



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

संचिका सं./F. No.- GEN/CB/435/2020/CBS

आदेश दिनांक/Date of Order: 27.09.2023

CAO No. 40/CAC/PCC(G)/SJ/CBS Adj

जारी दिनांक/Date of issue: 27.09.2023

संख्या:

DIN: 20230977000000777A85

द्वारा जारी : सुनील जैन

Issued By : Sunil Jain

प्रधान आयुक्त, सीमाशुल्क(सामान्य)

Pr. Commissioner of Customs(Gen.),

मुंबई -400 001

Mumbai - 400 001.

ORDER-IN-ORIGINAL मूल आदेश

ध्यान दीजिए/ N.B. :

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

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

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

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

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

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

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

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

6. (i) यदि प्रतिवादित आदेश, जिसके विरुद्ध अपील की गई है, में शुल्क एवं मांगे गए ब्याजबलगाएगए जुर्माने की राशि रु. पाँच लाख या इस से कम होतो रु. 1000/-, (ii) यदि यह राशि रु. पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न होतो रु. 5000/- एवं (iii) यदि यह राशि रु. पचास लाख से अधिक होतो रु. 10000/- के शुल्क का भुगतान क्रॉस्ड बैंक ड्राफ्ट के माध्यम से अधिकरण की खंडपीठ के सहायक पंजीयक के पक्ष में जिस स्थान पर खंडपीठ स्थित है, के किसी भी राष्ट्रीय क्रत बैंक की शाखा में किया जाए एवं डिमांड ड्राफ्ट अपील के साथ संलग्न किया जाए।

A fee of (i) Rs. 1000/- in case where the amount of duty and interest demanded and the penalty imposed in the impugned order appealed against is Rupees Five Lakhs or less, (ii) Rs. 5000/- in case where such amount exceeds Rupees Five Lakhs but not exceeding Rupees Fifty Lakhs and (iii) Rs. 10000/- in case where such amount exceeds Rupees Fifty Lakhs, is required to be paid through a crossed bank draft in favour of the Assistant registrar of the Bench of the Tribunal on a branch of any nationalized bank located at the place where the bench is situated and demand draft shall be attached to the Appeal.

7. अपील की एक प्रति में कोर्ट फी अधिनियम, 1870 की अनुसूची मद 6 के तहत निर्धारित रु. 50 का कोर्ट फी स्टैम्प लगा होना चाहिए एवं इसके साथ संलग्न इस आदेश की उक्त प्रति में रु. 50 का कोर्ट फी स्टैम्प लगा होना चाहिए।

Once copy of the Appeal should bear a Court Fee Stamp of Rs. 50 and said copy of this order attached therein should bear a Court Fee Stamp of Rs. 50 as prescribed under Schedule item 6 of the Court Fee Act, 1870, as amended.

BRIEF FACTS OF THE CASE

M/s. Beejay Clearing & Forwarding Agency, (PAN: AEZPM6919B), having address registered at Room No. 19, 1st Floor, Contractor Building, 15, Vaju Kotak Marg, Fort, Mumbai - 400 001 (hereinafter referred as the Customs Broker/CB) holder of Customs Broker License No. 11/707, 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.

2.1 An offence report in the form of SCN No. 35/ADJ(X)/2022-23 dated 15.11.2022 was received in the CBS, NCH from SIIB(X)/ACC, Sahar, Mumbai wherein, it was informed that on the basis of specific information received by the DRI, MZU, Mumbai investigation was conducted. Investigation revealed that various export firms including M/s World Wide Export 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 Suhel Ansari, which led to the recovery of copies of bogus bills in the names of several companies issued by him.

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

2.3 During the course of investigation, statement of Shri Suhel Parvez Ansari and Shri Shaikh Mohammed Arshad (employee of Shri Suhel Parvez Ansari) were recorded on 24.08.2015 by DRI, Mumbai. Both of them stated that they supplied fake invoices to the export firms including M/s World Wide Export. Shri Shaikh Mohammed Arshad stated that there were about 22 firms in whose name fake invoices were issued.

2.4 DRI, MZU, Mumbai forwarded the case to the SIIB(X)/ACC, Sahar, Mumbai for carrying out further investigation. The details of exporters including M/s World Wide Export who have claimed undue drawback by overvaluing the exports on the basis of fake invoices taken from Shri Suhel Ansari. In which, cheaper material is exported on higher value/price to claim higher amount of undue benefit of export incentives.

2.5 The details of one of the exporter M/s World Wide Export of the above mentioned case is as under :

During the course of investigation summons were issued by SIIB(X)/ACC, Sahar, Mumbai to directors of M/s World Wide Export Sh. Moize Ahmed Ali Angoothiwala, partner of M/s World Wide Export. In his

statement dated 09.03.2022, he stated that :-

- (i)** M/s. World Wide Export is their partnership firm. They had obtained IEC from DGFT in August, 2008. M/s. World Wide Export is merchant exporter.
- (ii)** That they bought the goods from local market and complete the orders. Thereafter, they prepared packing list and invoice and handover it to CB and Forwarding Agency for filing the Shipping Bills. Thereafter, they booked a tempo which took the goods from the warehouse and delivered the goods to Air Cargo Complex, Sahar, Mumbai. Thereafter, representative of CB, handle the further Customs proceedings till the LEO (Let Export Order) of export goods.
- (iii)** That they have given authorization to CB, but now he doesn't remember the names of the CBs but he took help from local freight forwarders, who handled the documentation and further necessary procedures.
- (iv)** The CB raised the invoice containing both freight and clearance charges then they made the payment through cheque.
- (v)** On being asked about whether any CB/Freight Forwarders carried out address verification of M/s. World Wide Exporter, he said physically no one came for verify the address.
- (vi)** On being asked about the warehouse, he said that their firm don't have warehouse.
- (vii)** On being asked about the documents they provide at time of exports, he answered that they used to provide Invoice, Packing List, SDF Form at the time of export.
- (viii)** On being asked about his exports from 2012 to 2017 and requisite documents, he replied that he did not remember how many consignments exported for the period 2012 to 2017; he did not have any Purchase Invoice, Shipping Bills, and Invoice Copies of the exported consignments.
- (ix)** On being asked about the method of procurement, they replied inter-alia that imitation jewellery exported were supplied by different Karigars located in the suburbs of Mumbai, as well as Jodhpur, Delhi, Agra, Rajkot etc. Further, he added that as these were small time Karigars, they only provided "Kaccha Bill" and were not able to provide proper invoices as they were not registered with Excise authorities.
- (x)** On being asked about any knowledge regarding invoices from M/s

