



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

संचिका सं./F. No.- GEN/CB/57/2023- CBS

आदेश दिनांक/Date of Order: 19.10.2023

CAO No. 45/CAC/PCC(G)/SJ/CBS-Adj

जारी दिनांक/Date of issue: 19.10.2023

संख्या:

DIN : 20231077000000333B63

द्वारा जारी : सुनील जैन
प्रधान आयुक्त, सीमाशुल्क(सामान्य)
मुंबई -400 001

Issued By : Sunil Jain
Pr. Commissioner of Customs(Gen.),
Mumbai - 400 001.

ORDER-IN-ORIGINAL मूल आदेश

ध्यान दीजिए/ N.B. :

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

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

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

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

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

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

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

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

6. (i) यदि प्रतिवादित आदेश, जिसके विरुद्ध अपील की गई है, में शुल्क एवं मांगे गए ब्याजवत्तगाएगए 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. Joshi Jatashankar Liladhar & Sons, having office address at 91, Narayanrao Koli, Marg Guru Nanak Niwas, Mandvi, Mumbai – 400 003 [hereinafter referred to as the Customs Broker/CB], bearing PAN based Registration No. AACFJ8539KCH001 are holding a regular Custom Broker License No 11/168 issued by Commissioner of Customs, Mumbai under Regulation 10(1) of the Customs House Agents Licensing Regulations (CHALR), 1984 [Now regulation 7(2) of Customs Broker Licensing Regulations (CBLR, 2018)] and as such they are bound by the regulation and condition stipulated therein.

2. An offence report in the form of SCN No. 01/COMMR/Adj(X)/2022 dated 14.12.2022 was received in the CBS, NCH on 16.01.2023 from SIIB(X)/ACC, Sahar, Mumbai wherein, it was informed that on the basis of specific information received by the DRI, MZU, Mumbai; investigation was conducted which revealed that various export firms including M/s. Haji's International (IEC – 0305002597) were procuring fake purchase bills against the export consignments from one Mr. Suhel Ansari, through fake firms floated by him. Searches were conducted at the premises of Mr. Suhel Ansari, which led to the recovery of copies of bogus bills in the names of several companies issued by him.

3. The office premises from where Mr. Suhel Ansari was operating, situated at Room No. 30, 4th Floor, Chunnwala Building, 38-Kolsa Street, Pydhonic, Mumbai – 400003 was searched on 14.08.2015. During the course of search of the said premises, certain records/documents, three laptops and one hard disk and various rubber stamps were recovered.

4. During the course of investigation, statement of Mr. Suhel Parvez Ansari and Mr. Shaikh Mohammed Arshad employee of Mr. Suhel Parvez Ansari was recorded on 24.08.2015 by DRI, Mumbai where they inter-alia stated that they supplied fake invoices to various export firms including M/s. Haji's International.

5. DRI vide its letter F. No. DRI/MZU/D/INT-31/2015/7766 dated 04.10.2016 mentioned that undue drawback is being claimed by the exporters by overvaluing the exports whereas cheaper material is exported and to justify the value of the goods, fake invoices from Mr. Suhel Ansari, are procured showing the higher purchase price. DRI further gave a list of exporters and stated that these exporters which included M/s. Haji's International may have also adopted similar modus operandi.

6. During the investigation, the details of exports made by the exporter M/s. Haji's International (IEC – 0305002597) were retrieved from the ICES System. During the period from 2012 to 2016, the exporter made total exports of 699 shipping bills with FOB value of 102.15 crores and availed the total drawback of Rs. 7.73 crores. It is further observed that CB M/s. Joshi Jatashankar Liladhar

& Sons had facilitated clearance of 211 Shipping Bills of the said Exporter with FOB value of Rs. 15.29 crores in which the total Duty Drawback availed was Rs. 1.21 crores.

7. DRI, MZU, Mumbai forwarded the report to the SIIB(X), ACC for carrying out further investigation regarding the details of exporters including M/s. Haji's International (IEC - 0305002597) who have claimed undue drawback by overvaluing the exports and justifying the value of the goods by procuring fake invoices showing the higher purchase price from Mr. Suhel Ansari.

8. Further, Special Intelligence and Investigation Branch of Air Cargo Complex, Sahar, Mumbai issued Summons no. RBW/60/2017-18 dated 23.05.2017 to Shri Zubair A. Nursumar, Partner of M/s. Haji's International for his appearance on 02.06.2017 under Section 108 of the Customs Act, 1962 to give evidence and/or produce all the relevant documents in respect of an enquiry being made in connection with goods exported by M/s. Haji's International through Air Cargo Complex, Sahar, Mumbai. But the said Shri Zubair A. Nursumar did not attend on the said date.

