



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.- S/8-76/2020-21 CBS

आदेश दिनांक/Date of Order: 19.06.2023

CAO No. 19/CAC/PCC(G)/SJ/CBS Adj

जारी दिनांक/Date of issue: 20.06.2023

संख्या:

DIN : 2023067700000000CBCA

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

ध्यान दीजिए/ N.B. :

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

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

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

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

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

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

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

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

6. (i) यदि प्रतिवादित आदेश, जिसके विरुद्ध अपील की गई है, में शुल्क एवं मांगे गए ब्याजवलागाएगए जुर्माने की राशि रु. पाँच लाख या इस से कम होतो रु. 1000/-, (ii) यदि यह राशि रु. पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न होतो रु. 5000/- एवं (iii) यदि यह राशि रु. पचास लाख से अधिक होतो रु. 10000/- के शुल्क का भुगतान 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 Hayatt Shipping Pvt. Ltd., 20/22, M.A. Sarang Mrg, Kashmiri House, 3rd Floor, Room-20, Dongri, Mumbai -400009 [hereinafter referred to as the Customs Broker/CB] bearing PAN based Registration No. AACCH9033K is holding a regular Customs Broker Licence No. 11/396 issued by the Commissioner of Customs (General), Mumbai under the Regulation 10 (1) of the CHALR, 1984 [now Regulation 7(1) of CBLR, 2018] in Mumbai Customs and as such they are bound by the Regulation and condition stipulated therein.

2. An offence report in the form of SCN F.No. SD/INT/MISC/NSPU/26/2018-19 dated 26.04.2019 issued by ADC, NSPU, R & I and OIO No. 1000/2019-20/ADC/NS-V/JNCH/CAC dated 31.03.2020 issued by ADC, NS-V, JNCH was received in CBS, NCH, Mumbai-I. Vide offence report, it was informed that an information was received the Nhava Sheva Preventive Unit (hereinafter referred as NSPU), R&I Division, Preventive Commissionerate, Mumbai Customs Zone-III, wherein it was informed that an import consignment of "TOYS" (Container No. TCKU9598698) with mis-declaration and concealment of cosmetics inside was attempted to be cleared for home consumption with an intention to evade Customs Duty and other statutory provisions by M/s Global Enterprises, under Bill of Entry No. 6026676 dated 18.04.2018, at Navkar Corporation Limited CFS, JNPT. The said consignment was put on hold on 26.04.2018 by the NSPU, R&I for 100% detailed examination of the Container No. TCKU9598698 by the officers of the NSPU, R&I for investigation in this matter.

3. The said consignment was examined under Panchnama by the officers of the NSPU, R&I, in the presence of the authorized representative of CB M/s. Hayatt Shipping Pvt. Ltd. (CB No. 11/396) on 26/27.04.2018. During the examination, it was found that the weight of the container was around 1000 Kgs. more than what was declared in the Bill of Entry. Further, un-declared items, mainly 87 cartons of cosmetics of "LAKME" and "Elle18" brands, 05 cartons of batteries, one safe box, one carton of used clothes, few cartons of different models of airplanes etc., were found concealed inside the consignment. Moreover, some of the declared items were found to be less than what was declared in the Bill of Entry.

4. Meanwhile, Central Bureau of Investigation (CBI), Anti Corruption Branch (ACB), Mumbai, had also initiated an investigation in the consignment pertaining to the same B/E No. 6026676 dated 18.04.2018. Further, vide Case RC/BAI/2018/A0012 NSPU, R&I vide letter dated 21.05.2018 had requested the CBI, ACB, Mumbai for their no objection regarding investigation in this matter by NSPU R&I. Superintendent of Police, CBI, ACB, Mumbai vide letter RC/BA1/2018/A0012/CBI/ACB/Mumbai/2288 dated 07.06.2018 informed

NSPU, R&I that CBI, ACB would not investigate the matter under the provisions of the Customs Act, 1962 and the aspect of mis-declaration (if any) pertaining to the aforesaid Bill of Entry may be investigated by the Customs Authority. Further, CBI, ACB, Mumbai also proposed that re-opening and re-examination of the said container pertaining to the B/E No. 6026676 may be done by Customs, R&I. Accordingly, re-examination of Container No. TCKU9598698 covered under B/E No. 6026676 dated 18.04.2018 was scheduled on 22.06.2018 by a team of officers from NSPU, R&I in presence of the persons/officials proposed by CBI, ACB, Mumbai. Further, the said examination of the aforesaid consignment was re-scheduled on 18.07.2018 at the request of CBI, ACB, Mumbai.

5. As the original Bill of Entry No.6026676 dated 18.04.2018 was not available either with NSPU, R&I or with the CB M/s. Hayatt Shipping Pvt. Ltd. (CB No. 11/396), the following documents were obtained from the CB M/s. Hayatt Shipping Pvt. Ltd. (CB No. 11/396) -

- (i) Copy of Bill of Entry No. 6026676 dated 18.04.2018 filed in Indian Customs EDI System at JNCH, Nhava Sheva by CB M/s. Hayatt Shipping Pvt. Ltd. (CB No. 11/396) for the importer M/s. Global Enterprises having Importer-Exporter Code (IEC) BSYPR4701C,
- (ii) Copy of Bill of Lading No. 0318510361 dated 29.03.2018 by Wan Hai Lines (India) Pvt. Ltd,
- (iii) Copy of Invoice No. JHCY201803040 issued by YIWU JUBANG IMPORT & EXPORT CO. LTD.
- (iv) Copy of Packing List No. JHCY201803040 issued by YIWU JUBANG IMPORT & EXPORT CO. LTD.
- (v) Copy of Certificate of Origin Reference No 8183312013220025 issued in The People's Republic of China (PRC).

6. During the course of investigation, examination of the Container No. TCKU9598698 imported vide B/E No. 6026676 dated 18.04.2018 was conducted on 18.07.2018 under Panchnama dated 18.07.2018 at Navkar Corporation Ltd. CFS, JNPT by the officers of NSPU, R&I.

7. The relevant portion of Panchnama cum examination report dated 18.07.2018 was as under-

- (i) The gross weight of goods contained in container no. TCKU9598698 was found to be 860 kgs more than what was declared in the Bill of Entry No. 6026676 dated 18.04.2018.
- (ii) The declared goods in container no. TCKU9598698 were found in less quantity than what was originally declared in Bill of Entry No. 6026676 dated 18.04.2018. The declared goods were found only in 307 cartons

against 422 cartons mentioned in Packing List No. JHCY201803040 issued by YIWU JUBANG IMPORT & EXPORT CO. LTD.

- (iii) Whereas 102 cartons were found of undeclared goods, such as 87 cartons of cosmetics, 07 cartons of different model of 2.4 GHZ Airplane/Glider, one metal safe locker, 05 cartons of Samsung Battery Li-ion, one carton of camera of drone and one carton of old and used Men T-shirt were found concealed inside the container no. TCKU9598698.

8. It appeared that huge quantity of impugned goods were knowingly and intentionally not declared by the importer for the purpose of evasion of Customs duties and other statutory provisions/restrictions. Further, a certificate that the toys being imported conform to the standards prescribed by Bureau of Indian Standards (BIS) and a Certificate of Conformance from the manufacturer that representative sample of the toys being imported have been tested by an independent laboratory, accredited by NABL, India and found to meet the prescribed BIS specifications, were not available in respect of the impugned consignment despite being a compulsory compliance requirement under Directorate General of Foreign Trade (DGFT) Notification No. 26/20152020 dated 01.09.2017. The declared goods in B/E No. 6026676 dated 18.04.2018, appeared to be used for concealing other un-declared goods in the same container, and thus, made the declared goods also liable for confiscation under Section 119 of the Customs Act, 1962.

9. The import of cosmetics of "LAKME" and "Elle18" brands (which were found concealed inside the container no. TCKU9598698) are covered under Section 129 and Section 130 (PART XIII) of the Drugs and Cosmetics Rules, 1945. But neither an invoice nor statement showing the name and quantities of each article of cosmetic included in the consignment and the name and address of the manufacturer was accompanied with this consignment nor any declaration signed by or on behalf of the manufacturer or by on behalf of the importer that the cosmetics comply with the provisions of Chapter III of the Drugs and Cosmetics Rules, 1945.

10. These undeclared cosmetics were mostly of "LAKME" brand which was registered under Intellectual Property Rights (IPR) with the jurisdictional Customs House JNCH, Mumbai - II by the right holder M/s Hindustan Unilever Limited. It appeared that import of these cosmetics of "LAKME" brand was a wilful attempt on the part of the importer M/s. Global Enterprises (IEC BSYPR4701C) in violations of conditions laid down in Notification No. 51-Cus (NT) dated 30.06.2010.

11. IPR Cell, JNCH reported that "Elle18" is not registered with Customs, and the right holder of "LAKME" in its inspection report has found cosmetics of "LAKME" brand "Fake" although Bond was not executed and Bank Guarantee (BG) was not given by the respective right holder. As the right holder or his

authorized representative did not join the IPR proceeding by executing a consignment-specific bond and submitting required bank guarantee in accordance with rule 5 of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

12. During the course of investigation, statement of Shri Mohammed Arfat Mehmood Mukadam, (KARDEX No. M-1936), Director/G-Power of Attorney Holder of the Customs Broker firm M/s Hayatt Shipping Pvt. Ltd. (CB No. 11/396), was recorded on 06.08.2018, under Section 108 of the Customs Act, 1962, wherein he inter-alia stated that -

- i) He has worked in M/s Hayatt Shipping Pvt. Ltd. (License No. 11/396) in the capacity of Director since 2012 and is also power of attorney holder of this CHA firm. He was aware of his duties and obligations as a Customs Broker as per Customs Brokers Licensing Regulations (CBLR), 2013.
- ii) He was introduced in person to Shri Sahdeo Bapurao Rade, proprietor, M/s. Global Enterprises (IEC BSYPR4701C) and to Shri Irfan Ismail Popatiya, power of attorney holder on behalf of Shri Sahdeo Bapurao Rade, by one of his friend Shri Santosh Gunjal, who was the de-facto operator of Customs Broker firm M/s Svarad Logistics Limited (CB No. 11/2190) and who had cleared the first consignment of M/s. Global Enterprises (IEC BSYPR4701C). The Know Your Customer (KYC) documents of M/s. Global Enterprises (IEC BSYPR4701C) and other documents were given to him by Shri Irfan Ismail Popatiya for the Customs clearance of import consignments in container no. TCKU9598698 imported by M/s. Global Enterprises (IEC BSYPR4701C).
- iii) He did not personally know Shri Sahdeo Bapurao Rade and Shri Irfan Ismail Popatiya before this consignment in container no. TCKU9598698, and this consignment is his first and only consignment with M/s. Global Enterprises (IEC BSYPR4701C). He agreed to offer his service as Customs Broker for this consignment for an agreed amount of Rs. 8000 + GST, which although remains unpaid.
- iv) He in pursuance of Section 10 (n) of CBLR, 2018 personally verified the address of Shri Sahdeo Bapurao Rade, proprietor, M/s. Global Enterprises (IEC BSYPR4701C) and found it to be a genuine one.
- v) He also obtained the letter of authority and other KYC documents as part of KYC compliance for the clearance of consignments of M/s. Global Enterprises (IEC BSYPR4701C). He took documents such as Letter of Authority dated 16.04.2018, Know Your Customer (KYC) Form duly signed by Shri Sahdeo Bapurao Rade, proprietor M/s Global Enterprises (IEC BSYPR4701C), IEC copy, Copy of Current Account Verification letter dated 29.01.2018 issued by Saraswat Bank, The Greater Bombay Co-Operative

Bank Limited, PAN, Aadhar and MSEDCL Electricity Bill of Shri Sahdeo Bapurao Rade, GST Registration Certificate of Global Enterprises, ITR-V of Shri Sahdeo Bapurao Rade, proprietor M/s Global Enterprises for Assessment Year 2017-18, Bill of Lading dated 29.03.2018, Invoice dated 23.03.2018, Packing List 23.03.2018 and Certificate of Origin dated 23.03.2018.

