



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

संचिका सं./F. No.- GEN/CB/384/2022-CBS

आदेश दिनांक/Date of Order: 22.05.2023

CAO No. 11/CAC/PCC(G)/SJ/CBS Adj

जारी दिनांक/Date of issue: 23.05.2023

संख्या:

**DIN :** 20230577000000999CB0

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, यथोत्तराधिकार 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 तदोत्तराधिकार में 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 ब्याजवलागाएंगे जुर्माने की राशि रु. पाँच लाख या इस से कम होती रु. 1000/-, (ii) यदि यह राशि रु. पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न होती रु. 5000/- एवं (iii) यदि यह राशि रु. पचास लाख से अधिक होती 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 OF FACT OF THE CASE: -**

M/s. JZN Logistics, (PAN: ADPPB8663GCHOO1) having registered address as Shakti House, 47A Little Malabar Hill, Sindhi Society, Chembur, Mumbai – 400071 (hereinafter referred as the Customs Broker/CB) is holder of Customs Broker License No. 11/1670, issued by the Commissioner of Customs, Mumbai under Regulation 9(1) of CHALR, 2004, [Now regulation 7(2) of CBLR, 2018] and as such they are bound by the regulations and conditions stipulated therein.

2. An offence report dated 14.10.2022 with respect to the role of the CB, M/s. JZN Logistics received in the Customs Broker Section, NCH, Mumbai-I from the CIU, NCH, Mumbai-I on 17.10.2022 wherein it was informed that M/s. Reton Engineering (IEC- AAVFR9257R) (hereinafter referred to as the 'Importer') imported various goods as mentioned in Table-I. The total value of consignment was declared as Rs. 16,18,734.02/-. The details of the B/E No. 2049316 dated 17.08.2022, filed by CB firm M/s JZN Logistics (CB No. 11/1670) on behalf of the importer, M/s Reton Engineering (IEC- AAVFR9257R), are as follows: -

<b>TABLE-I</b>		
<b>Sr. No</b>	<b>Particulars</b>	<b>Specifications</b>
1	B/E No & Date	2049316 dated 17.08.2022
2	Importer's Name	M/s. Reton Engineering (IEC: AAVFR9257R)
3	Customs Broker	M/s JZN Logistics (CB No. 11/1670 )
4	Container No.	TEMU8525264
5	B.L. No./Date	SZXCB22034986
6	IGM No/Date	2319350 dated 16.08.2022
7	Items Declared	1. Adhesive cello tape 2. Caliper (for two wheeler) 3. Earphone 4. Earphone case 5. Hands-free R-41183393/ R-41180319 6. Mobile back cover, 7. Mobile cover 8. Packing material (Box packing) 9. Portable Lithium Battery 2000 MAH R-41220728 10. Portable Lithium Battery 2500 MAH R-41175706 11. Portable Lithium Battery 2500 MAH R-41220728

		12. Portable Lithium Battery 2800 MAH R-41175706
		13. Portable Lithium Battery 2800 MAH R-41220728
		14. Portable Lithium Battery 3000 MAH R-41175706
		15. Portable Lithium Battery 3000 MAH R-41220728
		16. Portable Lithium Battery 3100 MAH R-41175706
		17. Portable Lithium Battery 3100 MAH R-41220728
		18. Portable Lithium Battery 3400 MAH R-41175706
		19. Portable Lithium Battery 3400 MAH R-41220728
		20. Portable Lithium Battery 3700 MAH R-41175706
		21. Portable Lithium Battery 3700 MAH R-41220728
		22. Portable Lithium Battery 4850 MAH R-41175706
		23. Portable Lithium Battery 4850 MAH R-41220728
		24. Pouch ( For I-pad),
		25. Smart watch R-41201120
		26. Tiny connector.
	Total Declared Value	Rs. 16,18,734.02/-

**2.1** When the said goods were examined under Panchnama dated 26.08.2022, certain discrepancies were noticed between the goods declared and the goods actually found on examination. The comparison of the goods declared Vs. goods found is as mentioned in table below: -

**TABLE-II**

Sl. No	Description of goods declared	No. of Pkgs. declared	Total quantity declared	Description of goods found	No. of Pkgs. found	Total quantity found per item	Remarks
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1	Adhesive cello tape	15	450 pcs	Brown Colour Adhesive cello tape	15	450 pcs	Goods found in bulk condition
2	Caliper for two-wheeler	80	2400 pcs	Caliper for two-wheeler	80	2400 pcs	Two types of items found. 1200 pcs in 40 cartons having marking "Pulsar" on box and other 1200 pcs in 40 cartons having marking "Unicorn" found. It appears that RE-44 and LMP C compliance were not followed.
3	Earphone	385	192500	Earphone unbranded marking as "KDM"	174	87000	Goods were found in pre-packaged condition. RE-44 and LMP C compliance were not followed.
				Neckband wireless earphone R-41182664 marking as "AROMA"	211	105500 pcs	Mis-declaration found in terms of description as wireless neckbands were found instead of earphones. Goods found in bulk condition. BIS was not uploaded in e-sanchit however BI

							S registration R-41182664 verified.
							ETA/ WPC certificate not produced.
4	Earphone case	11	3408 pcs	Mobile back cover marking as "CASE"	11	3408 pcs	Goods were found in pre-packaged condition.  Mis-declaration found in terms of description.  RE-44 and LMP C compliance not followed.
5	Handsfree R-41183393/ R-41180319	94	34080 pcs	Neckband wireless earphone (in blue colour)		6000 pcs	Goods found in bulk condition.  Statutory compliance of BIS not fulfilled and ETA/WPC certificate was not produced.
				Wireless headset marking as "ETAR" R-41180319	3	3000 Pcs	Goods found in bulk condition.  ETA/WPC was not produced.
				Neckband wireless earphone R-41183393 marking as "HONEYPORT"	6	4000 pcs	Goods found in bulk condition.  Statutory compliance of BIS is not fulfilled as R-41183393 is registered in the name of Bhavna Enterprise and ETA/WPC c



						ertification was not produced.
						The Goods found in bulk condition.
			Wireless Earbuds (in white colour) R-411833493 Pasted on box		2000 pcs	It appears that BIS labelling is not done as prescribed. Stickers were pasted on the goods. ETA/WPC certification was not produced.
			Neckband wireless earphone R-41189197 marking as "VOY"	10	5000 pcs	Goods found in bulk condition.  BIS was not uploaded in e-sanchit. Also, model no. is not mentioned on the product. Therefore statutory compliance of BIS not fulfilled and ETA/WPC certification was not produced.
			Neckband wireless earphone R-41180319 marking as "ETAR"	40	10072 pcs	Goods found in bulk condition. Statutory compliance of ETA/WPC not fulfilled.
			Wireless Earbuds R-411833493 pasted on box	10	1000 pcs	Goods were found in pre-packaged condition.

