that CB in his defence further submitted their written submissions dated 08.06.2023, wherein, CB submitted the following:-

**A.** IO submitted that CB in his defence submitted that a Show Cause Notice No. 25/2022 dated 11.11.2022 has been issued to the CB, alleging that the CB has delayed filing reply to query resulting in the Bill of Entry getting purged in system and thereafter filed fresh Bill of Entry to evade customs duty and/or violation of import policy thereby violating Regulation 10(d), 10(e) and

10(m) of the CBLR 2018.

- a. CB submitted that a detailed reply has already been submitted on 11.01.2023, wherein the circumstances by which two Bills of Entry for the same consignment got filed, the numerous queries raised and replies given thereto, and the submissions with regard to non-violation of Regulation 10(d), 10(e) and 10(m) of the CBLR 2018, were explained.
- b. CB submitted that as already stated, the reason for delay in filing reply on ICEGATE to the last query was that the CB was informed that the documents were being studied by the Group AC and hence to await till they direct to file reply. Only when the AC went through the documents and then decided to give first check examination, that the CB attempted to file reply but by then the first B/E got purged. Thereafter, the CB took the AC's permission to file fresh Bill of Entry, as without his approval in system under Section 48, no fresh Bill of Entry can be filed. Therefore, the AC was well aware of the nuances of the case.
- c. CB further submitted that as far as the allegation, that the CB was avoiding since the goods were in violation of customs/exim policy, it is also found to be wrong since the detailed examination was carried out under DC docks supervision, who found all parameters as declared. Not a single discrepancy was found in the goods.
- d. CB submitted that another allegation is that the CB sought to mislead the assessment officers that the importer and supplier were related. As already explained in the letter, what was replied in ICEGATE is that the "supplier" and "manufacturer" are one and the same, imputing that the invoice is manufacturer's invoice whereas the officers mistook it as if "supplier" and "importer" are the same. The CB cannot be blamed for their lack of understanding of the English language.
- e. CB submitted that as far as violation of Regulation 10(d) is concerned, it is explained above that the second Bill of Entry was filed only after due approval by Group AC hence the allegation is false. Second allegation that there is attempt to hide violation of import policy is already found to be false by the 100% examination by the Docks DC. Besides, where there was some delay in reply to queries, it happened during peak covid19 period and due to the demise of the partner, who was looking after Nava Sheva imports. Even the other partner was infected by Covid19 but survived as per the evidences submitted with the earlier letter. Therefore, the allegation of violation of Regulation 10(d) is also without basis.
- f. CB submitted that as far as violation of Regulation 10(e) is concerned, this allegation has been made in the light of the valuation of the imported goods and that the importer and supplier were related. As



may be seen from the replies to queries, there was no claim or declaration by the CB that the importer and supplier were related. The CB had sought to explain that the supplier is the manufacturer and therefore the invoice being manufacturer invoice has to be accepted. Secondly, even after 100% examination by docks AC, no discrepancy was found that the declared value was also finally accepted in assessment indicating that there is no valuation issue. In fact, the item imported being Maxell Brand of Batteries are a regular item of import which could have been checked from the NIDB by the FAG officers. Therefore, the allegation of violation of Regulation 10(e) is also without basis.

- g.** CB also submitted that as far as violation of Regulation 10(m) is concerned, it is alleged that the CB replied late resulting in the Bill of Entry getting purged from the system. It may be seen from the facts that the replies were submitted within 2-4 days of the raising of them in both the Bills of Entry. In respect of the earlier Bill of Entry, the documents were submitted to group, which made the file and put up to AC. The reply was not submitted till such time, the group gave the go-ahead to submit reply as the AC was studying the file. Therefore, the blame cannot be put at the doors of the CB. Even after the first B/E got purged, the second one was filed only after AC approval since the system does not take the checklist without AC approval. Therefore, the allegation of violation of Regulation 10(m) is also without basis.
- h.** CB submitted that, in view of the above and the reply dated 11.01.2023, it is requested that the proceedings may be recommended to be dropped.

#### **14.4. COMMENTS OF THE INQUIRY OFFICER:-**

**14.4.1** IO submitted that he had gone through the Show Cause Notice No. 51/2019-20 dated 29.06.2020 vide F.No. S/8-57/2018-19 CBS. He had gone through the records of the Personal Hearings and Defence submissions made during the personal hearings & also during the Inquiry Proceedings. He had also gone through the alleged Articles of Charges or contraventions mentioned in Show Cause Notice as well as legal provisions reflected in CBLR, 2018.

