



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/560/2023 -CBS आदेश दिनांक/Date of Order: 27.11.2024
CAO No.53/2024-25/CAC/PCC(G)/RC/ADJ-CBS जारी दिनांक/Date of issue: 27.11.2024

संख्या:

DIN: 20241177000000424652

द्वारा जारी : राजन चौधरी

Issued By : Rajan Chaudhary

प्रधान आयुक्त, सीमाशुल्क(सामान्य)
मुंबई -400 001

Pr. Commissioner of Customs (Gen.),
Mumbai - 400 001.

ORDER-IN-ORIGINAL मूल आदेश

ध्यान दीजिए/ N.B. :

1. यह प्रति उस व्यक्ति को निजी उपयोग हेतु निःशुल्क प्रदान की जाती है, जिसे यह जारी की जा रही है।

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2. इस आदेश के विरुद्ध अपील माँगे गए राशी के 7.5% के भुगतान पर सीमाशुल्क अधिनियम, 1962 की धारा 129A(1B)(i) के संबंधमें सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण में स्वीकार्य है, जहाँ शुल्क या शुल्क एवं जुर्माना विवादित हों, या जुर्माना, जहाँ सिर्फ जुर्माना ही विवादित हो। यह अपील इस आदेश के संप्रेषण की तारीख के तीन महीने के अंदर दायर की जाएगी। यह अपील सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण (कार्यविधि) नियमावली, 1982, के प्रावधानों के अंतर्गत, यथोत्तखंडपीठ में स्वीकार्य है।

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

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

31.05.2018 के अनुसार न्यायिक आदेश तदोउ प्रांत न्याय निर्णयन अधिकारी 'functus officio' बन जाता है

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

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

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

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

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

6. (i) यदि प्रतिवादित आदेश, जिसके विरुद्ध अपील की गई है, में शुल्क एवं मांगे गए ब्याजवत्नगाएगए 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।

One 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.

submitted that, from the facts and circumstances it becomes apparent that examination of container KOC14976560 (40) was never conducted and it appears that the CIU officers had arrived near the container when the de-stuffing of the said container was still in process.

(f) The aforementioned discrepancies were noticed only after the CIU officers conducted 100% examination of the container KOCU4976569. As the aforementioned discrepancies are of such nature, that they could be unearthed only after physical examination of the declare goods Therefore it would be impossible for any Customs Broker to fortell or foresee what is inside the container. Furthermore, the SCN has failed to produce any circumstantial or corroborative evidence to prove that the Customs Broker was having prior knowledge of the discrepancies or that the Customs Broker had connived with the importer.

(g) In the absence of any pre knowledge about such discrepancies, there is nothing for the Customs Broker to advise his client. Moreover, on perusal of statement dated 06.08.2024 deposited by Shri. Imran Anis Gheewala, Proprietor of M/s Good Luck Enterprises before the Investigation Officer, it is noticed that he has accepted that he was informed with all the procedural norms related to this import by the Customs Broker.

(h) The IO relied upon the decision of Hon'ble CESTAT Chennai Bench in the case of **Tuticorin Vs. Moriks Shipping and Trading (2008) ELT 577(Tri-Chennai)** It states that "*As rightly held in the case of Akanksha Enterprises (supra) a CHA is not required to go into the authenticity of the declarations made in the export documents. His job is confined to submission of the documents given by the exporter as also to identify the exporter to the Customs authorities.*"

(i) The IO further relied upon the decision of Hon'ble CESTAT Principal

Bench of New Delhi in the case of **M/S TRINITY INTERNATIONAL APPELLANT FORWARDERS VS. COMMISSIONER OF CUSTOMS (PREVENTIVE) CUSTOMS APPEAL NO. 54942 OF 2023**-It was held as under -

"11. Thus, while the transaction value is decided between the exporter and importer, value for determining the duty under the Customs Act is a part of assessment. The power to assess including determining the value lies with the importer/ exporter (self-assessment) or with the proper officer (re-assessment). The Customs Broker has neither any authority nor any responsibility to assess the value of the imported goods or export goods.

12. In all the Shipping Bills, exports were allowed by the Customs in the normal course. It is only the subsequent intelligence and investigations by the DRI which revealed the alleged over valuation of exports. The Customs Broker is neither authorized under the Act nor is obligated under the CBLR to re- determine the value of any goods. Transaction value (be it FOB, CIF or C&F) is a matter of negotiation between the overseas buyer and the Indian exporter. It is the consideration which is paid or payable to the Indian exporter by the overseas buyer. The Customs Broker is a stranger to this contract and has no locus standi with respect to the transaction value. Any value determined under the Customs Act is a part of assessment which is the prerogative of the importer/exporter (self-assessment) or the proper officer (re-assessment). The Customs Broker has neither any authority nor any power to determine or re- determine the value for customs purposes either. The Customs Broker also has no authority to inspect or examine the goods and so the possibility of the Customs Broker suspecting that the goods may have been over valued also does not arise."

(j) The IO further relied upon the decision of Hon'ble Delhi High Court in the case of Kunal Travels (Cargo) Vs CC, 2017(354) ELT 447, the para 12 states that

*"Clause (e) of the aforesaid Regulation requires exercise of due diligence by the CHA regarding such information which he may give to his client with reference to any work related to clearance of cargo. Clause (1) requires that all documents submitted, such as bills of entry and shipping bills delivered etc. reflect the name of the importer/ exporter and the name of the CHA prominently at the top of such documents. The aforesaid clauses do not obligate the CHA to look into such information which may be made available to it from the exporter/ importer. The CHA is not an inspector to weigh the genuineness of the transaction. It is a processing agent of documents with respect to clearance of goods through customs house and in that process only such authorized personnel of the CHA can enter the customs house area.....**There is nothing on record to show that the appellant had knowledge that the goods mentioned in the shipping bills did not reflect the truth of the consignment sought to be exported. In the absence of such knowledge, there cannot be any mens rea attributed to the appellant or its proprietor.**"*

(k) The IO found that the ratio of the above judgements are squarely applicable in the present case. IO found that unless it is found that false details in the import/export documents filed with the department were entered by the CB knowingly, CB cannot prima facie be held to have abetted in violation of customs provisions and other allied acts. I find that there is no evidence to prove that CB was having prior knowledge of the alleged violation of rules and regulations in this import. In the absence of any pre-knowledge about such discrepancies, there is nothing for the Customs Broker

could do to advise his client, or inform the jurisdictional AC/DC. Thus, The IO held that the charges of violation of Regulation 10(d) of Customs Brokers Licensing Regulations (CBLR), 2018 is 'Not Proved'.

18.2 Article of Charge-II: Violation of the provisions of Regulation 10(e) of Customs Brokers Licensing Regulations (CBLR), 2018:-

(a) The IO stated that the second charge levelled against the CB is that they have violated Regulation 10(e) of Customs Brokers Licensing Regulations, (CBLR), 2018. As per the SCN No. 40/2023-24 dated 14.03.2024 issued by Principal Commissioner (General), Mumbai Customs Zone 1, it has been alleged that, during investigation the goods declared as Mobile Battery, Smart Watch, Antistatic tempered glass, UV glue one minute quick paste screen protector, Handsfree (Model BD B4 TWS Brand- BD Bedominant a Product of Ashtel group), Handsfree (Oxy Plugs), Handsfree (I Touch Black Pods 2) were found in pre-packaged condition and thus falling under the purview of General Note 5 "Packaged products" of ITC(HS) read with DGFT Notification No.44 (RE-2000)/1997-2002 dated 24.11.2000 and the corresponding provisions of the Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities). The Customs Broker did not enquire about the condition of the goods i.e. pre-packaged and did not inform the importer about the required compliance of RE-44. Moreover, the Customs Broker (CB) has submitted only one ETA bearing No.ETA. SD-20230908277 against all the smart watches, wherein make and model mentioned in the said ETA i.e. Make Elements Industries China, Model- Watch 8 does not match with the make and model mentioned in the BIS certificate such as Shenzhen Leite Security Co. Ltd and Model MNT/NDX. The CB had also submitted only one ETA Certificates vide Registration No. ETA-SD-20200302152

dated 18.03.2020 against all Handsfree, whereas Registration No. ETA-SD-20200302152, Date of Issuance-18.03.2020, Equipment category- Handsfree, Model-Handsfree, Make- Asian Star Supply Chain Co. Limited does not match with the make and model mentioned in the BIS certificate such as Kelisen Trading (Guangzhou) Co. Ltd and Guangzhou Nanqiao Communications Electronic Pvt Ltd. Lastly it has been alleged that Shri Salim Roshanali Samnani, Director of CB firm M/s. AMC Logistics (India) Pvt. Ltd. in his Statement dated 19.12.2023 accepted discrepancy in the use of ETA Certificate for the clearance of item "Handsfree"; and "Smart watches". Hence it has been alleged that that the Customs Broker has not exercised due diligence to ascertain the correctness of the goods imported vide Bill of entry no. 8766607 dated 14.11.2023.