- vi) He was not aware of the matter that cosmetics and other undeclared goods were concealed inside the container no. TCKU9598698. Neither Shri Sahdeo Bapurao Rade nor Shri Irfan Ismail Popatiya informed him about the presence of undeclared cosmetics in this consignment. He had filed the Bill of Entry No. 6026676 dated 18.04.2018 with declared goods of toys, bi-cycle, etc. on the basis of Packing List, Invoice and Bill of Lading submitted to him by M/s. Global Enterprises (IEC BSYPR4701C).

13. During the course of investigation, statement of Shri Santosh Dagdu Gunjal, was recorded on 07.08.2018 and 07.02.2019 under Section 108 of the Customs Act, wherein he inter alia stated that-

- i) He is working as a Dock Clerk in Customs Broker firm Svarad Logistics India Private Limited (CB No. 11/2190) and is also sole proprietor of transport company Raj Bhushan Roadlines.
- ii) During the month of January, 2018, Shri Chandrashekhar Rane introduced him to Shri Irfan Ismail Popatiya, who claimed himself to be the person of M/s. Global Enterprises (IEC BSYPR4701C). Shri Chandrashekhar Rane introduced him to Shri Irfan Ismail Popatiya for the clearance of first import consignment of M/s. Global Enterprises (IEC BSYPR4701C) in Navkar CFS, JNCH.
- iii) He assigned the Customs clearance works of first import consignment of M/s. Global Enterprises (IEC BSYPR4701C) to his CB firm Svarad Logistics India Private Limited (CB No. 11/2190). He had made the entry of details of this import consignment of M/s. Global Enterprises (IEC BSYPR4701C) in the register maintained by CB Svarad Logistics India Private Limited (CB No. 11/2190). He also arranged the transportation for the said consignment from Navkar CFS to Bhiwandi.
- iii) He brought the Customs clearance work of one import consignment of M/s. Global Enterprises (IEC BSYPR4701C) to M/s. Hayatt Shipping Private Limited (CB No. 11/396) and its director Mohammed Arfat Mehmood Mukadam, who was known to him for the last 15 years. He had done so only on friendly grounds without any monetary considerations as license of CB Svarad Logistics India Private Limited (CB No. 11/2190) was suspended at that time.
- iv) He had introduced Mr. Irfan Ismail Popatiya and IEC holder of M/s. Global

Enterprises (IEC BSYPR4701C) to Mohammed Arfat Mehmood Mukadam of M/s. Hayatt Shipping Private Limited (CB No. 11/396). Mr. Irfan Ismail Popatiya and IEC holder of M/s. Global Enterprises (IEC BSYPR4701C) handed over documents of their import consignment to Mohammed Arfat Mehmood Mukadam.

- v) He made a query regarding the goods contained in the present import consignment to Mr. Irfan Ismail Popatiya and Mr. Popatiya told him that this consignment was of only toys etc. as in the previous consignment cleared by CB Svarad Logistics India Private Limited (CB No. 11/2190).
- vi) He was present as a pancha during the examination of this impugned import consignment of M/s. Global Enterprises (IEC BSYPR4701C) by the officers of NSPU, R&I on 26/27.04.2018. During the course of examination, apart from toys, cosmetics in huge quantity were found inside this consignment.

14. During the course of investigation, statement of Shri Sahdeo Bapurao Rade, proprietor, M/s. Global Enterprises (IEC BSYPR4701C), was recorded on 08.08.2018, under Section 108 of the Customs Act, 1962, wherein he inter-alia stated that:

- i) He is working as a daily wage labour in painting work in Kalyan-Dombivali belt. It is a seasonal job and he earns around Rs. 8000/- in a month depending on for how many days he gets the work. He also has an auto rickshaw in his name with route permit for Kalyan. But he has rented it to some other person for a one-time consideration of Rs. 50,000/- to meet hospitalization expenses of himself. He does not ever have any other business or profession. He also does not ever have authorized anybody to carry out any Import-Export business in his name.
- ii) He did not apply to anybody for any Importer-Exporter Code (IEC). Neither he ever has any business interest in M/s. Global Enterprises (IEC BSYPR4701C) nor was he aware of M/s. Global Enterprises (IEC BSYPR4701C) before receiving summons from this office. There is no office of M/s. Global Enterprises (IEC BSYPR4701C) in his home address at Room No. 6, Siddharth Nagar, Home Baba tekdi, Poona Link Road, Netivali, Katemanivali, East, Maharashtra-421306.
- iii) He was remained out of work for several months in the year 2017 as he was operated after a major accident. At that time, one person named Sachin approached him and collected his PAN Card, Aadhar Card, photo etc. and also obtained his signature on some other documents for business purpose of some other person. Sachin gave him Rs. 500/- and promised him an additional amount of Rs. 3000/-

which remains unpaid.

- iv) He gave his Aadhar Card (502249162276), PAN Card (BSYPR4701C), Ration Card and two passport size photo of himself to Sachin. He also put his signature on the copies of these said documents and on several other documents in different occasions. He was not aware about the content of the documents on which he had put his signature as he cannot read English and nobody informed him about the content of these documents in Marathi before obtaining his signature.
- v) He does not ever have any electricity connection in his name and the consumer No. 02150718130 of MSEDCL does not belong to him.
- vi) He did not open the current account No. 30206284532 with the Greater Bombay Co-operative Bank Limited and make any request to AD dealer Saraswat Bank for signature verification letter. In fact, he had never visited the Greater Bombay Co-operative Bank Limited, Dadar branch for any purpose. He has only one saving account jointly with his mother Smt. Kausabai Bapurao Rade with PMC Bank near TATA Power house, Kalyan. He does not ever have any current account in any bank in his name or in the name of his concern.
- vii) He did not have any business income of Rs. 2,67,230/- in F.Y. 2016-17 and did not file Income Tax return for the A.Y 2017-18. He hardly earned 100000/- in a year. He also denied of having availed any service of CA Haseen Khan & Co.
- viii) He has not made any application for GST registration in his name. The GSTIN 27BSYPR4701CIZG was obtained in his name with trade name of Global enterprises by fraudulent means.
- ix) He is a daily wage earner and did not order to anybody outside India for import of any goods in the name of M/s. Global Enterprises (IEC BSYPR4701C). He does not have any idea about Invoice, Packing List, Bill of Lading of impugned consignment covered under B/E No. 6026676 dated 18.04.2018.
- x) He has not given any authorization or Power of Attorney to anybody to operate business activities of M/s. Global Enterprises (IEC BSYPR4701C) on his behalf. He was not the proprietor of M/s. Global Enterprises (IEC BSYPR4701C) and not aware of its business or functioning.
- xi) The Power of Attorney dated 09.04.2018 to Shri Irfan Ismail Popatiya to operate business of M/s. Global Enterprises (IEC BSYPR4701C) on his behalf was obtained from him in his ignorance. He was not owner of M/s. Global Enterprises (IEC BSYPR4701C) and did not have any business interest in it and as such he disowned the

aforesaid power of attorney dated 09.04.2018.

- xii) He did not order any goods to be imported into India and not the proprietor of M/s. Global Enterprises (IECBSYPR4701C). He therefore completely disowned the goods contained in container No. TCKU9598698 covered under B/E No. 6026676 dated 18.04.2018 imported by M/s. Global Enterprises (IECBSYPR 4701C).
- xiii) He also disowned the right holder ship of IEC BSYPR4701C in the name of M/s. Global Enterprises Current A/C No. 30206284532 in the name of M/s. Global Enterprises with the Greater Bombay Co-operative Bank, Limited and GSTIN 27BSYPR4701CIZG in the trade name of M/s. Global Enterprises as such all these are opened and operated in my name without my consent by misusing my Aadhar, PAN Card and by taking opportunity of my ignorance in English.

15. During the course of investigation, statement of Shri Chandrashekar Chandrakant Rane was recorded on 13.08.2018, under Section 108 of the Customs Act, 1962. Wherein he inter-alia stated that:

- i) He is working as mediator/middleman between the importer and Customs House Agent (CHA)/ Customs Broker (CB). If the importer assigns any customs clearance works to him, he hires CHA/CB on behalf of the importer for the clearance of the consignment.
- ii) Shri Amjad Mohd. Farukh Bakali had contacted him telephonically and met him in the former's toys shop in the name of "AMJ Toys". Shri Amjad Mohd. Farukh Bakali offered him to take the work of customs clearance of his toys consignments coming into JNPT from China. Shri Irfan Ismail Popatiya was also present during this meeting. Shri Amjad Mohd. Farukh Bakali had introduced Shri Irfan Ismail Popatiya as his business partner.
- iii) During the month of March, 2018 when the first consignment of M/s. Global Enterprises (IEC BSYPR4701C) was arrived at JNPT, Shri Amjad Mohd. Farukh Bakali and Shri Irfan Ismail Popatiya handed over to him KYC documents of M/s. Global Enterprises (IEC BSYPR4701C), Bill of Lading, Invoice and Packing List.
- iv) Shri Amjad Mohd. Farukh Bakali and Shri Irfan Ismail Popatiya had given him three import consignments of M/s. Global Enterprises (IEC BSYPR4701C) for Customs clearance purpose.
- v) He had hired the services of CB/CHA M/s Svarad Logistics Pvt. Ltd. and M/s Shengi Shipping Pvt. Ltd., handed over the documents and also introduced Shri Irfan Ismail Popatiya to that CB/ CHA.
- vi) He did not hire CB/CHA M/s Hayatt Shipping Pvt. Ltd. directly. M/s Hayatt Shipping Pvt. Ltd was hired through Shri Santosh Gunjal of M/s Svarad Logistics Pvt. Ltd.

