



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/74/2022 CBS

आदेश दिनांक/Date of Order: 30.12.2022

CAO No. 64/CAC/PCC(G)/SJ/CBS Adj

जारी दिनांक/ Date of issue:02.01.2023

संख्या:

DIN: 20230177000000621746

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 उक्त 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 माँगो गराओ के 7.5% के भुगतान पर सीमाशुल्क अधिनियम, 1962

की धारा 129A(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, 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 कि इस आदेश के अमल में आते ही, न्यायनिर्णयन अधिकारी का अधिकार क्षेत्र समाप्त होता है और सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवा कर 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 तदोत्प्रांत 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, 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 अपीलकी गई है, में शुल्क एवं मांगे गए ब्याज व लगाए गए जुर्माने की राशि रु. पाँच लाख या इससे कम हो तो रु. 1000/-, (ii) यदि यह राशि रु. पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न हो तो रु. 5000/- एवं (iii) यदि यह राशि रु. पचास लाख से अधिक हो तो रु. 10000/- के शुल्क का भुगतान क्रॉसबैंक ड्राफ्ट के माध्यम से अधिकरण की खंडपीठ के सहायक पंजीयक के पक्ष में जिस स्थान पर खंडपीठ स्थित है, के किसी भी राष्ट्रीयकृत 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. अपीलकी 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 Husain Kasam Mukadam & Sons, having office address at 89, P. D'mello Road, 1st Floor, R.N.12 Shree Krishna Bhavan, Mumbai-400-009 [hereinafter referred to as the Customs Broker/CB], bearing PAN based Registration No. AABFH3370HCH001 are holding a regular Custom Broker License No 11/194 issued by Commissioner of Customs, Mumbai under Regulation 10(1) of the Customs House Agents Licensing Regulations (CHALR), 1984 [Now regulation 7(2) of Customs Broker Licensing Regulations (CBLR, 2018)] and as such they are bound by the regulation and condition stipulated therein.

2. An offence report dated 08.03.2022 was received from SIIB(I), JNCH stating that Pune Customs initiated an enquiry against Importer M/s K K Traders (IEC No. AXAPK3372Q) in respect of goods imported vide BE No 7580019 dated 21.02.2022, stuffed in container No. WHLU5762951. The said container was intercepted by Pune Custom (Preventive) after out of charge and gated out from CFS (M/s Take Care Logistics) and examined under Panchnama on 25/26.02.2022. On examination Cashew Kernels (Broken) were found concealed behind the declared cargo i.e. Raw Cashew Nuts in shell.

2.1 The Examination order in the subject BE was 'open and examine (100% at item level) and look for concealment' and as per the examination report entered by Docks Officer in system, all packages were opened and examined in presence of CHA and the goods were found as declared. However, after out of charge, the same container containing the subject goods was intercepted and examined by Pune Customs (Preventive) and goods were found mis-declared as mentioned in para 2 above. The matter is under investigation by Pune Customs in collaboration with SIIB (I) JNCH. Another container of same importer involving similar mis-declaration was detained by SIIB (I), JNCH in the same CFS and is under investigation by SIIB (I), JNCH.

2.2 The import of cashew kernel broken/whole into India is prohibited if the CIF value of the same is below Rs. 680/720 per kg respectively. Therefore, it was evident that this is the case of mis-declaration and smuggling of cashew nuts in terms of section 2(39) of Customs Act 1962. The importer, M/s K K Traders (IEC No. AXAPK3372Q) was in connivance with their CB, M/s Husain Kasam Mukadam & Sons (11/194) and Docks officer to evade the legitimate Customs Duty and for violation of applicable regulations.

2.3 During the course of investigation, statements of Shri Krishnat Shankar Kadam -Proprietor of M/s K. K. Traders (Importer), Shri Dhanaji Bhosle-Import Executive of M/s Shri Ninai Shipping Agency, Shri Vipin Singh alias Suraj Singh-Import Clearing Agent and Shri Abdul Rehman Dalvi of CB M/s Husain Kasam Mukadam & Sons were recorded under Section 108 of the Customs Act, 1962.

2.4 Shri Krishnat Shankar Kadam-Proprietor of M/s K. K. Traders (Importer), in his statement dated 26.02.2022 inter alia stated that he is engaged in the import business of Cashew Nuts and Ginger; that BE no.7580019 dated 21.02.2022 was filed by CB, M/s Husain Kasam Mukadam & Sons but as far as his knowledge, Shri Chetan Yadav from M/s Shri Ninai Shipping Agency was his CHA and he was not aware of the name of CB M/s Husain Kasam Mukadam & Sons; that Mr. Chetan Yadav helped him as unofficial partner for Customs Clearance and documentation etc.; that he mis-declared the goods to evade higher customs duty, the item is actually called as Baby Bits-A(BB-A); that Mr. Manish Ronaldo- an official of Shri Chetan Yadav prepared all the documents.

