



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/12/2021-CBS आदेश दिनांक/Date of Order: 11.03.2025

CAO No.83/2024-25/CAC/PCC(G)/RC/Adj-CBS जारी दिनांक/Date of issue: 11.03.2025

DIN: 20250377000000468210

द्वारा जारी : राजन चौधरी

प्रधान आयुक्त, सीमाशुल्क(सामान्य)  
मुंबई -400 001

Issued By : **Rajan Chaudhary**

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

**ORDER-IN-ORIGINAL मूल आदेश**

**ध्यान दीजिए/ N.B. :**

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

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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), 1982, के प्रावधानों के अंतर्गत, यथोत्तखंडपीठ में स्वीकार्य है।

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

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

DRI, Mumbai के संदर्भ में जारी आदेश क्रमांक A/86617-86619/2018 दिनांक 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 होती रु ., (ii)यदि यह राशि रु) एवं -/5000 .पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न होती रु .iii) यदि यह राशि रुके शुल्क -/10000 .पचास लाख से अधिक होती रु . का भुगतान क्रॉसड बैंक ड्राफ्ट के माध्यम से अधिकरण की खंडपीठ के सहायक पंजीयक के पक्ष में जिस स्थान पर खंडपीठ स्थित है, के किसी भी राष्ट्रीय क्रत बैंक की शाखा में किया जाए एवं डिमांड ड्राफ्ट अपील के साथ संलग्न किया जाए।

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

7. अपील की एक प्रति में कोर्ट फी अधिनियम, 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. AAACH8142HCH0001, holding 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 (CBLR, 2018)].

2. The Directorate of Revenue Intelligence (DRI), Sub-Regional Unit, Vapi received an intelligence that two proprietorship firms as per details mentioned below were indulged in diversion of goods imported at concessional rate of duty under Notification 25/99-Customs dated 28.02.1999, as amended: -

**Table-1**

Sr. No.	Name of the firm	Registered address	IEC No.	Name of the Proprietor
1.	M/s. Chandrashekhar Industries	A-44, STICE, Musalgaon MIDC, Sinnar, Nashik, Maharashtra	3113019486	Shri Surendra S. Salekar
2.	M/s. Shine Metal Industries	Plot No. J-6/3, MIDC Sinnar, Malegaon, Nashik-Pune Sinnar, Highway, Nashik, Maharashtra-422113 Office No. 416, 4th Floor, SwastikDisha Business Park, LBS Marg, Ghatkopar (W), Mumbai-400086	ABUPK7118G	Shri Kuldeep Ramesh Kshirsagar

3. Whereas, as per the Notification No. 25/1999- Customs dated 28.02.1999 as amended, goods falling under Sr. No. 89 of List A of the said notification, the portion of the Customs duty leviable on the goods thereon as specified in First Schedule to the Customs Tariff Act, 1975 becomes NIL when imported into India for use in the

manufacture of the finished goods as mentioned in the said notification, provided that the importer follows the procedure set out in the Customs (Import of goods at concessional rate of duty for manufacture of Excisable goods) Rules, 1996, as amended from time to time. Intelligence indicated that M/s. Chandrashekhar Industries and M/s. Shine Metal Industries had imported Electrolytic Tough Pitch Copper Rods 8 MM at concessional rate of duty for manufacture of "Lead Wire for Electronic Parts under Notification No. 25/99-Customs dated 28.02.1999 as amended, however, these goods were never used for manufacturing of Lead Wire for electronic parts. Intelligence further indicated that the above-said firms were working under the control of Shri Jayant Shantilal Mirani, who is the owner of M/s. Nikom Copper & Conductors Pvt. Ltd. he was the main mastermind behind this duty evasion. Acting upon the aforesaid intelligence, simultaneous searches were conducted by the officers of DRI Ahmadabad, Regional Unit, Surat, Sub-Regional unit Vapi, Zonal unit Mumbai Regional unit Pune Customs officers of Nashik and Pune at different premises on 16.12.2019 and the result of the same as under;

4. During the Course of Panchnama proceedings, it was observed and stated also by Shri Sanjay Kumar Saroj caretaker of the M/s. Chandrashekhar Industries that the machinery was lying in the factory premises which were old, rusted and in depleted condition and used to be in operation rarely twice or thrice in a month to manufacture Copper Wire. He also stated that copper wires drawn through the above said machineries were sold in open market without doing electro plating as they were not having any facility to do so. He also informed that they never did tin plating of copper wire in the said factory premises. The goods which were imported at concessional rate of duty under the said notification were meant to be used for manufacture of 'Lead Wire' for electronic parts but they had manufactured bare Copper wires only from it.

5. During the Course of search operation, the search of office and residential premises of Sh. Kuldeep Ramesh and Office premise of M/s. Nikom Copper and Conductors



Pvt.Ltd. and Customs Broker M/s. H.G. Mehta &Co., residential premise of Sh. Jayant Shantilal Mirani owner of M/s. Nikom Copper and Conductors Pvt. Ltd. It appeared that M/s. Chandrashekhar Industries (hereinafter referred to as CSI) and M/s. Shine Metal Industries [hereinafter referred to as SMI] were not having any facility/machineries to manufacture Lead Wire' in their respective factory premises. They were indulged in importing Electrolytic Tough Pitch (ETP) Copper Rods 8MM at concessional rate of duty under Notification 25/99-Customs dated 28.02.1999 (Sr. No. 89A), as amended for manufacture of Lead Wire for electronic parts' however they never manufactured Lead Wire from the imported Copper Rods. Most of the imported ETP Copper Rods were sold as such in open market and the remaining imported ETP Copper Rods were used for drawing bare Copper Wire. They never manufactured Lead Wire from those imported goods.

6. During the Course of investigation statement of Shri Kuldeep Ramesh Kshirsagar, Proprietor of M/s. SMI was recorded on 16.12.2019, 23.12.2019, 27.12.2019 and 25.09.2020 under Section 108 of the Customs Act, 1962. wherein he inter-alia stated that:

- His Cousin Shri Anil Anand Satpute, asked him to work as Proprietor of M/s. SMI on paper only; that all control of sales, purchase and finance of the firm would be done by M/s. NCCPL; that he became Proprietor of the said firm on paper in August-2018; that his firm's current bank account used to be controlled /operated online by Shri Jayant Mirani / Shri Mukesh Jain.
- M/s. SMI was engaged in drawing Copper Wire of diameter 2.54 MM /1.6 MM from Copper Rod of diameter 8 MM; they imported Copper Wire Rods of diameter 8 MM (Electrolytic Tough Pitch Copper Wire Rods) under Sr. No. 89 of Notification 25/1999- Customs dated 28.02.1999 at concessional rate of duty and either sold them directly in open market as such or manufactured bare copper wire up to size 1.6 MM and sold thereafter in open market.

- He was the Proprietor of M/s. SMI on paper only; that he was working as paid employee under Shri Jayant Mirani, who was the controller of M/s Nikom Pharmaceutical Pvt. Ltd., Mumbai & M/s. NCCPL; that he had been entrusted to look after the work related to generation of sales invoices, arrangement of transportation as instructed by Shri Mukesh Jain, who was the employee of M/s. NCCPL.; that he was also entrusted to look after the work related to manufacturing activities of the goods, inward e-way Bill generation and handling of goods; that for this, he was getting salary of 72,000/- per month from Shri Jayant Mirani by way of debiting the current account of M/s. SMI and crediting his personal savings account; that Shri Jayant Mirani through his employee Shri Mukesh Jain used to control/operate the current bank accounts of M/s. SMI from their office located at Mumbai; that the works related to sales of goods, receipt of payments and import of goods used to be handled by Shri Mukesh Jain under the instructions of Shri Jayant Mirani.
- He was having knowledge of the contents of the Notification No. 25/99-Customs dated 28.02.1999 as amended time to time; that as per the said Notification, he was supposed to import Electrolytic Tough Pitch (ETP) Copper Wire Rods at concessional rate of duty for manufacturing of 'Lead Wire for Electronic Parts' as mentioned under serial No. 89 of List A of the said Notification.
- On being asked regarding the manufacturing activities done from the goods which had been imported at concessional rate of duty under the said Notification, he stated that till June-2019, he was not having any manufacturing facility to manufacture Copper Wires in his factory premises; that only one old RBD machine (Rod Break Down Machine) was available in the factory premises but it was not in working condition; that the goods which had been imported under the said Notification till June-2019, had been sold in open market as such without doing any manufacturing

activities from the said goods; that approx. 1800 MTs of ETP Copper Wire Rods of diameter 8 MM which had been imported at concessional rate of duty had been sold in open market as such without processing the same in factory premises; that later on, in July-2019 one another RBD machine became operational after installation, for drawing of Copper Wire up to size 1.6 MM diameter; that as the said machine became operational in July-2019, that he did manufacturing of Copper wire of diameter 1.6 MM/2.54 MM from the 20% of the goods which had been imported under the said Notification and remaining 80% of the goods i.e. ETP Copper Wire Rods of 8 MM had been directly sold as such in open market; that his above said submission can be substantiated from the fact that electric power connection in his factory premises was taken in May 2019; before that period, he was not having power connection in his factory premises; that he was not having even a DG sets in his factory to run the machineries.

- He had never manufactured Lead Wire from the ETP Copper Wire Rods which had been imported under the said Notification; that even he was not having any manufacturing facility/ machineries/expertise at his factory premises to manufacture Lead Wire; that on being asked regarding knowledge of manufacturing of Lead wire, he stated that Lead Wire is a tin-plated copper wire having diameter less than 1 mm which is manufactured by doing electroplating of tin over copper wire; that Lead Wire basically provides connection between two locations electrically; that Lead wires are used in many electronic parts (components) such as Transistors, Inductors, Resistors, Capacitors, Micro Controllers, Relay, Switches, Circuit Breakers, Fuse, Transformers, Diodes, Integrated Circuits etc.; that as per the said notification, he was supposed to manufacture Lead wire for electronic parts but he never manufactured Lead Wire.

- When enquired about his eligibility to avail the benefits of exemption under the said notification when he was not having any requisite machinery/ facility/ expertise to manufacture Lead wire in his factory, he stated that the matters regarding the import of all the raw material in M/s. SMI used to be handled/controlled by Shri Mukesh Jain who was the employee of M/s. NCCPL and was working under the instructions of Shri Jayant Mirani; that he was entrusted only to work as per Shri Mukesh Jain's instructions; that as per Shri Mukesh Jain's instructions, he used to receive imported goods in his factory premises and thereafter, as instructions received from Shri Mukesh Jain through telephone regarding the name of the buyers, he used to prepare sales invoices for the imported goods and manufactured goods as details stated above; He confessed that he had contravened the provision of Customs Act, 1962 by way of not following the conditions of Notification No. 25/99- Customs dated 28.02.1999; that by way of his such act,
- Regarding the mastermind who had played key roles in evasion of said customs duty, he stated that Shri Anil Anand Satpute and Shri Jayant Mirani was the main mastermind for doing such duty evasion; that Sh. Anil Satpute stated the modus of such evasion to Sh. Jayant Mirani who further funded/financed to M/s. CSI and M/s. SMI; that Sh. Jayant Mirani established M/s. CSI and M/s. SMI with the help of dummy proprietors like him and started to operate these firms from his Mumbai office.
- He also stated that the electric transformer which had been taken from Electricity dept. and installed in his factory was in the name of M/s. NCCPL.; that even the RBD Machine which was installed in the factory premises of M/s. SMI was in the name of M/s. NCCPL.; that they had not done any MOU/ agreement with M/s. NCCPL for Nieghoff RBD Machine which was installed in his factory premises; that all control of daily activities of this firm were controlled by M/s. NCCPL.; that



he was not beneficiary of the duty evasion; that Shri Jayant Mirani and Shri Anil Satpute were the actual beneficiary of such duty evasion.

- With regard to payments particulars, he stated that he had imported most of the goods from M/s. NCCPL on high seas purchase; that thereafter, Shri Mukesh Jain used to do import of such goods under the IEC of M/s. SMI through CHA M/s. HG Mehta & Co. Pvt. Ltd and used to get the customs clearances of those goods; that these imported goods used to deliver in the factory premises of M/s. SMI. Thereafter, as per verbal instructions received from Shri Mukesh Jain, he used to prepare Performa invoices/invoices for sales of goods as per details of buyers as informed by Shri Mukesh Jain. Accordingly, he sold these imported goods as such or after manufacturing in his factory premises to different buyers; that he used to receive payment in his current bank account from those buyers and these payments then redirected in the bank account of M/s. NCCPL or other parties from whom he had purchased the goods; that all these receipt/remittance of payments used to be handled from the office of M/s. NCCPL.; that Shri Mukesh Jain was having the password of Internet banking of his current bank account; Shri Kshirsagar was not entrusted for doing any banking transactions for sale/purchase of M/s. SMI; that Shri Mukesh Jain used to have all the details of sales of goods as he used to E-mail the copies of sales invoices to him. Moreover, he also used to have the purchase details of the goods as he was handling there from his office.
- On further being questioned regarding roles of Shri Anil Satpute in M/s. CSI, he stated that Shri Anil Satpute was simultaneously handling the business activities of M/s. CSI along with Shri Jayant Mirani; that Shri Surendra Salekar was Proprietor on paper only; that Shri Anil Satpute was taking commissions from Shri Jayant Mirani on sales of goods done by M/s. CSI as he had given idea for doing such type

of evasions which led them to sell the goods in lower rate compared to other sellers as they were importing goods without paying basic Customs duty @ 5%.

- On enquiry regarding the High Sea Sales agreement signed between M/s SMI and M/s NCCPL, he stated that he never signed any High Sea Sale (HSS) agreement; that he was not aware of any such documents prepared for the high sea sales done to M/s SMI by M/s NCCPL.
- When he was asked to state the diversion of ETP Copper Wire Rods 8MM which had been imported by M/s. SMI at concessional rate of duty under Notification 25/99-Customs dated 28.02.1999 during the period from December-2018 to December-2019, he stated that the goods which had been imported under the said Notification till June-2019, had been sold in as it is condition in open market as such without doing any manufacturing activities from the said goods. Accordingly, approx. 1800 MTs of ETP Copper Wire Rods of diameter 8 MM which had been imported at concessional rate of duty had been sold in open market as such without processing the same in factory premises; that later on, after July-2019 onwards, they did manufacturing of Copper wire of diameter 1.6 MM/2.54 MM from the 20% of the goods which had been imported under the said Notification and remaining 80% of the goods i.e. ETP Copper Wire Rods of 8 MM had been directly sold as such in open market.
- Finally regarding manufacturing of lead Wire in M/s. SMI, he stated that M/s. SMI never manufactured Lead Wire.

7. The Enquiries with Shri Surendra Salekar, Proprietor of M/s. CSI could not be done as Shri Surendra Salekar met with accidental death on 16.12.2019.

