



प्रधान आयुक्त, 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/206/2024-CBS
CAO No.60/2024-25/CAC/PCC(G)/RC/Adj-CBS

आदेश दिनांक/Date of Order: 13.12.2024
जारी दिनांक/Date of issue: 13.12.2024

DIN :20241277000000915109

द्वारा जारी : राजन चौधरी

प्रधान आयुक्त, सीमाशुल्क (सामान्य)
मुंबई -400 001

Issued By : **Rajan Chaudhary**

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।
This copy is granted free of charge for the private use of the person to whom it is issued.

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, यथोत्खंडपीठ 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 क्षेत्री यखंडपीठ, के M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai के संदर्भ में जारी आदेश क्रमांक A/86617-86619/2018 दिनांक 31.05.2018 के अनुसार न्यायिक आदेश तदोउ प्रांत न्याय निर्णयन अधिकारी 'functus officio' बन जाता है

It is informed that the jurisdiction of the Adjudicating Authority stands alienated with the conclusion of the present adjudication order and the Adjudicating Authority attains the status of 'functus officio' as held by Hon'ble CESTAT, Mumbai in its decision in the case of M/s

Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai vide Order No. A/86617-86619/2018 dated 31.05.2018.

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

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

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

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

6. (i) यदि प्रतिवादित आदेश, जिसके विरुद्ध अपील की गई है, में शुल्क एवं मांगे गए ब्याजवलागाएगए जुर्माने की राशि रु. पाँच लाख या इस से कम होतो रु. 1000/-, (ii) यदि यह राशि रु. पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न होतो रु. 5000/- एवं (iii) यदि यह राशि रु. पचास लाख से अधिक होतो रु. 10000/- के शुल्क का भुगतान क्रॉसड 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. Maa Om Business Enterprises Pvt. Ltd. (PAN: AALCM6744K) [formerly known as M/s. Shree Durga Logistics with PAN: AFXPK9295D], having address registered at Unit No. 107, Plot No. 1A, Siddhivinayak complex, Sector-19C, Vashi, Navi Mumbai-400705 (hereinafter referred as the Customs Broker/CB) is holder of Customs Broker License No. 11/1772, issued by the Commissioner of Customs, Mumbai under Regulations of CHALR, 1984, [Now regulation 7(2) of CBLR, 2018] and as such they are bound by the regulations and conditions stipulated therein.

2. An Offence report in the form of Order-in-Original No. CC/RK/32/2023-24 Adj. (X) ACC dtd. 24.11.2023 issued by the Commissioner of Customs, Export, Air Cargo Complex, Sahar, Mumbai was received in this office on 06.02.2024, wherein, it was informed that on the basis of specific information received by DRI, MZU, Mumbai, investigation was conducted which revealed that various export firms including M/s. Lavin Exports & Imports Pvt. Ltd. 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 Shri Suhel Ansari was operating, was situated at Room No. 30, 4th Floor, Chunnwala Building, 38-Kolsa Street, Pydhonie, 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 wherein they inter-alia stated that they supplied fake invoices to various export firms including M/s. Lavin Exports & Imports Pvt. Ltd.
5. DRI, MZU, Mumbai forwarded the case to the SIIB(X)/ACC for carrying out further investigation wherein exporters including M/s. Lavin Exports & Imports

Pvt. Ltd., who have claimed undue drawback by overvaluing the exports and to justify the over-value of the goods, they procured fake invoices from Shri Suhel Ansari.

6. Further, on scrutiny of the shipping bills filed by the exporter M/s. Lavin Exports & Imports Pvt. Ltd., it was found that the Customs Broker M/s. Shree Durga Logistics (now reconstituted as M/s. Maa Om Business Enterprises Pvt. Ltd.) (CB No. 11/1772) had cleared consignments/shipping bills of the said exporter. Therefore, Summonses No.GKV/89/2022-23 and GKV/90/2022-23 both dated 19.05.2022 were issued to the Customs Brokers M/s. Shree Durga Logistics (now reconstituted as M/s. Maa Om Business Enterprises Pvt. Ltd.). however, nobody turned up for the statements.

7. During the investigation, DRI, MZU, Mumbai had issued Summons dated 11.09.2015, 03.12.2015 & 29.12.2015 to the Directors of M/s. Lavin Exports & Imports Pvt Ltd., however they did not appear to record the statement. Further, in response to summons, Shri Ramesh P. Singh Director of M/s. Lavin Exports & Imports Pvt. Ltd. in his written letter dated 28.12.2015 to DRI, MZU, Mumbai inter alia admitted that Shri Suhel Ansari who had issued bills/invoices and not supplied any goods.

7.1. Further, Special Intelligence and Investigation Branch (Exports) of Air Cargo Complex, Sahar, Mumbai issued Summons dated 06.10.2017, 02.11.2017, 27.02.2018, 12.04.2018, 23.04.2018, 16.05.2018, 10.08.2018, 13.10.2018, 11.06.2019, 09.10.2020, 13.08.2021 and 11.02.2021 to the directors of M/s. Lavin Exports & Imports Pvt. Ltd., but they never appeared themselves to records their oral evidence.

7.2. During the course of investigation, the officer of SIIB(X) visited the premises of Sh. Ramesh P. Singh Director of M/s. Lavin Exports & Imports Pvt. Ltd. The said address was residential flat and was locked. On query from neighbour no one knew the exporter. Further, the officer of SIIB (X) visited another premises of Shri Ramesh P. Singh Director of M/s. Lavin Exports & Imports Pvt. Ltd., the said premises was also found locked and on inquiry it was known that whole family was out station. Moreover, the Officer pasted the summons on door, however, on given date i.e. 26.05.2022, Shri Ramesh P. Singh director of M/s. Lavin Exports &

Imports Pvt. Ltd. did not appear for statement in the office of SIIB (X), ACC Mumbai.