2.5 Search of premises of M/s Shri Ninai Shipping Agency at shop No, 151, Agarwal Trade Centre, Plot No. 62, Sector-11, CBD Belapur Navi Mumbai - 400614 was conducted under Panchnama dated 28.02.2022 and during the search copy of the subject B/E No. 7580019 dated 21.02.2022 along with three other documents was recovered and the statement of Shri Dhanaji Bhosale of M/s Shri Ninai Shipping Agency was recorded on 28.02.2022 wherein he inter alia stated that he is import executive in M/s Shri Ninai Shipping Agency and his cousin brother Shri Sambhaji Bhosle is proprietor of this firm; that three documents for clearance of raw cashew nuts found during the search of premises of M/s Shri Ninai Shipping Agency were given by Shri Chetan Yadav, and that out of three documents, two were related to M/s K. K Traders and one to M/s Shanaya Blossoms; that Shri Chetan Yadav is his friend and they are from same district; that Shri Chetan Yadav instructed to generate the Tax Invoice in the name of S. S. Logistics.

2.6 Shri Vipin Singh alias Shri Vipin Singh in his statement dated 02.03.2022 inter alia stated that BE No. 7580019 dated 21.02.2022 and related documents were given to him by Shri Chetan Yadav and he was going to CFS Take Care Logistics for delivery process and at that point met Mr. Mustaqeem Siddiqui. He entered the CFS without one-day pass and started the work of customs clearance of goods related to BE no. 7580019 dated 21.02.2022; that he had been paid Rs. 1000/- for delivery of the

goods, then he took delivery of Container No. WHLU5762951 of M/s K. K. Traders; that he did not know the owner of the goods.

2.7 Shri Abdul Rehman Dalvi, Authorized Representative of CB M/s Husain Kasam Mukadam & Sons in his statement dated 19.04.2022 interalia stated that BE no. 7580019 dt. 21.02.2022 was filed by their CB M/s Husain Kasam Mukadam & Sons (11/194); that the said party was introduced to them by a broker Shri Sambhaji Bhosle of M/s Shri Ninai Shipping Agency who actively works for M/s Husain Kasam Mukadam & Sons (11/194); that KYC verification was done by them and where Shri Abdul Rehman Dalvi & Shri Sambhaji Bhosle had personally visited the importer premises on 13.02.2022 at Satara, Maharashtra-415002; that after KYC they agreed to undertake work of M/s K K traders; that the KYC documents were received on 21.02.2022 by M/s Shri Ninai Shipping Agency; that Shri Sambhaji Bhosle used to bring work for them, but they did not authorize him and issued any Customs Pass on behalf of CB M/s Husain Kasam Mukadam & Sons: that the entire examination of goods was carried in presence of Shri Mustaqeem Siddiqui (H-Card holder on behalf of CB) with assistance of Shri Suraj Singh as Shri Mustaqeem Siddiqui was not physically well; that Shri Suraj Singh was unofficial employee having no Pass issued on behalf of CB and Shri Suraj Singh was told by Shri Mustaqeem Siddiqui to take one-day pass to enter the premises; that CB was not aware about the mis-declaration during the examination of the goods.

2.8 From the above facts and applicable rules and regulations, prima facie it appeared that Customs Broker M/s Husain Kasam Mukadam & Sons, (AABFH3370HCH001) having Customs Broker Licence No. 11/194 did not exercise due diligence in discharging their obligation as required under provisions 10(e), 10(n), 10(q), 13(3), 13(4), 13(7) and 13(12) of CBLR, 2018.

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(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;"

Regulation 10(q) of CBLR, 2018 "a CB shall co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees;"

Regulation 13(3) of the CBLR, 2018 ; "A Customs Broker may, having regard to the volume of business transacted by him, employ any number of persons other than an F card holder to assist him after verifying their antecedents and identity at the declared address by using reliable, independent, authentic documents, data or information:

Provided that such an employed person shall possess the Aadhaar number issued to him and that the minimum educational qualification of such persons so employed shall be 10+2, or equivalent."

Regulation 13(4) of the CBLR, 2018 : "Employment of a person referred to in sub-regulation (3) shall be made only after obtaining the approval of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, who shall in granting approval, take into consideration the antecedents and any other information pertaining to the character of such person."

