



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/159/2022-CBS

आदेश दिनांक/Date of Order: 08.06.2022

CAO No. 17/CAC/PCC(G)/SJ/CBS Adj

जारी दिनांक/Date of issue: 09.06.2022

संख्या:

DIN: 20230677000000333FFD

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 संबंध में 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, यथोत्तुखंडपीठ में स्वीकार्य है।

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

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

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

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

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

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

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

6. (i) यदि प्रतिवादित आदेश, जिसके विरुद्ध अपील की गई है, में शुल्क एवं मांगे गए ब्याजवलगाए गए 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 Facts of the Case**

M/s. Maruti Logistics (ABQFM4134JCH001), having address at Shop No. 05, Building No. 06, Jai Santoshi Maa CHS Ltd, Gauri Shankar Wadi No. 02, Pantnagar (East), Ghatkopar (East), Mumbai - 400075, (hereinafter referred as the Customs Broker/CB) is holder of Customs Broker License No. 11/2686, issued by Pr. the Commissioner of Customs, Mumbai under Regulation 7(2) of CBLR, 2018 and as such they are bound by the regulations and conditions stipulated therein.

2. A letter dated 26.05.2022 vide F.No. SG/Misc-55/2022-23/LRM/SIIB(I)/JNCH was received from SIIB(I), JNCH and vide the said letter it was informed that a complaint was received by SIIB(I)/JNCH that the CB M/s. Maruti Logistics (ABQFM4134JCH001) had forged government documents namely Consent Validity issued by State Pollution Control Board as the original consent was valid upto 30.06.2021, however, the CB had forged the consent validity certificate and changed the validity upto 30.08.2022. This forged document was used for filing and clearance of goods under Bills of Entry No. 8295863 and 8304509 both dated 16.04.2022.

3. In the offence report, it was stated that an officer was deputed to visit Maharashtra Pollution Control Board (MPCB) office to verify the alleged forged certificate which was uploaded in e-sanchit while clearing the consignment under Bills of Entry No. 8295863 and 8304509 both dated 16.04.2022. Officials of MPCB, after verifying their records, confirmed that the certificate appeared to be forged, the actual validity was upto 30.06.2021 only. This fact has also been admitted by Shri Hemant Bhanushali, partner of the CB M/s. Maruti Logistics (ABQFM4134JCH001) in his statement dated 04.05.2022.

4. Statement of Customs Broker Shri Hemant Bhanushali, partner of CB firm M/s. Maruti Logistics (ABQFM4134JCH001) was recorded on 04.05.2022 under section 108 of the Customs Act, 1962, wherein he interalia stated that: -

(i) On being asked to explain the discrepancies in validity of MPCB certificate No. Format 1.0/CAC/UANNo.0000092321/CR-2009000528 dated 09.09.2020, he stated that after receiving summons from SIIB(I), he enquired from the mediator Mr. Ashok Jadhav, (whose role was to sell the product of overseas supplier to the Indian consignee i.e. importer and to obtain all valid necessary documents from the overseas supplier and also procure documents from the overseas supplier), regarding discrepancies of import documents to which he (Mr. Ashok Jadhav) interalia stated that he had only valid MPCB certificate No. Format 1.0/CAC/UAN No. 0000092321/CR-2009000528 dated 09.09.2020 validity period upto 30.06.2021. Further, he (Ashok Jadhav) informed that on behalf of importer he had already applied for extension of validity of MPCB certificate on 24.03.2021.



However, due to Covid-19 Pandemic, the application could not be processed timely; that after surpassing of 12 months, application has been considered by MPCB department and thus in this regard final renewal consent MPCB certificate No. Format 1.0/CC/UAN No. MPCB-CONSENT-0000111441/CR/2204001608 dated 24.04.2022 valid upto 30.06.2025 has been issued. He also informed that the importer had already applied for approval of certificate and further extension of the said period i.e. validity of the MPCB Certificate. As the importer did not receive the MPCB certificate in time, therefore, in order to clear consignment early, the mediator (Mr. Ashok Jadhav) submitted the forged MPCB certificate No. Format 1.0/CAC/UAN No. 0000092321/CR-2009000528 dated 09.09. 2020 valid upto 30.08.2022 (actual validity upto 30.06.2021).

During the course of investigation, Shri Hemant Bhanushali further stated that he had uploaded the same certificate in e-sanchit; however, changes were made in the validity period by Mr. Ashok Jadhav, assuming that MPCB department might issue the certificate by 30.08.2022. In order to clear consignment early, the CB did not verify the genuineness of the MPCB certificate.

(ii) On being asked that by the above acts, it appeared that the documents have been forged, he stated that original MPCB certificate No. Format 1.0/ CAC/UAN No. 0000092321/CR-2009000528 dated 09.09.2020 which was valid upto 30.06.2021 was forged and the validity was extended upto 30.08.2022 and the forged document was uploaded in e-sanchit.

(iii) On being asked about submitting wrong documents in the e-sanchit portal is liable for penal action as per Customs Act, 1962 and also attracts suspension of CB License, he stated that he had submitted the said documents on e-sanchit based on documents provided by Mr. Ashok Jadhav, the mediator; that, had they been aware about the forged documents, they would not have uploaded the fictitious documents on e-sanchit; that, they have received the valid MPCB certificate No. 1.0/ CC/UAN No. MPCB-CONSENT-0000111441/ /2204001608 dated 24.04.2022 valid upto 30.06.2025; the consignment was given out of charge on 21.04.2022 for Bills of Entry No. 8295863 & 8304509 both dated 16.04.2022; had they been aware about it, they would have cleared it after getting proper certificate issued by MPCB; the valid certificate has been issued on 24.04.2022; that, he knows that mis-declaration in any form attracts penal action to the importer and CB and that mis-declaration or suppression of fact can lead to suspension of license.