8. During the course of investigation statement of Shri Mukesh Jain, General Manager of M/s. Nikom Copper & Conductors Pvt. Ltd was recorded on 24.12.2019 and 01.10.2020 under Section 108 of the Customs Act, 1962 wherein he inter-alia stated that: -

- M/s. CSI was a proprietorship firm where Shri Surendra Salekar was the Proprietor of the said firm; that Shri Anil Satpute and Shri Surendra Salekar approached to Shri Jayant Mirani during January-2016 through a broker and informed that they needed a financier for running their business; that Shri Jayant Mirani being a financier agreed to fund M/s. CSI for running their business on receipt of commission of 1.25% of the fund; that Shri Jayant Mirani used to open LC (Letter of credit) in bank and from there he used to do payment to foreign parties; that they started to do import of Electrolytic Tough Pitch (ETP) Copper Wire Rods/Continuous Cast Copper Rods 8 MM from their company namely M/s. Nikom Pharmaceuticals Pvt. Ltd. and did high sea sales of these goods to M/s. CSI. that he used to deal with Shri Anil Satpute and Shri Surendra Salekar for the dealing; that Shri Anil Satpute used to do Customs clearances of the goods from port and sales of the imported goods to various buyers; that from June 2017 to January 2019 when they noticed that their debt was not going to be recovered from M/s. CSI, they took control over all operations of M/s. CSI; that Sh. Jayant Mirani started to control sales, purchase, transportation, funds movement, banking, accounts, day to day operation of M/s. CSI; they also deployed Sh. Gaurav Thakkar Naresh at the factory premises of M/s. CSI to control day to day operation of the said firm; they continued to do high sea sales of the goods to M/s. CSI and gave direction to CB M/s. H. G. Mehta & Co. Pvt. Ltd for doing Customs Clearances of the goods; that these goods i.e. Copper Rods 8 MM used to be delivered at factory premises of M/s. CSI and sold to various buyers as such; that these goods were never used for any manufacturing activities; that they had sold these imported goods as such to buyers; that the machineries which were installed in the factory premises of M/s. CSI were in old/ rusted and in depleted conditions; that these were having very less capacity to draw Copper Wire of various size; that these machineries were not used for the last 5-6 Months; that before this period also,

these machineries were rarely used to draw copper wire. He was having knowledge of the contents of the Notification No. 25/99- Customs dated 28.02.1999 as amended time to time;

- On being asked about the eligibility to M/s. CSI to avail the benefits of exemption under the said notification when they were not having any requisite machinery/ facility/ expertise regarding the manufacture of Lead wire in their factory, he stated that Shri Jayant Mirani was aware of the fact that M/s. CSI was not having any facility/machineries to manufacture lead wire; that in order to get concession on Basic Customs duty, Shri Mirani conspired with Shri Anil Satpute and planned to import these goods under the Notification 25/99-Customs dated 28.02.1999 as amended through the IEC of M/s. CSI; that Sh. Mukesh Jain was controlling all the import, purchase, sales, banking, transportation for the goods of M/s CSI since January 2019 as per direction of Sh. Jayant Mirani; that he used to inform the name of buyers to Sh. Surendra Salekar; that though Sh. Salekar was the proprietor of the said firm on paper, Sh. Jayant Mirani and Sh. Anil Satpute were the actual owners of the said firm; that both of them were the beneficiaries of the duty evasion.
- M/s. SMI was started in August-2018 under the control of Shri Jayant Mirani; that Shri Kuldeep Kshirsagar was the Proprietor of the said firm; Shri Anil Satpute introduced Shri Kuldeep to Shri Jayant Mirani and advised to open a proprietorship firm in the name of M/s. SMI wherein Shri Kuldeep would be the Proprietor on paper only; that all control over the sales, purchase, banking, finance, etc., of the said firm used to be controlled by Shri Jayant Mirani & his staff from the office of M/s. NCCPL.
- M/s. SMI had never manufactured Lead Wire from the ETP Copper Wire Rods which had been imported under the said Notification; that they were not having any manufacturing facility/machineries/expertise at their factory premises to



manufacture Lead Wire; that as per the said notification, M/s. SMI was supposed to manufacture Lead wire for electronic parts but they never manufactured Lead Wire; that they were not having any machineries or facility in their factory premises to manufacture Lead Wire; that they were having facility/machineries to manufacture bare copper wire by way of drawing Copper Wire that too after July-2019; that the RBD Machine which was installed in the factory premises of M/s. SMI was also in the name of M/s. NCCPL; that M/s. SMI had not done any MOU/ agreement with M/s. NCCPL for Nieghoff RBD Machine which was installed in the factory premises of M/s. SMI.

- Regarding availing of benefits of exemption under the said notification when they were not having any requisite machinery/facility/ expertise regarding the manufacture of Lead wire in their factory, he stated that Shri Jayant Mirani knew the fact that M/s. SMI were not having any facility to manufacture Lead Wire; that in order to import Copper Rods at concessional rate of duty, he conspired with Shri Anil Satpute and set up M/s. Shine Metal Industries under a dummy Proprietor and thereafter imported ETP Copper Rods at concessional rate of duty; that the declaration given to jurisdictional Customs authority was fabricated wherein they declared that they would manufacture Lead Wire for electronic parts;
- he confessed that Shri Jayant Mirani had conspired with Shri Anil Satpute and imported illegally ETP Copper Rods 8 MM at concessional rate of duty under Notification 25/99- Customs dated 28.02.1999 in the name of M/s. CSI and M/s. SMI; that by way of such act, they evaded Customs duty to the tune of 55 Crores (approx.) and 12 Crores (approx.) from M/s. CSI & M/s. SMI respectively; that under the said notification, both of the said firms were bound to manufacture Lead Wire from the imported goods but they had diverted as such almost all the imported goods.

- Regarding execution of high sea sales agreements done between M/s. NCCPL/ M/s. Nikom Pharmaceuticals Pvt. Ltd and M/s. CSI/ M/s. SMI, he stated that he used to sign over the High Sea Sales agreement on behalf of M/s. Nikom Copper & Conductors Pvt. Ltd/ M/s. Nikom Pharmaceuticals Pvt Ltd.; that after endorsing his signature on the agreements, he used to send it to his CHA M/s. H G Mehta & Co Pvt. Ltd (owner-Shri Pankaj Seth) for further processing; that from there it used to be submitted to the Customs dept.; that he did not know regarding how the Proprietor of M/s. CSI/ M/s. SMI marked their respective signatures on those high sea sales agreement; that it used to be dealt by Shri Pankaj Seth, he used to work as per instructions received from Shri Jayant Mirani; that Shri Jayant Mirani was the owner of this company.
- When enquired about his role in M/s. CSI and M/s. SMI, he stated that he was looking after the works related to both of the said firms as per instructions of Shri Jayant Mirani as he was working under him; that he was controlling all banking activities of M/s. SMI and was also assisting Shri Kuldeep Kshirsagar for GST registration & returns related activities of M/s. SMI by way of providing copies of invoices, GST user id & password to their consultant Shri Hardik Khatri; that he was also assisting for stationary viz. letter head, visiting cards, etc. for M/s. SMI since inception of the said firm; that he used to give dispatch instructions to Shri Kuldeep Kshirsagar for the goods of M/s. SMI wherein he used to tell him the name of the party, quantity and rate to dispatch the goods to buyers of the goods after getting payment/verbal payment confirmation from Shri Anil Satpute; that he used to give dispatch instructions to Shri Kuldeep for dispatching the goods from M/s. SMI; that after his dispatch instructions, Shri Kuldeep used to prepare sales invoices for the sale of the said goods wherein quantity, rate and name of the party used to be the same which were told by him; he was also releasing the payments for all

expenses of M/s. SMI as all the bank accounts of M/s. SMI was in exclusive control of him; that he had vetted the rent agreement of the factory premises of M/s. SMI before executing it on the verbal request of Shri Kuldeep; that he was handling installation of RBD machineries, electricity connection & import related activities of M/s. SMI;

- He perused statement dated 10.01.2020 of Shri Pankaj MukundraySheth, Director of M/s. H.G. Mehta & Co. Pvt. Ltd. (CHA) and agreed with the contents mentioned there in. On being asked to comment over the contents wherein he had stated that he was asked by Shri Jayant Mirani to do customs clearances of goods of M/s. Shine Metal Industries. They used to do forge signature of Proprietors of (M/s. Shine Metal Industries/M/s. Chandrashekhar Industries) on High Sea Sales documents as per instructions received from you. Even the dealings regarding payment of duty, bills of CHA in respect of M/s. Shine Metal Industries & M/s. Chandrasekhar Industries used to be dealt by Shri Mukesh Jain. You were the actual controller of imported goods of M/s. Shine Metal Industries/M/s. Chandrasekhar Industries (since July-2017). In this context, Shri Mukesh Jain stated that he used to deal regarding payment of duty, bills of CHA in respect of import done by M/s. SMI & M/s. CSI; As far as instructions to do forged signatures were concerned, he never instructed to Shri Pankaj Bhai to do so; that he might have done it himself; that he used to send the copies of High sea agreement to the office of Shri Pankaj Bhai, Customs Broker after doing his signature on behalf of High Sea Seller; that from there it was Shri Pankaj bhai's duty to take signature of high sea buyer on the said agreement and get it notarized.
9. During the Course of investigation, it appeared that Shri Anil Anand Satpute had played a vital role in duty evasion done by M/s. CSI and M/s. SMI. In order to get the

evidences from him, statement of Shri Anil Anand Satpute recorded on 03.01.2020 and, 23.09.2020 under Section 108 of the Customs Act, 1962 wherein he inter-alia stated that:

- He and Shri Surendra Salekar first time met with Shri Jayant Mirani in December-2015 through an agent; in the meeting he apprised Shri Jayant Mirani regarding the working of M/s. CSI; that he and Shri Surendra Salekar was looking for financier for day to day operation of M/s. Chandrasekhar Industries; So they requested Shri Jayant Mirani to help them by financing the firm; Shri Mirani agreed to do so on commission @ 1.5% of the value of the goods against payment done through his Letter of Credit (LC); that thereafter, he and Shri Surendra Salekar used to look after the work related to M/s. CSI; that later on in due course in the December-2016, Shri Jayant Mirani shown his willingness to become partners in profit of M/s. CSI as he was the financier of the firm; that later on during the period January-2018.
- On questioning about the control over M/s. CSI, he stated that M/s. CSI was a proprietorship firm where Shri Surendra Salekar was the Proprietor of the said firm; that Shri Jayant Mirani used to open LC (Letter of credit) in bank and from their he used to do payment to foreign parties; that Shri Jayant Mirani started to do import Electrolytic Tough Pitch (ETP) Copper Wire Rods/Continuous Cast Copper Rods 8 MM from his company namely M/s. Nikom Pharmaceuticals Pvt. Ltd. and did high sea sales of these goods to M/s. CSI; that thereafter, they (Shri Anil Satpute and Shri Surendra Salekar) used to do Customs clearances of the goods from port and sale of the imported goods to various buyers; that they continued such practice till June-2017, thereafter due to some disputes, all control over M/s. CSI were taken by Shri Jayant Mirani; that Shri Surendra Salker and Shri Jayant Mirani used to control all the activities of M/s. CSI from July-2017 to till date.
- On being asked regarding the activities carried by him till June-2017 in M/s. CSI, he stated that he was handling the import, sales, accounts and banking operations of



M/s. CSI; that Shri Surendra Salekar was the Proprietor of the said firm; that Shri Anil Satpute was getting the commission of sales of the goods; that he was having good relations in market and it was helping them to sell imported goods in open market; that the imported ETP Copper Rods used to be sold in open market as such and he used to get commission on the said sales.

- He also added that he was having knowledge of the contents of the Notification No. 25/99- Customs dated 28.02.1999 as amended time to time; that as per the said Notification (relevant portion only), M/s. CSI was supposed to import Electrolytic Tough Pitch (ETP) Copper Wire Rods at concessional rate of duty for manufacturing of Lead Wire for Electronic Parts as mentioned under serial No. 89 of List A of the said Notification; that M/s. Chandrasekhar Industries had never manufactured Lead Wire from the ETP Copper Wire Rods/ Continuous Cast Copper Wire Rods which had been imported under the said Notification; that they were not having any manufacturing facility/ machineries/ expertise at their factory premises to manufacture Lead Wire; that Lead Wire used to be a tin-plated copper wire having diameter less than 1 mm which used to be manufactured by doing electroplating of tin over copper wire; that it is basically tin coated Copper Wire which is used in electronic Industries.
- With regard to their eligibility to avail the benefits of exemption under the said notification when they were not having any requisite machinery/facility/ expertise regarding the manufacture of Lead wire in their factory, he stated that in order to get concession on Basic Customs duty, he conspired with Shri Surendra Salekar & Shri Jayant Mirani and planned to import these goods under the Notification 25/99- Customs dated 28.02.1999 as amended through the IEC of M/s. CSI; that they did all these act of evasion smoothly till June-2017; that thereafter, due to some disputes, he withdrew his hand from the business and Shri Jayant Mirani and Shri

Surendra Salekar continued to do import at concessional rate of duty; that Shri Surendra Salekar was just getting salary from Shri Jayant Mirani and Shri Jayant Mirani was enjoying the benefit of concessions as Shri Jayant Mirani was the financier, Shri Surendra Salker could not raise question over him; that Shri Surendra Salker approached Shri Anil Satpute so many times thereafter and told him that he was not getting the share in profit of M/s. CSI as Shri Mukesh Jain, staff of Shri Jayant Mirani had taken over control on all the banking transactions of M/s. Chandrasekhar Industries.

- He perused statement dated 10.01.2020 of Shri Pankaj Mukundray Sheth, Director of M/s. H. G. Mehta & Co. Pvt. Ltd and agreed with the contents mentioned therein. On being asked to comment over the contents of the statement wherein Shri Pankaj Sheth had stated that he used to get instructions from Shri Anil Satpute till June-2017 for doing customs clearances of goods of M/s. CSI; that even payment confirmations were also done by Shri Anil Satpute along with Shri SurendraSalekar. In this regards, he stated that he was controlling all the activities of M/s. CSI till June-2017; that Shri SurendraSalekar was Proprietor of the said firm on paper only, that Shri Anil Satpute was the actual owner/controller of the said firm; that all activities viz. import of goods at concessional rate of duty, sales of imported goods in as such condition and payment related work thereof used to be looked after by him; that he used to give instructions to Shri SurendraSalekar to prepare the sales invoices in the name of parties informed by him. However, after July 2017 onwards, due to financial constraints, all control over M/s. CSI were taken by Shri Jayant Mirani and Shri SurendraSalekar started to get the directions of Shri Jayant Mirani as he (Shri Jayant Mirani) became the financier/controller of the firm.
- When asked to state the reasons of issuing invoices of Copper Wires against the supply of imported Copper Rods 8MM to various buyers of M/s. CSI, he stated that

the benefit of Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 as superseded (IGCR) (concessional rate of duty) was available only when they were manufacturing Lead Wire from the imported Copper Rods; that they were not having any facility to manufacture Lead Wire in their factory premises; that they thought that at least they should show manufacturing of Copper Wires in their factory premises; that they had manufactured bare Copper wire from the 10% of the imported Copper Wire Rods 8MM and remaining 90% of the imported Copper Rods 8MM were diverted and sold in as is condition in open market.

- Further regarding his roles in M/s. SMI, he stated that M/s. SMI was working under the control of Shri Jayant Mirani; that Shri Kuldeep Kshirsagar was Proprietor of the said firm on paper only; that Shri Satpute was assisting Shri Jayant Mirani and his staff Shri Mukesh Jain in installing the machineries at M/s. SMI; that he was advising Shri Mukesh Jain to take benefit of imports at concessional rate of duty under IGCR even when they were not eligible to take such benefit; that the Neighoff make RBD machineries which were installed in the premises of M/s. SMI was operationalized in July-2019; that before this period, there was an old RBD Machine installed in the said premises which was having very less capacity to draw Copper Wires; that this machine was kept there in order to show that the manufacturing of Copper Wires used to be done in the premises; that he was associated with the said firm till July-2019; that on being asked to state the manufacturing of Lead Wire in the said premises till July-2019, he stated that there were no manufacturing of Lead Wire in the premises of M/s. SMI going on till July 2019; that most of the Copper Rods 8MM which had been imported at concessional rate of duty were diverted in as it is conditions in open market; that a very few quantity (approx. 10%) of the imported Copper Rods were delivered in the factory premises and were further used

for drawing Copper Wires; that remaining 90% of imported Copper Rods were cross loaded in another vehicle directly from containers and sold to various buyers.

- He confessed that he had wrongly availed the benefit of Notification 25/99-Customs dated 28.02.1999 as amended as he was not eligible to avail the benefit.; he admitted that he had evaded Customs duty by way of illegally importing Copper Wire Rods 8MM under the said notification from the IEC of M/s. CSI till June-2017; that thereafter, he conspired with Shri Jayant Mirani and explained him the entire modus of this duty evasion; that he then took over the control of M/s. CSI from him; that he started to operate M/s. CSI from July-2017 onwards; that as regards to M/s. SMI, he abetted Shri Jayant Mirani and Shri Mukesh Jain in initial setup of the unit; that he was also taking care of sales of imported goods; that he was aware of the fact that M/s. CSI and M/s. SMI were not eligible to avail the benefit of such notification.

