



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

संचिका सं./F. No.- GEN/CB/ACTN/30/2021-CBS आदेश दिनांक/Date of Order: 07.03.2025

CAO No.82/2024-25/CAC/PCC(G)/RC/Adj-CBS जारी दिनांक/Date of issue: 07.03.2025

DIN: 2025037700000083478E

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, यथोत्खंडपीठ में स्वीकार्य है।

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

3. यह सूचित किया जाता है की इस आदेश के अगल 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 ब्याजवलागाएण जुर्माने की राशि रु-1000 .पाँच लाख या इस से कम होतो रु ., (ii)यदि यह राशि रु) एवं -/5000 .पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न होतो रु .iii) यदि यह राशि रुके शुल्क -/10000 .पचास लाख से अधिक होतो रु . का भुगतान 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(1) of Customs Broker Licensing Regulations (CBLR, 2013)] and such they are bound by the regulation and condition stipulated therein.

2. The Directorate of Revenue Intelligence (DRI), Sub-Regional Unit, Vapi received an intelligence that a Proprietorship firm namely M/s. S.R. Enterprises, S. No. 16/4/1/1, Khalate Nagar, Mangdewadi, Ganesh Nagar, Gujarwadi Road, Nimbalkar Wasti, Katraj, Pune, Maharashtra having IEC No.-3114030416 (Proprietor Shri Sameer Sudhakar Renuse), was indulged in diversion of goods imported at concessional rate of duty under Notification 25/99-Customs dated 28.02.1999, as amended.

3. 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 substituted time to time. Intelligence indicated that M/s. S.R. Enterprises 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.

4. The factory premises of M/s. S.R. Enterprises, S. No. 16/4/1/1, Khalate Nagar, Mangdewadi, Ganesh Nagar, Gujarwadi Road, Nimbalkar Wasti, Katraj, Pune was searched under the Panchnama dated 16.12.2019. During the course of Panchnama proceedings, Shri Manoj Kumar, key-holder of the factory premises informed that they used to draw wires of 14 to 16 gauge (6mm to 2mm) on big Rod Break Down (RBD) machines and 20 gauge (3mm to 2mm) on small RBD machines in the factory premises of M/s. S.R. Enterprises. It was observed that the said factory premises were having one Big RBD machine with motor and conveyor belt, of Sagar Engineering Works capable of drawing wire from 14 to 16 gauge, one small RBD machine also of Sagar Engineering works capable of drawing 20-gauge wire, 2 electro-weld machines, and other machines weld 16-gauge wire with 16-gauge wire, 3 rewinding machines, one weighing machines, one rusted unused RBD for more fine drawing and one electronic Weightment scale. During the course of Panchnama proceedings, Shri Sameer Sudhakar Renuse, Proprietor of M/s. S.R. Enterprises informed that the said firm was engaged in manufacture of bare copper wire. For the said manufacturing of bare copper wire, he used to import electrolytic tough pitch copper wire rod 8mm from UAE through Delhi based high sea sellers and also sometimes purchases from local market. On being asked regarding the process of manufacturing of Lead wire, Shri Sameer Renuse informed that they import/purchase 8mm (10 to 11 gauges) copper rods. The said copper rod is passed through Big RBD drawing machines which pass through various 16 dyes with the help of coiler and copper wire 6mm to 3mm (14 o 16 gauges) is received at the other end. The copper wire received at other end is either rolled on spools/reel or sometime bundles are made. Further, Shri Sameer Renuse informed that if it is rolled on spool they pack it and after Weightment they transport the same to their buyers if sometimes bundles are made, they sell the bundles directly or sometime they wind it on spools with the help of rewinding machines. On being asked regarding use of second RBD drawing machines, Shri Sameer Renuse informed that

the said machine was used for drawing 3mm to 2mm (20 gauges) copper wire from 16-gauge copper wire. On being asked regarding whether any electrolytic machine installed in the factory premises or process of electrolysis being carried out in the factory premises or otherwise, Shri Sameer Renuse informed that he used to manufacture bare copper wire of above said specification only and not carry out any electroplating of tin or any other material on the said bare copper wire and no such electrolytic machine was installed in the said factory premises. On being asked regarding manufacture of lead wire, Shri Sameer Renuse informed that as per his knowledge this bare copper wire is called lead wire. Thereafter, as they were not having any machinery/facility to manufacture Lead Wire or doing electroplating of Copper Wire, the finished goods i.e. Copper wire of 16 gauge (4MM to 5 MM) lying on 73 spool/reel totally weighing 46667.4 Kgs (including weight of spool/reel wherein weight of one spool/reel comes to approx. 31 Kg.) were placed under seizure under the provisions of Customs Act, 1962 and representative samples were also withdrawn from the seized goods for further examination of goods. Apart from this, some documents were also withdrawn from the premises for further investigation.

5. The office premises of the Customs Broker namely 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 G.P.O, Mumbai-400001, who had done Customs clearances of the goods of M/s. S.R. Enterprises, was searched under Panchnama dated 16.12.2019 from where some documents were resumed for further investigation.

6. During the course of search operations, it was gathered that some live consignments of M/s. S.R. Enterprises which had been imported at concessional rate of duty under Notification 25/99- Customs dated 28.02.2019 were pending at Nhava Sheva Port for out of charge clearances. As the said firm was not eligible to avail the benefit of Notification No. 25/99- Customs dated 28.02.1999, the Deputy Director, Directorate of Revenue intelligence, Surat Regional Unit vide letter F.No. DRI/AZU/SRU/C/Misc-8/Vapi/2019

dated 17.12.2019 requested the Deputy Commissioner, Central Intelligence Unit, Nhava Sheva to hold the following import consignments of the said firm which had been imported availing the benefit of Notification No. 25/99- Customs dated 28.02.1999 and thereafter goods to be seized after examination, under the provisions of the Customs Act, 1962 as these goods were liable for confiscation. The details of the goods imported under the following mentioned bills of Entry were put on hold for examination and seizure purpose:

Sr. No.	Bill of Entry No.	Bill of Entry Date	Name Of the Importer	Qty.(in Kg.)	Assessable Value of the goods(in Rs)
01.	6050167	12.12.2019	M/s S.R.	24411	10726087
02.	6092308	16.12.2019	Enterprises	24399	11144241
03.	6088119	16.12.2019		24276	11369273
04.	6091844	16.12.2019		24348	11120946
05.	6049455	12.12.2019		24339	10694010
06.	6048800	12.12.2019		24384	10714223
07.	5955440	05.12.2019		25120	11158081
08.	6050166	12.12.2019		24448	11369821
09.	6089890	16.12.2019		24406	11147438
				Total	220131

7. The examination of the goods imported by M/s. S.R. Enterprises under 09 Bills of Entry were done under Panchnama dated 08.01.2020 and 09.01.2020 drawn at the premises of M/s. Kerry Indev Logistics Pvt. Ltd., Plot No. 10, Somathane Village, Kone Savla Rasayani Road, SH82, Panvel, Sawala Apta Road, Navi Mumbai, Maharashtra-410206 in presence of Shri Shiva Subramaniam, In-charge M/s. Kerry Indev Logistics Pvt. Ltd CFS, Shri Praveen Kishan Sondkar, Authorised person and G Pass Holder of Customs Broker M/s. H.G. Mehta & Co. Pvt. Ltd who had filed the said Bills of Entry on behalf of M/s. S.R. Enterprises and independent panchas.

