



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/ACTN/31/2021-CBS आदेश दिनांक/Date of Order: 06.03.2025

CAO No.81/2024-25/CAC/PCC(G)/RC/Adj-CBS जारी दिनांक/Date of issue: 06.03.2025

DIN: 2025037700000000F56F

द्वारा जारी : राजन चौधरी

Issued By : **Rajan Chaudhary**

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, 129 की धारा 1962A(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 नियमावली (कार्यविधि), १९८२, के प्रावधानों के अंतर्गत, यथोत्खंडपीठ में स्वीकार्य है।

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

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

DRI, Mumbai के संदर्भ में जारी आदेश क्रमांक A/86617-86619/2018 दिनांक के 31.05.2018 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 नियमावली (अपीलस), १९८२ के नियम में 2 के उपनियम 3 के तहत निर्धारित है एवं उसी नियमावली के नियम 6 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-/1000 .पाँच लाख या इस से कम होतो रु ., (ii)यदि यह राशि रु) एवं -/5000 .पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न होतो रु .iii) यदि यह राशि रुके शुल्क -/10000 .पचास लाख से अधिक होतो रु . 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, के तहत निर्धारित 6 की अनुसूची मद 1870 50 .रुका 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.

BRIEF FACTS:-

M/s H.G. Mehta & Co. Pvt. Ltd., Office No. 15, 3rd Floor, Friends Union Premises Co-operative Society Ltd., 227, P.D' Mello Road, Near GPO, Mumbai-400001 (hereinafter referred to as the Customs Broker/CB), bearing PAN based Registration No. AAACH8142HCH001, holding of a regular Custom Broker License No 11/362 issued by Commissioner of Customs, Mumbai under Regulation 9(1) of the Customs House Agents Licensing Regulations (CHALR), 2004 (Now regulation 7(2) of Customs Broker Licensing Regulations, 2018).

2. An offence report, in the form of Show Cause Notice F.No. DRI/AZU/SRU-7/2018-Ramnklal/Pt-1 dated 22.10.2020, was received from Pr. ADG, DRI, Ahmedabad Zonal Unit (AZU) wherein it was revealed that M/s Ramniklal & Sons, 62/64, Zaveri House, Hughes Road, Mumbai-400 007 (IEC No. 0388094702) (hereinafter referred to as M/s Ramniklal Sons) was indulged in misuse of the Advance Authorization Scheme in violation to the provisions of Foreign Trade Policy 2015-20 and the conditions of Notification No. 18/2015-Cus Dated 01.04.2015 by diverting the duty free imported goods to local market without payment of applicable Customs duties. Intelligence further indicated that the above said firm was a partnership firm where Shri Sanjiv Ramniklal Dhanak and Shri Laxmikant Deenanath Jaiswal were the partners of the said firm.

3. Intelligence further indicated that M/s. Ramniklal & Sons, Mumbai had obtained licenses under Advance Authorization Scheme under Notification No. 18/2015-Cus. dated 01.04.2015 from DGFT, Mumbai in terms of Paragraph 4.03 of the Foreign Trade Policy 2015-2020. The items allowed to be imported against the said authorizations were LDPE/LLDPE/HDPE/PVC Resins of different grades and Copper Rods and the items allowed to be exported against the said Authorizations Were Articles Made up of LDPE/LLDPE/ HDPE/PVC Compound and Copper wire. In the instant matter, the supporting

manufacturer for process of LDPE/ LLDPE/HDPE Granules / PP/PVC Resin had been declared as M/s Crocus Enterprises [IEC-3012014721], 2888/2, B-23, Street No. 5, Link Road, Samrala Chowk, Ludhiana, Punjab-141 008 and supporting manufacturer for process of Copper Rods had been declared as M/s Maks Technologies (IEC-3113017076), 1361, H. No. B/2/4, H. 1572, Milkat No. 2/596, Pune Nagar Road, Wagholi, Haveli, Pune-412 207. However, the said firm indulged in diversion of LDPE/LLDPE/HDPE/PVC Resins of different grades and copper rods imported duty free under Advance Authorization Scheme into local market.

4. During the course of search proceedings, simultaneous searches were also conducted by the officers of Directorate of Revenue Intelligence and the Officers of Pune Customs at different premises on 11.04.2018. Shri Sanjiv Ramniklal Dhanak, Partner of M/s Ramniklal & Sons, Mumbai was requested on 09.07.2018, 12.07.2018 through letters and through email sent on 13.08.2018 to arrange somebody at the premises 62/64, Zaveri House, NS Patker Marg, Hughes Road, Mumbai, so that search proceedings could be conducted. Thereafter, the shop premises were searched on 16.08.2018 by the investigating agency. During the search at the shop, some documents which were incriminating in nature, were withdrawn during the Panchnama dated 16.08.2018. During the course of Panchnama, on being asked by the officer to comment over the seized documents, Shri Sanjeev Ramniklal Dhanak informed that they i.e. M/s. Ramniklal & Sons have imported duty free goods viz. LDPE/LLDPE/PVC Resins/Copper Rods under Advance Authorization Scheme during the period from May-2016 to March-2018. All of the goods imported under Advance Authorization Scheme had been diverted/sold in local market.

4.1 Some of the imported goods had been sold in open market with cover of invoices and some of the goods had been sold without cover of invoice. The goods which had been sold in open market with cover of invoices were incorporated in the ledger which had been resumed during the course of panchnama. As per the said ledger, it was clear that they had

sold duty free goods imported under Advance Authorization Scheme having value Rs.15,14,03,850/- to various buyers. On being asked as to whom these duty free goods had been sold in cover of those invoices, he told that those goods were sold to M/s. Mahavir Polyfilms Pvt. Ltd. and M/s. Gemsouk Jewellers Pvt. Ltd. and the sales invoices of related transactions had already been resumed/seized during the course of the panchanama dated 16.08.2018. On further being asked regarding the details of other buyers who had purchased the remaining duty free goods which had been imported under Advance Authorization Scheme, he stated that all those dealings of sale and purchase had been done by Shri Viral Mehta, his brother-in-law. He must know about those buyers. He further informed that he was only doing signature on papers as per direction of Shri Viral Mehta. He did not know the name of the buyers.

4.2 It appeared that no manufacturing activities were carried out at any of the declared premises of supporting manufacturer of M/s Ramniklal & Sons, Mumbai viz at the premises of M/s Crocus Enterprises, Ludhiana and at factory premises of M/s Maks Technologies, Pune and no physical stock of imported PP/LDPE/LLDPE/HDPE/PVC Resins/Copper Rods were available at any of the declared premises of supporting manufacturer of M/s Ramniklal & Sons, Mumbai.

5. Statement of Shri Sanjiv Ramniklal Dhanak, Partner of M/s Ramniklal & Sons recorded on 02.05.2018, 03.05.2018, 11.03.2019 and 24.06.2019 under section 108 of Customs Act 1962, on being asked he inter-alia stated that: -

- that initially, his firm was engaged in manufacturing of gold & diamond jewellery and import & export of Cut & Polished Diamonds, diamond jewellery. Since the year 2012-2013, they were suffering with financial crunch and thereafter he planned to generate income illegally by selling the duty free imported goods in open market. Thereafter, they imported duty free goods viz. LDPE/LLDPE/HDPE/PVC Resins/Copper Rods under licenses under Advance Authorization Scheme and sold

the same in open market on commission basis. He stated that initially, his firm was engaged in manufacturing of gold & diamond jewellery and import & export of Cut & Polished Diamonds, diamond jewellery. Since his firm was a one-star Export House Status Holder, it was convenient for them to get licenses issued under Advance Authorization Scheme from DGFT, Mumbai. On issuance of licenses under Advance Authorization Scheme, they engaged in the import of raw materials/input namely LDPE/LLDPE/HDPE/PVC Resins of different grades and copper Rods under Advance Authorization Scheme.

- that the premises M/s. Crocus Enterprises (Proprietor Sh. Amrit Lal Garg S/o Sh. Parsina Mal, R/o 3109 Sec 38 Urban Estate, Chandigarh Road, Ludhiana), Ludhiana shown as Supporting manufacturer was a shop having, dimensions 9.5'x14' only, taken on rent for 11 months from 23.05.2016 by Shri Amrit Lal Garg and he occupied the shop only for 2 months and surrendered the shop after that. He further stated that no machine or plant was installed and no manufacturing activity ever took place in the said shop. The said premises were fake premises only. The address where the premise of M/s. Crocus Enterprises was shown in the licenses under Advance Authorization Scheme was fake/ non-existent. He stated that the aforesaid premise of M/s. Crocus Enterprise, Ludhiana was a fake & dummy premise. No Physical existence of the said unit was there on the said premises.
- as regards to M/s. Maks Technologies, Pune, he stated he had done the agreement with Shri Nilesh Jain, owner of M/s. Maks Technologies as a Supporting manufacturer of goods. He was introduced to Shri Nilesh Jain by Shri Viral Mehta at CCI Club, Mumbai and thereafter they did the agreement. Initially their plan was to do the export after manufacturing in the said premises but later on

manufacturing/processing of imported goods were not done in the said premises of M/s Maks Technologies and decided to divert duty free copper rods in open market.

- that the name of Customs House Agents (CHA) involved in the import & export of his firm; he stated that his CHAs for imports were (i) M/s. OV Shipping Agencies, (ii) M/s. HG Mehta & Company Private Limited, (iii) M/s. Shakti Forwarders Pvt. Ltd., (iv) M/s. KT Desai Clearing & Forwarding LLP, (v) M/s. AM Logistics, (vi) M/s. Indian Shipping Services and (vii) M/s. Aggressive Shipping Agencies. CHA for exports for diamonds products were (i) M/s. Lemuir, (ii) M/s. BB Chenaiye both located at BKC, Mumbai. Moreover, he carefully stated that they had not done any export (even single consignment) of goods manufactured out of duty free LDPE/LLDPE/ HDPE/PVC Resins/Copper Rods. On being asked, he stated that he used to give instructions to CHAs for doing Customs clearances of duty free import consignments.

- that regarding the goods viz. LDPE/LLDPE/HDPE/PVC Resins/Copper Rods which had been imported duty free under licenses issued under Advance Authorization Scheme, he stated that the goods which had been imported under licenses under Advance Authorization Scheme were sold in open market under Commission basis. These goods had been diverted to some other places than the premises registered in IEC or shown as supporting manufacturers. Moreover, around 300 MTs of Copper Rods were delivered at M/s. Maks Technologies which had been further diverted/sold in open market from there without any manufacturing/processing as per his instructions. Other than that, around 1000 MTs. Copper Rods cleared duty free under Advance Authorization from Arshiya SEZ, and Kandia Customs Bonded Warehouse had been diverted directly to Delhi.

Bhiwandi, Surat through brokers from the place of import as per his instructions. Further on being asked he stated that approx. 325 MTs. Copper Rods imported duty free under Advance Authorization had been diverted by him in Mumbai to different brokers.

- he further confessed/admitted that they had sold the imported duty free LDPE/LLDPE/HDPE/PVC Resins/Copper Rods through Brokers in open market at the Commission of Rs 7/- to Rs. 9/- per Kg. He had sold these goods in open market intentionally in order to earn easy money. He had taken his full responsibility for contravening the conditions of Notification No. 18/2015-Cus dated 01.04.2015 by way of selling/diverting duty free goods imported under licenses issued under Advance Authorization Scheme in open market without manufacturing/processing that in the registered factory premises.
- that when asked regarding port from where import & export had been done in India, he stated that they had done import from JNCH Port, Arshiya (FTWZ), Oil Field Warehouse & Services Ltd., Mundra SEZ & Customs Bonded Warehouse, Kandla. In regards of export, it was stated that they had done exports of only polished diamonds from BDB located at BKC Market.
- that regarding the payment of outstanding duty liabilities, he confessed the outstanding duty liabilities of Rs. 64.00 Crores, he assured that he would pay the Customs duty of Rs. 2.00 Crores till July-2018 and thereafter, he would pay the rest of duty along with appropriate interest & penalty at the earliest.

- that he reiterated that all transactions with buyers, sellers & transporters of the duty free imported goods were done on the instructions given by his brother in law Shri Viral Mehta. He had followed his instructions in good faith.
- that regarding the modus of evasion of Customs duty, he stated that he was suffering with financial crunch since the year 2015-16. Then he planned to earn money by selling duty free goods imported under licenses under Advance Authorization Scheme. Since he had already exported polished diamonds, his FOB value for exports was much higher which helped him to get DEEC licenses from DGFT easily being a one star Export House status holder. He conspired with Shri Viral Mehta and planned to do duty free import under licenses under Advance Authorization Scheme and sold the same goods in open market on commission basis. Thereafter, they imported goods viz. LDPE/LLDPE/HDPE/PVC Resins/Copper Rods under licenses under Advance Authorization Scheme and sold the same in open market with the help of Shri Viral Mehta. Arrangement of buyers and arrangement of transporters were done by Shri Viral Mehta. After the arrangement of the same, he used to give instructions to the transporters to deliver the goods at Bhiwandi/Delhi/Mumbai/Ahmedabad other than the premises registered under DEEC Licenses or IEC.
- that when asked the name of the buyers of those duty free goods which had been imported under Advance Authorization Scheme, he stated that the information which he had gathered till date, those buyers were Shri Minesh Shah (M/s. Eskey Bee Intl. Pvt. Ltd) and Shri SundeepSanghavi (M/s. Mahavir Poly films).

- that they had no business relation with M/s. Sun Sea Marketing, M/s. Sai International, M/s Nirantar, M/s. Salasar Traders, M/s. Nishi Wires & Cables Industries, M/s. SJ Overseas, M/s. ShreenakodaVitta India P Ltd, M/s. Raj Traders and M/s. Appolo Industries. On being asked about the modus of arranging of funds to these firms so that they subsequently transferred equivalent amount in account of M/s Ramniklal & Sons, Mumbai, he stated Mr. Viral Mehta, Proprietor of M/s Nirantar and Shri SundeepShanghavi, Director of M/s Mahavir Polyfilms Pvt Ltd. were the key persons for making arrangement of funds from these firms. He did not know how they managed to arrange funds from these firms. As and when they received amount in their firm's account from these firms, they used to inform about the receipt to Mr Viral Mehta, Proprietor of M/s Nirantar, and as per directions of Mr Viral Mehta, Proprietor of M/s M/s Nirantar, they used to transfer amounts to various parties like CHAs, transporters, overseas suppliers etc.
- that when asked about the reasons of various transactions held in their accounts with those firms/companies with which they had not made any business, he stated that M/s Ramniklal & Sons, Mumbai had arranged to transfer amount through NEFT/RTGS from those firms/companies to their account to pay to various overseas parties, high sea sellers, transporters, CHAs who were involved in import of duty free imports by them. He stated that Mr. Viral Mehta, Proprietor of M/s Nirantar and Shri Sundeep Shanghavi, Director of M/s Mahavir Polyfilms Pvt Ltd. were the key persons who managed and arranged to transfer funds from firms with which they had no business transactions, in the accounts of their firm.

6. Statement of Nilesh Pravin Kumar Jain, Partner of M/s Maks Technologies, recorded on 27.04.2018 and 08.11.2019 under Section 108 of the Customs Act, 1962 on being asked he inter-alia stated that: -

- he had been shown statement dated 11.04.2018 of Shri Sanjay Rasal, Manager of M/s. Maks Technologies and He had gone through the contents of the said statement and he agreed with the contents mentioned in the said statement dated 11.04.2018. He put his dated signature on last page of the said statement in token of having seen and agreed upon that Panchnama.
- his firm M/s. Maks Technologies was engaged in drawing of Copper Rods and platings from 8 MM to 43 Gauge. On being asked regarding any other firm where he was the director/proprietor/partner, he stated that he did not have any other manufacturing units other than M/s. Maks Technologies. However, he was also doing business in Pharma Sector by way of retail Shop (6-7 Shops) in the name of "NOVA CURE" located at Pune, Bhavnagar and Ajmer. On being asked, he further stated that his firm was maintaining bank account No. 60133899543 at Bank of Maharashtra, Chaturshingi Branch, Pune.
- regarding business/relation with M/s. Ramniklal & Sons, 62/64, Zaveri House, Hughes Road, Mumbai, he stated that he came in contact with Shri SanjivDhanak, Owner of M/s. Ramniklal & Sons in the year 2014-15 in a cricket club in Pune. Thereafter, they agreed for doing business in Metal Commodities since it seemed to be a more profitable business by that time. Initially, it was planned to do export against the duty-free imports under Advance Authorization Scheme. Accordingly, they signed an agreement for manufacturing of the goods where M/s Maks Technologies had to manufacture the goods as a supporting manufacturer. Accordingly, M/s Maks Technologies had been shown as supporting manufacturer in the DEEC licenses issued to M/s Ramniklal & Sons from the DGFT Mumbai.