10. During the Course of investigation, Shri Jayant Shantilal Mirani, owner of M/s. Nikom Group was summoned under Section 108 of the Customs Act, 1962 on 26.12.2019, 02.01.2020, 11.01.2020 and 14.01.2020 to tender statement on 20.01.2020. However, Shri Jayant Shantilal Mirani voluntarily appeared on 17.01.2020 before the summons issuing authority with the copy of Order dated 13.01.2020 of Hon'ble Supreme Court of India taken in Writ Petition (Criminal) No. 9 of 2020 wherein Hon'ble Court has ordered "No Coercive steps shall be taken against the petitioners (1. Mukesh Balchand Jain, 2. Jayant S. Mirani, 3. Gaurav Naresh Thakkar, 4. Nikom Copper and Conductors Pvt. Ltd.) in the meanwhile". Keeping in view of the above said order of Hon'ble Court, statement recorded on 17.01.2020 of Shri Jayant Shantilal Mirani under Section 108 of the Customs Act, 1962 wherein he inter-alia stated that: -

- He started his own company in the name & title of M/s. Nikom Pharmaceuticals Pvt. Ltd wherein he was one of the directors in the said company; that apart from him, Shri Akila Shubhramaniyam was the another director in the said company; that



he was working as director in the said company till 2016; that thereafter, he was disqualified by ROC, Mumbai due to non-filing of statutory returns for his another companies namely M/s. Stellar Agro Food Pvt. Ltd.; that he resigned from the directorship and made Smt. Angha Joshi as a director of the said company; that presently Shri Gaurav Naresh Thakkar and Shri Akila Shubramaniyam were the directors of the said company; that further during the year 2017, he started another company in the name & title of M/s. Nikom Copper & Conductors Pvt. Ltd. wherein he made Shri Gaurav Thakkar Naresh and Shri Abhijeet Shinde as the directors of the said company; that however, all decisions were taken in Nikom Group (i.e. M/s. Nikom Pharmaceuticals Pvt. Ltd and M/s. Nikom Copper & Conductors Pvt. Ltd.) jointly by his staff and him.

- Regarding the details of directors working in the companies wherein he was the owner, he did not provide the details; that he also not provided his bank details; that on being asked regarding his role in his controlled companies, he stated that he used to look all the financial activities of these companies; that all other day to day works used to be handled by his employees viz, Shri Mukesh Jain, Shri Hitesh etc. who were working jointly with him.
- On being asked to state the details of person with whom he used to do high sea sales of goods to M/s. SMI and M/s. CSI, he stated that Shri Mukesh Jain on behalf of him used to do all dealings with Shri Kuldeep Kshirsagar, Proprietor of M/s. SMI and Shri Surendra Salekar, Proprietor of M/s. CSI; that he was known to Shri Surendra Salekar who was introduced to him by a friend during November-2015; that there he requested to do high sea sales of ETP Copper Rods to him; thereafter, he met with Shri Kuldeep Kshirsagar through Shri Surendra Salekar during September-2018 and he also requested to do High seas of Copper Rods to him; that

Shri Jayant S. Mirani's roles were restricted to do high sea sales of the goods to M/s. SMI and M/s. CSI.

- He was shown many Panchnama and statements but he did not offer any comment over its.
- When asked to state the reasons for installation of RBD Machinerics and electric transformer in the factory premises of M/s. SMI without receipt of any charge/Commission even after passing approx. 13 months i.e. from December-2018 onwards during which he had done approx. 3700.0 MT's of high sea sale of goods to M/s. SMI and in return he did not receive any manufactured goods from those high seas purchased goods which had been done by M/s. SMI, he did not reply any reasons for the same.

11. During the Course of investigation, summons was issued to concerned Customs Broker Namely M/s. H.G. Mehta & Co. Pvt. Ltd., on 26.12.2019, 06.01.2019 and 08.01.2019 under Section 108 of the Customs Act, 1962 to tender statement on 31.12.2019, 07.01.2020, and 10.01.2020 respectively. However, statement of Shri Pankaj Mukundray Sheth, Director of M/s. H.G. Mehta & Co. Pvt. Ltd. recorded on 10.01.2020 under Section 108 of the Customs Act, 1962 wherein he inter-alia stated that:-

- M/s. H.G. Mehta & Co. Pvt. Ltd. used to look after the work related to customs clearances & forwarding of goods of import consignments of M/s. Shine Metal Industries and M/s. Chandrasekhar industries; that they did the customs clearances of all goods imported by these firms and forwarded these goods to the respective parties; that he was aware of Notification No. 25/99- customs dated 28.02.1999 and amendment done on it; that as per the said notification, these firms were importing ETP Copper Rods 8 MM at concessional rate of duty for manufacturing of Lead Wire for Electronic parts; that he was filing Bills of Entry for these firms for importing goods under the said notification.

- that he had started to do customs clearances of the goods of M/s. Shine Metal Industries since December-2018; that in the month of December-2018, Shri Jayant Shantilal Mirani informed him that he was the owner of M/s. SMI and he was entrusted to look after the Customs clearances of the import consignments of this firm, that accordingly he did the KYC verification of M/s. SMI; that he submitted the KYC related documents bearing Page no. from 01 to 09 of M/s. SMI received from Shri Jayant Mirani; that by that time, he did not meet with Shri Kuldeep R Kshirsagar, Proprietor of M/s. SMI; that all paper formalities were done by Shri Mukesh Jain, employee of Shri Jayant Mirani; that he used to receive Commercial invoices, copies of High sea Sales agreement, Bill of Lading, Packing List, etc. from Shri Mukesh Jain on behalf of M/s. SMI. Thereafter, his staff used to sign over those High Sea Sales agreement on behalf of M/s. SMI. Thereafter, these documents used to be notarized by concerned advocate. Thereafter, he used to file Bill of Entry for these imported consignments availing, the benefit of Notification 25/99-Customs dated 28.02.1999; that he was instructed by Shri Jayant Mirani to avail the benefit of Notification 25/99-Customs dated 28.02.1999 during filing B/E of M/s. SMI; that M/s. SMI had imported approx. 3760 MT's of ETP Copper Rods 8 MM having assessable value approx. Rs.182.0 crores under Notification 25/99- Customs dated 28.02.1999 during the period from December-2018 to till date wherein duty forgone amounts to approx. Rs.11.0 crores; that after customs clearances of these goods, he used to arrange transportation of the goods for delivering from port to the factory premises of M/s. SMI.
- He perused statement dated 27.12.2019 of Shri Kuldeep Kshirsagar, Proprietor of M/s. SMI and agreed with the contents mentioned therein; that as regards of signature of buyer and sellers on High Sea Sales (HSS) documents, he stated that he used to receive High Sea Sales documents from Shri Mukesh Jain wherein signature

on behalf of seller used to be endorsed on that HSS documents; that thereafter, his staff Shri Mahesh Yadav under his instructions used to sign over the place where buyer signatures were supposed to be done; that he admitted that he had forged the signature of Shri Kuldeep Kshirsagar, Proprietor of M/s. SMI; that Shri Kuldeep Ramesh Kshirsagar never signed over the HSS documents; he forged signature of Shri Kuldeep Kshirsagar on HSS documents as per instructions received from Shri Mukesh Jain; that as Shri Mukesh Jain was working under Shri Jayant Mirani, who was the actual owner of M/s. Shine Metal Industries, he did not hesitate in forging the signature of Shri Kuldeep Kshirsagar. Thereafter, these HSS documents were submitted to the Customs dept. for doing customs clearances of the goods; that he was not getting any extra payment for forging the signature on HSS documents; that it was done just to maintain the business relation;

- He perused statement dated 23.12.2019 of Shri Kuldeep Kshirsagar, Proprietor of M/s. SMI and agreed with the contents mentioned therein; he stated that Shri Kuldeep Kshirsagar was the dummy Proprietor of M/s. SMI; that all dealing used to be done by Shri Mukesh Jain or Shri Jayant Mirani; that even the dealings regarding import, documents, payment, etc. used to be handled by Shri Mukesh Jain on behalf of M/s. SMI; that he used to deal with Shri Mukesh Jain as he was working under Shri Jayant Mirani who was the actual owner of M/s. SMI; that Shri Jayant Mirani was the actual beneficiary of all the duty evasion done by M/s. SMI.
- He added that he was doing customs clearances of the goods of M/s. CSI, for the last 5-6 years; that during the year 2014, he was approached by Shri Subhash Salekar, brother of Shri Surendra Salekar who was the Proprietor of M/s. CSI and requested to, do Customs clearances of the imported goods of M/s. CSI; he did the KYC verification and started to do customs clearance of the goods of M/s. CSI; that later on, he came to know that Shri Subhash Salekar expired and he started to contact



with Shri Surendra Salekar and Shri Anil Satpute for doing all imported related to M/s. CSI; that during the year 2015-2016, Shri Anil Satpute and Shri Surendra Saleker introduced him to Shri Jayant Mirani who was the owner of the Nikom Group; that he was told that M/s. Nikom Pharmaceuticals Pvt. Ltd. would do the High Sea Sales of the goods to M/s. CSI and, he was instructed to file Bills of Entry on behalf of M/s. CSI; that M/s. Nikom Pharmaceuticals Pvt. Ltd. started to do high sea sales (HSS) of the goods to M/s. CSI; that he used to receive documents of HSS, commercial invoices, Bill of Lading, packing list, etc., from Shri Mukesh Jain; that sometimes he received signed copies of HSS wherein buyer and seller signatures had already been done on these paper; that sometimes he received HSS documents where only seller signature used to be done on those paper; that thereafter, as per instructions of Shri Mukesh Jain, he signed over on those HSS documents on behalf of M/s. CSI; that he admitted that in so many HSS agreement, he had done forged signature of Shri Surendra Salekar, on behalf of M/s. CSI; that further during the period July-2017, he was told by Shri Surendra Salekar and Shri Jayant Mirani that all dealings related to import, payment, forwarding of goods of M/s. CSI would be controlled by Shri Jayant Mirani; that as he came to know that Shri Jayant Mirani became financier of M/s. CSI, he started to do follow instructions of Shri Jayant Mirani / Shri Mukesh Jain; that since July-2017, he was getting instructions from Shri Mukesh Jain as and when any import consignments of M/s. CSI were come; that as per directions received from Shri Subhash Salekar he started to do import of goods availing the benefit of Notification No. 25/99- Customs dated 28.02.1999; that the benefit of availment of the said notification continued when the controlled over the firm was taken by Shri Jayant Mirani; that he was instructed by Shri Jayant Mirani/ Shri Mukesh Jain to continue to avail the benefit of Notification 25/99- Customs dated 28.02.1999 during filing Bills of Entry of M/s. CSI; that M/s. CSI

had imported approx. 19000 MTs of ETP Copper Rods 8 MM having assessable value approx. Rs. 900.0 crores under Notification 25/99- Customs dated 28.02.1999 during the period from January-2016 to December-2019 wherein duty forgone amounts to approx. Rs. 58.0 Crores.

- Further, he perused statement dated 24.12.2019 of Shri Mukesh Balchand Jain and agreed with the contents mentioned therein; he stated that Shri Kuldeep Kshirsagar was the dummy Proprietor of M/s. SMI; that all dealing used to be done by Shri Mukesh Jain or Shri Jayant Mirani; that even the dealings regarding import, documents, payment, etc. used to be handled by Shri Mukesh Jain on behalf of M/s. SMI; that he used to deal with Shri Mukesh Jain as he was working under Shri Jayant Mirani who was the actual owner of M/s. SMI; that Shri Jayant Mirani was the actual beneficiary of all the duty evasion done by M/s. SMI.
- He added that he was doing customs clearances of the goods of M/s. CSI, for the last 5-6 years; that during the year 2014, he was approached by Shri Subhash Salekar, brother of Shri Surendra Salekar who was the Proprietor of M/s. CSI and requested to, do Customs clearances of the imported goods of M/s. CSI; he did the KYC verification and started to do customs clearance of the goods of M/s. CSI; that later on, he came to know that Shri Subhash Salekar expired and he started to contact with Shri Surendra Salekar and Shri Anil Satpute for doing all imported related to M/s. CSI; that during the year 2015-2016, Shri Anil Satpute and Shri Surendra Saleker introduced him to Shri Jayant Mirani who was the owner of the Nikom Group; that he was told that M/s. Nikom Pharmaceuticals Pvt. Ltd. would do the High Sea Sales of the goods to M/s. CSI and, he was instructed to file Bills of Entry on behalf of M/s. CSI; that M/s. Nikom Pharmaceuticals Pvt. Ltd. started to do high sea sales (HSS) of the goods to M/s. CSI; that he used to receive documents of HSS, commercial invoices, Bill of Lading, packing list, etc., from Shri Mukesh Jain; that

sometimes he received signed copies of HSS wherein buyer and seller signatures had already been done on these paper; that sometimes he received HSS documents where only seller signature used to be done on those paper; that thereafter, as per instructions of Shri Mukesh Jain, he signed over on those HSS documents on behalf of M/s. CSI; that he admitted that in so many HSS agreement, he had done forged signature of Shri Surendra Salekar, on behalf of M/s. CSI; that further during the period July-2017, he was told by Shri Surendra Salekar and Shri Jayant Mirani that all dealings related to import, payment, forwarding of goods of M/s. CSI would be controlled by Shri Jayant Mirani; that as he came to know that Shri Jayant Mirani became financier of M/s. CSI, he started to do follow instructions of Shri Jayant Mirani / Shri Mukesh Jain; that since July-2017, he was getting instructions from Shri Mukesh Jain as and when any import consignments of M/s. CSI were come; that as per directions received from Shri Subhash Salekar he started to do import of goods availing the benefit of Notification No. 25/99- Customs dated 28.02.1999; that the benefit of availment of the said notification continued when the controlled over the firm was taken by Shri Jayant Mirani; that he was instructed by Shri Jayant Mirani/ Shri Mukesh Jain to continue to avail the benefit of Notification 25/99- Customs dated 28.02.1999 during filing Bills of Entry of M/s. CSI; that M/s. CSI had imported approx. 19000 MTs of ETP Copper Rods 8 MM having assessable value approx. Rs. 900.0 crores under Notification 25/99- Customs dated 28.02.1999 during the period from January-2016 to December-2019 wherein duty forgone amounts to approx. Rs. 58.0 Crores.

- Further, he perused statement dated 24.12.2019 of Shri Mukesh Balchand Jain and agreed with the contents mentioned therein; that Shri Surendra Salekar was working as a dummy Proprietor on paper only; that he was one of the employees working under Shri Jayant Mirani; that Shri Jayant Mirani/Shri Mukesh Jain was controlling

all the activities of M/s. CSI since July-2017.; that he was getting all instructions related to import of ETP Copper Rods from Shri Mukesh Jain; that Shri Jayant Mirani was the actual controller of the firm; that before this period, he was getting instructions from Shri Anil Satpute/Shri Surendra Salekar; that since July-2017, he was getting the payment confirmation from Shri Mukesh Jain.; that before July-2017, he was getting payment confirmation from Shri Anil Satpute/Shri Surendra Salekar.

- He also perused statement dated 03.01.2020 of Shri Anil Anand Satpute and agreed with the contents mentioned therein.
- As regards to goods imported under Bill of Entry No. 6020098 & 6022801 dated 10.12.2019, he stated that he had filed Bills of Entry bearing no. 6020098 & 6022801 dated 10.12.2019 for doing import of ETP Copper Rods 8 MM availing the benefit of Notification No. 25/99-Customs dated 28.02.1999 by M/s. CSI; that he had filed these Bills of Entry as per instructions received from Shri Mukesh Jain; that he was told by Shri Mukesh Jain that M/s. NCCPL was the High Sea Seller, that later on, he came to know that a case has been booked by DRI on 16.12.2019 against M/s. Chandrasekhar Industries for wrong availment of Notification No. 25/99- Customs dated 28.02.1999; that simultaneous searches were also carried out in his office premises related to these firms on 16.12.2019; that there, he came to know that all these three firms had been booked for diverting goods imported under Notification 25/99- Customs dated 28.02.1999; that on 17.12.2019, he received a letter from M/s. NCCPL that they intended to recall the High sea Sales agreement as both buyer and seller cancelled the agreement; that they also submitted the NOC letter issued by the buyer and seller for this. Accordingly, he filed an application on 18.12.2019 before the concerned customs authority to amend those two Bills of Entry; that after allowing the same, he amended the Bills of entry and had shown



importer name as M/s. Nikom Copper & Conductors Pvt Ltd at merit rate of duty without availing any exemption notification; that it was not correct to amend the said bills of Entry when consignments were put on hold by DRI for examination; that they did it intentionally in order to get these goods customs cleared anyhow; that they came to know on 18.12.2019 that these consignments and 04 consignments of M/s. Shine Metal Industries and 09 Consignments of M/s. S.R. Enterprises were put on hold by DRI for examination and seizure purpose; that he admitted that it was his malafide intention to get customs cleared these goods from Customs authority without informing DRI officials; that he was told by Shri Jayant Mirani to do so.