9. Further, Summons no. ABM/108/2017-18 dated 01.06.2017 was issued to Shri Ashfaq Anwar Nursumar, Partner of M/s. Haji's International by hand for his appearance on 01.06.2017 under Section 108 of the Customs Act, 1962. In response to the said summons, the statement of Shri. Ashfaq Anwar Nursumar was recorded on 01.06.2017 before the officers of SIIB (Export), Air Cargo Complex, Sahar, Mumbai under Section 108 of the Customs Act, 1962. In his statement, Shri. Ashfaq Anwar Nursumar inter alia stated that he was a merchant exporter of textile products and readymade garments; that he was a proprietor in M/s. M.M. Exports and partner in M/s. Haji's International; that they purchase goods from Surat, Ahmedabad, Kanpur, Kolkata, local market etc; that they directly export the textile products purchased from local market; that they exported goods mainly to Nigeria, Dubai, Togo, Benin etc; that CHAs M/s. Merchant & Sons & M/s. Sainath Clearing Agency were handled their export clearances; that they have not purchased any textile products, fabrics or any other goods from M/s. Kanu Impex Pvt. Ltd., M/s. Pavani Impex, M/s. Ruby Trading, M/s. Alaska Trading Company, M/s. Suman Impex, M/s. Sumangal Enterprises, M/s. B.A. Trading, M/s. Mahavir Enterprises, M/s. Combo Traders Pvt. Ltd., M/s. Caddilac Trade Link Pvt. Ltd. etc; that they always paid amount through cheques and online payments; that they had received the remittances from their indenting agents in Dubai and from their consignees in Africa; that their buyers are M/s. SDF Nigeria Ltd, M/s. God's Time International, M/s. Gochex Nigeria Ltd., M/s. Divina Logistics, M/s. ANB Rehman in Nigeria; that their indenting agents are M/s. Alrai Trading LLC and M/s. Pharmaquel Indents, Dubai. Further on being asked that some of the invoices obtained from their godown issued by M/s. Shree Giriraj Textiles and various other merchants in

the name of foreign buyers with directions to book the cargo for foreign countries and the goods exported are pertains to foreigners, Shri Ashfaq Anwar Nursumar stated that M/s. Giriraj Textiles are one of their suppliers, who was supplying goods to their warehouse on order and payments have been done to company accordingly and other invoices are local invoices delivered to their warehouse for local packing for which they charge Rs. 500 to Rs. 700 per package and after packing, owners take back their goods; that they exported the goods to the foreign buyers as per their verbal orders and not exported any goods on behalf of foreigners.

10. Further, various summons no. JSK/400/2017-18 dated 02.01.2018; summons no. JSK/438/2017- 18 dated 12.02.2018; summons no. JSIU532/2017-18 dated 04.04.2018; summons no. JSK/60/2018-19 dated 27.04.2018 were issued to Shri Ashfaq Anwar Nursumar, Partner of M/s. Haji's International for his appearances under Section 108 of the Customs Act, 1962. In response to all the said summons, M/s. Haji's International never appeared to this office to record his statement and gave various health related reasons and avoided the same.

11. Further, Summons no. NP/177/2018-19 dated 16.10.2018 was issued to Shri Ashfaq Anwar Nursumar, Partner of M/s. Haji's International for his appearance on 28.10.2018 under Section 108 of the Customs Act, 1962. In response to the said summons, Shri Ashfaq Anwar Nursumar, Partner of M/ s. Haji's International appeared to this office on 31.10.2018 and his statement was recorded before the officers of SIIB (Export) under Section 108 of the Customs Act, 1962. In his statement, Shri Ashfaq Anwar Nursumar inter alia stated that he does not know any person by name Shri Suhel Parvez Ansari, Shri Suryabhan Dhurpate, Shri Karan Ranka, Shri Gunjal Gabaji Madhu etc; that he does not know any firm by name M/s. Lorgan Life Style Ltd., M/s. Siddhivinayak Marketing, M/s. Ashapura Garments Ltd., M/s. Sanket Overseas, M/s. Unique Exports, M/s. Indo Foreign Agents, CHA etc. On being shown the letter No. DRI/NZU/D/INT-31/2015 dated 04.10.2016 wherein 45 and 11 more exporter's names were listed and specify the names he know, Shri Ashfaq Nursumar stated that his firm's name M/s. Haji's International was listed in 11 exporter's name and one more firm by name M/s. Fashions Fab was clicking in his mind and the owner of the firm is Mr. Jaffar Bhai. Further, on being shown the statement of Shri Suhel Parvez Ansari dated 24.08.2015 by DRI, Mumbai, wherein Shri Suhel Ansari admitted that they had supplied the fictitious bills / invoices to a number of exporters including M/s. Haji's International and the contact person is Haji Bhai, Shri Ashfaq Nursumar replied that he does not know why Mr. Suhel Ansari took his company and his name. Further, on being shown the tax invoices raised by M/s. B.A. Trading, M/s. Combo Traders, M/s. Addis Trading, M/s. Apex Enterprises, M/s. Caddillac Tradelink Pvt. Ltd., M/s. JD Enterprises, M/s.

Imperious Mercantile Pvt. Ltd., M/s. Snehal Enterprises, which have been generated against M/s. Haji's International, Shri Ashfaq Nursumar stated that as per trade practice foreign buyer (consignee) purchase goods from local market directly and M/s. Haji's International give cheques or RTGS payment to the shops from where the foreign buyers purchase the goods and they supply goods to the foreign buyers for export, since they do the payments to the shops, therefore, the bills were raised in the name of their firm M/s. Haji's International. Further, Shri Ashfaq Nursumar stated that the remittances against the exports made by them have been received and BRCs have been received and in this regard, they have submitted the Bank Statement.