- vii) He was not aware that cosmetics and other undeclared goods were concealed inside the import consignments of Shri Amjad Mohd. Farukh Bakali and Shri Irfan Ismail Popatiya.

16. During the course of investigation, statement of Shri Santosh Kashiram Kadam, was recorded on 31.08.2018 under Section 108 of the Customs Act, 1962 wherein he inter-alia stated that:

- i) He is working as a Nawghani (Electrician Helper) in The Brihanmumbai Electric Supply & Transport Undertaking (BEST) with a monthly salary of Rs. 32000/-. He does not ever have any other business or profession.
- ii) He does not know M/s Global Enterprises (Service Tax Registration Number AHAPK2065NSD001) and does not have any relation/concern/business transaction with it. There is no office of M/s Global Enterprises (Service Tax Registration Number AHAPK2065NSD001) in his residential address at BEST quarter at C/ 10, BEST Staff Quarters, Jerbai Wadala Road, Near Cancer society, Parel, Mumbai, Maharashtra-400012.
- iii) He admitted that the PAN Card (AHAPK2065N) and Aadhar Card (8400 7601 9978) and signatures on other documents, which were used to open Current A/c No. 30206284532 of GBCB, belong to him. However, he made it clear that he does not ever have opened any Current A/c No. 30206284532 in his name or in the name of any business/company in Dadar Branch of GBCB. He did not legally authorize/issue power of attorney to anybody to open and operate any bank account in any bank.
- iv) He did not file his income tax Return (ITR-4S) for the A.Y. 2016-17 with a declared business income of Rs. 229690/ -.
- v) Service Tax Registration No. AHAPK2065NSD001 in the name of Global Enterprises was not obtained by him.
- vi) Someone named Mathe collected his PAN Card, Aadhar Card and photo and also took his signature on several documents on two three different occasions on the promise of sanctioning personal loan.
- vii) Service Tax Registration Number AHAPK2065NSD001 in the name of Global Enterprises was not obtained by him.
- viii) He also does not know Shri Amjad Mohd. Farukh Bakali, Shri Irfan Ismail Popatiya, Shri Chandrashekar Chandrakant Rane and M/s. Global Enterprises (IEC BSYPR4701C) and its proprietor Shri Sahdeo Bapurao Rade.
- ix) He completely disowned the ownership of Current A/c No. 30206284532 of GBCB as that account was opened and operated in his name without his consent by misusing his PAN Card, Aadhar Card and by taking his signature in some unknown documents at promise of sanctioning

personal loan.

17. During the course of investigation, statement of Shri Irfan Ismail Popatiya, was recorded on 24.08.2018 under Section 108 of the Customs Act, 1962. Wherein he inter-alia stated that:

- i) He was earlier employed as a salesman in Shri Amjad Mohd. Farukh Bakali's shop "AMJ Toys". After that he entered into partnership with Shri Amjad Mohd. Farukh Bakali. Then he has started his own business of imported toys in the same shop "AMJ Toys" along with Shri Amjad Mohd. Farukh Bakali.
- ii) He did not enter into any formal partnership agreement with Shri Amjad Mohd. Farukh Bakali for doing joint business with him or for doing his own business in the latter's premises/shop "AMJ Toys."
- iii) He does not ever file any Income Tax Returns and does not have GST registration for retail sale of toys. The payment of taxes like GST, Municipal tax etc. for running business of imported toys has been made in the name of Sh. Amjad Mohd. Farukh Bakali.
- iv) He stated that he did not have any current account in his name. He has Savings Account No. 318402010770042 in his name in Union Bank, Mohamed Ali Road, Mumbai.
- v) The import of toys looking by Sh. Amjad Mohd. Farukh Bakali. He is regularly visit china, place order and also appoints persons for clearance of imported goods in customs. All the works/ documentations regarding import of toys from China are handled by Shri Amjad Mohd. Farukh Bakali.
- vi) The goods in the present consignment in container no. TCKU9598698 imported in the name of M/s Global Enterprises (IEC BSYPR4701C) belong to him. He is the importer and owner of the entire goods.
- vii) Shri Amjad Mohd. Farukh Bakali takes Rs. 25000/- per container from him for managing the import on behalf of him.
- viii) Shri Amjad Mohd. Farukh Bakali gives him imported toys in credit and after sale.
- ix) He has entered into an agreement with the IEC holder of M/s Global Enterprises (IEC BSYPR4701C) for the use of his IEC Code. Whatever profit he earn in the import of goods in the name of M/s. Global Enterprises (IEC BSYPR4701C), I share a percentage of that profit with the owner of M/s. Global Enterprises (IEC BSYPR4701C). Although he could not remember the name of the IEC holder of M/s. Global Enterprises (IEC BSYPR4701C). He once paid an amount of Rs. 5000/- in cash to the IEC holder of M/s. Global enterprises (IEC BSYPR4701C).
- x) The IEC holder had agreed to allow his IEC code to be used for the import

of goods for Shri Popatiya in lieu of a percentage of profit from such importation.

- xi) Although he is in the regular business of imported toys for the last 02 years, he does not have IEC of his own and does not apply for the same.
- xii) He gave the Customs clearance work of import consignments of M/s Global Enterprises (IEC BSYPR4701C) to Shri Chandrashekar Chandrakant Rane who was friend of Shri Amjad Mohd. Farukh Bakali. Shri Amjad Mohd. Farukh Bakali told him to avail the services of Sh. Chandrashekar Chandrakant Rane for the clearances work. He was agreed to pay an amount of Rs. 15000/- per container to Sh. Chandrashekar Chandrakant Rane for customs clearances works and the amount charged by the CHA would be paid extra.
- xiii) He was aware that Shri Chandrashekar Chandrakant Rane did not have any CHA license or any type of valid CHA Card.
- xiv) Shri Chandrashekar Chandrakant Rane introduced him to Shri Santosh Gunjal who had cleared the first import consignment of M/s Global Enterprises (IEC BSYPR4701C). He also met Mohammed Arfat Mehmood Mukadam of M/s. Hayatt Shipping Private Limited (CHA No. 11/396) for the Customs clearance works of the impugned consignment of M/s Global Enterprises (IEC BSYPR4701C).
- xv) He introduced himself as importer of goods of M/s Global Enterprises (IEC BSYPR4701C) before Shri Santosh Gunjal and Mohammed Arfat Mehmood Mukadam. He also submitted the following documents to Mohammed Arfat Mehmood Mukadam of M/s. Hayatt Shipping Private Limited (CB No. 11/396) for the Customs clearance works of the impugned consignment of M/s Global Enterprises (IEC BSYPR4701C): Letter of Authority dated 16.04.2018, Know Your Customer (KYC) Form duly signed by Shri Sahdeo Bapurao Rade, proprietor M/s Global Enterprises (IEC BSYPR4701C), IEC copy, Copy of Current Account Verification letter dated 29.01.2018 issued by Saraswat Bank/ The Greater Bombay Co-Operative Bank Limited, PAN, Aadhar and MSEDCL Electricity Bill of Shri Sahdeo Bapurao Rade, GST Registration Certificate of Global Enterprises, ITR-V of Shri Sahdeo Bapurao Rade, proprietor M/s Global Enterprises for Assessment Year 2017-18, Bill of Lading dated 29.03.2018, Invoice dated 23.03.2018, Packing List 23.03.2018 and Certificate of Origin dated 23.03.2018.
- xvi) He did not obtain/ collect the Bill of Lading dated 29.03.2018, Invoice and Packing List dated 23.03.2018 and Certificate of Origin dated 23.03.2018 on his own. As Shri Amjad Mohd. Farukh Bakali managed the import consignment (B/E No. 6026676 dated 18.04.2018) of M/s Global Enterprises (IEC BSYPR4701C), he had given him the aforesaid

documents. He has no idea about the origin of these documents.

- xvii) He had ordered only toys in this consignment (B/E No. 6026676 dtd 18.04.2018) of M/s Global Enterprises (IEC BSYPR4701C), through Shri Amjad Mohd. Farukh Bakali He was not aware of the cosmetics and other undeclared items found inside this consignment.

18. During the course of investigation, statement of Shri Amjad Mohd. Farukh Bakali, was recorded on 26.09.2018 under Section 108 of the Customs Act, 1962. Wherein he inter-alia stated that:

- i) He has started the business of imported toys in the year 2005. He has own business of imported toys in the name of "TOYS CENTER" in his shop "AMJ Toys".
- ii) He has Importer Exporter Code (IEC) 0308037979 in the name of TOYS CENTER. He generally imported 3-4 containers of imported toys in a financial year. He does not ever have any other IEC in the name of other entity or individual. He has not imported any consignments for the last one and half years.
- iii) Sometimes he has visited the Chinese exporter/supplier in China personally and placed the order. In other instances, he has also placed order through email or Whatsapp. He has communications with Chinese exporters in email. He has generally visited China 2-3 times in a year for business tour for the last 10 years. He last visited Shantou in China around 1st to 15th March, 2018 for business purpose.
- iv) He has wholesale business of imported toys in "AMJ Toys" and Shri Irfan Ismail Popatiya is running retail business of imported toys from the same shop.
- v) He does not enter into any formal partnership agreement with Shri Irfan Ismail Popatiya for allowing him to run the later business of imported toys in his rented premises/shop "AMJ Toys."
- vi) The name of business of Shri Irfan Ismail Popatiya is "Nana Nani Toys" but he does not have GST registration. For the payment of GST and issue of GST invoice, Shri Irfan Ismail Popatiya uses the tax invoice of "TOYS CENTER". Further, all other local taxes like municipal tax etc. are paid in the name of Shri Bakali as the shop "AMJ Toys" is rented in his name.
- vii) He introduced Shri Irfan Ismail Popatiya to the Chinese exporters with whom he was in good terms and also extended to Shri Irfan Ismail Popatiya the credit line he enjoyed with the Chinese exporter. On the request of Shri Irfan Ismail Popatiya, he has placed the order with the Chinese exporters.
- viii) He helped Shri Irfan Ismail Popatiya to run business of imported toys. He has acquaintance and regular business transactions with different

Chinese exporters and he has enjoyed line of credit with them. He extended the same line of credit to Shri Irfan Ismail Popatiya for doing business.