12. During the course of investigation, statement of Shri Bachchanlal Girijashankar Bajpai, Proprietor of M/s. Bajpai & Co. cum controller of M/s. Shreesti & Co. recorded on 30.01.2020 under Section 108 of the Customs Act, 1962 wherein he inter-alia stated that:

- He had transported the goods of M/s. CSI from December-2015 onwards till December-2020 from Nhava Sheva port to various places located at Maharashtra & Gujarat; that on being asked whether all goods of M/s. CSI which had been transported by him from Nhava Sheva Port had been delivered to the factory premises of M/s. CSI or otherwise, he stated that some of the goods of M/s. CSI had been delivered to their factory premises and some of the goods had been delivered to premises other than their factory premises; that he had almost transported 20,000.0 MTs of imported goods of M/s. CSI from Nhava Sheva port and out of the same, approx. 4000.0 MTs of goods had been delivered to various premises located at Surat/Daman/Hamrapur/Bhiwandi directly from Nhava Sheva port without delivering the same to the factory premises of M/s. CSI;
- Regarding the bills or other documents prepared by him for transporting the imported goods of M/s. CSI, he stated that in cases where the goods had been

directly delivered (including crossing) to the factory premises of M/s. CSI, he made bilties from his firm M/s. Shreesti & Co.; that he used to receive copies of Bills of Entry and Delivery Challans from representative of Customs Broker namely M/s. H.G. Mehta & Co.; that on the basis of the same, he used to prepare bilties for transporting these goods from Nhava Sheva to Nashik; that after preparation of bilties, three copies of the same along with the copy of bill of entry and delivery Challan used to be given to driver of the vehicle for further transportation; that in cases where the goods were purported to be delivered at premises other than the factory premises of M/s. CSI directly from Nhava Sheva port, he used to prepare two bilties for transporting single consignments; that one bilty meant for transporting goods from Nhava Sheva to the factory premises of M/s. CSI and another bilty meant for transporting the goods from the factory premises of M/s. CSI to various places located at Surat/Daman/Hamrapur/etc. However, these goods were directly delivered from Nhava Sheva port to the premises located at Daman, Surat, etc.

- On being asked regarding the reasons to prepare fake bilties for transporting the goods, he stated that he was initially contacted by Shri Surendra Salekar and Shri Anil Anand Satpute to transport the goods of M/s. CSI; that he was known to Shri Surendra Salekar as Shri Salekar was also in transportation business earlier; that he started to do transport of goods of M/s. CSI from Nhava Sheva to Sinnar, Nashik from December-2015 onwards; that later on, Shri Surendra Salekar informed him that these goods would be delivered either at their factory premises or at premises informed by him after getting customs clearances of the goods. Accordingly, as and when instructions were received from Shri Surendra Salekar/Shri Anil Anand Satpute, he delivered the goods to Sinnar, Nashik or other places; that the goods which were delivered other than Sinnar, Nashik were delivered as per instructions

received from Shri Surendra Salekar/Shri Anil Anand Satpute; that as per their instructions, he prepared fake bilties; that he admitted that he had prepared fake bilties from his firm M/s. Shreesti & Co. showing goods had been transported from Nhava Sheva to Sinnar/Nashik. However, these goods were directly delivered from Nhava Sheva to premises located at Surat/Daman/ Hamrapur, etc.

- he added that he had also transported the goods of M/s. SMI from Nhava Sheva port from December-2018 onwards and delivered the same to their factory premises located at Sinnar, Nashik; he had transported approx. 3700 MTs of imported goods of M/s. SMI and delivered the same to their factory premises; that he submitted copies of LRs prepared by M/s. Shreesti & Co. for transporting the imported goods of M/s. Shine Metal Industries; that in support of the same, that these order for transportation of goods came to him through Shri Surendra Salekar who informed him that the said firm was also working under the control of his boss namely Shri Jayant Mirani; that he was also introduced to Shri Kuldeep Kshirsagar for day to day dealing of the transportation.; that he used to be in touch of Shri Kuldeep Kshirsagar for day to day operation; that sometimes, he used to be get instructed by Shri Mukesh Jain who was the employee of Shri Jayant Mirani regarding timing & delivery of imported goods of M/s. SMI.
- He admitted that he had received all payments from M/s. HG Mehta & Co. against the transportation of goods of M/s. SMI and M/s. CSI; that on being asked regarding any extra payments received for transporting the goods from Nhava Sheva to Surat/Daman, he stated that he used to receive payments showing the delivery of goods to Sinnar, Nashik only. However, for the goods which had been delivered at Surat, the payments used to be set off from the goods which had been delivered to Daman/Hamrapur as these delivery incur less transportation charges; that he received charges for transportation as giving impression that these goods were

delivered at Sinnar, Nashik; that he had not taken any charge against the bilties made by M/s. Bajpai & Co. showing delivery of goods from Sinnar, Nashik to Surat/Daman/Hamrapur/etc.; that these payments were taken against the bilties raised by his another firm M/s. Shreesti & Co.

13. M/s. CSI and M/s. SMI, by way of wilful mis-statement and suppression of facts, fraudulently availed the benefit of Notification No. 25/99-Customs dated 28.02.1999 in as much as they never manufactured Lead Wire for electronic parts as envisaged under the said notification. They mis-declared in the application which was required to be furnished under IGCR, 1996 as superseded vide IGCR, 2016 and IGCR in as much as they had given undertaking that they would manufacture Lead Wire even without having any machinery or facility to manufacture Lead Wire in their respective factory premises. The diversion of goods in open market which were imported at concessional rate of duty contravened the provisions of the Notification 25/99-Customs dated 28.02.1999 read with IGCR, 1996 as superseded vide IGCR, 2016 and IGCR.

14. Ongoing through the statement of Shri Pankaj Munkundray Sheth, Customs broker who customs cleared the imported goods of M/s. CSI, it is noticed that all dealings related to import of goods by M/s. CSI were dealt by Shri Anil Satpute (till June-2017) and by Shri Jayant Mirani (after June-2017). He used to forge the signature of Proprietor of M/s. CSI on High sea sales documents as per instructions of Shri Mukesh Jain. Even the payment confirmation was also done to him for his work of M/s. CSI by Shri Anil Satpute (till June-2017) and by Shri Jayant Mirani (after June-2017).

15. It appeared that Shri Anil Anand Satpute, Shri Surendra Salekar and Shri Jayant Mirani had fraudulently obtained permission to import Electrolyte Tough Pitch (ETP) Copper Wire Rods by M/s. CSI at concessional rate of duty under Notification 25/99-Customs dated 28.02.1999 on the basis of wilful mis declaration and after getting the permission for import of goods and they sold these imported goods in open market without



manufacturing Lead Wire for electronic parts and thereby caused loss to the government exchequer to the tune of Rs. 60,23,89,816/- by way of not paying the differential customs duty. Shri Anil Anand Satpute was the main mastermind behind the said duty evasion and he controlled all operations of M/s. CSI till June-2017. He was the actual beneficiary of duty evasion amounting to Rs. 12,02,42,669/- done by M/s. CSI till June-2017. Thereafter Shri Jayant Shantilal Mirani took control over M/s. CSI. Shri Jayant Mirani was the actual owner/controller of M/s. CSI since July -2017 onwards and he became the actual beneficiary of duty evasion amounting to Rs. 48,21,47,147/ done by M/s. CSI from July-2017 to 16.12.2019. He made Shri Surendra Salekar as the dummy Proprietor and enjoyed the benefit of duty evasion. All these persons were well aware of the legal provisions of the said notification. They were aware to the fact that the imported goods of M/s. CSI were subjected to be used in manufacturing of Lead Wire for electronic parts. By indulging themselves in the authorized diversion of goods, all the persons as mentioned above illegally enriched themselves at the cost of government revenue thereby knowingly causing harm to the economy of the nation.

16. It further appeared that Shri Pankaj Mukundray Sheth, Director of M/s. H.G. Mehta & Co. Pvt. Ltd. by his acts of omission and commission had knowingly abetted Shri Anil Anand Satpute and Shri Jayant Shantilal Mirani to perpetuate the alleged fraud of mis-use of Notification No. 25/99-Customs dated 28.02.1999. By way of conspiring with Shri Anil Anand Satpute, Shri Jayant Shantilal Mirani and Shri Mukesh Balchand Jain, he forged the signatures of Shri Surendra Salekar and Shri Kuldeep Ramesh Kshirsagar on high sea sales documents. He under the instructions of Shri Mukesh Jain forged the signature of Shri Surendra Salekar on High Sea purchase documents of M/s. CSI and also forged the signature of Shri Kuldeep Ramesh Kshirsagar on high sea purchase documents of M/s. SMI. He used to direct his staff to sign over the documents on high sea sales agreement on behalf of High Sea Buyer. He was very much aware of the fact that the proprietors of M/s.

CSI and M/s. SMI were dummy Proprietor and were on paper only. The acts and deeds of Shri Pankaj Mukundray Sheth enabled the conspirators Shri Anil Anand Satpute and Shri Jayant Shantilal Mirani to implement their game plan of illicit selling of goods in open market which were imported at concessional rate of duty under Notification 25/99-Customs dated 28.02.1999 and thereby assisted the duty evader to accomplish their motive to defraud the government exchequer.

17. 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(f), 10(m) and 10(n) of the Custom Broker Licensing Regulations 2018.

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

In the instant case, as per statement of Shri Pankaj Mukundray Sheth, Director of Customs Broker M/s. H.G. Mehta & Co. Pvt. Ltd. (CB No. 11/362), recorded on 10.01.2020 under Section 108 of the Customs Act, 1962, admitted Shri Jayant Shantilal Mirani informed him that he was the owner of M/s. SMI and he was entrusted to look after the Customs clearances of the import consignments of this firm; that by that time, he did not meet with Shri Kuldeep R Kshirsagar, Proprietor of M/s. SMI; that all paper formalities were done by Shri Mukesh Jain, employee of Shri Jayant Mirani; that he used to receive Commercial invoices, copies of High sea Sales agreement, Bill of Lading, Packing List, etc. from Shri Mukesh Jain on behalf of M/s. SMI; that Shri Kuldeep Kshirsagar was the

dummy Proprietor of M/s. SMI; that all dealing used to be done by Shri Mukesh Jain or Shri Jayant Mirani.

As per his statement Shri Kuldeep Ramesh Kshirsagar, Proprietor of M/s. SMI recorded on 16.12.2019, 23.12.2019, 27.12.2019 and 25.09.2020, under Section 108 of the Customs Act, 1962, admitted that his Cousin Shri Anil Anand Satpute, asked him to work as Proprietor of M/s. SMI on paper only; that all control of sales, purchase and finance of the firm would be done by M/s. NCCPL; that he became Proprietor of the said firm on paper in August-2018; that Shri Anil Anand Satpute and Shri Jayant Mirani was the main mastermind for doing such duty evasion; that Sh. Jayant Mirani established M/s. CSI and M/s. SMI with the help of dummy proprietors like him and started to operate these firms from his Mumbai office; that Shri Mukesh Jain was having the password of Internet banking of his current bank account; Shri Kshirsagar was not entrusted for doing any banking transactions for sale/purchase of M/s. SMI; On being asked regarding the High Sea Sales agreement signed between M/s SMI and M/s NCCPL, he stated that he never signed any High Sea Sale (HSS) agreement; that he was not aware of any such documents prepared for the high sea sales done to M/s SMI by M/s NCCPL. Shri Anil Anand Satpute as per his statement recorded on 03.01.2020 and 23.09.2020, under Section 108 of the Customs Act, 1962 admitted that M/s. SMI was working under the control of Shri Jayant Mirani; that Shri Kuldeep Kshirsagar was Proprietor of the said firm on paper only. Despite of knowing that Shri Anil Satpute and Jayant Mirani was proxy importer and all the paper formalities done by Sh. Mukesh Jain and Jayant Mirani, the CB cleared the consignments of M/s. SMI. Thus, it appears that the CB has contravened the provisions of Regulation 10 (a) of the CBLR, 2018.

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

As per statement of Shri Pankaj Mukundray Sheth, Director of Customs Broker M/s. H.G. Mehta & Co. Pvt. Ltd. (CB No. 11/362), recorded on 10.01.2020 under Section 108 of the Customs Act, 1962, admitted that Shri Kuldeep Kshirsagar was the dummy Proprietor of M/s. SMI; that all dealing used to be done by Shri Mukesh Jain or Shri Jayant Mirani; that he used to receive High Sea Sales documents from Shri Mukesh Jain wherein signature on behalf of seller used to be endorsed on that HSS documents; that thereafter, his staff Shri Mahesh Yadav under his instructions used to sign over the place where buyer signatures were supposed to be done; that he admitted that he had forged the signature of Shri KuldeepKshirsagar, Proprietor of M/s. SMI; that Shri Kuldeep Ramesh Kshirsagar never signed over the HSS documents; he forged signature of Shri KuldeepKshirsagar on HSS documents as per instructions received from Shri Mukesh Jain. Shri Kuldeep Ramesh Kshirsagar, Proprietor of M/s. SMI as per his statement recorded on 16.12.2019, 23.12.2019, 27.12.2019 and 25.09.2020, under Section 108 of the Customs Act, 1962, admitted that his Cousin Shri Anil Anand Satpute, asked him to work as Proprietor of M/s. SMI on paper only; that all control of sales, purchase and finance of the firm would be done by M/s. NCCPL; that he became Proprietor of the said firm on paper in August-2018; that Shri Anil AnandSatpute and Shri Jayant Mirani was the main mastermind for doing such duty evasion; that 'Sh. Jayant Mirani established M/s. CSI and M/s. SMI with the help of dummy proprietors like him and started to operate these firms from his Mumbai office. Shri Anil AnandSatpute as per his statement recorded on 03.01.2020 and 23.09.2020, under Section 108 of the Customs Act, 1962 admitted that M/s. SMI was working under the control of Shri Jayant Mirani; that Shri KuldeepKshirsagar was Proprietor of the said firm on paper only; he had wrongly availed the benefit of Notification 25/99-Customs dated 28.02.1999 as amended as he was not eligible to avail the benefit. As per statement of Shri Bachchanlal Girijashankar Bajpai, Proprietor of M/s. Bajpai & Co. cum controller of M/s. Shreesti & Co. recorded on 30.01.2020, under Section 108 of the



Customs Act, 1962 admitted that he had almost transported 20,000.0 MTs of imported goods of M/s. CSI from Nhava Sheva port and out of the same, approx. 4000.0 MTs of goods had been delivered to various premises located at Surat/Daman/Hamrapur/Bhiwandi directly from NhavaSheva port without delivering the same to the factory premises of M/s. CSI; that he used to receive copies of Bills of Entry and Delivery Challans from representative of Customs Broker namely M/s. H.G. Mehta & Co. Thus, it appears that the CB were actively involved in diversion of goods in open market which were imported at concessional rate of duty contravened the provisions of the Notification 25/99-Customs dated 28.02.1999 read with IGCR, 1996 as superseded vide IGCR, 2016 and IGCR. As per statement of Shri Pankaj Mukundray Sheth, Director of Customs Broker M/s. H.G. Mehta & Co. Pvt. Ltd. (CB No. 11/362), recorded on 10.01.2020 under Section 108 of the Customs Act, 1962, admitted that when he came to know that the said three firms had been booked for diverting goods imported under Notification 25/99- Customs dated 28.02.1999; that on 17.12.2019, he received a letter from M/s. NCCPL that they intended to recall the High sea Sales agreement as both buyer and seller cancelled the agreement; that they also submitted the NOC letter issued by the buyer and seller for this. Accordingly, he filed an application on 18.12.2019 before the concerned customs authority to amend those two Bills of Entry; that after allowing the same, he amended the Bills of entry and had shown importer name as M/s. Nikom Copper & Conductors Pvt Ltd at merit rate of duty without availing any exemption notification; that it was not correct to amend the said bills of Entry when consignments were put on hold by DRI for examination; that they did it intentionally in order to get these goods customs cleared anyhow; that they came to know on 18.12.2019 that these consignments and 04 consignments of M/s. Shine Metal Industries and 09 Consignments of M/s. S.R. Enterprises were put on hold by DRI for examination and seizure purpose; that he admitted that it was his malafide intention to get customs cleared these goods from Customs authority without informing DRI officials. Thus, it appears that

CB was hand in glove with the proxy importer and facilitated the improper importation of the goods. Despite of knowing that Shri Anil Satpute was proxy importer, the CB cleared the consignments of M/s. SMI. The CB amended the Bill of Entry as per the letter received from M/s. NCCPL that they intended to recall the High sea Sales agreement as both buyer and seller cancelled the agreement with malafide intention to get customs cleared these goods from Customs authority without informing DRI officials. Thus, it appears that the CB have aided and abetted the unscrupulous elements. The CB neither advised the actual IFC holders about provisions of the Customs Act 1962 and the Rules & Regulations nor brought to the notice of the Customs Authorities and DRI Officials. Thus, it appears that the CB has contravened the provisions of Regulation 10 (d) of the CBLR, 2018.