- regarding the duty free imported goods which have been brought in his factory premises for doing Job Work from M/s. Ramniklal & Sons, he stated that they had received approx. 300 MTs of Copper Rods for Job Work from M/s. Ramniklal & Sons during the period from June-2016 to Oct-2016. Thereafter, the said goods were sold in open market without doing any processing/manufacturing in his factory premises. They had sold those duty free imported goods in open market and payment against the same had been taken in cash from the buyers.
- regarding the details of the buyers of these goods, he stated that name of the buyers to whom those duty free goods had been sold was Shri Joginder, Delhi, Shri Amar, Delhi, Shri Raju, Surat and Shri Pyar Chand, Surat. Further, he stated that they had sold the duty-free goods to those buyers as per instructions received from Shri Sanjiv Dhanak. On being asked regarding the address & Mobile No. of those persons, he stated that those were the brokers in Metal Commodity and their Mobile No. would be provided within 2-3 days, he was not having those numbers.
- about the consignment wise details of firms/persons, who had purchased the nearly 1869 MTs of duty free imported goods of M/s Ramniklal & Sons, he stated that they had cleared those duty free goods of M/s Ramniklal & Sons as per directions of Shri Viral Kanubhai Mehta who acted as broker for the said sales. He and Shri Viral Kanubhai Mehta made verbal agreement that the copper rods which would be imported under the licenses of M/s. Ramniklal & Sons would be sold in open market located at Surat/Silvassa/Delhi/Baddi and books of accounts would be managed by showing transactions through a dummy firm namely M/s. Nishi Wires & cable Industries which was operated by Shri Viral Kanubhai Mehta. Acting on the said agreement, they sold the goods in open market through Shri Viral Kanubhai Mehta

to various buyers located at Surat/Silvassa/Delhi/Baddi. As far as settling of books of accounts was concerned, as per instruction received from Shri Viral Kanubhai Mehta, they had issued invoices (from M/s. Ramniklal & Sons) of sales of Copper Wires to M/s. Nishi Wires & Cables Industries giving impression in such a way that the goods had been sold to M/s. Nishi Wires & Cables Industries.

- regarding the role of Shri Sanjiv Dhanak in those diversions of duty free goods in local market, he stated that those diversions had been done as per the directions received from Shri Sanjiv Ramniklal Dhanak.
- regarding the modus of diversions of these goods, he stated that initially duty free imported goods approx. 300 Mts. Copper Rods had been brought in his factory premises after the imports done by M/s. Ramniklal & Sons and diverted subsequently. Other than that, around 1000 MTs. Copper Rods cleared duty free under Advance Authorization from Arshiya SEZ, and Kandla Customs Bonded Warehouse had been diverted directly from the place of import by him as per the instructions received from Shri Sanjiv Ramniklal Dhanak. Further on being asked he stated that approx. 325 MTs. Copper Rods imported duty free under Advance Authorization had been diverted by Shri Sanjiv Ramniklal Dhanak himself in Mumbai.
- regarding the destination of diverted goods, he stated that these goods had been diverted in Surat, Mumbai & Delhi. Exact address was not known to him. On being asked regarding the payments done to transporters, he stated that payments had been made by him or by Shri Sanjiv Dhanak. On being asked regarding the payments received from these buyers he stated that the payments had been received in cash only by M/s. Ramniklal & Sons through Angadia.
- he stated that those invoices were fake and it was not having any relevance with the job work. Those documents were prepared just for records / to mis-lead and those

were not genuine. The fact was that they had not done any job work of any of the goods which had been brought up in his factory premises from M/s. Ramniklal & Sons. Initially they along with M/s Ramniklal & Sons planned to import copper Rods duty free under Advance Authorization and to export copper wires but due non-availability of export orders M/s Ramniklal Sons decided to divert duty free copper rods in open market. Accordingly, the entire import of copper consignment was diverted as per the instructions of Shri Sanjiv Ramniklal Dhanak in open market. Further, on being asked regarding the plan to do export for fulfillment of export obligation, he stated that they had not planned to do any export at the time of recording this statement.

- stated that those documents were forged/fake and were prepared just for documentation. In fact, no goods had been removed / cleared to any of the factory premises under the cover of those Lorry Receipts, Job Work Challans & job work invoices.
- he had been shown statement dated 25.09.2018 of Shri Pankaj M Sheth, Director of M/s H.G. Mehta & Co. Pvt. Ltd., Ballard Estate, Mumbai and he had gone through the contents of the said statement and he agreed with the contents of the statement and he put his dated signature on the last page of the said statement in token of having seen and agreed with it.
- he stated that he agreed that he managed the import consignments related to Copper Rods cleared by M/s H.G. Mehta & Co. Pvt. Ltd. and also payments were done by him to M/s H.G. Mehta & Co. Pvt. Ltd, as per directions of Shri Viral Mehta.
- about the reasons for payment done from M/s Maks Technologies, Wagholi, Pune to M/s Shakti Forwarders Pvt Ltd., M/s HG Mehta & Co. Pvt Ltd., both the CHA who including others had cleared the duty free goods of M/s Ramniklal & Sons, Mumbai, he stated that as he was the actual controller of the duty free goods and he

along with Mr. Viral Mehta already planned to divert those goods in open market hence he made payments to the liabilities of the clearance.

6.1 From the above statement of Shri Nilesh Pravin Kumar Jain, it appeared that every time he tried to deviate the investigation by stating different names of buyers of duty free imported goods of M/s Ramniklal & Sons, Mumbai without giving any documentary or other evidences so that investigation could not be proceeded against them. It also appeared that he was one of the masterminds in diversion of the duty free imported Copper Rod of M/s Ramniklal & Sons, Mumbai. He along with Shri Viral Mehta, Proprietor of M/s Nirantar hatched whole plan of importing and selling the duty free imported Copper Rods by M/s Ramniklal & Sons, Mumbai.

7. It appeared that Shri Viral Mehta, Proprietor of M/s Nirantar, was the mastermind and played vital role in diversion of duty free imported goods of Ramniklal & Sons, Mumbai. Hence in order to further investigate the matter, Shri Viral Mehta, Proprietor of M/s Nirantar was summoned on 30.01.2020 to tender his statement on 07.02.2020, however he did not appear on the scheduled date and sent a letter dated 03.02.2020 incorporating reasons of his non-appearance. Further, an opportunity was again given to him and a letter dated 13.02.2020 requesting him to fix the date as per his convenience schedule in Mumbai at DRI, Zonal Unit but he denied his appearance vide his letter dated 20.02.2020. Following the principles of natural justice, an opportunity was further given vide letter dated 04.03.2020 requesting him to tender his statement as per his convenient schedule but he did not bother to appear to tender his statement. An opportunity was further given and summon dated 26.06.2020 to appear on dated 01.07.2020 was issued but he did not respond and appear. Further a summons dated 14.07.2020 had been issued to him to appear on 24.07.2020, in response of the same, a reply dated 23.07.2020 has been received from the advocate of Shri Viral Mehta citing the reasons for non-appearance on the scheduled date. It appears that he had not co-operated in the investigation at all in the matter

of duty free import and diversion of the goods of M/s Ramniklal & Sons, Mumbai. Hence, a Criminal Complaint No. 1033/2020 against Shri Viral Mehta had been filed on 27.07.2020 in the Hon'ble Court of Addl. CJM, Vapi.

8. Proprietor of another supporting manufacturer unit M/s Crocus Enterprises, Shri Amrit Lal Garg was summoned on different dates as per addresses available with DRI, however all Summons were returned undelivered, hence investigation on this part could not be proceeded further.

9. During the course of investigation, statement of Shri Pankaj M Sheth, Director of M/s. H. G. Mehta & Co. Pvt. Ltd. recorded on 25.09.2018 under Section 108 of the Customs Act wherein he inter-alia stated that:

- He knew M/s Ramniklal & Sons, Mumbai.
- Mr. Nilesh Jain introduced him with Mr. Viral Mehta as representative of M/s Ramniklal & Sons in Aug 2016.
- On being asked about the post of Mr. Viral Mehta in M/s Ramniklal & Sons, he stated that he was informed by Mr. Nilesh Jain that Mr. Viral Mehta will contact you in future for customs clearances of import of M/s. Ramniklal & Sons.
- that he had never met with Shri Sanjiv Dhanak, Partner of M/s Ramniklal & Sons till the date of recording of the statement but he had met with Shri Veer Dhanak i.e. son of Shri Sanjiv Dhanak.
- Shri Viral Mehta was introduced to him in Aug 2016 at his office located at Dock View Building Ballard Estate, Mumbai by Shri Nilesh Jain.
- On being asked about the contents of discussion with Mr. Viral Mehta when Nilesh Jain introduced him with Mr. Mehta, he stated that they had discussed with Mr. Nilesh Jain, supporting manufacturer to M/s Ramniklal Sons in presence of Mr Viral Mehta that they were planning to import copper under licenses of advance authorization scheme of M/s Ramniklal & Sons.

- On being asked whether he had discussed about import of polymers i.e. LDPE & HDPE, PVC resin with Mr. Viral Mehta, he stated that he did not remember being very old matter.
- Mr. Viral Mehta told him that whatever imports would take place in the licenses of M/s Ramniklal & Sons, he had to clear. Further Mr. Viral Mehta had also told that he would send the licenses of M/s Ramniklal & Sons and he had to register them in NhavaSheva, Mumbai.
- On being asked how did he knew Mr. Nilesh Jain, he stated that he met Mr. Nilesh Jain in Pune in a function of a company of Shri Anil Satpute, having a company M/s Duplex Wires Pvt Ltd. and birthday of his father in 2012.
- On being asked whether Mr Viral Mehta had told him about his office, he stated that Mr Viral Mehta had told him that his office was in New Marine Lines in the name of M/s Nirantar.
- He was informed by Mr. Viral Mehta that M/s Ramniklal & Sons was in his own circle and Mr. Viral Mehta also informed that one of his relative owns M/s Ramniklal & Sons. Mr. Viral Mehta also told that the licenses would be issued in the name of M/s Ramniklal & Sons and import clearances were to be done.
- That first consignment of import of Copper was cleared in Aug 2016 for which documents were sent by Mr. Nilesh Jain. Documents sent were Bill of Lading, Invoice, packing list, High sea sale documents comprising of sale purchase letter and contract.
- That they had received KYC paper namely PAN, IEC, Export House certificate, RCMC and address proof of importer M/s Ramniklal & Sons through the peon of Mr. Viral Mehta.
- He had not verified physically details of importer M/s Ramniklal & Sons, but he knew that their showroom was situated at Hughes Road, Mumbai.

- He knew physical verification of the premises and antecedent's verification under CHA regulations is required of the importer.
- He had fulfilled the procedures under CHA regulations. M/s Ramniklal & Sons was holding star export house status; hence antecedents were implied. Apart from that, no other verification of the star export house was required as per his knowledge. However, he further stated that in the matter of verification of antecedents of M/s Ramniklal & Sons, he had not done anything else. Moreover, he also not verified the premises of supporting manufacturers i.e. M/s Crocus Enterprises, Ludhiana and M/s Maks Technologies, Pune.
- He knew M/s Maks Technologies, Pune was working but he was not aware about the functioning of M/s Crocus Enterprises, Ludhiana. Moreover, he had not tried to know about the status of M/s Crocus Enterprises, Ludhiana but Mr. Viral Mehta had provided Industrial licenses, Central Excise Registration and PAN card and forwarded to him for license registration through his peon.
- That in Aug 2016, he had registered the licenses of M/s Ramniklal & Sons for which documents viz. original Licenses, LUT Bond, Affidavit, IEC etc. were provided by Mr. Viral Mehta through his peon.
- He did not remember the number of licenses registered by him at Nhava Sheva, but he would find out and submit the same within a week's time from the date of recording of his statement. For which the payments were also done in cash by Mr. Viral Mehta.
- He had cleared 04 consignments of M/s Ramniklal & Sons, for which the clearance documents as cited earlier were provided by Mr. Viral Mehta through his peon. He submitted an Annexure A containing details of import of 04 consignments with his statement. He informed that in three consignments of polymers M/s Crocus was the

supporting manufacturer and for one consignment of copper, M/s Maks Technologies was the supporting manufacturer.

- That for one consignment of copper, they were paid by M/s Maks Technologies and for remaining three consignments, they were paid through cheques of M/s Ramniklal & Sons sent by Mr. Viral Mehta through his peon. He stated that they charged based on their clients. For 20' container, it ranged upto Rs. 7,500/- and for 40' Container; it ranged upto Rs. 10,000/-. He further stated that his company M/s. H.G. Mehta & Co. Pvt Ltd. was operating bank account No. 23205005600 maintained at Standard Chartered Bank, MG Road, Mumbai. Hence it appeared that Mr. Viral Mehta was the role model as their interaction was mostly through Mr. Viral Mehta, although for clearances, the interaction was with the staff of M/s Ramniklal & Sons.

10. It appeared, from the statement of various transporters recorded during investigation that they had not prepared bilty/LRs or prepared incorrect bilty/LRs showing destination as registered address but delivered goods at Bhiwandi or some other place, for transportation of the duty free goods of M/s. Ramniklal & Sons, Mumbai and thereby abetted the illegal diversion. Proper documentations had not been done by the aforesaid transporters while doing transportation of the duty free goods of M/s. Ramniklal & Sons, Mumbai. Some of the aforesaid transporters also transported the goods of M/s. Ramniklal & Sons, Mumbai under the cover of invoices of other companies. Internal records had not been kept, payments had also been taken from third party and some of them declined to produce the copies of fake invoices under which the duty free goods of M/s. Ramniklal & Sons, Mumbai were transported, in order to give no lead of any wrong doing for investigation.

11. It appeared that M/s Ramniklal & Sons, Mumbai was having knowledge of provisions of Customs Act, 1962 and deliberately sold the duty free goods viz.

PP/LDPE/LLDPE/HDPE/PVC Resins/Copper Rods in the local market without payment of aggregate duties of Customs, though sometimes they did prepare sales invoices in order to give a façade of legitimacy to the receipt of sale proceeds. It appears that they had contravened the provisions of Chapter 4 of the Foreign Trade Policy FTP 2015-2020 read with Notification No. 18/2015- Cus dated 01.04.2015, they had diverted the goods knowingly in the local market to make huge illegal profits. The said duty free goods were supposed to be exported or disposed of in accordance to the provisions of the FTP 2015-2020 and above said notification, but M/s Ramniklal & Sons, Mumbai violated the conditions of the FTP 2015-2020 and did not fulfill the requisite compliances and conditions for import of duty free inputs && export thereof as envisaged under Advance Authorization Scheme read with the condition of Notification No. 18/2015-Cus dated 01.04.2015.

12. Further to this, it appeared that Shri Sanjiv Ramniklal Dhanak, Partner of M/s Ramniklal & Sons, Mumbai fraudulently obtained the Licenses issued under Advance Authorization Scheme from DGFT, Mumbai in the name of M/s. Ramniklal & Sons, Mumbai. Thereafter by willful mis-utilization of licenses after obtaining the impugned Licenses indulged in import of 167 consignments of PP/LDPE/LLDPE/HDPE/PVC Resins/Copper Rods cleared in the name of M/s. Ramniklal Sons, Mumbai without payment of Customs Duty by availing benefit of Notification No. 18/2015-Cus dated 01.04.2015 and thereby caused a loss to the Government exchequer to the extent of 67,07,91,865/- (Rupees Sixty Seven Crores Seven Lacs Ninety One Thousands Eight Hundred and Sixty Five Only). Shri Sanjiv Ramniklal Dhanak was very well aware of the legal provisions governing imports under the Advance Authorization Scheme to the effect that the duty free goods imported under the said Scheme were subject to the actual user condition and as such could not be sold in the market. By indulging in the unauthorized diversion and sale of duty free goods imported against the impugned Licenses, Shri Sanjiv

Ramnklal Dhanak, Partner of M/s Ramnklal & Sons, Mumbai illegally enriched himself at the cost of Government exchequer thereby knowingly causing harm to the economy of the nation. It appears that Shri Sanjiv Dhanak also issued forged/fake invoices to purportedly legitimize the diversion of duty free goods of M/ Ramnklal & Sons.

13. It also appeared that M/s Crocus Enterprises, Ludhiana (Proprietor Shri Amrit Lal Garg) was actively and integrally involved in the game plan of diversion of duty free imported goods of M/s Ramnklal& Sons, Mumbai. Shri Amril Lal Garg started a proprietorship firm namely M/s Crocus Enterprises in a shop having dimension 9.5'x14' only, taken on rent for 11 months from 23.05.2016 but he occupied the said shop only for 02 months, he surrendered the shop after that and the monthly rent was paid in cash. It further appeared during the investigation that the same firm was opened only for declaring it as supporting manufacturer in the application submitted, for obtaining licenses under advance authorization scheme, in DGFT. Hence it appeared that Shri Amrit Lal Garg started a dummy firm M/s Crocus Enterprises, Ludhiana. During the course of investigation, several summons were issued to all available addresses of Shri Amrit Lal Garg, Proprietor of M/s Crocus Enterprises, Ludhiana, however all were returned undelivered. Hence it appears that Shri Amrit Lal Garg had deliberately declared false addresses before various authorities and it also appears that M/s Crocus Enterprises, Ludhiana was a dummy firm and started only for the purpose of obtaining licenses under advance authorization scheme.