(b) The IO submitted that the discrepancies mentioned here have already been discussed in Para 6.3 of this report. However, the allegation in respect of violation of Regulation 10(e) of CBLR 2018, may be decomposed into following points:

(A) The Customs Broker did not enquire about the condition of the goods i.e. whether the goods are pre-packaged or not"

This allegation is that of an act of omission or non-feasance. To be just and legally tenable, any allegation of omission or non-feasance must suffice any of the three conditions mentioned below: -

- (i) That it was statutorily required for the CB enquire about the condition of the goods i.e. whether the goods are pre-packaged. OR
- (ii) That it was a long-established practice for any CB to generally enquire from his client whether the goods imported are pre-packaged or not. OR
- (iii) That there was sufficient reasons to believe for the CB that it was

prudent to enquire from his client whether the goods imported are pre-packaged or not.

(c) The IO observed that the SCN has not provided any statutory provisions that were violated by the Customs Broker by not enquiring from his client about the condition of the goods, i.e. whether the goods are pre-packaged or not. Further from the perusal of available records it also appears that the SCN could not come out with any evidentiary document to showcase that it was generally a trade practice for the CB to enquire from his client about the condition of the goods, i.e. whether the goods are pre-packaged or not. Further, the prosecution has failed to highlight the causes of reasonable doubts which would have been sufficient enough for the CB to enquire from his client about the condition of the goods, i.e. whether the goods are pre-packaged or not. On the contrary, the Importer, Shri. Imran Anis Gheewala, Proprietor of M/s Good Luck Enterprises in his statement dated 10.01.2024 deposed before the CIU officers, has stated that since 2021 he had imported 45 consignments from the charged CB, M/s. AMC Logistics (India) Pvt. Ltd. Hereby, IO found that there could have been no reasonable doubt in the mind of the CB to enquire from his client about the condition of the goods, i.e. whether the goods are pre-packaged or not. Hence the allegation that the act of omission on the part of Customs Broker to enquire about the condition of the goods i.e. whether the goods are pre-packaged or not, cannot ipso facto become the reason for the violation of Regulation 10(e) of CBLR 2018.

(B) The Customs Broker did not inform the importer about the required compliance of RE-44 rules.

(d) It cannot be denied that there had been gross violation of RE-44 rules that was detected after the 100% examination of the said container by the CIU

officers. Details have been mentioned in Para 3 and Para 4 of Show Cause Notice No. 40/2023-24 dated 14.03.2024. There is indeed reasonable apprehension upon the probable malafide act of the importer. However this apprehension about the importer cannot be the basis of conclusion that the Customs Broker had connived with the importer in the wrongful import. The IO relied upon the decision of CESTAT, Kolkata Bench in the case **Deepankar Sen vs Commissioner of Customs versus Commissioner of Customs, Kolkata 2003 (159) ELT 260 (Tri-Kolkata)** wherein, it was held that *"merely acting as a Customs House Agent, does not ipso facto lead to an inevitable conclusion that he was in hand in glove with the exporters/importers in absence of any record to that effect."*

(e) Further, the IO stated that the SCN could not come out with any circumstantial or evidentiary document to showcase that the Customs Broker did not inform the importer about the required compliance of RE-44 rules. On the contrary, Shri. Imran Anis Gheewala, Proprietor of M/s Good Luck Enterprises in his statement dated 06.08.2024 deposited before the Investigation Officer that he was informed with all the procedural norms related to this import by the Customs Broker. Hence the allegation that the Customs Broker did not inform the importer about the required compliance of RE-44 rules is not only bereft of any evidentiary document but also factually incorrect.

(C) Customs Broker (CB) has submitted only one ETA bearing No.ETA-SD-20230908277 against all the smart watches, and had also submitted only one ETA Certificates vide Registration No. ETA-SD-20200302152 dated 18.03.2020 against all Handsfree.

(f) On perusal of available records, IO noticed two discrepancies in the Bill of Entry No. 8766607 dated 14.11.2023. They are as follows: -

(i) Mismatch between the name of manufacturer of smart watch as mentioned in the submitted ETA-SD-20230908277 (Element Industries, China) and that mentioned in submitted BIS Certificate R-41147494 (Shenzhen Leite Security Co. Ltd.).

(ii) Mismatch between the name of manufacturer of handsfree as mentioned in the submitted ETA-SD-20200302152 (Asian Star Supply Chain Co. Ltd.) and that mentioned in submitted BIS Certificate R-41187020 (Keliseng Trading Guangzhou Co. Ltd.) and BIS Certificate R-41183423 (Guangzhao Nanqiao Communications Electronic Pvt. Ltd.).

(g) However the CB has submitted a certified copy of three (One Time ETAs) along with other documents in the PH dated 07.06.2024. These documents had been uploaded by the CB in e-Sanchit. The details are represented in tabular form as mentioned below.

Sl. NO.	Unique ID	ETA No.	Commodity	Model	Importer	Page No.
1.	ETADHIS2023110006517	ETA-SD-20200302152	Smart Watch	ND08	Imran Geewala	5&6
2.	ETADHIS2023110006515	ETA-SD-20200302152	Handsfree	BT-1	Imran Geewala	7&8
3.	ETADHIS2023110006516	ETA-SD-20200302152	Handsfree	BT-12/IBT400	Imran Geewala	9&10

On perusal of these three one-time ETAs, He found that the commodity and model mentioned above exactly matches with that mentioned in the Invoice No. STGH22477 and Packing list.

(h) The CB also submitted the certified copy of final ETAs and BIS

Certificates. The details are represented in tabular form as mentioned below.

Sl. NO.	Registration No.	Date of Issuance	Equipment Category	Model	Make
1.	ETA-SD-20220907904	14.09.2022	Handsfree	BT-12	Kelisen Trading (Guangzhou) Co. Ltd.
2.	ETA-SD-20220807150	01.09.2022	Handsfree	IBT-400	Kelisen Trading (Guangzhou) Co. Ltd.

(i) The name of the manufacturer as mentioned above exactly matches with that of that which is mentioned in the BIS Registration No.R-41187020 for the Handsfree Models BT-12 and IBT-400. However the CB has not provided the final ETAs for the Smart watch Model ND-08 and Handsfree Model BT-1. From the facts of the case, it appears that there are some discrepancies in regard of the ETA Certificate used. However, it is no denying that the CB had been careless regarding uploading complete documents related to the import. However, in IO's considered view these discrepancies do not have any revenue implications and further it is hard to establish that this mistake was purposefully committed by the CB. Since the obligations under Regulation 10(e) mentions that the CB should exercise due diligence in processing of the import/export documents provided to him by his client; to that extent IO considered that the CB has violated the provisions of Regulation 10(e) of Customs Brokers Licensing Regulations (CBLR), 2018. Thus, IO held that the charges of violation of Regulation 10(e) of Customs Brokers Licensing Regulations (CBLR), 2018 is 'Proved'.

18.3 Article of Charge-III: Violation of the provisions of Regulation 10(m) of

Customs Brokers Licensing Regulations (CBLR), 2018:-

(a) The IO stated that the third charge levelled against the CB is that they have violated Regulation 10(m) of Customs Brokers Licensing Regulations, (CBLR), 2018. As per the SCN No. 40/2023-24 dated 14.03.2024 issued by Principal Commissioner (General), Mumbai Customs Zone 1, it has been alleged that as per the offence report, during the investigation, undeclared goods and mis-declaration of goods with respect to quantity and description were found by CIU officers. By not informing the importer or seeking necessary clarifications from the importer regarding the same, it indicates that the Customs Broker has failed to discharge his duties with utmost efficiency and caused a significant delay in Customs clearance thereby violating the provisions of Regulation 10(m)

(b) The IO submitted that from the facts of the case it is indicated that right from the beginning of investigation, starting from the time detailed examination of the goods under panchanama proceedings by CIU officers on 18.11.2023, the CB's representative was present and cooperated with investigation authorities. Further, voluntary statements were also given during the investigation by the Shri Salim Samnani, one of the director of the CB and Shri Sachin Dattatraya Bhagat, Executive of the CB. Further, there is no case of importer or any other person having complained about the inefficiency or delay in clearance of the imported goods by the CB. Further the CIU report fails to bring forward necessary evidences to point out that the CB had any direct or indirect role in the alleged mis-declaration of the imported goods. Neither does this SCN/CIU Report point out the specific acts of omission by the CB, which had direct causal relationship with the alleged mis-declaration and that performing that act could have prevented the mis-declaration.

(c) The IO relied upon the decision of **Hon'ble CESTAT Mumbai Bench in the case of Priya Hemant Bhandarkar vs Commissioner Of Customs-Mumbai** dated 19 April, 2024. Therefore, the conclusion the CB have failed to discharge their obligations cast on them under Regulation 10(m) *ibid* is factually not supported by any evidence and thus it is not legally sustainable. Thus, IO held that the charges of violation of Regulation 10(m) of Customs Brokers Licensing Regulations (CBLR), 2018 is 'Not Proved'.