8. As the aforesaid goods having net weight of 2,20,131 kg having value 9,94,44,120/- which had been imported under the Notification No. 25/99-Customs dated 28.02.1999 by the importer M/s S.R. Enterprises, who was not eligible to avail this notification, these copper coils were seized vide seizure memo dated 08.01.2020 and dated 09.01.2020 under the provisions of the Customs Act, 1962 and these seized goods were handed over to Shri Shiva Subramaniam, in-charge of M/s Kerry Indev Logistics CFS under the receipt of Supratnama dated 08.01.2020 with directions not to remove, sell, part with or otherwise deal with the said seized goods in any manner except with the prior mission in writing from the appropriate authority.

9. During the Investigation statement dated 30.12.2019 of Shri Sameer Sudhakar Renuse, Proprietor of M/s. S.R. Enterprises recorded under Section 3 of the Customs Act, 1962 wherein he interalia stated that: -

- During the period of January-2018, Shri Anil Satpute asked him to become Proprietor of a firm on paper only; that as per the verbal agreement, it was decided that he would become Proprietor of a firm namely M/s. S.R. Enterprises on paper only and for this he was receiving salary of 1,00,000/- per month from Shri Anil Satpute; that he was entrusted to look after day to day operation & transportation arrangement of the said firm; that all other dealings viz. accounting, sales, import, finance used to be handled by Shri Anil Satpute; that he became Proprietor of M/s. S. R. Enterprises in January-2018 and continued to work as Proprietor of M/s. S. R. Enterprises on paper only.
- 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 they had cleared / sold 70% of the imported Electrolytic Tough Pitch (ETP) Copper Wire Rods 8 MM as such between May-2018 to April-2019; that thereafter they had sold 90% of the imported Electrolytic Tough Pitch (ETP) Copper Wire

Rods 8 MM as such from May-2019 to December-2019; that they had manufactured Copper bare Wire of different size ( $>1.0$  MM) from the remaining imported goods; that they had sold almost 70% the imported Electrolytic Tough Pitch (ETP) Copper Wire Rods 8 MM as such from May-2018 to April-2019 and sold 90% of the imported Electrolytic Tough Pitch (ETP) Copper Wire Rods 8 MM as such from May-2019 to December-2019; that they were having two Rod Break Down (RBD) Machines in their factory premises for drawing Copper Wires of different sizes from Copper Rods of 8 MM; that one RBD Machine was used for manufacturing of Copper Wire of 16 Gauge from Copper Rods 8MM (i.e. from 8 MM to 4 MM) and another RBD Machine was used to draw copper wire from 14 gauge to 20 gauge (i.e. from 3 MM to 1 MM); that the second RBD Machine which was capable to draw copper wire up to 20 gauge was not in use for the last one year, that on being asked regarding the production capacity of working RBD Machine, he stated that the production capacity was 1.0 MTs of Copper Wire in an hour; that on being asked regarding the power consumption for the production of Copper Wire, he stated that generally their RBD Machine used to consume 100 units for production of 1 MTs of Copper Wires; that his firm used to run 8-9 hours on daily basis and it used to run 15 days in a month.

- On being asked regarding the manufacturing of Lead wires for electronic parts as stipulated in the said Notification, he stated that 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; that they were not having any manufacturing facility/ machineries/expertise at their 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 they never manufactured Lead Wire; that even they were not having any machineries or facility in their factory premises to manufacture Lead Wire; that they were having facility/machineries to manufacture only bare copper wire by way of drawing Copper Wire up to size 1.0 MM from Copper Rods of size 8 MM.

- He stated that they had always prepared sales invoices of Copper Wire irrespective of the goods either Cooper Wire Rods or Copper Wire; that as per instructions of Shri Anil Satpute, they had shown sales of Copper Wires under the said sales invoices, however they had sold Copper Wire Rods of 8 MM and Copper Wire of different size (1 MM) under those invoices.
- Most of the goods had been transported by M/s. Bajpai & Co., Navi Mumbai; on being asked regarding the details of transporters who delivered the goods in his factory premises from the Port, he stated that the said transportation arrangement used to be done by the concerned CHA namely M/s. H G Mehta & Co. Pvt Ltd. as he was working as clearing & forwarding agent for his firm and further transported as such from his factory by M/s. Bajpai & Co., Navi Mumbai.
- He confessed 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; that by way of such act, they imported approx. 5000 MTs of Electrolytic Tough Pitch (ETP) Copper Wire Rods having value Rs. 230.0 Crores (approx.) during the period from May-2018 to December-2019 at concessional rate

of duty under the said Notification and evaded Basic Customs duty to the tune of Rs. 14.0 Crores (approx.). He confessed that M/s. S.R. Enterprises had evaded Customs duty to the tune of 14.0 Crores approx. during the period from May-2018 to December-2019 by way of importing illegally ETP Copper wire rods; that the said duty evaded amount along with interest and penalty would be paid by him in instalment within 2 weeks; that he had talked to Shri Anil Satpute who was controlling all these activities and was the actual beneficiaries of these evaded duty, he assured that the duty payment would be done within 2 weeks in instalments.

10. From the evidences collected, it appeared that Shri Anil Anand Satpute had played a vital role in duty evasion done by M/s. S.R. Enterprises. It further appeared that Shri Anil Anand Satpute acted as mastermind behind the duty evasion as he was controlling the operations of M/s. S.R. Enterprises. In order to get the evidences from him, he was summoned and statement dated 03.01.2020 of Shri Anil Anand Satpute, 42, Shubhendra Bunglow, United Western Society, Karvenagar, Pune City, navashyadri, Pune-411052 was recorded under Section 108 of the Customs Act, 1962 wherein he interalia stated that: -

- He asked Shri Sameer Renuse to become Proprietor of a firm namely M/s. S.R. Enterprises on paper; that he used to look after the work related to M/s. S.R. Enterprises combined with Shri Sameer Renuse; that he was looking after the work related to day to day operation of M/s. S.R. Enterprises with Shri Sameer Renuse.
- 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 they had almost cleared / sold 70% of the imported Electrolytic Tough Pitch (ETP) Copper Wire Rods 8 MM as such between May-2018 to April-2019. Thereafter, they had sold 90% of the imported Electrolytic Tough Pitch (ETP) Copper Wire Rods 8 MM as such from May-2019 to December-2019; that they manufactured only Copper bare Wire of different size (>1.6 MM) from the

remaining imported goods; that they were having two Rod Break Down (RBD) Machines in their factory premises for drawing Copper Wires of different size from Copper Rods of 8 MM; that One RBD Machine was used for manufacturing of Copper Wire from Copper Rods 8MM to 4 MM and another RBD Machine was used to draw copper wire from 3 MM to 1.6 MM. Second RBD Machine which was capable to draw copper wire up to 1.6 MM was not in used for the last one year, that M/s. S.R. Enterprises used to run 8-9 hours on daily basis and it used to run 15 days in a month.

- On being asked regarding the manufacturing of Lead wires for electronic parts as stipulated in the said Notification, he stated that 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; that they were not having any manufacturing facility/ machineries/expertise at the 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 it used to be manufactured by coating tin over Copper Wire; that without coating, it is treated as bare copper Wire; that it must be coated with tin by electrolysis process for becoming Lead Wire; 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, they were supposed to manufacture Lead wire for electronic parts but they never manufactured Lead Wire; that even they were not having any machineries or facility in the factory premises of M/s. S.R Enterprises to manufacture Lead Wire;

that they were only having facility/machineries to manufacture bare copper wire by way of drawing Copper Wire up to size 1.6 MM from Copper Rods of size 8 MM.