8. During the investigation, the details of exports made by the exporter M/s Lavin Exports & Imports Pvt. Ltd. were retrieved from the ICES System. During the period 2012-16 exporter made export of total 504 Shipping Bills. The Duty Drawback in respect of the 504 Shipping Bills was Rs. 419.03 lakhs. As stated in the offence report, the duty drawback is Rs. 147.50 Lakhs against 137 Shipping Bills, in respect of which Bank Realization Certificates (BRCs) have not been received.

9. During 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.

10. During investigation, a statement dated 01.07.2016 of Shri Suryabhan Eknath Dhurphate, Proprietor of M/s. Sanket Overseas, Navi Mumbai, was recorded before the DRI, MZU, who was logistics provider and was involved in clearing the consignments through CHA, M/s. Indo Foreign Agents. From the perusal of his statement, it was disclosed that usually the cost and expenses incurred on the export material was only around 35% of the drawback amount. He also stated that the benefits availed by them and the exporter was to the extent of 65%. This was the modus operandi which was adopted by all such exporters including this exporter, who were exporting the goods on the basis of fake supplier's invoice.

11. Further, from the investigation, it appears 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 for recording of his statement but he failed to produce himself as well any such details. Therefore, it appears from

investigation that necessary ingredient of second proviso to Rule 3(1) Drawback Rule, 1995 is attracted in this case which does not permit any amount of drawback in such cases where no duty has been paid.

"(1) Drawback Rule, 1995 is attracted in this case which does not permit any amount of drawback in such cases where no duty has been paid. Rule 3 of the Drawback Rules 1995 reads as under,

"Rule 3. Drawback (1) Subject to provisions of –

Provided further that no drawback shall be allowed:

(ii) if the said goods are produced or manufactured, using imported materials or excisable materials in respect of which duties have not been paid."

12. From the investigations made by DRI, MZU and the investigations conducted by SIIB(X), ACC, Mumbai following appears:

- M/s. Lavin Exports & Imports Pvt. Ltd. procured fake and bogus invoices from Shri Suhel Ansari.
- Goods of inferior quality were procured from the local market without any invoice.
- Incorrect bank transactions were made with the fake suppliers, whose invoices were raised by Shri Suhel Ansari. This was done to conceal the actual transactions and give cover to the bogus transactions.
- This automatically explained the facts that there was no physical movement of the goods against the fake invoice raised by Shri Suhel Ansari.
- As export goods were procured from local market, which were of inferior quality and having low value, therefore impugned export by M/s. Lavin Exports & Imports Pvt. Ltd. was grossly overvalued and only done for the purpose of fraudulent claim of drawback.

Aforesaid fact of overvaluation supported by statements as mentioned above and by the enquiry caused by DRI with the Consulate General of Dubai.

13. Vide Order-in-Original No. CC/RK/32/2023-24 Adj(X)/ACC penalty of total Rs. 2.4 crores have been imposed on Customs Broker M/s. Maa Om Business Enterprises Pvt Ltd. under Section 114(i), 114(iii) & 114AA of Custom Act.

14. As per the Offence Report, it appears that the Customs Broker M/s. Maa Om Business Enterprises Pvt Ltd. cleared the consignments of the exporter, in which the exporter knowingly and deliberately submitted the fake and bogus export invoices and inflated the export value to obtain undue drawback fraudulently. Further, from the above, it appears that it is unlikely that CB has been receiving goods based on fictitious bills and he was not aware. Had the CB 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 CB actively connived with exporters in claiming undue Drawback and over valuing the export goods and mis-declaring in Shipping Bill. While dealing with exporter they did not care to follow the obligation imposed through Regulation and Act.

Therefore, under the fact and such circumstances, it appears that the CB actively connived with exporters in claiming undue drawback and over valuing the export goods and mis-declaring in Shipping Bill, therefore the CB has failed to comply with following regulations of the Customs Brokers Licensing Regulations 2018:-

14.1 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;”*

As per Circular No. 16/2009-Customs dated 25.05.2009, the goods available in the market are deemed to be duty paid goods. Thus, the merchant exporters who used to purchase goods from the local market for export shall henceforth be entitled to full rate of duty drawback (including the excise portion), subject to fulfilment of certain conditions as mandated by law. Therefore, admissibility of such duty drawback is dependent upon correct declaration of certain details i.e. the name and address of the trader from whom they have purchased the goods at the time of export, in terms of the prescribed format annexed with the above said Circular.

From the above, the CB appears to have not advised the exporter and abetted the exporter by declaring the incorrect value of the goods in SBs against the fake

invoices to avail undue drawback. Thus, it appears that CB has violated the regulation 10(d) of CBLR 2018 by abetting the exporter and not bringing the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

14.2 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;”*

The CB appears to have not advised the exporter and abetted the exporter for availing the undue drawback by the exporters by overvaluing the exports, whereas cheaper material was exported, and to justify the value of the goods, fake invoices from Suhel Ansari, were procured showing the higher purchase price. Hence, the CB failed to exercise due diligence and to sensitize the exporter to make proper declaration in terms of value & the details of procurement of the goods.

Thus, it appears that CB has violated the regulation 10(e) of CBLR 2018 by abetting the exporter and not bringing the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

14.3 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;”*

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 interalia required to declare the name and complete address of the traders from whom export goods had been purchased. Thus, the CB failed to verify the said declaration 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.

Thus, it appears that CB has violated the regulation 10(f) of CBLR 2018.

14.4 Regulation 10(n) of the CBLR, 2018: - *“A Customs Broker shall verify correctness of Importer Exporter Code (IEC) number, Goods and Service 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”.