18.4 Article of Charge-IV: Violation of the provisions of Regulation 10(n) of Customs Brokers Licensing Regulations (CBLR), 2018:-

(a) The IO stated that the fourth charge levelled against the CB is that they have violated Regulation 10(n) of Customs Brokers Licensing Regulations, (CBLR), 2018. As per the SCN No. 40/2023-24 dated 14.03.2024 issued by Principal Commissioner (General), Mumbai Customs Zone I, it has been alleged that as per the offence report, during the search conducted on 23.11.2023, Mr. Imran Anis Gheewala, Proprietor of M/s Good Luck Enterprises (IEC-AIOPG6942M) was not found at his registered address at 32 3rd Floor, Plot-22, Aman apartment, Mahapurush Mandir Marg, Gunpowder Lane, Mazgaon, Mumbai, Maharashtra. Search team came to know that the said flat has already been sold to Mr. Abdul Rehman Ismail Shaikh and Mrs. Mariyambi Abdul Rahman Shaikh on 02nd August, 2023. Mr. Imran Anis Gheewala, Proprietor of M/s Good Luck Enterprises in his statement recorded on 19.12.2023 has *inter alia* stated that he is now operating temporarily from the address i.e. Flat No. 2004, 20th Floor, Belligio, Saat Raastha, Agripada, Mumbai. He also told that KYC of his new address was not done by Mr. Salim R Samnani. Hence it has been alleged that the Customs Broker filed BE without verifying the facts of the importer which shows misconduct on

the part of the CB thereby violating the provisions of Regulation 10(n) of the CBLR, 2018.

(b) The IO submitted that from the perusal of the CIU report and the SCN, the sole basis behind this allegation is that, during the search conducted on 23.11.2023, Mr. Imran Anis Gheewala, Proprietor of M/s Good Luck Enterprises (IEC- AIOPG6942M) was not found at his registered address at 32 3rd Floor, Plot-22, Aman apartment, Mahapurush Mandir Marg, Gunpowder Lane, Mazgaon, Mumbai, Maharashtra. Search team came to know that the said flat has already been sold to Mr. Abdul Rehman Ismail Shaikh and Mrs. Mariyambi Abdul Rahman Shaikh on 02 nd August, 2023. On plain reading of Regulation 10(n) of Customs Brokers Licensing Regulations, (CBLR), 2018, it can be safely said that this regulation casts four obligations upon the CB.

(i) CB shall verify correctness of Importer Exporter Code (IEC) number

(ii) CB shall verify correctness of Goods and Services Tax Identification Number (GSTIN)

(iii) CB shall verify correctness of identity of his client

(iv) CB shall verify correctness of functioning of his client at the declared address by using reliable, independent, authentic documents, data or information.

(c) On the basis of the relevant Paras of the SCN, it comes out that the SCN has not challenged the obligation mentioned above in point (a), (b) &(c). i.e. Verification of IEC no., GSTIN and the identification of the Importer. The main allegation is that the CB did not verify correctness of functioning of his client at the declared address. In this regard, the IO stated that it is a settled law that the Customs Broker is not required to physically go to the premises

of the client to ensure that they are functioning at the premises. The same can be ascertained online through government issued of IEC No., GSTIN, Aadhar etc.

(d) The IO further relied upon the decision of **Hon'ble CESTAT Delhi Bench**, in the case of **M/S BRIGHT CLEARING & CARRIER PVT. LIMITED VERSUS COMMISSIONER OF CUSTOMS, (AIRPORT AND GENERAL), NEW DELHI.2022 (11) TMI 935 CESTAT NEW DELHI**, which states that

"The fourth and the last obligation under Regulation 10(n) requires the Customs Broker to verify the functioning of the client at the declared address using reliable, independent, authentic documents, data or information. This responsibility, again, can be fulfilled using documents or data or information so long as they are reliable, independent and authentic. Nothing in this clause requires the Customs Broker to physically go to the premises of the client to ensure that they are functioning at the premises..."

(e) In this regard, it is to be appreciated that the spirit behind Regulation 10(n) of CBLR 2018 is to curb the menace of fake importers/exporters, better referred to as fly-by-night entities. However, in this present the importer Shri. Imran Anis Gheewala, Proprietor of M/s Good Luck Enterprises in his statement dated 19.12.2023, has stated that the CB had personally known him since 2021. In his statement dated 10.01.2023, Shri. Imran Anis Gheewala, Proprietor of M/s Good Luck Enterprises further stated that approximately 45 consignments had been imported by him that was cleared by the charged CB, M/S AMC Logistics (India) Pvt. Ltd. (CB-11/196) since 2021. He further admitted that he had failed to update his new address with DGFT, Customs, Aadhar etc. Further, the prosecution has not made a case of fake entity. Here the identity of the Importer Shri. Imran Anis Gheewala, Proprietor of M/s

Good Luck Enterprises, has not been challenged by the prosecution. Any discrepancy in the correctness of the working address of the Importer was solely due to the negligence of the importer himself. Hence from the circumstances and facts of the case it is indicated that the CB had fulfilled his obligation under Regulation 10(n) of CBLR 2018. Thus, IO held that the charges of violation of Regulation 10(n) of Customs Brokers Licensing Regulations (CBLR), 2018 is 'Not Proved'.

18.5 Article of Charge-V: Violation of the provisions of Regulation 13(12) of Customs Brokers Licensing Regulations (CBLR), 2018:-

(a) The IO stated that the fifth charge levelled against the CB is that they have violated Regulation 13(12) of Customs Brokers Licensing Regulations, (CBLR), 2018. As per the SCN No. 40/2023-24 dated 14.03.2024 issued by Principal Commissioner (General), Mumbai Customs Zone 1, it has been alleged that as per the offence report, investigation revealed that Shri Sachin Dattatraya Bhagat, Executive, AMC logistics (India) Private Limited was duly informed by the Gate Customs Officer/Hawaldar regarding CIU hold on Container No. KOCU4976569 (40") and despite CIU hold he took the container back from MOD gate No.1 and played the role of accomplice in the whole incident. It shows the misconduct on the part of CB; thereby violating the provisions of Regulation 13(12) of CBLR, 2018.

(b) The IO submitted that on perusal of the available records and statements of different witnesses, the SCN has based its allegation upon the statements of witnesses deposed by the following persons, who were present on duty in the evening of 18.11.2023 at MOD Gate No.1: -

- (i). Shri Sunil B Nandanwar, Preventive Officer
- (ii). Shri Juned Ayub Tadvi, Armed Security Guard, MSF

(iii). Shri Rohidas Ramrao Patil, Armed Security Guard, MSF

(iv). Shri Ramdas Narayan Dhadwad, Head Hawaldar

(c) All the witnesses mentioned above deposed before the CIU officers in their statements submitted on different dates, that the container no. KOCU4976569 was stopped as soon as it reached the MOD Gate No. 1. They further deposed that Shri Sachin Dattatraya Bhagat, Executive, AMC Logistics India P Ltd. (Custom Broker) was informed by Shri Ramdas Narayan Dhadwad, Head Hawaldar, that the container has been stopped due to CIU hold. Thereafter, as per the statement of Shri Sunil B Nandanwar, Preventive Officer, Shri Sachin Dattatraya Bhagat was directed to offload the container near the examination area adjacent to the MOD gate. He further instructed Shri Sachin Dattatraya Bhagat not to handle or deal with the container as it was on CIU hold.

(d) However diametrically opposite statement were deposed by Shri Sachin Dattatraya Bhagat, Executive, AMC Logistics India P Ltd. (Custom Broker)- He stated in his statement dated 28.11.2023 that the said container was stopped at MOD Gate No. 1 by Shri Ramdas Narayan Dhadwad, Head Hawaldar. That Shri Ramdas Narayan Dhadwad did not mention any specific reason for stopping the container. He only said that he had been instructed by Shri Sunil B Nandanwar, Preventive Officer, not to allow the said container. Shri Sachin Dattatraya Bhagat also deposed that he did not notice Shri Sunil B Nandanwar, Preventive Officer at the MOD Gate-1 at the time when the container was stopped.

(e) Surprisingly in the re-examination of Shri Juned Ayub Tadvi, Armed Security Guard, MSF before the IO on 14.08.2024, he contradicted his earlier statement deposed before the CIU officers 30.11.2023, where he stated that

the Gate PO and the Head Hawaldar informed the CHA (Shri Sachin Dattatraya Bhagat) that the container had been stopped due to CIU hold. However in his re-examination dated 14.08.2024, he stated that he did not know the exact reason of stopping the container, as his duty is only to check the gate pass. Similarly, Shri Rohidas Ramrao Patil, Armed Security Guard, MSF also backtracked from their earlier deposed statement dated 30.11.2023. More surprisingly, Shri Ramdas Narayan Dhadwad, Head Hawaldar in his re-examination dated 14.08.2024 before the IO, clearly stated that he had stopped the said container only on the direction of his senior Shri Sunil B Nandanwar, Preventive Officer. He further stated that his senior did not tell him about the reason of stopping the said container. Hence he was not knowing the reason for stopping the container.