- ix) He has initiated business transactions of Shri Irfan Ismail Popatiya with Rollana Toys and other exporters of Shantou in China.
- x) He was aware that Shri Chandrashekhar Chandrakant Rane did not have any CHA license or any type of valid CHA card; he had introduced Shri Irfan Ismail Popatiya to Shri Chandrashekhar Chandrakant Rane for the Customs clearance works.
- xi) He came to know about M/ s. Global Enterprises (IEC BSYPR4701C) through Shri Irfan Ismail Popatiya and Shri Chandrashekhar Chandrakant Rane. He also extended a credit of Rs. 1100000/- to Shri Irfan Ismail Popatiya. He also regularly gave credit in cash and sometimes in goods to Shri Irfan Ismail Popatiya for the business of the latter.
- xii) He also admitted that in January, 2016 he was booked by the Mumbai Police Crime Branch for importing Chinese scooters in parts, locally assembling them and then using them with fake number plates without having registered them with the Regional Transport Office (RTO).

19. From the above facts it appeared that Shri Sahdeo Bapurao Rade, proprietor, M/s. Global Enterprises (IEC BSYPR4701C) allowed his Importer Exporter Code to be used by Shri Irfan Ismail Popatiya and Shri Amjad Mohd. Farukh Bakali on the assurance of commission for the purpose of fraudulent import of cosmetics and other goods in the name of M/s. Global Enterprises (IEC BSYPR4701C). Whereas he was a mere name lender, the actual beneficiary and importer of the consignments in the name of M/s. Global Enterprises (IEC BSYPR4701C) was Shri Irfan Ismail Popatiya and Shri Amjad Mohd. Farukh Bakali. He also accepted of taking an amount of Rs. 500/- to allow the use of his PAN Card, Aadhar Card, photo etc. and also to put his signature on some other documents for business purpose of some other person. Shri Irfan Ismail Popatiya also stated that he had once paid an amount of Rs. 5000/- to Shri Sahdeo Bapurao Rade for the use of the IEC of the latter.

20. Shri Sahdeo Bapurao Rade in his Importer-Exporter Code (IEC) application to Directorate of Foreign Trade (DGFT) and in his Know Your Customer (KYC) documents to Customs claimed that the Current Account (CA) 30206284532 in The Greater Bombay Cooperative Bank (GBCB) belonged to him. But his claim was negated by The Greater Bombay Cooperative Bank (GBCB) whose authorized representative in his voluntary statement U/s 108 of the Customs Act, 1962 has made it clear that Account (CA) 30206284532 in GBCB is in the name of Santosh Kashiram Kadam with trade name of M/s.

Global Enterprises. Shri Sahdeo Bapurao Rade does not find any official mention in any of the documents of this account and thus does not have any relation with this account. Further, Shri Sahdeo Bapurao Rade's letter to The Manager, GBCB, Dadar Branch with a request for issuance of signature verification letter of Account (CA) 30206284532 in GBCB and receiving of the same by Shri Rajesh Ramaswamy, Manager, GBCB with the office stamp affixed on it [this letter was part of the KYC documents submitted to CB for Global Enterprises (BSYPR4701C)] was found fabricated. Shri Rajesh Ramaswamy, Branch Manager, Dadar Branch, GBCB in his official email dated 03.10.2018 to this office clarified that no such letter was received in their office and his receiving signature in this letter is also fake. The signature in this letter does not match with the signature of Shri Santosh Kashiram Kadam, holder of Account (CA) 30206284532 in GBCB in the name of Global Enterprises. Further, the address of Global Enterprises mentioned in the letter head of this letter is different from the address of Global Enterprises mentioned in record of Account (CA) 30206284532 with GBCB. Thus, account of other person without having any authorization was filed the Bill of Entry in EDI Systems by M/s. Global Enterprises (IEC BSYPR4701C) for the purpose of dubious import in contravention of Section 46 of the Customs Act, 1962.

21. Thus, Shri Sahdeo Bapurao Rade knowingly and intentionally made, signed or used forged and fabricated documents for obtaining IEC in the name of bogus concern M/s. Global Enterprises (IEC BSYPR4701C) for the purpose of dubious import by Shri Amjad Mohd. Farukh Bakali and Shri Irfan Ismail Popatiya. He has aided and abetted Shri Amjad Mohd. Farukh Bakali and Shri Irfan Ismail Popatiya in commission of offence of import of cosmetics, drones and other undeclared 'restricted' goods in the name of non-existing IEC obtained in his name.

22. Shri Irfan Ismail Popatiya claimed that he was the actual importer who imports toys consignments from China in the name of M/s. Global Enterprises (IEC BSYPR4701C) for the purpose of retail sale of these imported goods in his business in the shop of AMJ Toys/Toys Center. But Shri Popatiya failed to substantiate his claim of having independent business in the shop of AMJ Toys/Toys Center which was the business place of Shri Amjad Mohd. Farukh Bakali. Shri Popatiya did not have any valid agreement with Shri Amjad Mohd. Farukh Bakali who claimed that the shop named "AMJ Toys" was taken in rent by him for running his business in the name of "Toys Center". Shri Popatiya did not have any GST registration for running his business of retail sale of imported toys. He also did not file Income Tax Return and also did not pay any taxes to local bodies.

23. Shri Bakali stated that Shri Popatiya used his GST registration in the name of "Toys Center" to issue tax invoice to customer for purchasing toys from him. Such claim of dual use of GSTIN is legally not viable and can be interpreted only as a desperate attempt to credit some authenticity to Shri Popatiya as independent businessmen. He himself admitted that he was previously employed as a salesman with Shri Amjad Mohd. Farukh Bakali in "AMJ Toys/Toys Center". Thus, it came out that Shri Irfan Ismail Popatiya is a mere associate of Shri Amjad Mohd. Farukh Bakali and is working in the shop "AMJ Toys/Toys Center". Shri Popatiya was projected by Shri Bakali as the owner of the impugned goods to avoid any possible punitive actions against him by any enforcement agency.

24. The notion of Shri Irfan Ismail Popatiya as a puppet in the hand of Shri Bakali and as a mere associate of his non-bonafide import was further confirmed by Shri Popatiya's inability to explain any import related matters of M/s. Global Enterprises (IEC BSYPR4701C) such as placement of order with Chinese suppliers, mode of payment, communications with Chinese supplier, arrangement of shipping line, hiring of CHA/CB etc. Shri Popatiya clearly passed on the onus to explain these import related matters of M/s. Global Enterprises (IEC BSYPR4701C) to Shri Bakali. Shri Popatiya stated that Shri Amjad Mohd. Farukh Bakali ordered the goods, made the payment agreement with the exporter in China, arranged the shipment of goods and also the Customs clearance. Shri Amjad Mohd. Farukh Bakali also took Rs. 25000/-per container from Shri Popatiya for managing the import affairs of M/s. Global Enterprises (IEC BSYPR4701C). Shri Popatiya also claimed that he did not obtain/collect the Bill of Lading dated 29.03.2018, Invoice and Packing List dated 23.03.2018 and Certificate of Origin dated 23.03.2018 from the shipping line/supplier on his own. It was Shri Bakali who had given him the aforesaid documents. Shri Popatiya claimed that he did not have idea about the origin of these documents. Shri Chandrashekar Chandrakant Rane was also introduced to Shri Popatiya by Shri Bakali for managing Customs clearance works of M/s. Global Enterprises (IEC BSYPR4701C). Shri Popatiya also failed to explain the source of finance of such import and also to produce any documents regarding the sale of the already cleared import consignments of M/s. Global Enterprises (IEC BSYPR4701C) and its sale proceeds. These facts explicitly contradict his claim of being owner and importer of the impugned consignments of M/s. Global Enterprises (IEC BSYPR4701C).

25. Thus, it appeared that Shri Rane was a part of improper importation by Shri Bakali and Shri Popatiya and he had played the role of a mediator to arrange CHA/CB and hide the bogus nature of M/s. Global Enterprises (IEC BSYPR4701C) before CHA. Shri Rane also got monetary benefits from such improper import of M/s. Global Enterprises (IEC BSYPR4701C), thus abetted/

facilitated improper importation of the impugned goods.

26. Shri Amjad Mohd. Farukh Bakali is the mastermind and kingpin in this case of improper importation of 'fake' cosmetics and other prohibited goods in the name of non-existing IEC M/s. Global Enterprises (IEC BSYPR4701C). He hatched the larger conspiracy of importing non-bonfide goods in disguise of bonafide goods in the name of bogus IEC and involved Shri Popatiya, Shri Rane, Shri Rade and other unknown persons for implementing the same. It was he who planned the import of cosmetics and other restricted goods from China with the help of Shri Irfan Ismail Popatiya who had borrowed the IEC from Shri Sahdeo Bapurao Rade in the name of M/s. Global Enterprises (IEC BSYPR4701C) or had obtained such bogus IEC from DGFT in the name of Shri Sahdeo Bapurao Rade by submitting fabricated documents.

27. Shri Santosh Dagdu Gunjal had facilitated the customs clearance of the first consignment (under B/E 5944338 dated 11.04.2018) of M/s. Global Enterprises (IEC BSYPR4701C) through Customs Broker firm Svarad Logistics India Private Limited (CB License No. 11/2190) which was managed by him. Shri Chandrashekhar Rane introduced him to Shri Irfan Ismail Popatiya for the clearance of first import consignment of M/s. Global Enterprises (IEC BSYPR4701C) in Navkar CFS, Nhava Sheva. He also arranged the transportation of the said consignment from Navkar CFS, Nhava Sheva to the warehouse in Bhiwandi through his sole proprietorship transport company Raj Bhushan Roadlines. He has, thus received monetary benefits from the import consignment of M/s. Global Enterprises (IEC BSYPR4701C) in both ways i.e. as a manager of Customs Broker firm Svarad Logistics India Private Limited (CB License No. 11/2190) for customs clearance works of one consignment (under B/E 5944338 dated 11.04.2018) and for the transportation of the same as proprietor of Raj Bhushan Roadlines. He also brought the Customs clearance work of one import consignment of M/s. Global Enterprises (IEC BSYPR4701C) to M/s. Hayatt Shipping Private Limited (CB No. 11/396) and its director Mohammed Arfat Mehmood Mukadam, who was known to him for the last 15 years. It was Shri Santosh Dagdu Gunjal who intentionally not disclosed the dubious nature of ownership of M/s. Global Enterprises (IEC BSYPR4701C) before the customs brokers and attempted to give creditability and genuineness to the said bogus IEC before the CHA. He has also arranged the transportation of such improper importation through his transport company Raj Bhushan Roadlines.