				ox marking as "AIR 6 PLUS"		<p>RE-44 and LMP C compliance not followed.</p> <p>It appears that BIS labelling is not done as prescribed. Stickers were pasted on the goods.</p> <p>Statutory compliance of BIS is not fulfilled as R-41183393 is registered in the name of Bhavna Enterprise and ETA/WPC certification was not produced.</p>
				Wireless Earbuds ( in white colour ) R-41183393 pasted on box	15	<p>3000 pcs</p> <p>Goods were found in pre-packaged condition.</p> <p>RE-44 and LMP C compliance not followed.</p> <p>It appears that BIS labelling is not done as prescribed. Stickers were pasted on the goods.</p> <p>Statutory compliance of BIS is not fulfilled as R-41183393 is registered in the name of Bhavna Enterprise and ETA/WPC certification was not produced.</p>



							cation was not produced.
6	Mobile back cover	191	136944 pcs	mobile back cover marking as "Fashion Case "	119	92135 pcs	Goods were found in pre-packaged condition. RE-44 and LMP C compliance not followed.
				Mobile back cover marking as " DEE-case " ( 1200 pcs of IP 14 pro Max, 1800j pcs of IP 14 Max and 1800 pcs of I 14 pro )	24	4800 pcs	
				mobile back cover	50	29550 pcs	
				mobile back cover (transparent t)	15	10450 pcs	
7	Mobile cover	4	800 pcs	mobile back cover marking " A4 toucho"		800 pcs	Goods were found in pre-packaged condition. RE-44 and LMP C compliance not followed.
8	Packing material (Box packing )	24	480 kgs	Packing material (Box packing )	24	480 kgs	
9	Portable Lithium Battery 2000 MAH R-41220728	15	6200	Portable Lithium Battery 4030 MAH R-41220728	15	150 pcs	Goods found in bulk condition.
10	Portable Lithium Battery 2500 MAH R-41175706			Portable Lithium Battery 4230 MAH R-41220728		150 pcs	Mis-declaration in description
11	Portable Lithium Battery 2500 MAH R-41220728			Portable Lithium Battery 5900 MAH R-41220728		100 pcs	Two types of portable lithium battery goods were found - " HY COT+" brand bearing R-41220

12	Portable Lithium Battery 2800 MAH R-41175706	Portable Lithium Battery 4000 MAH R-41220728	100 pcs	728 and "KCS" brand bearing R-411075706
13	Portable Lithium Battery 2800 MAH R-41220728	Portable Lithium Battery 3900 MAH R-41175706	500 pcs	The portable lithium battery of "KCS" brand bearing R-411075706 has not fulfilled statutory compliance of BIS as the R-41175706 is issued to "JNH" brand not to "KCS" brand.
14	Portable Lithium Battery 3000 MAH R-41175706	Portable Lithium Battery 4035 MAH R-41220728	100 pcs	
15	Portable Lithium Battery 3000 MAH R-41220728	Portable Lithium Battery 3260 MAH R-41220728	150 pcs	
16	Portable Lithium Battery 3100 MAH R-41175706	Portable Lithium Battery 3415 MAH R-41175706	150 pcs	
17	Portable Lithium Battery 3100 MAH R-41220728	Portable Lithium Battery 3500 MAH R-41220728	50 pcs	
18	Portable Lithium Battery 3400 MAH R-41175706	Portable Lithium Battery 2900 MAH R-41220728	250 pcs	
19	Portable Lithium Battery 3400 MAH R-41220728	Portable Lithium Battery 5000 MAH R-41220728	100 pcs	
20	Portable Lithium Battery 3700 MAH R-41175706	Portable Lithium Battery 4100 MAH R-41175706	400 pcs	
21	Portable Lithium Battery 3700 MAH R-41220728	Portable Lithium Battery 2716 MAH R-41220728	50 pcs	
22	Portable Lithium Battery 4850 MAH R-41175706	Portable Lithium Battery 1960 MAH R-41220728	100 pcs	



23	Portable Lithium Battery 4850 MAH R-41220728			Portable Lithium Battery 3300 MAH R-41220728		500 pcs	
				Portable Lithium Battery 4870 MAH R-41175706		200 pcs	
				Portable Lithium Battery 3460 MAH R-41175706		100 pcs	
				Portable Lithium Battery R-41175706		3050 pcs	
24	Pouch (for iPad)	39	1900 pcs	case for I pad	4	100 pcs	Goods were found in pre-packaged condition. RE-44 and LMP C compliance not followed.
				case for I pad (iPad 6)	3	225 pcs	
				case for I pad (for pro 12.9)	3	120 pcs	
				case for I pad (for m2/3/4/5)	1	55 pcs	
				case for iPad (for iPad 10.2)	15	750 pcs	
				case for I pad (for iPad 9.7)	7	350 pcs	
				case for I pad (for iPad 10.9)	6	300 pcs	
25	Smart watch R-41201120	21	2100 pcs	smart watch in red box R-41201120 pasted on box	5	500 pcs	Goods were found in pre-packaged condition. It appears that BIS labelling is not done as prescribed. Stickers were pasted on the goods.
				smart watch in green box marking as "wear pro" R-41201120 pasted on box	2	200 pcs	
				smart watch in white box marking as "Active 25" R-41201120 pasted on box	5	500 pcs	Statutory compliance of BIS is not fulfilled and ETA/WPC certification was not

				smart watch in sky blue box marking as "T700 pro max" R-41201120 pasted on box	2	200 pcs	produced. BIS/R-41201120 is issued to smart watch of "BREBEL" brand which is not found.
				smart watch marking as "T700S" R-41201120 pasted on box		200 pcs	RE-44 and LMP C compliance not followed.
				smart watch marking as "GEN 6" R-41201120 pasted on box		200 pcs	
				smart watch in blueish box marking as "Active32" R-41201120 pasted on box	3	300 pcs	
26			4000 pcs	Tiny connector		4000 pcs	Goods found in bulk condition in mobile back cover cartons marked as MA.BD 3 & MA.BD 4 as per packing list. Each carton has 2000 pcs. Respectively.
	Tiny connector						
	or	2	2000 pcs	Long connector	2	2000 pcs	Goods found in bulk condition.  The goods were found as long connector and have been mis-declared as tiny connector in B/E
<b>TOTAL</b>					<b>898 CTN</b>		



**2.2** From the above discrepancies in declaration of goods, the following violations were observed by the officers of CIU.