- On being asked to comment over the statement dated 30.12.2019 of Shri Sameer Sudhakar Renuse wherein he had admitted that he had not signed on any of the High Sea Sales agreements which were placed in the files; that wherever his signatures were shown on High Sea Sales agreements, those signatures were not done by him. In this context, he stated that he did not know who had done signature on those documents on behalf of Shri Sameer Renuse; that these documents used to be provided to the Customs Broker M/s. HG Mehta & Co. after getting endorsed from the high sea Sellers; that thereafter, it was upon the High Sea Sellers to complete all paper formalities; that he had given one time instructions to the concerned Customs Broker to import goods under Notification 25/99- Customs dated 28.02.1999 (Sr. No. 89A). Thereafter, he used to intimate Customs Broker as and when High Sea Sales agreement got endorsed by the High Sea Seller; that he used to be in contact with Shri Dinesh Sharma, Accounts Manager of M/s. Agsons Agencies (I) Pvt.Ltd. and M/s. Himgiri Buildcon & Industries Ltd.; that in support of the same, he submitted representative print copies of his Email bearing page no. from 01 to 19 which contain Bill of Lading of the goods sold by the Avana Global FZCO for sales of ETP Copper Rods 8 MM to M/s. Agsons Agencies., bank a/c statement of S.R. Enterprises, etc.
- He confessed that he was one of the mastermind who had transpired plan to do evasion of Customs duty by adopting modus as stated above; that he confessed his guilt; that Shri Sameer Renuse abetted him in such duty evasion; that he took responsibility of such duty evasion and assured to pay back the Customs duty which had been evaded.

11. The concerned Customs Broker namely 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 who had done customs clearances of the imported goods of M/s. S.R. Enterprises was summoned and statement dated 10.01.2020 of Shri Pankaj Mukundray Sheth, Director of M/s. H.G. Mehta & Co. Pvt. Ltd. was recorded by the Summons issuing authority 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. S.R. Enterprises; that they did the customs clearances of all goods imported by this firm and forwarded these goods to the concerned party.
- He was aware of Notification No. 25/99- customs dated 28.02.1999 and amendment done on it; that under the said notification, the said firm was 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 the said firm for importing goods under the said notification.
- He started to do customs clearances of imported goods of M/s. S.R Enterprises from May-2018 onwards; that he was approached by Shri Anil Satpute who informed him that he needed a Customs Broker for doing import of goods of his one firm namely M/s. S.R. Enterprises.; that as he was in touch with him since long (as he was handling the clearance works of his another firm namely M/s. Chandrasekhar Industries), he agreed to do so; that he received KYC documents from Shri Anil Satpute wherein he came to know that Shri Sameer Sudhakar Renuse was the Proprietor of the said firm on paper; that he submitted copies of KYC documents bearing page no. from 01 to 06 received from Shri Anil Satpute; that they started to

do customs clearances of imported goods i.e. ETP Copper Rods 8 MM under Notification 25/99- Customs dated 28.02.1999 from Nhava Sheva Port; that initially, he used to receive documents directly from the High sea Seller i.e. M/s. Agsons Agencies Pvt Ltd./ M/s. Hingiri Buildcon & Industries Ltd (Owner Shri Ravi Agrawal); that sometimes he used to receive High Sea sales (HSS) documents wherein buyer's and seller's signature used to be done already but sometimes they used to receive HSS documents wherein only Seller signature used to be done over it; that wherever buyer's signature used not to be done on HSS documents, they used to sign over it on behalf of buyer; that he admitted that he forged the signature of Shri Sameer Renuse and did over the HSS documents; that in so many HSS agreement, they did signature of Shri Sameer Renuse as he was under impression that Shri Anil Satpute was the actual owner of the firm and he had forged the signature of Shri Sameer Renuse on direction of Shri Anil Satpute; that as per directions received from Shri Anil Satpute they started to do import of goods availing the benefit of Notification No. 25/99- Customs dated 28.02.1999; that later on during December-2018, Shri Anil Satpute introduced him to Shri Sameer Renuse and directed that Shri Sameer Renuse would now also involve in day to day operation of import consignments for M/s. S.R. Enterprises; that he started to get directions form Shri Anil Satpute and Shri Sameer Renuse from thereon; that M/s. S.R. Enterprises had imported approx. 5000.0 MTs of ETP Copper Rods 8 MM having assessable value approx. 230.0 Crores under Notification 25/99- Customs dated 28.02.1999 during the period from May-2018 to Deccember-2019 wherein duty forgone amounts to approx. 14.0 Crores; that after customs clearances of these goods, they used to arrange transportation of the goods for delivering from port to the factory premises of M/s. S.R. Enterprises; that these goods were further

transported by M/s. Shreesti & Co. and delivered to the factory premises of M/s. S.R. Enterprises.

- He was shown statement dated 30.12.2019 of Shri Sameer Sudhakar Renuse and he agreed with the contents mentioned therein; that M/s. S.R. Enterprises used to be controlled by Shri Anil Satpute.
- Perused statement dated 03.01.2020 of Shri Anil Anand Satpute and agreed with the contents mentioned therein.
- The payments related to M/s. S.R. Enterprises used to be confirmed by Shri Anil Satpute; that he used to receive payment in his bank account bearing no. bank account bearing no. \*\*\*\*15466 maintained at SBI, Fort Branch, Mumbai.
- Perused Panchnama dated 16.12.2019 drawn at his office premises, located at Office No. 15, 3rd Floor, Friends Union Co-operative Society Ltd., 227, P.D' Mello Road, Near GPO, Mumbai-400001 and agreed with the contents mentioned in the Panchnama.

12. It was gathered that most of the goods had been purchased by M/s. S.R. Enterprises on high Seas from M/s. Agsons Agencies (1) Pvt. Ltd. and M/s. Himgiri Buildcon & Industries Ltd. and thereafter bills of entry were filed by M/s. S.R. Enterprises for import of these goods. Accordingly, High Sea sellers of the goods were summoned to provide the evidences related to the case.

- M/s. Agsons Agencies (1) Pvt. Ltd., 706, New Delhi House, Barakhamba Road, Connaught Place, New Delhi and M/s. Himgiri Buildcon & Industries Ltd. H.O.-H47, Green Park Extension, New Delhi-440016 was summoned and statement dated 11.02.2020 of Shri Dinesh Sharma, Authorised Person of M/s. Agsons Agencies (1) Pvt. Ltd. and M/s. Himgiri Buildcon & Industries Ltd. was recorded under Section 108 of the Customs Act, 1962 wherein he interalia stated that: -

- Shri Ravi Kumar Agarwal was the main director of the said company and he looked after the work related to purchase and management related works of the said company.
- M/s. Agsons Agencies (I) Pvt. Ltd had sold approx. 3950.0 MTs of ETP Copper Rods 8MM having value 185,68,13,089 and M/s. Himgiri Buildcon & Industries Ltd had sold approx. 930.0 MTs of ETP Copper Rods 8MM having value 53,05,65,762/ to M/s S.R. Enterprises during the period from May-2018 to December-2019; on being asked regarding the person to whom all dealings were done, he stated that initially they were told by broker Shri Vishal Sharma (broker) that Shri Anil Anand Satpute and Shri Sameer Renuse were willing to do business with them as they were the owner of M/s. S.R. Enterprises; that they agreed to do high sea sales of the goods to them; that whenever they required to purchase goods from them on high seas, they used to take order from Shri Anil Satpute; that they used to send the documents viz. invoices, packing list, High sea sales agreement, copy of Bill of Lading to the office of concerned Customs Broker namely M/s. HG Mehta & Co.
- He was shown 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 statement of Shri Pankaj Mukundray Sheth regarding high sea sales wherein he had stated that, he used to receive High Sea sales documents directly from M/s. Agsons Agencies (I) Pvt. Ltd. and M/s. Himgiri Buildcon & Industries Ltd. where only seller signatures used to appended on those agreement; that thereafter in some of the cases, he or his employee used to do forged signature over the High Sea Sales agreement on behalf of Proprietor of M/s. S.R. Enterprises, he stated that they used to sign their signature



on High Sea Sales agreements; that after signing on behalf of seller on High Sea sales agreement, they used to send this agreement to the office of Customs Broker through courier without having any signature of buyers over it; that thereafter, it was for the buyer to do signature at their end on those High Sea Sales agreements; that on being asked regarding the attestation or notarization done on those High Sea Sales agreement where seller and buyer both had endorsed their signatures, he stated that he did not know who had attested their signatures; that they (seller & Buyer) never signed on those documents clearances at the same time at same place.