28. Shri Mohammed Arfat Mehmood Mukadam of the Customs Broker Firm M/s Hayatt Shipping Pvt. Ltd had filed the B/E No. 6026676 dated 18.04.2018 for the customs clearance of the import consignment of M/s. Global Enterprises (IEC BSYPR4701C). He took these customs clearance works of M/s. Global Enterprises (IEC BSYPR4701C) through middlemen like Shri Santosh Dagdu

Gunjal and Shri Chandrashekar Chandrakant Rane. Although he claimed that he had met the IEC holder of M/s. Global Enterprises (IEC BSYPR4701C) and verified the registered address of the IEC, but that cannot reverse the fact that address verification of the IEC itself would raise doubt about its dubious nature. Although he had obtained authority letter and other Know-Your-Customer documents of M/s. Global Enterprises (IEC BSYPR4701C), but he failed to anticipate the fraudulent imports through such non-existing company. Thus, he has facilitated in clearing the consignments of M/s. Global Enterprises (IEC BSYPR4701C) and in commission of offence by Amjad Bakali and associates.

29. In view of the above facts and circumstances, it appeared that the above omission/commission of CB M/s Hayatt Shipping Pvt Ltd. (11/396) (PAN No. AAAFA3866E) leading to violation of Regulations 10(a), 10(d), 10(e), 10(m) and 10(n) of the Custom Broker Licensing Regulations 2018. Hence, the CB M/s Hayatt Shipping Pvt Ltd. (11/396) did not exercise due diligence in discharging their obligation as required under provisions Regulations 10(a), 10(d), 10(e), 10(m) and 10(n) of the CBLR, 2018.

Legal Provisions of CBLR, 2018:

- **Regulation 10 (a) of CBLR, 2018** – *“The CB shall obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;”*
- **Regulation 10 (d) of CBLR, 2018** – *“The CB 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 Department;”*
- **Regulation 10 (e) of CBLR, 2018** – *“The CB 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 CBLR, 2018** – *“The CB shall discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay.”*
- **Regulation 10 (n) of CBLR, 2018** – *“The 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;”*

30. SUSPENSION OF LICENSE: In view of the facts stated above, CB, M/s Hayatt Shipping Pvt. Ltd (11/396) was found liable for their acts of omission and

commission leading to contraventions of the provision under Regulation 10(a), 10(d), 10(e), 10(m) and 10(n) of CBLR, 2018 therefore, prima facie, it appeared that the CB failed to fulfil their responsibilities as per provisions of regulations of CBLR, 2018. Hence the licence of CB was put under immediate suspension under regulation 16(1) of CBLR, 2018 vide Order No. 42/2020-21 dated 16.02.2021 passed by the Principal Commissioner of Customs(G), NCH in the instant case. Thereafter suspension of M/s. Hayatt Shipping Pvt. Ltd., CB No (11/396) was revoked, pending inquiry proceedings under Regulation 17 of CBLR, 2018, vide Order No.52/2020-21 dated 15.03.2021 read with corrigendum dated 27.07.2021 to Order No.52/2020-21 dated 15.03.2021 under the provisions of Regulation 16 (2) of CBLR, 2018.

31. SHOW CAUSE NOTICE: M/s Hayatt Shipping Pvt. Ltd (11/396) was issued a Show Cause Notice (SCN) No. 82/2020-21 dated 15.03.2021 by the Principal Commissioner of Customs (General), NCH, Mumbai, Zone-I asking them to show cause as to why the licence bearing no. 11/396 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 Rajesh Munde, Deputy Commissioner of Customs who was appointed an inquiry officer to conduct inquiry under regulation 17 of CBLR, 2018.

32. INQUIRY REPORT

In accordance to the SCN No. 82/2020-21 dated 15.03.2021, the appointed Inquiry Officer submitted Inquiry Report dated 16.09.2021 wherein the charges against CB M/s Hayatt Shipping Pvt. Ltd (11/396) i.e. violation of Regulation 10(a), 10(d), 10(e), 10(m) and 10(n) of CBLR, 2018 were held 'Proved'.

(i) IO submitted that on 10.08.2021 authorized advocate Shri Anil Balani on behalf of M/s. Hayatt Shipping Pvt. Ltd., CB No (11/396) had appeared through virtual mode. IO also submitted that, the oral and written submission made by CB during the PH was summarized as below;

- In SCN dated 15.03.2021, para 12, on Page 3, the Custom Broker has stated under Section 108 that he was introduced in person to Shri Sahdeo, Proprietor of Global Enterprises and to Irfan, Power of Attorney holder by his friend Santosh of Svarad Logistics, another CB firm which had cleared the first consignment of the said Global Enterprises.
- The KYC documents, etc. for clearance of the instant consignment were

also obtained by this CB.

- This is the one and only consignment of Global which this CB has handled. His usual charges of Rs. 8000 remain unpaid. He verified the address of Global and found it to be genuine. He obtained letter of authority and other KYC documents duly signed by Shri Sahdeo. He was not aware about the undeclared/concealed goods in the container. He had filed the Bill of Entry on the basis of the import documents.
- In his statements in Para 13 of the SCN the said Shri. Santosh has confirmed the above facts.
- In para 14 Shri. Sahdeo has stated under Section 108 that he does painting work. He has an auto rickshaw. He gave his Pan Card, Aadhar and Photo with signatures to one Sachin. However, he did not deny meeting the Custom Broker. In fact, he was not questioned about the meeting.
- In Para 15 Rane has referred to three (03) import consignments of Global. The department must disclose the status of the 3rd consignment before proceeding further. The CB is Shengi Shipping as per the said statement.
- In Para 16 also, there is no evidence against this CB.
- In para 17 Irfan has stated that he entered into an agreement with M/s Global Enterprise.
- A confrontation should have been arranged between Shri Irfan and Shri Sahdeo during the investigations. It can be done even at this stage after allowing cross examination of Shri Irfan and Shri Sahdeo.
- Para 18 refers to statement of Shri Bakali. He has not implicated this CB.
- Paras 19-21 confirmed that Shri Sahdeo acted in concert with Shri Irfan and Shri Bakali.
- Para 22-27 do not concern the Custom Broker.
- Para 28 falsely states that this CB took work from middlemen. The fact is that he took the work directly from M/S. Global Enterprises.
- Address verification did not raise any doubt because the statutory authorities had issued IEC on the basis of the said address. The CB is not a super power or a super authority who can overrule and doubt the address mentioned in the IEC.
- The allegations of carelessness are not correct. The CB has acted diligently.
- Hence there is no violation of Regulations 10(a), 10(d), 10(e), 10(m) and 10(n).
- The proceedings are barred by time and hit by limitation. As per CBLR 2018, the Inquiry Notice has to be issued within 90 days from receipt of offence report. In this case the Bill of Entry is of dated 18.04.2018 and the SCN does not refer to any Offence Report. The SCN dated 15.03.2021 is

hit by laches and delays. It is contrary to and in violation of the law laid down. In this regard, they relied upon the judgment of Hon'ble Bombay High court in the case of Unison Clearing 2018 (361) ELT 321 (Bom).

- In the circumstances it was prayed that the proceedings kindly be dropped and the charges be held to be unproved.

32.2 COMMENTS OF INQUIRY OFFICER: - The Inquiry Officer had gone through the charges vis a vis the reply/submission of the CB M/s Hayatt Shipping Pvt. Ltd. and concluded the inquiry proceedings as under;

32.2.1 ARTICLE OF CHARGE –I (Regulation 10(a) of CBLR, 2018):-

In respect of article of charge of violation of Regulation 10(a) of the CBLR, 2018, the Inquiry Officer noted that the CB has failed to obtain an authorisation from Shri Sahdeo Bapurao Rade, by whom he is employed as a Customs Broker and failed to produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. The CB, Shri Mukadam got the documents from Shri Irfan Popatiya and introduced by Shri Santosh. Shri Mukadam did not personally verify the address of M/s Global Enterprises. Further, IEC holder Shri Sahdeo has denied that he applied for any Importer Exporter Code (IEC). Shri Sahdeo further stated that he has not authorized anybody to carry out any import-export business in his name. Hence, Shri Sahdeo has not authorized the CBM/s Hayatt Shipping Pvt. Ltd. Thereby, it was held by the Inquiry Officer that the CB has violated Regulation 10(a) of CBLR, 2018.

32.2.2 ARTICLE OF CHARGE –II (Regulation 10(d) of CBLR, 2018):-

With reference to charge of violation of Regulation 10(d) of the CBLR, 2018, the Inquiry Officer had observed that the CB failed to advise Shri Sahdeo, his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of noncompliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. There was evidence as discussed that Shri Sahdeo did not apply for any IEC and neither had any business interest in M/s Global Enterprises nor was he aware of M/s Global Enterprises. Shri Sahdeo has not given any authorization or Power of Attorney to anybody to operate business activities of M/s Global Enterprises. He was not the proprietor of M/s Global Enterprises and not aware of its business or functioning. Shri Mukadam, Director and G- Power of Attorney holder of the Customs Broker stated that he got the documents from non IEC Holder, Shri Popatiya, who was introduced by his friend Shri Santosh Gunjal. The Inquiry finds that Shri Sahdeo never

authorized the CB and Shri Mukadam nor the CB met Shri Sahdeo. It is on record that there was no interaction between the Customs Broker and Shri Sahdeo so that the Customs Broker could give proper advice. Thereby, it was concluded by the Inquiry Officer that the CB has violated Regulation 10(d) of CBLR, 2018.

32.2.3 ARTICLE OF CHARGE –III (Regulation 10(e) of CBLR, 2018):

On the article of charge of violation of Regulation 10(e) of the CBLR, 2018, the Inquiry Officer found that in the instant case, the CB has not interacted directly with Shri Sahdeo, the IEC holder. The documents for clearance purpose were received by the CB through middlemen viz. Shri Santosh and Shri Rane, who were neither importer nor authorized representative of the importer. The CB thus failed to verify the authentic and genuineness of the proxy importer M/s Global Enterprises. Therefore, the Inquiry found that the CB allowed unauthorized person Shri Bakali to import the goods by misuse of IEC. Thus, by their acts of omission and commission, the CB has aided and abetted the fraudulent imports. Therefore, the Customs Broker has failed to exercise due diligence to ascertain the correctness of the information furnished by the client. Thereby, it was held by the Inquiry Officer that the CB has also violated Regulation 10(e) of CBLR, 2018.

32.2.4 ARTICLE OF CHARGE –IV (Regulation 10(m) of CBLR, 2018):

With regard to article of charge of violation of Regulation 10(m) of the CBLR, 2018, the Inquiry Officer found that Shri Mohammed Mukadam, Director 86 G-Power of Attorney Holder has admitted in his statement that all the clearance documents were received through middlemen viz. Shri Santosh and Shri Rane, who were neither importer nor authorized representative of the importer and failed to verify the authentic and genuineness of the proxy importer M/s Global Enterprises. It was found that the CB has not been efficient in the discharge of their obligation laid down under the CBLR, 2018. Thereby, it was held by the Inquiry Officer that the CB has violated Regulation 10(m) of CBLR, 2018.