Ruby Trading Co., M/s Alaska Trading Company and other companies which were allegedly floated by Mr Suhel Ansari, he replied that he didn't remember but same would be reflected in his bank statement which he would provide in few days.

(xi) On being asked about Suhel Parvez Mohammed Sharif Ansari and whether he supplied any invoices, he replied that he did not know this person by name as there are aliases for the people in the market so he might not know his actual name. He further added that he had not received any invoices from the said person directly. Further, if any, he might have received, it might have come through third party including parties mentioned above.

(xii) Further he was shown statement of Shri Suhel Parvez Mohammed Sharif Ansari dated 24.08.2015 and mentioning of firm M/s World Wide Export and also the acknowledgement before DRI that he (Shri Suhel Parvez Mohammed Sharif Ansari) submitted the fake and bogus invoices to M/s World Wide Export to which he (Shri. Moize Ahmed Ali Angoothiwala) replied that he did not know this person by name as there are aliases for the people in the market so he might not know his actual name. He further added that he had not received any invoices from the said person directly. Further, if any, he might have received, might have come through third party including parties mentioned above.

2.6 During the investigation, the details of exports made by the exporter M/s World Wide Export, were retrieved from the ICES System. During the period from 2012-2017, the exporter made total exports of 31 Shipping Bills and fraudulently availed total drawback amount of Rs. 3.31 Lakhs, it was found that the Customs Brokers, M/s Beejay Clearing and Forwarding Agency has handled the 3 export consignments / Shipping Bills of the said exporter.

2.7 Statements of CB M/s. Beejay Clearing and Forwarding Agency could not be recorded by DRI, MZU, Mumbai as they have not presented themselves for recording of statements despite summons issued to them.

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

2.9 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, Mumbai 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.

2.10 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 as he presented himself for recording of his statement but he failed to produce 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."

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

- M/s World Wide Export has procured fake and bogus invoices from Sh. Suhel Ansari.
- Goods of inferior quality were procured from local market without any invoice
- Incorrect 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.
- As export goods were procured from local market which was of inferior

quality and having low value, therefore impugned goods, exported by M/s World Wide Export were grossly overvalued and only done for purpose of fraudulent claim of undue export benefits.

2.12 From the investigation, it appears that CB M/s Beejay Clearing and Forwarding Agency was aware that he was receiving goods based on fictitious bills. The CB should have seen these documents and the type of exporter as merchant exporter and their invoices procured from local market diligently (care). It appears that, such fraudulent export could not have been possible without connivance of the CB.

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

Legal Provision of the CBLR, 2018:-

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

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

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

Regulation 10 (k) of the CBLR, 2018:- " A Customs broker shall maintain upto date records such as bill of entry, shipping bill, transshipment application, etc. and all correspondence and other papers relating to his business as Customs Broker and also accounts including financial transactions in an orderly and itemised manner as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be; and keep them current;"

Regulation 10 (n) of the CBLR, 2018:- "A Customs Broker shall verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax

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

3. SHOW CAUSE NOTICE: M/s. Beejay Clearing & Forwarding Agency (11/707) was issued a Show Cause Notice (SCN) No. 38/2022-23 dated 09.03.2023 by the Principal Commissioner of Customs (General), NCH, Mumbai, Zone-I asking them to show cause as to why the licence bearing no. 11/707 issued to them should not be revoked and security deposited should not be forfeited and/or penalty should not be imposed upon them under Regulation 14 read with 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018 as elaborated in the Show Cause Notice. They were directed to appear for a personal hearing and to produce proof of evidence/documents if any, in their defense to Shri D. Prasad, Deputy Commissioner of Customs who was appointed an inquiry officer to conduct inquiry under regulation 17 of CBLR, 2018.

4. INQUIRY REPORT

Inquiry Officer submitted Inquiry Report dated 26.07.2023, wherein, the charges against CB M/s. Beejay Clearing & Forwarding Agency (11/707) i.e. violation of Regulation 10(d), 10(e), 10(f), 10(k) and 10(n) of CBLR, 2018 were held as 'Proved'.

4.2 CB's WRITTEN SUBMISSION :-

IO submitted that the CB replied to the SCN vide their letter dated 08.05.2023. Accordingly point wise replies submitted by CB in their defence which is reproduced as below:

- a. They filed Shipping Bills for export of imitation jewelry. The said Shipping Bills were filed on the basis of document given by the exporter. However, the Shipping Bill has not been annexed/furnished to the noticee.
- b. Further they stated that the exports made by the exporter during the period 2012-2017, for 31 Shipping Bills and availed drawback of Rs. 3.31/- lakhs.
- c. The SCN is barred by limitation as the Shipping Bills pertains to the year 2012-17 and the SCN has been issued in the year 2023, which is after a period of more than 10 years. Further CB relied on the judgement of Hon'ble High Court in the case of The Principal Commissioner of Customs (General) versus Mehul & Co. reported in 2022 (5) TMI 30- Bombay High Court
- d. As per the Show cause Notice, statements of various persons have been recorded. However, it is pertinent to note that in the SCN No.