- He submitted therewith copies of High Sea Sales agreements done between M/s. Agsons Agencies (1) Pvt. Ltd. & M/s. Himgiri Buildcon & Industries Ltd. and M/s. S.R. Enterprises wherein it can easily be seen that they had done only their signatures on those HSS agreements; that Buyer signatures or notarization was not there on those documents.
- On being asked regarding the legal compliances on those goods which were high sea sold by them to M/s. S.R. Enterprises, he stated that once the goods were sold on high seas to buyers, the onus is now upon buyer to arrange of the goods from Customs at their sole risk and responsibility. Any tax or any statutory charges levied/imposed on the goods shall be to the account of buyer; their roles were restricted to do high sea sales of the goods; that it was not their look out to deal with the goods once it was high sea sold to buyers; that the buyer has to file Bills of entry and pay duties applicable on it.

13. In order to further track the movement of the goods from Nhava Sheva Port, the investigation was conducted by way of recording statement of the transporter namely M/s. Bajpai & Co. and M/s. Shreesti & Co. Nhava ha transported the imported goods of M/s. S.R. Enterprises from Nhava Sheva Port after out of charge clearances of the imported goods. M/s. Bajpai & Co. & M/s. Shreesti & Co. both having address at C-307, Steel

Chamber Tower, Plot No. 514, Steel Market, Kalamboli, Navi Mumbai-4102018 were summoned and statement dated 30.01.2020 of Shri Bachchanlal Girijashankar Bajpai, Proprietor of M/s. Bajpai & Co, cum controller of M/s. Shreesti & Co, was recorded under Section 108 of the Customs Act, 1962 wherein he interalia stated that:-

- He had transported the goods of M/s. S.R. Enterprises during the period from June-2018 to December-2020; that he had transported the goods of M/s. S.R. Enterprises from Nhava Sheva port to various places located at Maharashtra & Gujarat; that some of the goods of M/s. S.R. Enterprises had been delivered to the factory premises and some of the goods had been delivered to premises other than the factory premises; that he had transported approx. 5000.0 MTs of imported goods of M/s. S.R. Enterprises from Nhava Sheva port and out of the same, approx. 3000.0 MTs of goods had been delivered to various premises located at Surat/Daman/Hamrapur/Sinnar directly from Nhava Sheva port without delivering the same to the factory premises of M/s. S.R. Enterprises, Pune; that he submitted Annexure A bearing Sr. No. from 01 to 112 wherein he had mentioned the details of goods of M/s. S.R. Enterprises transported by him from Nhava Sheva port and delivered at places mentioned in the Annexure; that he had not delivered these goods at the factory premises of M/s. S.R. Enterprises, Pune; that he had transported container containing goods of weight 25 MTs (approx.) per container and in such way as per the said annexure, he transported approx., 2800-3000.0 MT of goods of M/s. S.R. Enterprises and delivered to M/s. Rational Engineering, Hamrapur/M/s. Babji Wire, Surat/M/s. National India Refinery, Surat/M/s. Nine Metal, Daman/M/s. Chandrashekhar Industries, Sinnar Nashik/M/s. Balaji Extrusion, Daman, etc.; that in support of the same, he submitted copies of LRs bearing page no. from 01 to 665 issued by M/s. Shreesti & Co. & M/s. Bajpai & Co.; that he delivered remaining imported goods of approx. 2000.0 MTs to the factory premises

of M/s. S.R. Enterprises wherein most of the goods were cross-transferred in another vehicle in the premises of M/s. S.R. Enterprises; that when his vehicles used to reach at the factory premises of M/s. S.R. Enterprises, most of the times, these goods used to be cross transferred in another vehicle (i.e. unloading his vehicle and directly loaded in another vehicle) and from there it used to be transported to some other places; that a very few consignments were delivered in the factory premises of M/s. S.R. Enterprises.

- On being asked regarding the bilties or other documents prepared by him for transporting the imported goods of M/s. S.R. Enterprises, he stated that in cases where the goods had been directly delivered (including crossing) to the factory premises of M/s. S.R. Enterprises Pune, 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 CHA (now Customs Broker) namely M/s. HG Mehta & Co.; that on the basis of the same, he used to prepare bilties for transporting these goods from Nhava Sheva to Pune; 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. S.R. Enterprises directly from Nhava Sheva port, he used to prepare two bilties for transporting single consignments; that one bilties meant for transporting goods from Nhava Sheva to the factory premises of M/s. S.R. Enterprises, Pune and another bilty meant for transporting the goods from the factory premises of M/s. S.R. Enterprises, Pune to various places located at Surat/Daman/etc. However, these goods were directly delivered from Nhava Sheva port to the premises located at Daman, Surat, etc.; that he had incorporated the details of Lorry receipt in Annexure-A which was submitted by him during statement wherein it can be clearly seen that he had made two distinct

LRs for transporting single consignment of goods; that against the LRs of M/s. Bajpai & Co. wherein he had mentioned container no. on LRs as these goods were directly transported from Nhava Sheva to premises other than the factory premises but destination on LRs was shown as Pune to other premises; that if the goods would have transported from Pune to other places, it would not have mentioned container No. of LRs; that all LRs prepared in the name of M/s. Shreesti & Co. are fake in these cases; that these LRs were prepared just for documentation purpose in order to give false impression that these goods were transported from Nhava Sheva to Pune; that these goods were never transported to Pune; that he used to receive instructions from Shri Sameer Sudhakar Renuse, Proprietor of M/s. S.R. Enterprises regarding the destination of the goods; that if the destination of the goods informed to him was other than Pune, he used to receive sales invoices of M/s. S.R. Enterprises from Shri Sameer Renuse on WhatsApp or on Email. On the basis of the same, he used to prepare bilties showing transportation of goods from Pune to Daman/Surat/Hamrapur/etc. However, these goods were directly delivered Nhava from Sheva to Daman/Surat/Hamrapur/etc.