5. Thus, from the above, prima facie, it appeared that Shri Hemant Bhanushali, partner of the CB firm received documents from the mediator Mr. Ashok Jadhav and there is nothing on record that mediator was the authorized person of the Importer/Exporter. Thus, it is apparent that the CB M/s. Maruti Logistics has



failed to get proper authorization from the importer; that the CB has not only failed to advise his client to comply with the provisions of MPCB but also involved himself in the tempering with the original letter (by changing the validity date); that the CB did not upload the entire certificate (10 pages) in the e-sanchit and uploaded only first page of the certificate; that the CB failed to ensure in guiding the importer to provide the correct document and helped in an improper import. As the said CB did not upload the complete copy of the MPCB certificate, otherwise Customs might have found out the forgery.

It is evident from the investigation report that the validity of the MPCB Certificate uploaded in e-sanchit was extended illegally and the same was not verified by the Customs Broker and the goods were cleared by concealing the fact that they were not in possession of valid MPCB certificate. It is the duty of the Customs Broker to verify the records, documents related to the consignments. It appeared that CB started doing customs clearance work as per instruction of so called mediator and without confirming identity of his actual client and functioning of his client. While answering about the role of mediator CB has accepted that his role was to sell the product of overseas supplier to the Indian consignee. It appeared that this so called mediator was not appointed by the importer and the CB was working for the mediator, who was using IEC of other importers to import the goods.

6. In view of the facts stated above, it appeared that, prima facie, the Customs Broker M/s. Maruti Logistics (ABQFM4134JCH001) had therefore failed to fulfil their responsibilities as per Regulations 10(a), 10(d), 10(e), 10(j) and 10(n) of CBLR, 2018 and liable for penal action under following relevant Regulations of CBLR, 2018.

**Regulation 10(a) of CBLR, 2018:** *"A Customs Broker shall obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be".*

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

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

**Regulation 10(j) of CBLR, 2018:** - *"A Customs Broker shall not refuse access to, conceal, remove or destroy the whole or any part of any book, paper or other record, relating to his transactions as a Customs Broker which is sought or may be sought by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be"*

**Regulation 10(n) of CBLR, 2018:** - *"verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information"*

**7. SUSPENSION OF LICENSE:** In view of the facts stated above, CB, M/s. Maruti Logistics (ABQFM4134JCH001) (CB No. 11/2686) was found liable for their acts of omission and commission leading to contraventions of the provision under Regulation 10(a), 10 (d), 10(e), 10(j) and 10(n) of CBLR, 2018. Therefore, prima facie, it appeared that the CB failed to fulfil their responsibilities as per provisions of regulations of CBLR, 2018. Hence, in exercise of powers conferred under the provisions of Regulation 16 of CBLR, 2018, the licence of the CB, M/s Maruti Logistics (CB No. 11/2686) was suspended by the Pr. Commissioner of Customs (General), NCH vide Order No. 18/2022-23 dated 27.06.2022 and the same was continued vide Order No. 24/2022-23 dated 25.08.2022.

**8. SHOW CAUSE NOTICE:** M/s Maruti Logistics (CB No. 11/2686) was issued a Show Cause Notice No. 24/2022-23 dated 31.10.2022 by the Principal Commissioner of Customs (General), NCH, Mumbai, Zone-I asking them to show cause as to why the licence bearing no. 11/2686 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 D. J. Jyotirmoy, Deputy Commissioner of Customs, who was appointed an Inquiry Officer to conduct inquiry under regulation 17 of CBLR, 2018.

## **9. INQUIRY REPORT**

Inquiry Officer submitted inquiry report dated 23.02.2023 wherein the charges against CB M/s. Maruti Logistics (CB No. 11/2686) i.e., violation of Regulation 10(a), 10 (d), 10(e), 10(j) and 10(n) of CBLR, 2018 were held 'Proved'.

**9.2** IO submitted that a letter dated 25.11.2022 was sent to the Customs Broker M/s. Maruti Logistics to submit reply to the Show Cause Notice and to appear for

personal hearing before him in connection with the inquiry on 01.12.2022. In reply to the subject letter, CB submitted his reply vide letter dated 01.12.2022.

### **9.3 SUBMISSION BY CB: -**

**9.3.1** CB submitted that impugned SCN cannot survive in law and proceeding under the SCN is liable to be dropped because it has been issued contrary to the provisions of Regulation 17 of the CBLR, 2018.

In the instant case, no Show Cause Notice has been issued within the time limit of ninety days as provided in the Regulation 17 of CBLR. The offence report was received from SIIB(I) vide letter F. No. SG/Misc-55/2022-23/LRM/SIIB(I)/JNCH dated 26.05.2022. Based on the said offence report dated 26.05.2022, the License of the CB was suspended vide order No. 18/2022-23 dt. 27.06.2022 & consequent suspension of CB License vide impugned Order No. 24/2022-23 dated 25.08.2022 issued by the Hon'ble Principal Commissioner of Customs. The impugned SCN was issued dated 31.10.2022 and served to CB on 04.11.2022 whereas the time limit of ninety days, as provided in the Regulation 17 of CBLR 2018, had already lapsed. It is thus clear that now, no legal & valid show cause notice can be issued to the CB as it would be in contravention of Regulation 17 of CBLR, 2018. The CB placed reliance upon the following judgment in support of the aforesaid legal position:

- (i) KAMAL SEHGAL Versus COMMISSIONER OF CUSTOMS, NEW DELHI-2019 (370) E.L.T. 758 (Tri. - Del.)
- (ii) S.S. INTERNATIONAL Versus COMM. OF CUS. (SEAPORT-IMPORT), CHENNAI-2015 (327) E.L.T. 713 (Tri. Chennai)
- (iii) SOWPARNIKA SHIPPING SERVICES Versus COMM. OF CUSTOMS, CHENNAI-VIII-2017 (352) E.L.T. 286 (Mad.)
- (iv) IMPEXNET LOGISTIC Versus COMMISSIONER OF CUSTOMS (GENERAL)- 2016 (338) E.L.T. 347 (Del.)
- (v) OVERSEAS AIR CARGO SERVICES Versus COMM. OF CUS. (GENERAL), NEW DELHI-2016 (340) E.L.T. 119 (Del.)
- (vi) HARJEET SINGH JOHAR Versus COMMISSIONER OF CUSTOMS (GENERAL)- 2018 (361) E.L.T. 731 (Del.)