32.2.5 ARTICLE OF CHARGE –V (Regulation 10(n) of CBLR, 2018):

On the charge of violation of Regulation 10(n) of the CBLR, 2018, the Inquiry Officer held that the CB failed to verify the declared address by using reliable, independent, authentic documents, data or information. Statement of Shri Mukadam, Director and G- Power of Attorney holder of the Customs Broker has stated that he got the documents from Shri Popatiya, who was introduced by his friend Shri Santosh. Also, Shri Mukadam claimed that he personally verified the address of Shri Sahdeo is proved false as Shri Sahdeo has denied that he applied for any IEC and that he has not authorized anybody to carry out

any import-export business in his name. The Inquiry held that the CB has not been careful and not diligent in undertaking the KYC of the background of M/s Global Enterprises and accepted documents from the persons who were neither importer nor authorized representative of the importer and failed to verify the authentic and genuineness of the bogus importer M/s Global Enterprises. Thereby, it was held by the Inquiry Officer that the CB has violated Regulation 10(n) of CBLR, 2018.

33. Written Submission of CB before the then Adjudicating authority

In response to the above Inquiry Report, Shri Anil Balani, authorised advocate of CB M/s Hayatt Shipping P. Ltd., had submitted a representation dated 29.10.2021 and argued that; -

- The Inquiry Officer gravely erred in relying on adjudication order dated 31.03.2020 imposing penalty on the CB. He failed to appreciate that appeal against the said order filed by CB is pending.
- Further, it is well settled that the proceeding under CBLR should not be influenced by adjudication in as much as they are independent and mutually exclusive.
- The Inquiry Officer has to decide independently and on his own. He should not allow himself to be influenced by the findings of another person. He cannot substitute his judgement with the judgement of another authority.
- The Inquiry Officer gravely erred in examining statements of seven (07) persons which were recorded under section 108 of Customs Act, 1962 without following the procedure laid down under the CBLR. The said seven (07) persons should have been directed to attend the Inquiry Proceedings. Their testimony should have been recorded and thereafter Cross-examination should have been permitted. Regulation 17(3) and 17(4) of the CBLR, 2018.
- His finding that inconsistencies were found in the said statements which could not be reconciled made it all the more inoperative for him to personally examine the said persons in the course of Inquiry.
- The Inquiry Officer failed to appreciate that in case there were contradiction between the depositions of Shri Sahdeo Rade (IEC Holder) and The CB, those contradictions could only have been resolved by rejecting the statements and making an honest attempt to arrive at the truth. The contradictions cannot be resolved by conveniently rejecting the version of the CB. That exposes the bias on the part of the Inquiry Officer against the CB. It also proved that he was in a tearing hurry to decide the case by throwing the principles of natural justice to the winds.
- The Inquiry Officer failed to appreciate that the statements under section

108 are recorded by the investigating agency for the purpose of adjudication of duty, fine and penalty. On the other hand, the CBLR proceedings affect the livelihood of the CB and directly impact the fundamental rights guaranteed under the Constitution of India to carry on business, trade and occupation. Hence, the burden is on the department to prove and establish each charge with credible documentary evidence and oral evidence. A shortcut approach by taking a statements recorded by another agency which are admittedly conflicting and contradictory and attempting to resolve the contradictions in a hurried and biased manner behind the back of the CB neither be countenanced nor sustained.

- The findings were amorphous and omnibus. The fact is that Regulations 10(a), 10(d), 10(e), 10(m) and 10(n) of the CBLR, 2018 are not violated by the CB.
- The Inquiry Report deserves to be rejected and the proceedings deserve to be dropped.

34. HON'BLE CESTAT, MUMBAI ORDER FOR REMAND PROCEEDINGS: -

Initially based on offence report in the form of SCN F.No. SD/INT/MISC/NSPU/26/2018-19 dated 26.04.2019 issued by ADC, NSPU, R & I and OIO No. 1000/2019-20/ADC/NS-V/JNCH/CAC dated 31.03.2020 issued by ADC, NS-V, JNCH was received, a SCN No. 82/2020-21 dated 15.03.2021 was issued under Regulation 17 of CBLR, 2018 and same was adjudicated vide O-I-O No. 139/CAC/PCC(G)/SJ/CBS(Adj) dated 28.01.2022 whereby revocation of license No. 11/396 and forfeiture of entire amount of security deposit were ordered by then Adjudicating authority.

In the subject case, Hon'ble CESTAT, Mumbai in its final order dated 03.03.2023 mentioned that: -

- (i) They did not find any consideration of the submissions made by the appellant in their representation dated 29.10.2021. The order has been passed without consideration of the submissions made and is against the principles of natural justice.
- (ii) Appeal filed by the appellant is allowed by way of remand to the original authority for passing the speaking order after providing the appellant all the documents that are relied against them and after consideration of all the submissions made by the appellant before him.
- (iii) As the issue in respect of revocation of the CHA licence impacting the right to livelihood of the concerned persons, we direct that the matter in remand proceedings should be decided within two months from the receipt of this order.
- (iv) Appeal is allowed by way of remand

In these circumstances, Hon'ble CESTAT, Mumbai vide its final order dated 03.03.2023 against OIO dated 28.01.2022 had remanded the issue back to the licensing authority and directed that the matter in remand proceedings should be decided within two months from the receipt of this order.

35. PERSONAL HEARING AND RECORDS OF THE PERSONAL HEARING: -

In compliance to the Hon'ble CESTAT, Mumbai final order dated 03.03.2023, a personal hearing was given to CB on 13.06.2023 for consideration of all the submissions if any. Authorized advocate Shri Anil Balani on behalf of M/s. Hayatt Shipping Pvt. Ltd., CB No (11/396) appeared for Personal Hearing conducted wherein he submitted a written submission dated 13.06.2023 wherein he reiterated their earlier submission dated 29.10.2021 before the then adjudicating authority. He further stated that they have already suffered a lot, therefore, their license should be restored.

36. DISCUSSIONS AND FINDINGS: -

I have gone through the case, material evidence on record, the show cause notice dated 15.03.2021, Inquiry Report dated 16.09.2021 and written submissions dated 29.10.2021 & 13.06.2023 made by the CB and examined the role and conduct of CB in the case before me.

36.1 The charges against the CB i.e. violation of Regulation 10(a), 10(d), 10(e), 10(m) and 10(n) of CBLR, 2018 were made vide Show Cause Notice No. 88/2020-21 dated 15.03.2021 issued by Pr. Commissioner of Customs (General), NCH, Mumbai. Inquiry Officer in his report held the charges for violation of Regulation 10(a), 10(d), 10(e), 10(m) and 10(n) of CBLR, 2018 as "Proved".

36.2 I refrain from reproducing the brief facts of the case which have already been discussed above. 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(a), 10(d), 10(e), 10(m) and 10(n) of CBLR, 2018.

36.3.1 With regard to violation of Regulation 10(a) of CBLR, 2018:

"A Customs Broker shall obtain an authorization from each of the companies, firm or individuals by whom he is for the time being employed as a Customs Broker and produced such authorization whenever required by the deputy Commissioner of Customs or assistant Commissioner of Customs, as the case may be."

As per the Investigation report in the instant case, Shri Mohammed Arfat Mehmood Mukadam, Director and G- Power of Attorney holder of the Customs Broker M/s. Hayatt Shipping Pvt. Ltd. in his statement recorded on 06.08.2018, under Section 108 of the Customs Act, 1962 inter alia stated that he obtained the Letter of Authority and other KYC documents as part of KYC compliance for

the clearance of consignment of M/s. Global Enterprises. He was introduced in person to Shri Sahdeo Bapurao Rade, proprietor, M/s. Global Enterprises (IEC BSYPR4701C) and to Shri Irfan Ismail Popatiya, power of attorney holder on behalf of Shri Sahdeo Bapurao Rade, by one of his friend Shri Santosh Gunjal. He further stated that the Know Your Customer (KYC) documents of M/s. Global Enterprises (IEC BSYPR4701C) and other documents were given to him by Shri Irfan Ismail Popatiya for the Customs clearance of import consignments in container no. TCKU9598698 imported by M/s. Global Enterprises (IEC BSYPR4701C). He further stated that he took documents such as Letter of Authority dated 16.04.2018, Know Your Customer (KYC) Form duly signed by Shri Sahdeo Bapurao Rade, proprietor M/s Global Enterprises (IEC BSYPR4701C), IEC copy, Copy of Current Account Verification letter dated 29.01.2018 issued by Saraswat Bank, The Greater Bombay Co-Operative Bank Limited, PAN, Aadhar and MSEDCL Electricity Bill of Shri Sahdeo Bapurao Rade, GST Registration Certificate of Global Enterprises, ITR-V of Shri Sahdeo Bapurao Rade, proprietor M/s Global Enterprises for Assessment Year 2017-18, Bill of Lading dated 29.03.2018, Invoice dated 23.03.2018, Packing List 23.03.2018 and Certificate of Origin dated 23.03.2018.

Shri Irfan Ismail Popatiya, power of attorney holder on behalf of Shri Sahdeo Bapurao Rade, in his statement dated 24.08.2018 recorded under Sec 108 of Customs Act, inter-alia stated that he introduced himself as importer of goods of M/s Global Enterprises (IEC BSYPR4701C) before Shri Santosh Gunjal and Mohammed Arfat Mehmood Mukadam. He also submitted the following documents to Mohammed Arfat Mehmood Mukadam of M/s. Hayatt Shipping Private Limited (CB No. 11/396) for the Customs clearance works of the impugned consignment of M/s Global Enterprises (IEC BSYPR4701C): Letter of Authority dated 16.04.2018, Know Your Customer (KYC) Form duly signed by Shri Sahdeo Bapurao Rade, proprietor M/s Global Enterprises (IEC BSYPR4701C), IEC copy, Copy of Current Account Verification letter dated 29.01.2018 issued by Saraswat Bank/ The Greater Bombay Co-Operative Bank Limited, PAN, Aadhar and MSEDCL Electricity Bill of Shri Sahdeo Bapurao Rade, GST Registration Certificate of Global Enterprises, ITR-V of Shri Sahdeo Bapurao Rade, proprietor M/s Global Enterprises for Assessment Year 2017-18, Bill of Lading dated 29.03.2018, Invoice dated 23.03.2018, Packing List 23.03.2018 and Certificate of Origin dated 23.03.2018.

On perusal of the statements of Shri. Mohammed Arfat Mehmood Mukadam of M/s. Hayatt Shipping Private Limited and Shri Irfan Ismail Popatiya, power of attorney holder of Exporter M/s. Global Enterprises, I find that there is sufficient corroboration between the statements of both the stakeholders. Thus, it appears that CB had taken authorization letter from an authorized employee of Exporter. Therefore, I hold that the CB has not violated Regulation 10(a) of the CBLR,

2018.