12. Further, Summons no. NP/289/2018-19 dated 03.01.2019 for his appearance on 03.01.2019 were issued by hand to Shri Ashok V. Joshi, Partner of Customs Broker M/s. Joshi Jatashankar Liladhar & Sons under Section 108 of the Customs Act, 1962. In response to the said summons, statement of Shri Ashok V. Joshi, Partner of Customs Broker M/s. Joshi Jatashankar Liladhar & Sons was recorded on 03.01.2019 before the officers of SUB (Export) under Section 108 of the Customs Act, 1962. In his statement, Shri Ashok V. Joshi inter alia stated that their company was suspended in May 2016 in case of M/s. Shruti and M/s. Innova as they were the clearing agents. On being asked why their Customs Broker license was suspended, Shri Ashok V. Joshi stated that one Mr. Kulin Khona and his partner Mr. Uday Shetty. introduced him to Mr. Aatif Merchant of M/s. Merchant Overseas Pvt. Ltd., which is an IATA company; that Mr. Kulin Khona and Mr. Uday Shetty were involved in cases of M/s. Shruti and M/s. Innova; that the said IATA agent Mr. Aatif Merchant introduced him to M/s. Haji's International; that he had completed the KYC formalities in respect of M/s. Haji's International before accepting their customs clearance work; that they had received the payments online from M/s. Merchant Overseas Pvt. Ltd., IATA. On being asked why the clearing charges received from M/s. Merchant Overseas Pvt. Ltd., IATA, when the services provided to M/s. Haji's International, Shri Ashok V. Joshi stated that it was a trade practice, where CHA collects customs charges from the IATA; that they were instructed by M/s. Haji's International to follow the same and received the customs clearing charges from M/s. Merchant Overseas Pvt. Ltd., which was an IATA agent; that they do not have any written agreement to this effect with M/s. Haji's International; that except 2-3 occasions some queries raised by AC/DC regarding valuation of the goods and the same was resolved after submitting of purchase orders, otherwise no discrepancy was found during the examination of the goods exported by M/s. Haji's International.

13. Further, BRC details of defaulting IECs (FOB yet to be realized) in respect of IEC No. 0305002597 of M/s. Haji's International were generated from ICES System for the years 01.01.2012 to 31.12.2020 and on scrutiny of the said

details, it was found that the FOB amount has realized only US \$ 9395 against 198 shipping bills in which the total drawback amount availed is Rs. 2,24,93,070/-. In this regard, the exporter submitted the Realisation Certificates / Negative Statements from the Authorized Dealer Banks (i) Union Bank of India (AD Code No. 0290153). A.R. Street Branch & (ii) Union Bank of India (AD Code No. 0290174), Kalbadevi Branch certifying that the export proceeds in respect of export shipments made by M/s. Haji's International during the period 2005 to 2016 for which documents have been processed by them. On perusal of the said Realisation Certificates / Negative Statements, it was found that the said Negative Certificates issued by the said authorized dealer banks are for the export proceeds in respect of export shipments made by M/s. Haji's International are made at Nhava Sheva Port (INNSA1), but not for the Air Cargo Complex (INBOM4). Further, the exporter submitted a letter dated 15.07.2022 from Union Bank of India, AR Street Mumbai Branch having AD Code No. 0290153 certifying that that the export proceeds in respect of export shipments made by M/s. Haji's International during the period 2005 to 2016 for which documents have been processed by them and confirmed that the export proceeds in respect of export shipments made by M/s. Haji's International are made at Air Cargo, Sahar, Mumbai and there is NIL realizations pending against the said M/s. Haji's International. On perusal of the said letter, it was found that the exporter submitted the letter from the authorized dealer bank AD Code No. 0290153 only, whereas the said exporter is having another AD Code bank account No. 0290174 for bank details for foreign exchange, for which the exporter not submitted any letters / nil statements for the said AD Code.

14. Further, during investigations, it was found that DBK (XOS) have issued a Demand cum show cause notice dated 26.08.2010 to the exporter for non-realisation of export proceeds in respect of 50 shipping bills during the period 01.01.2004 to 31.12.2008. Further, vide this office letter dated 05.08.2022 requested the TRC (X) to inform this office that any Show Cause Notices, Order-in-Originals, Demands, Recoveries pending against the said exporter M/s. Haji's International. In this regard, TRC (X) vide their reply dated 06.08.2022 informed this office that as per records, an SCN was issued vide F. No. S/3-Misc/DBK(XOS)11662/2010- 11 ACC dated 26.08.2010 for non-realization of foreign remittances for 50 shipping bills for the period 01.01.2004 to 31.12.2008. And the case was adjudicated vide Order-in-Original No. AC/NKM/1201/12 dated 28.04.2012 ordering for recovery of Rs. 33,74,795/- along with applicable interest. They further stated that the exporter filed an appeal in which subsequently got rejected on 31.10.2019 and only Rs. 7,48,717/- was recovered as on date.