(f) In the light of above discussions, the IO stated that only one officer Shri Sunil B Nandanwar, Preventive Officer knew that there was a CIU hold on the said container. In fact, it is on record that he was not present at MOD Gate-1 from the beginning when the container was stopped. In the absence of substantial corroborative evidence it would be difficult to establish that the CHA (Shri Sachin Dattatraya Bhagat) was having information about the CIU hold when the container was stopped at the MOD Gate. Furthermore, Shri Haripal Singla, Appraiser Docks, in his statement dated 13.12.2023 has himself admitted that he instructed the CHA (Shri Sachin Dattatraya Bhagat) to cut open the seal of the said container and de- stuff the goods. Hence, the IO observed that Shri Sachin Dattatraya Bhagat, Executive, AMC Logistics India P Ltd. (Custom Broker) was not knowing the reason of stopping the container. While he later engaged in de-stuffing container after receiving direct and clear instruction from Custom Officer, Shri Haripal Singla

(Appraiser Docks). Thus, IO held that the charges of violation of Regulation 13(12) of Customs Brokers Licensing Regulations (CBLR), 2018 is 'Not Proved'.

19. In view of the above, the IO concluded the inquiry proceedings and held that the charges of violation of regulation 10(d), 10(m), 10(n) and 13(12) of CBLR, 2018 are 'NOT PROVED' and the charge of violation of regulation 10(e) of CBLR, 2018 as 'PROVED'. The IO also submitted that due to 'Election Duty' there has been delay in submitting this report. The inquiry report was accepted and for the sake of 'Principle of Natural Justice' the inquiry report was served to the CB under the provisions of Regulation 17(6) of CBLR, 2018, and an opportunity of personal hearing was granted to the CB.

RECORDS OF PERSONAL HEARING:

20. The personal hearing in the matter was fixed on 07.11.2024. Mr. Salim Roshanali Samnani, Director of CB company and G-card with Power of Attorney holder, appeared for the hearing and submitted their written submissions dated 07.11.2024 at the time of hearing and reiterated the same. He also submitted a copy of Hon'ble CESTAT order dated 04.11.2024, which is issued in favour of them.

WRITTEN SUBMISSIONS OF THE CB:

21. With reference to the Suspension Order No. 38/2023-24 dated 20.12.2023, the CB vide their letter dated 07.11.2024 submitted that:

21.1 The suspension order is passed in violation and total disregard to the CBIC Instruction No. 24/2023 dated 18.07.2023, which states that "*...it indicates that suspension is not visualized for application in a manner routine or mechanical or in every case. This aspect is to be kept in view by the Commissioner of Customs in the course of considering a proposal to suspend the licence of a customs*

broker. Before doing so, the Commissioner should also take the care also of recording his/her reasons as to why it is considered an appropriate case where immediate action of suspension is necessary". Hence the learned Principal Commissioner is under statutory obligation to record the reason of immediate action before suspending the CB licence. He is also expected to apply due diligence and shall not suspend the CB licence indiscriminately in a routine or mechanical manner.

21.2 The CB submitted that in the contrary their Custom License has been suspended indiscriminately without following the procedure of the law which is a grave violation of principles of natural justice. The Learned Principal Commissioner has passed the Impugned Order and suspended the Custom License with immediate effect and in the said Order has granted an opportunity of personal hearing on 28.12.2023. It is submitted by the CB that the opportunity of personal hearing should have been granted to them before passing of any Order which has drastically affected their regular business activities and is unlawful and against the principles of natural justice. Because of suspension with immediate effect, the portal has been blocked and the containers which are lined up to be cleared is being affected and causing a great financial loss not only to CB's clients but to their Company also.

21.3 The CB submitted that it is trite law and settled principle that any suspension of CB licence shall not be done in mechanical and manner. And the reason for immediate suspense of licence should clearly be recorded in writing. Not following the same can be construed as non-application of mind and reckless misuse of power, especially when the immediate suspension of licence has devastating effect livelihood of numerous employees of the Company. The CB place reliance on the following case law -

i. **M.K. SAHA & COMPANY Versus COMMISSIONER OF CUSTOMS (AIRPORT & ADMINISTRATION), KOLKATA (2021 (376) E.L.T. 534 (Tri. - Kolkata))** - Th Hon'ble CSTAT Bench of Kolkata has held that *"Customs Broker's Licence Suspension of Power of suspension under Regulation 16 of Customs Brokers Licensing Regulations, 2018 is to be exercised in appropriate cases where immediate action is necessary - Only in appropriate cases where immediate action is necessary, suspension is required to be adhered to Suspension of CB licence cannot be exercised by authority in a routine and mechanical manner-For invocation of Regulation 16 ibid it is necessary for authority to disclose the immediate necessity of exercising such power. Thus, prior ingredient of 'immediate necessity of suspension of a CB licence remained in the provision of the wisdom of legislation Commissioner has not applied his mind on the aspect as to whether immediate action was necessary and thus, on this ground alone order of continuation suspension of CB licence fails."*

ii. **RATNADIP SHIPPING PVT. LTD. Versus COMM. OF CUS. (GENERAL), MUMBAI - 2019 (370) E.L.T. 1765 (Tri. - Mumbai)-2019 (370) E.L.T. 1765 (Tri. - Mumbai)** - *"Customs House Agent - Suspension of licence - Cause of immediate action or continued action of suspension could not be deciphered from impugned order - No merits in impugned order to sustain the same - Regulations 16(2) and 17 of Customs Brokers Licensing Regulations, 2018. - Proper analysis of all the decisions referred above will show that there is enough power vested in the Commissioner to suspend the license of Custom Broker, in terms of Customs Brokers Licensing Regulations, 2018. However said power which impact the lively hood of the person and his employee needs to be exercised with caution and in accordance with the inbuilt safeguards, to prevent the arbitrary and reckless use of the power. One of the safeguards that has been built in the scheme, is to decide the matter after affording the post-decision hearing in case of immediate suspension. This post- decision hearing is not an empty formality but the responsibility cast on the Commissioner to decide the issue of continuation of suspension in reasonable and logical manner by way of speaking order, clearly recording the reasons for suspension of licence. The reason obviously cannot be "enquiry is contemplated" simplicitors."*

21.4 The CB submitted that it is wrong allegation of the Department that they connived with the importer for de-stuffing of container and mislead the CIU officer for erroneously giving the OOC (Out of Charge) Order. It is submitted that the following sequence of events occurred on 18.11.2023

before the arrival of the CIU officers -

The Custom appraiser gave OOC order for the impugned container on random basis following the normal procedure. The CB was also never informed about the said container being on hold at that instance.

Later it was informed to the CB that as the said consignment was erroneously made Out-Of-Charge, the reversal of OOC order was done by the Department itself.

Order for 100% examination of the said container was given by RMS. Further, order for scanning was also given by DC supervision.

On the basis of above request of Custom appraiser, the Custom officials came for examination of the impugned consignment.

When the examination of the Impugned container was ongoing and 150 packages were taken out, the CIU officers arrived at the location. It is submitted that at the time the CIU officers arrived, their Company's Director was busy with his other consignments.

21.5 The CB submitted that the entire allegation of their conniving with the importer for de-stuffing of the impugned container is nothing but wild and fanciful imagination of the Department having nil evidentiary value. The actual reason for erroneous OOC order was due to the mistake of the Custom appraiser, anywhere in the entire Impugned Order and surprisingly this fact has not been mentioned. The CB further submitted that the granting of an Out of Charge Order is the sole responsibility of the Custom Department officials and no CB can mislead the Custom officials while granting the said Order.

22. CB's Reply in respect of Violation of Regulation 10(d) of CBLR 2018:-

22.1 Regulation 10(d) of CBLR, 2018 states that, "*A Customs Broker shall advise his client to comply with the provisions of the Act 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". It has been alleged that on examination of the goods conducted by CIU it was revealed that there is gross misdeclaration with regard to quantity and undervaluation of goods viz. Tempered glass. Also there is violation of other allied acts such as non-compliance of RE-44 Notification, non-adherence of BIS Orders and non-availability of ETA certificates. In this case the CB has failed to advise/inform the importer about the requirement of BIS certification, ETA certificates and the CB did not bring the same to the notice of Deputy Commissioner of Customs, Import Docks.

22.2 The CB submitted that the Department has gravely misunderstood the provisions of Regulation 10(d) of CBLR, 2018. The CHA is not an inspector to weigh the genuineness of the transaction. The CB is a processing agent of documents with respect of clearance of goods through custom house. The CB has a limited liability limited to filing import documents as per the instruction of the importer. This liability of advise/inform cannot be extended to the truthfulness of the declaration vis-à-vis the actual goods imported, which liability rests with the importer. There are catena of cases to prove the same. Reliance is placed upon the below mentioned case laws.