Thus, The CB submitted that in view of the foregoing submissions and the legal position settled by plethora of judgments relied as above, the impugned SCN is not sustainable in law and liable to be set aside.

**9.3.2** CB submitted that the allegation made against them in the impugned SCN is solely based on two documents: (i) Investigation Report issued from SIIB(I), JNCH vide F. No. SG/Misc-55/2022-23/LRM/SIIB(I)/JNCH dated 26.05.2022; and (ii) Statement of Shri Hemant Bhanushali, partner of the CB firm recorded by Customs on 04.05.2022. CB further submitted that they have not been provided



copy of Investigation Report issued from SIIB(I), JNCH vide F. No. SG/Misc- 55/ 2022-23/LRM/SIIB(I)/JNCH dated 26.05.2022 and copy of Statement of Shri Hemant Bhanushali relied in the SCN, in absence of which the CB was unable to submit proper reply to the allegations and CB crave leave to add, alter, amend or delete all or any of the reply/submissions submitted, if the CB finds it necessary to do so after receiving the copy of aforesaid two relied upon documents as & when the same are provided to the CB:

**9.3.3** The allegation made out in the SCN is that a document called Consent Validity Certificate issued by State Pollution Control Board was forged by the CB himself and that the same was uploaded by him in e-sanchit in respect of clearance of consignment under Bills of Entry No. 8295863 and 8304509 both dated 16.04.2022.

The conclusion which comes out from the statement of Shri Hemant Bhanushali is that the CB was unaware of any discrepancy in the Consent Validity Certificate issued by MPCB at the time when it was handed over & uploaded on e-sanchit and the said discrepancy came to his knowledge when the summons was issued to him. The conclusion which also comes out from the above statement of Shri Hemant Bhanushali is that change of validity date in the said certificate had been done by a mediator Mr. Ashok Jadhav, who had applied on behalf of the importer for extension of validity date of the said certificate with MPCB, as he could not get it done timely due to COVID-19 situation. Thus, Shri Hemant Bhanushali in his statement has categorically denied to have made changes himself in the said certificate.

The CB thus submitted that the sole basis on which the impugned Order dated 27.06.2022 held that the CB has forged the said certificate & uploaded the same on e-sanchit, is the statement of Shri Hemant Bhanushali, whereas there is nothing so stated in the said statement of Shri Hemant Bhanushali which could support the said findings, hence the said findings are without any basis.

**9.3.4** The Customs Broker M/s. Maruti Logistics (CB No. 11/2686) in his written submissions dated 01.12.2022 denied all the charges levelled against them.

**A) In defence of the violation of Regulation 10(a) of the CBLR, 2018-**

In respect of the Regulation 10(a) of the CBLR, 2018, CB submitted that in the instant matter, there is no occasion pointed out in the SCN as to when the CB was asked by the Deputy Commissioner of Customs or Assistant Commissioner of Customs to produce such authorization and hence the question of CB's failure to produce the same before the said officers does not arise. Had the CB been so asked, he had definitely produced the authorisation of the importer as required under Regulation 10(a). Such authorization had been obtained by CB.

CB further submitted that Regulation 10(a) requires an authorization of the importer by whom the CB has been employed to do his customs work on his behalf. The stand taken in SCN that CB has to obtain authorization from every person to whom the importer sends to hand over his papers to the CB for customs clearance, is not a requirement of Regulation 10(a). If Customs department inquires with any Customs Broker in Mumbai or anywhere in India, no CB does this as no CB is bound to perform a non-statutory compliance. Without prejudice to the aforesaid legal position, the CB further submitted that as per the facts in the SCN, Mr. Ashok Jadhav on behalf of the importer had applied for extension of validity of MPCB certificate to the Maharashtra Pollution Control Department. From the aforesaid facts it is obvious that Mr. Ashok Jadhav was authorised to do such work by the importer otherwise he would not have applied to MPCB department for the said certificate. However, all this has nothing to do with Regulation 10(a) of CBLR, 2018.

**B) In defence of the violation of Regulation 10(d) of the CBLR, 2018: -**

In respect of the Regulation 10(d) of the CBLR, 2018, CB submitted that the SCN relies upon the statement dated 04.05.2022 of Shri Hemant Bhanushali (partner of the appellant CB firm) who has stated in his said statement "After receiving summons from SIIB(I), he enquired from the mediator Mr. Ashok Jadhav regarding discrepancies of import documents". The aforesaid statement shows that CB was unaware of any discrepancy in the Consent Validity certificate issued by MPCB at the time when it was handed over to him & uploaded on e-sanchit and the said discrepancy came to his knowledge when Customs issued summons to him. Shri Hemant Bhanushali has further stated that "had they been aware about the forged documents, they would not have uploaded the fictitious documents on e-sanchit." and that "Had they been aware about it, they would have cleared it after getting proper certificate issued by MPCB". CB uploaded the document provided by the importer and there is no obligation upon CB under the CBLR that has to verify the document by its issuing department viz. MPCB. CB submitted that when CB had no knowledge of any discrepancy in the documents provided by the importer, the allegation that CB failed to advise his client to comply with requisite provisions and that CB failed to bring the discrepancy to the knowledge of AC/DC of Customs does not make any prudent reason/ basis.