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

Further as per statement of Shri Pankaj Mukundray Sheth, recorded on 10.01.2020 he also admitted that he was aware that Shri Kuldeep Kshirsagar was the dummy Proprietor of M/s. SMI; that all dealing used to be done by Shri Mukesh Jain or Shri Jayant Mirani; that he used to receive High Sea Sales documents from Shri Mukesh Jain wherein signature on behalf of seller used to be endorsed on that HSS documents; that thereafter, his staff Shri Mahesh Yadav under his instructions used to sign over the place where buyer signatures were supposed to be done; that he admitted that he had forged the signature of Shri Kuldeep Kshirsagar, Proprietor of M/s. SMI; that Shri Kuldeep Ramesh Kshirsagar never signed over the HSS documents; he forged signature of Shri Kuldeep Kshirsagar on HSS documents as per instructions received from Shri Mukesh Jain; Despite of knowing that Shri Anil Satpute was proxy importer, they cleared the consignments of M/s. SMI. Thus, it appears 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. Shri Pankaj Mukundray Sheth admitted that they forged the signature on HSS Agreement. As discussed in foregoing paras the CB amended the Bill of Entry as per the letter received from M/s. NCCPL that they intended to recall the High sea Sales agreement as both buyer and seller cancelled the agreement mala fide intention to get customs cleared these goods from Customs authority without informing DRI officials. Thus, it appeared that the CB have aided and abetted the unscrupulous elements. As discussed in foregoing paras it appeared that the CB was actively involved in diversion of goods in open market which were imported at concessional rate of duty contravened the provisions of the Notification 25/99-Customs dated 28.02.1999 read with IGCR, 1996 as superseded vide IGCR, 2016 and IGCR. Thus, it appeared that the CB has contravened the provisions of Regulation 10 (e) of the CBLR, 2018.

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

In his statement dt 10.01.2020, Shri Pankaj Mukundray Sheth, he admitted that he was aware of Notification No. 25/99- customs dated 28.02.1999 and amendment done on it; that as per the said notification, these firms were importing ETP Copper Rods 8 MM at concessional rate of duty for manufacturing of Lead Wire for Electronic parts; that he was filing Bills of Entry for these firms for importing goods under the said notification. As per the Notification No. 25/1999- Customs dated 28.02.1999 as amended, goods falling under Sr. No. 89 of List A of the said notification, the portion of the Customs duty leviable on the goods thereon as specified in First Schedule to the Customs Tariff Act, 1975 becomes NIL when imported into India for use in the manufacture of the finished goods as mentioned in the said notification, provided that the importer follows the procedure set out in the Customs (Import of goods at concessional rate of duty for manufacture of Excisable goods) Rules, 1996, as amended from time to time. As per statement of Shri Bachchanlal

Girijashankar Bajpai, Proprietor of M/s. Bajpai & Co. cum controller of M/s. Shreesti & Co. recorded on 30.01.2020, under Section 108 of the Customs Act, 1962 admitted that he had almost transported 20,000.0 MTs of imported goods of M/s. CSI from Nhava Sheva port and out of the same, approx. 4000.0 MTs of goods had been delivered to various premises located at Surat/Daman/Hamrapur/Bhiwandi directly from Nhava Sheva port without delivering the same to the factory premises of M/s. CSI; that he used to receive copies of Bills of Entry and Delivery Challans from representative of Customs Broker namely M/s. H.G. Mehta & Co. Thus, it appears that the CB were actively involved in diversion of goods in open market which were imported at concessional rate of duty contravened the provisions of the Notification 25/99-Customs dated 28.02.1999 read with IGCR, 1996 as superseded vide IGCR, 2016 and IGCR. The CB failed in sensitizing the actual IEC holders regarding Notification 25/99-Customs dated 28.02.1999 read with IGCR, 1996 as superseded vide IGCR, 2016 and IGCR. The Investigation has revealed that the CB was involved in the mis-use of the said Notification. The CB did not restrict the misuse of the said Notification even after knowing that the HSS Agreement were without signature of the buyer. Thus, it appeared that the CB has contravened the provisions of Regulation 10 (f) of the CBLR, 2018.

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

Shri Pankaj Mukundray Sheth, in his statement dt. 10.01.2020 also admitted that he was aware that Shri Kuldeep Kshirsagar was the Proprietor of M/s. SMI on paper only; that they used to receive HSS documents wherein only Seller signature used to be done over it and wherever buyer's signature used not to be done on HSS documents, they used to sign over it on behalf of buyer. Shri Pankaj Mukundray Sheth further admitted that he forged the signature of Shri Kuldeep Kshirsagar and did over the HSS documents. Despite of knowing that Shri Anil Satpute was proxy importer, they cleared the consignments of M/s.



SMI. Shri Kuldeep Ramesh Kshirsagar, Proprietor of M/s. SMI, as per his statement recorded on 16.12.2019, 23.12.2019, 27.12.2019 and 25.09.2020, under Section 108 of the Customs Act, 1962, admitted that they had contravened the provision of Customs Act, 1962 by way of not following the conditions of Notification No. 25/99- Customs dated 28.02.1999. The CB failed in sensitizing the actual IEC holder regarding Notification 25/99-Customs dated 28.02.1999. 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 the HSS Agreement were without signature of the buyer. Thus, it appeared that the CB has contravened the provisions of Regulation 10 (m) of the CBLR, 2018.

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

As per statement of Shri Pankaj Mukundray Sheth, he was aware that Shri Kuldeep Ramesh Kshirsagar, was Proprietor of M/s. SMI on paper only. Despite knowing the fact that Shri Anil Satpute was proxy importer, they cleared the consignments of M/s. SMI. Shri Kuldeep Ramesh Kshirsagar, Proprietor of M/s. SMI as per his statement recorded on 16.12.2019, 23.12.2019, 27.12.2019 and 25.09.2020, under Section 108 of the Customs Act, 1962, admitted that his Cousin Shri Anil Anand Satpute, asked him to work as Proprietor of M/s. SMI on paper only; that all control of sales, purchase and finance of the firm would be done by M/s. NCCPL.; that he became Proprietor of the said firm on paper in August-2018. Shri Anil Anand Satpute as per his statement recorded on 03.01.2020 and 23.09.2020, under Section 108 of the Customs Act, 1962 admitted that M/s. SMI was working under the control of Shri Jayant Mirani; that Shri Kuldeep Kshirsagar was Proprietor of the said firm on paper only; 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 also appeared that the CB has contravened the provisions of Regulation 10 (n) of the CBLR, 2018.

#### SUSPENSION OF LICENSE

19. 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(f), 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. 01/2021-22 dated 08.04.2021 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. 09/2021-22 dated 07.06.2021 under the provisions of Regulation 19(2) of CBLR, 2013 (now Regulation 16 (2) of CBLR, 2018).

20. A Show Cause Notice No. 13/2021-22 dated 16.06.2021 was issued in terms of Regulation 20(1) of CBLR, 2013 (now 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 20 of CBLR, 2013 (now Regulation 17 of CBLR, 2018) being

initiated by the Inquiry Officer Shri Rahul Kumar, Deputy Commissioner of Customs appointed in the case.

### **INQUIRY REPORT**

21. Inquiry Officer submitted Inquiry Report dated 26.08.2021, wherein the charges against CB i.e. violation of Regulation 10(a), 10(d), 10(e), 10(f), 10(m) and 10(n) of CBLR, 2018 were held as 'Proved'. The inquiry report inter alia stated as below:

21.1 In reply to the Show Cause Notice No. 13/2021 dated 16.06.2021 received on date 09.07.2021, the CB submitted that:

- denied all the allegations and charges made in the show cause dated 16.06.2021 and the proposal made therein for revocation of CB Licence 11/362, forfeiture of security deposit and levy of penalty under Regulation 14,17 & 18 of CBLR-18, are not sustainable.
- denied the violation of the provisions of Regulation 10(a), 10(d), 10(e), 10(f),10(m) and 10(n) of the CBLR-18, as alleged in the paragraph 18 of the impugned show notice dated 16.06.2021.
- that the matter has been prejudiced and they will have no effective opportunity to displace the conclusions arrived at.
- that the show cause notice F.No. DRI/AZU/SRU-50/2019 dated 01.12.2020 issued by the Principal Additional Director General DRI is an illegal/tainted document because the Principal Additional Director of Revenue Intelligence (Pr. ADG-DRI) is not the competent officer to issue show, cause notice under the Custom Act. that in view of the judgment of a three Judge Bench of the Hon'ble Supreme Court in the case of M/S CANON INDIA PRIVATE LIMITED & others VERSUS COMMISSIONER OF CUSTOMS, the said show cause notice is kept in abeyance, therefore cannot be relied upon in any proceedings under CBLR-18.

- that the relied documents were not provided along with the said show cause notice. Further, they requested to provide relied upon documents. They also requested to give 30 days' time after supplying all the Relied Upon Documents to submit final reply to the said show cause notice.
- requested to allow cross-examination of Mr. Ashish Verma, Additional Director General, DRI; S.I.Os & I.Os of DRI who recorded the statements; person/persons who typed the statements on computer, in case the statements were typed on computer and all the persons whose statements are relied upon in the notice.
- that the above submissions are purely interim and final/detail reply to the impugned show cause notice will be made only on receiving the relied upon documents. Further, they submitted that they reserve their right and also seek liberty to ask for the name of other person/people for cross-examination or documents on scrutiny of relied upon documents to be supplied and to modify the above submissions, if need be.

21.2 The Inquiry Officer stated that Shri Pankaj Mukundray Sheth, Director of M/s. H.G. Mehta & Co. Pvt. Ltd. and their authorized representative Shri Jhamman Singh, Defense Assistant to the CB have denied all the charges. CB have submitted Authorization letter given by M/s. CSI and M/s. SMI. Further, in their written submission Shri Jhamman Singh, the legal representative of M/s. H.G. Mehta & Co. Pvt. Ltd. requested to cross examine Shri Ashish Verma, the Principal ADG-DRI, Ahmedabad.

21.3 In respect of article of charge of violation of Regulation 10(a) of the CBLR, 2018, the Inquiry Officer observed that as per statement of Shri Pankaj Mukundray Sheth, Director of CB M/s H.G. Mehta & Co. Pvt. Ltd recorded on 10.01.2020 under Section 108 of the Customs act 1962, admitted that Shri Jayant Shantilal Mirani informed him that he was the owner of M/s. SMI and he was entrusted to look after the Customs clearances of the import consignments of this firm; that all paper formalities were done by Shri Mukesh



Jain, employee of Shri Jayant Mirani; that he used to receive Commercial invoices, copies of High sea Sales agreement, Bill of Lading, Packing List, etc. from Shri Mukesh Jain on behalf of M/s. SMI; that Shri Kuldeep Kshirsagar was the dummy Proprietor of M/s. SMI; that all dealing used to be done by Shri Mukesh Jain or Shri Jayant Mirani. Despite of knowing that Shri Anil Satpute and Jayant Mirani was proxy importer and all the paper formalities done by Sh. Mukesh Jain and Jayant Mirani, the CB cleared the consignments of M/s. SMI. Thereby it is held by the Inquiry Officer that the Article of Charge alleging violation of Regulation 10 (a) of the CBLR, 2018 as "Proved".

21.4 With reference to article of charge of violation of Regulation 10(d) of the CBLR, 2018, the Inquiry Officer observed that as per statement of Shri Pankaj Mukundray Sheth, Director of CB M/s H.G. Mehta & Co. Pvt. Ltd recorded on 10.01.2020 under Section 108 of the Customs act 1962, inter-alia admitted that Shri Kuldeep Kshirsagar was the dummy Proprietor of M/s. SMI and all dealing used to be done by Shri Mukesh Jain or Shri Jayant Mirani. Further, he used to receive High Sea Sales documents from Shri Mukesh Jain wherein signature on behalf of seller used to be endorsed on that HSS documents; that thereafter, his staff Shri Mahesh Yadav under his instructions used to sign over the place where buyer was supposed to be done.

- It was also noted that despite of knowing that Shri Anil Satpute was proxy importer, the Custom Broker cleared the consignments of M/s. SMI. The CB amended the Bills of Entry as per the letter received from M/s. NCCPL that they intended to recall the High sea Sales agreement as both buyer and seller cancelled the agreement with a malafide intention to get customs cleared these goods from Customs authority without informing DRI officials. Thus, it appears that CB was hand in glove with the proxy importer and facilitated the improper importation of the goods. The 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 and DRI Officials.

- In addition it was also found that Shri Bachchanlal Girijashankar Bajpai, Proprietor of M/s. Bajpai & Co. cum controller of M/s. Shreesti & Co. in his statement recorded on 30.01.2020 under Section 108 of the Customs Act, 1962 admitted that he had transported imported goods of M/s. CSI from Nhava Sheva port and had been delivered to various premises located at Surat/Daman/Hamrapur/Bhiwandi directly from Nhava Sheva port without delivering the same to the factory premises of M/s. CSI; that he used to receive copies of Bills of Entry and Delivery Challans from representative of Customs Broker namely M/s. H.G. Mehta & Co. Thus, it appeared that the CB were actively involved in diversion of goods in open market which were imported at concessional rate of duty contravened the provisions of the Notification 25/99 Customs dated 28.02.1999 read with IGCR, 1996 as superseded vide IGCR, 2016 and IGCR.

In this regard the IO relied upon the following judgements and noted that the same are squarely applicable in the instant case.

- Hon'ble Tribunal's judgement in the Enterprise Vs. Commissioner of Customs (General), Mumbai, reported in 2016 (343) E.L.T. 475 (Tri. Mumbai).
- High Court order against final order of Hon'ble Tribunal's judgement in Dhakhane & Co. Vs. Commissioner of Customs (General), NCH, Mumbai, reported in 2015 (317) E.L.T. 56 (Tri. -Mumbai)
- The Inquiry Officer also found that the Customs Broker M/s. H.G. Mehta was aware that Sh. Jayant Mirani established M/s. CSI and M/s. SMI with the help of dummy proprietors and started to operate these firms from his Mumbai office. They were also aware that Shri Anil Anand Satpute and Shri Jayant Mirani was the main mastermind for doing duty evasion by wrong availment of the benefit of

Notification 25/99-Customs dated 28.02.1999 as amended. However, the Customs Broker M/s. H.G. Mehta & Co. Pvt. Ltd. aided and abetted the importer in clearance of the goods at Nhava Sheva Port and got the goods cleared at concessional rate of duty under Notification 25/99-Customs dated 28.02.1999, as amended. The Customs Broker supposed to 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 as the case may be.

- Finally, he concluded that despite of knowing the duty evasion by benefit of Notification 25/99-Customs dated 28.02.1999 as amended, the CB M/S. H.G. Mehta & Co. Pvt. Ltd. cleared the goods as per directions of the Shri Anil Satpute, Shri Jayant Shantilal Mirani and Shri Mukesh Jain. It was also observed that though It was duty of the Customs broker to bring these malpractices to the notice of the Customs officers in Nhava Sheva at the time of import of the said goods, they have not done their duty. Thereby it is held by the Inquiry Officer that the Article of Charge alleging violation of Regulation 10 (d) of the CBLR, 2018 as "Proved".