(i) **M/S TRINITY INTERNATIONAL APPELLANT FORWARDERS VS. COMMISSIONER OF CUSTOMS (PREVENTIVE) - CUSTOMS APPEAL NO. 54942 OF 2023** - The Hon'ble CESTAT Principal Bench of New Delhi has held as under-

"11. Thus, while the transaction value is decided between the exporter and importer, value for determining the duty under the Customs Act is a part of assessment. The power to assess including determining the value lies with the importer/ exporter (self-assessment) or with the proper officer (re-assessment). The Customs Broker has neither any authority nor any responsibility to assess the value of the imported goods or export goods.

12. In all the Shipping Bills, exports were allowed by the Customs in the normal

course. It is only the subsequent intelligence and investigations by the DRI which revealed the alleged over valuation of exports. The Customs Broker is neither authorized under the Act nor is obligated under the CBLR to re-determine the value of any goods. Transaction value (be it FOB, CIF or C&F) is a matter of negotiation between the overseas buyer and the Indian exporter. It is the consideration which is paid or payable to the Indian exporter by the overseas buyer. The Customs Broker is a stranger to this contract and has no locus standi with respect to the transaction value. Any value determined under the Customs Act is a part of assessment which is the prerogative of the importer/exporter (self-assessment) or the proper officer (re- assessment). The Customs Broker has neither any authority nor any power to determine or re-determine the value for customs purposes either. The Customs Broker also has no authority to inspect or examine the goods and so the possibility of the Customs Broker suspecting that the goods may have been over valued also does not arise."

(ii) **Tuticorin Vs. Moriks Shipping and Trading (2008) ELT 577(Tri- Chennai)**

It states that "As rightly held in the case of Akanksha Enterprises (supra) a CHA is not required to go into the authenticity of the declarations made in the export documents. His job is confined to submission of the documents given by the exporter as also to identify the exporter to the Customs authorities."

22.3 Moreover, the learned Principal Commissioner in the Impugned Order (Suspension order) has very conveniently ignored the Advisory No. 01/2022 dated 29.12.2022, which was issued by the Office of Chief Commissioner of Customs wherein it was clearly stated that the Custom Brokers were not to be implicated in case of interpretive disputes, etc. It was also stated as under in the said Advisory -

"3. Further, the Officers need to be sensitized about the provisions of Customs Broker Licensing Regulations, 2018 (CBLR,2018) and the implications of invoking the said provisions. As the scope of audit is limited to scrutinizing the averment based on documents submitted to the revenue, the possibility to prove such complicity, involving the violations of the provisions of CBLR, 2018 is unattainable without detailed inquiry. 4. There are numerous judicial pronouncements wherein it has been, inter-alia, held that in cases where there is

no evidence of complicity in the illegal importation of goods or wrong intent or prior knowledge about the violator, the penalty cannot be imposed on the Customs Broker."

22.4 In the present case, without any complete investigation and without any evidence showing our involvement in the mis-declaration/discrepancy in quantity etc. of the Imported goods, the Impugned Order has been issued to us and our license has been suspended. Hence, the CB submitted that they have not violated the provision of Regulation 10(d) of CBLR 2018.

23. CB's Reply in respect of Violation of Regulation 10(n) of CBLR:-

23.1 The CB submitted that the importer is their regular client and they are regularly clearing the goods of the importer. The KYC of the importer is properly verified at the time of the first import i.e., 3 years back. All the KYC documents were also submitted to the Custom authorities and after full satisfaction and due diligence, the said documents were accepted by the Custom and regular import was allowed by the Custom authorities. According, to the provisions of Regulation 10(n), the Custom clearing agent is supposed to verify the KYC & address of the importer at the time of the first import. Regulation 10(n) does not provide anywhere that the custom clearing agent has to verify the address of the importer before import of every consignment.

23.2 The Departmental investigation concluded that the importer M/s Good Luck Enterprises was not found at the address declared at the DGFT website. However, the investigation completely ignored the KYC documents such as IE Code and GSTIN submitted by the importer M/s Good Luck Enterprises, in compliance with Regulation 10 (n) of CBLR 2018 at the time of its registration. The CB submitted that the said importer is doing business with them since last 3 years and at the time of starting business with this importer

they collected all the relevant documents as required under Section 10(n) of CBLR 2018. Accordingly, there was no requirement for them to do KYC of the importer before every consignment. Also, after doing regular business, the importer came to their office with all the required documents of import consignment and all the payments were transferred through proper banking channel. Therefore, The CB did not had any requirement of visiting the importer's declared address.

23.3 Hence, the CB submitted that they had obtained all the KYC documents required under the provisions of the Act and as mentioned in the Board Circular 9/2010 dated 08/04/2010 and hence, fulfilled all responsibilities entrusted to them in the capacity of a CHA. Also, the CB placed reliance on the below mentioned case law -

(a) M/s. B. K. Clearing Agency VERSUS Commissioner of Customs (Administration & Airport), Kolkata - Customs Appeal No. 75018 of 2022-The Hon'ble CESTAT Bench of Kolkata relied on the case of Anax Air Services Pvt Ltd where in it was concluded that "Nevertheless, the burden of this very liberal, open, scheme and its potential misuse cannot be put at the doorstep of a Customs Broker. Just as the officer's responsibility ends with doing his part of the job (which may be issuing a registration without physical verification or allowing exports without assessing the documents or examining the goods), the Customs Broker's responsibility ends with fulfilling his responsibilities under Regulation 10 of the CBLR, 2018. In dispute in this case is CBLR 10(n) which, as we have discussed above, does not require any physical verification of the address of the exporter/importer and the appellant has fully met his obligations under Regulation 10(n). The Hon'ble CESTAT accordingly held as under -

"20. We find that the ratio of the above said order of the Tribunal is squarely applicable in this case. In the present case also, the appellant has collected the documents such as IEC, GSTIN etc. submitted by the exporter S S Impex, Hyderabad before processing their shipping bills. Later if they were not found to be existing in the said addresses, the appellant cannot be held responsible for their non-existence at the address specified, as held by the Tribunal, New Delhi in the case of Anax Air Services."

24. CB's Reply in respect of Violation of Regulation 10(e) of CBLR:-

24.1 The regulation 10(e) states that "the CB should exercise due diligence to ascertain the correctness of any information which he imports to a client with reference to any work related to clearance of cargo or baggage."

24.2 The CB submitted that it has been alleged that on examination of the goods conducted by CIU it was revealed that the importer has mis-declared with regard to quantity and undervaluation of goods viz. Tempered glass. Also there is violation of other allied acts such as non-compliance of RE-44 Notification, non-adherence of BIS Orders and non-availability of ETA certificates. In this case the CB has failed to exercise due diligence and under the fact and such circumstances it appears that the CB has actively connived with the importer to hide the actual quantity of the imported goods and also non compliance of allied acts.

24.3 It is submitted by the CB that the Department has gravely misunderstood the provisions of Regulation 10(e) of CBLR, 2018. Regulation 10(d) casts a duty on the Customs Broker to exercise due diligence in communicating correct information to a client with reference to any work related to clearance of cargo. The said Regulation has no concern/application with the acts or omissions of the importer firms itself. There is no finding in the order of the Commissioner that the Appellant had given any incorrect information to the importer firms in the process adopted for the clearance of

the goods at the Customs Station or in any manner abetted the importer firm in wrongful act or omission. In this regard, the CB placed reliance on the below mentioned case laws.

(i) Kunal Travels (Cargo) v. Commissioner of Customs (Import & General), 2017 SCC OnLine Del 7683)

"Para 12 of the judgement states that "Clause (e) of the aforesaid Regulation requires exercise of due diligence by the CHA regarding such information which he may give to his client with reference to any work related to clearance of cargo. Clause (1) requires that all documents submitted, such as bills of entry and shipping bills delivered etc. reflect the name of the importer/exporter and the name of the CHA prominently at the top of such documents. The aforesaid clauses do not obligate the CHA to look into such information which may be made available to it from the exporter/importer. The CHA is not an inspector to weigh the genuineness of the transaction. It is a processing agent of documents with respect to clearance of goods through customs house..."

(ii) DS Cargo Agency vs Commissioner Of Customs on 25 September, 2023:-

"It states that, the said Regulation casts a duty on the Customs Broker to exercise due diligence in communicating correct information to a client with reference to any work related to clearance of cargo. The said Regulation has no concern/application with the acts or omissions of the importer firms itself. (Re: Kunal Travels (Cargo) v. Commissioner of Customs (Import & General), 2017 SCC OnLine Del 7683)"

24.4 The CB further submitted that there is no finding in the order of the Commissioner that the Appellant had given any incorrect information to the importer firms in the process adopted for the clearance of the goods at the Customs Station or in any manner abetted the importer firms in the diversion of the goods from the public bonded warehouse to the domestic market. Hence the CB submitted that they have not violated the provisions of Regulation 10(m) of CBLR 2018.