Regulation 13(7) of the CBLR, 2018 ; " A Customs Broker shall authorize only such employee who has been issued a photo identity card in Form F or Form G as the case may be to sign the declaration on the bills of entry, shipping bills, annexure thereof or any other document generated in connection with the proceedings under the Act or the rules or regulations made there under."

Regulation 13(12) of the CBLR, 2018 ; "The Customs Broker shall exercise such supervision as may be necessary to ensure proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment."

3.SUPESNSION OF LICENCE:

In view of the facts stated above, CB, M/s Husain Kasam Mukadam & Sons (11/194) was found liable for their acts of omission and commission leading to contraventions of the provision under Regulation 10(e), 10(n),10(q), 13(3), 13(4), 13(7) and 13(12) 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 of CBLR, 2018, license of

Customs Broker, M/s M/s Husain Kasam Mukadam & Sons (11/194) was suspended by Principal Commissioner of Customs, NCH, Mumbai vide order no. 01/2022-23 dated 01.04.2022 and the same was continued vide Order No. 08/2022-23 dated 23.05.2022.

4. SHOW CAUSE NOTICE: M/s Husain Kasam Mukadam & Sons (11/194) was issued a Show Cause Notice (SCN) No. 11/2022-23 dated 23.06.2022 by the Principal Commissioner of Customs (General), NCH, Mumbai, Zone- I asking them to show cause as to why the licence bearing no. 11/194 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 S. Shiva Kumar, Asstt. Commissioner of Customs, NCH, JNCH who was appointed an inquiry officer to conduct inquiry under regulation 17 of CBLR, 2018.

5. INQUIRY REPORT

Inquiry Officer submitted inquiry report dated 30.09.2022 wherein the charges against CB M/s Husain Kasam Mukadam & Sons (11/194) i.e. violation of Regulation 10(e), 10(n), 13(3), 13(4) and 13(12) of CBLR, 2018 were held '**proved**' and Regulation 10(q) and 13(7) were held '**Not Proved**'.

5.1 Inquiry Officer submitted that the CB was granted a personal hearing vide letter dated 22.08.2022 and Shri D.H Nadkarni, Advocate accompanied by Sh. Abdul Rehman Dalvi (Authorised Representative) of the CB Firm appeared on 22.08.2022 in respect of personal hearing. Sh. D.H. Nadkarni read the entire statement of Sh. Abdul Rehman (Authorised representative) in the said matter and stated that CB had personally visited the premises of M/s K.K Traders and were well acquainted to them (importer). IO submitted that on being shown the statement of Proprietor of M/s K.K Traders wherein he stated that he was unaware about the CB, M/s Husain Kadam Mukadam & sons, CB stated that they wish to cross verify the statement of Shri Krishnat Kadam, Proprietor of M/s K.K Traders and thereby invoked the provision of regulation 17(4) to cross examine the person. CB submitted their written submissions dated 13.09.2022 and prayed that they were nowhere at fault. They prayed that the inquiry proceedings might only be concluded after giving them chance to cross verify Sh. Krishnat Kadam, the Proprietor of M/s K.K. Traders.

5.2 Submission by CB in defence: The details of their reply verbatim against the allegations/charges are as under;

5.2.1. In defence of the violation of Regulation 10(e) of CBLR,2018

(i) CB submitted through advocate that the statement of Shri Abdul Rehman Dalvi, Authorised Representative (of CB) was recorded on 19.04.2022. From said statement, it would be clear that he narrated truth and his conduct showed that he had abided by law and regulations made therein by cooperating with the Customs authorities during investigations.

(ii) Shri Abdul Rehman Dalvi stated in his aforementioned statement dated 19.04.2022 that import clearance work of M/s. K.K.Traders was received from M/s. Shri Ninai Shipping Agency, who are their sub-brokers-intermediary. It was also stated that KYC formalities as required under CBLR were completed by the CB through Shri Dalvi. He personally visited premises of Importer, M/s. K K Traders. He stated that employee of CB, Shri Mustaqeem Siddiqui, H-Card holder was present during the examination of imported cargo. Therefore, they acted in a diligent manner throughout the proceedings and they did not contravened regulation 10(e) of CBLR in any manner.

5.2.2. In defence of the violation of Regulation 10(n) of CBLR,2018

CB submitted that that they verified correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN) and also identified their client at the declared address by using reliable, independent, authentic documents, data or information. Even the Representative of CB personally visited premise of M/s. K K Traders and hence there is no violation of regulation of 10(n) of CBLR.