14. It appeared that Shri Viral Mehta Proprietor of M/s Nirantar was master mind in this case. Shri Viral Mehta arranged to get issued Licenses under Advance Authorization scheme from DGFT in name of M/s Ramnklal Sons, Mumbai by submitting forged details/ fake Appendix duly certified by Chartered Accountants and by showing in correct / fake details regarding exports made of similar goods in past by M/s Ramnklal& Sons, Mumbai to DGFT. He had hatched the plan of importing 23781.9 MTs and 1868.5 MTs of

PP/LDPE/LLDPE/HDPE/PVC Resins and Copper Rods respectively (total of 25650.4 MTs.) of foreign origin (i.e. imported) having value of Rs. 173.12 Crores (approx.) and Rs.65.61Crores(approx.) respectively [Total 238.73 Crore(approx.)] in the name of M/s. Ramniklal& Sons, Mumbai under Advance Authorization Scheme during the period from June-2016 to January-2018. These imported goods were further sold in open market under his directions and under directions of other conspirators Shri NileshPravin Kumar Jain, Shri Sundeep Mahendra KumarSanghavi and Shri Minesh Shah. It also appears that all fake invoices to legitimize the sale of duty free goods of M/s Ramniklal&s Sons, Mumbai were made under his directions. The sale proceeds were received either directly in the bank account or in cash. Moreover, he did not co-operate in the investigation; but from the several statements of Shri Sanjiv Ramniklal Dhanak, Partner of M/s Ramniklal & Sons, Mumbai, Shri Nilesh Pravin Kumar Jain, Partner of M/s Maks Technologies, Pune, Shri Sundeep Mahendra KumarSanghavi, Director of M/s Mahavir Polyfilms Pvt Ltd., Mumbai, Shri Vinay Umashankar Khetan, one of the CHA etc. it appeared that Shri Viral Mehta played main role in getting issued the licenses under Advance authorization Scheme from DGFT and subsequently importing & diverting the said duty free imported goods of M/s Ramniklal& Sons, Mumbai. He also started a dummy firm in the name of M/s Nishi Wires and Cables Industries and from the statement of Shri Chirag Mehta, Partner of M/s Nishi Wires and Cables Industries, it also appeared that Shri Viral Mehta and Shri Nilesh Jain diverted all the duty free imported copper rods of M/s Ramniklal& Sons, Mumbai in open market and managed to receive funds in the account of M/s Nishi Wires and Cables Industries from various dummy firms. From the above discussions, it appeared that Shri Viral Mehta played main role in importing duty free goods in the name of M/s Ramniklal Sons, Mumbai, managed to divert all those goods in open market and earned profit from selling of those goods. He appeared to be one of beneficiaries of such huge amount of duty evasion. Further it also appeared that Shri Sanjiv Dhanak and his firm M/s Ramniklal&

Sons were used by Shri Viral Mehta as a facade in the overall game of the diversion of the duty free imported goods. The acts and deeds of Shri Viral Mehta also enabled all the conspirators to implement their game plan of illicit selling of the duty free goods imported under the Advance Authorization Scheme and thereby assisted the duty evaders to accomplish their motives to defraud the government exchequer.

15. From the above facts, it appeared that the above act of omission/commission of CB M/s H.G. Mehta & Co. Pvt. Ltd. (11/362) (PAN No. AAACH8142H) led to violation of Regulations 10(a), 10(d), 10(e), 10(m) and 10(n) of the Custom Broker Licensing Regulations 2018.

16. From the investigations in the above mentioned case the following commission and omission leading to violation of obligations stipulated in Regulation 10 of CBLR, 2018 are apparent: -

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

As per statement of Sh. Sanjiv Dhanak, Partner of M/s. Ramniklals sons recorded on 03.05.2018 under section 108 of Customs Act, 1962 wherein he stated that all the transaction with buyers, sellers, & transporters of the duty free imported goods were done on the instruction given by his brother in law Sh. Viral Mehta. As per the statement of Sh. Pankaj Mukundray Sheth, Director of Customs Broker M/s. H.G. Mehta & Co. Pvt. Ltd. (CB No. 11/362), recorded on 25.09.2018 under Section 108 of the Customs Act, 1962, he admitted that he received KYC paper namely PAN, IEC, Export House Certificate, RCMC and address proof of importer M/s. Ramniklal & Sons through the peon of Sh. Viral Mehta who is neither importer nor authorized signatory of importer. he also admitted that he had never met with Sh. Sanjiv Dhanak, Partner of M/s. Ramniklal & sons till the date of

recording of the statement. Thus, it appeared that CB do not obtain an authorization from importer by whom he is for the time being employed as a Customs Broker. Thus, it appeared that the CB has contravened the provisions of Regulation 10 (a) of the CBLR, 2018.

► **Regulation 10(d) of CBLR, 2018:** *"A Custom Broker shall advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Department;*

Whereas in the instant case, as per statement of Sh. Pankaj Mukundray Sheth, Director of Customs Broker M/s. H.G. Mehta & Co. Pvt. Ltd. (CB No. 11/362), recorded on 25.09.2018 under Section 108 of the Customs Act, 1962, he admitted that he received KYC paper namely PAN, IEC, Export House Certificate, RCMC and address proof of importer M/s. Ramniklalés Sons through the peon of Sh. Viral Mehta who is neither importer nor authorized signatory of importer. He also admitted that he had never met with Sh. Sanjiv Dhanak, Partner of M/s. Ramniklal & sons till the date of recording of the statement. Therefore, it is clear that he did not know actual IEC holder (Importer) and did not advise his actual client to comply with the provisions of the Act. Thus, it appeared that CB was hand in glove with the proxy importer and facilitated the improper importation of the goods. Thus, it appeared that CB neither advised the actual IEC holders about provisions of the Customs Act 1962 and the Rules & Regulations nor brought to the notice of the Customs Authorities. Thus, it appeared that the CB has contravened the provisions of Regulation 10 (d) of the CBLR, 2018.

► **Regulation 10(e) of CBLR, 2018:** *"A Custom 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."*

Whereas in the instant case, as per statement of Sh. Pankaj Mukundray Sheth, Director of Customs Broker M/s. H.G. Mehta && Co. Pvt. Ltd. (CB No. 11/362), recorded on 25.09.2018 under Section 108 of the Customs Act, 1962, he admitted that he received KYC

paper namely PAN, IEC, Export House Certificate, RCMC and address proof of importer M/s. Ramniklal & Sons through the peon of Shri Viral Mehta who is neither importer nor authorized signatory of importer. He also admitted that he had never met with Sh. Sanjiv Dhanak, Partner of M/s. Ramniklal & sons till the date of recording of the statement. Despite of knowing that Shri Viral Mehta was proxy importer, they cleared the consignments of M/s. Ramniklal & sons. Thus, it appeared that CB was hand in glove with the proxy importer and facilitated the improper importation of the goods. It is evident that the Customs Broker processed the documents without exercising due diligence to ascertain the correctness of the information. Thus it appeared that the CB has contravened the provisions of Regulation 10 (c) of the CBLR, 2018.

Regulation 10 (m) of CBLR, 2018: *"A Custom Broker shall discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay".*

Whereas in the instant case, as per statement of Sh. Pankaj Mukundray Sheth, Director of Customs Broker M/s. H.G. Mehta & Co. Pvt. Ltd. (CB) No. 11/362), recorded on 25.09.2018 under Section 108 of the Customs Act, 1962, he admitted that he received KYC paper namely PAN, IEC, Export House Certificate, RCMC and address proof of importer M/s. Ramniklal & Sons through the peon of Shri Viral Mehta who is neither importer nor authorized signatory of importer. He also admitted that he had never met with Sh. Sanjiv Dhanak, Partner of M/s. Ramniklal & Sons till the date of recording of the statement. He further admitted that in Aug 2016, he had registered the licenses of M/s. Ramniklal sons for which documents viz. original license, LUT Bond, Affidavit, IEC etc. were provided by Sh. Viral Mehta through his peon. Despite of knowing that Shri viral Mehta was proxy importer, they cleared the consignments of M/s. Ramniklal & sons. Sh. Sanjiv Dhanak, Partner of M/s. Ramniklal & sons as per his statement recorded on 02.05.2018, under Section 108 of the Customs Act, 1962, admitted that he was very much aware that he had contravened the provisions of Customs Act, 1962, Notification, FTP 2015-2020 and

confessed that he had intentionally evaded Customs duty of approx. Rs. 64 crores. The CB failed in sensitizing the actual IEC holder regarding Notification 18/2015-Customs dated 01.04.2015. The Investigation has revealed that the CB was involved in the mis-use of the said Notification. These commissions and omissions on the part of the CB firm prove grave inefficiency in discharge of their duties as a Customs Broker. The CB did not restrict the misuse of the said Notification even after knowing that Sh. Viral Mehta is proxy importer. Thus, it appeared that the CB has contravened the provisions of Regulation 10 (m) of the CBLR, 2018.

> **Regulation 10(n) of CBLR, 2018:** *"A Custom 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"*.

Whereas in the instant case, as per statement of Sh. Pankaj Mukundray Sheth, Director of Customs Broker M/s. H.G. Mehta & Co. Pvt. Ltd. (CB No. 11/362), recorded on 25.09.2018 under Section 108 of the Customs Act, 1962, he admitted that he received KYC paper namely PAN, IEC, Export House Certificate, RCMC and address proof of importer M/s. Ramniklal & Sons through the peon of Sh. Viral Mehta who is neither importer nor authorized signatory of importer. Further he admitted that he knew physical verification of the premises and antecedent's verification under CHA regulations is required of the importer, but he had not physically verified the antecedents of importer details of M/s. Ramniklal & Sons as well as the premises of supporting manufacturer i.e. M/s. Crocus Enterprises, Ludhiana and M/s. Masks technologies, Pune. He also admitted that he had never met with Sh. Sanjiv Dhanak, Partner of M/s. Ramniklal & sons till the date of recording of the statement. As per the statement of Sh. Sanjiv Dhanak, Partner of M/s. Ramniklal & Sons recorded on 03.05.2018 under section 108 of Customs Act, 1962 wherein he stated that all the transaction with buyers, sellers, & transporters of the duty free imported goods were done on the instruction given by his brother in law Sh. Viral

Mehta. This being the case, the whole purpose of KYC is defeated i.e. to ensure that the CB has received and verified the KYC documents submitted by the genuine client. There is no denying the fact that the CB M/s. H. G. Mehta & Co. Pvt. Ltd. (CB No.11/362), have not been careful and not diligent in undertaking the KYC of the background of importer and accepted documents, which he did not verify. Thus it appeared that the CB had contravened the provisions of Regulation 10 (n) of the CBLR, 2018.

SUSPENSION OF LICENSE AND SHOW CAUSE NOTICE:-

17. On-going through the above facts and circumstances, prima facie it appeared that Customs Broker, M/s. H. G. Mehta & Co. Pvt. Ltd. (CB No.11/362) did not exercise due diligence in discharging their obligation as required under Regulations 10(a),10(d), 10(e), 10(m) and 10(n) of the Custom Broker Licensing Regulations 2018 and for the willful/intentional violation, the license of M/s. H. G. Mehta & Co. Pvt. Ltd. was suspended vide Order No. 41/2020-21 dated 12.02.2021 under the provisions of Regulation 19(1) of CBLR, 2013 (now Regulation 16(1) of CBLR, 2018). Thereafter Personal Hearing to the CB was given and suspension of M/s. H. G. Mehta & Co. Pvt. Ltd. (CB No.11/362) were continued, pending inquiry proceedings under Regulation 17 of CBLR, 2018, by the Commissioner of Customs (General), New Custom House, Mumbai vide order no. 03/2021-22 dated 07.04.2021 under the provisions of Regulation 16 (2) of CBLR, 2018.

18. A Show Cause Notice No. 06/2021-22 dated 07.05.2021 was issued in terms of Regulation 17(1) of CBLR, 2018 and vide this notice, the Customs Broker M/s. H. G. Mehta & Co. Pvt. Ltd. (CB No.11/362) were called upon to show cause, as to why the license bearing no. 11/362 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 above, with pending inquiry under Regulation 17 of CBLR,

2018 being initiated by the Inquiry Officer Shri Sandeep Gunjal, Deputy Commissioner of Customs appointed in the case.

INQUIRY REPORT

19. Inquiry Officer submitted Inquiry Report dated 22.07.2021, wherein the charges against CB i.e. violation of Regulation 10(a), 10(d), 10(e), 10(m) and 10(n) of CBLR, 2018 were held as 'Proved beyond doubt'. The inquiry report inter alia stated as below:

19.1 The Inquiry Officer stated that the CB was given ample opportunity for submission of written defense and for personal hearing. However, he never submitted written defense. During the personal hearing noticee wanted to cross examine Shri Ashish Verma, Pr. ADO, DRI Ahmedabad. However, he did not mention any reason behind cross examining him. There was no substantial reason for the cross examination of the same. It seems that during the whole proceedings, CB wanted to delay the proceeding and mislead the inquiry. Accordingly, the Inquiry Officer was compelled to prepare the inquiry report on the basis of available records as per regulation 17 of CBLR, 2018.

19.2 In respect of Article of Charge-1 i.e. violation of Regulation 10(a) of the CBLR, 2018, the Inquiry Officer observed that the as per statement of Shri Pankaj M Sheth, Director of CB M/s H.G. Mehta & Co. Pvt. Ltd recorded on 25.09.2018 under Section 108 of the Customs act 1962, he admitted that he received KYC paper of M/s Ramniklal & Sons through the peon of Shri Viral Mehta who is neither Importer nor authorized signatory, he also admitted that he had never met with Shri Sanjiv Dhanak, Partner of M/s Ramniklal & Sons. He also registered the licenses of Importer M/s H.G. Mehta & Co. Pvt. Ltd for which documents were provided by the Shri Viral Mehta through his peon. Despite knowing that Shri Viral Mehta is proxy importer, he cleared the consignments. Thus, the Custom Broker never obtained any authorization from the Importer. Hence, the charge that M/s H.G. Mehta & Co Pvt Ltd has contravened the provisions of the Regulation 10(a) of the Customs Broker Licensing Regulation 2018 is proved beyond doubt.

19.3 With regard to Article of Charge-II i.e. violation of Regulation 10(d) of the CBLR, 2018, the Inquiry Officer observed that the as per statement of Shri Pankaj M Sheth, Director of CB M/s H.G. Mehta & Co. Pvt. Ltd recorded on 25.09.2018 under Section 108 of the Customs act 1962, the Customs Broker has never met the Shri Sanjiv Dhanak, Partner of M/s H.G.-Mehta & Co. Pvt. Ltd till the date of recording of statement, further CB has collected the KYC document from the peon of Shri Viral Mehta who is neither importer nor authorized signatory. Hence, it is clear that he did not know actual IEC holder (Importer) and did not advise his actual client to comply with the provisions of the Act. Further, knowing the Importer is proxy he never brought to the notice of the customs authority about the fact. Hence M/s H.G. Mehta & Co. Pvt. Ltd has contravened the provisions of the Regulation 10(d) of the CBLR, 2018 is proved beyond doubt.

19.4 On Article of Charge-III i.e. violation of Regulation 10(c) of the CBLR, 2018, the Inquiry Officer noted that the as per statement of Shri Pankaj M Sheth, Director of CB M/s H.G. Mehta & Co. Pvt. Ltd recorded on 25.09.2018 under Section 108 of the Customs act 1962, the Customs Broker has never met the Shri. Sanjiv Dhanak, Partner of M/s H.G. Mehta & Co. Pvt. Ltd till the date of recording of statement, further CB has collected the KYC document from the peon of Shri Viral Mehta who is neither importer nor authorized signatory. Hence, it is clear that he did not know actual IEC holder (Importer) and did not advise his actual client to comply with the provisions of the Act. Further, knowing the Importer is proxy he never brought to the notice of the customs authority about the fact. CB has not exercised due diligence to ascertain the correctness of the information. Violation of Regulation 10(c) of the CBLR 2018 by the Custom Broker is proved beyond doubt.

19.5 Regarding Article of Charge-IV ie. violation of Regulation 10(m) of the CBLR, 2018, the Inquiry Officer observed that in the instant case, as per statement of Shri Pankaj M Sheth, Director of CB M/s H.G. Mehta & Co. Pvt. Ltd recorded on 25.09.2018 under

Section 108 of the Customs act 1962, he admitted that he received KYC paper of M/s Ramniklal & Sons through the peon of Shri Viral Mehta who is neither Importer nor authorized signatory, he also admitted that he had never met with Shri Sanjiv Dhanak, Partner of M/s Ramniklal & Sons. He also registered the licenses of Importer M/s H.G. Mehta & Co. Pvt. Ltd for which documents were provided by the Shri Viral Mehta through his peon. Despite knowing that Shri Viral Mehta is proxy importer, he cleared the consignments. The CB failed to sensitizing the actual IEC holder regarding Notification 18/2015 Customs dated 01.04.2015. The investigation has revealed the commissions and omissions on the part of the CB firm prove grave inefficiency in discharge of their duties as a Customs Broker. The CB did not restrict the misuse of the said Notification even after knowing that Shri Viral Mehta is proxy importer. CB has not discharges his duty as a Customs Broker with efficiency and hence the violation of Regulation 10 (m) of CBLR 2018 is also proved beyond doubt.