15. From the investigations, scrutiny of various documents retrieved and statements recorded by DRI, MZU, Mumbai, it appears that Mr. Suhel Parvez

Ansari was in the business of raising fictitious bills which involved just printing of bills in the names of the firms / companies which did not exist and no purchase and sale of the goods were effected as per details mentioned in the said bills and he got bills printed in the names of various fake firms; that no purchase of any kind of goods be it in the form of garments /imitation Jewellery had been made by him and the proprietors /directors of these firms/ companies were all his friends and no sale as shown on the bills had been made to any exporters shown on the bills. The same was admitted by the Mr. Suhel Parvez Ansari in his statements recorded by DRI, MZU, Mumbai. This clearly shows that Mr. Suhel Parvez Ansari had supplied fake bills in the name of a number of companies to the exporters including M/s. Haji's International without supplying any goods. It appears from exporter's statement that for supply of the goods for export effected by them, invoices were not procured from actual supplier as it was not competitive therefore they procured fake invoices from Mr. Suhel Parvez Ansari as the same was admitted by Mr. Suhel Ansari in his statement given before DRI, MZU that he had supplied the fake and bogus invoices. Mr. Suhel Parvez Ansari in his statement dated 24.08.2015 recorded before DRI, Mumbai gave the names of the exporters to whom he had supplied fictitious bills without there being any purchase or sale and the names of the contact persons, with whom he dealt with. He clearly mentioned the name of exporter M/s. Haji's International and the contact person name was Mr. Haji Bhai.

16. It appears from investigation that goods were procured from Domestic Tariff Area (DTA) without any invoices so no details of its manufacturing, production, using imported material or excisable material therein were available so it could not be ascertained whether any duties have been paid or otherwise. During investigation, exporter could not produce any such details in respect of manufacturing, production or use of any imported material in impugned export goods, though he was having enough opportunity as he presented himself for recording of his statement but he failed to produce any such details.

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

18. As stated in the Offence Report, the exports were fictitious as Purchase Bills were fictitious. Actual movements of goods is always under cover of Challan and Invoices. There are other requirements of local Government which prevent movement of goods without documentation. It is also unlikely that Customs Broker has been receiving goods based on fictitious Bills and he was not aware. Further the Customs Broker has responsibility to guide exporter and inform

about the requirement that only in certain cases, both types of Drawback can be claimed by the exporter. Had the Customs Broker seen these documents relating to meeting the criteria to claim both types of Drawback and checked the correctness of relevant declaration, such fraudulent export could not have been possible. Therefore, under the fact and such circumstances, the Customs Broker M/s. Joshi Jatashankar Liladhar & Sons actively connived with exporters in claiming undue Drawback and over valuing the export goods and mis-declaring in Shipping Bill. Therefore, CHA has rendered themselves liable for Penal action under Section 114(i) and/or 114(iii) and also under (114 AA) of Customs Act, 1962.

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

Legal Provision of the CBLR, 2018:-

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

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

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

Regulation 10 (m) of the CBLR, 2018:- "A Customs Broker shall discharge his duties as a Customs Broker with utmost speed and

efficiency and without any delay”.

Regulation 10 (n) of the CBLR, 2018:- “A Customs Broker 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;”

19. SHOW CAUSE NOTICE: M/s. Joshi Jatashankar Liladhar & Sons (11/168) was issued a Show Cause Notice (SCN) No. 02/2023-24 dated 03.04.2023 by the Principal Commissioner of Customs (General), NCH, Mumbai, Zone-I asking them to show cause as to why the licence bearing no. 11/168 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 defense to Shri P.C. Sekhar, Asst. Commissioner of Customs who was appointed an inquiry officer to conduct inquiry under regulation 17 of CBLR, 2018.

20. SUSPENSION/REVOCATION OF LICENSE: The license of the CB M/s. Joshi Jatashankar Liladhar & Sons (11/168) was suspended vide Order No. 12/2016 dated 07.06.2016 based on the Preliminary Investigation Report received from SIIB(X), ACC, Mumbai vide F.No. SIIB/Gen-6/2016-17-ACC(X) dated 03.05.2016.

Later Order-in-Original vide CAO No. 22/CAC/PCC(G)/SKD/CBS (Admn) dated 07.12.2017 was passed by Principal Commissioner of Customs(G), NCH, Mumbai which revoked CB License and Forfeited Security Deposit. CESTAT vide its Order No. A/86728/2018 DATED 08.06.2018 set aside the aforesaid Order-in-Original on ground of violation of timeline as prescribed under CBLR, 2013.

The Department preferred an Appeal vide Customs Appeal No. 22/2019 dated 05.07.2019 in the Hon'ble High Court of Judicature, Bombay. The present status of the Appeal is Admitted (Unready).

21. INQUIRY REPORT

Inquiry Officer submitted Inquiry Report dated 25.05.2023, wherein, the charges against CB M/s. Joshi Jatashankar Liladhar & Sons (11/168) i.e. violation of Regulation 10(a), 10(d), 10(e), 10(f), and 10(m) of CBLR, 2018 were held as 'Proved' and violation of Regulation 10(n) of CBLR, 2018 was held as 'Not Proved'.

21.2 RECORDS OF THE HEARING AND CB's WRITTEN SUBMISSION :

IO submitted that personal hearing was granted to the CB on 19.04.2023. The Partner of M/s. Joshi Jatashankar Liladhar & Sons (CB No. 11/168), Shri Ashok Vasant Kumar Joshi, appeared on behalf of the CB firm in respect of Inquiry Proceedings against the said CB in the matter of exporter M/s. Haji's International, covered under Show cause notice No. 02/2023-24 issued by the Pr. Commissioner of Customs (Gen) vide F. No. GEN/CB/57/2022-CBS dt. 03.04.2023.