38/2022-23 dtd 09.03.2023, there were no copies of the statements relied upon in the SCN.

- e. There was no evidence whatsoever to support the allegation that the goods exported have been over valued as the letter dtd. 08.03.2018 from the Consulate General of India has also not been furnished with the SCN. Therefore, the goods exported could not have been that of inferior quality. However, in short there is no documents/ evidence in the said SCN to allege that the CB has connived with the exporter in claiming undue drawback as there is no evidence of over valuation of the export goods.
- f. It is pertinent to note that the SCN at para 13 records that the CB was unaware that he was receiving goods based on fictitious bills. Further, the CB filed a Shipping Bill on the basis of document given by the exporter. Therefore, the CB being not aware of the same could not have connived with the exporter as it is purely a transaction between the exporter and the seller of the goods locally. The role of the CB begins only after exporter gives them relevant document and the authorization.
- g. Further, the investigations by DRI with the Consulate General of India, Dubai, UAE is not applicable in the present case as the goods were imitation jewelry and rarely garments. Further, the exports were made to South Africa and Dubai and there is no evidence furnished in the notice.
- h. The statements of various persons were recorded under Section 108 of the Customs Act, 1962 and the same is exculpatory in nature.

In so far as the charge of violation of regulations 10(d), 10(e), 10(f), 10(k) and 10(n) of CBLR, 2018 is concerned CB made the following submissions separately under each clause.

4.2.1 In Defence of violation of Regulation 10(d) of CBLR, 2018:

The CB submitted that the Shipping Bill was as filed as per the documents given by the exporter. The said documents whether genuine or fake cannot be decided by the CB. Further, the document given by the exporter is deemed to be correct and genuine as the same has been accepted by the officers of the respondent.

Hence, the allegation that the exporter declared incorrect value is neither legal nor proper. Therefore, the charge under regulation 10(d) of CBLR, 2018 does not sustain and merits to be withdrawn.

CB also relied on the case of Jaiswal import Cargo Services Ltd versus Commissioner of Customs., New Delhi reported in 2019 (370) E.L.T.1366 (TH. - Del.)

4.2.2 In Defence of violation of Regulation 10(e) of CBLR, 2018:

CB submitted that documents were given by the exporter and after due verification compliance of KYC the Shipping Bill was filed. Further, the Shipping Bill was duly assessed by the assessing officer and thereafter LEO was granted. Therefore, the charge under Regulation 10(e) does not survive and merits to be withdrawn.

CB also relied on the case of Baraskar Brothers versus Commissioner of Customs (General), Mumbai reported in 2013 (294) E.L.T. 415 (Tri. - Mumbai).

4.2.3 In Defence of violation of Regulation 10(f) of CBLR, 2018:

CB submitted that as per the notice itself, it is stated that the CB was responsible for informing the exporter about the instructions and public notice regarding claiming of drawback.

CB further submitted that, it is pertinent to note that the SCN does not mention which instruction or public notice. Therefore, the question of abetting the exporter does not survive as the SCN itself para 13 records that the CB unaware of the fictitious bills. Therefore, the SCN merits to be withdrawn as the charge is not proved.

4.2.4 In Defence of violation of Regulation 10(k) of CBLR, 2018:

For the allegations that the CB did not present themselves for recording the statements and submit any document, CB submitted that the exports pertained to the year 2014-15 and the SCN has been issued on 09.03.2023 which is after a period of more than 8 years and as per CBLR, 2018 they need to maintain the records till the period of limitation only.

It was further submitted by CB that it is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. Further, all the documents mentioned are maintained as per the CBLR, 2018 and Customs Act, 1962. In this context we rely on the judgment in the case of Collector of Customs, Cochin versus Trivandrum Rubber Works Ltd reported in 1999 (106) E.L.T. 9 (S.C.)

4.2.5 In Defence of violation of Regulation 10(n) of CBLR, 2018:

In so far as article of charge 10(n) is concerned the CB submitted that they had done due diligence before filing of the Shipping Bill. The CB has verified the IEC and complied with the KYC norms before filing of Shipping Bill. Therefore, the said charge against the CB deserves to be set aside. Further, it is pertinent to note that the exporter has been exporting since 2012 and there has been no issue whatsoever pertaining to the IEC number, address etc. Further, it is not a requirement that the CB has to physically verify the address of the exporter.

Further CB also relied in the case of Poonia & Brothers versus Commissioner of Customs (Preventive), Jaipur reported in 2019 (370) E.L.T.

CB further submitted that they craved leave to be heard in person before the case is finally adjudicated and would like to cross examine the following persons Shri. Suhel Parvez Ansari, Shri. Surya, Shri. Suryabhan Eknath Dhurphate, Shri. Karan Ashoklal Ranka, Shri. Gunjal Gabaji Madhu and the Customs officers who assessed the Shipping Bills in this regard and to file further reply after the cross examination and receipt of the relied upon documents. In the circumstances, the SCN was not sustainable in law and they are liable to be discharged and the SCN dropped and sought for a PH in the matter.

4.3 CB's Further Submission and Personal Hearing :-

IO submitted that principles of natural justice was followed and the Customs Broker was heard on 25.05.2023, 31.05.2023 and 09.06.2023. During which Shri John Mathew, proprietor of M/s Beejay Clearing and Forwarding Agency attended the hearing and reiterated the submission already made in their reply, which is detailed herein as under that:-

(i) There was no summons or intimation received from the DRI or any other department other than the Summon from SIIB issued on 22nd April 2022.