During the investigation after issuing ample summons exporter did not turn up to record the statement. Further, the officers of the SIIB(X), ACC visited the premises of the director of M/s. Lavin Exports & Imports Pvt. Ltd., however one of the address of the director was non-existence. Further, one another address of the exporter was found locked and the officer affixed summons on the door of the address, however, the exporter did not turn up before the investigation on the date and time mentioned in the affixed summons. Hence, it appears that the CB was not aware of the operating address of the exporter. Hence, the CB was failed to verify the identity of his client and functioning of his client at the declared address. Thus, it appears that CB has violated the regulation 10(n) of CBLR 2018.

15. In view of the above, it is evident that the exporter claimed duty drawback using fake invoices and Customs Broker M/s. Maa Om Business Enterprises Pvt Ltd abetted the exporter to avail this non-eligible duty drawback and did not bring the matter to the notice of the Customs authorities.

16. The evidence on record clearly indicates that the CB was working in a serious negligent manner and was in violation of the obligations casted upon them under the CBLR 2018. A Custom Broker occupies a very important position in the customs House and is 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, but by their acts of omission and commission it appeared that the said CB have violated Regulation 10 (d), 10(e), 10(f) & 10(n) of the Customs Brokers Licensing Regulations, 2018 (Regulation 18, 20 & 22 of CBLR, 2013).

17. Show Cause Notice: M/s. Maa Om Business Enterprises Pvt. Ltd. (erstwhile, M/s. Shree Durga Logistics) (11/1772) was issued a Show Cause Notice (SCN) No. 05/2024-25 dated 26.04.2024 by the Principal Commissioner of Customs (General), NCH, Mumbai, Zone-I asking them to show cause as to why the licence bearing no. 11/1772 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. They were directed to appear for a personal hearing and to produce proof of evidence/documents if any, in their defense to Shri Shrimali Suresh Kantilal, Assistant Commissioner of Customs, who was appointed as an Inquiry Officer to conduct inquiry under regulation 17 of CBLR, 2018.

18. Inquiry Report

Inquiry Officer submitted Inquiry Report dated 16.08.2024, wherein, the charges against CB M/s. Maa Om Business Enterprises Pvt. Ltd. (CB No. 11/1772) in respect of violation of Regulations 10(d), 10(e), 10(f) and 10(n) of CBLR, 2018 were held as 'Not Proved'.

19. Comments of the Inquiry Officer

Inquiry Officer has commented that the Show Cause Notice No 05/2024-25 issued vide F.No GEN/CB/206/2024-CBS dated 26.04.2024 under Regulation 17 of The Customs Broker Licensing Regulation, 2018, M/s Maa Om Business Enterprises Pvt Ltd (PAN No AALCM6744K) (formerly known as M/s Shree Durga Logistics with PAN: AFXPK9295D) (i) have failed to guide the exporter viz M/s Lavin Exports & Imports Pvt. Ltd. In realization of export proceeds within the stipulated time. (ii) have failed to exercise due diligence and aided the exporter in availing the undue drawback by the exporters by overvaluing the exports (iii) did not inform the exporter about the instructions, circulars and public notice regarding the claiming of the drawback (iv) failed to verify the identity and functioning of his client M/s Infinity Trading Co., as no manufacturing or trading activity was done by his client and (v) have failed to cooperate with the customs authorities during the course of investigation and therefore called upon to show cause as to why the Customs Broker License bearing no 11/1772 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 Regulations 17 and 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018.

19.1 It is observed that the modus operandi of exporting goods with overvaluation by getting fake purchase orders from the market was passed on by DRI to SIIB

(Export), Air Cargo Complex, Mumbai, who visited the premise of M/s Lavin Exports & Import Pvt. Ltd. and found it to be non-existent. Since M/s Shree Durga Logistics had cleared 2 export consignments, summons was issued which were not attended to by the CB.

19.2 In the instant case, it is relevant to see the chronological events happened and the same are under: a. The original licenses no 11/1772 was issued to Shri Harish Gopal Kuppikar (PAN: AFXPK9295D) as Proprietor of M/s Shree Durga Logistics. The license was valid upto 03.09.2022. b. The Additional Commissioner SIIB (Export), Air Cargo issued Show Cause Notice 29/ADC/Adjudication/2022-23 dated 15.11.2022 to M/s Shree Durga Logistics as to why penalty should not be imposed on them under Section 114(i)/114(iii) and also under 114 AA of the Customs Act read with CBLR 2013. The said license was also suspended on 02.09.2013 by Joint Commissioner, SIIB(X), JNCH, Nhava Sheva in a similar case vide Show Cause Notice dated 27.08.2014. c. As the inquiry was in progress, Shri Harish G. Kuppikar, proprietor of M/s Shree Durga Logistics expired on 18.01.2015. d. The Joint Commissioner, SIIB(X), JNCH, Nhava Sheva issued final Order No 174/2015-16 dated 01.10.2015 dropping the proceedings against the CB in absence of establishment of mens rea. The Principal Commissioner Customs (General), Mumbai, after considering the order 174 dated 01.10.2015 by the Joint Commissioner, revoked the suspension of (CB License No 11/1772) of Customs Broker, M/s Shree Durga Logistics with immediate effect on 12.01.2016. e. On application for change in the name of the proprietor the department carried out the second constitutional change in the License No 11/1772 by replacing name of Later Harish G Kuppikar with Ms Mansi Kuppikar as Proprietor of M/s Shree Durga Logistics. f. Later, the department, after completing all the required formalities, has approved and carried out the third constitutional change in the CB License No 11/1772 by replacing name of M/s Shree Durga Logistics (Proprietorship) with M/s Maa Om Business Enterprises Pvt Ltd (Company) with effect from 05.04.2018.