**C) In defence of the violation of Regulation 10(e) of the CBLR, 2018: -**

In respect of the Regulation 10(e) of the CBLR, 2018, CB submitted that for attracting the provisions of Regulation 10(e), there must be certain information which had been imparted by CB in respect of which the CB is required to 'exercise due diligence to ascertain the correctness'. The SCN issued to CB does not point out any such information imparted to his client. Therefore, the question of

exercising due diligence to ascertain the correctness of any information imparted to the importer does not arise at all. Since it was only after summons were issued to CB upon which the CB enquired with the importer to know the facts & thus became aware of the discrepancy. It is incorrect to say that the CB did not inform the same earlier to the Customs authorities.

**D) In defence of the violation of Regulation 10(j) of the CBLR, 2018: -**

In respect of the Regulation 10(j) of the CBLR, 2018, CB submitted that it is clear that the provision of Regulation 10(j) is in respect of the records maintained by the Customs Broker relating to his transactions as a Customs Broker in respect of which he is required not to "refuse access to, conceal, remove or destroy the whole or any part, of". CB submitted that there is no event pointed out in the impugned Order dated 27.06.2022 to show that the appellant has ever refused access to, concealed, removed or destroyed the whole or any part, of any his book, paper or other record, relating to his transactions as a Customs Broker. Therefore, the question of violation of Regulation 10(j) of CBLR, 2018 does not arise at all in the instant case.

**E) In defence of the violation of Regulation 10(n) of the CBLR, 2018: -**

CB submitted that for the above purposes, the Board in its Circular No. 9/2010 Cus. dated 08.04.2010 and Circular No. 7/2015 Cus. dated 12.02.2015 has prescribed the specific documents which a CB has to obtain from his client to prove that he has verified the identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. The CB submitted that all the above particulars of the importer had been duly verified by them in terms of the said Circular by obtaining KYC documents from the importer. A copy of the KYC documents was also submitted to Inquiry Officer with his reply. Further MITC Rolling Mill Pvt. Ltd. is a well-known established big importer and is still importing goods cleared by Mumbai Customs. Thus, the allegation of violation of Regulation 10(n) is baseless.

**9.4** IO submitted that opportunity of the Personal Hearing was given to the CB on 01.12.2022 and 16.12.2022 and in response to these letter, personal hearing was attended by the CB on 16.12.2022. In the personal hearing, the Customs Broker reiterated their written submission and denied all the allegations and contended that they have fulfilled all the obligations as per the CBLR, 2018.

**9.5 COMMENT OF THE INQUIRY OFFICER: -**

IO submitted that he had gone through the facts of the case, the Show Cause Notice and written submissions of the CB. Inquiry Officer discussed the charges as under:



#### **9.5.1 ARTICLE OF CHARGE - I: Regulation 10(a) of CBLR, 2018: -**

As regards to the allegation of violation of Regulation 10(a) of CBLR 2018, IO submitted that as per the statement of Shri Hemant Bhanushali, partner of the CB firm M/s. Maruti Logistics recorded under Section 108 of the Customs Act, 1962 inter alia stated that he received all the valid import documents i.e. Invoice, B/L, Packing List, PSIC Certificate, MPCB Certificate etc. from a mediator (Shri Ashok Jadhav). On being asked about the discrepancies of the import documents, Shri Hemant Bhanushali stated that Ashok Jadhav made changes in the validity of the MPCB certificate No. Format 1.0/CAC/UAN No. 0000092321/CR-2009000528 dated 09.09.2020, which was valid upto 30.06.2021 and the validity was extended upto 30.08.2022 by himself (Mr. Ashok Jadhav) and the said document was uploaded in e-sanchit.

Since Shri Hemant Bhanushali, partner of the CB received documents from the mediator and there is nothing on record that Mr. Ashok Jadhav was the authorized person of the Importer/Exporter. Thus, it is apparent that the CB M/s. Maruti Logistics has failed to get proper authorization from the importer and therefore violated the provisions of Regulation 10(a) of CBLR, 2018. Accordingly, IO held the article of charge alleging violation of Regulation 10(a) of CBLR, 2018 as "Proved".

#### **9.5.2 ARTICLE OF CHARGE - II: Regulation 10(d) of CBLR, 2018:-**

As regards to the allegation of violation of Regulation 10(d) of CBLR 2018, IO submitted that ongoing through the documents it appeared that the CB has not only failed to advise his client to comply with the provisions of MPCB but also involved himself in the tempering with the original letter (by changing the validity date). The CB has not uploaded the entire certificate (10 pages) in the e-sanchit and has uploaded only first page of the certificate. It appeared that the CB has not compared letter with the original one. In the forged copy of the MPCB certificate uploaded on e-sanchit by the CB, it is found that there is digital sign of Sh. Vijay Kumar Shekher Devy and the date of sign is mentioned as 16.04.2022, when the consent letter is having the issue date as 09.09.2020. Therefore, it appeared that by ignoring this CB has either involved himself in the forgery of the document or failed to exercise due diligence before uploading the documents.

IO further found that Shri Hemant Bhanushali, in his statement dated 04.05.2022, recorded under Section 108 of the Customs Act, 1962 inter-alia admitted that he has uploaded the same certificate in e-sanchit; however, changes were made in the validity period by Mr. Ashok Jadhav, assuming that MPCB department may issue the certificate by 30.08.2022. In order to clear consignment early, the CB did not verify the genuineness of the MPCB certificate.

IO found that despite of knowing the discrepancies, the CB M/s. Maruti Logistics Pvt. Ltd. cleared the goods. It was duty of the Customs Broker to bring these discrepancies to the notice of the Customs officers in Nhava Sheva at the time of import of the said goods but they appeared to have not done their duty. Accordingly, IO held the article of charge alleging violation of Regulation 10(d) of CBLR, 2018 as " Proved".