19.6 Concerning Article of Charge-V i.e. violation of Regulation 10(n) of the CBLR, 2018, the Inquiry Officer observed that as per statement of Shri. Pankaj M Sheth, Director of CB M/s H.G. Mehta & Co. Pvt. Ltd recorded on 25.09.2018 under Section 108 of the Customs act 1962, he admitted that he received KYC paper of M/s Ramniklal & Sons through the peon of Shri Viral Mehta who is neither Importer nor authorized signatory, he also admitted that he had never met with Shri Sanjiv Dhanak, Partner of M/s Ramniklal & Sons. It is seen that CB has not been diligent in verifying correctness of IEC, GSTIN and identity of his client and functioning of the client at the declared address. Hence the violation of Regulation 10 (n) of CBLR 2018 is proved.

19.7 Thus in summation, the Inquiry Officer concluded that it is a fit case of revocation of license of M/s H.G. Mehta & Co. Pvt. Ltd (CB-11/362) and imposition of penalty under Regulation 14 read with 17 & 18 of the CBLR 2018.

20. Under the provisions of Regulation 17(6) of CBLR, 2018, a copy of the Inquiry report was shared with the CB vide office letter dated 17.08.2021 and an opportunity of personal hearing was granted to the CB by the then Pr. Commissioner of Customs (Gen), NCH, Mumbai.

20.1 Thereafter, the then Pr. Commissioner of Customs (Gen), NCH, Mumbai passed an Order-in-Original CAO No. 122/CAC/PCC(G)/SJ/CBS-Adj, dated 10.01.2022, in the present case, under Regulation 17(7) of CBLR, 2018 and ordered for Revocation of CB License held by M/s. H.G. Mehta & Co. Pvt. Ltd.(CB No. 11/362) along with forfeiture of security deposit of the CB under Regulation 14 of CBLR, 2018 and imposition of penalty of Rs. 50,000/- under Regulation 18 of CBLR, 2018.

20.2 Further, it is observed that three separate proceedings under CBLR, 2018, were occurring / undergoing against the CB M/s. H.G. Mehta & CO. Pvt. Ltd. (CB No. 11/362), including the present case. The inquiry proceedings, in the three matters, were initiated under Regulation 17 of CBLR, 2018 vide (i) SCN No. 05/2021-22 dated 04.05.2021; (ii) SCN No. 06/2021-22 dated 07.05.2021 (present case) and (iii) SCN No. 13/2021-22 dated 16.06.2021. After completion of inquiry proceedings in all the three cases, the then Pr. Commissioner of Customs (Gen), NCH, Mumbai passed three separate OIOs all dated 10.01.2022, under Regulation 17(7) of CBLR, 2018, as mentioned below:-

(i) CAO No. 120/CAC/PCC(G)/SJ/CBS Adj. dated 10.01.2022 (w.r.t. SCN No. 05/2021-22 dtd. 04.05.2021)

(ii) CAO No. 122/CAC/PCC(G)/SJ/CBS Adj. dated 10.01.2022 (w.r.t. SCN No. 06/2021-22 dtd. 07.05.2021 – Present case)

(iii) CAO No. 123/CAC/PCC(G)/SJ/CBS Adj. dated 10.01.2022 (w.r.t. SCN No. 13/2021-22 dated 16.06.2021)

20.3 In all the three matters, as mentioned above, it was ordered for Revocation of CB License held by M/s. H.G. Mehta & Co. Pvt. Ltd. (CB No. 11/362) along with forfeiture

of security deposit of the CB under Regulation 14 of CBLR, 2018 and imposition of penalty of Rs. 50,000/- under Regulation 18 of CBLR, 2018.

CESTAT Order:-

21. The CB, being aggrieved, filed appeals before the Hon'ble CESTAT Mumbai, against all the three OIOs dated 10.01.2022:-

(i) Customs Appeal No. 85759 of 2022 (against the OIO CAO No. 122/CAC/PCC(G)/SJ/CBS Adj order dated 10.01.2022 – Present case)

(ii) Customs Appeal No. 85787 of 2022 (against the OIO CAO No. 120/CAC/PCC(G)/SJ/CBS Adj order dated 10.01.2022)

(iii) Customs Appeal No. 85803 of 2022 (against the OIO CAO No. 123/CAC/PCC(G)/SJ/CBS Adj order dated 10.01.2022)

21.1 The Hon'ble CESTAT, Mumbai vide common Order No. 85745-85747 dated 05.08.2024, held that:-

"8. We have no wish to dilate further on the normative aspect of the obligations. Day exist; for, if it were otherwise, every proceedings against an importer or exporter must be attended by proceedings against 'custom broker' under Customs Broker Licensing Regulation, 2018 which is too nightmarish a consequence for customs administration to contemplate let alone enforce. Suffice it to say that none of three impugned orders have attempted to connect appropriate imputations of misconduct to each charge and are, in consequence, incomplete culmination of proceedings.

9. Added to that is the gross impropriety of taking up three proceedings for three consequences, of which two are rendered infructuous, to affect a single licence and single security deposit. It is no different from combing the outcome of three proceedings in one order of revocation and forfeiture. The proceedings are flawed and the outcome is, accordingly, flawed. That warrants fresh proceedings in each, and not simultaneously or in common, for which purpose the three impugned orders are set aside and remanded to the licencing authority for decisions in accordance with the framework set out supra.

10. Appeals are allowed by way of remand."

21.2 Therefore, in compliance of the Hon'ble CESTAT's order dated 05.08.2024, all the three matters were taken up for fresh adjudication proceedings. Accordingly, in the present matter an opportunity of personal hearing was granted to the CB M/s. H.G. Mehta & Co. Pvt. Ltd. (CB No. 362) on 08.01.2025.

RECORDS OF PERSONAL HEARING:-

22. The personal hearing in the present case was held on 08.01.2025. Mr. Jhamman Singh, Advocate for CB and Mr. Pankaj M. Seth, Director of CB firm/company appeared for personal hearing and submitted their written submission dated 08.01.2025 and reiterated the same.

WRITTEN SUBMISSIONS OF THE CB:-

23. The CB submitted written reply dated 08.01.2025 at the time of personal hearing. The CB also resubmitted their written submissions dated 13.09.2021, and reiterated the same during the personal hearing. The defence submissions of the CB are briefly discussed below:

23.1 NATURE OF IMPORT- IMPORT AGAINST ADVANCE AUTHORIZATION:-

(i) The CB submitted that they cleared only 4 consignments of M/s. Ramniklal & Sons and not all the consignments covered in the show cause notice dated 22-10-2020. There are more than one Customs Brokers who cleared the goods which are subject matter of the show cause notice dated 22-10-20; The goods *in the said 4 consignments* were imported and cleared against advance authorization claiming duty benefit under notification No.18/2015-cus.dated 01-04-2015; the Notification No. 18/2015-Cus., dated 1-4-2015 stipulates conditions stated therein; Perusal of the said conditions, reveal that condition No (i) to (vii) & (xi) of the Notification are pre-import condition to be complied with by the importer before or at the time clearance of imported goods from Customs to the satisfaction of Customs Authorities. Condition No (viii) & (ix) are related to production evidence of

discharge of export obligation. **Condition (x) of the notification, which is the bone of contention in the DRI's show cause notice, restrains that the said advance authorization and the said materials shall not be transferred or sold, which is a post import post clearance conditions:**

(ii) The CB submitted that they received (i) Certificate of Importer-Exporter Code (IEC), (ii) Star Export House Certificate (iii) Authorization, (iv) PAN CARD from the importer for ascertaining their credentials and thereafter Bills of Entry were filed on the basis of import invoice, Bill of lading, high sea sale agreement, Advance authorization etc. On the instruction of the importer, the CB submitted check list claiming benefit under Notification No.18/2015-cus dated 01-04-2015.

(ii) The CB also submitted that it is to be pointed out that the Importer is a **"Recognized Star Export House"**, recognized by the Government of India and being a Star Export House, no bank guarantee was asked for by the Customs Authorities and the BOND was accepted without Bank Guarantee.

24. The CB submitted that their CB License which was under suspension since 03-02-2021, was again suspended under the provisions of Regulation 19(1) of CBLR-2013 vide Order No- 41/2020-21 dated 12-02-2021. Further, vide Order No-03-2020/22 dated 07-04-2021, issued from file F.No. S/8-71/2020-21-CBS, the Principal Commissioner of Customs (General), Mumbai Zone- I, ordered to continue the suspension as referred to above.

24.1 The CB submitted that the following Articles of charge were levelled against the CB to conduct inquiry proceedings under Regulation 17 of CBLR, 2018:-

(i) Article of Charge-I

Regulation 10(a) of the CBLR, 2018 states "that the CB shall obtain an authorization from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such

authorization whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be."

(ii) Article of Charge-II

Regulation 10(d) of the CBLR, 2018 states "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"

(iii) Article of Charge-III

Regulation 11(e) of the CBLR, 2018 states "that the CB 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."

(iv) Article of Charge-IV

Regulation 10(m) of the CBLR, 2018 states "that the CB shall discharge his duties as a Customs Broker with utmost speed, efficiency and without any delay."

(v) Article of Charge-V

Regulation 10(n) of the CBLR, 2018 states "that the CB shall verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;"

25. CB's submission w.r.t. Article of Charge – I:-

25.1 The CB submitted that the Customs Broker obtained (i) Certificate of Importer-Exporter Code (IEC), (ii) Star Export House Certificate (iii) Authorization, (iv) PAN CARD from the importer. It is to be pointed out that the Importer is a "**Recognized Star Export House**", recognized by the Government of India and being a Star Export House, no bank guarantee was asked for by the Customs Authorities and the BOND was accepted

without Bank Guarantee. The CB also argued that since no inquiry was conducted by I.O, there was no occasion to submit KYC documents before the I.O.

26. KYC NORMS-VERIFICATION BY CB:-

26.1 The CB submitted that IEC No. and address of the importer are found to be correct; DRI/Customs searched the office and residential premises of the importer, their proprietor or partner; and supporting manufacture; the importer and the supporting manufacturer joined the investigation and appeared before DRI and Customs officer; their statements are recorded by the DRI; the director of the importer was arrested by DRI; in these circumstances it is erroneous to say that the Customs Broker/Appellant has not adhered to KYC norms. In this regard, the CB relied upon the following case laws:-

(i) THE HON'BLE CESTAT, PRINCIPAL BENCH, NEW DELHI in the case of M/S G.N.D. CARGO MOVERS Versus COMMR. OF CUS. (GENERAL), NEW DELHI reported vide -- 2017 (357) E.L.T. 1184 (Tri. - Del.), while considering revocation of CB licence and penalty on CB under CBLR, had held as under :-

".....IEC number and address of importer correct - Charge that Customs Broker did not verify antecedents, correctness of IEC number, identity of his client and declared address, etc., incorrect - Since all importers had joined in investigations and have given their statements, it cannot be said that Customs Broker had not adhered to KYC norms - No justifiable reason to revoke licence or to forfeit security amount - Order set aside - Regulations 11(d), 11(e) and 11(n) of Customs Brokers Licensing Regulations, 2013. [paras 4, 5, 6]

(ii) THE CESTAT, PRINCIPAL BENCH, NEW DELHI in the case of M/S APS FREIGHT & TRAVELS PVT. LTD. Versus COMMR. OF CUS. (GENERAL), NEW DELHI--2016 (344) E.L.T. 602 (Tri. - Del.), KYC norms has held as under;

"Revocation of - KYC norms - Absence of physical verification of importer - Undisputedly, appellant checking details such as IEC, PAN card, Bank account and Electricity Bill of importing firm - No legal requirement as per business practice of physically verifying premises of importer - Further, no violation of

Customs law in consignment imported through appellant - Revocation of Licence not sustainable - Regulations 11 & 20 of CBLR-, 2013. [para 4]

Non-compliance of time schedule under Customs Brokers Licensing Regulations (CBLR), 2013 by authorities - Enquiry report submitted on 26-5-2014 and licence revoked on 8-5-2015 - Mandatory time-limits as prescribed under impugned Regulations having not been adhered to, licence not revocable - Regulation 20 of CBLR-13. [para 5]"

(iii) THE HON'BLE HIGH COURT OF DELHI IN M/S KUNAL TRAVELS (CARGO) Versus CC (I & G), IGI AIRPORT, NEW DELHI--2017 (354) E.L.T. 447 (Del.),:-

"Obligations of - They are processing agent of documents for clearance of goods through Customs House - They are not inspector to weigh genuineness of transaction, and there is no obligation to look into information from exporter/importer - It is onerous to expect CHA to inquire into and verify genuineness of IE Code given by client for each import/ export transaction - When such code is mentioned, there is presumption that appropriate background check in this regard would have been done by Customs authorities - In absence of knowledge that goods mentioned in shipping bills did not reflect truth of consignment sought to be exported, CHA or its proprietor cannot be attributed with mens rea - If goods did not corroborate with declaration in shipping bills, it cannot be deemed to be misdeclaration by CHA - Regulation 13(e) of Customs House Agents Licensing Regulations, 2004. - The grant of the IE Code presupposes a verification of facts etc. made in such application with respect to the concern or entity. If the grant of such IE Code to a non-existent entity at the address WZ-156, Madipur, New Delhi-63 is in doubt, then for such erroneous grant of the IE Code, the appellant cannot be faulted. The IE Code is the proof of locus standi of the exporter. The CHA is not expected to do a background check of the exporter/client who approaches it for facilitation services in export and imports. Regulation 13(e) of the CHALR, 2004 requires the CHA to "exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage". The CHAs due diligence is for information that he may give to its client and not necessarily to do a background check of either the client or of the consignment.

Documents prepared or filed by a CHA are on the basis of instructions/documents received from its client/importer/exporter. Furnishing of wrong or incorrect information cannot be attributed to the CHA if it was innocently filed in the belief and faith that its client has furnished correct information and veritable documents. The mis declaration would be attributable to the client if wrong information were deliberately supplied to the CHA. Hence there could be no guilt, wrong, fault or penalty on the appellant apropos the contents of the shipping bills. Apropos any doubt about the issuance of the IF Code to M/s. H.S. Impex, it was for the respondents to take appropriate action. Furthermore, the inquiry report revealed that there was no delay in processing the documents by the appellant under Regulation 13(n). [para 12] "

(iv) THE HON'BLE CESTAT, PRINCIPAL BENCH, NEW DELHI in the case of HIM LOGISTICS PVT. LTD. Versus COMMISSIONER OF CUS., NEW DELHI REPORTED VIDE - 2016 (338) E.L.T. 725 (Tri. - Del.), on physical verification of importer had held as under:

"Revocation of - KYC norms - Absence of physical verification of importer - Undisputedly, appellant verifying copies of partnership deed of importer firm, IEC, PAN Card and Voter ID Card of partner - No stipulation or legal requirement of physically verifying business or residential premises of importer - Fraudulent obtaining of IEC by importer has no effect on Customs Broker's obligation - Customs Broker having adhered to KYC norms, extreme punishment of revocation of licence not sustainable - Regulations 11 and 20 of CBLR-13 [paras 7, 8, 9]"

(v) The Hon'ble CESTAT, CHENNAI, in the case of SHIV AMBICA CLEARING AND FORWARDING PVT. LTD. Versus COMMISSIONER OF CUS., CHENNAI-VIII COMMISSIONERATE reported vide 2022 (379) E.L.T. 250 (Tri. - Chennai), while considering violation of Regulation 11(a) of CBLR-13(now Regulation 10(a) of CBLR-18) has held that once the importer is found to be in existence, violation of obligation casted on appellant Customs Broker under CBLR-13 could not be alleged in substance. Para 3 of the order being relevant is extracted below;

“3. We have heard both sides at length and we take note from the impugned order that the plea of the customs broker to the effect that the importer on record, having appeared before the investigating authorities, could not be non-existent is tenable. We find merit in the contention that, with the existence of the importer thus being without doubt, the obligation devolving on the broker could not be alleged to have been breached in substance. The objective of the said obligation could only be established the antecedents of the said persons. Had the customs broker carried out necessary checks as warranted by the Regulations, the facts would not alter in any manner and nor would the importability of goods”

(vi) The Hon'ble CESTAT, CHENNAI in the case of SEASWAN SHIPPING AND LOGISTICS Versus COMMISSIONER OF CUS., CHENNAI-II reported vide 2022 (380) E.L.T. 358 (Tri. - Chennai), while considering violation of Regulation 13(a) – has held as under”