25. CB's Reply in respect of Violation of Regulation 10(m) of CBLR:-

25.1 Regulation 10(m) states that *"the CB is required to discharge his duties as a*

Customs Broker with utmost speed and efficiency and without any delay.”

25.2 The CB submitted that they have performed their duty with utmost speed and efficiency. There is nothing on record to prove the allegation that the CB has not performed their duties with speed and efficiency. Neither did the importer complain to the Department about any delay or Inconvenience from our side. Hence the charge of violation of Regulation 10(m) of CBLR 2018 is not only arbitrary but also blatantly illegal. No presumptions of connivance of CB can be made without proper evidence. It is observed in the Impugned Order that allegations of active connivance of CB with the importer has been made by the Department, without providing any corroborative evidences. The allegations in the Impugned Order are only based upon assumptions and completely baseless. It is submitted that the CB has acted completely in accordance with law and utmost devotion to work. In this regard, the CB placed reliance upon the following case laws –

(i) **Deepankar Sen vs Commissioner of Customs versus Commissioner of Customs, Kolkata 2003 (159) ELT 260 (Tri-Kolkata)** wherein it was held that merely acting as a Customs House Agent, does not ipso facto lead to an inevitable conclusion that he was in hand in glove with the exporters/importers in absence of any record to that effect.

26. Further, the CB submitted that he fully co-operated with the investigation/inquiry conducted by the appointed IO and furnished all relevant information and documents connected with the case. The CB also submitted that nearly one year has passed since the suspension of their CB licence. The firm is languishing in limbo, with severely impacting the livelihood of our employees/staffs and their innocent dependents. Further CB submitted that, the Hon'ble CESTAT, Mumbai Bench, in their Customs

Appeal No. 85726 of 2024 has quashed the impugned order of suspension of Custom Broker licence dated 11.01.2024, strongly observing that the department did not have sufficient grounds to continue the suspension of our licence. In view of the above representation, the CB prayed to revoke the suspension and to restore all the original Custom Passes issued to their Company's employee/partner/director/Proprietor.

DISCUSSIONS AND FINDINGS:

27. I have gone through the facts of the case, the material brought on records; Interim offence report and final offence report dated 16.12.2023 and 01.03.2024 respectively, received from CIU, NCH; suspension order no. 38/2023-24 dated 20.12.2023; suspension continuation order no. 40/2023-24 dated 11.01.2024; Show Cause Notice No. 40/2023-24 dated 14.03.2024 issued under regulation 17 of CBLR, 2018; inquiry report dated 03.09.2024 and the submissions made by the CB at the time of personal hearing.

28. Briefly stated, I find that working on some specific intelligence, one container No. KOCU4976569 (40") imported vide Bill of Entry No. 8766607 dated 14.11.2023 was put on hold by Central Intelligence Unit (CIU) NCH on 18.11.2023. The said consignment was imported by the importer M/s. Good Luck Enterprises (IEC No. AIOPG6942M) and the said Bill of Entry was filed through the Customs Broker M/s. AMC Logistics (India) Pvt. Ltd. (the charged CB in present case). The examination of the said container was done under Panchanama dated 21.11.2023 and it was found that the goods have been mis-declared in terms of quantity and also imported in violation of BIS & ETA norms and DGFT Notification No. 44 (RE-2000)/1997-2002 dated 24.11.2000. The discrepancies found during examination have already been discussed in 'Table-I' and 'Table-II' under para 4 supra. I also find that apart

from the violation of statutory laws/norms, the SCN issued under CBLR, 2018 also alleged that despite the CIU hold the container No. KOCU4976569 was taken back which was about to get out from MoD gate and the said container was opened and de-stuffed which is a gross misconduct on the part of the CB M/s AMC Logistics (India) Private Ltd. Also, when the CIU team reached MoD CFS on 18.11.2023, CIU team found that the container No. KCU4976569 was opened and around 150 packages were lying outside the container and neither the Importer and nor the CB was present. Accordingly, on receipt of the offence report from CIU, NCH, action under CBLR, 2018 was taken against the CB for apparent violation of provisions of regulation 10(d), 10(e), 10(m), 10(n) and 13(12) of CBLR, 2018. The CB license was put under suspension vide order no. 38/2023-24 dated 20.12.2023 and the said suspension was continued vide order no. 40/2023-24 dated 11.01.2024 pending inquiry proceedings. Also, a Show Cause Notice no. 40/2023-24 dated 14.03.2024 was issued to the CB and inquiry under regulation 17 was initiated against the CB. The inquiry officer submitted the inquiry report dated 03.09.2024 wherein he concluded that the charges of violation of Regulation 10(d), 10(m), 10(n) and 13(12) as 'Not Proved' and the charge of violation of Regulation 10(e) as 'Proved'.

28.1 Having perused the SCN dated 14.03.2024, the inquiry report dated 03.09.2024 and the submissions dated 07.11.2024 made by the CB, now, I sequentially discuss the charges of violations levelled against the CB vis-à-vis the findings of the inquiry officer and defense submissions of the CB.

29 The first charge levelled against the CB is violation of provisions of

regulation 10(d) of CBLR, 2018, *ibid*. I find that the SCN alleged that it is the responsibility of the Customs Broker to inquire about the condition (i.e. pre-packaged or bulk), specifications of the goods etc. with the importer and advise the importer to comply with the extant rules which was not done in the instant case. The Customs Broker has also failed to inform/bring this to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Also, Shri Salim Roshanali Samnani, Director of CB firm M/s. AMC Logistics (India) Pvt. Ltd. in his Statement dated 19.12.2023 accepted discrepancy in the use of ETA Certificate for the clearance of item "Handsfree"; and "Smart watches". Hence, by doing so, the Customs Broker appeared to have violated the provisions of Regulation 10(d) of CBLR, 2018. In this regard, the inquiry officer held that the aforementioned non-compliances, such as mis-declaration of goods, violation of RE-44 rules, violation of provisions of BIS/ETA norms were only unearthed after 100% examination of container No. KOCU4976569 (40") imported vide Bill of Entry No. 8766607 dated 14.11.2023, by CIU officers under observation by the Panchas. The IO also observed that there are no circumstantial or corroborative evidence available on record to prove that the Customs Broker was having prior knowledge of the discrepancies or that the Customs Broker had connived with the importer. In the absence of any pre knowledge about such discrepancies, there is nothing for the Customs Broker to advise his client. Moreover, on perusal of statement dated 06.08.2024 deposed by Shri. Imran Anis Gheewala, Proprietor of M/s Good Luck Enterprises before the IO, it is noticed that he has accepted that he was informed with all the procedural norms related to this import by the Customs Broker. I find that the IO has placed reliance on the following case laws:-

- (i) **Hon'ble CESTAT Chennai Bench in the case of Tuticorin Vs. Moriks Shipping and Trading (2008) ELT 577(Tri-Chennai)**
- (ii) **Hon'ble CESTAT Principal Bench of New Delhi in the case of M/S TRINITY INTERNATIONAL APPELLANT FORWARDERS VS. COMMISSIONER OF CUSTOMS (PREVENTIVE) CUSTOMS APPEAL NO. 54942 OF 2023**
- (iii) **Hon'ble Delhi High Court in the case of Kunal Travels (Cargo) Vs CC, 2017(354) ELT 447**

29.1 I have also considered the submissions of the CB in this regard. The CB submitted that “the CHA is not an inspector to weigh the genuineness of the transactions. The CB is a processing agent of documents with respect of clearance of goods through customs. The CB has a limited liability to file import documents as per the instructions of the importer. The liability of advice/inform cannot be extended to the truthfulness of the declaration vis-à-vis the actual goods imported, for which the liability rests with the importer”. Under the facts and circumstances of the case and having taken into cognizance the findings of the inquiry officer, the defense submissions of the CB and the various case laws relied upon by them I am not inclined to establish the charge of violation of regulation 10(d) of CBLR, 2018 levelled against the CB and hence I approve the conclusion of inquiry officer and held that the said charge is sustainable dropped by the inquiry officer.

30. The second charge levelled against the CB is violation of Regulation 10(e) of CBLR, 2018, *ibid*. I find that the IO has observed that from the facts of the case, it appears that there are some discrepancies with regard of the ETA Certificate used and the CB had been careless regarding uploading complete documents related to the import. Since the obligations under Regulation 10(e) mentions that the CB should exercise due diligence in

processing of the import/export documents provided to him by his client; to that extent, IO considered that the CB has violated the provisions of Regulation 10(e) of Customs Brokers Licensing Regulations (CBLR), 2018. I find that the CB, in their defense, has submitted, "that there is no findings that they had given any incorrect information to the importer firms in the process adopted for the clearance of the goods at the Customs Station or in any manner abetted the importer firm in wrongful act or omission". I have also perused the case laws relied upon by the CB in this regard viz (i) Kunal Travels (Cargo) vs. Commissioner of Customs (Import & General), 2017 SCC Online Del 7683) and (ii) D S Cargo Agency vs. Commissioner of Customs on 25 September, 2023.