5.2.3. In defence of the violation of Regulation 10(q) of CBLR,2018

They submitted that they co-operated with Customs Authorities during investigations to the fullest extent and furnished every information sought for and hence there is no violation of regulation of 10(q) of CBLR.

5.2.4. In defence of the violation of Regulation 13(3) of CBLR,2018

They submitted that they had not violated Regulation 13(3) of CBLR in any manner. The employee of CB, Shri. Mustaqeem Siddiqui, H-

Cardholder was present during the examination of imported cargo and this was an admitted fact on record and corroborated by the statement of AR i.e. Shri Abdul Rehman Dalvi; that this charge had no basis in the facts of the present proceedings.

5.2.5. In defence of the violation of Regulation 13(4) of CBLR,2018

They submitted that their employee, Shri Mustaqeem Siddiqui, H-Card holder was in employment and as he is/was a H-Card holder, it was deemed to have been approved by the Deputy Commissioner of Assistant Commissioner of Customs. The H-Card is issued to any person after due verification by Customs Officials. Hence, the charge of violation of Regulation 13(4) is not sustainable.

5.2.6. In defence of the violation of Regulation 13(7) of CBLR,2018

They submitted that their employee, Shri. Mustaqeem Siddiqui, H-Card holder was present with a photo identity and as such being an employee, it would be appropriate to state that no outsider was entrusted with customs related clearance work. Hence, technically, the charge of violation of Regulation 13(7) is not sustainable.

5.2.7. In defence of the violation of Regulation 13(12) of CBLR,2018

They submitted that they had exercised necessary supervision and ensured that their employee's conduct in the transaction of business was proper. The statement of the Representative is very clear, concise and law abiding in nature about the factual aspects involved in the present proceedings.

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

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

IO submitted that in the instant case, Shri Krishnat Kadam, Proprietor of M/s K. K. Traders in his statement dated 26.02.2022 stated that as far as his knowledge is concerned, Shri Chetan Yadav from M/s Shri Ninai Shipping Agency, Mumbai was the CHA and also stated that he was not aware of the name of M/s Husain Kasam Mukadam & Sons and he did not sign any affidavit in the name of M/s Husain Kasam Mukadam & Sons. However, he added that he had given 4-5 signed blank letter head & 5-6 signed blank cheques to Shri Manish

Ronaldo (office staff of Shri Chetan Yadav) at Belapur, Mumbai. They might have used signed blank letter head for appointing M/s Husain Kasam Mukadam & Sons as the CHA.

Further, Shri Krishnat Kadam admitted that he thought that there was higher duty involved, hence he mis-declared the goods. Mr. Chetan from Shri Ninai Shipping Agency helped him with all the clearance. It appeared from the above that the said import took place in collusion with the CB and despite being aware about the fraud of mis-declaration the CB for sake of earning ill money abetted the clearance of prohibited goods and thus failed to oblige to the provisions of regulation 10(e) of CBLR 2018.

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

IO submitted that in the instant case, Shri Abdul Rehman Dalvi from CB, stated that the KYC verification was done by CB where he along with Shri Sambhaji Bhosle had personally visited the importer's premises. After KYC they agreed to undertake work of M/s K K traders. The KYC documents were received on 21.02.2022 by M/s Shri Ninai Shipping Agency. However, Shri Krishnat Kadam, Proprietor of M/s K. K. Traders (Importer) had admitted that as per his knowledge Shri Chetan Yadav from M/s Shri Ninai Shipping Agency was his CHA and he was not aware of the name of CB M/s Husain Kasam Mukadam & Sons. Therefore, it appeared that CB did not verify correctness of Importer Exporter Code, GSTIN number, identity and functioning of his client by using reliable, independent documents, data, and information. CB Husain Kasam Mukadam & Sons received all the documents from mediator, M/ s Shri Ninai Shipping Agency who were not their clients. Accordingly, IO held the article of charge alleging violation of Regulation 10(n) as Proved.

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

IO submitted that It has been alleged in the Show Cause Notice that no competent person i.e. F/G category customs pass holder from the CB appeared during the examination of the goods and hence CB violated the provisions of regulation 10(q) of CBLR 2018. It is found that this could not be concluded as sufficient ground for non cooperation by the CB. It was seen from the documents available on record that the H-card holder of the CB, Shri. Mustaqeem Siddiqui was present during the examination of the container, even though he was unwell. Further, there is no

evidence/document on record to show that the CB had evaded enquiry/investigation. Further the CB in his defence stated that they had rendered every possible cooperation to the customs during the investigation proceedings. Therefore, IO found that the charges of violation of regulation 10(q) against the CB untenable and hence "Not Proved".