**9.5.3 ARTICLE OF CHARGE - III: Regulation 10(e) of CBLR, 2018: -**

As regards to the allegation of violation of Regulation 10(e) of CBLR 2018, IO submitted that the importer had already applied for approval of the MPCB certificate and further extension of the said period. Since they have not received the MPCB certificate timely, hence, in order to clear consignment early the CB submitted the forged MPCB certificate No. Format 1.0/CAC/UAN No. 0000092321/CR-2009000528 dated 09.09.2020 valid upto 30.08.2022 (actual validity upto 30.06.2021); however, changes were made in the validity period by Mr. Ashok Jadhav. He (Mr. Ashok Jadhav) had made changes in the validity period as 30.08.2022 assuming that MPCB department may issue the certificate by 30.08.2022 and the CB stated that he was unaware about the validity of the certificate issued by MPCB.

During the course of investigation, Shri Hemant Bhanushali in his statement dated 04.05.2022 stated that he had uploaded in e-sanchit the said documents based on the documents provided by Mr. Ashok Jadhav. They received the valid MPCB certificate on 24.04.2022 from the importer M/s. MITC Rolling Mills Pvt. Ltd. However, the Customs Broker did not inform about the same to the department and the same was noticed by the department only. Thus, it is apparent that the CB M/ s. Maruti Logistics has failed to exercise due diligence to ascertain the correctness of any information.

As per the provisions of the Regulation 10 (e) of the CBLR, 2018, Customs Broker shall exercise their duties with due diligence and they shall check any scope for fraud. It is evident that the Customs Broker M/s. Maruti Logistics were aware that the importer has already applied for approval of the MPCB certificate and further extension of the said period. Since they have not received the MPCB certificate timely, hence, in order to clear consignment early the CB submitted the forged MPCB certificate. Thus, the Customs Broker M/s Maruti Logistics aided and abetted the importer in clearance of the goods at Nhava Sheva Port by forging the MPCB certificate. IO further found that nature of the cargo was sensitive as it came under restricted category requiring a valid MPCB certificate and CB should have exercised due diligence in handling such cargo. It is apparent that the CB firm did not exercise due diligence in ascertaining the correctness of any information. It is evident that the Customs Broker did not inform about the same

to the department and the same was noticed by the department only and therefore, this was act of omission and commission by suppression of facts with clear intent of early clearance. Accordingly, IO held the article of charge alleging violation of Regulation 10(e) of CBLR, 2018 as "Proved".

**9.5.4 ARTICLE OF CHARGE - IV: Regulation 10(j) of CBLR, 2018: -**

As regards to the allegation of violation of Regulation 10(j) of CBLR 2018, IO submitted that in the instant case, the Customs Broker uploaded forged documents in e-sanchit and cleared the goods without a valid MPCB certificate. The validity of the MPCB Certificate uploaded in e-sanchit was extended illegally; that the same was not verified by the Customs Broker. Accordingly, IO held the article of charge alleging violation of Regulation 10(j) of CBLR, 2018 as "Proved".

**9.5.5 ARTICLE OF CHARGE - V: Regulation 10(n) of CBLR, 2018: -**

As regards to the allegation of violation of Regulation 10(n) of CBLR 2018, IO submitted that as the CB started doing customs clearance work as per instruction of so called mediator and without confirming identity of his actual client and functioning of his client. While answering about the role of mediator CB has accepted that his role was to sell the product of overseas supplier to the Indian consignee. It appears that this so called mediator was not appointed by the importers and the CB working for the mediator, who was using IEC of other importer to import goods. There is no denying the fact that the CB M/s. Maruti Logistics had not been careful and not diligent and accepted documents, which he did not verify and therefore made himself liable for penal action for violation of Regulation 10(n) of the CBLR, 2018. Accordingly, IO held the article of charge alleging violation of Regulation 10(n) of CBLR, 2018 as "Proved".

**10. PERSONAL HEARING & WRITTION SUBMISSION OF THE CB: -**

A personal hearing was granted by Principal Commissioner of Customs, NCH, Mumbai to Customs Broker on 26.04.2023 & 16.05.2023. The CB presented themselves for personal hearing and submitted their written submission dated 16.05.2023. CB submitted that due to Covid, they couldn't verify the correctness of the MPCB certificate. CB further submitted that their Licence is under suspension for almost one year and they are not able to pay salary to their employees. They requested to take lenient view in the subject matter.

Further, during the personal hearing the CB presented the written submission dated 16.05.2023, relevant part of the same is as under;

- i. In respect of Regulation 17(5) of the CBLR, 2018, the CB submitted that the Notice was issued on 31.10.2022. The period of 90 days from the date of issue of the Notice ended on 29.01.2023. The Inquiry Report date is 23.02.2023. Thus no Inquiry Report was submitted within the time limit of 90 days from the date of



issue of the Notice. Thus revocation proceedings as per the provisions of Regulation 17 of the CBLR, 2018 can never be lawfully carried on further and hence CB License of the noticee must be restored.

ii. In respect of Regulation 17(4) of the CBLR, 2018, the CB submitted that in their reply to the inquiry officer they had asked for cross-examination of the Mr. Ashok Jadhav and Officers of Customs who appraised the BEs and who gave out of charge the goods. The inquiry officer has neither granted CB cross-examination of the above persons nor he has recorded his reasons in writing for not permitting cross-examination (in case he intended to decline the same). Thus, the Inquiry Report has been prepared in violation of Regulation 17(4) of the CBLR, 2018 and liable to be rejected as being one-sided, biased and legally untenable. The avoidance of cross-examination shows that the allegations made are subverted and unsustainable in law.

iii. The noticee submitted that the entire proceedings are being carried on contrary to the legal provisions contained in CBLR, 2018. The Show Cause Notice is time barred as it was issued after the time limit of 90 days from the date, the offence report was received. They submitted that the CB License of the noticee cannot be revoked in such proceedings.

## **11. DISCUSSIONS AND FINDINGS: -**

I have gone through the case, the Show Cause Notice dated 31.10.2022, Offence report dated 26.05.2022, material evidence on record, Inquiry Report dated 23.02.2023 along with its RUDs, Submission of CB and examined the role and conduct of CB in the case before me.