21.5 On the charge article relating to violation of Regulation 10(e) of the CBLR, 2018, the Inquiry Officer discerned that as per statement of Shri Pankaj Mukundray Sheth, Director of CB M/s H.G. Mehta & Co. Pvt. Ltd recorded on 10.01.2020 under Section 108 of the Customs act 1962, he admitted that he was aware that Shri Kuldeep Kshirsagar was the dummy Proprietor of M/s. SMI; that all dealing used to be done by Shri Mukesh Jain or Shri Jayant Mirani; that he used to receive High Sea Sales documents from Shri Mukesh Jain wherein signature on behalf of seller used to be endorsed on that HSS documents; that thereafter, his staff Shri Mahesh Yadav under his instructions used to sign over the place where buyer signatures were supposed to be done; that he admitted that he had forged the signature of Shri Kuldeep Kshirsagar, Proprietor of M/s. SMI; that Shri Kuldeep Ramesh

Kshirsagar never signed over the HSS documents; Despite of knowing that Shri Anil Satpute was proxy importer, they cleared the consignments of M/s. SMI. Thus, it appeared that CB was hand in glove with the proxy importer and facilitated the improper importation of the goods.

- As per the provisions of the Regulation 10 (e) of the CBLR, 2018, Customs Broker shall exercise their duties with due diligence and they shall check any scope for fraud or loss of Government Revenue. Inquiry Officer noted that It is evident that the Customs Broker processed the documents without exercising due diligence to ascertain the correctness of the information. The CB amended the Bill of Entry as per the letter received from M/s. NCCPL that they intended to recall the High Sea Sales agreement as both buyer and seller cancelled the agreement, shows malafide intention to clear these goods from Customs authority without informing DRI officials. Thus, it appeared that the CB have aided and abetted the unscrupulous elements. It appears that the CB were actively involved in diversion of goods in open market which were imported at concessional rate of duty contravened the provisions of the Notification 25/99-Customs dated 28.02.1999 read with IGCR, 1996 as superseded vide IGCR, 2016 and IGCR. Thereby it is held by the Inquiry Officer that the Article of Charge alleging violation of Regulation 10(e) of CBLR, 2018 as "Proved".

21.6 In respect of article of charge of violation of Regulation 10(f) of the CBLR, 2018, the Inquiry Officer spotted that in his statement Shri Pankaj Mukundray Sheth, had admitted that he was aware of Notification No. 25/99-customs dated 28.02.1999 and amendment done on it. CB was filing Bills of Entry for M/s. CSI & M/s. SMI for importing goods i.e. "ETP Copper Rods 8 MM" at concessional rate of duty for manufacturing of "Lead Wire for Electronic parts" under the said notification, however, these goods were never used for manufacturing of Lead Wire for electronic parts.



- He also found that Shri Bachchanlal Girijashankar Bajpai, Proprietor of M/s. Bajpai & Co. cum controller of M/s. Shreesti & Co. In his statement recorded on 30.01.2020 under Section 108 of the Customs Act, 1962 admitted that he had transported imported goods of M/s. CSI to various premises located at Surat/Daman/Hamrapur/Bhiwandi directly from Nhava Sheva port without delivering the same to the factory premises of M/s. CSI; that he used to receive copies of Bills of Entry and Delivery Challans from representative of Customs Broker M/s. H.G. Mehta & Co. Thus, it appeared that the CB were actively involved in diversion of goods in open market which were imported at concessional rate of duty contravened the provisions of the Notification 25/99 Customs dated 28.02.1999 read with IGCR, 1996 as superseded vide IGCR, 2016 and IGCR.
- He observed that the M/s.H.G. Mehta & Co. Pvt. Ltd. was well aware of the fact that M/s. CSI & M/s. SMI were involved in misuse of Notification No. 25/1999 Customs dated 28.02.1999 as amended but failed in sensitizing the actual IEC holders regarding the said notification. The CB did not restrict the misuse of the said Notification even after knowing that the HSS Agreement was without signature of the buyer. Thereby it is held by the Inquiry Officer that the Article of Charge alleging violation of Regulation 10(f) of CBLR, 2018 as "Proved".

21.7 On article of charge of violation of Regulation 10(m) of CBLR 2018, the Inquiry Officer noted that failure to comply with regulation 10(m) of CBLR, 2018 is clearly established as the CB has cleared the goods as per the directions of Shri Anil Satpute, Shri Jayant Mirani and Shri Mukesh Jain who were neither importer nor were an employee of the importer. It is evident that the Customs Broker M/s. H.G. Mehta & Co. Pvt. Ltd. were aware that Shri Kuldeep Kshirsagar was the Proprietor of M/s. SMI on paper only. Shri Pankaj Mukundray Sheth, Director of Customs Broker M/s. H.G. Mehta & Co. Pvt. Ltd. in his statement dated 10.01.2020 admitted that they forged the signature of Shri Kuldeep

Kshirsagar and did over the HSS documents; that they used to sign over HSS documents on behalf of buyer. The Investigation has revealed that the CB was involved in the misuse 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 the HSS Agreements were without signature of the buyer. The CB deliberately facilitated the clearance of goods & actively participated in the duty evasion. Had Shri Pankaj Mukundray Sheth, Director of Customs Broker M/s. H.G. Mehta & Co. Pvt. Ltd. acted in a vigilant manner and performed his duties efficiently, the loss to government revenue would have not taken place. Thereby it is held by the Inquiry Officer that the Article of Charge alleging violation of Regulation 10(m) of CBLR, 2018 as "Proved".

21.8 Finally on the charge of violation of Regulation 10(n) of CBLR 2018, the Inquiry Officer recorded that Shri Pankaj Mukundray Sheth, in his statement dt. 10.01.2020 inter-alia it was admitted that he was aware of the fact that Shri Kuldeep Ramesh Kshirsagar was Proprietor of M/s. SMI on paper only. Despite of knowing that Shri Anil Satpute was proxy importer, they cleared the consignments of M/s. SMLM/s. H.G. Mehta & Co. Pvt. Ltd. collected the import documents pertaining to M/s. SMI & M/s. CSI from Shri Mukesh Jain who was neither the importer nor authorized employee of the importer.

21.9 The Inquiry Officer categorically noted that it is clearly established fact that the CB has accepted the documents from a person/company who was neither related to the importer or was an employee of the importer. The CB did not carry out verification of IEC holder as needed. He deliberately facilitated the clearance of impugned goods and actively participated in the duty evasion. There is no denying the fact that the CB M/s. H.G. Mehta & Co. Pvt. Ltd. have not been careful and not diligent in undertaking the KYC of the background of importer and accepted documents, which he did not verify and therefore made himself liable for penal action for violation of Regulation 10(n) of the CBLR, 2018.

Thereby it is held by the Inquiry Officer that the Article of Charge alleging violation of Regulation 10(n) of CBLR, 2018 as "Proved".

21.10 Thus in summation, the Inquiry Officer concluded that the CB M/s H.G. Mehta & Co. Pvt. Ltd., (CB 11/362) had contravened the mandatory Regulations of the CBLR, 2018 and Customs Act, 1962 and hence rendered themselves liable to be penalized under the Regulations of CBLR, 2018.

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

22.1 Thereafter, the then Pr. Commissioner of Customs (Gen), NCH, Mumbai passed an Order-in-Original CAO No. 123/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.

22.2 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 and (iii) SCN No. 13/2021-22 dated 16.06.2021 (present case). 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)

(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 – Present case)

22.3 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:-**

23. 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)

(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 – Present case)

23.1 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."*

23.2 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 10.01.2025.

#### **RECORDS OF PERSONAL HEARING:-**

24. The personal hearing in the present case was held on 10.01.2025, 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:-**

25. 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:

25.1 The CB submitted that in both the show cause notices viz. SCN NO.05/2021-22 dated 04-05-2021 and SCN No. 13/2021-22 dated 16.06.2021, the facts are similar and that the goods were imported by claiming duty benefit under Notification No. 25/99-Cus., dated 28-2-1999 and the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. (In short IGCR-2016/2017).

25.2 The CB further submitted that The Principal Commissioner of Custom (General), Mumbai-Zone-I issued the above referred Show Cause Notices under Regulation 17(1) of CBLR-18, for holding "Inquiry" against the noticee/CB under Regulation 17(1) of the Customs Broker Licensing Regulation 2018. The noticee was asked to show the cause within 30 days, as to why the licence bearing No 11/362 should not be revoked and security deposited should not be forfeited and or penalty should not be imposed under Regulation 14 read with 17&18 of CBLR-18. In the same notice the name of Sh. Sandeep Gunjal, DC-PCCO, Mumbai-Zone-I (w.r.t the SCN NO. 05/2021-22 dated 04-05-2021) and Sh. Rahul Kumar D.C, NCH-MUMBAI (SCN NO. 13/2021-22 dated 16-06-2021) respectively were mentioned to be the Inquiry Officers( I.Os) to conduct inquire under Regulation 17 of CBLR-2018 into the grounds against the noticee.

25.3 The CB submitted that he submitted interim reply to the above referred show cause notice to the Principal Commissioner of Customs (General) as well as to the Deputy Commissioner, nominated I.O. The customs broker section forwarded the copy of the Report of Inquiry, which was received by the CB. CB submitted comments on the "Report of Inquiry", during personal hearing written submissions were also submitted. The CB craved leave to refer to and rely upon the reply to the impugned SCN and comments on I.O 's report and the written submission, as forming part of these submissions. The CB repeated, reiterated, maintained and confirmed all the statements, averments and submissions made in the said replies and for sake of brevity same are not repeated herein.

25.4 The CB further submitted that there is common thread in all these three show cause notices that the importers have allegedly sold the imported goods in the market and did not use the said goods to manufacture the resultant product as required under the said notifications under which the duty benefit was claimed and obtained by allegedly in violation of post import conditions of the said notification; DRI in its show cause notices alleged violation of section 111(o) of the Customs Act and proposed confiscation of the

goods under section 111(o) of the Customs Act 1962 against all the 4 importers; hence, the submissions for Articles charge made for Show Cause Notice No-06/2021-22 dated 07-05-2021 is common for all the three show cause notice.

25.5 The CB submitted that the Goods were imported by claiming duty benefit under Notification No. 25/99-Cus., dated 28-2-1999 and the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. (In short IGCR-2016/2017). The Government of India vide Notification No. 25/99-Cus., dated 28-2-1999 as amended by Notification No. 9/2004-Cus., dated 8-1-2004 exempted the goods (Electrolytic Tough Pitch (ETP) Copper Wire Rods), specified at Sr. No 89 of the table thereto when imported for use in manufacture of finished goods, Lead Wire for Electronic Parts, from so much of that portion of duty of customs leviable thereon, as in excess of the amount calculated at the rate of (a) Nil in the case of the imported goods specified in List A; Provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. The CB further submitted that the IGCR-17 are complete CODE in itself and Rule 4, 5, & 6 of the said Rules provide mechanism not only for availing customs duty benefit under Notification No. 25/99-Cus., dated 28-2-1999, but also for providing information as well as maintenance of records by the importer.

26. In defense, the CB submitted the following points:-

- (i) The description and value of the impugned goods were found as declared in the Bills of Entry and the invoice submitted to customs along with the bill of entry and the clearance was allowed by the customs officer being fully satisfied about description and value.
- (ii) The offence has taken place after clearance of the goods from customs on which the CB has no control

- (iii) Hon'ble Calcutta High Court -2006-204 ELT-554; has held that "*CHA cannot be held liable as the alleged offence took place after his role was over, once the Role of the CHA came to be over he cannot be held responsible for subsequent event*";
- (iv) A Custom Broker cannot be blamed for irregularities committed by the Customs Officials unless there is connivance of the Custom House Agent with the Officials of Customs.
- (v) It is not the case of the department that the importer are fake or non existent; Customs/DRI searched the office and residence PREMISES of all the importers, all the importers appeared before DRI and their statement are recorded; Importer executed BONDS with the Customs Department ,in the case of the importer who imported the goods under IGCR -17, It is on record that all executed BOND with the JURISDICTION GST officers who not only accepted the BONDS regularly but also cancelled those BONDS.
- (vi) During the enquiry proceedings no evidence is brought on record by way of producing witness/witnesses and or in the form of documents to support the allegation. No evidence is brought on record to sustain the charges that the noticee did not either obtain authorization or failed to produced the authorization when asked for by the Deputy Commissioner of Customs. The observation in Report of Inquiry are untrue and the result of imagination of the Ld. I.O. and devoid of any substance;
- (vii) The importer has been importing various types of goods from 2016 but not under benefit of Notification 25/99-cus read with IGCR-17; Shri Sameer the Proprietor of SRE has approached the appellant in the year 2016/2017 and the appellant have cleared few of his consignments in the year 2017; IEC of M/S S.R. Enterprises is dated 27-03-2015; Form RC , the Central Excise Registration



certificate is dated 17-05-2016; Form GST REG-25 dated 28-06-2017; in view of these vial facts to say that Shri Sameer only came in the scene in August, 2018 and the services of the appellant engaged by Shri Anil Satpute in May, 2018 for clearance in the name of SRE; thus the statements of the Shri Sameer Renuse are totally false and fabricated;

- (viii) The act of filing the Bill of Entry by the CB without any knowledge that the goods are being diverted or likely to be diverted, such an act cannot be held to be in contravention of Regulation 10 of CBLR-18
- (ix) The Commissioner of Customs is the appointing authority of Customs Brokers; The relationship between a customs broker with Customs authority is one of 'near employment'; The CB is appointed /or license is issued to provide facility for smooth clearance of the goods imported and or exported on behalf of importers/exporters.
- (x) Customs Broker acted in a responsible way by producing Importer before the DRI officers who had filed Bill of Entry for clearance of imported of goods. Customs Broker's duty is limited to facilitate filing of Bill of Entry as per the import documents such as Bill of Lading, invoice, packing list, advance authorization etc. as received from importer; if the goods have been diverted after clearance, the CB/CHA firm, as licensee is not liable.
- (xi) Nothing on record is brought out to indicate that firm of CB/CHA had abdicated their role in attending to the said Bills of Entry; Custom Broker only presented Bill of Entry at the instance of importer - Nothing on record to suggest that Customs Broker concealed any material facts from Customs authorities; in any proceedings before the Customs officers, mere filing B/E and without knowledge about diversion of the goods a penalty for handling and dealing in the impugned goods, cannot be considered to be called for penalty.

- (xii) No evidence is forthcoming in the impugned show cause notice to prove that Customs Broker in any manner helped the importer in diversion of the goods after clearance from Customs; Role of Customs clearing agent limited to clearance of import consignment from port of importation; The Customs Broker cannot be expected to keep track of import consignment after clearance
- (xiii) In any proceedings before the Adjudicating authority/Customs officers under the provisions of the Customs Act, mere obtaining of import document from the third person with knowledge of the importer cannot be a case for penalty under Section 112(a) of the Custom Act
- (xiv) Further, diversion of goods imported and cleared against advance authorization by availing customs duty benefit under Notification 25/99-cus dated 28-1-201 and under IGCR-17 by the importer after clearance from customs cannot be considered to be called for punishment under CBLR-18; Verification of KYC norms would not have stopped occurrence of offence committed by the Importers that is selling of the imported goods imported and cleared by availing customs duty benefit under IGCR.
- (xv) There is no requirement that the Customs Broker should personally verify the premises of the Importer; There is no requirement that the Customs Broker should verify the veracity of documents issued by the Government; Non-verification of KYC documents per se will not result in committal of any offence because goods have been diverted after clearance; goods were as per declaration and same were allowed to be cleared after examination; Offence taking place after clearance of the goods from customs; beyond the jurisdiction and without Customs Broker; Any amount of care or Verification of KYC norms could not have stopped occurrence of offence.

27. The CB also resubmitted and reiterated their written submission dated 26.09.2021, wherein the CB submitted that:-

27.1 The CB submitted that on the submissions herein below, it merits to be held that the Inquiry Report grossly erred in addressing the basic issue of submission of check lists for clearance of the goods imported, allegedly by the CB, basing it on sound evidence either documentary and or oral and impact of alleged import clearance or violation of Provisions either of the Custom Act 1962 and or Regulations and or Rules made thereunder or thereto and consequence thereof, if any on the custom duty or otherwise. The CB also argued that the conclusions in the Report of Inquiry are also not based on sound, authoritative and convincing reasoning. The Report is also lacking credence and fairness. The Report is also not lawfully just and it is also devoid of rationale, reasonable inference that could be termed as fair and justifiable.