(i). For item No. 2 (Caliper for two-wheeler), since it was found in pre-packaged condition. RE-44 and LMPC Rules, 2011 compliance were not followed which require the declaration of:

- Name and address of the importer;
- Generic or common name of the commodity packed;
- Net quantity in terms of standard unit of weights and measures. If the net quantity in the imported package is given in any other unit, its equivalent in terms of standard units shall be declared by the importer;
- Month and year of packing in which the commodity is manufactured or packed or imported;
- Maximum retail sale price at which the commodity in packaged form may be sold to the ultimate consumer. This price shall include all taxes local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertising, delivery, packing, forwarding, and the like, as the case may be.
- Consumer Care details, etc.

(ii). Item no. 3 declared as “earphone” having quantity 16042 DOZ (192500 pcs) in 385 ctn. However, during the examination two types of items were found- earphone unbranded with marking as “KDM” having quantity 87000 pcs in 174 cartons in pre-packaged condition and Neckband wireless earphone R-41182664 with marking as “AROMA” having quantity 105500 pcs in 211 cartons, which appeared to be mis-declared in terms of description as earphone instead of wireless neckband. However, BIS certificates were produced by CB during the investigation and appeared to be proper. Also, ETA (self-declaration) one time import permission was produced during the investigation.

(iii). Item no. 4 declared as “earphone case” having quantity 284 doz (3408 pcs) in 11 cartons. However, during the examination, the goods were found to be “mobile back cover” in place of “earphone case” in same quantity in pre-packaged condition which appeared to be mis-declaration in terms of description. Goods were found in pre-packaged condition. Thus, RE-44 and LMPC compliance was not followed.

(iv). Item no. 5 declared as “Handsfree R-41183393/R-41180319” having quantity 2840 DOZ (34080 pcs) in 94 cartons. However, during the examination, the goods were found to be 04 types of Neckband wireless earphone, 03 types of

wireless ear buds and 01 type of wireless single ear headset. The subject goods fall under the purview of the List of Electronics and IT Goods under the 'Compulsory Registration Scheme' for Self-Declaration of conformity (i.e. Scheme-II of BIS). Also, the subject goods wireless neckband earphone/wireless ear buds fall under the purview of WPC Equipment Type Approval (ETA) requirements.

- With respect to 6000 pcs of "Neckband wireless earphone" in 6 cartons (in blue colour), goods were found in bulk condition. BIS labelling was not found on goods. Statutory compliance of BIS was not followed. Also ETA Certificate was not produced.

- With respect to "Neckband wireless earphone bearing R-41183393" with marking as "HONEYPORT" having quantity 4000 pcs in 6 cartons, were found in bulk condition. The R-41183393 was issued to the brand "BHAVNA ENTERPRISE" & not to "HONEYPORT" brand and therefore, it appeared that statutory compliance of BIS was not followed. Also ETA/WPC certificate was not produced.

- With respect of "Wireless ear buds (white)" having quantity 2000 pcs in 4 cartons, goods were found in bulk condition. BIS labelling were pasted on goods. Also, statutory compliance of BIS is not fulfilled as R-41183393 is registered in the name of "BHAVNA ENTERPRISE" brand. Also, ETA/WPC certificate was not produced.

- With respect of "Wireless earphone R-41189197" with marking as "VOY" voice of youth having quantity 5000 pcs in 10 cartons, goods were found in bulk condition. Brand name was mentioned on goods but model no. was not mentioned on goods. BIS certificates were produced by CB during the investigation and appeared to be proper. Also, ETA (self declaration) one time import permission was produced during the investigation.

- With respect to "Wireless Neckband earphone bearing R-41180319" with marking as "ETAR" having quantity 10072 pcs in 40 cartons, goods were found in bulk condition. BIS /ETA certificates were produced by CB during the investigation and appeared to be proper.

- With respect to "Wireless ear buds R-41183393" having quantity 1000 pcs in 10 cartons, goods were found in pre-packaged condition. RE-44 and LMPC Rules, 2011 compliance were not followed. BIS labelling was not done as prescribed. Statutory compliance of BIS was not fulfilled as R-41183393 is registered in the name of "BHAVNA ENTERPRISE" brand. Also, ETA/WPC certificate was not produced.

- With respect to "Wireless ear buds" having quantity 3000 pcs in 15 cartons, goods were found pre-packaged condition. RE-44 and LMPC Rules, 2011 compliance were not followed. BIS labelling was not done as prescribed. Stickers were pasted on the goods. Statutory compliance of BIS was not fulfilled



as R-41183393 is registered in the name of "BHAVNA ENTERPRISE" brand. Also, ETA/WPC certificate was not produced.

(v). The items No. 6 & 7 (mobile back cover) were found in pre-packaged condition. Thus, RE-44 and LMPC Rules, 2011 compliance were not followed.

(vi). The items no. 09-23 were declared as Portable Lithium Battery bearing R-41220728/41175706 having quantity 6200 pcs in 15 cartons. However, during the examination, two types of portable lithium battery goods were found "HYCOT+" brand bearing R-41220728 and "KCS" brand bearing R-411075706, in bulk condition. The portable lithium battery bearing R-411075706 had not fulfilled statutory compliance of BIS as the R-41175706 was issued to "JNH" brand and not to "KCS" brand & "HYCOT+" brand.

(vii). The item no. 24 declared as pouch (I Pad) having quantity 1900 pcs in 39 cartons. RE-44 and LMPC compliance were not followed as goods were found in pre-packaged condition.

(viii). The item no. 25 declared as "Smart watch bearing R-41201120" having quantity 175 DOZ (2100 pcs) in 21 cartons. However, during the examination, 07 types of smart watches were found. BIS labelling was not done as prescribed. Stickers were pasted on the goods. Statutory compliance of BIS was not fulfilled. Also, ETA/WPC certificate was not produced. BIS/R-41201120 is registered in the name of "BREBEL" brand which was not found in the consignment. RE-44 and LMPC compliance was not followed as goods were found in pre-packaged condition.

(ix). The item no. 26 mentioned in TABLE-II declared as "tiny connector" having quantity 6000pcs. However, during the examination, 2000 pcs were found to be in long size connector in white colour in 2 cartons and have been mis-declared as tiny connector in the B/E and rest 4000 pcs were of tiny size as declared and found in mobile back covers cartons marked as MA.BD 3 & MA.BD 4 as per packing list. Goods were found in bulk condition.

Further, all goods appeared to have been undervalued.

**2.3** Statement of Shri Subhash Laxman Shelke, "G" Card holder, Kardex No. S-3615 with CHA Firm M/s. JZN Logistics (11/1670) was recorded under Section 108 of the Customs Act 1962 on 06.09.2022, wherein he interalia stated that he is working in the firm as G Card holder. In his statement, he stated that he was present on 26.08.2022 when the container no. TEMU8525264 was examined 100% by the officers of the CIU. On being questioned with regard to the violation regarding LMPC, RE-44 compliance, mis-declaration in terms of description,



statutory compliance of BIS/WPC not being fulfilled, he stated that he filed the Bill of Entry on the basis of the documents like invoice and other import related documents provided by the importer. During the course of recording of his statement, he stated that the importer had not provided him ETA/WPC certificate of wireless earphone/smart watch and that the same would be provided at the time of clearance as told to him by the importer.