“8. The relevant provisions have already been reproduced above. Under Regulation 11(a), the Customs Broker has to obtain authorization from the firm/individual by whom he is being employed as a Customs Broker. In the present case, there is no dispute with the address of the importer or his IE Code. The only allegation put forward under Regulation 11(a) is that the appellant had not obtained the KYC documents from the importer directly but through a middleman, be it Shri Ramadhurai or Shri Karthi. When the necessary authorization and KYC documents have been obtained and when these documents are proper, merely because the said documents were not obtained directly from the importer, the appellant cannot be said to have violated provisions of Regulation 11(a). It may not always be practical for a Customs Broker to obtain the documents directly from the importer. In the case of K.S. Sawant & Co. (supra) in para 5.1, the Tribunal has discussed that “obtaining authorization from the importer does not mean that the same should be obtained directly; so long as the concerned import documents were signed by the importer, it amounts to authorization by the importer and therefore it cannot be said that there has been violation of Regulation 13(a)”. The above decision was under CHALR, 2004 wherein the provisions of Regulation 13(a) are similar to Regulation 11(a) of CBLR, 2013”

27. Further, with respect to Articles of Charge- II, III, IV & V- Regulation 10(a), 10(d), 10(e) & 10(n), CBLR-2018, the CB relied upon the following case laws:-

27.1 The Hon'ble CESTAT, PRINCIPAL BENCH, NEW DELHI in the matter of PERFECT CARGO & LOGISTICS Versus C.C. (AIRPORT & GENERAL), NEW DELHI- 2021 (376) E.L.T. 649 (Tri. - Del.), while dealing with violation of Regulation 10(a), (d), (e) & (n) of CBLR-18, held as under;

(i) Regulation 10(a)

Regulation 10(a) of CBLR-18 requires Customs Broker to obtain authorization, which CB did obtain- Signatures on authorisation letter not forged neither person authorising appellant denied having given authority letters; Also, CB claimed that due diligence carried out for ascertaining functioning of clients at address declared by clients and partnership deed as well as Service Tax registration, PAN card, Import Export Code, voter card, electricity bill, bank details and mobile number of partners with email id, examined - Commissioner, therefore, committed illegality in holding violation of impugned Regulation 10(a); Para 18 being relevant is extracted herein below;

"18. This conclusion drawn by the Commissioner is clearly erroneous. The Regulation requires the Customs Broker to obtain an authorisation, which the Appellant did. It is not the case of the Department that the signatures on the authorisation letter were forged or that the persons authorising the Appellant denied having given the authority letters. This apart, the Appellant also claims that due diligence was carried out for ascertaining the functioning of the clients at the address declared by the clients and in this connection the partnership deed as well as service tax registration, PAN card, Import Export Code, voter card, electricity bill, bank details and mobile number of the partners with email id were also examined. The Commissioner, therefore, committed an illegality in holding that Regulation 10(a) of the Licensing Regulations had been violated".

(ii) Regulations 10(d) and 10(e) of CBLR- 2018:-

Two documents listed in Annexure to C.B.E. & C. Circular No. 9/2010-Cus., dated 8-4-2010, obtained by CB - Neither Circular nor Annexure requires any physical verification of premises - Also, documents obtained not forged documents - CB's reply not discussed at all nor any reason assigned as to why said documents could not be considered - Moreover, Customs House Agent merely processing agent of documents with respect to clearance of goods through Customs House and not inspector to weigh genuineness of transaction - When Importer/Exporter Code Number provided and before issue of code background check of said importer/exporter undertaken by Customs Authority, no reason to doubt identity of said exporter - Reliance placed on statement of G-Card holder that neither firm visited and nor met partners personally, misplaced - Findings of non-compliance with provisions of Regulations 10(d) and 10(e), therefore, erroneous; Para 22,25,26,27&30 of the order are as under;

22. *Paragraph 6 of the Circular provides for certain obligations on the Customs Broker to verify the correctness of Import/Export Code Number, identity and functioning of the client at the declared address by using reliable, independent, authentic documents, data or information. For this purpose, detailed guidelines on the features to be verified and obtained from the clients have been provided in the Annexure to the Circular. It has also been mentioned in the Circular that it would be obligatory for the client/customer to furnish a photograph in the case of an individual and those of the authorised signatory in respect of other forms of organisations, such as company/trusts and any two of the listed documents mentioned in the Annexure.*
25. *Out of the documents listed in the Annexure to the Circular, only two documents have to be obtained. The CB obtained two documents. Neither the Circular nor the Annexure requires any physical verification of the premises. It is not the case of the Department that the documents that had been obtained were forged documents. The reply submitted by the CB has not been discussed at all nor any reason has been assigned as to why these documents could not be considered. The Commissioner appeared to have been swayed by the fact that the two firms did not exist at the addresses provided and so the documents*

cannot be relied upon. It needs to be noted that this verification of the address was undertaken by the Department after 18 months.

26. The provisions of Regulation 10(e) of the Licensing Regulations were examined at length by the Delhi High Court in *Kunal Travels* and the relevant observations are as follows :

"12. 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 (l) 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. What is noteworthy is that the IE Code of the exporter *M/s. H.M. Impex* was mentioned in the shipping bills, this itself reflects that before the grant of said IE Code, the background check of the said importer/exporter had been undertaken by the customs authorities, therefore, there was no doubt about the identity of the said exporter. It would be far too onerous to expect the CHA to inquire into and verify the genuineness of the IE Code given to it by a client for each import/export transaction. When such code is mentioned, there is a presumption that an appropriate background check in this regard i.e. KYC etc. would have been done by the customs authorities. 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. Whatever may be the value of the goods, in the present case, simply because upon inspection of the goods they did not corroborate with what was declared in the shipping bills, cannot be deemed as misdeclaration by the CHA because the said document was filed on the basis of information provided to it by *M/s. H.M. Impex*, which had already

been granted an IE Code by the DGFT. The grant of the IE Code presupposes a verification of facts etc. made in such application with respect to the concern or entity. If the grant of such IE Code to a non-existent entity at the address WZ-156, Madipur, New Delhi-63 is in doubt, then for such erroneous grant of the IE Code, the appellant cannot be faulted. The IE Code is the proof of locus standi of the exporter. The CHA is not expected to do a background check of the exporter/client who approaches it for facilitation services in export and imports. Regulation 13(e) of the CHALR, 2004 requires the CHA to : "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" (emphasis supplied). The CHAs due diligence is for information that he may give to its client and not necessarily to do a background check of either the client or of the consignment. Documents prepared or filed by a CHA are on the basis of instructions/documents received from its client/importer/exporter. Furnishing of wrong or incorrect information cannot be attributed to the CHA if it was innocently filed in the belief and faith that its client has furnished correct information and veritable documents. The misdeclaration would be attributable to the client if wrong information were deliberately supplied to the CHA. Hence there could be no guilt, wrong, fault or penalty on the appellant apropos the contents of the shipping bills. Apropos any doubt about the issuance of the IE Code to M/s. H.S. Impex, it was for the respondents to take appropriate action. Furthermore, the inquiry report revealed that there was no delay in processing the documents by the appellant under Regulation 13(n)."

27. It is clear from the aforesaid decision of the Delhi High Court that there is no obligation on the Customs House Agent to look into the information made available by the importer/exporter. The Customs House Agent is merely a processing agent of documents with respect to clearance of goods through Customs House and he is not an inspector to weigh the genuineness of the transaction. When the Importer/Exporter Code Number was provided and before this code was issued a background check of the said importer/exporter is undertaken by the Customs Authority, there should be no doubt about the identity of the said exporter. It would be too onerous to expect a Customs House Agent to inquire into what is stated in the documents

when there is a presumption that an appropriate background check is done by the Customs Authorities. In fact, the grant of Importer/Exporter Code Number is a proof regarding verification of facts and if the grant of such a code number to an entity at the address mentioned is in doubt, then for such erroneous grant of the Importer/Exporter Code Number, the Appellant cannot be faulted.

30. The Commissioner was, therefore, not justified in ignoring the documents provided by the Appellant. Reliance placed by the Commissioner on the statement made by Virender Kumar Saraswat is misplaced. As noted above, the verification is required to be undertaken on the basis of the documents and it is not possible to draw any inference from the said statement that he had any serious doubts about the existence of the firms. The findings that the Appellant had not followed the provisions of Regulations 10(d) and 10(e) of the Licensing Regulations is, therefore, erroneous.

(iii) Regulation 10(n):-

Basic requirement of Regulation 10(n) is that Customs Broker needs to verify identity of client and functioning of client at declared address by using, reliable, independent, authentic documents, data or information - Detailed guideline on list of documents to be verified and obtained from client, contained in Annexure to C.B.E. & C. Circular No. 9/2010-Cus., dated 8-4-2010, and any of two listed documents in Annexure, sufficient - Two documents submitted by CB and fact also stated in impugned order - Finding recorded by Commissioner that required documents not submitted therefore, factually incorrect:

33. The Delhi High Court in *Shiva Khurana* had an occasion to examine the provisions of Regulation 13(o) of the 2004 Regulations, which Regulation is similar to Regulation 10(n) of the Licensing Regulations, and the relevant observations are as follows:

"7. This court is of the opinion that the impugned order is justified in the facts and circumstances of the case. The reference to the verification of "antecedents and correctness of Importer Exporter Code (IEC) Number" and the identity of the concerned exporter/importer, in the

opinion of this Court is to be read in the context of the CHA's duty as a mere agent rather than as a Revenue official who is empowered to investigate and enquire into the veracity of the statement made orally or in a document. If one interprets Regulation 13(o) reasonably in the light of what the CHA is expected to do, in the normal course, the duty cast is merely to satisfy itself as to whether the importer or exporter in fact is reflected in the list of the authorized exporters or importers and possesses the Importer Exporter Code (IEC) Number. As to whether in reality, such exporters in the given case exist or have shifted or are irregular in their dealings in any manner (in relation to the particular transaction of export), can hardly be the subject matter of "due diligence" expected of such agent unless there are any factors which ought to have alerted it to make further inquiry. There is nothing in the Regulations nor in the Customs Act which can cast such a higher responsibility as are sought to be urged by the Revenue. In other words, in the absence of any indication that the CHA concerned was complicit in the facts of a particular case, it cannot ordinarily be held liable."

34. *The basic requirement of Regulation 10(n) is that the Customs Broker should verify the identity of the client and functioning of the client at the declared address by using, reliable, independent, authentic documents, data or information. For this purpose, a detailed guideline on the list of documents to be verified and obtained from the client is contained in the Annexure to the Circular dated April 8, 2010. It has also been mentioned in the aforesaid Circular that any of the two listed documents in the Annexure would suffice. The Commissioner noticed in the impugned order that any two documents could be obtained. The CB had submitted two documents and this fact has also been stated in paragraph 27(a) of the order. It was obligatory on the part of the Commissioner to have mentioned the documents and discussed the same but all that has been stated in the impugned order is that having gone through the submissions of the Customs Broker, it is found that there is no force in the submissions. The finding recorded by the Commissioner that the required documents were not submitted is, therefore, factually incorrect.*

35. The Commissioner, therefore, committed an error in holding that the CB failed to ensure due compliance of the provisions of Regulation 10(n) of the Licensing Regulations.

(iv) REGULATION 10(n):-

The Hon'ble CESTAT, KOLKATA in the case of JYOTI CUSTOMS BROKER SERVICE PVT. LTD. Versus PRINCIPAL COMMISSIONER OF CUSTOMS (ADMINISTRATION & AIRPORT), KOLKATA--2023 (385) E.L.T. 404 (Tri. - Kolkata) / (2023) 7 Centax 154 (Tri. - Kolkata), held as under:

"As per C.B.E. & C. Circular No. 9/2010-Cus., dated 8-4-2010, obtaining a photograph and any two of documents listed in Annexure to circular would be sufficient compliance of Regulation 10(n) of CBLR, 2018 - Customs Broker obtained these documents as prescribed in said circular - Physical verification of business premises is not an obligation cast upon Customs Broker under Rule 10(n) ibid - Appellant collected documents such as IEC, GSTIN etc. submitted by exporter before processing their shipping bills - Customs Broker was not required to ensure that officers had correctly issued these documents - Later if exporters were not found to be existing in said addresses, appellant could not be held responsible for their non-existence at address specified - Thus, appellant did not violate Regulation 10(n)"

(v) Regulation 10(m):-

Regulation 10(m) provides that the Customs Broker discharges his duties with utmost speed and efficiency and without any delay:

Regulation 10(m) requires a CB to discharge his duties with utmost speed and efficiency. This provision deals with the performance of the Customs Broker with reference to facilitating clearance of import or export cargo efficiently. In all these case the importer have violated the post import condition of notification by allegedly diverting the imported goods in the open market and did not use for manufacturing the goods as provided in the notification. It has no bearing on the efficiency or inefficiency of the CB. There is no case of slackness on the part of CB; There is no specific instance regarding providing of slow

or inefficient service to the clients; this Regulation has been wrongly and inappropriately invoked by the Department.

28. The CB further argued that the proceedings are vitiated by not complying with the time limits prescribed under Regulation 17(1) of CBLR-18. There is no offence report submitted by the Department; however, DRI issued three show cause notices under Section - 124 of the Customs Act 1962 (i) Show Cause Notice F.No. DRI/AZU/SRU-7/2018/Ramnikal Pt-I dated 22-10-2020 on 22-10-2020 (ii) F.No. DRI/AZU/SRU-50/2019 dated 03-12-2020 on 03-12-2020 and (iii) DRI Show Cause Notice F.No. DRI/AZU/SRU-50/2019 Dated 01-12-2020, copy of each show cause notice was displayed on the notice board as required under Section 153. These show cause notices are being considered as offence report in these proceedings and also are the foundation for impugned three show cause notices, issued under Regulation 17(1) of CBLR-18. The CB submitted that the Show Cause Notice in present case viz. SCN No. 06/2021-22 dated 07.05.2021 is issued after 210 days of receipt of offence report and hence there is delay of 120 days in issuance of such SCN. Regulation 17(1) of CBLR-18 stipulates a period of 90 days to issue show case notice from the date of offence report, admittedly, all the three show cause notices under Regulation 17(1) are issued after expiry of 90 days which is in violation of Regulation 17(1) of CBLR-18;

28.1 It is further submitted by the CB that "Time limit" for taking action under Regulation 17(1) of CBLR-2018, being prescribed by Legislature, is binding on the Respondent; initiation of proceedings against the CB by issuance of show cause notices beyond 90 days of offence report is ex facie without authority of law and jurisdiction and therefore, no action could have been taken on the strength of such illegal show cause notices. In this regard, the CB relied upon the following case laws:-

(i) THE Hon'ble CESTAT, NEW DELHI in the case of KAMAL SEHGAL Versus COMMISSIONER OF CUSTOMS, NEW DELHI-2019 (370) E.L.T. 758 (Tri. - Del.), while dealing with the issue of show cause notice beyond 90 days of receipt of offence report, held as under:

"Customs Brokers Licence - Revocation of - Limitation - Show cause notice issued beyond 90 days of receipt of offence report - Revocation order not sustainable since adherence to time-limit of 90 days under Regulation 20(1) of Customs Brokers Licensing Regulations, 2013 was mandatory and not directory -"

(ii) The hon'ble High Court at Madras in the case of M/S SEA QUEEN SHIPPING SERVICES PVT. LTD. Versus COMMR. OF CUS., CHENNAI-VIII, reported vide-2021 (376) E.L.T. 496 (Mad.), while considering issue of show cause notice issued beyond 90 days stipulated under Regulation 20(1) of CBLR-13, has held as:

"Show cause notice issued beyond period of 90 days of offence report, contrary to Regulation 20(1) of Customs House Agents Licensing Regulations as per Regulation 20(1) of CBLR-13, show cause notice ought to be issued within a period of 90 days "receipt of the offence report"; Impugned order also liable to be held without jurisdiction and therefore liable to be quashed"

(iii) The Hon'ble CESTAT, CHENNAI in the matter of SEASKY EXIM (P) LTD. Versus COMMISSIONER OF CUSTOMS, CHENNAI- 2021 (378) E.L.T. 652 (Tri. - Chennai), on the similar issue held as under:

"Show cause notice for penalty under Customs Brokers Licensing Regulations, 2018 to be issued within 90 days from date of receipt of offence report; Show notice for penalty not issued within 90 days; Proceedings vitiated due to non-compliance of time limit prescribed; Order imposing penalty and forfeiture set aside;"

(iv) THE Hon'ble CESTAT, BENCH, KOLKATA in the case of PRAGATI OVERSEAS AGENCY Versus COMMR. OF CUS. (AIRPORT & ADMN.), KOLKATA

reported--2018 (363) E.L.T. 169 (Tri. – Kolkata while considering time limit for taking action under CHALR now CBLR has held that “Time limit for taking steps in each and every stage in the sub-regulations of Regulation 20 of Customs Brokers Licensing (Amendment) Regulations, 2013 being prescribed by Legislature, Commissioner of Customs cannot ignore such time limit without assigning any reason “ Para 10 being relevant is extracted below:-

“10. We find that the Legislature has prescribed the time limit for taking steps in each and every stage in the sub-regulations of Regulation 20. In our considered view, the Commissioner of Customs cannot ignore such time limit without assigning any reason or in an unusual situation. In the present case, we do not find any such material on record for contravention of the provisions of the law. It is well-settled principles of law as decided by the Privy Council in the case of Nazir Ahmed v. King Emperor [A.I.R. 1936 Privy Council 253(2)] and followed by the Hon’ble Supreme Court in various decisions that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. In the present case, the said Rule would squarely apply. Therefore, the impugned order, passed by the Commissioner of Customs cannot be sustained under the law.”