27.2 The CB submitted that it is to be pointed out that in the notice dated 16-6-21, neither the list of relied upon documents other than the show cause notice No: DRI/AZU/SRU-50/2019 dated 01-12-20 nor the name of the person/persons to be called for giving evidence as witness were mentioned based on which the alleged imputation of charges were to be established and sustained. However, the inquiry proceedings were not only commenced by I.O. but also concluded without providing the relied upon documents or calling any witness. The CB argued that in Report of the inquiry the Ld I.O has relied upon on the Show Cause Notice F.No. DRI/AZU/SRU-50/2019 Dated 01-12-2020 issued by the Additional Director General, DRI-Ahmedabad which is based on "preliminary inquiry". It is respectfully submitted that the show cause notice dated 01-12-2020 issued by the DRI, purported to be the investigation report, despite repeated requests, not provided to the CB by the Id. I.O. It is a settled legal position that non supply of even relied upon documents to the CB is violation of elementary principles of natural justice.

27.3 The CB submitted that the show cause notice dated 01-12-20 was the result of "preliminary inquiry". 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 the respective CB/CBs, the preliminary inquiry lost its existence and therefore of no substantive use thereafter. The Hon'ble Supreme Court of India in the case *Nirmala J.Jhala V/S State of Gujrat and others* reported vide [(2013)4.SCC-301] held as:

*"..... it is evident that the evidence recorded in preliminary Inquiry cannot 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."*

27.4 The CB argued that in view of the above settled legal position, it manifests that 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 too. For the purpose of holding enquiry under the CBLR-2018, specific procedure has been provided for in Sub-Regulation 1, 2, 3, 4, 5 & 6 of Regulation 17 of CBLR-18. When specific procedure is provided for, the general procedure provided for holding adjudication proceedings under the Customs Act, would not stand attracted.

27.5 The CB further submitted that it is settled law that the statement recorded under section 108 of the customs Act 1962 is not applicable in inquiry proceedings under CBLR-18 since the CB did not have an opportunity to cross examine the persons whose statement are used. Further, the statement recorded under section 108 of the custom Act 1962, during preliminary enquiry, can also not be used against the CB since the present proceedings are under CBLR-2018 which is a complete code in itself. The CB argued that from the above referred provisions of CBLR-18, it emerges that for the purpose of making use of any oral evidence, in these proceedings, such evidence is required to be recorded by the Enquiry



Officer, and the person giving such oral evidence required to be offered to the delinquent for cross-examination; There does not exist any provision under CBLR-18 which authorizes use of statement recorded under Section 108 of the Customs Act as an evidence in the proceedings under CBLR-18; On the other hand, both recording of evidence and offering the persons for cross-examination has been made mandatory under CBLR-2018. Any use of statement recorded under section 108 of the Custom Act 1962 would directly violate the provisions of Regulation 17.

27.6 The CB submitted that as per the show cause notice No 13/2021-22 dated 16-06-2021, the only relied upon document in these inquiry proceedings is the Show Cause Notice F.No. DRI/AZU/SRU-50/2019 dated 01-12-20. Meaning thereby that the Check lists, Bills of Entry, import invoice, Bill of lading, high sea sale agreement, Bond/undertakings or any other documents or statements are neither the relied upon documents in the notice dated 16-6-21 nor produced or brought on record during the inquiry proceedings by the Id. I.O. Further, during the enquiry proceedings, no witness either called or examined by the I.O. nor produced for cross examination. 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, none of these documents neither brought on record during inquiry nor are relied upon documents as per the notice dated 16-06-2021.

27.7 The CB argued that 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. The only allegation in the show cause notice dated 01-12-2020 is violation of post import post clearance conditions of the notification No 25/1999-customs dated 28-2-1999, by the importers.

27.8 The CB stated that the facts are that (i) M/S Chandrasekhar Industries and (ii) Shine Metal Industries have imported and cleared copper wire rods by availing Customs duty

benefit under Notification No-25/99-Customs dated 28-02-1999, read with the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules-1996 (now Rules-2017). Proviso to Notification No-25/99-Customs dated 28-02-1999 mandates to follow the procedure as set out in IGCR-2017.

27.9 The CB submitted that careful perusal of the report of Inquiry and the observation of Ld. I.O therein, reveal that the entire analysis and discussion in the "Report of Inquiry dated 26-8-21", in its entirety is a verbatim reproduction of allegations contained in the show cause notice except some cosmetic changes here and therein without considering the representation made by the CB and there is no reasoning given to arrive at the conclusion, hence, shows non-application of mind on part of Ld. IO. It has been repeatedly held that a mechanical and verbatim reproduction of contents of show cause notice vitiates against quasi-judicial approach and is liable to be set aside on the ground of non-application of mind.

27.10 The CB further stated that during the inquiry proceedings the Director of CB was Examined by the Ld. I.O. However, the oral evidence of Shri Pankaj M. Sheth recorded during Inquiry and the documents submitted do not find mention in the report. The CB also argued that during the inquiry proceeding, no evidence is brought on record either by way of documents or by producing the witness to give oral evidence, rather, no witness was mentioned in the notice nor summoned by the Ld. I.O. No witness was called for cross-examination. The untested material has been made to appear as proof and this directly defeats the end of justice. Therefore, the observation and conclusions in the Report of Inquiry by the Id. I.O. are presumption and devoid of any merit. No allegation can be considered to be proved on mistaken assumptions. In these circumstances, the Ld. I.O. ought not to have held that the Articles charge-1, II, III, IV, V & VI are proved.

28. The CB submitted that during the inquiry proceedings Shri Pankaj M. Sheth, Director of the CB was examined by the Ld. I.O on 18-8-21; gist thereof are as under;

*"Examination of Shri Pankaj M. Sheth, director of M/S H.G. Mehta & Co Pvt Ltd in the inquiry proceedings being Conducted under CBLR-15, On 18-08-2021 in show cause notice No-13/2021-22 dated 16-06-2021, issued to M/S H.G. Mehta & Co Pvt Ltd, CB-11/362.*

*Q-3-Have you, as Customs Broker attended or cleared any goods imported by (i) M/s Chander Sekhar Industries (in short CSI) and (ii) M/s Shine Metal Industries (in short SMI) in the past?*

*Ans- Yes, we have attended cleared of the goods imported by both the above referred importers*

*Q-4-Have the above said importers authorized you for clearance of their imports?*

*A-Yes, both the importers authorized and gave me authority letter. I have already submitted both the authorization on 10-8-21, again I am submitting the authorization today.*

*Q-5- Have you submitted these authorizations to the Customs officers at the time of the import clearance?*

*A-NO, because no customs officers ever asked for it.*

*Q-6-DO you know that every Customs Broker is required to ascertain the authenticity of the importers and what steps you have taken to do that?*

*ANS-Yes, I am aware. And I obtained the following documents from these importers and I am submitting these documents today duly attested by me, may be taken on record.*

*1-CHANDRASHEKHAR INDUSTRIES*

*1) Authority Letter*

*2) IEC copy*

*3) GST Registration*

*4) PAN Card copy*

*5) Aadhar Card Copy*

*6) Cancelled cheque*

*7) Premises Lease Agreement*

*8) Electricity Bill*

*9) LR Copies (Five)*

## *II- SHINE METAL INDUSTRIES*

- 1) Authority Letter*
- 2) IEC Copy*
- 3) GST Registration*
- 4) PAN Card Copy*
- 5) Aadhar Card copy*
- 6) Electricity Bill*
- 7) Cancelled cheque*
- 8) LR Copies (Five)*

*Q.7-What documents you used to get from these importers for clearance of their goods from Customs.*

*A- I used to get IEC, import invoice, packing list, Bill of lading, and other related documents, high sea sale agreement duly signed by both high sea seller and high sea buyer.*

*Q-9-Who used to arrange the transporter to transport the imported goods?*

*ANS-The importers engaged the transporter and informed me. I was told that the said transporter will be their regular transporter. However, I was asked to make payment to the transporter and the same will be re-imbursed to us. And we were re-imbursed regularly from time to time.*

*Q-10-Where you delivered the goods to the transporter for transportation?*

*ANS-We used to give delivery of the goods to the transporter at Nhava-sheva docks itself after customs officer gave out of charge order. I submit LORRY RECEIPT in support.*

*Q-12- Have you been called by DRI and has DRI officers recorded your statement?*

*ANS— YES, I was called by the DRI officers and I attended DRI office at VAPI. They recorded my statement. But copy of statement was not given to me. I wish to say that I was coerced to sign the statement written by DRI officers; DRI officers threatened me and coerced me to sign the statement; I was not allowed to read statement; Since my wife is one of the director, I was under duress and signed the statement without reading.”*

28.1 The CB argued that the Ld. I.O, neither considered the above evidence nor gave reason for non consideration thereof, rather chosen to ignore it. The findings and



observations of Ld. I.O. at para 12,13,14,15,16 &17 of the Report of Inquiry for Articles of Charge I, II, III, IV, V & VI, are similar in sum and substance.

28.2 The CB further submitted that during inquiry proceedings Shri Pankaj M. Seth director of the CB was examined by I.O on 18-8-21, wherein he has inter alia stated that: He cleared the goods imported by (i) M/s. Shine Metal Industries and (ii) M/s. Chandershekhar Industries; Both the Importers have authorized by giving authority letter in the name of the CB. The CB submitted the authorization to the Ld. I.O on 10-8-21 and again on 18-8-21 submitted the following documents to the Id. I.O:

*I---CHANDRASHEKHAR INDUSTRIES*

*(1) Authority Letter*

*(2) IEC copy*

*(1) GST Registration*

*(2) PAN Card copy*

*(3) Aadhar Card Copy*

*(4) Cancelled cheque*

*(5) Premises Lease Agreement*

*(6) Electricity Bill*

*(7) L R Copies (Five)*

*II- SHINE METAL INDUSTRIES*

*(1) Authority Letter*

*(2) IEC Copy*

*(3) GST Registration*

*(4) PAN Card Copy*

*(5) Aadhar Card copy*

*(6) Electricity Bill*

*(7) Cancelled cheque*

*(8) LR Copies (Five)*

(i) In reply to question 12 he answered as under:

*"YES, I was called by the DRI officers and I attended DRI office at VAPI. They recorded my statement. But copy of statement was not given to me. I wish to say that I was coerced to sign the statement written by DRI officers; DRI officers threatened me and coerced me to sign the statement; I was not allowed to read statement; Since my wife is one of the director, I was under duress and signed the statement without reading."*

28.3 The CB submitted that the above facts are scrupulously missing in the report of inquiry and the only rely upon document in these inquiry proceedings is the Show Cause Notice F.No. DRI/AZU/SRU-50/2019 dated 01-12-2020 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-50/2019 dated 01-12-2020 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;

28.4 In view of the above, the CB submitted that the Show Cause Notice F.No. DRI/AZU/SRU-50/2019 Dated 01-12-2020 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 the Show Cause Notice F.No. DRI/AZU/SRU-50/2019 dated 01-12-2020 issued by DRI. The report of inquiry based on an illegal document cannot be acted upon. In view of the foregoing submissions on the Inquiry Report herein above, the CB argued that 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, because the conclusions in the Report are contrary to the facts.

28.5 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 goes 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.

28.6 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 CB violated or contravened any of the provisions of the Custom Act or CBLR-18 Because the conclusions in the Report are contrary to the facts. In view thereof, 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 show cause notice No 13/2021-22 dated 16-06-21 under Regulation 17(1) of CBLR-18.

**DISCUSSIONS AND FINDINGS:-**

29. 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-50/2019 dated 01.12.2020, from Pr. ADG, DRI, Ahmedabad Zonal Unit (AZU); the Suspension Order No. 01/2021-22 dated 08.04.2021; the Suspension Continuation Order No. 09/2021-22 dated 07.06.2021; the Show Cause Notice No. 13/2021-22 dated 16.06.2021, issued under CBLR, 2018; the Inquiry Report dated 22.07.2021; the Order-in-Original CAO No. 123/CAC/PCC(G)/SJ/CBS-Adj dated 10.01.2022; the CESTAT Final Order No. 85745-85747 dated 05.08.2024 and the written submissions dated 08.01.2025 and 26.09.2021, submitted by the CB at the time of personal hearing.

30. Briefly stated, I find that the present case has been booked and investigated by DRI, AZU against the importer M/s. Chandrashekhar Industries (CSI) (IEC No.- 3113019486, Proprietor-Shri Surendra S. Salekar) and M/s. Shine Metal Industries (SMI) (IEC No.- ABUPK7118G, Proprietor - Shri Kuldeep Ramesh Kshirsagar) who were indulged in diversion of goods imported at concessional rate of duty under Notification 25/99-Customs dated 28.02.1999, as amended. Investigation revealed that the importers M/s. Chandrashekhar Industries and M/s. Shine Metal Industries had imported 'Electrolytic Tough Pitch Copper Rods 8 MM' at concessional rate of duty for manufacture of 'Lead Wire for Electronic Parts' under Notification No. 25/99- Customs dated 28.02.1999 as amended, however these goods were never used for manufacturing of Lead Wire for Electronic Parts. The investigation revealed that most of the goods had been purchased by M/s. Chandrashekhar Industries and M/s. Shine Metal Industries on high Seas from M/s. Nikon Pharmaceuticals Pvt. Ltd. (NPPL) & M/s. Nikom Copper and Conductors Pvt. Ltd.



(NCCPL) and thereafter bills of entry were filed by M/s. Chandrashekhar Industries and M/s. Shine Metal Industries for import of these goods on the basis of High Sea Sales Agreements. I find that the investigation revealed that the importers had sold the imported 'Electrolytic Tough Pitch (ETP) Copper Wire Rods 8 MM' in open market and they had never manufactured 'Lead Wire' from the ETP Copper Wire Rods which had been imported under the said Notification during the period from May-2018 to December-2019, which resulted in non-compliance of the provisions of Notification No. 25/99- Customs dated 28.02.1999 and Customs (Import of goods at concessional rate of duty for manufacture of Excisable goods) Rules, 1996, as substituted time to time (IGCR Rules).

30.1 I find that the import consignments of the importers M/s. Chandrashekhar Industries and M/s. Shine Metal Industries, in the present case, were handled and cleared by the Customs Broker M/s. H.G. Mehta & Co. Pvt. Ltd. (CB No. 11/362). The investigation also revealed that Shri Surendra S. Salekar and Shri Kuldeep Ramesh Kshirsagar were the Proprietors of the importer firm M/s. CSI and M/s. SMI respectively, only on papers and the said imports were being handled by Sh. Jayant Shantilal Mirani, owner of M/s. NPPI, & M/s. NCCPL and Sh. Anil Anand Satpute, cousin of Sh. Kuldeep Ramesh Kshirsagar. Shri Jayant Mirani had conspired with Shri Anil Satpute and imported illegally ETP Copper Rods 8 MM at concessional rate of duty under Notification 25/99- Customs dated 28.02.1999 in the name of M/s. CSI and M/s. SMI and by way of such act, they evaded Customs duty to the tune of 55 Crores (approx.) and 12 Crores (approx.) from M/s. CSI & M/s. SMI respectively. I find that under the said Notification No. 25/99- Customs dated 28.02.1999, both of the said firms were bound to manufacture Lead Wire from the imported goods but they had diverted as such almost all the imported goods. Shri Anil Anand Satpute and Sh. Jayant Shantilal Mirani had played a vital role in duty evasion done by M/s. CSI and M/s. SMI as they acted as mastermind behind the duty evasion by controlling the operations of M/s. CSI and M/s. SMI. For the apparent act of omission and commission on

the part of the Customs Broker, action under CBLR, 2018 (erstwhile CBLR, 2013) was initiated against the charged CB M/s. H.G. Mehta & Co. Pvt. Ltd. (CB No. 11/362) and consequently the CB license was put under immediate suspension vide order no. 01/2021-22 dated 08.04.2021 and such suspension was continued, under Regulation 16(2) of CBLR, 2018, vide order no. 09/2021-22 dated 07.06.2021. Also, Inquiry under regulation 17 of CBLR, 2018 was initiated against the CB for apparent violation of Regulations 10(a), 10(d), 10(e), 10(f), 10(m) and 10(n) of the Custom Broker Licensing Regulations 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. 123/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

31. I find that the inquiry officer, in the present case, has conducted the inquiry proceedings under regulation 17 of CBLR, 2018, and held that all the charges levelled against the CB viz. violation of Regulation 10(a), 10(d), 10(e), 10(f), 10(m) and 10(n) of CBLR, 2018, *ibid*, are proved. I also find that all of the above mentioned charges have been levelled against the CB on the grounds that the CB never met the actual importers and received & accepted the KYC documents as well as import documents through Sh. Anil Anand Satpute, Sh. Jayant Shantilal Mirani and Sh. Mukesh Jain who were neither the IEC holders nor the authorised employee of the importer firms and also the CB had forged the signature of the Proprietors of M/s. CSI and M/s. SMI and did over the High Sea Sales (HSS) Agreements.