5.5 Regulation 13 of CBLR, 2018: Engagement or employment of persons-

5.5.4 ARTICLE OF CHARGE – IV Regulation 13(3), 13(4), 13(7) & 13(12) of the CBLR, 2018:

In this regard, IO submitted that it had been alleged that the entire examination of goods was carried in presence of Shri Mustaqeem Siddiqui (H-Card holder on behalf of CB, M/s Husain Kasam Mukadam & Sons) with assistance of Shri Suraj Singh, as Shri Mustaqeem Siddiqui was not physically well. Shri Suraj Singh was unofficial employee having no Pass issued on behalf of CB, M/s Husain Kasam Mukadam & Sons and Shri Suraj Singh was told by Shri Mustaqeem Siddiqui to take one-day pass to enter the premises. CB took assistance in examination from unauthorized person i.e Shri Suraj Singh who was never issued any Customs Pass to work in Customs premises. CB M/s Husain Kasam Mukadam & Sons could not exercise supervision over the conduct of Shri Mustaqeem Siddiqui (H-Card holder of M/s Husain Kasam Mukadam & Sons) who took assistance of Shri Suraj Singh. Hence, it appeared that CB, M/s Husain Kasam Mukadam & Sons had violated Regulation 13(3), 13(4), 13 (7) and 13(12) of CBLR, 2018.

It was found that in the instant case, Sh. Suraj Singh was employed by the H card holder of the CB, for assistance in examination of the goods (Physical examination/labour). It was not known as to whether the antecedents of this person were verified by the CB or not. Further there is nothing on record to show that the approval of the Deputy Commissioner of Customs or Assistant Commissioner of Customs was obtained for employing this person. But, there is no evidence on record to show that this person had signed the declaration on the bills of entry, shipping bills, annexure thereof or any other document generated in connection with the proceedings under the Act or the rules or regulations made there under. From the above, it was evident that the CB had failed to exercise such supervision as may be necessary to ensure proper conduct of his employees in the transaction of business and thus he shall be held responsible for all acts or omissions of his employees during their employment. Hence, the charges of violation of regulations 13(3), 13(4)

and 13(12) against the CB as "Proved" and the charges of violation of regulation 13(7) as "not proved".

5.6 In respect of Provision 17(4) of the CBLR, 2018, IO submitted that the CB had requested to cross examine Shri Krishnat Kadam, Proprietor of M/s K.K. Traders (Importer) regarding his statement wherein he stated that he was unaware of the CB, M/s Husain Kasam Mukadam & Sons filing the BE and they might have used the 5-6 Blank letters given by him to Sh. Manish Ronaldo (employee of M/s Shri Ninai Shipping) for taking his authorization. In this regard, IO opined that if the CB was allowed to cross examine Shri Krishnat Kadam, Proprietor of M/s K.K. Traders (Importer), the entire investigation proceedings shall be jeopardized, as the CB might have already influenced the importer to change his earlier submission. Hence, the request of the CB to cross examine Shri Krishnat Kadam, Proprietor of M/s K.K. Traders (Importer) was denied accordingly.

6. PERSONAL HEARING :-

Shri D.H. Nadkarni, Advocate along with Shri Abdul Rehman S. Dalvi appeared for Personal Hearing conducted on 13.12.2022, wherein they reiterated the submission made in their reply dated 09.12.2022 and also relied upon judgments in the case of 2006 (193) E.L.T. 385 (Bom.) & 2015 (324) E.L.T. 641 (S.C.).

7. DISCUSSIONS AND FINDINGS:-

I have gone through the case, material evidence on record, the show cause notice dated 23.06.2022, Inquiry Report dated 30.09.2022, Oral and written submission made by the CB and through his advocate during the personal hearing held on 13.12.2022 and examined the role and conduct of CB in the case before me.

7.1 The charges against the CB i.e. violation of Regulation 10(e), 10(n), 10(q), 13(3), 13(4), 13(7) and 13(12) of CBLR, 2018 made vide Show Cause Notice No. 11/2022-23 dated 23.06.2022 issued by Pr. Commissioner of Customs (General), NCH, Mumbai were held as "Proved" by the Inquiry Officer except Regulation 10(q) and 13(7) of the CBLR, 2018.