(v) The Division Bench of the Hon’ble Delhi High Court, both in Impexnet Logistics-2016 (338) E.L.T. 347 (Del.) and Overseas Air Cargo Services— 2016 (340) E.L.T. 119 (Del.) and 2018 (363) E.L.T. 169 (Tri. - Kolkata) , have held that the period of 90 days, provided for issuance of SCN for revocation of Customs Brokers Licence is sacrosanct.

29. The CB further argued that:

- (i) *No one is appointed inquiry officer by the Adjudicating Authority;*
- (ii) *the Adjudicating Authority in the show cause notices nominated the Deputy Commissioner of Customs to inquire into the Articles of charge and directed to conduct inquiry, in violation of the provisions of Regulation 17 (1) &(2) of CBLR-18,*

- (iii) *The Adjudicating Authority directed the I.O to conduct inquiry even without waiting for the reply of the appellant and before expiry 30 days period as provided under Regulation 17(1) of CBLR-18 and stipulated in the Notices*
- (iv) *both the orders are issued simultaneously in one go in the notice itself. There is, therefore, a clear infraction of Regulation 17(1)&(2) of CBLR:18*

29.1 The CB argued that the Adjudicating Authority failed to appreciate that the I.O. without being appointed as "Inquiry officer" and without conducting any Inquiry, submitted report in direct violation of Regulation 17(2) of CBLR-2018: thus, the inquiry report is farce and non-est in the eye of law and therefore, could have not been acted upon.

29.2 The CB further argued that conjoint reading of Sub-Regulation (1) & (2) of Regulation 17 of CBLR-18 mandate two stage process to initiate and hold an enquiry. First, the Principal Commissioner or Commissioner of Customs shall issue a notice in writing to the Customs Broker within 90 (ninety) days from the date of receipt of offence report, stating the grounds on which it is proposed to revoke the license or impose penalty asking the Customs Broker to submit within thirty (30) days a written statement of defense to the nominated Deputy Commissioner of Customs; and thereafter, the Commissioner of Customs may, on receipt of the written statement, or where no such statement has been received within the time-limit specified in the notice, direct the Deputy Commissioner of Customs to inquire into the grounds which are not admitted by the Customs Broker. The effect of Regulation 17(1) & (2) is that on issue of show cause notice, the CB can object to the same and his objection is required to be considered by for forming an opinion to proceed further with the show cause notice or not will require giving some meaning to it, otherwise it would be rendered otiose.

29.3 The CB stated that the Pr. Commissioner of Customs (General) issued the impugned show cause notices referred to above asking the CB to reply the same within 30 days. The Adjudicating Authority, in the notice itself directed the Deputy Commissioner of Customs, to conduct inquiry under Regulation 17 of CBLR-2018.

29.4 The CB submitted that the effect of two-stage process in adjudication was before the Hon'ble Supreme Court in Natwar Singh case , wherein the Hon'ble Supreme Court held as under:

"22. That a bare reading of the relevant provisions of the Act and the Rules makes it abundantly clear that the manner, method and procedure of adjudication are completely structured by the statute and the Rules. The authority is bound to follow the prescribed procedure under the statute and the Rules and is not free and entitled to devise its own procedure for making inquiry while adjudicating under Section 13 of the Act since it is under legislative mandate to undertake adjudication and hold inquiry in the prescribed manner after giving the person alleged to have committed contravention against whom a complaint has been made, a reasonable opportunity of being heard for the purpose of imposing any penalty. The discretion of the authority is so well structured by the statute and the Rules

23. The Rules do not provide and empower the adjudicating authority to straightaway make any inquiry into allegations of contravention against any person against whom a complaint has been received by it. Rule 4 of the Rules mandates that for the purpose of adjudication whether any person has committed any contravention, the adjudicating authority shall issue a notice to such person requiring him to show cause as to why an inquiry should not be held against him. It is clear from a bare reading of the rule that show-cause notice to be so issued is not for the purposes of making any adjudication into alleged contravention but only for the purpose of deciding whether an inquiry should be held against him or not. Every such notice is required to indicate the nature of contravention alleged to have been committed by the person concerned. That after taking the cause, if any, shown by such person, the adjudicating authority is required to form an opinion as to whether an inquiry is required to be held into the allegations of contravention. It is only then thereal and substantial inquiry into allegations of contravention begins. XXXXX"

29.5 The CB further submitted that the scheme of Rule 4 of the Adjudication Rules of FEMA, which is similar to Regulation 17(1)&(2) of CBLR-18 has also been considered

by the hon'ble High Court of Bombay in Shashank Vyankatesh Manohar (supra), observing as under:

"10. It is true that ordinarily this Court would not entertain a Writ Petition against a show cause notice as the CB would get an opportunity to submit his reply and of hearing before the adjudicating authority. However, the scheme of the Adjudication Rules in question is different from the other inquiries where an authority issues a show cause notice, the CB submits his reply, the authority then hears the complainant and the CB for taking a decision in the matter. Ordinarily, inquiries are not divided into different stages, unlike the inquiry for which procedure is laid down in Rule 4 of the Adjudication Rules. In ordinary inquiries, the inquiry officer is not required to form any opinion before conclusion of the inquiry. On the other hand, the scheme of Rule 4 of the Adjudication Rules is quite different and the same is required to be examined both for the purpose of considering the last alternative submission of the petitioner about breach of Rule 4 of the Adjudicating Rules and also for considering the aforesaid preliminary objection raised by the learned Additional Solicitor General about maintainability of the Writ Petition.

12-On reading the above Rule, particularly sub-rules (1) and (3) thereof, it is clear that on the issue of show cause notice, a CB is permitted to submit his reply to the same. In terms of the above Rule, the Adjudicating Authority has to consider the objections raised by the CB and only if he forms an opinion that an inquiry should be continued further that the Adjudicating proceedings can be proceeded with, by issuing a notice for personal hearing. However, if the Adjudicating Authority is satisfied that the objections raised to the notice are valid, he may drop the show cause notice. The provision as found in Rule 4 of the Adjudication Rules is a unique provision. The Counsel for the parties were not able to point out any similar rules under which a two tier adjudication of a show cause notice is provided for in any other statute. Normally, once a show cause notice has been issued, the Adjudicating Authority deals with all the objections of the CB, be it preliminary as well as any other defence, by passing one common order of adjudication. The fact that the legislature has provided in Rule 4 of the Adjudication Rules that on issue of notice, the CB can object to the same and this objection has to be considered by the Adjudicating Authority for forming an opinion to proceed further with the show cause notice would require giving some meaning to it, otherwise it would be rendered otiose."

30. PRELIMINARY INQUIRY AND ITS RELEVANCE:-

30.1 The CB submitted that the only relied upon document in all the three impugned show cause notices were the Show Cause Notices issued by DRI under Section 124 of the Customs Act 1962. Assuming but without admitting, the CB was served with three show Cause Notices referred to above by DRI, Ahmedabad. DRI show cause notices were based on the "preliminary Inquiry" conducted by DRI for violation of provisions of the Customs Act 1962 or notifications for claiming duty benefit and not under CBLR-2018.

30.2 The CB further argued that the Adjudicating Authority failed to appreciate that the preliminary inquiry report is only to take a "prima facie" view to decide whether a regular inquiry is to be held or not. Once a decision is taken to hold regular inquiry and a notice is issued to do so, the preliminary inquiry lost its existence and therefore, of no substantive use thereafter. The Hon'ble Supreme Court of India in the case Ms Nirmala J. Jhala V/S State of Gujrat and others [(2013)4.SCC-301] held as :

"..... it is evident that the evidence recorded in preliminary Inquiry can not be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice."

30.3 CB stated that this legal position is also supported by the Apex Court as well as other courts in India and some of the case law are cited below;

(i) The Constitution Bench of Apex Court in Amlendu Ghosh v. District Traffic Superintendent, North-Eastern Railway, Katiyar, AIR 1960 SC 992, held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed.

It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.

- (ii) Similarly in *Chiman Lal Shah v. Union of India*, AIR 1964 SC 1854, a Constitution Bench of the Apex Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held ex-parte, for it is merely for the satisfaction of the government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the government as to whether a regular inquiry must be held. The Court further held as under:

".....There must, therefore, be no confusion between the two inquiries and it is only when the Government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishment indicated in Article 311 that the government servant is entitled to the protection of that Article, nor prior to that."

- (iii) In *Naryan Dattatraya Ramteerathakhar v. State of Maharashtra & Ors.*, AIR 1997 SC 2148, the Apex court dealt with the issue and held as under:

".....a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice or nor, remains of no consequence."

30.4 The CB argued that in view of the above settled legal position, the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the CB is not

associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violation of the principles of natural justice.

31. The CB further submitted that it is now an established principle that the Inquiry Officer while writing his report, should rely only on the evidence adduced during the inquiry and that he should not make use of any material which is not brought to his notice during the course of the enquiry. In these cases the Ld. I.O. did not call any witness, no one tendered any evidence oral or documentary; the Ld. I.O. in his report of inquiry dated 22-05-2021, has extracted the show cause notice to a large extent with some inconsequential cosmetic changes. In this regard, the CB relied upon the following case laws:-

(i) The Hon'ble CESTAT, CHENNAI, in the case of SEASWAN SHIPPING AND LOGISTICS Versus COMMISSIONER OF CUS., CHENNAI-II reported vide 2022 (380) E.L.T. 358 (Tri. - Chennai), while considering Inquiry under CBLR, at Para 13 thereof observed as under;

“13. These Regulations are in the nature of disciplinary rules for a Customs Broker. Revocation of licence is a major punishment which affects the livelihood of not only the Customs Broker but also those persons who are employed under him. The punishment being of such major nature, Regulation provides for the conduct of inquiry before adjudication of the Show Cause Notice issued to the Customs Broker. The inquiry proceedings is a measure to be cautious and to give sufficient opportunity to the person whose conduct is the subject matter of the Show Cause Notice. The purpose of such inquiry is to help the adjudicating authority to derive at proper conclusion based on all materials and facts that have been collected during the inquiry. The first stage of such inquiry as laid down in the Regulation is to collect material/statements so as to give opportunity to those persons who are required or relevant to be heard. In the second stage, the Regulation provides for giving opportunity to the Customs Broker to cross-examine those persons whose statements have been recorded. The inquiry officer should support his conclusion with reason. As per sub-clause (6) of Regulation 20, a copy of the inquiry report is to be served to the Customs Broker. This is to ensure

that the Customs Broker is to be equipped to defend his case at the time of adjudication as the inquiry report would play a vital role in the adjudication proceedings."

- (ii) Further, the Hon`ble CESTAT, CHENNAI, in the case of INDIAN SHIPPING SERVICES Versus COMMISSIONER OF CUS., CHENNAI-VIII reported vide 2022 (380) E.L.T. 90 (Tri. - Chennai), while considering Inquiry under CBLR, held that failure by Inquiry officer to give opportunity of hearing to the Customs Broker; Inquiry report is containing the show cause notice to large extent; no oral evidence taken or opportunity to cross examination provided; inquiry report submitted as empty formality; Para 4 being relevant is extracted herein below:

" 4. The appellant was issued a Show Cause Notice dated 3-4-2020 under Regulation 17(1) ibid. alleging that the appellant had contravened various provisions of the Customs Brokers Licensing Regulations. The appellant filed its detailed reply dated 8-7-2020, addressing the same to the Inquiry Officer, but however, the Inquiry Officer, in his Inquiry Report dated 14-10-2020, has extracted the Show Cause Notice to a large extent and the appellant's reply. What is missing is the requirement under Regulation 17(3) whereby the Inquiry Officer was expected, in the course of inquiry, inter alia, to take such oral evidence as may be relevant. This is because, as contended by the Learned Advocate for the appellant, no opportunity of being heard was ever extended to the appellant by the Inquiry Officer. Further, Regulation 17(4) gives the right of cross-examination to the Customs Broker, but however, in the absence of any notice of hearing, even the appellant stands deprived of the above opportunity. I am therefore of the view that the Inquiry Report has been submitted as an empty formality. Moreover, it appears that the Inquiry Report has not been submitted as mandated under Regulation 17(5)."

- (iii) The Supreme Court of India, in the case of State of Assam Vs M.K Das, 1970 (SC) SLR 444 has observed as under:-

"It is highly improper for an Inquiry Officer during the conduct of inquiry to attempt to collect any materials from outside source and not make that information so collected, available to the delinquent officer and, further make

use of the same in the inquiry proceedings. There may also be cases where a very clever and astute Inquiry Officer, may collect outside information behind the back of the delinquent officer and, without any apparent reference to the information so collected, may have been influenced in the conclusion recorded by him against the delinquent officer concerned. If it is established that the material behind the back of the delinquent officer has been collected during the enquiry and such material has been relied on by Inquiry Officer, without its having been disclosed to the delinquent officer it can be stated that the inquiry proceedings are vitiated”.

32. The CB further submitted that the I.O erred in using the statements recorded under Section 108 of the Customs Act 1962; for holding enquiry under CBLR-2018, a specific procedure has been provided for in Regulation 17 of CBLR-2018; when specific procedure is provided for, the general procedure provided for, for holding adjudication proceedings under the Customs Act, would not stand attracted. Sub-clause 3 and 4 of Regulation 17 of CBLR-18 provide that for using any oral evidence, in these proceedings, such evidence required to be recorded by the Enquiry Officer, and the person giving such oral evidence has to be offered to the CB for cross-examination. Use of any statement recorded under section 108 of the Custom Act 1962 would directly violate the provisions of Clause (4) of Regulation 17 CBLR-2018. In this regard, the CB cited the following case laws:-

(i) The Hon`ble Tribunal in the case of **M/S Thakkar Shipping Agency Vs Collector of Customs, Bombay** reported in ELT-1994 (69) ELT-90 (Tribunal) held that the statement recorded under section 108 of the Custom Act 1962 not to be used as evidence under Customs House Agents Licensing Regulation-1984 (Later CHAIR-2004 and Now CBLR-2013)-Recording of evidence and offering the person for cross examination is mandatory under clause (3) and (4) of Regulation 23. The observation of the hon`ble Tribunal are as :

“Both the Enquiry Officer and the Collector have relied upon the statement of Vijay Thakkar which alleged to have been retracted by him and have sought corroboration thereto from the statements of those two passengers also recorded

vide Section 108. Undisputedly, neither of these two passengers have been examined as witnesses in those proceedings nor have they been offered for cross-examination. For the purpose of holding enquiry under the Regulations, specific procedure has been provided for in Regulation 23. Under Clauses (3) and (4) of Regulation 23, for the purpose of making use of any oral evidence, in these proceedings, such evidence has to be recorded by the Enquiry Officer, and the person giving such oral evidence has to be offered to the delinquent for cross-examination. There does not exist any provision which authorises use of statement recorded vide Section 108 of Customs Act as an evidence here. Both recording of evidence and offering the persons for cross-examination has been made mandatory. Non-examination of these two passengers and non-offering them for cross-examination to the delinquent, therefore, makes their statements recorded in other proceedings, not admissible. The use of the statements of the two passengers, even for the purpose of corroborating what Vijay Thakkar has said, is therefore, not permissible. The statements obviously cannot fall within the category of 'documents'. That, therefore, leaves only the retracted statement of Vijay Thakkar. Thus the same ought to get corroboration on material particulars. [paras 10-12]"

(ii) The Hon'ble CESTAT, MUMBAI in the case of SMITA INTERNATIONAL Versus COMMISSIONER OF CUS. (GENERAL), MUMBAI reported vide 2008 (225) E.L.T. 439 (Tri. - Mumbai), while dealing with the issue relevancy of statement recorded under Section 108 of the Customs Act had held that statement relied upon against CHA were recorded under provision of Section 108 of Customs Act, 1962 which cannot be relied upon in proceedings under Customs House Agents Licensing Regulations, 2004

(iii) The hon'ble CESTAT, MUMBAI in the matter of VARMA & SONS Versus COMMISSIONER OF CUSTOMS (G), MUMBAI-2009 (235) E.L.T. 344 (Tri. - Mumbai), has held that Statements recorded under Section 108 of Customs Act, 1962 cannot be used as evidence against CHA under Customs House Agent's Licensing Regulations, 1984.