**2.4** Ongoing through the above facts and circumstances, it appeared that the CB, M/s. JZN Logistics (CB No. 11/1670) did not exercise due diligence in its duties as mandated under Customs Brokers Licensing Regulations, 2018 and failed to fulfil the obligations mandated under Regulation 10(d) and 10(m) of CBLR, 2018.

**3. SUSPENSION OF LICENCE:** - In view of the facts stated above, CB, M/s JZN Logistics (CB No. 11/1670) was found liable for their acts of omission and commission leading to contraventions of the provision under Regulation 10(d) and 10(m) of the CBLR, 2018. Therefore, prima facie, it appeared that the CB failed to fulfil their responsibilities as per provisions of regulations of CBLR, 2018. Hence, in exercise of powers conferred under the provisions of Regulation 16 of CBLR, 2018, license of Customs Broker M/s. JZN Logistics (CB No. 11/1670) was suspended by Principal Commissioner of Customs, NCH, Mumbai vide Order No. 53/2022-23 dated 23.12.2022 and the same was continued vide Order No. 62/2022-23 dated 10.01.2023.

**4. SHOW CAUSE NOTICE:** Inquiry Proceedings were initiated against CB M/s. JZN Logistics (CB No. 11/1670) vide Show Cause Notice No. 32/2022-23 dated 24.01.2023 issued under Regulation 17 of CBLR 2018 and vide the said notice, CB M/s. JZN Logistics was called upon to show cause as to why the licence bearing no. 11/1670 issued to them should not be revoked and security deposited should not be forfeited and/or penalty should not be imposed upon them under Regulation 14 read with 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018, as elaborated in the Show Cause Notice. They were directed to appear for a personal hearing and to produce proof of evidence/documents if any, in their defence to Shri P. C. Shekar, Assistant Commissioner of Customs who was appointed an inquiry officer to conduct inquiry proceedings under regulation 17 of CBLR, 2018.

Legal provisions related to the case are as below: -

**Regulation 10(d) of CBLR, 2018:** *"A 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 Deputy*



*Commissioner of Customs or Assistant Commissioner of Customs, as the case maybe;”*

**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;*”

## **5. INQUIRY REPORT: -**

**5.1** Inquiry Officer submitted Inquiry Report dated 01.03.2023 wherein the charges against CB M/s. JZN Logistics (CB No. 11/1670) i.e. violation of Regulation 10(d) and 10(m) of CBLR, 2018, were held **‘Proved’**.

**5.2** IO submitted that as a part of Inquiry, personal hearing was granted to the CB on 08.02.2023 and Shri Maulik Kishore Bhagat, Proprietor of CB appeared for the same. During the course of Personal hearing when asked as to how he defends himself against the charges of violation of Regulations 10(d) & 10(m) of CBLR, 2018 levelled against his firm, he submitted that all the documents as received from importer were submitted to the authorities and that in fact they advised their client about submission of missing certificates. He added that the importer had promised to send the missing certificates before clearance of the goods. CB submitted that there is no water in the allegation that they had not advised their client. He further added that they were always efficient in doing their work and are well aware of the rules and regulations. In fact, as they were efficient in documentation, they had noticed the non-submission of WPC certificate by the importer and immediately sought the same from them. However, they went ahead with filing the B/E since they could upload the certificates in e sanchit when once received from client. Thus he vehemently contested that they had not contravened the regulations of 10 (d) & 10(m) as is alleged in the show cause notice. He also added that even his G card holder employee Shri Subhash Lakshman Shelke had told the same thing in the statement given before the authorities proved this point.

For a question as to why he was not brought to notice of the authorities regarding non availability of WPC/BIS/LMPC certificate from the importer, he submitted that the B/E was filed on 17.08.2022, as they were waiting to receive the certificates from importer, the goods were put on hold by CIU in the meantime. He went on adding that they had uploaded all the information as provided by the importer and thus they are not aware of varieties of goods under a single description till the same was recorded under panchnama.

At the end he submitted that they are in the CHA business for two generations and they do genuine transactions with utmost care. The firm supports more than 50 employees in Mumbai alone and they have branches in Kandla & Mundra also. According to him, this is the first time their license got suspended and that too for none of their fault. He also added at the end that a



detailed written submission would be made in a week in support of their defence and requested to consider the same before finalizing the Inquiry.

Earlier vide email dated 07.02.2023, the Customs Broker requested for Cross examination of importer of the goods and their concerned employee. He requested for the same on 08.02.2023. However, since the issue is relating to alleged violation of Regulation 10 (d) & 10(m) of CBLR 2018 and there is no reliance on any statements of the importer, the request was denied.

**5.3 WRITTEN SUBMISSION OF CB:** - The CB submitted his written statement via email dated 16.02.2023, wherein it was submitted by the CB that: -

The goods were detained on 18.08.2022 and were examined 100% under punchnama on 26.08.2022 by the officers of CIU, New Customs House, Mumbai-I. On examination it was found that the quantity was found to be as declared. However, certain goods were found to be in violation of RE 44/LMPC compliance/BIS /WPC Certificate which were not produced and the goods were undervalued.

The statement of the G card holder of the CB was recorded under Section 108 of the Customs Act, 1962. On 06.09.2022, he inter-alia stated that the import related documents were provided by the importer. However, ETA/WPC certificate were not provided by him as he was told by the importer that the same would be provided at the time of clearance of the goods. The KYC of the consignee was completed as per CBLR, 2018.

The said SCN was issued on violation of Regulation 10(d) and 10(m) and inquiry was initiated under Regulation 17 of CBLR, 2018. The inquiry officer had fixed the personal hearing on 08.02.2023. The Proprietor of the CB attended the hearing and denied the allegations and requested for cross examination vide email dated 07.02.2023. However, the request for cross examination was not granted.

**5.3.1 In Defence of the Regulation 10(d) of the CBLR, 2018: -**

It is alleged in the SCN dated 24.01.2023 that the CB had failed to advice their client M/s. Reton Engineering regarding the Rules and Regulation of the Customs and allied Acts and failed to informed them about the declaration to be made as per Notification No. 44 (RE 2000)/1997-2002 dated 24.11.2002. The said Notification is covered by the provision of SWM Rules 1997 which mandates that compliance of labeling have to be ensured before the import consignments are cleared by customs for home consumption.