(ii) On the basis of the summon from SIIB(X), ACC, Mumbai, CB had submitted the following documents to SIIB(X), ACC, Mumbai on 04.05.2022. Accordingly, CB submitted the following documents:

- a. IEC Copy,
- b. Authority letter/appointment letter from M/s. World Wide Exports.
- c. KYC Format
- d. Copy of PAN Card
- e. Copy of Airway bill no. 071-2426 7165 dated 18.12.2014 along with status report of Shipping Bill numbers as tabulated under.

Sr. No.	Shipping No. & date	Port of discharge	No of packages	Gross weight in kgs	FOB value (INR)	Drawback amount
1	6704971 dtd.18.12.2014	BKO (Bamako)	10	211.66	18,05,948.25	0
2	8637331 dtd. 27.03.2015	BKO (Bamako)	15	152.38	12,57,199.62	0
3	8636959 dtd. 27.0.2015	BKO (Bamako)	15	155.38	17,92,044.62	0

- (iii) All the above 3 Shipping Bills were free Shipping Bills and no Drawback amount is involved. There is no revenue loss.
- (iv) The party was verified by them with their address and all the authenticity was secured after reference from their IATA Agent.
- (v) They used to get the export invoice, packing list for filing & passing Shipping Bills, on preparation of Shipping Bill they would inform the party, thereafter the exporter used to send the cargo on their tempo. On arrival at cargo complex, they use to cart the same in the designated shed for Customs examination and out of charge. They open the cargo at the time of examination in the presence of the Customs examiner and Shed Appraiser. On examination and proper scrutiny of description, quantity and value, the shed appraiser gives out of charge for export of the goods. Then they handover the cargo along with the Shipping Bills copy, invoice, packing list, and copy of airway bill of the respective Airlines to the authorized representative.
- (vi) They have not involved either in procuring the material or packing and transportation of the goods or its valuation.
- (vii) They have not connived in any manner to prepare the documents or to pack and transport the material or the valuation part.
- (ix) Since the summons have been received after 8 years and documents were more than 5 years they were unable to produce, however the available documents such as airway bill, Shipping Bills status report etc. were already submitted.
- (x) Neither the DRI, MZU, Mumbai nor the SIIB(X), ACC, Mumbai has projected of their involvement. They totally deny their involvement procuring preparation of document of packing valuation or further deals of any sort of documentation, valuation or further deals of any.
- (xi) They have submitted their reply through their legal consultant at jnch office.
- (xii) They have been punished by suspending their CB license for more than two months and still license under ALERT and unable to file any export document till date. Due to high business competitions and lack of business, they are unable to pay the salary to their employees.
- (xiii) In view of the above, they request to take a lenient view and make them free from the above matter.

4.4. COMMENTS OF THE INQUIRY OFFICER:- IO submitted that he had gone through the Show Cause Notice No. 38/2022-23 dated 09.03.2023 and various statements of the concerned persons taken during the investigation and the records of the Personal Hearings. IO had taken the submissions made

by the CB on record and proceeded to discuss all these submissions & examine their merits.

(i) IO submitted that, this is a case where M/s Beejay Clearing and Forwarding Agency, who provided service to M/s World Wide Exports as a Customs Broker in export of goods under three Shipping Bills pertaining to the period from 2014 to 2017, where the Customs Broker was issued with SCN for violations of provisions of Regulation 10(d), 10(e), 10(f), 10(k) and 10(n) of CBLR, 2018 in as much as the exporter M/s World Wide Export who claimed drawback to the extent of 3.31 lakhs for 31 Shipping Bills have fraudulently procured fake purchase bill (overvalued) through Suhel Ansari from various non duty paid suppliers and claimed ineligible drawback besides illegal remittances for which, M/s World Wide Export were also issued with SCN as per investigations conducted by DRI, MZU, Mumbai.

In respect of the following 3 Shipping Bills pertaining to M/s World Wide Export, the Customs Broker M/s Beejay Clearing and Forwarding Agency was their appointed CB.

Sr. No.	Shipping No. & date	FOB value (INR)	Drawback amount (free Shipping Bill)	Remittance received
1	6704971 dtd.18.12.2014	18,05,948.25	0	0
2	8637331 dtd. 27.03.2015	12,57,199.62	0	0
3	8636959 dtd. 27.0.2015	17,92,044.62	0	0

IO further submitted that, the Customs Broker filed the above 3 Shipping Bills for export of imitation jewelry, on the basis of document given by the exporter M/s World Wide Export during the period 2014 to 2017. As per the investigation by DRI, MZU, Mumbai in the above case conducted against M/s World Wide Exports and the Customs Brokers, the goods were procured from local market (Domestic Tariff Area) by the exporter and invoice and packing list were handed over to the Customs Broker for presenting the Shipping Bill. Further as and when the goods were delivered in tempo to air cargo complex, the representative of Customs Broker handle the Customs proceedings till the LEO of export goods. Further, in the statement given by Shri Moize Ahmed Ali partner of M/s World Wide Export, he has categorically stated that the CB did not carry out address verification physically and they raised invoice containing both freight and clearance charges. The fact that the exporter do not have any warehouse, infer that they are mere traders. It is also on record that statements

could not be recorded from M/s Beejay Clearing and Forwarding Agency as they have not presented themselves in response to summons issued to them, which is further confirmed by the Customs Broker that they have not attended as they were not in receipt of any communication from DRI however on receipt of summons from SIIB, they have provided records as required by them i.e. I.E.C. Copy, Authority letter / appointment letter from M/s World Wide Exports, KYC Format, Copy of PAN Card, Copy of Airway Bill No. 071-2426 7165 dated 18.12.2014 along with status report of Shipping Bill numbers.