30.1 Having perused the facts of the case, I do not find any merits in the defense submission of the CB, whereas the findings recorded by the inquiry officer are more justifiable and logical. Hence, the benefit of doubt cannot be given to the CB and the above cited case law by the CB would not come to the rescue of them. The factual matrix of the present case clearly demonstrate that the CB failed to exercise due diligence while filing the said B/E and they also failed to inform the discrepancy in respect of the ETA certificates, to the customs authorities until the same was found by CIU, NCH. It clearly shows that the CB was not diligent in checking whether the information provided by them, related to proper ETA certificates and BIS certificates, was correct or not, which resulted in violation of various statutory rules/norms. It is the primary role of CB to verify all the necessary documents before filing the B/E. The CB has an important role with respect of the filing of documents and clearance of the goods. A lot of faith has been placed on the CB by the Customs authorities in the era of trade facilitation and RMS facilitation. The

failure on the part of the CB, to fulfill the obligations specified under regulation 10(e) of CBLR, 2018 shows their lackadaisical approach towards their responsibility to see that their client comply with the provisions of the Customs Act, 1962, follow laid down procedure and neither they brought the fact to the notice of the Customs staff on duty. Hence, I am of the firm opinion that the charge of Violation of the Regulations 10(e) of CBLR, 2018 is sustainably proved.

31. The third charge levelled against the CB is violation of regulation 10(m) of CBLR, 2018, *ibid.* I find that the IO observed that right from the beginning of investigation, starting from the time detailed examination of the goods under panchanama proceedings by CIU officers on 18.11.2023, the CB's representative was present and cooperated with investigation authorities and there is no case of importer or any other person having complained about the inefficiency or delay in clearance of the imported goods by the CB. Further the CIU report fails to bring forward necessary evidences to point out that the CB had any direct or indirect role in the alleged mis-declaration of the imported goods. Accordingly, the IO has held that the charge of violation of regulation 10(m) is 'not proved'. I have also gone through the defense submission of the CB in this regard, which stated that "there is nothing on record to prove the allegation that the CB has not performed their duties with speed and efficiency; neither did the importer complaint to the Department about any delay or inconvenience on the part of the CB; the charge of violation of Regulation 10(m) of CBLR 2018 is not only arbitrary but also blatantly illegal; no presumptions of connivance of CB can be made without proper evidence".

31.1 Under the facts and circumstances of the case, I do not find any

substantial evidence to establish the charge of violation of regulation 10(m) of CBLR, 2018 levelled against the CB. Establishing the charge only on presumption and assumptions will be unsustainable in the eyes of law. I approve the conclusion of the IO and I am not inclined to arbitrarily establish the charge of violation of regulation 10(m) of CBLR, 2018, hence the same is dropped.

32. The fourth charge levelled against the CB is violation of Regulation 10(n) of CBLR, 2018, *ibid*. I find that the IO has observed that IO stated that it is a settled law that the Customs Broker is not required to physically go to the premises of the client to ensure that they are functioning at the premises. The same can be ascertained online through government issued IEC No., GSTIN, Aadhar etc. Accordingly, the IO concluded that the charge of violation of regulation 10(n) is not proved. I have also gone through the defense submission of the CB. I find that there is force in submission of the CB. I have also perused the case laws relied upon by the IO as well as the CB.

32.1 I find that the IEC certificate, GSTIN and the identity of the importer M/s. Good Luck Enterprises, is not disputed in the present case. I find that the charge of violation of regulation 10(n) has been levelled against the CB on the ground that during the search conducted by CIU, NCH on 23.11.2023, Mr. Imran Anis Gheewala, Proprietor of importer M/s Good Luck Enterprises was not found at his registered address. Having perused the statement of Mr/ Imran Anis Gheewala dated 19.12.2023, I find that he has changed his address and he did not inform the same to the CB. Also, I find that the CB submitted that "the KYC of the importer is properly verified at the time of the first import i.e. 3 years back. All the KYC documents were also submitted to the Customs authorities and Regulation

10(n) does not provide anywhere that the customs clearing agent has to verify the address of the importer before import of every consignment.” The CB placed reliance on the case law of **M/s. B.K. clearing Agency vs. Commissioner of Customs (Administration & Airport), Kolkata-Customs Appeal No. 75018 of 2022**. I find that the said case law is squarely application to present case. Hence, considering all these facts I am of the considered opinion that the physical existence of the importer is not disputed and hence the charge of violation of regulation 10(n) of CBLR, 2018, levelled against the CB, cannot be sustainably proved. Hence, I am inclined to drop the same.

33. The fifth charge levelled against the CB is violation of Regulation 13(12) of CBLR, 2018, *ibid*. I find that the said charge has been levelled against the CB on the ground that Sh. Sachin Dattatraya Bhagat, Executive of the CB, was duly informed by the Gate Customs Officer/Hawaldar regarding CIU hold on Container No. KOCU4976569 (40”) and despite CIU hold he took the container back from MOD gate No.1 and played the role of accomplice in the whole incident. It shows the misconduct on the part of CB; thereby violating the provisions of Regulation 13(12) of CBLR, 2018. I find that the IO, in this regard, has observed that that only one officer Shri Sunil B Nandanwar, Preventive Officer knew that there was a CIU hold on the said container. In fact, it is on record that he was not present at MOD Gate-1 from the beginning when the container was stopped. In the absence of substantial corroborative evidence it would be difficult to establish that the CHA (Shri Sachin Dattatraya Bhagat) was having information about the CIU hold when the container was stopped at the MOD Gate. Furthermore, Shri Haripal Singla, Appraiser Docks, in his statement dated 13.12.2023 has

himself admitted that he instructed the CHA (Shri Sachin Dattatraya Bhagat) to cut open the seal of the said container and de- stuff the goods. Hence, the IO observed that Shri Sachin Dattatraya Bhagat, Executive, AMC Logistics India P Ltd. (Custom Broker) was not knowing the reason of stopping the container. While he later engaged in de-stuffing container after receiving direct and clear instruction from Custom Officer, Shri Haripal Singla (Appraiser Docks). Thus, IO held that the charges of violation of Regulation 13(12) of Customs Brokers Licensing Regulations (CBLR), 2018 is 'Not Proved'.

33.1 Under the facts and circumstances of the case I find that there is nothing on record which can establish any nexus between the importer and Sh. Sachin Dattatraya Bhagat, Executive of the CB. Also, no mens rea on the part of Sh. Sachin Dattatraya Bhagat, in his personal capacity, has been brought on record which can indicate the failure of the CB to conduct supervision of their employee. I find that the CB was well aware of all the actions of Sh. Sachin Dattatraya Bhagat during the present case. I do not find any corroborative evidence or statement to conclude that the CB had not performed their obligation to exercise supervision of their employee Sh. Sachin Dattatraya Bhagat, to ensure his proper conduct. Hence, I am of the considered view that the charge of violation of regulation 13(12) of CBLR, 2018, cannot be sustainably proved and I approve the conclusion of the IO to hold that the said charge is not established.

34. I find that the CB has preferred an appeal before the Hon'ble CESTAT Mumbai against the suspension continuation order no. 40/2023-24 dated 11.01.2024, of their license. The Hon'ble CESTAT vide order dated 04.11.2024 held that:-

“10. On the basis of the above discussion and analysis of the decision in the judicial forum, we are of the considered view that the impugned order providing for continuation of the suspension of the appellants’ CB license does not survive the legal scrutiny. We accordingly modify the impugned order dated 11.01.2024, by setting aside the suspension of the CB license of the appellants only, as indicated in paragraph 15.1 of the impugned order. The other part of the impugned order at paragraph 16, relating to proceeding to be initiated under Regulation 17 of CBLR, 2018 shall continue in accordance with law. The Principal Commissioner (General), NCH, Mumbai Zone-I shall issue necessary order immediately allowing operation of the CB license of the appellants”

35. I find that in the instant case, the CB license was suspended under Regulation 16(1) of CBLR, 2018. Also, by following the Principle of Natural Justice and granting an opportunity of personal hearing to the CB, the suspension of CB license was continued under Regulation 16(2) of CBLR, 2018, pending inquiry proceedings. I find that for the violation of obligations provided under regulation 10(e) of CBLR, 2018 and for their act of omission and commission, the CB M/s. AMC Logistics (India) Pvt. Ltd. (CB No. 11/196) has rendered themselves liable for penal action under CBLR, 2018. Hence, while deciding the matter, I rely on the following case laws:

a) *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:*

“the CHA occupies a very important position in the Custom House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interest of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as

well as by the government agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations”.

b) **The Hon’ble CESTAT Delhi in case of M/s. Rubal Logistics Pvt. Ltd. Versus Commissioner of Customs (General)** wherein in (para 6.1) it is opined that:-

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

36. Further, with regard to the timelines prescribed under Regulation 17 of CBLR, 2018, relying on the following case laws, I observe that the timelines under CHALR/CBLR, are directory in nature and not mandatory:

a) **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 (Born.), 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."