It is pertinent to note that whether the goods imported were labeled or not is not in knowledge of the CB as the goods were in the container. Only after the goods were off loaded it was only then the CB came to know about the labeling.



Further, the labeling also can be done in the warehouse so the goods may be released.

Further, the CB also checked on the applicability of BIS, LMPC, WPC Certificate which the importer agreed to comply before the clearance of the goods. Therefore, the CB had not violated the provisions of Regulation 10(d) of CBLR, 2018.

### **5.3.2 In Defence of the Regulation 10(m) of the CBLR, 2018: -**

In order to establish the charge under Regulation 10 (m) of CBLR 2018, there should be a complaint to the effect that the CB delayed in the clearance of the goods. There was no such complaint against the CB.

It was submitted that there is no complaint whatsoever against the CB by the importer of not discharging his duties with utmost speed and efficiency and without any delay. Assuming that the CB was actively involved in the improper importation of goods. The fact about the content of the imported goods was known to the CB only after the examination for which the CB cannot be held liable. Therefore, no knowledge of mis declaration can be attributed to the CB and the charge of violation of the provisions of Regulation 10(m) of CBLR, 2018 is totally devoid of merit and deserves to be withdrawn.

Hence, the Articles of charges based on the above mentioned Regulations appeared to mere presumptions without the backing of an iota of evidence. Therefore, the question of bringing such violations to the notice of the Customs authority does not arise. It is well settled law that the person making allegation must corroborate the same with sufficient evidence in support of the allegation. The onus to prove the so called tacit understanding is on the department. No such evidence has been brought on record. Therefore, the charge of violation of the provision of Regulation 10(m) of CBLR, 2018 appeared to be totally speculative and without any substantiation

Further, the CB submitted that the said SCN is barred by limitation as the time limit in issuing of the SCN has not been complied. In this context they said relied on the case of The Principal commissioner of customs (General) versus Mehul & Co reported in 2022 (5) TMI 30-Bombay High Court & KTR Logistics Solutions Pvt Ltd versus Commissioner of Customs., Chennai reported in 2020 (371) E.L.T 685 (Mad.) the Hon'ble Supreme Court in the case of Olga Tellis & Ors v. Bombay Municipal Corporation 1986 AIR 180.

The statements are exculpatory in nature and there is no allegation whatsoever on the CB. The statement of the G-card holder of the CB is also exculpatory in nature. The assessment of Bill of Entry was done by the assessing officers and post clearance is the responsibility of the importer. The Bill of Entry



had been filed by the CB as per the instructions of the importer. Therefore, the article of charges invoked has to fail as none of the charges can be leveled against the CB. Further, there is no evidence whatsoever that the CB had any knowledge of diversion the goods post clearance. Therefore, the CB did not violate any on the CBLR, 2018.

The CB has been efficient in performing their duties and there is not a single complaint against the charged CB. The CB had done due diligence in so far as the documents filed by them. The KYC had been done and it was found that the IEC has been issued by the DGFT, New Delhi.

The CB filed the Shipping Bill/Bill of Entry on the basis of documents provided by the exporter/importer. Therefore, to fasten any responsibility on the CB for any post clearance violation would be totally against the established norms and practice. For any violation or contravention in this regard, the entire responsibility would devolve on the importer and investigation made and the evidence before the investigation authorities. There being no evidence to allege violation of CBLR, 2018 warranting continuation of the suspension was not required.

In view of the above mentioned governing facts and attendant circumstances of the present case there is no substance in any of the charges levelled against the charged CB. The license in operation since more than 10 years and the CB had an unblemished record and their license is being renewed time to time which shows the bonafide of the CB. The CB had cooperated during the course of investigation and is ready and willing to cooperate in the inquiry under CBLR, 2018. In view of the submission made aforesaid the Suspensions leveled against the charge CB be withdrawn and/or dropped.

**5.4 COMMENTS OF INQUIRY OFFICER:** IO, having gone through the facts of the case, Show Cause Notice dated 24.01.2023, the reply to the Show Cause Notice and the submissions by the Customs Broker, analysed charges levelled against CB in the Show Cause Notice.

**5.4.1 ARTICLE OF CHARGE - I (Regulation 10(d) of the CBLR, 2018):-**

IO submitted that during the course of personal hearing When asked as to how he defends himself against the charge of violation of Regulations 10(d) levelled against his firm, Shri Maulik Bhagat, Proprietor submitted that all documents as received from the Importer were submitted to the authorities and that in fact they advised their client about submission of missing certificates. He added that the importer had promised to send the missing certificates before clearance of the goods. Even the G card holder Shri Subhash Lakshman Shelke in his statement dated 06.09.2022 given before the authorities stated that the



importer did not provide him ETA/WPC certificate of wireless earphone/smart watch and that the same would be provided at the time of clearance as told to him by the importer.

Further, in their written submission sent by email dated 15.02.2023 (received and diarized on 16.02.2023) it was mentioned that- "It is pertinent to note that whether the goods imported are labeled or not is in knowledge of the CB as the goods are in the container. Only after the goods are off loaded it is only then the CB comes to know about the labelling. Further the labelling also can be done in the written submissions the goods are released for home consumption." It was also mentioned in the written submissions that "the CB also checked on the applicability of BIS, LMPC, WPC Certificate which the importer agreed to comply before the clearance of the goods."

Thus it established the fact that the CB was well aware of the BIS, LMPC and WPC certificates and rules and regulations thereof. The CB was admitting the fact that the importer had promised to deliver necessary certificates at the time of importation. When such is the case, in the absence of receipt of necessary documents showing evidence of BIS/LMPC/WPC certificates/compliance documents, the CB should not have accepted the job and uploaded the documents. Further, the CB should have notified the fact to the Deputy Commissioner of Customs or Assistant Commissioner of customs as the case may be when once the required documents were not handed over to them. It is acceptable argument that whether the labelling was done or not on the goods/packages would be known only after the container is examined. However, the requirement of the certification and compliance to rules and regulations under these BIS/LMPC/WPC is known from the description of the goods itself. It is the submission of the CB that they went ahead with filling the BE since they can upload the certificates in e-sanchit when once received from the client. It is nowhere on record that the CB had informed the Asst. Commr/Dy. Commr of Customs regarding the non- uploading of necessary certificates before the examination was conducted. Thus it was only an afterthought but not appeared to be a bonafide act. Thus, IO held the article of charge alleging violation of Regulation 10(d) as 'Conclusively Proved'.