19.3 From the above discussion, it is evident that the proprietor of M/s Shree Durga Logistics expired on 18.01.2015. At the time of his death, one notice was issued to him and was pending adjudication. Another Show cause, SCN No 29/ADC/Adjudication/2022-23 dated 15.11.2022 was issued to him. During the

relevant period, the company was a proprietary firm and Late Shri Kuppikar was the proprietor. Though the legacy and liabilities will carry forward to the successors of the proprietor, the allegations made against a Proprietor of a firm after death of the Proprietor cannot be carried forward. If any liabilities have arisen and was pending before the death of the Proprietor, the same can be recovered from their successors of the business. In the instant case, it is only allegation against the CB, which was proprietorship firm at the relevant period, by the issue of Show Cause Notice to the firm/company for the period when dead proprietor was holding charge. In the case of Commissioner of Central Excise Chandigarh vs Shree Ambica Steel Industries, the CESTAT, New Delhi Bench vide final Order No A/1168/2012-EX (BR) in the E/1501 OF 2012 held as under: *“8. Coming to the undertaking by the legal heir of sole proprietor of the respondent firm on perusal of the undertaking reproduced above, we find that legal heir of the deceased sole proprietor of the respondent-firm had undertaken to pay all the pending central excise liability of the respondent-firm as and when the dues are finally settled. From this it is evident that the undertaking was given in respect of pending dues under dispute. In the instant case, the show cause notice raising demand was issued almost three years after the undertaking on 2-4-2009. This imply that the dispute pertaining to the demand in question was raised much after the undertaking as such the demand which is subject matter of the show cause notice cannot be termed as pending as covered by the undertaking given by the legal heir. That being the case, we are of the view that there was no reason for issue of show cause notice against non-existing firm. As such, the demand confirmed on the basis of aforesaid show cause notice cannot be sustained. We do not find any infirmity in the order-in-appeal setting aside the order-in-original and dropping the demand.”*

19.4 In OM No 11012/7/99-Est (A) dated 20.10.1999, it is clarified that where a government servant dies during pendency of the inquiry i.e., without charges being proved against him, imposition of any penalties prescribed under CCS(CCA) Rules, 1965, would not be justifiable. Therefore, disciplinary proceedings should be closed immediately on the death of the alleged Government Servant. Similar logic can be applied here in the instant case.

19.5 Applying the above analogy, it is not proper to issue Show Cause Notice to firm/company, wherein allegations were in allegations were made against the dead

proprietor, who was in charge of the firm during the relevant period. In the instant case, Shri Harish G Kuppikar, was the proprietor during the period from 2012 to 2014. He died on 18.01.2015. The SCN was issued to the company, Maa Om Business Enterprises Pvt Ltd (formerly known as M/s Shree Durga Logistics (Proprietorship) on 15.11.2022 covering period 01.01.2014-31.12.2015, vide F.No SIIB/INV45/2018-19 ACC(X) dated 15.11.2022, proposing to take appropriate action against CHA under CBLR.

19.6 In the instant case, it is observed that SCN has not brought any fact or allegation on the role of the CB in the issue of fake purchase orders received by the exporter M/s Lavin Exports & Import Pvt. Ltd. The fake documents were processed by the CB but the SCN also does not cast any role of CB in the preparation of these fake purchase orders. However, there has been negligence on the part of the CB in scrutinizing the documents and keeping an eye on the exporter as he had ample opportunity for doing the same, especially because he was involved in clearing many export consignments of the IECs linked with Shri Suhel Ansari, as was observed in the case of M/s Vedant Trading Pvt Ltd.

19.7 The license of Customs Broker, M/s Shree Durga Logistics (now reconstituted as Maa Om Business Enterprises Pvt Ltd.) (CB No 11/1772) was suspended vide Order No 47/2022-28 dated 01.12.2022 and was given opportunity of personal hearing in the matter on 22.11.2023. Based on the submissions made which include facts relating to the revocation of license after suspension after issue of Show Cause Notice by way of adjudication order by the Joint Commissioner, SIIB(X), JNCH and the observations made by the Joint Commissioner in the Adjudication Order No. 174 infer that prima facie there was no violations from CB M/s Shree Durga Logistics during the relevant period. Even if there may be some negligence, the successors cannot be penalized for the actions of the dead proprietor.

19.8 Based on the above findings, Inquiry Officer hold that the allegations of noncompliance of due care by the Customs Broker M/S Shree Durga Logistics by the department in verifying the KYC norms of the exporter relating to export procedure, verifying identity and functionality of the exporter as alleged in the subject SCN could not be proven beyond doubt. Furthermore, the penal action on

a reconstituted company with limited liability, for allegations against the dead proprietor would not be proper, legal and logical. Accordingly, proceedings initiated in the impugned SCN may be dropped as it cannot be concluded beyond doubt that the Customs Broker: (i) have failed to guide the exporter viz M/s Infinity Trading Co. In realization of export proceeds within the stipulated time. (ii) have failed to exercise due diligence and aided the exporter in availing the undue drawback by the exporters by overvaluing the exports (iii) did not inform the exporter about the instructions, circulars and public notice regarding the claiming of the drawback (iv) failed to verify the identity and functioning of his client M/s Infinity Trading Co., as no manufacturing or trading activity was done by his client and (v) have failed to cooperate with the customs authorities during the course of investigation

19.9 In light of the above facts and findings, IO hold that the allegations against the Customs Broker M/s Shree Durga Logistics (now reconstituted as M/s Maa Om Business Enterprises Pvt Ltd.) (CB No 11-1772) by the department as alleged in the subject SCN may be dropped.