32.1 The CB submitted that on perusal of Report of the Ld I.O. suggests that in Report of the inquiry the Id I.O has heavily relied upon the Show Cause Notice F. No. DRI/AZU/SRU-7/2018 Dated 22-10-2020 issued by the Additional Director General, DRI-Ahmedabad which is based on "preliminary inquiry". It is respectfully submitted that the show cause notice dated 22-10-2020 issued by the DRI, purported to be the investigation report, despite repeated requests, not provided to the noticee by the Id. I.O. It is a settled legal position that non supply of even relied upon documents to the noticee is the violation of elementary principles of natural justice.

32.2 The CB argued that it is settled law that the statement recorded under section 108 of the customs Act 1962 is not applicable in regular inquiry proceedings since the noticee was not given an opportunity to cross examine the witness. Further, the statement recorded under section 108 of the custom Act 1962, during preliminary enquiry, can also not be used against the noticee since the present proceedings are under CBLR-2018 which is a complete code in itself.

32.3 As per para 22 of the show cause notice No 06/2021-22 dated 07-05-2021, the only relied upon document in these inquiry proceedings is the Show Cause Notice F.No. DRI/AZU/SRU-7/2018 Dated 22-10-2020. Meaning thereby that the Check lists, Bills of Entry or any other documents, statements were not the relied upon documents. Further, during the enquiry proceedings, no witness either called or examined by the IO. The documentation procedure for clearance of the import goods by way of filing B/E before the Custom authorities, assessment, payment of duty so assessed, examination of goods, issue of "order of out of charge" of the imported goods, all these documents are neither brought on record during inquiry nor are relied upon documents as per the impugned notice dated 07-05-2021. It is not the allegation that the impugned goods had been cleared without payment of custom duty and or the goods were imported in violation of the provisions of the Custom Act 1962 or any other law.

32.4 The CB submitted that their CB firm, comprising of a group of small number of closely knit dedicated employees, voluntarily agreed to remain vigilant so that no such incident could go undetected and the appointment of all these employees was made with the approval of the Customs Department. The Customs Broker Employee's passes for attending to the work in clearance of cargo through Customs are issued in accordance with the provisions of the Customs Broker License Regulations and only these employees were engaged in attending the Customs clearance work in the Custom House. During the period of 60 years of the Customs clearance operations, no instance of any infringement of the Customs Procedure or the Regulations or the provisions of the Act /Regulations was attributed to the noticee by any of the Custom Houses and or any other agencies.

32.5 The CB submitted that they cleared only 4 consignments of M/S Ramniklal & Son and not all the consignments covered in the show cause notice dated 22-10-2020. There are more than one Customs Brokers who cleared the goods which are subject matter of the show cause notice dated 22-10-20.

32.6 The CB argued that the findings of Id I.O. at para 8 (B, C, & E) of the report for Articles of Charge II,III&V are similar in substance which are as under:

(I) The Customs Broker has never met Shri Sanjiv Dhanak, Partner of M/s. Ramniklal & Sons

(II) He received KYC papers of M/S Ramniklal & Sons through a peon, And thereafter, observed "Hence it is clear that he did not know actual IEC holder and did not advised his actual client to comply with the provisions of the Customs Act.

32.7 The CB submitted that the only rely upon document in these inquiry proceedings is the Show Cause Notice F.No. DRI/AZU/SRU-7/2018 dated 22-10-2020 issued by the Additional Director General, DRI-Ahmedabad. In this regards it is to be stated that;

(i) A three Judge Bench of the Hon'ble Supreme, in the case of M/S CANON INDIA PRIVATE LIMITED & others VERSUS COMMISSIONER OF CUSTOMS- [2021 (376) E.L.T. 3 (S.C.)], decided on 9-3-21, in the batch of Civil Appeals, by referring its own judgment in the case of Commissioner of Customs vs. Sayed Ali and Another, has held that the Additional Director General of DRI is not the proper officer to issue show cause notice under the Customs Act. As a result whereof, the Board has issued instructions No.04/2021-Customs dated 17-03-2021, from file F.No.450/72/2021-Cus-IV, and directed to keep the show cause notices issued by DRI in abeyance. Accordingly the Principal Commissioner of Customs (NS-III), has kept the show cause notice F.No. DRI/AZU/SRU-7/2018 dated 22-10-2020 in abeyance.

(ii) Similarly the Hon'ble Supreme Court in the case Commissioner of Customs, Kandla VS AGARWAL METALS AND ALLOYS, in CIVIL APPEAL NO.3411 of 2020, decided on 31-8-2021, wherein the show cause notices were issued by the Additional Director General (ADG), Directorate of Revenue Intelligence (DRI), has held that the Additional Director General (ADG), DRI is not the proper officer to issue the said show cause notices;

32.8 In view of the settled legal position referred to above the Show Cause Notice F.No. DRI/AZU/SRU-7/2018 dated 22-10-2020 issued by the Principal Additional Director General, DRI is non est in the eyes of law; In the present inquiry proceedings the only relied upon document is Show Cause Notice F.No. DRI/AZU/SRU-7/2018 dated 22-10-2020 issued by DRI. Therefore, the report of inquiry based on an illegal document can not be acted upon.

32.9 The CB submitted that in view of the foregoing submissions on the Inquiry Report herein above, it merits to be held that the Inquiry Report grossly erred in expressing the conclusions that the omission and or commission the noticee violated or contravened any of the provisions of the Custom Act or CBLR-18; and Because the conclusions in the Report are contrary to the facts. The CB prayed that the Hon'ble Principal Commissioner

of Customs (General), Mumbai, may be please to disagree with the conclusions in the 'Report of Inquiry' and drop the proceedings initiated by the impugned show cause notice No 06/2021-22 dated 07-05-21 under Regulation 17(1) of CBLR-18.

DISCUSSIONS AND FINDINGS:-

33. I have gone through the facts of the case, the materials/documents brought on record; the offence report received in the form of Show Cause Notice F.No. DRI/AZU/SRU-7/2018-Ramniklal/Pt-1 dated 22.10.2020, from Pr. ADG, DRI, Ahmedabad Zonal Unit (AZU); the Suspension Order No. 41/2020-21 dated 12.02.2021; the Suspension Continuation Order No. 03/2021-22 dated 07.04.2021; the Show Cause Notice No. 06/2021-22 dated 07.05.2021, issued under CBLR, 2018; the Inquiry Report dated 22.07.2021; the Order-in-Original CAO No. 122/CAC/PCC(G)/SJ/CBS-Adj dated 10.01.2022; the CESTAT Final Order No. 85745-85747 dated 05.08.2024 and the written submission dated 08.01.2025, submitted by the CB at the time of personal hearing.

34. Briefly stated, I find that the present case has been booked and investigated by DRI, AZU against the importer/exporter M/s. Ramniklal & Sons (IEC No. 0388094702) who was indulged in misuse of the Advance Authorization Scheme in violation to the provisions of Foreign Trade Policy 2015-20 and the conditions of Notification No. 18/2015-Cus Dated 01.04.2015 by diverting the duty free imported goods to local market without payment of applicable Customs duties. The items allowed to be imported against the said authorizations were LDPE/LLDPE/HDPE/PVC Resins of different grades and Copper Rods and the items allowed to be exported against the said Authorizations Were Articles Made up of LDPE/ LLDPE/ HDPE/PVC Compound and Copper wire. However, the said firm indulged in diversion of LDPE/LLDPE/HDPE/PVC Resins of different grades and copper rods imported duty free under Advance Authorization Scheme into local market. M/s. Ramniklal & Sons have imported duty free goods viz. LDPE/LLDPE/PVC Resins/Copper Rods under Advance Authorization Scheme during the period from May-

2016 to March-2018. All of the goods imported under Advance Authorization Scheme having value Rs. 15,14,03,850/- had been diverted/sold in local market to various buyers.

34.1 Investigation also revealed that no manufacturing activities were carried out at any of the declared premises of supporting manufacturer of M/s Ramniklal & Sons, Mumbai viz at the premises of M/s Crocus Enterprises, Ludhiana and at factory premises of M/s Maks Technologies, Pune and no physical stock of imported PP/LDPE/LLDPE/HDPE/PVC Resins/Copper Rods were available at any of the declared premises of supporting manufacturer of M/s Ramniklal & Sons, Mumbai. From the records of the case, I find that M/s. H.G. Mehta & Co. Pvt. Ltd. (CB No. 11/362), the charged CB in the present case, has handled 04 consignments of M/s. Ramniklal & Sons, for which the clearance documents were provided by Mr. Viral Mehta through his peon and in three consignments of polymers M/s Crocus was the supporting manufacturer and for one consignment of copper, M/s Maks Technologies was the supporting manufacturer. Hence, for the apparent act of omission and commission on the part of the CB M/s. H.G. Mehta & Co. Pvt. Ltd. (CB No. 11/362), action under CBLR, 2018 was initiated and consequently the CB license was put under immediate suspension vide order no. 41/2020-21 dated 12.02.2021 and such suspension was continued, under Regulation 16(2) of CBLR, 2018, vide order no. 03/2021-22 dated 07.04.2021. Also, Inquiry under regulation 17 of CBLR, 2018 was initiated against the CB for apparent violation of Regulation 10(a), 10(d), 10(e), 10(m) and 10(n) of CBLR, 2018. The inquiry officer held all the charged as proved and consequently the CB license was revoked, security deposit forfeited and penalty of Rs. 50,000/- was imposed on the CB vide OIO CAO No. 122/CAC/PCC(G)/SJ/CBS-Adj dated 10.01.2022. The CB preferred appeal, against the said OIO, before the Hon'ble CESTAT, Mumbai and the matter was remanded back by Hon'ble CESTAT, Mumbai vide order dated 05.08.2024.

35. I find that the inquiry officer, in the present case, has conducted the inquiry proceedings under regulation 17 of CBLR, 2018, only on the basis of available records as the CB did not submit any written defense submission. During the inquiry proceedings the CB wanted to cross examine Shri Ashish Verma, Pr. ADO, DRI Ahmedabad, however, he did not mention any reason behind cross examining him and the same was denied by the inquiry officer stating that there was no substantial reason for the cross examination of Shri Ashish Verma, Pr. ADO, DRI Ahmedabad. The inquiry officer concluded the inquiry proceedings and held that all the charges levelled against the CB viz. violation of Regulation 10(a), 10(d), 10(e), 10(m) and 10(n) of CBLR, 2018, *ibid*, are proved beyond doubt. I also find that all of the above mentioned charges have been levelled against the CB on the very grounds that the CB never met the actual importer and received & accepted the KYC documents as well as import documents through peon of a third person Sh. Viral Mehta who was neither the IEC holder not the authorised employee of the importer firm.

36. I find that with respect to the obligation of CB stipulated under Regulation 10(a) of CBLR, 2018, the Hon'ble CESTAT Mumbai, under para 6 of order dated 05.08.2024, observed that *"The purpose of 'authorization' is to establish that 'customs broker' is contacted agent of importer or exporter for each transaction and, thereby, bring section 147 of Customs Act, 1962 into play. The manner in which it is to be obtained is not set out in regulation 10(a) of Customs Broker Licensing Regulations, 2018 and, obviously, considering its purpose, is only required to be produced when asked for. It is not open to the licensing authority to insinuate more stipulations into this obligation than contemplated in the Regulation"*. I find that the CB, vide written submission dated 08.01.2025, submitted that the Customs Broker obtained (i) Certificate of Importer-Exporter Code (IEC), (ii) Star Export House Certificate (iii) Authorization, (iv) PAN CARD from the importer. However, I find that the CB has not received these documents directly from M/s. Ramniklal & Sons, however, the CB has received these documents

directly from M/s. Ramniklal & Sons, however, the CB has received these documents through Sh. Viral Mehta. Along with the written submissions dated 08.01.2025, the CB has also submitted copies of authorisation letters dated 26.07.2016 and 09.09.2016, received from M/s. Ramniklal & Sons and submitted that Regulation 10(a) of CBLR-18 requires Customs Broker to obtain authorization, which CB did obtain- Signatures on authorisation letter not forged neither person authorising appellant denied having given authority letters.

The copies of the authorization letters submitted by the CB are attached below:



RAMNIKLAL & SONS

62/64, ZAVERI HOUSE, HUGHES ROAD, OPP. DHARAM PALACE, MUMBAI: 400 007.

49

9 Sep 2016

70

To
DEPUTY COMMISSIONER OF CUSTOMS
IMPORT DEPT.,
JAWAHAR CUSTOM HOUSE,
NCTUA SHEVA

Dear Sir,

Sub- Consignment of High seas Basis of 153.00 MT of PHDPE LOTRENE Q TR 144
shipped per S.S. AL ROMEIA Voy No.636 VIDE B/L No. MSCUDD 239671 DT
08.09.2016.

Kindly note, that as per the provision of sub clause III of para 5 of Import Control Order
1955. We have purchased on High seas Basis the above referred Consignment from:


To
M/s Prince Containers Pvt. Ltd.
Plot No.668/10(2) Somnath Kuchigam,
Near Dabhel Sub station,
Nani Daman u.t. Pin 396210

Further, we hereby authorize our CHA M/s H G MEHTA & CO. PVT. LTD. (11/362) to do
all customs formalities regarding high seas sale, on our behalf.

We request you to allow the clearance of the Consignment to the High Seas Purchaser by
allowing them to file the B/E s in this regard.

Thanking you,

Yours faithfully,
For RAMNIKLAL & SONS


AUTHORIZED SIGNATORY

36.1 The CB also argued that no proper inquiry was conducted by the inquiry officer and there was no occasion to submit KYC documents before the inquiry officer. I have also perused the statements of Shri Sanjiv Ramniklal Dhanak, Partner of M/s Ramniklal & Sons; Sh. Nilesh Pravin Kumar Jain, Partner of M/s Maks Technologies, the supporting manufacturer of the importer and Shri Pankaj M Sheth, Director of M/s. H. G. Mehta & Co. Pvt. Ltd. (CB No. 11/362). Taken into cognizance, of all the records of the case, I do not find any corroborative evidence to substantiate that the CB M/s. H.G. Mehta & Co. Pvt. Ltd. was handling the import consignments of M/s. Ramniklal and Sons without any authorization. Hence, I am of the considered view that the charge of violation of Regulation

10(a) of CBLR, 2018, levelled against the CB, is not sustainable and hence I drop the same.

I also rely on the judgement of Hon`ble Tribunal in case of K.S. Sawant & Co. Vs. Commissioner of Customs (General), Mumbai reported in 2012 (284) E.L.T. 363 (Tri. – Mumbai):

“5.1.....Obtaining an authorisation from the importer does not mean that the same should be obtained directly; so long as the concerned import documents were signed by the importer, it amounts to authorisation by the importer and, therefore, it cannot be said that there has been a violation of Regulation 13 (a)”

37. I find that the charge of violation of Regulation 10(n) of CBLR, 2018 has been levelled against the CB on the ground that the CB had not physically verified the antecedents of importer details of M/s. Ramniklal & Sons as well as the premises of supporting manufacturers i.e. M/s. Crocus Enterprises, Ludhiana and M/s. Masks technologies, Pune. Also, the CB has not been careful and not diligent in undertaking the KYC of the background of importer and accepted documents, which he did not verify. I find that the CB has received the (i) Certificate of Importer-Exporter Code (IEC), (ii) Star Export House Certificate (iii) Authorization, (iv) PAN CARD etc. from the importer through Sh. Viral Mehta and the IEC No. and address of the importer are found to be correct during the investigation. Also, the importer and the supporting manufacturer joined the investigation and appeared before DRI and Customs officer. Hence, I find that the physical existence of the importer M/s. Ramniklal & Sons is not disputed and this is not the case of forged or invalid KYC documents of the importer, as all the documents were found to be valid. There is no dispute that the importer firm exist and they have participated in the investigation conducted by DRI. Further, I have perused all the case laws relied upon by the CB which suggests that *“No stipulation or legal requirement of physically verifying business or residential premises of importer”*. Under the facts and circumstances of the case I am of the considered view that the charge of violation of regulation 10(n) of CBLR,

2018 cannot be proved sustainably. In this regard, I rely on the following case laws/judgement:

(i) **The Hon'ble High Court of Delhi in the matter of D S Cargo vs. Commissioner of Customs (CUSAA 2/2022) dated 25.09.2023**, held that:

"This court has perused the records. In the facts of this case, there is no allegation of impersonation in the name of importer firms. The findings of DRI is that these importer firms were not being run and operated by the persons in whose name the importer firms were incorporated. The allegation is not that these firms are fictitious and do not exist. The finding is that these these firms are being run and remotely controlled by Mr. Sanjeev Maggu and Mr. Ramesh Wadhera. The Regulation requires the Customs Broker to verify the identity of the client (i.e. importer firms) and in the facts of this case since the client (i.e. importer firms) exist as is evident from the functionality of the IEC (as discussed above), it is not possible to hold that there has been a blatant violation of this Regulation, which would justify the revocation of CB license."