#### **5.4.1 ARTICLE OF CHARGE – II (Regulation 10(m) of the CBLR, 2018):-**

IO submitted that during the course of personal hearing Shri Maulik Bhagat, Proprieter submitted that they were always efficient in doing their work and are well aware of the rules and regulations. In fact, as they were efficient in documentation, they had noticed the non submission of WPC certificate by the importer and immediately sought the same from them. However, they went ahead with filling the BE since they can upload the certificates in e sanchit when



once received from client. Thus he vehemently contested that they had not contravened the regulation 10(m) as is alleged in the show cause notice. He also added that even statement of his G card holder employee Shri Subhash Lakshman Shelke proves this point.

Further it was argued by CB in his written submissions that in order to establish the charge under Regulation 10(m) of CBLR, 2018, there should be a complaint to the effect the CB delayed in the clearance of the goods and that there is no such complaint whatsoever against the CB in the present issue by the importer of not discharging his duties with utmost speed and efficiency and without any delay. He added that it is only a presumption that the CB was actively involved in the improper importation of goods. Assuming that the goods are not in compliance to RE-44/BIS etc., which was not known to the CB. The fact about the content of the imported goods was known to the CB only after the examination for which the CB cannot be held liable. Therefore, no knowledge of mis declaration can be attributed to the CB and the charge of violation of the provisions of Regulation 10 (m) of CBLR, 2018 is totally devoid of merit and deserves to be withdrawn. CB had further added in his written submissions that the charges are devoid of merit and no evidence is brought on record.

However, on thorough examination of the issue it can be seen that it is on record that the custom broker had uploaded the incomplete invoice in e-sanchit, wherein the model no. of the goods (Hands-free, wireless earphone neckband, wireless earbuds, portable lithium battery, smart watch) were not mentioned while filling the Bill of Entry which required ETA/WPC certificates to be uploaded in e-sanchit. Therefore, by not uploading the correct documents and by not uploading necessary documents, the Customs Broker had failed to discharge his duties with utmost efficiency.

The argument of the CB that there was no complaint against the CB from the importer and thus charge of violation of regulation 10(m) is totally devoid of merit and needs to be withdrawn holds no water for the mere reason that the charges of violation of CBLR regulations by the Customs Broker does not necessarily need a complaint from the importer. When the Department noticed any deviation in compliance of regulations, the Department can issue notice to the delinquent Customs Broker and suitable action as per the regulations can be taken by the competent authority.

The Word Efficiency also means- "The Quality of working well in an organized way without wasting time or energy." By uploading the incomplete invoice and by not uploading the required necessary certification the CB had failed to work in an organized way as is expected in Customs Brokers work.



Hence it also conclusively proved that the CB had violated regulation 10(m) of CBLR 2018.

In his written submission the CB also argued that the notice is time barred and that the continuation of suspension of license is not warranted. However, I do not dwell on this issue since the Inquiry is limited to violation of Regulations under CBLR 2018 and CB may raise his concerns/arguments before the competent authority before the issue is finally decided.

**6. WRITTEN SUBMISSION OF CB:** - CB submitted written submission dated 27.04.2023 in response to reply to the Inquiry Report wherein, they reiterated the facts and circumstances as stated earlier and in support of their submission, they relied on the following case laws and advisory;

- (i) The Principal Commissioner of Customs (General) versus Mehul & Co. reported in 2022 (5) TMI 30 Bom.,
- (ii) The Pr. Commissioner of Customs versus Shasta Freight Service Pvt. Ltd reported in 2022 (381) E.L.T. 436 (S.C.),
- (iii) KTR Logistics Solutions Pvt. Ltd versus Commissioner of Customs, Chennai,
- (iv) Advisory No. 01/2022 dated 29.12.2022,
- (v) Hon'ble CESTAT, Chennai in the case of M/s Chakiat Agencies reported in Final Order No. 40042-40043/2023,
- (vi) Hon'ble CESTAT, Mumbai in the case of Mahavir Logistics versus Pr. Commissioner of Customs (General), Mumbai reported in 2021 (378) E.L.T. 669 (Tri.-Mumbai).

**7. PERSONAL HEARING & RECORDS OF PERSONAL HEARING:** Mr. N. D. George, Advocate of the CB firm M/s. JZN Logistics (11/1670) attended the Personal Hearing via virtual mode on 28.04.2023, wherein he summarised the facts of the case and reiterated the written submission dated 27.04.2023. At last, he humbly requested for the revocation of the suspension of the CB License.

#### **DISCUSSION AND FINDINGS**

**8.** I have gone through the case, material evidence on record, the Show Cause Notice dated 24.01.2023, Inquiry Report dated 01.03.2023, Oral and written submission made by the CB during the proceedings and examined the role and conduct of CB in the case before me.

**8.1** The charges against the CB i.e. violation of Regulation 10(d) and 10(m) of CBLR, 2018 made vide Show Cause Notice No. 32/2022-23 dated 24.01.2023 issued by Pr. Commissioner of Customs (General), NCH, Mumbai were held as "Proved" by the Inquiry Officer.



**8.2** From the facts stated in SCN and the outcome of the investigation report, it appeared that the CB M/s JZN Logistics (11/1670) had failed in fulfilling the obligation of a Customs Brokers as mandated under CBLR, 2018 and has violated the regulation 10(d) and 10(m) of CBLR, 2018.

**8.3** 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. It has been alleged that CB did not exercise due diligence in discharging their obligation as required under Regulation 10(d) and 10(m) of CBLR, 2018.

**8.3.1 With regard to violation of Regulation 10(d) of CBLR, 2018:** *“A Custom Broker shall advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;”*

I find that it is alleged that the Customs Broker M/s JZN Logistics (11/1670) failed to advise properly to their client M/s. Reton Engineering regarding the Rules and Regulations of Customs and other allied acts and failed to inform them about the declarations to be made for pre-packaged goods falling under the purview of General Note 5 “packaged products” of ITC (HS) read with DGFT Notification No. 44(RE-2000)/1997-2002 dated 24.11.2000 and the corresponding provisions of the Legal Metrology Act, 2009 and the Legal Metrology (packaged Commodities) Rules, 2011.

Further, despite the fact that no Model No. was mentioned in the invoice and packing list, the Customs Broker did not seek any clarification or advise his client and instead proceeded to file the Bill of Entry. Further, the Customs Broker did not upload ETA/WPC certificates for wireless earphone/earbuds/smart watch required to be uploaded in e- sanchit for clearance of goods mentioned in invoice.

The CB in his defence submitted that all the relevant documents were given to them by the importer, accordingly the Bill of Entry was filed as per the given documents. Further, the importer had agreed to submit the ETA/WPC Certificates for wireless earphone/Smart Watch at the time of clearance which is also recorded in the statement of the “G” holder. Further, about no labelling of the goods, the CB submitted that they were not in knowledge, they came to know only after the examination of the said goods.