(ii) IO further submitted that, from the above fact that the goods procured from domestic tariff area and no imported material used in the goods exported by M/s World Wide Exports, as such second proviso to Rule 3(1) drawback Rule 1995 is attracted and drawback not permitted when duty has not been paid. The above modus operandi adopted by exporters is confirmed from a statement recorded by DRI, MZU, Mumbai during investigation from Shri Suryabhan Eknath Dhurpat proprietor of M/s Sanket Overseas, a logistics provider where he disclosed that usually the cost and expenses incurred on the export material was only 35% of the drawback amount and the benefits availed was to the extent of 65%.

(iii) IO also submitted that, during the PH the Customs Broker Shri John Kurien Mathew of M/s Beejay Clearing and Forwarding Agency, reiterated what has been stated in their defence in their reply however the same is brought out where the Customs Broker claimed that they were not involved or connived, had physically visited the premises, they were not aware of the value of the goods as the invoices and packing list was provided by the exporter and have no expertise regarding valuation of goods, however on delivery of goods at Air Cargo they have presented the Shipping Bill for examination. The Shipping Bills were free Shipping Bill and have not claimed or received drawback.

IO submitted that CB in his defence submitted that there is no documentary evidence or proof that they have connived but their license was also suspended and facing difficulties in paying the salaries. They deny all the charges, and the records could not be produced as the records were more than 8 years old however they produced whatever documents were available and requested to take lenient view and drop the proceedings as there was no motive and the SCN is barred by limitation as the Shipping Bills pertain to the year 2012 to 2015.

(iv) IO submitted that, taking into account of all the documents available and facts deliberated above it is seen that the value of goods in question and authenticity of goods exported / exporter not verified by Customs Broker and merely presented the documents for export where the exported goods value is inflated, which are based on fake purchase bills procured by the exporter that are non-duty paid, evidences that exporter solely intended to claim

undue fraudulent drawback benefit and abetted directly or indirectly by the Customs Broker. Further non production of records/ documents and financial transactions during the period in question on the pretext that they have discarded being old records amounts to withholding information against the case. Besides Customs Broker feigned ignorance by stating in their reply that they merely forward the invoices/ packing list and submit the Shipping Bill and airway bill for examination by the department goes to prove that the Customs Broker has not exercised due diligence and failed to comply with provisions of the CBLR Act 2018 as alleged in the SCN.

(v) IO further submitted that, on perusal of the notice issued to M/s World Wide Export under SCN No.35/ADJ(X)2022-23 dt. 15.11.2022 by Additional Commissioner of Customs Export Assessment in Table-II of para 8 under Sl. No.15, 25 and 26 and in comparison with the status of Shipping Bills, it is seen that from all the three Shipping Bills, i.e, 6704971 dt.18.12.2014, 8637331 Dated 27.03.2015 and 8636959 Dated 27.03.2015, filed by Customs Broker M/s Beejay Clearing and Forwarding Agency, were free Shipping Bill and no drawback payment has been received by the exporter including remittances. Though there is no revenue loss, on this count, the act of tacit connivance with the exporter over direct or indirect is clear violation of Customs Broker Licensing Regulations, 2018 and attracts penal provisions.

Hence it is obvious that the goods exported in question, under the above 3 Shipping Bills as evidenced by the above deliberation that the value is inflated and have been part of a larger conspiracy to claim ineligible drawback with few Shipping Bills being filed as free Shipping Bill and not claimed drawback to obviate detection of modus operandi is proved beyond doubt.

(vi) IO further submitted that, the Customs Broker in their written submissions and submissions during personal hearing have denied all the allegations and contended that they have fulfilled all the obligations as per the CBLR, 2018. The CB relied upon the following judgment:

- a) the case of Jaiswal Import Cargo Services Ltd versus Commissioner of Customs., New Delhi reported in 2019 (370) E.L.T.1366 (Tri. - Del.)
- b) the case of Baraskar Brothers versus Commissioner of Customs (General), Mu bai reported in 2013 (294) E.L.T. 415 (Td. - Mumbai).
- c) the case of Collector of Customs, Cochin versus Trivandrum Rubber Works Ltd reported in 1999 (106) E.L.T. 9 (S.C.)
- d) the case of Poonia & Brothers versus Commissioner of Customs (Preventive), Jaipur reported in 2019 (370) E.L.T. 1074 (Tri. - Del.)

4.4.1 Article of Charge-I :- Violation of Regulation 10 (d) of CBLR, 2018:

With regards to the allegation of violation of Regulation 10(d) of CBLR

2018, IO found that the Customs Broker has merely accepted the documents and presented without verification to the Customs. The Customs Broker supposed to have guided the exporter and ensured about the value of the veracity of goods of inferior quality and the value thereof.

IO found that without sufficient precautions to obviate violations the CB M/s. Beejay Clearing and Forwarding Agency Ltd. Merely forwarded for export. It was duty of the Customs Broker to bring any discrepancies to the notice of the Customs Officers at the time of export of the said goods, but CB appears to have not done their duty. Accordingly, the Charge alleging violation of Regulation 10 (d) of the CBLR, 2018 stands "Proved".

4.4.2 Article of Charge-II :- Violation of Regulation 10 (e) of CBLR, 2018:

With regards to the allegation of violation of Regulation 10(e) of CBLR 2018, the Customs Broker shall exercise their duties with due diligence and they shall check any scope for fraud or loss of Government Revenue. However, the Customs Broker M/s. Beejay Clearing and Forwarding Agency Ltd tacitly abetted the exporter. IO found that 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 which they impart to a client with reference to any work related to cargo, as the CB not at all interacted with the importer. It is evident that the CB were overtly and covertly hands in gloves with the exporter in their acts of omission and commission by resorting to remain non-committed. Accordingly, the IO held that the Article of Charge alleging violation of Regulation 10(e) of CBLR, 2018 as "Proved".