IO submitted that the CB in his defense submitted that the issue is relating to fake invoices produced by the exporter M/s. Haji International but that their firm has nothing to do with either the fake invoices or the Drawback claims made by the exporter. He added that in fact they had obtained proper authorization and the exporter himself was so knowledgeable that there was no need to educate them. He further added that there was a checklist sent to the exporter by them and the same was duly approved by the exporter before uploading the documents into icegate system. In addition, he added that they rely on the documents given by the exporter in good faith and that it is not practically possible for them to verify each and every purchase made by the exporter himself and that is not even the duty of a CHA as per law. He asserted that no information was withheld from either the exporter or from the Department at any point of time and they were following law scrupulously and efficiently. Moreover, he added that post exports also, as and when any information was sought by the Department, the same was furnished, by communicating with the exporter and obtaining the same from them. He also added that the exporter details were verified online before accepting the job and the exporter himself was very much available at the declared premises and thus the allegation that they had not verified the correctness of the IEC Code, identity of his client functioning at the declared address by using reliable sources of information, is not true. According to him the CB role is limited to clearance of goods only and they are not aware of any fraud committed by the exporter and that they had all the time assisted the Department in its investigation. He further stated that their license was cancelled in the early 2017 and since then they had closed the CHA business and in fact sold out the premises also. Thus, he added that at present he is not having any documentary proof at all in support of his claims. He finally submitted that in fact his firm is not interested in reinstating their CB license also. He prayed for closure of the issue and not to impose any further penalties on them. No written submissions were submitted by the CB.

21.3 COMMENTS OF THE INQUIRY OFFICER :-

21.3.1 Article of Charge-I :- Violation of Regulation 10 (a) of CBLR, 2018:

IO submitted that as per the available record during investigation, in the Statement of Shri Ashok V. Joshi, Partner of Customs Broker M/s. Joshi

Jatashankar Liladhar & Sons recorded on 03.01.2019, it was clearly admitted that the CB did not have written agreement with the Exporter M/s. Haji's International and received the Customs clearing charges from M/s. Merchant Overseas Pvt. Ltd., which was an IATA agent. Thus it is evident that the CB did not obtain authorisation from the exporter. Thus, IO held that the violation of regulation 10 (a) of CBLR, 2018 by the CB is conclusively proved.

21.3.2 Article of Charge-II :- Violation of Regulation 10 (d) of CBLR, 2018:

IO submitted that except oral submission, during the course of personal hearing also the CB has failed to submit any documentary proof to that extent that he had advised the exporter properly with regard to declaration of values, obtaining proper invoices, realization of export proceeds within stipulated time frame allowed under Foreign Exchange Management Act, 1999. However from the offence report it is evident that Not only the CB had not properly advised the exporter while filing the Shipping Bill(s) but abetted the wrong doer and thereby failed in his duty to inform the same to the Department. Thus, IO held that the violation of regulation 10 (d) of CBLR, 2018 by the CB is conclusively proved.

21.3.3 Article of Charge-III :- Violation of Regulation 10 (e) of CBLR, 2018:

IO submitted that on perusal of BRC details in respect of IEC No. 0305002597 of M/s. Haji's International generated from ICES System for the years 01.01.2012 to 31.12.2020 it was found that the FOB amount realized has been only US \$ 9395 against 198 shipping bills in which the total drawback amount availed is Rs. 2,24,93,070. It clearly shows that transaction value is incorrect, inflated, value of goods misdeclared by the exporter thereby it is evident that CB did not exercise due diligence and did not impart the information relating to Drawback Rules to the client but aided the exporter in availing the undue drawback by overvaluing the exports, whereas in reality cheaper material was exported. Thus, IO held that the violation of regulation 10 (e) of CBLR, 2018 by the CB is proved.

21.3.4 Article of Charge-IV :- Violation of Regulation 10 (f) of CBLR, 2018:

IO submitted that the fact that the name and complete address of the traders from whom the goods have been purchased in order to claim drawback as is mandated in the declarations filed at the time of export in format annexed to Circular No. 16/2009- Customs dated 25.05.2009 issued under F. No. 609/137/2007 – DBK is absent shows clearly that the CB has withheld the information from the exporter to comply with Rule 3, Rule 16 and Rule 16A of Drawback Rules, 1995. Thus, IO held that the violation of regulation 10 (f) of CBLR, 2018 by the CB is proved.

21.3.5 Article of Charge-V :- Violation of Regulation 10 (m) of CBLR, 2018:

IO submitted that had the CB been efficient enough, he should have detected the over valuing of the invoice pricing and fake invoices and export of cheaper material at the very beginning and brought it to the notice of the Department to

avoid such an eventuality. However, since the CB is actively involved with the exporter, the over values were declared in the Shipping Bills to claim undue duty Drawback benefit. Thus, IO held that the CB failed on the count of exhibiting efficiency in dealing with Customs declarations and there by violation of regulation 10 (m) of CBLR 2018 by the CB is proved.