14. It appeared that Shri Anil Anand Satpute had acted as main mastermind of duty evasion. He made Shri Sameer Renuse as Proprietor of M/s. S.R. Enterprises but controlled the import, sales and banking related activities of M/s. S.R. Enterprises. He, with the help of Shri Sameer Renuse fraudently obtained the permission to import goods at concessional rate of duty in the IFC of M/s. S.R. Enterprises. He acted as de-facto owner / beneficial owner and controller of M/s. S.R. Enterprises. Shri Sameer Renuse was working under the instructions of Shri Anil Anand Satpute. He was also getting salary from Shri Anil Satpute in cash. He controlled the diversion of imported goods of M/s. S.R. Enterprises. He instructed the Customs Broker M/s. H.G. Mehta & Co. Pvt. Ltd, to do forged signature of Shri Sameer Renuse on high sea sales documents. He directed the Customs broker to avail

the benefit of Notification No. 25/99 Customs dated 28.02.1999 while importing goods of M/s. S.R. Enterprises in spite of knowing the fact that the said firm was not eligible to claim the benefit of such notification. He conspired with Shri Sameer Renuse and acted as main mastermind behind the duty evasion. He hatched the conspiracy to import goods at concessional rate of duty in the IEC of M/s. S.R. Enterprises, for which they were not eligible. He also informed the Customs Broker that he was the real owner of the said firm and Shri Sameer Renuse was acting as proprietor of the said firm on paper only. He also informed the concerned transporter that he was having one another firm namely M/s. S.R. Enterprises other than M/s. Chandrashekhar Industries and on his request, the concerned transporter started to transport the imported goods of M/s. S.R. Enterprises. Shri Anil, Anand Satpute was very well aware of the legal provisions governing import of goods at concessional rate of duty under Notification 25/99-Customs dated 28.02.1999 read with provisions of IGCR, 2017. By indulging in the unauthorized import and diversion of goods which had been imported at concessional rate of duty, Shri Anil Anand Satpute illegally enriched himself at the cost of government exchequer thereby knowingly causing harm to the economy of the nation.

15. It 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 Sameer Sudhakar Renuse 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 Sameer Sudhakar Renuse, he forged the signatures of Shri Sameer Sudhakar Renuse on high sea sales agreement documents. He under the instructions of Shri Anil Satpute forged the signature of Shri Sameer Renuse on High Sea Sales Agreement documents of M/s. S.R. Enterprises. He used to direct his staff to sign over the documents on high sea sales agreement on behalf of High Sea Buyer. The acts and deeds of Shri Pankaj Mukundray Sheth and M/s. H.G. Mehta & Co. Pvt. Ltd. enabled the conspirators Shri Anil

Anand Satpute and Shri Sameer Sudhakar Renuse 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.

16. 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(d), 10(e), 10(m) and 10(n) and 14(c) of the Custom Broker Licensing Regulations 2018.

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

Whereas 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 that he was aware that Shri Sameer Sudhakar Renuse was the Proprietor of M/s. S. R. Enterprises 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. He further admitted that he forged the signature of Shri Sameer Renuse and did over the HSS documents. The CB despite of knowing that Shri Anil Satpute was proxy importer, they cleared the consignments of M/s. S. R. Enterprises. Shri Sameer Sudhakar Renuse, proprietor of M/s. S. R. enterprises as per his statement recorded on 30.12.2019, under Section 108 of the Customs Act, 1962, admitted that during the period of January-2018, Shri Anil Satpute asked him to become Proprietor of a firm on

paper only. Shri Anil Anand Satpute as per his statement recorded on 03.01.2020, under Section 108 of the Customs Act, 1962 admitted that he asked Shri Sameer Renuse to become Proprietor of a firm namely M/s. S.R Enterprises on paper only. Shri Anil Anand Satpute admitted that he was one of the mastermind who had transpired plan to do evasion of Customs duty and Shri Sameer Renuse abetted him in such duty evasion. Thus, it appears that CB was hand in glove with the proxy importer and facilitated the improper importation of the goods. Thus, it appears that CB neither advised the actual IEC holders about provisions of the Customs Act 1962 and the Rules & Regulations nor brought to the notice of the Customs Authorities. Thus it appeared that the CB has contravened the provisions of Regulation 10 (d) of the CBLR, 2018.

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

Whereas 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 that he was aware that Shri Sameer Sudhakar Renuse was the Proprietor of M/s. S. R. Enterprises 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. He further admitted that he forged the signature of Shri Sameer Renuse and did over the HSS documents. Despite of knowing that Shri Anil Satpute was proxy importer, they cleared the consignments of M/s. S. R. Enterprises. Thus, it appeared that CB was hand in glove with the proxy importer and facilitated the improper importation of the goods. It is evident that the Customs Broker processed the documents without exercising due diligence to ascertain the correctness of the information. It is apparent that the CB forged the signature on HSS Agreement. Thus, it appeared that the CB has contravened provisions of Regulation 10 (e) of the CBLR, 2018.

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

Whereas in the instant case, as per statement of 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 Sameer Sudhakar Renuse was the Proprietor of M/s. S. R. Enterprises 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. He further admitted that he forged the signature of Shri Sameer Renuse and did over the HSS documents. Despite of knowing that Shri Anil Satpute was proxy importer, they cleared the consignments of M/s. S. R. Enterprises. Shri Sameer Sudhakar Renuse, Proprietor of M/s. S.R. Enterprises, as per his statement recorded on 30.12.2019, 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 was 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 CBLR, 2018:** *"A Custom Broker shall verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data information".*



Whereas 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 that he was aware that Shri Sameer Sudhakar Renuse was the Proprietor of M/s. S. R. Enterprises on paper only. Despite of knowing that Shri Anil Satpute was proxy importer, they cleared the consignments of M/s. S. R. Enterprises. Shri Sameer Sudhakar Renuse, proprietor of M/s. S. R. enterprises as per his statement recorded on 30.12.2019, under Section 108 of the Customs Act, 1962, admitted that during the period of January 2018, Shri Anil Satpute asked him to become Proprietor of a firm on paper only. Shri Anil Anand Satpute as per his statement recorded on 03.01.2020, under Section 108 of the Customs Act, 1962 admitted that he asked Shri Sameer Renuse to become Proprietor of a firm namely M/s. S.R Enterprises 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 appeared that the CB has contravened the provisions of Regulation 10 (n) of the CBLR, 2018.

**Regulation 14 of CBLR, 2018:** *(c) commits any misconduct, whether within his jurisdiction or anywhere else which in the opinion of the Principal Commissioner or Commissioner of Customs renders him unfit to transact any business in the Customs Station;*

Whereas in the instant case, as per the 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, wherein he admitted that sometimes he used to receive High sea sales documents wherein buyer's and seller's signature used to be done already but sometimes they used to receive HSS documents wherein only seller signature used to be done over it; that wherever buyer's signature used

not be done on HSS documents, they used to sign over it on behalf of buyer; that he admitted that he forged the signature of Sh. Sameer Renuse Proprietor of M/s. S. R. Enterprises and did over the HSS documents. He had forged the signature of Sh. Sameer Renuse Proprietor of M/s. S. R. Enterprises on direction of Sh. Anil satpute. Thus, it appears that CB was hand in glove with the proxy importer and facilitated the improper importation of the goods. Thus it appeared that the CB has contravened the provisions of Regulation 14 (c) of the CBLR, 2018.

### **SUSPENSION OF LICENSE**

18. 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(d), 10(e), 10(m), 10(n) and 14(c) 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. 39/2021-22 dated 02.02.2021 under the provisions of Regulation 19(1) of CBLR, 2013 (now Regulation 16(1) of CBLR, 2018). Thereafter Personal Hearing to the CB was given and suspension of M/s. H. G. Mehta & Co. Pvt. Ltd. (CB No.11/362) was continued, pending inquiry proceedings under Regulation 17 of CBLR, 2018, by the Commissioner of Customs (General), New Custom House, Mumbai vide order no. 02/2021-22 dated 08.04.2021 under the provisions of Regulation 16 (2) of CBLR, 2018.