(b) The Hon'ble High Court of Telangana, in the matter of M/S. Shasta Freight Services Pvt Ltd vs Principal Commissioner Of Customs, [Writ Petition No. 29237 of 2018] held that:-

"42. Therefore, if the tests laid down in Dattatreya Moreshwar, which have so far held the field, are applied, it would be clear (i) that the time limit prescribed in Regulation 20 (7) is for the performance of a public duty and not for the exercise of a private right; (ii) that the consequences of failure to comply with the requirement are not spelt out in Regulation 20(7) (iii) that no prejudicial consequences flow to the aggrieved parties due to the non-adherence to the time limit; and

(iii) that the object of the Regulations, the nature of the power and the language employed do not give scope to conclude that the time limit prescribed is mandatory. Hence, we hold that the time limit prescribed in Regulation 20 (7) is not mandatory but only directory."

37. As discussed above, I conclude that the CB is guilty of violations of regulation 10(e) of CBLR, 2018. However, considering all the facts and circumstances of the case, I am of the view that revoking the CB license and forfeiture of security deposit, is too grave a penalty to be imposed for the above violations, as the punishment of revocation of license is much harsh and disproportionate to the offences committed. Also, it is pertinent to note

here that the license of the CB is already under suspension for almost 11 months i.e. since 20.12.2023 and the CB has been unable to work for these 11 months and thus been already penalised in this manner. The ends of justice will be met by revoking the suspension of the CB license and imposing a penalty, on the CB, under Regulation 18 of CBLR, 2018. In this regard, I place reliance on the following case laws:

a) Delhi High Court has in case of Falcon Air Cargo and Travels (P) Ltd [2002 (140) ELT 8 (DEL)] held as follows:

"13. By order dated 15-7-2000, licence was revoked. It is not clear how there could be revocation when the licence itself was not functional after 13-1-2000. Licence can be suspended or revoked on any of the grounds as mentioned in Regulation 21. It is, therefore, clear that if any of the grounds enumerated existed, two courses are open to the Commissioner. One is to suspend the licence and the other is to revoke it. Suspension would obviously mean that licence would be for a particular period inoperative. An order of revocation would mean that licence is totally inoperative in future, it loses its currency irretrievably. Obviously, suspension/revocation, as the case may be, has to be directed looking to the gravity of the situation in the background of facts. For minor infraction or infraction which are not of very serious nature order of suspension may suffice. On the contrary, when revocation is directed it has to be only in cases where infraction is of a very serious nature warranting exemplary action on the part of the authorities, otherwise two types of actions would not have been provided for. Primarily it is for the Commissioner/Tribunal to decide as to which of the actions would be appropriate but while choosing any of the two modes, the Commissioner/Tribunal has to consider all relevant aspects and has to draw a balance sheet of gravity of infraction and mitigating circumstances. The difference in approach for consideration of cases warranting revocation or suspension or non-renewal has to be borne in mind while dealing with individual cases. In a given case the authorities may be of the view that non-renewal of licence for a period of time would be sufficient. That would be in a somewhat similar position to that of suspension of licence though it may not be so in all cases. On the other hand, there may be cases where the authorities may be of the view that licensee does not deserve a renewal either. Position would be different there. Though we have not dealt with the question of proportionality, it is to be noted that the authorities while dealing

with the consequences of any action which may give rise to action for suspension, revocation or nonrenewal have to keep several aspects in mind. Primarily, the effect of the action vis-a-vis right to carry on trade or profession in the background of Article 19(l)(g) of the Constitution has to be noted. It has also to be borne in mind that the proportionality question is of great significance as action is under a fiscal statute and may ultimately lead to a civil death."

b) Delhi High Court has in case of Ashiana Cargo Services[2014 (302) ELT 161 (DEL)] held as follows:

"11. Viewing these cases, in the background of the proportionality doctrine, it becomes clear that the presence of an aggravating factor is important to justify the penalty of revocation. While matters of discipline lie with the Commissioner, whose best judgment should not second-guessed, any administrative order must demonstrate an ordering of priorities, or an appreciation of the aggravating (or mitigating) circumstances. In this case, the Commissioner and the CESTAT (majority) hold that —there is no finding nor any allegation to the effect that the appellant was aware of the misuse of the said G cards, but do not give adequate, if any weight, to this crucial factor. There is no finding of any mala fide on the part of the appellant, such that the trust operating between a CHA and the Customs Authorities (as a matter of law, and of fact) can be said to have been violated, or be irretrievably lost for the future operation of the license. In effect, thus, the proportionality doctrine has escaped the analysis.

c) In the case of ACE Global Industries [2018 (364) ELT 841 (Tri Chennai)], Hon'ble Tribunal observed as follows:

"6. We are unable to appreciate such a peremptory conclusion. The CBLR, 2013 lays down that stepwise procedures are to be followed before ordering any punishment to the Customs broker. True, the said regulations do contain provisions for revocation of the license and for forfeiture of full amount of security deposit, however these are maximum punishments which should be awarded only when the culpability of the Customs broker is established beyond doubt and such culpability is of very grave and extensive nature. In case of such fraudulent imports, for awarding such punishment, it has to be established without doubt that the Customs broker had colluded with the importer to enable the fraud to take place. No such culpability is forthcoming in respect of the appellant herein. On the other hand, the Inquiry Officer, appointed under CBLR, 2013, has opined that there is no substantive case to level charges violation of Regulation 11(a), (b), (n), (e) & (k) of

the CBLR, 2013. The Inquiry Officer has in fact clearly stated that he has not found anything substantial that can merit proposing revoking the license of the appellant or imposing the penalty. The Inquiry Officer has categorically reported that at the most, appellant may be given a strict warning."

d) **Hon'ble CESTAT, Mumbai in the matter of Setwin Shipping Agency Vs. CC (General), Mumbai – 2010 (250) E.L.T 141 (Tri.-Mumbai)** observed that *"it is a settled law that the punishment has to be commensurate and proportionate to the offence committed"*.

38. Further, I find that the CB vide their submissions dated 07.11.2024, furnished at the time of personal hearing, stated that *"nearly one year has passed since the suspension of their CB license. The firm is languishing in limbo, with severely impacting the livelihood of their employee/staff and their innocent dependents."* In this regard, I rely on the judgement of **Hon'ble CESTAT Mumbai in the case of Friends Syndicate Clearing Pvt Ltd vs Commissioner Of Customs-Mumbai** which observed as follows:

"4.16 We also take note of the following submissions made by the appellant which have not been disputed by the revenue authorities:-

-They have been performing as CB for nearly 40 years and have developed goodwill for their firm in trade. They have performed their functions throughout as Custom Brokers with utmost care and diligence, and their past record is evidence for their goodwill, integrity and efficiency in handling the customs related works. → They have branches spread across the country and employ a large number of persons for supporting their business at various ports in India. The order of revocation of their license will not only be harsh on them but will deprive all the persons employed by them from their livelihood."

39. In view of the above judgements and the "Doctrine of Proportionality" which propagates the idea that a punishment for an offence should be proportional to the gravity of the offence, I am not inclined to revoke the

license of the CB and forfeit the security deposit furnished by the CB at the time of issuance of their license. However, for their acts of omission and commission, the CB M/s. AMC Logistics (India) Pvt. Ltd. (CB No.11/196) 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(e) of CBLR, 2018 and the interest of justice would be met by imposition of penalty under Regulation 18 of CBLR, 2018. Accordingly, I pass the following order:

ORDER

40. 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 revoke the suspension of CB License held by M/s. AMC Logistics (India) Pvt. Ltd. (PAN no. AAFCA4538D, CB No. 11/196), which was ordered vide order no. 38/2023-24 dated 20.12.2023 and continued vide order no. 40/2023-24 dated 11.01.2024

(ii) I, hereby impose penalty of Rs. 30,000/- (Rs. Thirty Thousand Only) on M/s. AMC Logistics (India) Pvt. Ltd. (PAN no. AAFCA4538D, CB No. 11/196) under Regulation 18(1) 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.


(Rajan Chaudhary)

Principal Commissioner of Customs (G)
NCH, Mumbai-I

To,

M/s. AMC Logistics (India) Pvt. Ltd. (CB No. 11/196),
1st Floor, 239 Rupam Building,
Opposite GPO, P D'Mello Road,
Fort, Mumbai-400001

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. CIUs 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 circulate among all the concerned.
9. Cash Department, NCH, Mumbai.
10. Notice Board
11. Office Copy