21.3.6 Article of Charge-VI :- Violation of Regulation 10 (n) of CBLR, 2018:

IO submitted that in the present case, the exporter though involved in the substantiated fraud, is very much in existence and available at the given address. Further, the partner of the firm, Shri Ashfaq Nursumar of M/s. Haji's International appeared before the SIIB officers and the officers in turn has recorded his statement on 01.06.2017 and again on 31.10.2018. Thus the record on vitiates the allegation levelled against the Customs Broker that the CB has violated Regulation 10 (n) of CBLR 2018. Thereby, IO held that the violation of regulation 10 (n) of CBLR 2018 by the CB is NOT proved.

22. PERSONAL HEARING AND RECORDS OF PERSONAL HEARING :-

A personal hearing was granted to Customs Broker on 27.09.2023. Shri Ashok Joshi, partner of the CB firm appeared for personal hearing stated that he had met partner of M/s. Haji International and there was no doubt about their credentials. He did whatever he could have done and there is no lapse from their side.

23. DISCUSSION AND FINDINGS:-

I have gone through the case, material evidence on record, the Show Cause Notice dated 03.04.2023, and Inquiry Report dated 25.05.2023, submissions of the said CB.

23.1 I observe that the charges against the said CB is of violation of regulation 10(a), 10(d), 10(e), 10(f), 10(m) and 10(n) of CBLR, 2018 made vide Show Cause Notice No. 02/2022-23 dated 03.04.2023 issued by Pr. Commissioner of Customs (General), NCH, Mumbai. The Inquiry Officer vide inquiry report dated 25.05.2023 held the charges of violation of regulations 10(a), 10(d), 10(e), 10(f), and 10(m) as "Proved" and the charge of violation of regulation 10(n) as "Not Proved".

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

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

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

"A Customs Broker 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 authorization whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may

be.”

I find that Customs Broker M/s. Joshi Jatashankar Liladhar & Sons in his statement recorded on 03.01.2019 admitted that they did not have written agreement with the exporter M/s. Haji's International and received the Customs clearing charges from M/s. Merchant Overseas Pvt. Ltd., which was an IATA agent. Hence, it is clear that CB did not obtain authorization from the exporter before taking the job of the clearance of the exported goods. Therefore, I find that CB M/s. Joshi Jatashankar Liladhar & Sons was failed to obtain authorization from the exporter. In this regard I agree with the IO's report that CB has violated the regulation 10(a) of the CBLR, 2018.

In view of the above, I am of the considered view that the CB failed to obtain authorization from the exporter in respect of fraudulent exported goods. Therefore, I hold that the CB has violated the provisions of Regulation 10(a) of the CBLR, 2018.

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

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

“A Customs broker shall advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;”

I find that the IO submitted that CB failed to submit any documentary proof to the extent that he had advised the exporter properly with regard to declaration of values, obtaining proper invoices, realization of export proceeds within stipulated time frame allowed under Foreign Exchange Management Act, 1999. Thus, IO held that the violation of regulation 10 (d) of CBLR, 2018 by the CB is conclusively proved.

I find that there is nothing on record which prove that the CB has advised the exporter regarding the Boards Circular No. 5 of 2009 Customs dated 02.02.2009 issued vide F. No. 609/167/2003-DBK, which clarifies that the exporter is required to submit the proof of export realization to the Custom House within the stipulated time-limit. The CB did not guide the exporter with respect to realization of export proceeds within stipulated time frame allowed under Foreign Exchange Management Act, 1999 in order to claim drawback. Further, on perusal of BRC details of defaulting IECs (FOB yet to be realized) in respect of IEC No. 0305002597 of M/s. Haji's International were generated from ICES System for the years 01.01.2012 to 31.12.2020 and on scrutiny of the said details, I find that the FOB amount realized has been only US \$ 9395 against 198 Shipping Bills in which the total drawback amount availed is Rs. 2,24,93,070. I find that as per Consulate General of India, Dubai, UAE enquiry

report, original/actual unit value of the exported goods were found abnormally low compared to declared value in the Shipping Bills which clearly shows that the transaction value is incorrect, inflated, value of goods misdeclared by the exporter M/s. Haji's International. Further, I find that CB did not advise the exporter with respect to recovery of Drawback in case of non-realization of export proceeds as stated in second proviso to Section 75(1) of Customs Act, 1962.

In this context, I rely upon the judgment of Hon'ble CESTAT, Mumbai in the case of M/s Eagle Transport Services Vs Commissioner of Customs, Mumbai in 1997 (96) E.L.T. 469 (Tribunal) wherein though the matter was different yet the ratio of judgement may be applied to the present case. In this case, Hon'ble CESTAT, Mumbai has held at para no. 7 (relevant portion) that

"a Custom house agent has a very significant role to play in the clearance of goods through Customs and Port Trust. Such clearance involves application of many specialized laws and detailed procedures often contain complex statutory requirements. It is for this reason that Customs Brokers have been licensed. Before he is granted permanent license, he has to qualify an examination in which his knowledge of relevant procedures is vested. The object of these regulations is to ensure that the Customs Brokers acts honestly and efficiently in the conduct of their business. It is not difficult to foresee the consequences that would arise if the Custom House Agent does not co-act in such a manner. The Custom House Agent makes various representations before the Custom House on behalf of the importer and exporter relating to the nature of the goods conditions under which they were imported their value etc. The statements that he makes and the information that he provides are crucial for assessing the goods to duty and deciding whether the import is prohibited or not. The Custom House Agent thus has the status of a professionally qualified person akin to an advocate, Chartered Accountant or number of other professions which requires a minimum standards of knowledge for minimum standards of conduct. If the Custom House Agent acts negligently or dishonestly, the Custom House can be defrauded money due to the Government, and in good faith permit import or export of prohibited goods."