**14.4.2** IO submitted that he had already taken on record the submissions made by the CB. He observe that in this case the Noticee has been charged with violation of Regulation 10 (d), 10 (e) and 10 (m) of CBLR,2018 respectively.

**14.4.3 Article of Charge-I :- Violation of Regulation 10 (d) of CBLR, 2018:**  
IO submitted that the charge on the CB is that Whether the Customs Broker has violated Regulation 10 (d) of the CBLR, 2018 due to non – satisfactory reply



in the due time to the queries of the department because of the B/E was purged in the system and advising the client to file 2 Bills of Entry for the same consignment without getting prior permission of the department?

IO submitted in his report that he found that there was COVID - 19 pandemic situations at the time of the above period. Shri Sunil M Kolge of the CB firm passed away on 03.04.2021 and the same was intimated by the CB to the Customs Broker Section. Further other working partner of the firm were also tested COVID - 19 Positive and quarantined during the period. IO further submitted that there was no unreasonable delay at the CB's part and there was no discrepancy found in the import consignment.

IO submitted in his report that he found that the two Bills of Entry filed by the Customs Broker was not simultaneous. When the first Bill of Entry is purged in the system, there remains no other option for the CB / Importer to clear the goods but to file another Bill of Entry for the goods. Late filing charges for the same are paid by the importer, if applicable. In the instant case, the date of the first Bill of Entry was 24.03.2021 and it was purged in the system after 30 days i.e. on 24.04.2021, but the importer / CB filed the another Bill of Entry on 28.04.2021 after purging the first Bill of Entry, for the same he has paid an amount of Rs. 3,35,000/- as late filing charges. There was no other live Bill of Entry for the same goods when they filed another Bill of Entry. IO submitted that he found that there is no violation of any legal provision on record under which filing of second Bill of Entry for the goods is not allowed. Further, there is no violation of any procedure/rule/ regulation on record, which was not followed by the CB, while filing the second Bill of Entry. Further, as the second Bill of Entry was filed after 30 days of the goods landed, the Bill of Entry was filed under Section 48 of the Customs Act, 1962 and Bill of Entry under Section 48 of the Customs Act, 1962 can be filed only after the approval of the DC / AC in the EDI System in the respective role. Thus details of the filing of the second Bill of Entry was in the knowledge of the department.

IO submitted that he found no evidence on record that the Customs Broker has violated the Regulation 10(d) of the CBLR, 2018 as mentioned in the SCN. Therefore, IO held that the CB has not violated the Regulation 10(d) of the CBLR, 2018.

#### **14.4.4 Article of Charge-II :- Violation of Regulation 10 (e) of CBLR, 2018:**

IO submitted that the charge on the CB is that whether the Customs Broker has violated Regulation 10 (e) of the CBLR, 2018 due to non - satisfactory reply of the valuation query and hiding the fact of the buyer - seller relation in the bill of entry.

IO submitted that he found that the reply dated 08.06.2021 by the importer regarding value was "Dear Sir, our supplier and manufacturer are the same and they (Manufacturer) stated that the same item has been imported by other importers in other ports also. So please check the data of other importers in Maxell Brand. Moreover, Maxell is a Japanese Group, never under invoice for any shipment. As well as we have uploaded Proforma Invoice and Previous Bill of entry in E-Sanchit for your reference."

IO submitted in his report that the Importer / CHA submitted that the supplier and manufacturer are same. The import item under the subject Bill of Entry is imported by the other importers also. They further requested to check the data in Maxell brand. The Bill of Entry was further assessed on the first check basis where the value of the import consignment was accepted by the department. Further CB submitted the Proforma Invoice and Previous Bill of Entry in e – sanchit for reference, it makes a satisfactory reply to the query of the assessing officer. Further, the Custom Broker has submitted that the supplier and manufacture in the Bill of Entry are same. IO submitted that there is no evidence on record that CB had submitted that the supplier and importer (Buyer and seller) are related. Case of the related supplier arises only when buyers and sellers are related, having same supplier and manufacture in the Bill of entry makes no impact on the assessment of the Bill of Entry.