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

“The CB 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 Department;”

On analysis of the inventory of goods declared under Bill of Entry No. 6026676 dated 18.04.2018, I find that all the declared goods were “TOYS”. However, certificate that the toys being imported conform to the standards prescribed by Bureau of Indian Standards (BIS) and a Certificate of Conformance from the manufacturer that representative sample of the toys being imported have been tested by an independent laboratory, accredited by NABL, India and found to meet the prescribed BIS specifications, were not available in respect of the impugned consignment despite being a compulsory compliance requirement under Directorate General of Foreign Trade (DGFT) Notification No. 26/2015-2020 dated 01.09.2017. Thus, I find that CB did not advise the Importer to comply with the compulsory compliance requirement and standard norms as laid out under BIS.

Having perused the statements of various stakeholders in the subject case, I find that CB did not make any efforts to establish any communication linkages with the Proprietor of M/s. Global Enterprises. Since there was no communication between CB and Proprietor of M/s. Global Enterprises, CB failed to advise the Importer to comply with all the requisite norms in relation to import of subject goods.

Based on the above analysis, I find that the CB failed to advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, thus I hold that the CB has violated the provisions of Regulation 10(d) of the CBLR, 2018.

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

“A CB 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”;

In the instant case, it appears that the CB has not established any communication linkage with the IEC holder. However, Shri Mohammed Arfat Mehmood Mukadam, Director and G- Power of Attorney holder of the Customs Broker M/s. Hayatt Shipping Pvt. Ltd. in his statement recorded on 06.08.2018, under Section 108 of the Customs Act, 1962 inter alia stated that he was introduced in person to Shri Sahdeo Bapurao Rade, proprietor, M/s. Global Enterprises (IEC BSYPR4701C) and to Shri Irfan Ismail Popatiya, power of attorney holder on behalf of Shri Sahdeo Bapurao Rade, by one of his friend Shri Santosh Gunjal. He further stated that personally verified the address of Shri

Sahdeo Bapurao Rade, proprietor, M/s. Global Enterprises (IEC BSYPR4701C) and found it to be a genuine one. The aforesaid statement of Shri. Mohammed Arfat Mehmood Mukadam does not corroborate with the statement of Shri. Sahdeo Bapurao Rade, proprietor of M/s. Global Enterprises who in his statement dated 08.08.2018 held that he did not apply to anybody for any Importer-Exporter Code (IEC). Neither he ever has any business interest in M/s. Global Enterprises (IEC BSYPR4701C) nor was he aware of M/s. Global Enterprises (IEC BSYPR4701C) before receiving summons from this office. He further held that there is no office of M/s. Global Enterprises (IEC BSYPR4701C) in his home address at Room No. 6, Siddharth Nagar, Home Baba tekdi, Poona Link Road, Netivali, Katemanivali, East, Maharashtra-421306. He further stated that he is working as a daily wage labour in painting work in Kalyan-Dombivali belt. It is a seasonal job and he earns around Rs. 8000/- in a month. He also has an auto rickshaw in his name with route permit for Kalyan. He further stated that He has not given any authorization or Power of Attorney to anybody to operate business activities of M/s. Global Enterprises (IEC BSYPR4701C) on his behalf. He was not the proprietor of M/s. Global Enterprises (IEC BSYPR4701C) and not aware of its business or functioning.

Based on the analysis of statements of above stakeholders, though CB has stated that CB had met the Proprietor and verified the registered address of the IEC, however it is not in consonance with the statement of the Proprietor of M/s. Global Enterprises. In this regard, if it is assumed that CB had verified the address of M/s. Global Enterprises, it would have raised serious doubts about the dubious nature of import. Thus, the failure on the part of CB not exercising due diligence to ascertain to examine who is the actual beneficiary and importer of the consignments had adverse implications i.e. improper importation of 'fake' cosmetics and other prohibited goods in the name of non-existing IEC M/s. Global Enterprises (IEC BSYPR4701C).

Further, as stated in Para 36.3.2, I find that CB failed to exercise due diligence with respect to informing the client about the compulsory compliance requirement and standard norms as laid out under BIS.

Therefore, I find that the charge against the Customs Broker for violation of the Regulation 10(e) of the CBLR, 2018 as 'proved' and thus I hold that the CB has violated the provisions of Regulation 10(e) of the CBLR, 2018.

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

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

As stated in the Investigation Report, Shri Irfan Ismail Popatiya, power of attorney holder on behalf of Shri Sahdeo Bapurao Rade, in his statement dated

24.08.2018 recorded under Sec 108 of Customs Act, inter-alia stated that he introduced himself as importer of goods of M/s Global Enterprises (IEC BSYPR4701C) before Shri Santosh Gunjal and Mohammed Arfat Mehmood Mukadam. He also submitted the following documents to Mohammed Arfat Mehmood Mukadam of M/s. Hayatt Shipping Private Limited (CB No. 11/396) for the Customs clearance works of the impugned consignment of M/s Global Enterprises (IEC BSYPR4701C): Letter of Authority dated 16.04.2018, Know Your Customer (KYC) Form duly signed by Shri Sahdeo Bapurao Rade, proprietor M/s Global Enterprises (IEC BSYPR4701C), IEC copy, Copy of Current Account Verification letter dated 29.01.2018 issued by Saraswat Bank/ The Greater Bombay Co-Operative Bank Limited, PAN, Aadhar and MSEDCL Electricity Bill of Shri Sahdeo Bapurao Rade, GST Registration Certificate of Global Enterprises, ITR-V of Shri Sahdeo Bapurao Rade, proprietor M/s Global Enterprises for Assessment Year 2017-18, Bill of Lading dated 29.03.2018, Invoice dated 23.03.2018, Packing List 23.03.2018 and Certificate of Origin dated 23.03.2018.

Shri Mohammed Arfat Mehmood Mukadam, Director and G- Power of Attorney holder of the Customs Broker M/s. Hayatt Shipping Pvt. Ltd. in his statement recorded on 06.08.2018, under Section 108 of the Customs Act, 1962 inter alia stated that he obtained the Letter of Authority and other KYC documents as part of KYC compliance for the clearance of consignment of M/s. Global Enterprises. He further stated that he took documents such as Letter of Authority dated 16.04.2018, Know Your Customer (KYC) Form duly signed by Shri Sahdeo Bapurao Rade, proprietor M/s Global Enterprises (IEC BSYPR4701C), IEC copy, Copy of Current Account Verification letter dated 29.01.2018 issued by Saraswat Bank, The Greater Bombay Co-Operative Bank Limited, PAN, Aadhar and MSEDCL Electricity Bill of Shri Sahdeo Bapurao Rade, GST Registration Certificate of Global Enterprises, ITR-V of Shri Sahdeo Bapurao Rade, proprietor M/s Global Enterprises for Assessment Year 2017-18, Bill of Lading dated 29.03.2018, Invoice dated 23.03.2018, Packing List 23.03.2018 and Certificate of Origin dated 23.03.2018.

Based on the perusal of the statements of the aforesaid stakeholders, I find that CB had collected the requisite documents from an authorized representative of the Importer. I further find that in para 64 of O-i-O No. 1000/2019-20/ADC/NS-V/CAC/JNCH dated 31.03.2020, CB was the only noticee who attended the personal hearing before the adjudicating authority on 29.07.2019. Further, no other notice in the said case appeared before Adjudicating Authority.

In view of the above, I find that CB did not violate regulation 10(m) of CBLR, 2018.

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

"A CB shall verify correctness of Importer Exporter Code (IEC) number, Goods

and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;"

I find that the statement of Shri Mohammed Arfat Mehmood Mukadam, Director and G- Power of Attorney holder of the Customs Broker M/s. Hayatt Shipping Pvt. Ltd. was recorded on 06.08.2018, under Section 108 of the Customs Act, 1962, wherein he inter alia stated that he got the documents from a person by name Shri Irfan Ismail Popatiya, who was introduced by his friend Shri Santosh Gunjal. Shri Mohammed Arfat Mehmood Mukadam further stated that he personally verified the address of Shri Sahdeo Bapurao Rade, Proprietor of M/s. Global Enterprises. Shri. Sahdeo Bapurao Rade, proprietor of M/s. Global Enterprises who in his statement dated 08.08.2018 held that he did not apply to anybody for any Importer-Exporter Code (IEC). Neither he ever has any business interest in M/s. Global Enterprises (IEC BSYPR4701C) nor was he aware of M/s. Global Enterprises (IEC BSYPR4701C) before receiving summons from this office. He further held that there is no office of M/s. Global Enterprises (IEC BSYPR4701C) in his home address at Room No. 6, Siddharth Nagar, Home Baba tekdi, Poona Link Road, Netivali, Katemanivali, East, Maharashtra-421306. He further stated that he is working as a daily wage labour in painting work in Kalyan-Dombivali belt. It is a seasonal job and he earns around Rs. 8000/- in a month. He also has an auto rickshaw in his name with route permit for Kalyan. He further stated that he has not given any authorization or Power of Attorney to anybody to operate business activities of M/s. Global Enterprises (IEC BSYPR4701C) on his behalf. He was not the proprietor of M/s. Global Enterprises (IEC BSYPR4701C) and not aware of its business or functioning.

On analysis of the above statements, I find that had CB verified the identity and functioning of the client at the declared address by using reliable, independent, authentic documents, data or information, it would have itself raised doubt about the dubious nature of imports. Thus, I find that CB failed to undertake proper background verification of the client and actual importer and beneficiary of the subject goods.

Therefore, I find that the charge against the Customs Broker for violation of the Regulation 10(n) of the CBLR, 2018 as 'proved' and thus I hold that the CB has violated the provisions of Regulation 10(n) of the CBLR, 2018.

37. I find that the CB vide submission dated 29.10.2021 & 13.06.2023 submitted some points regarding the inquiry proceedings which are discussed below:

37.1 The CB argued that the timeline was not followed in the present case. In this regard, I find that the normal time limit for completion of proceedings is of

09 months from the date of receipt of offence report. However, these guidelines are directory but not mandatory. In this regard, I rely on the decision of Hon'ble High Court of Judicature at Bombay in the case of Principal Commissioner of Customs (General), Mumbai Versus Unison Clearing P. Ltd. reported in 2018 (361) E.L.T. 321 (Born.), which stipulates that:

"15. In view of the aforesaid discussion, the time limit contained in Regulation 20 cannot be construed to be mandatory and is held to be directory. As it is already observed above that though the time line framed in the Regulation need to be rigidly applied, fairness would demand that when such time limit is crossed, the period subsequently consumed for completing the inquiry should be justified by giving reasons and the causes on account of which the time limit was not adhered to. This would ensure that the inquiry proceedings which are initiated are completed expeditiously, are not prolonged and some checks and balances must be ensured. One step by which the unnecessary delays can be curbed is recording of reasons for the delay or non-adherence to this time limit by the Officer conducting the inquiry and making him accountable for not adhering to the time schedule. These reasons can then be tested to derive a conclusion whether the deviation from the time line prescribed in the Regulation, is "reasonable". This is the only way by which the provisions contained in Regulation 20 can be effectively implemented in the interest of both parties, namely, the Revenue and the Customs House Agent.