From the above facts and circumstances, I am of the considered view that the CB failed to advise the exporter to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof and in case of non compliance did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Therefore, I hold that the CB has violated the provisions of Regulation 10(d) of the CBLR, 2018.

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

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

"A Customs broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;"

I find that IO in his report submitted that on perusal of BRC details in respect of IEC No. 0305002597 of M/s. Haji's International generated from ICES System for the years 01.01.2012 to 31.12.2020 it was found that the FOB amount realized has been only US \$ 9395 against 198 Shipping Bills in which the total drawback amount availed is Rs. 2,24,93,070.

I find from the offence report that as per Consulate General of India, Dubai, UAE enquiry report, original/actual unit value of the exported goods were found abnormally low compared to the declared value in the Shipping Bills which clearly shows that transaction value is incorrect, inflated, value of goods misdeclared by the exporter. It is obligations and duty of the CB to exercise due diligence to ascertain the correctness of information in respect of any information which they impart to a client with reference to any work related to cargo, the CB failed to do so, otherwise exporter could not have made an attempt to export goods at such high valuations on the basis of fake invoices, which is a gross violation on the part of the CB under the provisions of the Regulation 10(e) of the CBLR, 2018.

In view of the above, I am of the considered view that the CB failed to exercise due diligence to ascertain the correctness of information in respect of fraudulent exported goods. Therefore, I hold that the CB has violated the provisions of Regulation 10(e) of the CBLR, 2018.

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

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

"A Customs broker shall not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information; "

I find that IO in his report submitted the fact that the name and complete address of the traders from whom the goods have been purchased in order to claim drawback as is mandated in the declarations filed at the time of export in format annexed to Circular No. 16/2009- Customs dated 25.05.2009 issued under F. No. 609/137/2007 - DBK is absent, shows clearly that the CB has withheld the information from the exporter to comply with Rule 3, Rule 16 and Rule 16A of Drawback Rules, 1995. Thus, IO held that the violation of regulation 10(f) of CBLR, 2018 by the CB is proved.

I find that the exporter did not furnish the declarations at the time of

exports in format annexed with the circular No. 16/2009-Customs dated 25.05.2009. As per the said format exporter were inter-alia required to declare the name and complete address of the traders from whom export goods had been purchased. The exporter was also required to declare that they were not the manufacturer of the export goods and were not registered under the erstwhile Central Excise Act, 1944. They were also required to declare that no rebate (input rebate or/ and final product rebate) would be taken against the exports made against the Shipping Bills. However, during the course of investigation, M/s. Haji International failed to produce any such declaration. Thus, the CB failed to verify the declarations at the time of exports in format annexed with the circular No.16/2009-Customs dated 25.05.2009, which is gross negligence on the part of the CB.

From the above facts, I am of the considered view that the CB failed to inform the exporter about the circular No.16/2009-Customs dated 25.05.2009. Therefore, I hold that the CB has violated the provisions of Regulation 10(f) of the CBLR, 2018.

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

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

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

I find that IO in his report submitted that had the CB been efficient enough, he should have detected the over valuing of the invoice pricing and fake invoices and export of cheaper material at the very beginning and brought it to the notice of the Department to avoid such an eventuality. However, since the CB was actively involved with the exporter, the over values were declared in the Shipping Bills to claim undue duty Drawback benefit. Thus, IO held that the CB failed on the count of exhibiting efficiency in dealing with Customs declarations and there by violation of regulation 10 (m) of CBLR 2018 by the CB is proved.

I find that the CB failed to discharge their duties efficiently by actively conniving with exporter to claim undue Drawback and overvalue the export goods in the Shipping Bills. I also find that foreign remittances for all the Shipping Bills filed by the CB have not been realized through formal banking channels even after lapse of prescribed time limit set by the RBI guidelines. I find that CB M/s. Joshi Jatashankar Liladhar & Sons violated the regulation 10(m) of CBLR, 2018 due to their failure to efficiently fulfill their duties in dealing with Customs declarations and their active involvement in activities that led to the submission of overvalued invoices in the Shipping Bills.

In view of the above, I am of the considered view that the CB failed to discharge his duties with utmost speed and efficiency in respect of fraudulent exported goods. Therefore, I hold that the CB has violated the provisions of Regulation 10(m) of the CBLR, 2018.

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

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

"A Customs Broker shall verify 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 IO in his report submitted that in the present case, the exporter though involved in the substantiated fraud, is very much in existence and available at the given address. Further, the partner of the firm, Shri Ashfaq Nursumar of M/s. Haji's International appeared before the SIIB(X), ACC, Mumbai and his statement was recorded on 01.06.2017 and again on 31.10.2018. Thus the record on vitiates the allegation levelled against the Customs Broker that the CB has violated Regulation 10 (n) of CBLR 2018. Thereby, IO held that the violation of regulation 10 (n) of CBLR 2018 by the CB is Not proved.