4.4.3 Article of Charge-III :- Violation of Regulation 10 (f) of CBLR, 2018:

With regards to the allegation of violation of Regulation 10(f) of CBLR 2018, IO found that the Customs Broker M/s. Beejay Clearing and Forwarding Agency Ltd. who is bound to verify the correctness of the value and the goods to be exported and accordingly bring to the knowledge of the department has failed to do so and not brought to the knowledge of the exporter or the customs authorities thus attracting violation under Regulation 10(f) of CBLR, 2018.

4.4.4 Article of Charge-IV :- Violation of Regulation 10 (k) of CBLR, 2018:

With regard to allegation of violation of Regulation 10(k) of CBLR 2018, IO found that the Custom Broker M/s. Beejay Clearing and Forwarding Agency Ltd. who is mandatory obligated to maintain upto date records such as Bill of Entry, Shipping Sill, transshipment application, etc. and all correspondence and other papers relating to his business as Customs Broker and accounts including financial transactions in an orderly and itemised manner has failed to maintain, and produce when sought during hearing besides stated that those records were old and hence could not produce.

Even the payment transaction between importer and Customs Broker such as receipt, bank transactions, Financial year statements could not be furnished. These evidences that the Customs Broker M/s. Beejay Clearing and Forwarding Agency by not maintaining and producing records as mandated have thus violated the provisions of Regulation 10 (k) of the CBLR, 2018.

4.4.5 Article of Charge-V :- Violation of Regulation 10 (n) of CBLR, 2018:

With regards to the allegation of violation of Regulation 10(n) of CBLR 2018, IO found that M/s Beejay Clearing and Forwarding Agency, appears to have not physically visited the exporters premises which is a pre requisite and neither provided records pertaining to invoice raised and payments received nor the bank statement for having received payment from which can be inferred that they never directly interacted with the exporter M/s World Wide Export, concerning the transactions. There is no denying the fact that the CB M/s. Beejay Clearing and Forwarding Agency have not been careful and not diligent in undertaking the KYC of the background of importer 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.

4.5 IO found that the CB have relied upon the various case laws, however, ratio of those judgements are not applicable in the instant case as the CB tacitly facilitated the goods for export.

Therefore, IO of the considered opinion that the allegations against the Charged Customs Broker are established all the Charges viz. 10 (d), 10 (e), 10 (f), 10(k) and 10 (n) of the CBLR, 2018 levelled against the CB M/s. Beejay Clearing and Forwarding Agency CB No. 11/707 are proved during the inquiry held by IO and attract penal provisions for the above act.

4.6 IO submitted that, there is not substantial delay caused in the Inquiry proceedings however, due to delay in reply submitted by the noticee for the SCN in May 2023 and sought time to make further submissions during the PH which was completed on 09.06.2023. The report was submitted within two weeks immediately after PH conducted.

5. PERSONAL HEARING AND RECORDS OF PERSONAL HEARING :-

A personal hearing was granted to Customs Broker by the Principal Commissioner of Customs (General), NCH, Mumbai on 30.08.2023. Shri Lawrence Tauro, Advocate appeared for personal hearing and represented the CB. Wherein, they reiterated the submissions made by them vide their letter dated 28.08.2023. In addition to the previous submission dated 08.05.2023, CB further submitted that;

(i) In the inquiry report one fail to understand as to how the inquiry officer has arrived on the finding that the CB did not carried out any verification

physically when the CB was not investigated. The inquiry authority has conveniently chosen to record that the CB did not present themselves even when they are still operating as a Customs Broker. Hence, the allegation that the CB did not attend the office is not valid as they on receipt of summons from SIIB(X), ACC, Mumbai appeared before them and furnished the relevant KYC documents. Therefore, the charge under regulation 10(d) of CBLR, 2018 does not sustain and merits to be withdrawn.

(ii) The inquiry authority has observed that the CB has tacitly abetted the exporter even when there is no evidence. Further, the observation that the CB was hand in gloves with the exporter has no basis as the documents were processed by the assessing officers. Therefore, to arrive at such finding has no basis and therefore the charge under 10(e) deserves to be set aside.

6. DISCUSSION AND FINDINGS:-

I have gone through the case, material evidence on record, the Show Cause Notice dated 09.03.2023, and Inquiry Report dated 26.07.2023, submissions of the said CB dated 28.08.2023.

6.1 I observe that the charges against the said CB is of violation of regulation 10(d), 10(e), 10(f), 10(k) and 10(n) of CBLR, 2018 made vide Show Cause Notice No. 38/2022-23 dated 09.03.2023 issued by Pr. Commissioner of Customs (General), NCH, Mumbai were held as "Proved" by the Inquiry Officer vide inquiry report dated 26.07.2023.

6.2 For brevity, 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.

6.2.1 With regard to violation of Regulation 10(d) of 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;"

On perusal of the offence report, I find that during the material period, the exporter M/s. World Wide Export was a merchant exporter and was not registered under the erstwhile Central Excise Act, 1944. Further, they had purchased the goods from traders who were also not registered under the erstwhile Central Excise Act, 1944. DRI, MZU, Mumbai investigated the case and found that goods of inferior quality were procured from local market without any invoice and to justify the value of the goods, the exporter M/s World Wide Export had procured fake and bogus invoices from Sh. Suhel Ansari.

IO in his report submitted that without sufficient precautions to obviate violations the CB M/s. Beejay Clearing and Forwarding Agency Ltd. merely filed the Shipping Bills for export. It was duty of the Customs Broker to bring

any discrepancies to the notice of the Customs Officers at the time of export of the said goods, but they appear to have not done their duty. Therefore, IO proved that CB had violated the Regulation 10(d) of the CBLR, 2018.