7.2 From the facts stated in SCN and the outcome of the investigation report, it appeared that the CB M/s Husain Kasam Mukadam & Sons (11/194) had failed in fulfilling the obligation of a Customs Brokers as mandated under CBLR, 2018 and has violated the regulation 10(e), 10(n), 10(q), 13(3), 13(4), 13(7) and 13(12) of CBLR, 2018.

7.3 I refrain from reproducing the brief facts of the case which have already being 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(e), 10(n), 10(q), 13(3), 13(4), 13(7) and 13(12) of CBLR, 2018.

7.4.1 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) On perusal of statement of Shri Krishnat Shankar Kadam, Proprietor of M/s K K Traders recorded under section 108 of the Customs Act, 1962, wherein he stated that Mr. Chetan Yadav from M/s Shri Ninai Shipping agency, Mumbai helped him with the customs clearance & documentation etc. ; that as far as his knowledge, Shri Chetan Yadav was the CHA and he was not aware of that name CB M/s Husain Mukadam & Sons ; that he had not signed any affidavit in the name of M/s Shri Ninai Shipping Agency or M/s Husain Mukadam & Sons for appointing them as CHA for the current consignment, However, he had given 4-5 signed blank letter head & 5-6 signed blank cheques to Shri Manish Ronaldo (office staff of Shri Chetan Yadav) at Belapur, Mumbai nearly one months back, it appeared that they might have used signed blank letter head for appointing M/s Husain Kasam Mukadam & Sons as the CHA ; that he thought that there was higher duty involved, hence he mis-declared the goods and Mr. Chetan from M/s Shri Ninai Shipping Agency helped him with all the clearance. Hence, it is evident from the above that the charged CB was not authorized by the importer and the CB never imparted correct information to Importer related to Customs Clearance of cargo via any means of communication.

(ii) CB submitted in defence that they had acted in a diligent manner throughout the proceedings and not contravened regulation 10 (e) of the CBLR, 2018 in any manner.

(iii) 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.

(iv) 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 CBLR, 2018.

7.4.2 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;"*

Shri Abdul Rehman Dalvi, Authorized Representative of CB, in his statement recorded under section 108 of Customs Act, 1962 stated that the KYC verification was done by CB where he and Sambaji Bhosle (a broker/sub-broker of CB) had personally visited the importer's premises on 13.02.2022 situated at Satara, Maharashtra and after all KYC verification, the CB agreed to undertake work of M/s K K Traders. The KYC documents were received on 21.02.2022 by M/s Shri Ninai Shipping Agency.

On the other hand, the importer K K Traders in his statement recorded under Section 108 of the Customs Act, 1962, stated; that Mr. Chetan Yadav from M/s Shri Ninai Shipping agency, Mumbai helped him with the customs clearance & documentation etc. ; that as far as his knowledge, Shri Chetan Yadav was the CHA and he was not aware of that name CB M/s Husain Mukadam & Sons; that he had not signed any affidavit in the name of M/s Husain Mukadam & Sons for appointing them as CHA for the current consignment.

From the above facts, I find that this being the case, the whole purpose of KYC is defeated and there is no denying the fact that the CB M/s Husain Mukadam & Sons (11/194), was not careful and the charged CB received all the documents from mediator M/s Shri Ninai Shipping agency who were not their clients. Hence, I have no doubt in holding that the CB has violated the provisions of Regulation 10(n) of CBLR, 2018.

7.4.3 Regulation 10(q) of CBLR, 2018 *"a CB shall co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees;"*

From the statement of Shri Vipin Singh alias Suraj Singh that BE No. 7580019 dated 21.02.2022 related documents were given to him by Shri Chetan Yadav and while going to the CFS Take Care Logistics for delivery process, he met Mr. Mustakin Siddiqui. He entered the CFS without one-day pass and started the work of customs clearance of goods related to the said BE. Further, No competent person i.e. F/G category customs pass holder from the CB appeared during the examination of the goods. During the examination, H Category Customs Pass holder Shri Mustaqeem Siddiquie was present however, his health condition was not good and he took assistance of an unauthorized person Shri Suraj Singh. Therefore, it has been alleged in the SCN that CB did not co-operate promptly during the examination as no authorized person of CB i.e. F/G Card Holder was present during the examination of goods.

In the regard, IO stated that this could not be concluded as sufficient ground for non cooperation by the CB. It is seen from the documents available on record that the H card holder of the CB, Shri. Mustaqeem Siddiqui was present during the examination of the container, even though he was unwell. Further, there is no evidence/ document on record to show that the CB evaded enquiry/investigation.

In this context, I agree to the Inquiry Report and CB submission as there is sufficient ground for cooperation of the CB in the event of an inquiry against them or their employees, Hence, I find that the CB has not violated the provisions of Regulation 10(q) of CBLR, 2018.