I find that during the investigation the partner of the firm, Shri Ashfaq Nursumar of M/s. Haji's International appeared before the SIIB(X), ACC, Mumbai and his statement was recorded on 01.06.2017 and 31.10.2018. I find that CB in his submission stated that the exporter details were verified online before accepting the job. I also find that IEC of the exporting firm is no where in question as the exporter himself was very much available at the declared premises. In this regard I find that there is a force in the CB's submission. Therefore, I find that the exporter though involved in the substantiated fraud however, as per available records exporter was in existence and available at the declared address during the export.

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

24. While deciding the matter, I rely upon following judgements :-

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

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

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

- i. *The very purpose of granting a licence to a person to act as a Customs House Agent is for transacting any business relating to the entry or departure of conveyance or the import or export of goods in any customs station. For that purpose, under Regulation 9 necessary examination is conducted to test the capability of the person in the matter of preparation of various documents determination of value procedures for assessment and payment of duty, the extent to which he is conversant with the provisions of certain enactments, etc. Therefore, the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as CHA, it is seen that while CHA should be in a position to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an Agent for carrying on certain illegal activities of any of the persons who avail his services as CHA. In such circumstances, the person playing the role of CHA has got greater responsibility. The very description that one should be conversant with the various procedures including the offences under the Customs Act to act as a Custom House Agent would show that while acting as CHA, he should not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as CHA by taking advantage of his access to the Department. The grant of licence to a person to act as CHA is to some extent to assist the Department with the various procedures such as scrutinizing the various documents to be presented in the course of transaction of business for entry and exit of conveyances or the import or export of the goods. In such circumstances, great confidence is reposed in a CHA. Any misuse of such position by the CHA will have far reaching consequences in the transaction of business by the customs house officials. Therefore, when, by such malpractices, there is loss of revenue to the custom house, there is every justification for the Respondent in treating the action of the Petitioner Applicant as detrimental to the interest of the nation and accordingly, final order of revoking his licence has been passed.*
- ii. *In view of the above discussions and reasons and the finding that the petitioner has not fulfilled their obligations under above said provisions of the Act, Rules and Regulations, the impugned order, confirming the order for continuation of prohibition of the licence of the petitioner is sustainable in law, which warrants no interference by this Court. Accordingly, this writ*

petition is dismissed.

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

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

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

26. I hold that the proof of charges in inquiry are acceptable and tenable based on the available evidence, the facts and circumstances of the case, which certainly warrant penal action against the CB. Therefore, for their acts of omission and commission, CB M/s. Joshi Jatashankar Liladhar & Sons (11/168) is held liable and guilty for violating the provisions of CBLR, 2018 as mentioned above. I hold that the CB has failed to discharge his duties cast upon him with respect to Regulation 10(a), 10(d), 10(e), 10(f) and 10(m) of CBLR, 2018 and is liable for penal action. Accordingly, I pass the following order.

ORDER

27. 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) The CB License No.11/168 is already revoked in another case vide Order-In-Original No. 22/CAC/PCC(G)/SKD/CBS(Admn) dated 07.12.2017 under Regulation 18 of the CBLR, 2013. Therefore, I hereby order deemed revocation

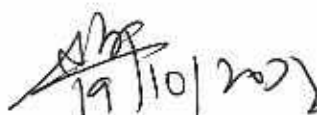
of the CB License No.11/168 which shall come into force, if any, contrary decision is taken at any higher appellate forum in the above case.

(ii) I note that entire amount of security deposit furnished by the CB has already been forfeited in another case vide Order-In-Original No. 22/CAC/PCC(G)/SKD/CBS (Admn) dated 07.12.2017 under Regulation 18 of the CBLR, 2013. I hereby order deemed forfeiture of the entire amount of security which shall come into force, if any, contrary decision is taken at any higher appellate forum in the above case.

(iii) I hereby impose penalty of Rs. 50,000/-(Rupees Fifty Thousand only) on M/s Joshi Jatashankar Liladhar & Sons (11/168) (PAN No. AACFJ8539KCH001) under Regulation 18 of the CBLR, 2018.

(iv) I hereby order that the CB surrender the original License as well as all the 'F', 'G' & 'H' cards issued there under immediately.

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



(SUNIL JAIN)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
MUMBAI ZONE-I

To,

M/s. Joshi Jatashankar Liladhar & Sons (11/168)
(PAN No. AACFJ8539KCH001)

EM683081553 IN

91, Narayanrao Koli, Marg Guru Nanak Niwas,
Mandvi, Mumbai - 400 003

Copy to,

1. The Pr. Chief Commissioner/Chief Commissioner of Customs, Mumbai I, II, III Zone.
2. All Pr. Commissioners/Commissioners of Customs, Mumbai I, II, III Zone
3. DRI, MZU, Mumbai.
4. SIIB(X), ACC, Sahar, Mumbai
5. CIU's of NCH, ACC & JNCH
6. EDI of NCH, ACC & JNCH
7. ACC (Admn), Mumbai with a request to circulate among all departments.

8. JNCH (Admn) with a request to circulate among all concerned.
9. Cash Department, NCH, Mumbai.
10. Notice Board
11. Office Copy
12. Guard File (Admin)