19. A Show Cause Notice No. 05/2021-22 dated 04.05.2021 was issued in terms of Regulation 17(1) of CBLR, 2018 and vide this notice, the Customs Broker M/s. H. G. Mehta & Co. Pvt. Ltd. (CB No.11/362) were called upon to show cause, as to why the license bearing no. 11/362 issued to them should not be revoked and security deposited should not be forfeited and/or penalty should not be imposed upon them under Regulation 14 read with 17 & 18 of the CBLR, 2018, for their failure to comply with the provisions of CBLR, 2018 as elaborated above, with pending inquiry under Regulation 17 of CBLR,

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

### INQUIRY REPORT

20. Inquiry Officer submitted Inquiry Report dated 22.07.2021, wherein the charges against CB i.e. violation of Regulation 10(d), 10(e), 10(m), 10(n) and 14(c) of CBLR, 2018 were held as Proved beyond doubt'. The inquiry report inter alia stated as below:

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

20.2 In respect of article of charge of violation of Regulation 10(d) of the CBLR, 2018, the Inquiry Officer noted that as per the statement of Shri Pankaj M Sheth, Director of Customs 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 Sameer S Renuse was the proprietor of M/s SR Enterprises 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. He further admitted that he forged the signature of Shri Sameer Renuse and did over the HSS documents. The CB despite knowing that Shri Anil Satpure was proxy importer, cleared the consignments of M/s SR Enterprises. Shri Sameer Renuse proprietor of M/s SR Enterprises as per his statement recorded on 30.12.2019 under section 108 of the Customs Act 1962, admitted that during the period of Jan 2018, Shri Anil Satpute asked him to become proprietor of a

firm on paper only. Shri Anil Satpute as per his statement recorded on 03.01.2020 admitted that he asked Shri Sameer Renuse to become proprietor of a firm namely M/s SR Enterprises on paper only. Hence, CB failed to interact with actual IEC holder and appraise him about provisions of Customs Act, 1962 and also did not brought these issues to the notice of Customs Authority. 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 beyond doubt".

20.3 Regarding violation of Regulation 10(e) of the CBLR, 2018, the Inquiry Officer observed that as per the statement of Shri Pankaj M Sheth, Director of Customs Broker M/s H.G. Mehta & Co. Pvt. Ltd recorded on 10.01.2020 under section 108 of the Customs Act, 1962 admitted that he was aware that Shri Sameer S Renuse was the proprietor of M/s S R Enterprises 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. He further admitted that he forged the signature of Shri Sameer Renuse and did over the HSS documents. The CB despite knowing that Shri Anil Satpure was proxy importer, they cleared the consignments of M/s S R Enterprises. It is evident that the CB processed the documents without exercising the due diligence to ascertain the correctness of the information and forged the signature and thereby it is held by the Inquiry Officer that the Article of Charge alleging violation of Regulation 10(e) of CBLR, 2018 is "Proved beyond doubt".

20.4 With reference to violation of Regulation 10(m) of CBLR 2018, the Inquiry Officer noted that as per the statement of Shri Pankaj M Sheth, Director of Customs Broker M/s H.G. Mehta & Co. Pvt. Ltd recorded on 10.01.2020 under section 108 of the Customs Act, 1962 admitted that he was aware that Shri Sameer S Renuse was the proprietor of M/s SR Enterprises 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. He further admitted that he forged the signature of Shri Sameer Renuse and did over the HSS documents. The CB despite knowing that Shri Anil Satpure was proxy importer, cleared the consignments of M/s SR Enterprises. The CB failed in sensitizing the actual IEC holder regarding Notification 25/99-Customs dated 28.02.1999. The Investigation 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 notification even after knowing that the HSS Agreement were without signature of the buyer and showed his inefficiency in discharging his duties and hence it is held by the Inquiry Officer that the Article of Charge alleging violation of Regulation 10(m) of CBLR, 2018 is "Proved beyond doubt".

20.5 In respect of article of charge of violation of Regulation 10(n) of CBLR 2018, the Inquiry Officer find that as per the statement of Shri Pankaj M Sheth, Director of Customs Broker M/s H.G. Mehta & Co. Pvt. Ltd recorded on 10.01.2020 under section 108 of the Customs Act, 1962 admitted that he was aware that Shri Sameer S Renuse was the proprietor of M/s SR Enterprises 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. He further admitted that he forged the signature of Shri Sameer Renuse and did over the HSS documents. The CB despite knowing that Shri Anil Satpure was proxy importer, they cleared the consignments of Ms SR Enterprises. Shri Sameer Renuse proprietor of M/s SR Enterprises as per his statement recorded on 30.12.2019 under Section 108 of Customs Act 1962, admitted that during the period of Jan 2018 Shri Anil Satpute asked him to become Proprietor of a firm on paper only. Shri Anil Satpute as per his statement recorded on 03.01.2020 admitted that he asked Shri Sameer Renuse to become proprietor of a firm namely M/S SR Enterprises on paper only. This being the case, the whole purpose of KYC

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

20.6 On the charge of violation of Regulation 14(c) of CBLR 2018, the Inquiry Officer observed that as per the statement of Shri Pankaj M Sheth, Director of Customs Broker, M/s H. G Mehta & Co Pvt Ltd recorded on 10.01.2020 under section 108 of the Customs Act, 1962 wherein he admitted that sometimes he used to receive High sea sales documents wherein buyer's and seller's signature used to be done already but sometimes they used to receive HSS documents wherein only seller signature used to be done over it; that wherever buyer's signature used not be done on HSS documents, they used to sign over it on behalf of buyer, that he admitted that he forged the signature of Shri Sameer Renuse Proprietor of M/s SR Enterprises and did over the HSS documents. He had forged the signature of Sameer Renuse Proprietor of M/s S. R. Enterprises on direction of Shri Anil Satpute. Thus CB facilitated the improper importation & committed misconduct and hence it is held by the Inquiry Officer that the Article of Charge alleging violation of Regulation 14(c) of CBLR 2018 is also "proved".

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

21. 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.

21.1 Thereafter, the then Pr. Commissioner of Customs (Gen), NCH, Mumbai passed an Order-in-Original CAO No. 120/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.

21.2 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 (present case); (ii) SCN No. 06/2021-22 dated 07.05.2021 and (iii) SCN No. 13/2021-22 dated 16.06.2021. After completion of inquiry proceedings in all the three cases, the then Pr. Commissioner of Customs (Gen), NCH, Mumbai passed three separate OIOs all dated 10.01.2022, under Regulation 17(7) of CBLR, 2018, as mentioned below:-

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

21.3 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:-**

22. 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 – Present case)

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

22.1 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."*

22.2 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 09.01.2025.

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

23. The personal hearing in the present case was held on 09.01.2025, 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:-**

24. 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:

24.1 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).

24.2 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 notice/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.

24.3 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.

24.4 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.

24.5 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.

25. 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 I.d. 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.

26. The CB also re-submitted and reiterated their written submission dated 13.09.2021, which is discussed below:-

26.1 The CB submitted that based on the submissions herein below, it merits to be held that the Inquiry Report grossly erred in addressing the basic issue of filing of Bills of Entry/ submission of check lists for clearance of the goods imported against the said Bs/E filed allegedly by the noticee, 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 therein or thereto and consequence thereof, if any on the custom duty or otherwise. 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.