I have gone through the facts on record and I find that it pertinent to mention the following points;

- a. During the course of the inquiry, it is admitted fact that the CB was well aware of requirement of the ETA/WPC certificates for wireless earphone/earbuds/smart watch for the Customs Clearance and in his



defence, they submitted that the importer had agreed to submit the ETA/WPC Certificates for the above mentioned goods at the time of clearance. Hence, it is evident that despite the possessing the knowledge of requirement of necessary documents, the CB has failed in their obligation to advise the importer properly. In this regard, I agree to the Inquiry Report regarding facts that as the importer did not have the necessary required documents for the Customs Clearance, when such is the case, in the absence of receipt of necessary documents showing evidence of BIS/LMPC/WPC certificates/compliance documents, the CB should not have accepted the job and uploaded the documents. Further, the CB should have notified the fact to the Deputy Commissioner of Customs or Assistant Commissioner of customs as the case may be when once the required documents were not handed over to them. Thus, the claim in the CB submission that the importer had promised to submit the required necessary documents was only an afterthought and does not appear to be a bonafide act. I also find that there is nowhere on the record during the course of investigation that the CB informed the Customs Authorities regarding the non uploading of necessary certificates before the examination was conducted which is gross violation on the part of CB under the Regulation of the CBLR, 2018.

- b. Further, they submitted that the goods in the container were not labelled was not in their knowledge. They came to know only after the examination of the said goods. In this context, I find that when the CB is admitting that they had the knowledge of non-compliance of ETA/WPC which may be easily known from the description of the goods itself, they should have inquired with the importer about the compliance of RE-44 which they failed to do so. In view of the above, the fact that the RE-44 compliance was not in their knowledge is not a justifiable ground for the act of omission on part of the CB.
- c. In support of their contention, the CB relied on the judgement of Hon'ble CESTAT, Channai in the case of M/s Chakiat Agencies in Final Order No. 40042-40043/2023. In the cited case, Hon'ble Tribunal found that there was no allegation or evidence to establish that the CB in the cited case had indulged in any manner to assist the exporter in his attempt to export the goods. The issue of classification is of complex nature. I find that this case is not mechanically applicable in the present case on following grounds;

- (i) In the present case, it is on record that the CB was well aware of the fact that there is requirement of the necessary documents and they had noticed the non submission of WPC/ETA certificates by the importer, despite this fact, the CB accepted the job and uploaded the incomplete documents and further, there is nowhere on record that the fact was intentionally notify to the Customs Authorities before the examination was conducted. Hence, in the present case, there is enough evidence to prove the CB's involvement in the case.
- (ii) The cited case is about the issue of classification which Hon'ble Tribunal found it 'of complex nature'. But I find that there is no complexity in this present case as the CB had simply filed the Bill of Entry and uploaded the incomplete packing list, invoice & not did not upload the necessary documents, therefore this case is devoid of any complexity as such.

In view of the above analysis, it is concluded that in the instance case, CB failed to advise the importer about the requirement of ETA/WPC certificates for wireless earphone/earbuds/smart watch and about the RE-44/LMPC Rules, 2011, therefore, CB failed to 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, as in the present case, the CB was well aware of the absence of receipt of necessary documents i.e. BIS/LMPC/WPC certificates from the importer, the CB failed to bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs hence I find that CB has violated the provisions of Regulation 10(d) of the CBLR, 2018.

**8.3.2 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;*

I find that in this case, the custom broker had uploaded the incomplete invoice in e-sanchit, wherein the model no. of the goods (Hands-free, wireless earphone neckband, wireless earbuds, portable lithium battery, smart watch) were not mentioned while filing the Bill of Entry. Further, the Custom Broker did not seek any clarification from the importer and proceeded to file the Bill of Entry for clearance of goods mentioned in invoice which required ETA/WPC certificates to be uploaded in e-sanchit. Therefore, by not uploading the correct documents and by not seeking necessary clarifications from the importer, it is alleged that the Customs Broker failed to discharge his duties with utmost efficiency and caused a significant delay in Customs clearance which is mandated under the Regulation 10(m) of CBLR, 2018.



The CB in their defence submitted that they discharged their duties as mandated under the provisions of the CBLR, 2018 and there is no complaint whatsoever against the CB in discharging their duties and the charge of the said Regulation is devoid of merit and no evidence against the CB. The CB filed the Bill of Entry along with the invoice and packing list without any delay and without the wasting of time or energy. Therefore, the charge of violation and regulation 10(m) is not proved.

I have gone through the facts on record and I find that it pertinent to mention the following points;

- a. It is worthy to mention here that the Custom Broker had uploaded the incomplete invoice in e-sanchit, wherein the model no. of the goods (Hands-free, wireless earphone neckband, wireless earbuds, portable lithium battery, smart watch) were not mentioned while filing the Bill of Entry. Further, the Custom Broker did not seek any clarification from the importer and proceeded to file the Bill of Entry for clearance of goods mentioned in invoice which required ETA/WPC certificates to be uploaded in e-sanchit. Therefore, by not uploading the correct documents and by not seeking necessary clarifications from the importer, the CB failed to comply with the provisions of the CBLR, 2018.
- b. The argument of the CB that there was no complaint against the CB from the importer and thus charge of violation of regulation 10(m) is totally devoid of merit and needs to be withdrawn. In this regard, I agree to the inquiry report wherein it is stated that the argument holds no water for the mere reason that the charges of violation of CBLR regulations by the Customs Broker does not necessarily need a complaint from the importer. When the Department noticed any deviation in compliance of regulations, the Department can issue notice to the delinquent Customs Broker and suitable action as per the regulations can be taken by the competent authority. In the instant case, I find that by not uploading the correct documents and by not seeking necessary clarifications from the importer in this regard hold enough ground to revoke the Regulation 10(m) of the CBLR, 2018.
- c. In support of their contention, the CB relied on the judgement in case of Mahavir Logistics versus Pr. Commissioner of Customs(General), Mumbai reported in 2021 (378) E.L.T. 669 (Tri.-Mumbai). In the cited case, there was breach of Regulation 11(m) of CBLR, 2013 on allegation of involvement of CB in undervaluation of imported goods. I find that this case is not mechanically applicable in the present case as the charges against the CB is not based on undervaluation of the imported goods, on the contrary, in

the case the CB had not uploaded the correct documents and by not seeking necessary clarifications from the importer, there is enough evidence to prove the CB's involvement in the present case which is already discussed above. As the matter is totally different from the present case, therefore, the ratio of the aforesaid judgement is not squarely applicable in the instant case.