(ii) **Hon'ble CESTAT in the case of M/s. Anax Air Services Pvt. Ltd. Vs. Commissioner of Customs, (Airport and General), New Delhi**. The relevant portion of said judgement is reproduced below:

"para 27.....In the factual matrix of this case, we find that the GSTIN issued by the officers of CBIC itself shows the address of the client and the authenticity of the GSTIN is not in doubt. In fact, the entire verification report is based on the GSTIN. Further, IECs issued by the DGFT also show the address. There is nothing on record to show that either of these documents were fake or forged. Therefore, they are authentic and reliable and we have no reason to believe that the officers who issued them were not independent neither has the Customs Broker any reason to believe that they were not independent....."

28. The responsibility of the Customs Broker under Regulation 10(n) does not include keeping a continuous surveillance on the client to ensure that he continues

to operate from that address and has not changed his operations. Therefore, once verification of the address is complete as discussed in the above paragraphs, if the client moves to new premises and does not inform the authorities or does not get his documents amended, such act or omission of the client cannot be held against the Customs Broker.....”

38. I find that the charge of violation of Regulation 10(m) of CBLR, 2018, has been levelled against the CB on the ground that the CB failed in sensitizing the actual IEC holder regarding Notification 18/2015-Customs dated 01.04.2015. The Investigation has revealed that the CB was involved in mis-use of the said Notification. These commissions and omissions on the part of the CB firm prove grave inefficiency in discharge of their duties as a Customs Broker. The CB did not restrict the misuse of the said Notification even after knowing that Sh. Viral Mehta is proxy importer. However, I find that the CB, in this regard, has submitted that in the present case the importer has violated the post import condition of notification by allegedly diverting the imported goods in the open market and did not use for manufacturing the goods as provided in the notification; that it has no bearing on the efficiency or inefficiency of the CB; that there is no case of slackness on the part of CB; that there is no specific instance regarding providing of slow or inefficient service to the clients and hence, this Regulation has been wrongly and inappropriately invoked by the Department. I also find that the Hon'ble CESTAT, in order dated 05.08.2024, under para 7, has observed that “.....*The obligation to ascertain the correct procedure and position is also obviously in relation to a client who would have to allege having been misled by 'customs broker' for this charge to hold. Likewise, speed and efficiency are in interest of the client and it is for the client to fire the opening salvo before the charge to the contrary becomes meaningful*”. I also find that under the factual matrix of the case, no substantiated evidence has been found to hold that the CB has not worked with speed and efficiency in handling the import consignments of the importer M/s. Ramniklal & Sons and also no

evidence has been recorded with respect to the unnecessary delay in exercising their role as CB and no such allegation has been raised by the importer against the CB. I also find that all the allegation, on the CB, has been levelled on the facts that the CB never met Shi Sanjeev Dhanak, Partner of M/s. Ramniklal & Sons and all the KYC documents and import documents have been received by the CB through a peon of Sh. Viral Mehta and not directly from the importer. Under the factual matrix of the case, I am of the firm opinion that the charge of violation of Regulation 10(m) of CBLR, 2018 levelled against the CB is not sustainable.

39. Further, I find that the charges of violation of Regulations 10(d) and 10(e) of CBLR, 2018 have been levelled against the CB on the grounds that the CB admitted that he had never met with Sh. Sanjiv Dhanak, Partner of M/s. Ramniklal & sons till the date of recording of the statement. Therefore, it is clear that he did not know actual IEC holder (Importer) and did not advise his actual client to comply with the provisions of the Act. Also, it is alleged that the CB received KYC paper namely PAN, IEC, Export House Certificate, RCMC and address proof of importer M/s. Ramniklal & Sons through the peon of Shri Viral Mehta who is neither importer nor authorized signatory of importer. Despite of knowing that Shri Viral Mehta was proxy importer, they cleared the consignments of M/s. Ramniklal & Sons.

39.1 I find that it is a matter of fact that the CB has never met the importer (IEC holder) or any of the authorised signatory/representative of the importer firm/company. The CB received all the KYC documents and import documents through the peon of Sh. Viral Mehta. Although the importer was not bogus or fictitious in this case and all the KYC documents were found to be genuine and valid, however, advising the importer is the primary responsibility of the CB to ensure that their client met with all the requisite conditions of Customs Act, 1962 and comply with regulation, rules and notifications issued

thereunder. However, in the present case no such evidence has been produced by the CB that they have ever communicated with the importer to fulfil their obligation stipulated under regulation 10(d) of CBLR, 2018. Also, it is a matter of fact that the importer M/s. Ramniklal & Sons was indulged in fraud activity of selling the duty free imported goods, imported under Advance Authorisation License, to the local buyers in open market and did not fulfil their export obligation as per the AA License, which resulted in defrauding the Govt. exchequer and duty liability on the importer amounting to approx. Rs. 64 crores. Had the department not intervened timely such fraudulent activity would not have been unearthed. I also find that on the directions of Sh. Viral Mehta, the CB M/s. H.G. Mehta & Co. Pvt. Ltd. had registered the Advance Authorisation License of the importer M/s. Ramniklal & Sons at Nhava Sheva. I find that under regulation 10(d) of CBLR, 2018, it is prescribed that *"A Custom Broker shall advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Department"*. Also, I find that under Regulation 10(e) of CBLR, 2018, it is stipulated that *"A Custom 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."* Having perused the same, and having taken into cognizance of all the facts and circumstances of the case, I am of the firm opinion that the CB has contravened the provisions of Regulation 10(d) and 10(e) of CBLR, 2018 inasmuch as they have not advised their client i.e. the importer M/s. Ramniklal & Sons to comply with the Notification 18/2015-Customs dated 01.04.2015.

39.2 The CB cannot run from their obligations by citing that it was a post import violation by the importer. Also, the CB had worked in completely negligent manner and relied only on Sh. Viral Mehta and the CB himself/themselves did not exercised due diligence with respect to the fact that whether the importer is complying with all the rules, regulation and Notifications pertaining to Advance Authorisation License. In the facts and circumstances

of the present case, as discussed above, it is apparent that CB has failed to discharge his duties with due diligence. As per his own statement, the CB has knowledge of the imports conducted by some other person and the actual importer was merely on papers. Despite that the CB did not act with due diligence in advising the firms or bringing this fact to the knowledge of the department. The CB should have exercised due diligence and imparted correct position of law as regards the nature of the imports.

39.3 I am of the firm belief that the CB was in gross negligence as they were also dealing with a third party Sh. Viral Mehta, as he was not the actual importer. 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. In this regard, reliance is also placed on the decision of **Hon'ble Tribunal, New Delhi in case of KVS Cargo Vs. Commissioner of Customs (Gen.), New Delhi, reported in 2018 (363) E.L.T. 856 (Tri. – Del.)**. Relevant para 8 of the said order is re-produced as under:

“8. Regarding Regulation 11(d), the CB is expected to advice their client, to comply with the provisions of the Customs Act, it stands established that the appellant has not met the actual importer. In view of above, the failure to observe Regulation 11(d) stands established”.

39.4 I find that ratio of the aforesaid judgments is squarely applicable in the instant case. The CB has an important role in respect of documentation and Customs Clearances. I find that in the instant case, the CB did not advise the importer which resulted in fraudulent import, also the CB did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Hence, the CB cannot shy away from the responsibilities & obligations cast upon them under the CBLR, 2018. Further, in case of accepting the documents through intermediary or third person, it is the responsibility of the Customs Broker that he ensures at the same time that the IEC is not being misused by any person other than IEC holder. The responsibility of a Customs

Broker play a crucial role in protecting the interest of the Revenue and at the same time he is expected to facilitate expeditious clearance of import/export cargo by complying with all legal requirements. From the above facts and circumstances, I am of the considered view that the said Custom Broker failed to advise the actual importer. Further, the CB did not bring the said discrepancy to the notice of the Deputy or Assistant Commissioner of Customs. Therefore, I hold that the CB has violated the provisions of Regulation 10(d) and 10(e) of the CBLR, 2018 (erstwhile Regulation 11(d) & 11(e) of CBLR, 2013).

39.5 I find that the CB has argued that the statement recorded under section 108 of the customs Act 1962 is not applicable in regular inquiry proceedings since the noticee was not given an opportunity to cross examine the witness. The CB also argued that the statement recorded under section 108 of the custom Act 1962, during preliminary enquiry, can also not be used against the noticee since the present proceedings are under CBLR-2018 which is a complete code in itself. I have taken cognizance of all the facts, statements and evidences as well as the findings of the IO and defense submissions of the CB. Here, I rely on the apex court judgement in the matter of **Surjeet Singh Chhabra Vs. Union of India reported in 1997 (89) E.L.T. 646 (S.C.) and in the case of Systems & Components [2004 (165) E.L.T. 136 (S.C.)]** respectively, which sates as under:-

"The Customs Officials are not police officers. The confession, though retracted, is an admission and binds the petitioner".

"It is a basic and settled law that what is admitted need not be proved".

40. I find that the CB has quoted the judgement of Hon'ble Apex Court in the case of M/s. Canon India Pvt. Ltd. & Others Vs. Commissioner of Customs [2021 (376) E.L.T. 3 (S.C.) decided on 09.03.2021] wherein it is held that the Additional Director General of DRI is not the proper officer to issue show cause notice under the Customs Act, 1962. As a result whereof, the Board has issued instructions No. 04/2021-Customs dated 17.03.2021

and directed to keep the show cause notices issued by DRI in abeyance. Accordingly, the Principal Commissioner of Customs (NS-III) has kept the show cause notice F.No. DRI/AZU/SRU-7/2018 dated 22.10.2022 in abeyance. The CB has argued that the DRI's SCN is non-est in the eyes of law and hence the inquiry based on illegal documents cannot be acted upon. However, it is pertinent to mention here that the proceedings under CBLR are separate, independent and distinct from that under Customs Act, 1962. Also, for initiating the warranted action under CBLR, 2013/2018, the DRI's show cause notice has been treated as an Offence Report against the CB, in the present case, under Regulation 17 of CBLR, 2018, which is sufficient and valid document for framing charged against the CB to initiate action under CBLR for apparent violations of prescribed regulations of CBLR.

41. Further, with regard to the contention of the CB that the proceedings under CBLR, in the present case, are time barred and the prescribed time limit under Regulation 17 of CBLR, 2018, has not been followed, I, relying on the following case laws, 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."

(c) The Hon'ble CESTAT Mumbai in the matter of M/s. Muni Cargo Movers Pvt. Ltd. Vs. Commissioner of Customs (General), Mumbai [Order No. A/996/13CSTB/C-I dated 23.04.2013] held that:-

"Para 4.2:- As regards the third issue regarding non-adherence to the time-limit prescribed in CHALR, there is some merit in the argument. But nevertheless, it has to be borne in mind that time-limit prescribed in the law though required to be followed by the enforcement officers, at times could not be adhered to for administrative reasons. That by itself does not make the impugned order bad in law".

42. I find that in the instant case, the CB license was suspended vide Order No. 41/2020-21 dated 12.02.2021, 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 vide Order No. 03/2021-22 dated 07.04.2021, under Regulation 16(2) of CBLR, 2018, pending inquiry proceedings. I find that for the

violation of obligations provided under CBLR, 2018 and for their act of omission and commission, the CB M/s. H.G. Mehta & Co. Pvt. Ltd. (CB No. 11/362) 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 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."

43. As discussed above, I conclude that the CB is guilty of violations of CBLR, 2018. However, considering all the facts and circumstances of the case, I am of the view that revoking the CB license is too grave a penalty to be imposed for the above violations, as the punishment of revocation of license and forfeiture of security deposit of the CB, 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 04 years i.e. since 12.02.2021 and the CB has been unable to work for these 04 years 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 D S Cargo Agency vs. Commissioner of Customs [CUSAA 2/2022] dated 25.09.2023, held as follows:

"22. In the facts of this case, the revocation of the license came into effect on 04.02.2019 and a period of more than 4-1/2 years has already lapsed. The revocation of the license which is in operation since 2019 i.e. almost 4-1/2 years is itself a severe punishment and will serve as a reprimand to the Appellant to conduct its affairs with more alacrity. A penalty of revocation of license for failing to collect the KYC forms unjustly restricts the Appellant's ability to undertake the business CHA for the entire life. Thus, keeping in view the proportionality doctrine and keeping in view that the Appellant has already been unable to work for 4-1/2 years, this Court is therefore of the opinion that the impugned order of the learned Tribunal as well as the order-in-original dated 04.02.2019 to the extent that it

revokes the Appellant's license and forfeits the security deposit is liable to be set aside."

(b) 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."

- (c) **Delhi High Court has in case of Ashiana Cargo Services [2014 (302) ELT 161 (DEL)] held as follows (relevant paras):**

"10.....Not any and every infraction of the CHA Regulations, either under Regulation 13 ("Obligations of CHA") or elsewhere, leads to the revocation of license; rather, in line with a proportionality analysis, only grave and serious violations justify revocation. In other cases, suspension for an adequate period of time (resulting in loss of business and income) suffices, both as a punishment for the infraction and as a deterrent to future violations. For the punishment to be proportional to the violation, revocation of the license under Rule 20(1) can only be justified in the presence of aggravating factors that allow the infraction to be labeled grave. It would be inadvisable, even if possible, to provide an exhaustive list of such aggravating factors, but a review of case law throws some light on this aspect. In cases where CUS.A.A.24/2012 Page 9 revocation of license has been upheld (i.e. the cases relied upon by the Revenue), there has been an element of active facilitation of the infraction, i.e. a finding of mens rea, or a gross and flagrant violation of the CHA Regulations....."

"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.

- (d) **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."

(c) **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".

44. Further, I find that the CB has submitted that 'their CB firm, comprising of a group of small number of closely knit dedicated employees, voluntarily agreed to remain vigilant so that no such incident could go undetected and the appointment of all these employees was made with the approval of the Customs Department. The Customs Broker Employee's passes for attending to the work in clearance of cargo through Customs are issued in accordance with the provisions of the Customs Broker License Regulations and only these employees were engaged in attending the Customs clearance work in the Custom House. During the period of 60 years of the Customs clearance operations, no instance of any infringement of the Customs Procedure or the Regulations or the provisions of the Act

/Regulations was attributed to the noticee by any of the Custom Houses and or any other agencies'. 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."

45. 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 to forfeit the security deposit furnished by the CB. However, for their acts of omission and commission, the CB M/s. H.G. Mehta & Co. Pvt. Ltd. (CB No. 11/362) 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) of CBLR, 2018 (erstwhile regulation 11(d) & 11(e) of CBLR, 2013) and the interest of justice would be met by imposition of penalty under Regulation 18 of CBLR, 2018. Accordingly, I pass the following order:

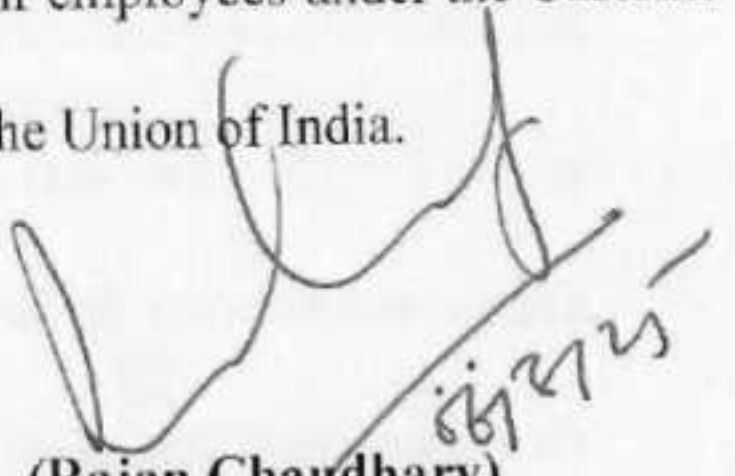
ORDER

46. I, Principal Commissioner of Customs (General), in exercise of the power conferred upon me under Regulation 17(7) of CBLR, 2018 (erstwhile Regulation 20(7) of CBLR, 2013), pass the following order:

(i) I, hereby revoke the suspension of CB License held by M/s. H.G. Mehta & Co. Pvt. Ltd. (PAN no. AAACH8142HCH001, CB No. 11/362), which was ordered vide order no. 41/2020-21 dated 12.02.2021 and continued vide order no. 03/2021-22 dated 07.04.2021.

(ii) I, hereby impose penalty of Rs. 50,000/- (Rs. Fifty Thousand only) on H.G. Mehta & Co. Pvt. Ltd. (PAN no. AAACH8142HCH001, CB No. 11/362) under Regulation 18(1) of the CBLR, 2018 (erstwhile Regulation 22 of CBLR, 2013).

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 H.G. Mehta & Co. Pvt. Ltd. (CB No. 11/362),
Office No. 15, 3rd Floor,
Friends Union Premises Co-operative Society Ltd., 227,
P.D' Mello Road, Near GPO,
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