**11.1** The charges against the CB i.e. violation of Regulation 10(a), 10 (d), 10(e), 10(j) and 10(n) of CBLR, 2018 made vide Show Cause Notice No. 24/2022-23 dated 31.10.2022 issued by Pr. Commissioner of Customs (General), NCH, Mumbai were held as "Proved" by the Inquiry Officer.

**11.2** From the facts stated in Show Cause Notice No. 24/2022-23 dated 31.10.2022, it appeared that the CB, M/s Maruti Logistics (CB No. 11/2686) failed to fulfil the obligation of a Customs Brokers as mandated under CBLR, 2018 and has violated the regulation 10(a), 10 (d), 10(e), 10(j) and 10(n) of CBLR, 2018.

**11.3** I refrain from reproducing the brief facts of the case which have already been discussed above. I, now examine the charges in the SCN sequentially. It has been alleged that the CB did not exercise due diligence in discharging their obligation as required under Regulations 10(a), 10 (d), 10(e), 10(j) and 10(n) of CBLR, 2018.

### **11.3.1 With regard to violation of Regulation 10(a) of CBLR, 2018: -**

*"A Customs Broker "shall obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed*

*as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be".*

From the statement of Shri Hemant Bhanushali, partner of the CB firm M/s. Maruti Logistics recorded under Section 108 of the Customs Act, 1962, it is clear that he received all the valid import documents i.e. Invoice, B/L, Packing List, PSIC Certificate, MPCB Certificate etc. from a mediator (Shri Ashok Jadhav). He also stated that Mr. Ashok Jadhav made changes in the validity of the MPCB certificate No. Format 1.0/CAC/UAN No. 0000092321/CR-2009000528 dated 09.09.2020, which was valid upto 30.06.2021 and the validity was extended upto 30.08.2022 by Mr. Ashok Jadhav and the said document was uploaded in e-sanchit.

CB contended in his submission that in the instant matter, there is no occasion pointed out in the SCN as to when the CB was asked by the Deputy Commissioner of Customs or Assistant Commissioner of Customs to produce such authorization and hence the question of CB's failure to produce the same before the said officers does not arise. CB further submitted that as per the facts in the SCN, Mr. Ashok Jadhav on behalf of the importer had applied for extension of validity of MPCB certificate to the Maharashtra Pollution Control Department. From the aforesaid facts, it is obvious that Mr. Ashok Jadhav was authorised to do such work by the importer otherwise he would not have applied to MPCB department for the said certificate.

Inquiry Officer in his inquiry report stated that since Shri Hemant Bhanushali, partner of the CB received documents from the mediator and there is nothing on record that Mr. Ashok Jadhav was the authorized person of the importer.

I find that Shri Hemant Bhanushali, partner of the CB firm received all the valid import documents i.e. Invoice, B/L, Packing List, PSIC Certificate, MPCB Certificate etc. from a mediator i.e. Shri Ashok Jadhav and I agree with the Inquiry Officer that there is nothing on record that Mr. Ashok Jadhav was the authorized person of the importer. I also find that CB has accepted that the role of Mr. Ashok Jadhav was to sell the product of overseas supplier to the Indian consignee.

From the above fact, it is established that the mediator was not appointed by the importer. Therefore, I find that the charge against the Customs Broker for violation of the Regulation 10(a) of CBLR, 2018 as 'proved' and thus I hold that the CB has violated the provisions of Regulation 10(a) of CBLR, 2018.

#### **11.3.2 With regard to violation of Regulation 10(d) of CBLR, 2018: -**

*"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".*

Investigation report reveals that CB M/s. Maruti Logistics (ABQFM4134JCH001) had forged government documents namely Consent Validity Certificate issued by State Pollution Control Board as the original consent was valid upto 30.06.2021, however, the CB has forged the consent validity certificate and changed the validity upto 30.08.2022. This forged document was used for filing and clearance of goods under Bills of Entry No. 8295863 and 8304509 both dated 16.04.2022. Shri Hemant Bhanushali, partner of CB firm in his statement dated 04.05.2022, admitted that he had uploaded the same certificate in e-sanchit which were received from mediator (Mr. Ashok Jadhav); however, changes were made in the validity period of said certificate by Mr. Ashok Jadhav, assuming that MPCB department may issue the certificate by 30.08.2022. In order to clear consignment early, the CB did not verify the genuineness of the MPCB certificate.

CB contended in his submission that the SCN relies upon the statement dated 04.05.2022 of Shri Hemant Bhanushali (partner of the appellant CB firm) who has stated in his said statement "After receiving summons from SIIB(I), he enquired from the mediator Mr. Ashok Jadhav regarding discrepancies of import documents". The aforesaid statement shows that CB was unaware of any discrepancy in the Consent Validity Certificate issued by MPCB at the time when it was handed over to him & uploaded on e-sanchit and the said discrepancy came to his knowledge when Customs issued summons to him.

Inquiry Officer in his inquiry report stated that ongoing through the documents it appeared that the CB has not only failed to advise his client to comply with the provisions of MPCB but also involved himself in the tempering with the original letter (by changing the validity date).

I find that the CB did not upload the entire certificate (10 pages) in the e-sanchit and uploaded only first page of the certificate. The charged CB also did not compare uploaded letter with the original one. It is observed that in the forged copy of the MPCB certificate uploaded on e-sanchit by the CB, there is digital sign of Sh. Vijay Kumar Shekher Devy and the date of sign is mentioned as 16.04.2022, whereas the consent letter is having the issue date as 09.09.2020. This huge difference in date of signing and issuing of the said certificate is ignored by the charged CB. By ignoring this CB has either involved himself in the forgery of the document or failed to exercise due diligence before uploading the documents.