20. Disagreement Memo

The Inquiry Officer in his report dated 16.08.2024 had held the charges for violation of Regulations 10(d), 10(e), 10(f) and 10(n) of CBLR, 2018 as 'Not Proved'. Pr. Commissioner of Customs (G), Mumbai-I, disagreed with the Inquiry Officer's report in respect of the charges under Regulations 10(d), 10(e), 10(f) and 10(n) of CBLR, 2018 in the light of available evidences on record. Therefore, a Disagreement Memo dated 12.09.2024 was issued.

21. Personal Hearing

A personal hearing was granted to Customs Broker on 16.10.2024 and due to the administrative reasons, the same was re-scheduled for 24.10.2024. Shri Manoj Lakhani, Consultant and Shri Rajesh Bhanushali, authorized representative of CB firm appeared for personal hearing and submitted written submission dated 24.10.2024 and re-iterated the submissions made therein. The CB submitted the following in his written submission dated 24.10.2024: -

1. The CB submitted that they have been issued three different show cause notices at different time, for processing shipping bills for three different

- exporters in the same matter, which is totally incorrect and against law and natural justice. Further, they have not been provided any relied upon documents (RUDs) by the department in which the name of CB M/s Shree Durga Logistics or its Proprietor late Shri Harish Kuppikar is mentioned.
2. The CB submitted that the Inquiry Officer has hold two major observations first that “the penal action on a reconstituted company with limited liability, for allegations against the dead proprietor would not be proper, legal and logical”. Second, “proceedings initiated in the impugned SCN may be dropped as it cannot be concluded beyond doubt that the Customs Broker have failed in performing his obligations of Regulation 10(d), 10(e), 10(f) & 10(n) under CBLR, 2018.
 3. The CB contended that the disagreement with the Inquiry Report is beyond any understanding and justification as the Inquiry Officer in his report emphasized that Shri Harish G Kuppikar, the proprietor of the firm M/s Shree Durga Logistics, who handled all referred bill of entries, is dead and can't be prosecuted, but therefore, the applicant M/s Maa Om Business Enterprises Pvt. Ltd. should not be punished.
 4. Shri Suhel Ansari, the main conspirator in the referred case, or his employees Sheikh Mohammad Arshad or Karan Ashoklal Ranka has nowhere mentioned the name of CB M/s Shree Durga Logistics in their statement recorded by the department in the month of July 2015, which are part of RUDs provided to the applicant.
 5. The CB further submitted that it appears from the SCN that the exporter M/s Lavin Exports & Imports Pvt. Ltd. was served many notices between the period of 01.09.2015 to 04.03.2022. Despite that all these notices remained un-responded by M/s Lavin Exports & Imports Pvt. Ltd., the applicant was not served a single notice in between the period to ascertain the facts, which shows that the applicant was not guilty according to the department. There is no reason as how it took more than eight years to investigate and issue SCN, when the office report by the DRI was received by the department in April, 2016. Therefore, the issuance of SCN itself is unlawful, not maintainable in court of law as it is time barred as per Regulation 17(1) of CBLR, 2018 and it is liable to be drop on the ground of limitation period itself.

6. The CB submitted that in the investigation carried out by DRI, the name of CB M/s Shree Durga Logistics or its deceased proprietor Late Shri Harish Kuppikar is nowhere mentioned in their letter. The charges against the applicant are framed only on the basis of the shipping bills processed by him for the said exporter.
7. Also, Shri Harish G Kuppikar, the Proprietor of M/s Shri Durga Logistics, died on 15.01.2015, had solely handled all the referred shipping bills and was solely responsible for any deficiencies and consequences. He died much before the offence report was submitted and is not available to face the proceedings in the case. It doesn't allow the department to prosecute the reconstituted entity i.e. the applicant M/s Maa Om Business Enterprises Pvt. Ltd. for the allegation made against M/s Shree Durga Logistics which is completely a different entity.
8. There is no evidence brought on record to show that the CB has imparted any wrong information to the exporter or he had supported the exporter with any mala-fide intention or vested interest in this case. Further, in the investigation carried out by DRI, the name of CB M/s Shree Durga Logistics or its deceased proprietor Late Shri Harish Kuppikar is nowhere mentioned in their letter. As a matter of facts, there is no basis or grounds on which the charges are framed against the CB. Therefore, issuance of SCN is totally incorrect and unlawful.
9. The original license (CB No. 11/1772) was constituted in the name of Shri Harish G Kuppikar, as proprietor of M/s Shree Durga Logistics (who died on 15.01.2015). The said license was reconstituted by the department after carrying out all the required formalities on 5th April 2018 in the name of existing company M/s. Maa Om Business Enterprises Pvt. Ltd., which is all together a different entity. The license was inactive from the death of Shri Harish G Kuppikar i.e. 15.01.2015 and since then not a single deal happened till the reconstitution of license.
10. Further, the appellant also relies upon the following judgments of the Hon'ble Courts, in support of their contention and time limitation periods:
 - i) M/s. Ayushi Logistic Company V/s Commissioner of Customs (Airport & Administration), Kolkata (FO 75215 of 2023 Tribunal), CESTAT Kolkata.