26.2 The CB also submitted that on perusal of Report of the Ld. I.O. suggests that in Report of the inquiry the Ld. I.O. has heavily relied upon the Show Cause Notice F.No. DRI/AZU/SRU-50/2019 Dated 03-12-2020 issued by the Additional Director General, DRI-Ahmedabad which is based on "preliminary inquiry". The CB submitted that the show cause notice dated 03-12-2020 issued by the DRI, purported to be the investigation report,

despite repeated requests, not provided to the noticee by the Ld. I.O. It is a settled legal position that non supply of even relied upon documents to the noticee is the violation of elementary principles of natural justice.

26.3 The CB stated that the show cause notice dated 03-12-20 issued by DRI 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 noticee/noticees, 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 recorded in preliminary Inquiry can not be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice."*

26.4 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 noticee 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.

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

26.6 The CB submitted that as per para 22 of the show cause notice No 05/2021-22 dated 04-05-2021, the only relied upon document in these inquiry proceedings is the Show Cause Notice F.No. DRJ/AZU/SRU-50/2019 dated 03-12-20. 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 were neither the relied upon documents in the notice dated 4-5-21 nor produced during the inquiry proceedings by the I.d. I.O. Further, during the enquiry proceedings, no witness either called or examined by the IO 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, all these documents are neither brought on record during inquiry nor are relied upon documents as per the impugned notice dated 04-05-2021. The CB also 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 03-12-20 is violation of post import conditions of the notification.

26.7 The CB stated that they submitted interim reply to the said show case notice on 30-5-21. In the said reply it was also requested to provide the following documents:

*(i) authentic copies of all the documents, statements, Bills of entry, Bonds, undertakings, examination reports, Advance authorization, check lists*

*(ii) Bills of Ladings, invoices, packing list payments made by the importer or remittances*

*(iii) Name of the persons who were panchas to witness the searches, copies of panchnamas, examination reports, seizure memos etc.*

*(iv) In view of above circumstances the Noticee/CB may be given 30 days time, after supplying all the above documents to submit reply to the said show cause notice*

*(v) In addition to above, We shall be allowed cross-examination of:-*



*(a) Mr Ashish verma, Pr. Additional Director General, DRI Ahmedabad, the author of the show cause notice issued by DRI, the relied upon document;*

*(b) S.I.Os & IOs of DRI who recorded the statements, the person/persons who typed the statements on computer, in case the statements were typed on computer;*

*(c) All the persons who's statements are relied upon in the show cause notice F.NO DRI/AZU/SRU/-07/2018 dated 22-10-2020, which is the relied upon documents in these proceedings.*

26.8 The Id. I.O. at Para 7 of the report of enquiry has stated that during the inquiry proceedings he examined (i) the statement of Shri Pankaj M.Sheth dated 10-1-20 (ii) statement of shri Sameer Sudhakar Renuc dated 30-12-2019 (iii) statement of Anil Satpute dated 3-1-20 (iv) panchnama of searches of M/S H.G.Mehta & Co Pvt Ltd dated 16-12-19 and (v) personal hearing note dated 22-7-21. The inquiry report while finally concluding at para 8, concludes that all the Articles of charge' proved beyond doubt. However, the findings of Id I.O. at para 8 (A, B, C, D & E) of the report for Articles of Charge I, II, III, IV & V are similar in substance.

26.9 The CB argued that the observation and conclusions in the Report of Inquiry by the Ld. I.O. are only hypothetical presumption devoid of any merit. No allegation can be considered to be proved on mistaken assumptions. In these circumstances, the Ld IO ought not to have held that the Articles of charge- I, II, III, IV&V are proved beyond doubt.

26.10 The CB submitted that the Ld. I.O. vide his letter dated 12-5-21 directed the them to submit the reply to the show cause notice dated 4-5-21 within 7 days instead of 30 days stipulated under Regulation 17(1) and was also stated in the said notice and rightly so. In the said letter it was stated that this information (reply to the show cause notice) is being asked under Section 108 of the Customs Act, which itself is against the provisions of Regulation 17 of CBLR-18. They submitted interim reply to the show cause notice dated 4-5-21 on 31-5-21, a copy of which was also addressed to the Principal Commissioner of Customs (General). The noticee requested to provide copy of relied upon documents and

also sought permission to cross-examine some officers/persons. The Ld. I.O neither denied nor allowed the cross examination, and thus, violated the principle of natural justice.

26.11 The CB further stated that the Ld. I.O. issued summons under Section 108 of the Customs Act asking the noticee to appear before him on 11-6-21. The CB replied summons on 8-6-21 and a copy was marked to the Principal Commissioner of Customs (General). On 8-6-21 the CB asked the permission from the Ld. I.O. to take the assistance of a defence assistant, for which no reply was ever received. The CB wrote a letter on 10-6-21 to the Ld. I.O. showing their inability to appear before him. On 23-6-21 the CB asked the Ld. I.O. copy of relied upon documents and the permission for defence assistance, however, there was no reply whatsoever. The Ld. I.O. by his letter dated 05-07-21 gave three dates for hearing. Finally, and first time, the common preliminary hearing in these enquiry proceedings was held on 22-7-21 through virtual mode. The CB requested next date for hearing after 10 days to submit documents relevant in this case. However, no further hearing was held in these proceedings. Thus, the inquiry proceedings were abruptly concluded without informing the noticee.

26.12 The CB argued that with reference to Para No. 7 of the Report of the Inquiry, it relates to the examination of documents mentioned therein by the Ld. I.O. The documents referred at para 7 (i to iv) were neither relied upon documents in the impugned notice dated 4-5-21 nor brought on record by the Ld. I.O during the inquiry proceeding nor submitted by any witness during inquiry, rather no witness was called or examined during inquiry proceedings, that what is stated therein, which is not in accordance with the law and facts on record, is hereby denied. Further, the CB argued that with reference to Para No 8 of the Report of the Inquiry, what is stated therein, which is not in accordance with the law and facts on record, is hereby denied. The CB submitted that the Learned IO have confirmed the allegation and proposals contained at para 19 of the notice 04-05-2021 by reproducing the allegation itself and that the entire report of Inquiry of the Ld. I.O is nothing but a

verbatim reproduction of show cause notice and there is no reasoning given to arrive at the conclusions

26.13 The CB further submitted that they requested for cross examination of some of the officers who were considered to be relevant in these proceedings. The Ld. IO neither allowed nor denied cross examination. Thus, observation of the IO at para 8 of Report of Inquiry is a result of assumptions and presumption and total mis-appreciation of the facts, circumstances, and issues which arise for consideration in the inquiry proceedings and are, therefore, stoutly denied.

26.14 The CB argued that bare perusal of Report of Inquiry dated 22-5-21 reveals that the Ld. IO has arrived at his conclusions on the basis of the case as set out in the impugned show cause notice dated 4-5-21. The Ld. I.O. proceeded to decide the issue without virtually any input from his side. He has extensively reproduced verbatim paragraphs and discussions of the Principal Commissioner of Customs (General) contained in the notice dated 4-5-21 but without referring to the said notice as if such discussion and conclusions are his own, barring some cosmetic changes here and there, however, so far as the substance is concerned, the I.O's report is nothing but repetition and reproduction of notice dated 4-5-21 wherein he confirmed verbatim the allegation/proposals contained at para 19 of the show cause notice dated 4-5-21 without applying his mind independently. The CB also argued that the Sub-Regulation 2, 3, 4 & 5 of the Regulation 17 of CBLR-2018, prescribe the procedure for the Deputy Commissioner of Customs or Assistant Commissioner of Customs (the IO), to be followed in the inquiry under CBLR-2018. From these legal provisions, it emerges that the CBLR-2018 nowhere provides that the IO should interrogate the noticee under Section 108 of the Customs Act during the course of Inquiry.