IO submitted that he found no evidence on record that the Customs Broker has violated the Regulation 10(e) of the CBLR, 2018 as mentioned in the SCN. Therefore, IO held that the CB has not violated the Regulation 10(e) of the CBLR, 2018.

**14.4.5 Article of Charge-III :- Violation of Regulation 10 (m) of CBLR, 2018:** IO submitted that the charge on the CB is that whether the Customs Broker has violated Regulation 10 (m) of the CBLR, 2018 due to late replying to the query in the bill of entry and because of the first B/E was purged in the system.

IO submitted in his report that he found that Shri Sunil M Kolge of the CB firm passed away on 03.04.2021 and the same was intimated by the CB to the Customs Broker Section. Further other working partner of the firm were also tested COVID – 19 Positive and quarantined during the period. Considering the exceptional emergency situation of COVID-19 Pandemic, IO found that there was no unreasonable delay at their part. It is pertinent to note here that there was no discrepancy/mis-declaration found in the import consignment during 100% Examination under first check.

IO submitted that he found no evidence on record that the Customs Broker has violated the Regulation 10(m) of the CBLR, 2018 as mentioned in the SCN. Therefore, IO held that the CB has not violated the Regulation 10(m) of the CBLR, 2018.

**14.4.6** IO submitted that in view of above, he found that the charges levelled against the CB for violation of Regulations 10 (d), 10(e) and 10(m) of the CBLR, 2018 are not sustainable.

**15. PERSONAL HEARING AND RECORDS OF PERSONAL HEARING :-**

A personal hearing was granted to Customs Broker on 01.11.2023. Shri Jaywant V. Sawant, partner of the CB firm and Shri Sanjay Singhal, Advocate appeared for personal hearing and represented the CB. Wherein, Shri Sanjay Singhal reiterated the contents of their reply dated 23.10.2023 and his earlier submission to the Inquiry Officer. Jaywant V. Sawant stated that immediately after filing of first Bill of Entry, his partner of the firm died and he was also Covid positive during that time. Infact all the documents were also submitted to PAG in response to first Bill of Entry and as such there was no malafide from their side. They requested to drop the proceedings.

**16. DISCUSSION AND FINDINGS:-**

I have gone through the case, material evidence on record, the Show Cause Notice dated 11.11.2022, and Inquiry Report dated 10.08.2023, submissions of the said CB.

**16.1** I observe that the charges against the said CB is of violation of regulation 10(d), 10(e) and 10(m) of CBLR, 2018 made vide Show Cause Notice No. 25/2022-23 dated 11.11.2022 . The Inquiry Officer vide inquiry report dated 10.08.2023 held the charges of violation of regulations 10(d), 10(e) and 10(m) of CBLR, 2018 as " Not Proved".

**16.2** 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.

**16.2.1 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;"*

IO in his report submitted that there was COVID-19 pandemic situations at the time of the said period. Shri Sunil M Kolge of the CB firm passed away on 03.04.2021 and the same was intimated by the CB to the Customs Broker Section. Further other working partner of the firm were also tested COVID - 19 Positive and quarantined during the period. IO further submitted that there was



no unreasonable delay at the CB's part and there was no discrepancy found in the import consignment. In this regard I agree to the IO's findings.

IO also submitted that the two Bills of Entry filed by the Customs Broker was not simultaneous. When the first Bill of Entry is purged in the system, there remains no other option for the CB / Importer to clear the goods but to file another Bill of Entry for the goods. Late filing charges for the same are paid by the importer, if applicable. In the instant case, the date of the first Bill of Entry was 24.03.2021 and it was purged in the system after 30 days i.e. on 24.04.2021, but the importer / CB filed the another Bill of Entry on 28.04.2021 after purging the first Bill of Entry, for the same he has paid an amount of Rs. 3,35,000/- as late filing charges. There was no other live Bill of Entry for the same goods when they filed another Bill of Entry. IO further submitted that there is no violation of any legal provision on record under which filing of second Bill of Entry for the goods is not allowed. Further, there is no violation of any procedure/rule/ regulation on record, which was not followed by the CB, while filing the second Bill of Entry. Further, as the second Bill of Entry was filed after 30 days of the goods landed, the Bill of Entry was filed under Section 48 of the Customs Act, 1962 and Bill of Entry under Section 48 of the Customs Act, 1962 can be filed only after the approval of the DC / AC in the EDI System in the respective role. Thus details of the filing of the second Bill of Entry was in the knowledge of the department. In this regard I agree to the IO's findings. Therefore, I find that CB has not violated the regulation 10(d) of the CBLR, 2018.