- ii) M/s Perfect Cargo & Logistics V/s Commissioner of Customs, New Delhi (Airport and General) (CESTAT New Delhi CUSTOMS APPEAL NO. 50875 OF 2021)
 - iii) Access World Wide Cargo V/s Commissioner of Customs, Bangalore (CESTAT Bangalore Final Order No. 20666/2021, dated 10- 8-2021 in Appeal No. C/20444/2021)
 - iv) Transpeed Logistics Pvt Ltd V/s Commissioner of Customs (Airport & General) New Delhi (CESTAT New Delhi Customs Appeal No. 51729 OF 2019)
 - v) M/s Sai Chhaya Impex Pvt. Ltd. V/s Commissioner of Customs, (Airport and General) New Delhi (CESTAT New Delhi Customs Appeal No. 51029 OF 2021)
 - vi) In the matter of limitation period: HIM LOGISTICS PVT. LTD. V/S COMMISSIONER OF CUS. (AIRPORT & GENERAL) New Delhi (HC New Delhi-W.P. (C) No. 505 of 2021 and C.M. No. 1317 of 2021, decided on 2-2-2023)
 - vii) In the matter of suit against the Dead Person: Hon'ble Supreme Court Judgement in the matter of Ashok Transport Agency Vs. Awadhesh Kumar and Another (Civil Appeal No. 1873 of 1998, arising out of SLP (C) No. 24241 of 1996)
11. Proprietor of CB Shri Harish G Kuppikar was the only person to answer all the allegations made in SCN, however, he died on 18.01.2015. The fraud, if any in this case, was solely carried out by the exporter M/s Lavin Exports & Imports Pvt. Ltd. with conspirator Mr. Suhel Ansari to claim the duty drawback benefits. There was no role of CB M/s Shree Durga Logistics or its proprietor Late Shri Harish G Kuppikar and no evidences which may prove them guilty., the proprietor conducted all the business transactions/acts in good faith and without any mala-fide intention.
12. No law permits to prosecute another person in lieu of a dead person, as liability of any individual or a firm can be shifted to the beneficiaries/successors, but allegation cannot be shifted in the same manner.
13. CB is providing unblemished services to the clients with support and excellent coordination with the department for last six years. They are providing livelihood to their staff and family members and many other

families through their business transactions. CB requested to drop all the charges alleged under various Regulations of CBLR, 2018.

22. Discussion and Findings

I have gone through the facts of the case, material evidence on record, the Show Cause Notice 05/2024-25 dated 26.04.2024, Inquiry Report dated 16.08.2024 and written and oral submissions of the said CB.

22.1 I observe that the charges against the said CB is of violation of Regulations 10(d), 10(e), 10(f) & 10(n) of CBLR, 2018 made vide Show Cause Notice No. 05/2024-25 dated 26.04.2024. The Inquiry Officer vide inquiry report dated 16.08.2024 held the charges of violation of Regulations 10(d), 10(e), 10(f) & 10(n) of CBLR, 2018 as "Not Proved". A Disagreement Memo dated 12.09.2024 was issued with respect to charge under Regulations 10(d), 10(e), 10(f) & 10(n) of the CBLR, 2018.

22.2 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.

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

The 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) IO in his report mentioned that SCN has not brought any fact or allegation on the role of the CB in the issue of fake purchase orders received by the exporter M/s Lavin Exports & Imports Pvt. Ltd. The fake documents were processed by the CB but the SCN also does not cast any role of CB in the preparation of these fake purchase orders. However, there has been negligence on the part of CB in scrutinizing the documents and keeping an eye on the exporter as he has had ample opportunity for doing the same, especially because he was involved in clearing many export consignments

of the IECs linked with Shri Suhel Ansari. Accordingly, IO proved that CB had not violated the Regulation 10(d) of the CBLR, 2018.

- (ii) The CB in his submissions has stated that the Inquiry Officer has made detailed observation and findings in respect of all the allegations made in the SCN dated 21.03.2023. Issue of SCN to the company for allegation against the dead proprietor for the period during which the dead proprietor was responsible is not proper, not logical and legally not correct and SCN is liable to be dropped. CB has submitted that Shri Suhel Ansari or his employee has nowhere mentioned the name of CB or the exporter M/s. Vedant Trade Impex Pvt. Ltd., in their statement provided to the department in the month of July, 2015 and there is no justification to investigate and file the charge-sheet after five years as the DRI provided offence report in the month of April 2016.
- (iii) In this regard, I find that this office has received Offence Report i.e. Order-in-Original No. CC/RK/32/2023-24 Adj.(X) ACC dated 24.11.2023 issued by the Commissioner of Customs (Export), ACC, Sahar, Mumbai on 06.02.2024 and as the license of CB was already suspended in another similar case, suspension in the instant case was not necessary and a Show Cause Notice No. 5/2024-25 dated 26.04.2024 was issued to the CB.
- (iv) I find that the exporter firms including M/s. Lavin Exports & Imports Pvt. Ltd. was procuring fake purchase invoices against the export consignments from one Mr. Suhel Ansari. M/s. Lavin Exports & Imports Pvt. Ltd. claimed undue export benefits by overvaluing the exports, whereas cheaper material was exported and to justify the value of goods, fake invoices from Suhel Ansari were procured showing the higher purchase price. Vide letter dated 08.03.2018, the Consulate General of India, Dubai, UAE had informed that "from the scrutiny of the documents provided by Federal Customs Authority, Dubai it emerged that original/actual unit value of the exported goods were found abnormally low compared to declared value in the Shipping Bills". As per the investigation, the instant exporter has also adopted the similar modus-operandi. During investigation, the exporter failed to produce any documents in respect of manufacturing, production or use of any imported material in impugned export goods and thus violated the provisions of the Drawback Rules, 1995. Also, the

exporter failed to produce any documents related to transportation and delivery of goods, bank transactions details, invoices. During the investigation, the officer of SIIB(X) visited the premises of Sh. Ramesh P. Singh Director of M/s. Lavin Exports & Imports Pvt. Ltd. The said address was residential flat and was locked. On query from neighbour no one knew the exporter. Further, the officer of SIIB (X) visited another premises of Shri Ramesh P. Singh Director of M/s. Lavin Exports & Imports Pvt. Ltd., the said premises was also found locked and on inquiry it was known that whole family was out station. Moreover, the Officer pasted the summons on door, however, on given date i.e. 26.05.2022, Shri Ramesh P. Singh director of M/s. Lavin Exports & Imports Pvt. Ltd. did not appear for statement in the office of SIIB (X), ACC Mumbai.