In this context, I rely on judgement in case of the Hon'ble Supreme Court in Commissioner of Customs V/s. K. M. Ganatra and Co. in civil appeal no. 2940 of 2008 approved the following observation of Hon'ble CESTAT Mumbai in M/s. Noble Agency V/s. Commissioner of Customs, Mumbai:

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

Similarly, the view taken by the High Court of Madras, in Sri Kamakshi Agency Vs Commissioner of Customs, Madras -2001 (129) ELT 29 wherein it has been held that:

*"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 Custom House Agent, it is seen that while Custom House Agent 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 Custom House Agent. In such circumstances, the person playing the role of Custom House Agent has got greater responsibility. The very prescription that one should be conversant with various procedures, including the offences under the Customs Act to act as a Custom House Agent would show that, while acting as Custom House Agent, he should not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as a CHA by taking advantage of the access to the department. The grant of licence to a person to act as Custom House Agent 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 conveyance or the import or export of the goods. In such circumstances, great confidence is reposed in a Custom House Agent. Any misuse of such position*



*by the Custom House Agent will have far reaching consequences in the transaction of business by the Customs House officials.”*

Therefore, ratio of the aforesaid judgements is squarely applicable in the instant case, I find that if CB would have discharged his duties with utmost efficiency and had not uploaded the incorrect documents and sought necessary clarifications from the importer, the import of impugned goods would not have taken place.

I find that efficiency in the context of a person or a work is defined as in a well organised and competent way. This incorporates the essential element of due diligence in it but on the contrary, I find that in the instant case, CB did not upload the correct documents i.e. complete invoice and packing list, model no. etc. and did not seek necessary clarifications from the importer. It is lucid that the CB took no steps to seek clarification for BIS as per model no for imported goods and ETA/WPC certificates. These facts proved grave inefficiency in discharge of the duties as a Customs Broker. It is clear that the Customs Broker has failed to discharge his duties with utmost efficiency and caused significant delay in Customs clearance thereby violating the provisions of Regulation 10(m) of CBLR, 2018. Thus, I hold that the CB has violated the provisions of Regulation 10(m) of CBLR, 2018.

**8.4** The CB in his submission dated 27.04.2023 argued and submitted various case laws in support of that the timeline prescribed in the CBLR, 2018 for completing the inquiry proceeding against the CB was not followed in the present case. I find that the cited case laws are not applicable in the present case as the timeline for initiating the inquiry against the CB, is not violated as the inquiry was initiated from the receipt of the date of the offence report as per Regulation 17(1) of the CBLR, 2018. I find that the offence report dated 14.10.2022 was received in the CBS, NCH, Mumbai from the CIU, NCH on 17.10.2022 and further the CB wrongly quoted the filing of the Bill of Entry i.e. 17.08.2022 for initiation of the inquiry proceeding under the Regulation 17(1) of the CBLR, 2018. Therefore, in view of the above, I find that the timeline has been following as per the Regulation 17 of the CBLR, 2018 throughout the inquiry proceeding and there is no lapse in respect of timeline in the present case. Hence, I find that there is no contention in CB submission in this regard.

**8.4.1** Further, the CB submitted that they requested for the cross examination of the importer and the persons whose statements were recorded vide letter dated 07.02.2023 to Inquiry Officer. However, no reasons were given for denying the cross examination which is violation of regulation 17 (4) of the CBLR, 2018. In this regard, I find that IO submitted in the inquiry report that earlier vide email dated 07.02.2023, the Customs Broker requested for Cross examination of



importer of the goods and their concerned employee. He requested for the same on 08.02.2023. However, since the issue is relating to alleged violation of Regulation 10 (d) & 10(m) of CBLR 2018 and there is no reliance on any statements of the importer, the request was denied. I find that inquiry officer may decline 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 as per the Regulation 17(4) the CBLR, 2018. Therefore, I don't find any contention in CB submission in this regard as the IO has recorded his reasons in his inquiry report for denial of the request and the provision itself empower the IO for doing so, thus the case law cited by the CB is not applicable in the present case.

**8.5** Further, I rely on the following judgements and hold that in the instant case, CB, M/s. JZN Logistics (CB No. 11/1670) had failed to adhere to the responsibilities as was expected of them in terms of the Regulations made under CBLR, 2018 and therefore rendered themselves liable for penal action under CBLR, 2018.

**8.5.1** The Hon'ble Madras High Court in case of M/s Cappithan Agencies Versus Commissioner of Customs, Chennai-Viii, [2015(326) ELT 0150 Mad.], had held that:

*“13. 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.

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

**8.5.2** 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 ascertain the correctness of any information and to advice 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."

Therefore, ratio of the aforesaid judgements is squarely applicable in the instant case. Therefore, it has to be concluded that CB had failed to comply with the provisions of the CBLR, 2018.

**9.** In a regime of trade facilitation, a lot of trust is placed on the Customs Broker who acts as a vital link between Customs Authorities and Importers/Exporters. Failure to comply with CBLR, 2018 by the CB gives room for illegal imports to take place which has adverse implications on revenue frauds. It is noticed that the CB failed to advise the client and failed to bring the matter of non-compliance of BIS/WPC/ETA certificates/LMPC compliance and allied Rules/Regulations in the said consignment to the Customs Authorities. As brought out in discussions above, there is gross negligence and dereliction of duty on the part of the CB. The facts on record prove that CB violated various

provisions of CBLR 2018.

**10** I hold that the proof of charges in inquiry are acceptable and tenable based on the available evidence, the facts and circumstances of the case and judicial pronouncement mentioned supra which certainly warrant penal action against the CB. Therefore, for their acts of omission and commission, CB M/s. JZN Logistics (CB No. 11/1670) is held liable and guilty for not advising his client regarding the Rules and Regulations thereof i.e. BIS/WPC/ETA certificates/LMPC compliance. I hold that the CB has failed to discharge duties cast upon them with respect to Regulation 10(d) and 10(m)) of CBLR,2018 and are liable for penal action. Accordingly, I pass the following order.

**ORDER**

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

- (i) I hereby impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on M/s. JZN Logistics (PAN: ADPPB8663GCHOO1) (CB No. 11/1670) under Regulation 18 of the CBLR, 2018.
- (ii) I hereby order for forfeiture of entire amount of security deposit furnished by the CB M/s. JZN Logistics, under Regulation 14 of the CBLR, 2018.
- (iii) The CB License No.11/1670 is ordered to be revoked under Regulation 14 of the CBLR, 2018.
- (iv) I hereby order that the CB surrender the original License as well as all the 'F', 'G' & 'H' cards issued thereunder immediately.

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



**(SUNIL JAIN)**

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)  
MUMBAI ZONE-I



To,

M/s JZN Logistics, (PAN: ADPPB8663GCHOO1)

Customs Broker License No. 11/1670

Shakti House, 47A Little Malabar Hill,

Sindhi Society, Chembur,

Mumbai - 400 071.

*EM 171706182IN*  
*23-05-2023*

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