16. In the light of the aforesaid discussion, the appeals filed by the Revenue succeed and the question of law framed in the appeals is answered by holding that the CESTAT was not justified in setting aside the order or suspension of the Customs Brokers' Licence on the ground of delay between suspension and the notice of deviation or omission and it cannot be laid down as an absolute proposition of law that delay in taking immediate action of suspension or **initiation of inquiry within a period of 90 days** would vitiate the action of the Commissioner.

In view of the above, I find that though the delay has occurred in completion of proceedings, the delay is owing to unavoidable administrative reasons such delay cannot be fatal to outcome of inquiry and cannot neutralise the acts of omission and commission already committed by the CB. Hon'ble High Court of Judicature at Bombay also observed that the time limit contained in Regulation 20 cannot be construed to be mandatory and is held to be directory.

37.2 Further, CB vide his written submission dated 29.10.2021 submitted that in the subject case, the Regulation 17(3) & 17(4) of the CBLR, 2018 for allowing cross-examination was not followed as the Inquiry Officer gravely erred in

examining statements of seven (07) persons which were recorded under section 108 of Customs Act, 1962 without following the procedure laid down under the CBLR. The said (seven) 07 persons should have been directed to attend the Inquiry Proceedings. Their testimony should have been recorded and thereafter Cross-examination should have been permitted as per Regulation 17(3) & 17(4) of the CBLR, 2018. In this regard, I find it pertinent to mention Regulation 17(3) and 17(4) of CBLR, 2018:

Regulation 17(3): The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall, in the course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings, and he may also put any question to any person tendering evidence for or against the Customs Broker, for the purpose of ascertaining the correct position.

Regulation 17(4): The Customs Broker shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings, and where 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.

In this regard, if Inquiry Officer declines permission to cross-examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing. In the subject case, Inquiry Officer in para ix (o) of the Inquiry Report has categorically stated that "all the documents of the IEC Holder including the POA was disowned and rejected by Sahdeo with Sahdeo deposing the POA to be false as not authorised by him. Thus, on this basis when all the facts are in the knowledge of the CB, the question of allowing confrontation/ cross examination of Irfan and Sahdeo in the context of the Regulation does not arise." I further find that it was not tenable under the purview of the Section 138B or any other section of the Customs Act, 1962 on the ground that the CB failed to provide any cogent and valid reason for the cross-examination therefore there is no ground in the CB submission. In this context, I rely upon the following judgment in the matter:

- i. In the case of Fortune Impex Vs. Commissioner of Customs, Calcutta [2001(138) E.L.T.556 (Tri. -Kolkata)], Hon'ble Tribunal observed at Para 12 that:

"...it is not required that in each and every case, cross-examination should necessarily be allowed. There is no absolute right of cross-examination

provided in the Customs Act. The Advocate had given a list of 26 persons for cross-examination without indicating the specific reasons for cross-examining the...it cannot be said that there was violation of principles of natural justice by not allowing the cross-examination of the persons sought by him.” This view taken by the Tribunal has been affirmed by Hon’ble Supreme Court – 2004 (164) E.L.T. 4 (S.C.) & 2004 (167) E.L.T.A. 134 (S.C.)”.

37.3 Further, the CB argued in his submission that in the instant case, the inquiry against the CB was influenced by OIO No. 1000/2019-20/ADC/NS-V/JNCH/CAC dated 31.03.2020 issued by ADC, NS-V, JNCH. In this regard, I find that under the provision of the Regulation 17 of the CBLR, 2018, the Adjudicating authority may initiate the inquiry proceedings against the Charged CB wherein it is reported any non-compliance or misconduct that as per 17(b) “failure to comply with any of the provisions of the these regulations, within his jurisdiction or anywhere else”, 17(c) “commits any misconduct, whether within his jurisdiction or anywhere else which in the opinion of the Principal Commissioner or Commissioner of Customs renders him unfit to transact any business in the Customs Station”.

On perusal of the above mentioned provisions, I find that inquiry against the CB can be initiated as per any misconduct or non-compliance reported before the Adjudicating Authority and for this relied upon documents i.e. OIO dated 31.03.2020 may be taken under consideration while concluding the Charges against the CB as the said documents contain the grounds for revoking the license.

37.4 CB in his written submission dated 13.05.2023 stated that copies of the Offence Report along with statement of Representative of Greater Bombay Corporation Bank and mail of the said bank have not been supplied to them. In this regard, I find that Offence Report in the form of SCN F. No. SD/INT/MISC/NSPU/26/2018-19 dated 26.04.2019 and Order-in-Original 1000/2019-20/ADC/NS-V/JNCH/CAC dated 31.03.2020 have been issued to Shri. Mohammed Arfat Mehmood Mukadam, Director of M/s. Hayatt Shipping Pvt. Ltd. by the Investigating authority. Further, I find that Inquiry Proceedings have been initiated based on the Offence Report in the form of SCN F. No. SD/INT/MISC/NSPU/26/2018-19 dated 26.04.2019 and Order-in-Original 1000/2019-20/ADC/NS-V/JNCH/CAC dated 31.03.2020. I find that CESTAT vide its order directed to provide CB with all the documents that are relied against them. In the subject case, this office has relied upon SCN F. No. SD/INT/MISC/NSPU/26/2018-19 dated 26.04.2019 and Order-in-Original 1000/2019-20/ADC/NS-V/JNCH/CAC dated 31.03.2020 which have already been issued to the CB by the Investigating Authority. Further, in SCN F. No.

SD/INT/MISC/NSPU/26/2018-19 dated 26.04.2019, it is observed that all the relevant RUDs have been enclosed and provide to the noticees. In this regard, it is redundant on the part of the CB to ask for the same documents from this office. I find that there was no communication from CB to this Office before Personal Hearing regarding the list of documents required by the CB. I note that letter for PH scheduled on 13.06.2023 at 05:00 PM was communicated to CB vide email dated 08.06.2023. I note that CB had submitted the Written Submission vide email dated 13.06.2023 at 04:52 PM and PH was scheduled on 13.06.2023 at 05:00 PM. Hence, I find no rationale in the CB's argument that copy of Offence Report has not been supplied to them.

37.5 I have gone through the Hon'ble CESTAT, Mumbai vide Final order dated 03.03.2023 and find that the order has been followed as while the concluding the charges against the CB as per the CBLR, 2018, relevant part of the submission dated 29.11.2021 & 13.06.2023 has been taken under consideration

38. I rely on the following judgements and hold that in the instant case, CB, M/s Hayatt Shipping Pvt. Ltd., CB No. 11/396 has failed to fulfil certain obligations laid down under CBLR 2018.

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

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

permitted to misuse his position as CHA by taking advantage of his access to the Department. The grant of licence to a person to act as CHA is to some extent to assist the Department with the various procedures such as scrutinizing the various documents to be presented in the course of transaction of business for entry and exit of conveyances or the import or export of the goods. In such circumstances, great confidence is reposed in a CHA. Any misuse of such position by the CHA will have far reaching consequences in the transaction of business by the customs house officials. Therefore, when, by such malpractices, there is loss of revenue to the custom house, there is every justification for the Respondent in treating the action of the Petitioner Applicant as detrimental to the interest of the nation and accordingly, final order of revoking his licence has been passed."

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

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

"Para 6.1 These provisions require the Customs Broker to exercise due diligence to ascertain the correctness of any information and to advice the client accordingly. Though the CHA was accepted as having no mens rea of the noticed mis-declaration /under-1 valuation or mis-quantification but from his own statement acknowledging the negligence on his part to properly ensure the same, we are of the opinion that CH definitely has committed violation of the above mentioned Regulations. These Regulations caused a mandatory duty upon the CHA, who is an important link between the Customs Authorities and the importer/exporter. Any dereliction/lack of due diligence since has caused the Exchequer loss in terms of evasion of Customs Duty, the original adjudicating authority has rightly imposed the penalty upon the appellant herein."

39. In a regime of trade facilitation, a lot of trust is placed on the Customs Broker who directly deals with the importers/exporters as the department does not have interface with the importers/exporters. They failed to advise the importer for advising the Customs Act and allied act and failed to ascertain the actual importer in the subject case. However, I find that there was no willful collusion on the part of CB or its employees to facilitate such fraudulent imports.

Thus, I find that this was procedural lapse on the part of the CB. Further, this was the only consignment dealt by the CB in relation to the subject Importer M/s. Global Enterprises.

40. I hold that the charges held as proved in inquiry report are partly acceptable and tenable under the facts and circumstances of the case and certainly warrant penal action against the CB. However, I opine that awarding maximum punishment to Customs Broker for minor procedural lapses under CBLR, 2018 may not be justifiable. Accordingly, I pass the following order.

ORDER

41. 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 Hayatt Shipping Pvt. Ltd., (PAN No. AACCH9033K) (CB No. 11/396) under Regulation 18 of the CBLR, 2018.

(ii) I hereby order for forfeiture of entire amount of Rs 75,000/- (Rs. Seventy Five Thousand Only) security deposit furnished by the CB, under Regulation 14 of the CBLR, 2018.

(iii) Since there is no mens rea on the part of CB in facilitating such fraudulent imports and only procedural lapse is observed in a single Bill of Entry filed by the CB in relation to the subject Importer, I refrain from revoking the CB License No. 11/396 under Regulation 17 read with Regulation 14 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.

(SUNIL JAIN)

**PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
MUMBAI ZONE-I**

To,

M/s Hayatt Shipping Pvt. Ltd., (CB No. 11/396)

(PAN No. AACCH9033K),

20/22, M.A. Sarang Mrg, Kashmiri House,

3rd Floor, Room-20, Dongri,

Mumbai -400009

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
4. Commissioner of Customs, R&I, NSPU
5. SIIB (export), JNCH
6. CIU's of NCH, ACC & JNCH
7. EDI of NCH, ACC & JNCH
8. ACC (Admn), Mumbai with a request to circulate among all departments.
9. JNCH (Admn) with a request to circulate among all concerned.
10. Cash Department, NCH, Mumbai.
11. Notice Board
12. Office Copy.
13. Guard File (Admin)