(v) Export consignment of some of these exporters were made through M/s. Sanket Overseas, who is the logistics provider. Statement of Shri Suryabhan Eknath Dhurphate, Proprietor of M/s. Sanket Overseas, Navi Mumbai, was recorded under Section 108 of the Customs Act, 1962 by the DRI vide which he inter alia stated that he was into the business of arranging of export material by way of purchases from open market and arranging to export the same to the overseas buyers of M/s. Vedant Trade Impex Pvt. Ltd. and others, he further stated that usually the cost and expenses incurred on the export material is only around 35% of the drawback amount; that in other words the benefits availed by them and the exporter was to the extent of 65%; that on being asked to confirm the benefit percentage of 65% of the drawback amount, he confirms the same.

(vi) Total 92 S/Bills were filed by the CB on behalf of exporter from 2012-16, but, they never tried to confirm the genuineness of the invoice, as the exporter failed to produce any such document during investigation, even the slightest effort by the CB to verify the genuineness of the invoice had revealed these forged documents.

(vii) Further, in terms of Boards Circular No. 05 of 2009 –Customs dated 02.02.2009, vide F. No. 609/167/2003-DBK, the exporter is required to submit the proof of export realization to the Customs House within the stipulated time period. So, the CB has not guided the exporter about the same.

- (viii) Further, the CB who is obliged to bring any non-compliance of rules/act to the notice of the Deputy Commissioner of Customs, in the instant case, the CB did not comply his act and never informed the fact to the Deputy/ Assistant Commissioner that the goods are being exported on the basis of fake invoices.
- (ix) Hence, it is impossible to assume that the exporter without wilful collusion with CB could have exported the impugned goods, hence, the CB cannot shy away from the responsibilities & obligations cast upon them under the CBLR, 2018.
- (x) 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 aim 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 can 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.”

- xi) From the above facts and circumstances, I am of the considered view that the said Custom Broker failed to advise the exporter to dissuade away from such overvaluation in order to avail undue export benefit. Further, the CB did not bring the said discrepancy to the notice of the Deputy or Assistant Commissioner of Customs. Therefore, I hold that the CB has violated the provisions of Regulation 10(d) of the CBLR, 2018.

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

The 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) I observe that IO in his report has not discussed anything substantially and held that CB had not violated the Regulation 10(e) of the CBLR, 2018.
- (ii) The CB submitted that there is no evidence to show that the CB has imparted any wrong information to the exporter or he had supported the exporter with any mala-fide intention in the case. There is no basis on which the charges are framed against the CB, moreover, the proprietor of the CB firm died in the year 2015. The CB firm M/s. Maa Om Business Enterprises (new name) can't be sued for the act of previous CB firm M/s. Shree Durga Logistics (previous name) in case proprietor (late) Harish G Kuppikar of M/s Shree Durga Logistics died. So, the CB has not violated the said provision in as much as there is nothing on record to suggest that CB has furnished incorrect information.
- (iii) 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, and mis-declared by the exporter. The exporter M/s Lavin Export & Import Pvt. Ltd.

had produced fake invoices/ purchase bills showing higher purchase price against the export consignments from one Mr. Suhel Ansari. It is obligations and duty of the CB to exercise due diligence to ascertain the correctness of information imparted 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 Regulation 10(e) of the CBLR, 2018. I also find that, the CB cannot shy away from the responsibilities cast upon them under CBLR, 2018 by stating that determining the mis-declaration in terms of valuation is the officer's responsibility. Therefore, I find that there is no merit in the CB's submission in this regard.

- (iv) From the above facts and circumstances, 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.

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

The 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) From the investigation, it is revealed 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.
- (ii) 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 they were having enough opportunity. Shri Ramesh P. Singh, director of exporter M/s. Lavin Export & Import Pvt. Ltd. in his written letter to DRI, MZU inter alia admitted that Shri Suhel Ansari

who had issued bills/invoices and not supplied any goods.

- (iii) Various Summons were issued to the director Shri Ramesh P. Singh, but he never appeared for recording of statement.
- (iv) Further, it also revealed from the investigation that exporter M/s. Lavin Export & Import Pvt. Ltd. had declared high value of the goods to avail higher amount of export benefits which is clear violation of the Customs Valuation (Determination of value of export goods) Rules, 2007.
- (v) I find that 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, which is mentioned in the SCN. As per the said format, exporter was inter-alia required to declare the name and complete address of the traders from whom export goods had been purchased. The exporter 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 and they had purchased these goods from a trader who was also 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. Lavin Export & Import Pvt. Ltd. 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.
- (vi) 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.

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

The Regulation 10(n) of CBLR, 2018 reads as:

Customs Broker shall verify correctness of Importer Exporter Code (IEC) number, Goods and Service 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) I observe that IO in his report has not discussed anything substantially and held that CB had not violated the Regulation 10(n) of the CBLR, 2018.
- (ii) From the records of the case, I observe that the Customs Broker did not verify the identity and functioning of the exporter M/s. Lavin Export & Import Pvt. Ltd. at the declared address by using reliable, independent, authentic documents, data or information.
- (iii) I observe that the CB did not verify the antecedent of the exporter. Summons to Shri Ramesh P. Singh, director could not be delivered at the given address. CB also failed to submit any documentary proof to substantiate that they had verified the credentials of the said exporter including functioning of client at the declared address using reliable & independent information such as speed post etc.
- (iv) From the above facts and circumstances, I am of the considered view that the CB has failed to fulfil obligation casted upon him under regulation 10(n) of the CBLR, 2018. Therefore, I hold that the CB has violated the provisions of Regulation 10(n) of the CBLR, 2018.