From the above facts, I find that CB uploaded only single page of the said certificate which clearly indicates that the charged CB was having knowledge about



forgery and despite of knowing the discrepancies, the CB M/s. Maruti Logistics Pvt. Ltd. cleared the goods. Since, the CB was aware of not having the valid MPCB certificate by importer, this fact must have been told to Customs authorities in time to prevent illegal import but the CB also failed to bring the fact of noncompliance of the import policy i.e. valid MPCB certificate to the notice of the Customs Authorities. It is also clear that the charged CB received the documents from mediator who was not employee of the importer so the question of proper advising the importer doesn't arise. This proves that the CB failed to advise the client properly as mandated under CBLR,2018 to provide the correct document.

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

### **11.3.3 With regard to violation of Regulation 10(e) of CBLR, 2018: -**

*"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".*

Investigation report reveals that during the course of investigation, Shri Hemant Bhanushali in his statement dated 04.05.2022 stated that he had uploaded the documents in e-sanchit based on the documents provided by Mr. Ashok Jadhav. They received the valid MPCB certificate on 24.04.2022 from the importer M/s. MITC Rolling Mills Pvt. Ltd. However, the Customs Broker did not inform about the same to the department and the same was noticed by the department only. Thus, it is apparent that the CB M/s. Maruti Logistics has failed to exercise due diligence to ascertain the correctness of any information.

CB submitted that for attracting the provisions of Regulation 10(e), there must be certain information which had been imparted by CB in respect of which the CB is required to 'exercise due diligence to ascertain the correctness'. The SCN issued to CB does not point out any such information imparted to his client. Therefore, the question of exercising due diligence to ascertain the correctness of any information imparted to the importer does not arise at all.

Inquiry Officer in his inquiry report stated that importer had already applied for approval of the MPCB certificate and further extension of the said period. Since they have not received the MPCB certificate timely, hence, in order to clear consignment early, the CB submitted the forged MPCB certificate No. Format 1.0/CAC/UAN No. 0000092321/CR-2009000528 dated 09.09.2020 valid upto 30.08.2022 (actual validity upto 30.06.2021); however, changes were made in the validity period by Mr. Ashok Jadhav. He (Mr. Ashok Jadhav) had made changes in

the validity period as 30.08.2022 assuming that MPCB department may issue the certificate by 30.08.2022.

I find that it is evident that the Customs Broker M/s. Maruti Logistics were aware that the importer had already applied for approval of the MPCB certificate and further extension of the said period. Since they had not received the MPCB certificate timely, hence, in order to clear consignment early the CB submitted the forged MPCB certificate. Thus, the Customs Broker M/s Maruti Logistics aided and abetted the importer in clearance of the goods by forging the MPCB certificate.

From the above facts, I find that the cargo was sensitive in nature and required valid MPCB certificate before clearance and CB should have exercised due diligence in handling such cargo. It is clearly evident that the Customs Broker deliberately uploaded the forged documents without exercising due diligence to ascertain the correctness of the documents. It is evident that the Customs Broker did not inform about the same to the department and the same was noticed by the department itself. Therefore, this was act of omission and commission by suppression of facts with clear intent of early clearance.

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

#### **11.3.4 With regard to violation of Regulation 10(j) of CBLR, 2018: -**

*"A Customs Broker shall not refuse access to, conceal, remove or destroy the whole or any part of any book, paper or other record, relating to his transactions as a Customs Broker which is sought or may be sought by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be"*

Investigation report reveals that Shri Hemant Bhanushali, partner of the CB firm M/s. Maruti Logistics in his statement recorded under Section 108 of the Customs Act, 1962 admitted that Ashok Jadhav made changes in the validity of the MPCB certificate No. Format 1.0/CAC/UAN No. 0000092321/CR-2009000528 dated 09.09.2020, which was valid upto 30.06.2021 and the validity was extended upto 30.08.2022 by Mr. Ashok Jadhav and the said document was uploaded in e-sanchit.

CB submitted that there is no event pointed out in the impugned Order dated 27.06.2022 to show that the appellant has ever refused access to, concealed, removed or destroyed the whole or any part, of any his book, paper or other record, relating to his transactions as a Customs Broker.

Inquiry Officer in his inquiry report stated that in the instant case, the Customs Broker uploaded forged documents in e-sanchit and cleared the goods without a valid MPCB certificate. The validity of the MPCB Certificate uploaded in e-sanchit was extended illegally; that the same was not verified by the Customs Broker.

I find that CB did not upload the complete copy of the MPCB certificate, otherwise Customs might have found out the forgery. It is evident from the investigation report that the validity of the MPCB Certificate uploaded in e-sanchit was extended illegally and the same was not verified by the Customs Broker and the goods were cleared by concealing the fact that they were not in possession of valid MPCB certificate.

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

**11.3.5 With regard to violation of Regulation 10(n) of CBLR, 2018: -**

*"verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information"*

Investigation report reveals that Shri Hemant Bhanushali, partner of the CB firm M/s. Maruti Logistics in his statement recorded under Section 108 of the Customs Act, 1962 admitted that he received all the valid import documents i.e. Invoice, B/L, Packing List, PSIC Certificate, MPCB Certificate etc. from a mediator (Shri Ashok Jadhav).

CB Contended in his submission that all the particulars of the importer had been duly verified by them in terms of the Board in its Circular No. 9/2010 Cus. dated 08.04.2010 and Circular No. 7/ 2015 Cus. dated 12.02.2015 by obtaining KYC documents from the importer. A copy of the KYC documents was also submitted to Inquiry Officer. Further MITC Rolling Mill Pvt. Ltd. is a well-known established big importer and is still importing goods cleared by Mumbai Customs. Thus, the allegation of violation of Regulation 10(n) is baseless.

Inquiry Officer in his inquiry report found that as the CB started doing customs clearance work as per instruction of so called mediator and without confirming identity of his actual client and functioning of his client.