I note that the said CB in his submission date 28.08.2023 has *inter alia* stated that the said documents whether genuine or fake cannot be decided by the CB. Further, CB submitted that the document given by the exporter is deemed to be correct and genuine as the same has been accepted by the officers of the department.

I find from the offence report that various export firms including M/s World Wide Export was procuring fake purchase bills against the export consignments from one Mr. Suhel Ansari. M/s World Wide Export claimed undue export benefits by overvaluing the exports, whereas cheaper material is exported and to justify the value of the goods, fake invoices from Shri Suhel Ansari are procured showing the higher purchase price. As per Consulate General of India, Dubai, UAE enquiry report, original/actual unit value of the exported goods were found abnormally low compared to declared value in the Shipping Bills. Hence, it is impossible to assume that the exporter without wilful collusion with CB could have exported the impugned goods, therefore the CB cannot shy away from the responsibilities & obligations cast upon them under the CBLR, 2018.

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 provide 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."

From the above facts and circumstances, I am of the considered view that the CB failed to advise the exporter to comply with the provisions of the Act, other allied Acts (i.e. erstwhile Central Excise Act, 1944) and the rules and regulations thereof and in case of non compliance did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Therefore, I hold that the CB has violated the provisions of Regulation 10(d) of the CBLR, 2018.

6.2.2 With regard to violation of Regulation 10 (e) of 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;"

On perusal of the offence report, I find that various export firms including M/s World Wide Export was procuring fake purchase bills against the export consignments from one Mr. Suhel Ansari. M/s World Wide Export claimed undue export benefits by overvaluing the exports, whereas cheaper material is exported and to justify the value of the goods, fake invoices from Shri Suhel Ansari are procured showing the higher purchase price. As per Consulate General of India, Dubai, UAE enquiry report, original/actual unit value of the exported goods were found abnormally low compared to declared value in the Shipping Bills.

IO submitted in his report that Customs Broker M/s. Beejay Clearing and Forwarding Agency Ltd tacitly abetted the exporter. IO also submitted that 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 which they impart to a client with reference to any work related to cargo, as the CB not at all interacted with the exporter. It is evident that the CB were overtly and covertly hands in gloves with the exporter in their acts of omission and commission by resorting to remain non-committed. Therefore, IO proved that the CB has violated the Regulation 10(e) of the CBLR, 2018.

The CB's argument that documents were given by the exporter and after due verification compliance of KYC the Shipping Bill was filed. Further, the Shipping Bill was duly assessed by the assessing officer and thereafter LEO was granted.

In this regard, I find that Sh. Moize Ahmed Ali Angoothiwala, partner of M/s World Wide Export in his statement dated 09.03.2022 stated that he had given authorization to CB, but he did not remember the name of the CB but he took help from local freight forwarders, who handled the documentation and further necessary procedures. Thus, it appears that the CB not at all interacted with the exporter. The CB's argument that documents were given by the exporter does not hold any ground as the documents were not received directly from the exporter. I also find that as per Consulate General of India, Dubai, UAE enquiry report, original/actual unit value of the exported goods were found abnormally low compared to declared value in the Shipping Bills. It is obligations and duty of the CB to exercise due diligence to ascertain the correctness of information in respect of any information which they impart to a client with reference to any work related to cargo, the CB failed to do so, otherwise exporter could not have made an attempt to export goods at such high valuations on the basis of fake invoices, which is a gross violation on the part of the CB under the provisions of the Regulation 10(e) of the CBLR, 2018. I also find that, the CB cannot shy away from the responsibilities cast upon them under the regulation 10(e) of the 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 water in the CB's submission in this regard.

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

6.2.3 With regard to violation of Regulation 10(f) of 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; "

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. During investigation exporter could not produce any such details in respect of manufacturing, production or use of any imported material in impugned export goods, though he was having enough opportunity as he presented himself for recording of his statement but he failed to produce any such details. Further, it also revealed from the

investigation that exporter M/s. World Wide Export had declared high value of the goods exported to avail higher amount of export benefits which is clear violation of the Customs Valuation (Determination of value of export goods) Rules, 2007.

CB in his submission argued that the SCN does not mention which instruction or public notice he had not informed to the exporter. CB further argued that SCN itself records that the CB was unaware of the fictitious bills.

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. As per the said format exporter were inter-alia required to declare the name and complete address of the traders from whom export goods had been purchased. The exporter 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. World Wide Export failed to produce any such declaration. Thus, the CB failed to verify the declarations at the time of exports in format annexed with the circular No.16/2009-Customs dated 25.05.2009, which is gross negligence on the part of the CB.

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

6.2.4 With regard to violation of Regulation 10(k) of CBLR, 2018:

" A Customs broker shall maintain upto date records such as bill of entry, shipping bill, transshipment application, etc. and all correspondence and other papers relating to his business as Customs Broker and also accounts including financial transactions in an orderly and itemised manner as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be; and keep them current;"

From the offence report, I find that despite issuing summons, Customs Broker M/s. Beejay Clearing and Forwarding Agency did not present themselves for recording statements, nor submitted any documents before the DRI, MZU, Mumbai.

IO in his inquiry report submitted that the CB M/s. Beejay Clearing and Forwarding Agency Ltd. who is mandatorily obligated to maintain upto date

records such as Bill of Entry, Shipping Bill, transshipment application, etc. and all correspondence and other papers relating to his business as Customs Broker and accounts including financial transactions in an orderly and itemized manner, has failed to maintain, and produce when sought during hearing besides stated that those records were old and hence could not produce. Even the payment transaction between importer and Customs Broker such as receipt, bank transactions, Financial year statements could not be furnished. Therefore, IO proved that the CB has violated Regulation 10 (k) of the CBLR, 2018.