22.7 In addition, the Inquiry Officer at para No. 24 (b) and (c) of the IR has quoted a SCN dated 27.08.2014 issued by the Joint Commissioner of Customs SIIB(X), JNCH later on the joint commissioner issued final order No. 174/2015 dated 01.10.2015 and thereby dropped the proceedings against the CB as no mens-rea was established against the CB, and the principal Commissioner of Customs revoked the suspension of the license of the CB. The facts were checked and found that it was altogether a different case of the exporter M/s. Rush Exports and the instant case is of exporter M/s. Lavin Export & Import Pvt. Ltd.

22.8 In para 25 of the IR, the Inquiry Officer has emphasized that during the offence the CB firm was a proprietorship under the proprietor Shri Harish G. Kuppikar, now after his death in the year 2015 and reconstitution of the CB firm, allegation against the company should not carry forward, in support of his argument he has quoted the order of the CESTAT, New Delhi Bench vide final Order No. A/1168/2012- EX (BR) in Appeal No. E/1501 OF 2012 dated September 13, 2012, case of Commissioner of Central Excise, Chandigarh Versus Shree Ambica Steel Industries, held as under:

"8. Coming to the undertaking by the legal heir of sole proprietor of the respondent firm, on perusal of the undertaking reproduced above, we find that legal heir of the deceased sole proprietor of the respondent firm had undertaken to pay all the pending central excise liability of the respondent firm as and when the dues are finally settled. From this it is evident that the undertaking was given in respect of pending dues under dispute. In the instant case, the show cause notice raising demand was issued almost three years after the undertaking on 2.4.2009. This imply that the dispute pertaining to the demand in question was raised much after the undertaking as such the demand which is subject matter of the show cause notice cannot be termed as pending as covered by the undertaking given by the legal heir. That being the case, we are of the view that there was no reason for issue of show cause notice against non-existing firm. As such, the demand confirmed on the basis of aforesaid show cause notice cannot be sustained. We do not find any infirmity in the order in appeal setting aside the order in original and dropping the demand"

In this regard, I find that this order is with respect to carrying forward of liability of central excise tax and not in respect of offence cases under CBLR,2018, hence this argument has no bearing on this case.

22.9 In para 26 of the IR, the Inquiry Officer has quoted the OM No.11012/7/99-Estt (A) dated 20.10.99.

The same is reproduce below:

**In OM No.11012/7/99-Estt (A) dated 20.10.1999, it is clarified that where a government servant dies during the pendency of the inquiry is without charges being proved against him, imposition of any of the penalties prescribed under the CCS(CCA) Rules, 1965, would not be justifiable. Therefore, disciplinary proceedings should be closed immediately on the death of the alleged Government servant. Similar logic can applied here in the instant case."*

Ongoing through the said O.M., I find that this O.M. is with respect to central government employee and limited to them only, the CCS(CCA) Rules, 1965 cannot be extended to CB hence this argument also no bearing on this case.

22.10 I have gone through the various Case Laws referred by the said CB in his various submissions and observed that the ratios of the judgment of said Case Laws are not squarely applicable in the instant case, as the facts and circumstances are different and clearly distinguishable.

22.11 While deciding the matter, I rely upon following judgements:

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)”.

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.

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 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."

23. 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 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 has a prominent role in advising the exporter to mention the correct transaction value in the export document and to bring the matter to the notice of the Customs authorities wherever discrepancy is noticed. The facts on record prove that CB had violated various provisions of CBLR, 2018 with mens rea. Hence, the decision of above case law is squarely applicable in the present case.

24. In view of above facts and circumstances, I hold that the charges against the CB under Regulation 10(d), 10(e), 10(f) & 10(n) of the CBLR, 2018 are proved, and the CB is liable for penal action under the CBLR, 2018. Therefore, for their acts of omission and commission, CB M/s. Maa Om Business Enterprises Pvt. Ltd. (CB Licence no. 11/1772) is held liable and guilty for violating the provisions of CBLR, 2018 as mentioned above. Accordingly, I pass the following order:-

ORDER

25. 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 order revocation of the CB License No. 11/1772 under Regulation 14 of the CBLR, 2018.
- (ii) I hereby impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on CB M/s. Maa Om Business Enterprises Pvt. Ltd. (CB no. 11/1772) under Regulation 18 of the CBLR, 2018.

- (iii) I hereby order for forfeiture of entire amount of security deposit furnished by CB under Regulation 14 of the CBLR, 2018.
- (iv) I hereby order that the CB surrender the original License as well as all the 'F', 'G' & 'H' cards issued there under immediately.

This order is passed without prejudice to any other action which may be taken 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.


(RAJAN CHAUDHARY)

PRINCIPAL COMMISSIONER OF CUSTOMS (G)
MUMBAI ZONE-I

To,
M/s. Maa Om Business Enterprises Pvt. Ltd.,
Unit No. 107, Plot No. 1A,
Siddhi Vinayak-complex,
Sector-19C, Vashi, Navi Mumbai-400705

Copy to: -

1. The Pr. Chief Commissioner/Chief Commissioner of Customs, Mumbai I, II, III Zone
2. All Pr. Commissioners/Commissioners of Customs, Mumbai I, II, III Zone
3. Commissioner of Customs (Export), ACC, Sahar, Mumbai
4. CIU's of NCH, ACC & JNCH
5. EDI of NCH, ACC & JNCH
6. ACC (Admn), Mumbai with a request to circulate among all departments.
7. JNCH (Admn) with a request to circulate among all concerned.
8. Cash Department, NCH, Mumbai.
9. Notice Board
10. Office Copy.
11. Guard File (Admin)