32. 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 inquiry officer has observed that the CB has received the KYC documents of the importers from Sh. Jayant Mirani through Sh. Mukesh Jain. Also, the IO has stated that despite of knowing that Shri Anil Satpute and Jayant Mirani was proxy importer and all the paper formalities done by Sh. Mukesh Jain and Jayant Mirani, the CB cleared the consignments of M/s. SMI & M/s. CSI, hence the CB violated the Regulation 10(a) of CBLR, 2018. I find that the CB has submitted that the Customs Broker obtained the authorisation and all the requisite KYC documents for KYC verification for M/s. SMI and M/s. CSI. The CB also argued that they have submitted all these copies to the inquiry officer however the inquiry officer did not take cognizance of same. I find that the CB has not received these documents directly from the Proprietors of M/s. SMI and M/s. CSI, however, the CB has received these documents through Sh. Jayant Mirani and Sh. Mukesh Jain. Along with the written submissions dated 08.01.2025, the CB has also submitted copies of authorisation letters dated 07.07.2014 and 26.12.2018, received from M/s. CSI and M/s. SMI respectively 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 such authorization letters submitted by the CB are attached below:

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**CHANDRASHEKHAR INDUSTRIES**

Plot No. A-44, STICE, Muralgaon MIDC, Tal. Sinnar, Dist. Nashik - 422 113.  
E-mail : csindustries00@gmail.com

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Date: 7<sup>th</sup> July, 2014

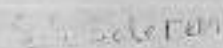
TO WHOMSOEVER IT MAY CONCERN

Sub: Authorization

Re: Clearance of Import consignments of Copper Rod ex. Nhava Sheva

We hereby authorize M/s H G Mehta & Co. Pvt. Ltd. as our CHA for clearance of our import consignments, on our behalf.

For CHANDRASHEKHAR INDUSTRIES



PROPRIETOR





**SHINE Metal Industries**

Registered & Sales:

Office No. 414, 4th Floor, Swastik Alpha Business Park,

LBS Marg, Ghurkopar (W), Mumbai-400 083

Phone: +91 9801201427 | Email: sales@shine-metalindustries.com

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Date: 26/12/2018

TO WHOMSOEVER IT MAY CONCERN

Subj: Letter for Authorization

Re: Clearance of Import consignments of Copper Rods ex. Narva Sheva

We are appointing/authorizing M/s H G Mehta & Co. Pvt. Ltd. as our CHA for clearance of our import consignments, on our behalf.



32.1 I have also perused the statements of Shri Kuldeep Ramesh Kshirsagar, Proprietor of M/s. SMI, Sh. Anil Anand Satpute, Sh. Jayant Shantilal Mirani owner of M/s. NCCPL and his associate Sh. Mukesh Jain 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. CSI and M/s. SMI without any authorization. Hence, I am of the considered view that the charge of violation of Regulation 10(a) of CBLR, 2018 (erstwhile Regulation 11(a) of CBLR, 2013), 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)"*

33. 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 importers details of M/s. SMI and M/s. CSI as well as their high sea sellers i.e. M/s. Nikom Copper & Conductors Pvt. Ltd. (NCCPL) and M/s. Nikom Pharmaceuticals Pvt. Ltd. (NPPL) respectively. The CB has never met the actual IEC Holders and Proprietors of importer firms i.e. Shri Surendra S. Salekar and Shri Kuldeep Ramesh Kshirsagar. Also, it is alleged that 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 argued that they received the KYC documents such as (i) Certificate of Importer-Exporter Code (IEC), (ii) Authorization, (iii) PAN card copies (iv) Aadhar Card copies (v) Cancelled cheques (vi) Premises lease agreements (vii) Electricity Bills (viii) L R copies etc. from the importer through Sh. Jayant Shantilal Mirani and Sh. Anil Anand Satpute and these documents are found to be correct and valid during the investigation. The CB also submitted copies of these documents along with his defence submission dated 08.01.2025. The CB also argued that they have submitted these copies

before the inquiry officer also, however the inquiry officer never considered their submissions and ignored the same. I also find that the importers and the High Seas seller joined the investigation and appeared before DRI and Customs officer. Hence, I find that the physical existence of the importers M/s. CSI and M/s. SMI 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 firms 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 (erstwhile Regulation 11(n) of CBLR, 2013) 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....."*

34. 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 holders regarding Notification No. 25/99- customs dated 28.02.1999 and IGCR Rules, as amended. 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. Jayant Shantilal Mirani and Sh. Anil Anand Satpute are proxy importers. I find that as per statement of Shri Pankaj Sheth, Director of Customs Broker M/s. H.G. Mehta & Co. Pvt. Ltd. (CB No. 11/362), recorded on 10.01.2020 under Section 108 of the Customs Act, 1962, admitted that he was aware that Shri Surendra S. Salekar and Shri Kuldeep Ramesh Kshirsagar were the Proprietors of



M/s. CSI and M/s. SMI respectively, on paper only and they, as CB, used to receive HSS documents wherein sometimes only seller's (M/s. NCCPL & M/s. NPPL) signature used to be done over it and wherever buyer's signature used not to be done on HSS documents, they used to sign over it on behalf of buyer as per the instructions of Sh. Jayant Mirani and Sh. Anil Anand Satpute. He further admitted that they forged the signature of Shri Kuldeep Ramesh Kshirsagar and did over the HSS documents. 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.

34.1 Having taken into cognizance of the facts of the case, the findings of the inquiry officer and the defense submissions of the CB, I find that it is a matter of facts that the CB used to do forged signature of the Proprietors of the importer firms on the High Sales Agreements and the CB committed such fraud under the instructions of Sh. Jayant Mirani and Sh. Anil Anand Satpute. I also find that the Bills of Entry no. 6020098 & 6022801 both dated 10.12.2019 were filed by the CB for the importer M/s. CSI. However, these bills of entry were got amended and customs cleared by the CB even after initiation of the investigation in the present case by the DRI. I find that Sh. Pankaj M. Sheth, Director of CB has admitted in his statement that it was his malafide intention to get customs cleared these goods from Customs authority without informing DRI officials and he was instructed by Sh. Jayant Mirani. This indicates a substantial evidence to prove that the CB was not efficient while discharging their duties as Customs Broker. Hence, 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 (erstwhile regulation 11(m) of CBLR, 2013) levelled against the CB is sustainably proved and I uphold the conclusion of inquiry officer, in this regard.

35. Further, I find that the charges of violation of Regulations 10(d), 10(e) and 10(f) of CBLR, 2018 (erstwhile regulation 11(d), 11(e) and 11(f) of CBLR, 2013) have been levelled against the CB on the grounds that the CB admitted that he had never met with Shri Surendra S. Salekar and Sh. Kuldeep R Kshirsagar, Proprietors of M/s. CSI and M/s. SMI respectively and he received the KYC and import related documents through Sh. Jayant Mirani and Sh. Anil Anand Satpute and handled the fraud imports of M/s. SMI and M/s. CSI. Therefore, it is clear that he did not know actual IEC holders (Importers) 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, Aadhar and address proof of importer M/s. M/s. CSI and M/s. SMI through Sh. Jayant Mirani and Shri Anil Anand Satpute who are neither importer nor authorized signatory of importer. Despite of knowing that Shri Jayant Mirani and Shri Anil Anand Satpute are proxy importer, they cleared the consignments of M/s. CSI and M/s. SMI.

35.1 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 firms/companies. The CB received all the KYC documents and import documents through Sh. Jayant Mirani and Sh. Anil Anand Satpute who were the mastermind behind such fraud and the main beneficiaries as well. Although the importers were not bogus or fictitious in this case and all the KYC documents were found to be genuine and valid, however, advising the importers 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 importers to fulfil their obligation stipulated

under regulation 10(d) of CBLR, 2018 (erstwhile Regulation 11(d) of CBLR, 2018). Also, it is a matter of fact that the importer M/s. CSI and M/s. SMI was indulged in fraud activity of non-complying with the conditions of Notification No. 25/99- customs dated 28.02.1999 and IGCR Rules, which resulted in defrauding the Govt. exchequer and duty liability on the importer amounting to Rs. 55 crores (approx.) and Rs. 12 crores (approx.) respectively. Had the department not intervened timely such fraudulent activity would not have been unearthed. I also find that on the directions of Sh. Jayant Shantilal Mirani, a third person, the CB M/s. H.G. Mehta & Co. Pvt. Ltd. was handling the customs clearance of the import consignments of M/s. CSI and M/s. SMI at Nhava Sheva Port by indulging in the activity of forged signature on the High Sea Sales Agreements, on behalf of the importer. 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."* Also, I find that under Regulation 10(f) of CBLR, 2018, it is stipulated that *"not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information"*. 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), 10(e) and 10(f) of CBLR, 2018 inasmuch as they have not advised their client i.e. the importer M/s. CSI and M/s. SMI to comply with the Notification No. 25/99- customs dated 28.02.1999 and IGCR Rules and the CB withheld the information contained in said Notification from

the importers and also the CB had failed to bring the matter of non-compliance to the notice of the department.

35.2 The CB cannot run from their obligations by citing that it was a post import violation by the importer. It is also a matter of fact that after the DRI has put the consignments of M/s. SMI and M/s. S.R. Enterprises on hold, the CB handled the clearance of the 02 consignments of the importer M/s. CSI by way of amendment. Hence, the CB had worked in completely negligent manner and relied only on Sh. Jayant Mirani and Sh. Anil Anand Satpute 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 Notification No. 25/99- customs dated 28.02.1999 and IGCR Rules. 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 and the forged signatures of the importer were also being done by the CB himself. 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.

35.3 I am of the firm belief that the CB was in gross negligence as they were also dealing with a third party Sh. Jayant Mirani, as he was not the actual importer for which the CB was engaged. 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 advise 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".*

35.4 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), 10(e) and 10(f) of the CBLR, 2018 (erstwhile Regulation 11(d), 11(c) and 11(f) of CBLR, 2013) and accordingly I approve the decision of the Inquiry Officer, in this regard.

35.5 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".*

36. 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-50/2019 dated 01.12.2020 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, I find that the said judgment of Hon'ble Supreme Court has been reviewed and reversed by the Hon'ble Supreme Court in Review Petition No. 400 of 2021 in Civil Appeal No. 1827 of 2018, dated 07.11.2024, wherein the apex court concluded that DRI and other designated officers can issue notices under Section 28, thus settling jurisdictional uncertainties. Thus, the initial Canon India (P.) Ltd. judgment was overruled for being per incuriam as it failed to consider key legislative amendments. Also, 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 charges against the CB to initiate action under CBLR for apparent violations of prescribed regulations of CBLR.

37. 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 CBLR/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 (Bom.), which stipulates that:**

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

**(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".*

38. I find that in the instant case, the CB license was suspended vide Order No. 01/202-22 dated 08.04.2021, 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. 09/2021-22 dated 07.06.2021, 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 advice the client accordingly. Though the CHA was accepted as having no mensrea of the noticed mis-declaration /under- valuation or mis-quantification but from his own statement acknowledging the negligence on his part to properly ensure the same, we are of the opinion that CH definitely has committed violation of the above mentioned Regulations. These Regulations caused a mandatory duty upon the CHA, who is an important link between the Customs Authorities and the importer/exporter. Any dereliction/lack of due diligence since has caused the Exchequer loss in terms of evasion of Customs Duty, the original adjudicating authority has rightly imposed the penalty upon the appellant herein."*

39. As discussed above, I conclude that the CB is guilty of violations of CBLR, 2018. I find that the CB has committed misconduct inasmuch as he failed to fulfil his obligations as stipulated under Regulation 10(d), 10(e), 10(f) & 10(m) of CBLR, 2018 (erstwhile Regulation 11(d), 11(e), 11(f) & 11(m) of CBLR, 2013). I find that the license of the CB is already under suspension and in-operative for almost 04 years i.e. since 08.04.2021 and the CB has been unable to work for these 04 years and thus been already penalised in this manner. Considering all the facts and circumstances of the case, I am of the view that

continuing the revocation of the CB license is too grave a penalty to be imposed for the above violations, as the punishment of revocation of license is much harsh and disproportionate to the offences committed. 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 along with forfeiture of entire amount of security deposit furnished by the CB. 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 irrevocably. 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(1)(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 M/s. Setwin Shipping Agency Vs. Commissioner of Customs (Chennai-VIII) – Customs Appeal No. 42682 of 2018 (Final Order No. 40003/2021 dated 13.01.2021), the Hon'ble Tribunal held that:-**

*"8. Looking into the circumstances of the case where the custom Broker prima facie has some documents; the person who handed over the documents to the Broker is available; it is not alleged that the exporter were fictitious and the fraudulent persons used the high security IDs and passwords of the departmental officers, the omission on the part of the Custom Broker becomes a bit less serious. Under the circumstances, we hold that though there was lapse on the part of the Custom Broker, the same is not at the root of the occurrence of the fraud. We find that the Customs Brokers erred inasmuch as non-verifying the antecedents of the exporter and has not obtained authorisation. However, we find that the punishment meted out to the Custom Broker should be commensurate with such omission. It is a settled law that penalty should be proportionate to the offence committed. It would be too harsh to revoke the license of the Customs Broker and to leave the right of livelihood of the Customs Broker as well as his employees to the wind. We find that the fact*



that the Customs Broker's license was suspended / revoked for a considerable period also needs to be taken on to account.

10.....We find that the license has been under the orders of revocation/suspension for more than two years. Under the circumstances, we find that the Customs Broker has been sufficiently penalised. For the commission of an offence on the part of the Customs Broker, the livelihood of many employees of the firm cannot be put to jeopardy. Therefore, as held by this Tribunal in the case of *N.T. Rama Rao & Co. Vs CC, CHENNAI-VIII – 2020 (371) ELT 789 (Tri.-Chennai)*, we find that ends of justice would be met if the security deposited is forfeited and penalty imposed is upheld, while setting aside the order as far as the revocation of the license is concerned.”

(e) **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.”

(f) **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”.

40. 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."*

41. 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. However, for their acts of omission and commission, the CB M/s. H.G. Mehta & Co. Pvt. Ltd. (CB No. 11/362) is

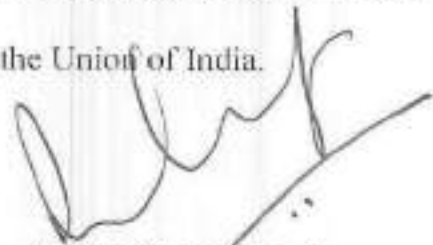
held liable and guilty for violating the provisions of CBLR, 2018 as mentioned above. I hold that the CB has failed to discharge his duties cast upon him with respect to Regulation 10(d), 10(e), 10(f) & 10(m) of CBLR, 2018 (erstwhile regulation 11(d), 11(e), 11(f) & 11(m) of CBLR, 2013) and the interest of justice would be met by imposition of penalty under Regulation 18 of CBLR, 2018 and forfeiture of security deposit, under Regulation 14 of CBLR, 2018. Accordingly, I pass the following order:

**ORDER**

42. 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. 01/2021-22 dated 08.04.2021 and continued vide order no. 09/2021-22 dated 07.06.2021.
- (ii) I hereby order for forfeiture of entire amount of security deposit furnished by the CB under Regulation 14 of CBLR, 2018 (erstwhile Regulation 18 of CBLR, 2013).
- (iii) 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 LII, III Zone.
2. All Pr. Commissioners/Commissioners of Customs, Mumbai I, II, III Zone.
3. DRI, MZU, Mumbai.
4. SHB (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