From the above facts and circumstances, I am of the considered view that there is no substantial proof/ records to establish that CB has contravened provisions of Regulation 10(d) of the CBLR, 2018. Therefore, I hold that the CB has not violated the provisions of Regulation 10(d) of the CBLR, 2018.

#### **16.2.2 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;"*

IO submitted in his report that the importer / CHA submitted that the supplier and manufacturer are same. The import item under the subject Bill of Entry is imported by the other importers also. They further requested to check the data in Maxell brand. The Bill of Entry was further assessed on the first check basis where the value of the import consignment was accepted by the department. Further CB submitted the Proforma Invoice and Previous Bill of Entry in e – sanchit for reference, it makes a satisfactory reply to the query of

the Assessing officer. Further, the Custom Broker has submitted that the supplier and manufacturer in the Bill of Entry are same. IO submitted that there is no evidence on record that CB had submitted that the supplier and importer (Buyer and seller) are related. Case of the related supplier arises only when buyers and sellers are related, having same supplier and manufacturer in the Bill of Entry makes no impact on the assessment of the Bill of Entry. In this regard, I agree to the IO's findings. Therefore, I find that CB has not violated the regulation 10(e) of the CBLR, 2018.

From the above facts and circumstances, I am of the considered view that there is no substantial proof/ records to establish that CB has contravened provisions of Regulation 10(e) of the CBLR, 2018. Therefore, I hold that the CB has not violated the provisions of Regulation 10(e) of the CBLR, 2018.

**16.2.3 With regard to violation of Regulation 10(m) of CBLR, 2018:**

I observe that the said regulation 10(m) of CBLR, 2018 reads as :-

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

IO submitted in his report that Shri Sunil M Kolge of the CB firm passed away on 03.04.2021 and the same was intimated by the CB to the Customs Broker Section. Further other working partner of the firm were also tested COVID -19 Positive and quarantined during the period. Considering the exceptional emergency situation of COVID-19 Pandemic, IO submitted that there was no unreasonable delay at their part. It is pertinent to note that there was no discrepancy/mis-declaration found in the import consignment during 100% examination under first check. In this regard, I agree to the IO's findings. Therefore, I find that CB has not violated the regulation 10(e) of the CBLR, 2018.

From the above facts and circumstances, I am of the considered view that there is no substantial proof/ records to establish that CB has contravened provisions of Regulation 10(m) of the CBLR, 2018. Therefore, I hold that the CB has not violated the provisions of Regulation 10(m) of the CBLR, 2018.

**17.** I hold that none of the charges levelled against the CB are sustainable. In view of the facts as discussed above, I find that the charged CB fulfilled his duties and no evidences were produced by the investigating agency against CB to prove the charges of violation of regulations of the CBLR, 2018. So, I agree with the finding of the Inquiry Officer and conclude that there is nothing substantial to prove that CB has violated regulations of CBLR, 2018. Accordingly, I pass the following order.

**ORDER**

**18.** I, Principal Commissioner of Customs (General), in exercise of the power conferred upon me under Regulation 17(7) of the CBLR, 2018, hereby drop the charges levelled against Customs Broker M/s. Anusaya Air & Sea Clearing Agency (11/821) under Regulation 18 of the CBLR, 2018.

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

10/11/2023  
(SUNIL JAIN)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)  
MUMBAI ZONE-I

To,

M/s Anusaya Air & Sea Clearing Agency  
(CB No. 11/821), (PAN No. AAFFA7231E)

EM683081465IN

5/B, Roy Apartment, Opp Sahar Air Cargo Complex,  
Sahar Road, Andheri (East), Mumbai-400099

Copy to,

1. The Pr. Chief Commissioner/Chief Commissioner of Customs, Mumbai I, II, III Zone.
2. All Pr. Commissioners/Commissioners of Customs, Mumbai I, II, III Zone
3. Commissioner of Customs, NS-V, JNCH, Mumbai-II
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)