7.4.4 Regulation 13(3) of the CBLR, 2018 ; *"A Customs Broker may, having regard to the volume of business transacted by him, employ any number of persons other than an F card holder to assist him after verifying their antecedents and identity at the declared address by using reliable, independent, authentic documents, data or information:*

Provided that such an employed person shall possess the Aadhaar number issued to him and that the minimum educational qualification of such persons so employed shall be 10+2, or equivalent."

7.4.5 Regulation 13(4) of the CBLR, 2018 : *"Employment of a person referred to in sub-regulation (3) shall be made only after obtaining the approval of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, who shall in granting approval, take into consideration the antecedents and any other information pertaining to the character of such person."*

7.4.6 Regulation 13(7) of the CBLR, 2018 ; "A Customs Broker shall authorize only such employee who has been issued a photo identity card in Form F or Form G as the case may be to sign the declaration on the bills of entry, shipping bills, annexure thereof or any other document generated in connection with the proceedings under the Act or the rules or regulations made there under."

7.4.7 Regulation 13(12) of the CBLR, 2018 ; "The Customs Broker shall exercise such supervision as may be necessary to ensure proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment."

I find that the allegations for violations of the Regulations 13(3),13(4), 13(7) and 13(12) are interrelated to one another and therefore I intend to take these four charges together for reaching to the conclusion.

In the instant case, Shri Abdul Rehman Dalvi, Authorized Representative of CB, stated that Shri Sambhaji Bhosale from M/s Shri Ninai Shipping Agency was not authorized by his CB and he did not have any Customs Pass on behalf of his CB and the entire examination of goods was carried in presence of Shri Mustaqeem Siddiqui (H-Card holder on behalf of CB M/s Husain Kasam Mukadam & Sons) with assistance of Shri Suraj Singh as Shri Mustaqeem Siddiqui was not physically well. Shri Suraj Singh was unofficial employee having no Pass issued on behalf of CB M/s Husain Kasam Mukadam & Sons and Shri Suraj Singh was told by Shri Mustaqeem Siddiqui to take one-day pass to enter the premises.

From the above facts, I find that the CB has failed to fulfill the obligations as warranted by Regulation 13(3), 13(4) of the CBLR, 2018 as it is clear from above that CB took assistance in examination from an unauthorized person i.e Shri Suraj Singh who had never been issued any Customs Pass to work in Customs premises. I also find from the above that the CB M/s Husain Kasam Mukadam & Sons could not exercise supervision over the conduct of Shri Mustaqeem Siddiqui (H-Card holder of M/s Husain Kasam Mukadam & Sons) who took assistance of Shri Suraj Singh, hence, the CB has failed to fulfill the obligation as warranted by Regulation 13(12) of the CBLR, 2018. Further, I agree to the Inquiry Report on disapproving the charges in respect of provision 13(7) of the CBLR, 2018 as there is no evidence on record to show that this person had signed the declaration on the bills of entry, shipping bills, annexure thereof or any other document generated in connection with the proceedings under the Act or the rules or regulations made there under. Hence, I hold that the CB

has failed to fulfill the obligation of the Regulation 13(3), 13(4) and 13(12) of CBLR 2018, and has not violated the obligation of the Regulation 13(7) of CBLR, 2018.

7.5 IO submitted in his Inquiry Report that the CB had requested to cross examine Shri Krishnat Kadam, Proprietor of M/s K.K. Traders (Importer) regarding his statement under the provisions of Regulation 17(4) of CBLR 2018. With respect to the said request, IO opined that if the CB was allowed to cross examine Shri Krishnat Kadam, Proprietor of M/s K.K. Traders (Importer), the entire investigation proceedings could have been jeopardized, as the CB might have already influenced the importer to change his earlier submission. Hence, IO denied the request of the CB to cross examine Shri Krishnat Kadam, Proprietor of M/s K.K. Traders (Importer) accordingly.

7.5.1 Further, the CB made the same request to cross-examine the statement of Shri Krishnat Kadam, the Importer, in his personal hearing dated 13.12.2022 wherein they relied upon the judgments in the case of 2006 (193) E.L.T. 385 (Bom.) & 2015 (324) E.L.T. 641 (S.C.) for the request to cross-examine of the said statement. In this context, I find that IO rightly declined the request during inquiry proceedings as the provision 17(4) of the CBLR, 2018 empowers *“the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines permission to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing”* and the IO mentioned his reasons in written in his Inquiry Report for so doing. Hence, I don't find any contention in the CB submission as the Provision itself empowers the IO for this denial.