The CB's argument that the exports pertain to the year 2014-15 and the SCN has been issued on 09.03.2023 which is after a period of more than 8 years. As per CBLR, 2018 the CB has to maintain the records till the period of limitation i.e. 5 years. In this regard, I agree to IO report that it is also on record that statements could not be recorded from M/s Beejay Clearing and Forwarding Agency as they have not presented themselves in response to summons issued to them, which is further confirmed by the Customs Broker that they have not attended as they were not in receipt of any communication from DRI, MZU, Mumbai, however on receipt of summons from SIIB(X), ACC, Mumbai, CB provided records i.e. I.E.C. Copy, Authority letter / appointment letter from M/s World Wide Exports. KYC Format, Copy of PAN Card, Copy of Airway Bill No. 071-2426 7165 dated 18.12.2014 along with status report of Shipping Bill numbers. Therefore, it is clear that Charged CB responded to SIIB(X), ACC, Mumbai summons and had not responded to DRI, MZU, Mumbai summons shows their clear intention to ignore the investigation process. I find that as per Regulation 10(p) of the CBLR, 2018, CB shall maintain all records and accounts that are required to be maintained under these regulations and preserve for at least five years and all such records and accounts shall be made available at any time for the inspection of officers authorised for this purpose. Further, if the case is with any investigation agency, it cannot be argued that the CB has to maintain the records till the period of limitation i.e. 5 years as per CBLR, 2018. Therefore, the CB's argument does not hold water on this ground.

From the above facts, I am of the considered view that the CB failed to maintain upto date records of his business as Customs Broker and accounts including financial transactions in an orderly and itemized manner. Therefore, I hold that the CB has violated the provisions of Regulation 10(k) of the CBLR, 2018.

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

During the course of investigations, Shri Moize Ahmed Ali Angoothiwala, partner of M/s World Wide Export, in his statement recorded under section 108 of Customs Act, 1962 on 09.03.2022 *inter alia* admitted that physically no one came to verify the address. Thus, it appears that the Customs Broker M/s. Beejay Clearing and Forwarding Agency did not verify the address and functioning of the exporter M/s. World Wide Export at the declared address by using reliable, independent, authentic documents, data or information.

CB submitted that they had done due diligence before the filing of the Shipping Bill. They had verified the IEC and complied with the KYC norm before filing of Shipping Bill. This fact is recorded in the statement recorded under Section 108 of the Customs Act, 1962. The CB further argued that as per Regulation 10(n) of CBLR, 2018, the obligations of the Customs Broker only require him to verify that he is dealing with the exporter who is having valid IEC, PAN, bank account, address etc. at the time of import/export of the goods.

In this regard, I agree to IO report that M/s Beejay clearing and Forwarding Agency, appears to have not physically visited the exporters premises which is a pre requisite, and neither provided records pertaining to invoice raised and payments received nor the bank statement for having received payment from which can be inferred that they never directly interacted with the exporter M/s World Wide Export, concerning the transactions. There is no denying the fact that the CB M/s. Beejay Clearing and Forwarding Agency have not been careful and not diligent in undertaking the KYC of the background of exporter, which he did not verify. The 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.

From the above facts and circumstances, I am of the considered view that the CB in the present case showed an act of carelessness which resulted in fraudulent activities of export. Therefore, I hold that the CB has violated the provisions of Regulation 10(n) of the CBLR, 2018.

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

7.1 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)".

7.2 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.

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

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

7.4 Further, CB in his written submission dated 28.08.2023 requested a chance to cross-examine Shri. Suhel Parvez Ansari, Shri. Surya, Shri. Suryabhan Eknath Dhurphate, Shri. Karan Ashoklal Ranka Shri. Gunjal Gabaji Madhu and the Customs officers who assessed the Shipping Bills.

7.5 In this regard, I find that the CB's request for cross examine is devoid of any cogent and valid reason and therefore same is not tenable under CBLR,2018 read with Customs Act, 1962. In this regard, I rely upon the judgment of Hon'ble CESTAT Kolkata in the case of Fortune Impex Vs. Commissioner of Customs, Calcutta [2001(138) E.L.T.556 (Tri. -Kolkata)], wherein the Hon'ble Tribunal held 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.

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

on record prove that CB had violated various provisions of CBLR, 2018 with mens rea.

9. I hold that the proof of charges in inquiry are acceptable and tenable based on the available evidence, the facts and circumstances of the case, which certainly warrant penal action against the CB. Therefore, for their acts of omission and commission, CB M/s. Beejay Clearing & Forwarding Agency (11/707) is held liable and guilty for violating the provisions of CBLR, 2018 as mentioned above. I hold that the CB has failed to discharge his duties cast upon him with respect to Regulation 10(d), 10(e), 10(f), 10(k) and 10(n) of CBLR, 2018 and is liable for penal action. Accordingly, I pass the following order.

ORDER

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

(i) The CB License No. 11/707 is ordered to be revoked under Regulation 14 of the CBLR, 2018.

(ii) I hereby order for forfeiture of entire amount of security deposit furnished by the CB, under Regulation 14 of the CBLR, 2018.

(iii) I hereby impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on M/s Beejay Clearing & Forwarding Agency, (11/707) (PAN No. AEZPM6919B) under Regulation 18 of the CBLR, 2018.

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

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


(SUNIL JAIN)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
MUMBAI ZONE-I

To,

M/s. Beejay Clearing & Forwarding Agency, (CB No. 11/707)
(PAN: AEZPM6919B)
Room No. 19, 1st Floor, Contractor Building,
15, Vaju Kotak Marg, Fort, Mumbai-400001

EM 68308/6552N
27-09-2023

Copy to,

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