I find that regulation 10(n) of CBLR, 2018 casts a binding responsibility on the CB to enquire about the KYC documents, identity and functioning of his client by reliable and independent sources or documents. While answering about the role of



mediator, CB has accepted that his role was to sell the product of overseas supplier to the Indian consignee which shows that this so called mediator was not appointed by the importer and the CB working for the mediator, who might be using IEC of other importers to import goods. There is no denying the fact that the CB M/s. Maruti Logistics had not been careful and not diligent and accepted documents, which he did not verify and therefore made himself liable for penal action for violation of Regulation 10(n) of the CBLR, 2018.

From the above facts, I find that by the act of omission and commission, the CB deliberately facilitated the clearance of impugned goods in a negligent manner and made himself liable for violation of Regulation 10(n) of the CBLR, 2018. Therefore, I find that the charge against the Customs Broker for violation of the Regulation 10(n) of CBLR, 2018 as 'proved' and thus I hold that the CB has violated the provisions of Regulation 10(n) of CBLR, 2018.

**12.** Further, I rely on the following judgements and hold that in the instant case, CB, M/s Maruti Logistics (CB No. 11/2686) has failed to adhere to the responsibilities as was expected of them in terms of the Regulations made under CBLR, 2018 and therefore rendered themselves liable for penal action under CBLR, 2018.

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

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

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

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

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

- i. *The very purpose of granting a licence to a person to act as a Customs House Agent is for transacting any business relating to the entry or departure of conveyance or the import or export of goods in any customs station. For that purpose, under Regulation 9 necessary examination is conducted to test the capability of the person in the matter of preparation of various documents determination of value procedures for assessment and payment of duty, the extent to which he is conversant with the provisions of certain enactments, etc. Therefore, the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as CHA, it is seen that while CHA should be in a position to act as agent for the transaction 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.*

**13.** CB submitted that the SCN dated 31.10.2022 was issued after lapse of 90 days' time limit as provided in the Regulation 17 of CBLR 2018. It is thus clear that now, no legal & valid Show Cause Notice can be issued to the CB as it would be in contravention of said Regulation 17.

However, in this context, I rely on the judgement in the case of M/s Unison Clearing P. Ltd. reported in 2018 (361) E.L.T. 321 (Bom.) which stipulates that the time lines stipulated in Regulations are directory in nature and not mandatory.

The decision of Hon'ble High Court of Judicature at Bombay in the case of Principal Commissioner of Customs (General), Mumbai Versus Unison Clearing P. Ltd. reported in 2018 (361) E.L.T. 321 (Bom.), which stipulates that:

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

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

**14.** CB requested for cross examination of the Mr. Ashok Jadhav and Customs officer who examined the Bill of Entry. I observe that there is no retraction filed by



any of the persons whose statements were recorded under section 108 of the Act, 1962. I find that there is no need of the cross-examination of the persons as was demanded by the CB in the present matter and it was not tenable under the purview of the Section 138B or any other section of the Customs Act, 1962 on the ground that the CB failed to provide any cogent and valid reason for the cross-examination therefore there is no ground in the CB submission. In this context, I rely upon the following judgement in the matter:

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

*"...it is not required that in each and every case, cross-examination should necessarily be allowed. There is no absolute right of cross-examination provided in the Customs Act. The Advocate had given a list of 26 persons for cross-examination without indicating the specific reasons for cross-examining the...it cannot be said that there was violation of principles of natural justice by not allowing the cross-examination of the persons sought by him." This view taken by the Tribunal has been affirmed by Hon'ble Supreme Court – 2004 (164) E.L.T. 4 (S.C.) & 2004 (167) E.L.T.A. 134 (S.C.)".*

**15.** In a regime of trade facilitation, a lot of trust is being placed on the Customs Broker who directly deals with the importers/exporters. Failure to comply with regulations by the CB mandated in the CBLR gives room for unscrupulous persons to get away with import-export violations and revenue frauds. In this case, it is noticed that the charged CB, M/s Maruti Logistics (CB No. 11/2686) acted in violation of Regulation 10(a), 10 (d), 10(e), 10(j) and 10(n) of the CBLR, 2018, by not verifying the correctness of documents i.e. MPCB certificate and CB did not upload the complete copy of the MPCB certificate which shows that CB was involved in clearing the goods without valid MPCB certificate, which clearly proves that CB has violated Regulation 10(a), 10 (d), 10(e), 10(j) and 10(n) of CBLR 2018 with mens rea.

**16.** Though the charges held as proved in inquiry appears to be acceptable and tenable under the facts and circumstances of the case and certainly warrant penal action against the CB. Keeping in mind that there are no substantial evidences which proves that the CB was directly indulged in any wrong doings but being a Custom Broker, he has to ensure correctness of any documents before filing the Bill of Entry and he shall be held responsible for the acts of omission and commission in the instant case. If CB, M/s Maruti Logistics (CB No. 11/2686) had acted in a diligent manner and had performed his duties efficiently by verifying the correctness of the document i.e. MPCB certificate, the forgery of document would not have taken place. Accordingly, I pass the following order.

## **ORDER**

17. 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 Maruti Logistics (PAN No. ABQFM4134JCH001) (CB No. 11/2686) under Regulation 18 of the CBLR, 2018.

(ii) I hereby order for forfeiture of entire amount of Rs.5,00,000/- (Rs. Five Lakh Only) security deposit furnished by the CB, under Regulation 14 of the CBLR, 2018.

(iii) However, considering the punishment already suffered by the Custom Broker, as the CB's licence has been under suspension for 11 months and taking the livelihood of the Custom Broker and its employees into the consideration, I refrain from revoking the CB License No.11/2686 under Regulation 14 of the CBLR, 2018.

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

  
(SUNIL JAIN)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)  
MUMBAI ZONE-I

To,

M/s. Maruti Logistics (ABQFM4134J),

Shop No. 05, Building No. 06, Jai Santoshi Maa CHS Ltd,

Gauri Shankar Wadi No. 02, Pantnagar (East), Ghatkopar (East),

Mumbai - 400075.

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. SIIB(I), JNCH.
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)