8. Further, I rely on the following judgements and hold that in the instant case, CB, M/s Husain Kasam Mukadam & Sons (CB No.11/194) has failed to adhere to the responsibilities as was expected of them in terms of the Regulations made under CBLR, 2018 and therefore rendered themselves liable for penal action under CBLR, 2018.

8.1 Ratio of The Hon'ble Tribunal judgement in the case of Rubal Logistics Pvt. Ltd. Vs. Commr. of Cus. (General), New Delhi reported in 2019 (368) E.L.T. 1006 [Tri. - Del.] is fairly applicable in the present issue. The relevant para 6.1 of the said judgement are as under:

“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 misdeclaration/under-valuation or mis-quantification but from his own statement acknowledging the negligence on his part to properly ensure the same, we are of the opinion that CHA definitely has committed violation of the above mentioned Regulations. These Regulations caused a mandatory duty upon the CHA, who is an important link between the Customs Authorities and the importer/exporter. Any dereliction/lack of due diligence since has caused the Exchequer loss in terms of evasion of Customs Duty, the original adjudicating authority has rightly imposed the penalty upon the appellant herein”.

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

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

8.3 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

- i. *The very purpose of granting a licence to a person to act as a Customs House Agent is for transacting any business relating to the entry or departure of conveyance or the import or export of goods in any customs station. For that purpose, under Regulation 9 necessary examination is conducted to test the capability of the person in the matter of preparation of various documents determination of value procedures for assessment and payment of duty, the extent to which he is conversant with the provisions of certain enactments, etc. Therefore, the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as CHA, it is seen that while CHA should be in a position to act as agent for the transaction n of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an Agent for carrying on certain illegal activities of any of the persons who avail his services as CHA. In such circumstances, the person playing the role of CHA has got greater responsibility. The very*

description that one should be conversant with the various procedures including the offences under the Customs Act to act as a Custom House Agent would show that while acting as CHA, he should not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as CHA by taking advantage of his access to the Department. The grant of licence to a person to act as CHA is to some extent to assist the Department with the various procedures such as scrutinizing the various documents to be presented in the course of transaction of business for entry and exit of conveyances or the import or export of the goods. In such circumstances, great confidence is reposed in a CHA. Any misuse of such position by the CHA will have far reaching consequences in the transaction of business by the customs house officials. Therefore, when, by such malpractices, there is loss of revenue to the custom house, there is every justification for the Respondent in treating the action of the Petitioner Applicant as detrimental to the interest of the nation and accordingly, final order of revoking his licence has been passed.

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

9. In a regime of trade facilitation, a lot of trust is being placed on the Customs Broker who directly deals with the importers/exporters. Failure to comply with regulations by the CB mandated in the CBLR gives room for unscrupulous persons to get away with import-export violations and revenue frauds. In this case, there was suppression of facts and willful misstatements on part of the importer as well as the CHA, in as much as they deliberately and knowingly refrained from discharging the correct duty on the said goods. The facts on record prove that CB violated various provisions of CBLR 2018 with mens rea.

10. I hold that the proof of charges in inquiry are acceptable and tenable based on the available evidence, the facts and circumstances of the case, which certainly warrant penal action against the CB. Therefore, for their acts of omission and commission, CB M/s Husain Kasam Mukadam & Sons (11/194) is held liable and guilty for violating the provisions of CBLR, 2018 as mentioned above. I fully agree with the findings of the Inquiry Officer and hold that the CB has failed to discharge duties cast on him with respect to

Regulation 10(e), 10(n), 13(3), 13(4) and 13(12) of CBLR,2018 and are liable for penal action. Accordingly, I pass the following order.

ORDER

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

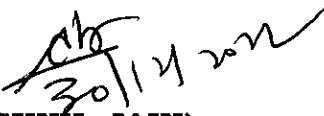
(i) I hereby impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on M/s Husain Kasam Mukadam & Sons (11/194) (AABFH3370HCH001) under Regulation 18 of the CBLR, 2018.

(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.11/194 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 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.


(SUNIL JAIN)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
MUMBAI ZONE-I

To,
M/s Husain Kasam Mukadam & Sons,
89, P. D'mello Road,
1st Floor, R.N.12 Shree Krishna Bhavan,
Mumbai-400-009

.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. Special Investigation and Intelligence Branch (Import), NS-V, JNCH wrt F.No. SG/Misc-576/2021-22/SIIB(I) JNCH dated 08.03.2022

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)