26.15 The CB argued that based on the aforesaid submissions, it merits to be held that the Report of Inquiry grossly erred in addressing the basic issue of evidence based determination the contravention of provisions of CBLR-18 by the noticee and that import

clearances was allegedly in violation of any provision of the Act or Rules or Regulation made there under and impact of the said clearance either on customs duty or otherwise attributable to the noticee, The conclusions in the Report 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.

26.16 The CB submitted that the only rely upon document in these inquiry proceedings is the Show Cause Notice F.No. DRI/AZU/SRU-50/2019 dated 03-12-2020 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 03-12-2020 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;

26.17 In view of the above, the CB submitted that the Show Cause Notice F.No. DRI/AZU/SRU-50/2019 Dated 03-12-2020 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 03-12-2020 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.

26.18 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.

26.19 In view of the above, 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 05/2021-22 dated 04-05-21 under Regulation 17(1) of CBLR-18.

**DISCUSSIONS AND FINDINGS:-**

27. 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 03.12.2020, from Pr. ADG, DRI, Ahmedabad Zonal Unit (AZU); the Suspension Order No. 39/2020-21 dated 02.02.2021; the Suspension Continuation Order No. 02/2021-22 dated 08.04.2021; the Show Cause Notice No. 05/2021-22 dated 04.05.2021, issued under CBLR, 2018; the Inquiry Report dated 22.07.2021; the Order-in-Original CAO No. 120/CAC/PCC(G)/SI/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 13.09.2021, submitted by the CB at the time of personal hearing.

28. Briefly stated, I find that the present case has been booked and investigated by DRI, AZU against the importer M/s. S R Enterprises (IEC No.-3114030416 - Proprietor Shri Sameer Sudhakar Renuse) who was 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 importer M/s. S.R. Enterprises 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. S.R. Enterprises on high Seas from M/s. Agsons Agencies (I) Pvt. Ltd. and M/s. Hingiri Buildcon & Industries Ltd. and thereafter bills of entry were filed by M/s. S.R. Enterprises for import of these goods on the basis of High Sea Sales Agreements. I find that the investigation revealed that the importer 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).

28.1 I find that the import consignments of the importer M/s. S R Enterprises, 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 Sameer Sudhakar Renuse was the Proprietor of the importer firm, only on papers and the said imports were being handled by one Sh. Anil Satpute and Sh. Sameer Sudhakar Renuse was receiving salary of 1,00,000/- per month from Shri Anil Anand Satpute. Shri Anil Anand Satpute had played a vital role in duty evasion done by M/s. S.R. Enterprises as he acted as mastermind behind the duty evasion by controlling the operations of M/s. S.R. Enterprises. M/s. S.R. Enterprises had imported approx. 5000.0 MTs of ETP Copper Rods 8 MM having assessable value approx. 230.0 Crores under Notification 25/99- Customs dated 28.02.1999 during the period from May-2018 to December-2019 wherein duty forgone amounts to approx. 14.0 Crores. 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. 39/2020-21 dated 02.02.2021 and such suspension was continued, under Regulation 16(2) of CBLR, 2018, vide order no. 02/2021-22 dated 08.04.2021. Also, Inquiry under regulation 17 of CBLR, 2018 was initiated against the CB for apparent violation of Regulations 10(d), 10(e), 10(m) and 10(n) and 14(c) 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. 120/CAC/PCC(G)/SI/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.

29. I find that the inquiry officer, in the present case, has conducted the inquiry proceedings under regulation 17 of CBLR, 2018, only on the basis of available records as the CB did not submit any written defense submission. During the inquiry proceedings the CB wanted to cross examine Shri Ashish Verma, Pr. ADO, DRI Ahmedabad, however, he did not mention any reason behind cross examining him and the same was denied by the inquiry officer stating that there was no substantial reason for the cross examination of Shri Ashish Verma, Pr. ADO, DRI Ahmedabad. The inquiry officer concluded the inquiry proceedings and held that all the charges levelled against the CB viz. violation of Regulation 10(d), 10(e), 10(m), 10(n) and 14(c) of CBLR, 2018, *ibid.*, are proved beyond doubt. I also find that all of the above mentioned charges have been levelled against the CB on the grounds that the CB never met the actual importer and received & accepted the KYC documents as well as import documents through Sh. Anil Anand Satpute who was neither the IEC holder nor the authorised employee of the importer firm and also the CB had forged the signature of Sh. Sameer Renuse Proprietor of M/s. S. R. Enterprises and did over the High Sea Sales (HSS) Agreements.

30. I find that the charge of violation of Regulation 10(n) of CBLR, 2018 has been levelled against the CB on the ground that the CB had not physically verified the antecedents of importer details of M/s. S.R. Enterprises as well as the high sea sellers i.e. M/s. Agsons Agencies (I) Pvt. Ltd. and M/s. Himgiri Buildcon & Industries Ltd. The CB has never met the actual IEC Holder and Proprietor of importer firm i.e. Sh. Sameer Sudhakar Renuse. Also, the CB has not been careful and not diligent in undertaking the KYC of the background of importer and accepted documents, which he did not verify. I find that the CB has received the KYC documents such as (i) Certificate of Importer-Exporter Code (IEC), (ii) Authorization, (iii) PAN CARD & Aadhar Card etc. from the



importer through Sh. Anil Anand Satpute and the IEC No. and address of the importer are found to be correct during the investigation. Also, the importer and the High Seas sellers joined the investigation and appeared before DRI and Customs officer. Hence, I find that the physical existence of the importer M/s. S.R. Enterprises is not disputed and this is not the case of forged or invalid KYC documents of the importer, as all the documents were found to be valid. There is no dispute that the importer firm exist and they have participated in the investigation conducted by DRI. Further, I have perused all the case laws relied upon by the CB which suggests that *"No stipulation or legal requirement of physically verifying business or residential premises of importer"*. Under the facts and circumstances of the case I am of the considered view that the charge of violation of regulation 10(n) of CBLR, 2018 cannot be proved sustainably. In this regard, I rely on the following case laws/judgement;

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

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

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

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

*28. The responsibility of the Customs Broker under Regulation 10(n) does not include keeping a continuous surveillance on the client to ensure that he continues to operate from that address and has not changed his operations. Therefore, once verification of the address is complete as discussed in the above paragraphs, if the client moves to new premises and does not inform the authorities or does not get his documents amended, such act or omission of the client cannot be held against the Customs Broker.....”*

31. I find that the charge of violation of Regulation 10(m) of CBLR, 2018, has been levelled against the CB on the ground that the CB failed in sensitizing the actual IEC holder regarding Notification 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. Anil Anand Satpute is proxy importer. 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 Sameer Sudhakar Renuse was the Proprietor of M/s. S. R. Enterprises on paper only and 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 as per the instructions of Sh. Anil Anand Satpute. He further admitted that he forged the signature of Shri Sameer Renuse 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.

31.1 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 Shri Sameer Renuse on the High Sales Agreements and the CB committed such fraud under the instructions of Sh. Anil Anand Satpute, which 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 levelled against the CB is sustainably proved and I uphold the conclusion of inquiry officer, in this regard.

32. Further, I find that the charges of violation of Regulations 10(d) and 10(e) of CBLR, 2018 (erstwhile regulation 11(d) & 11(e) of CBLR, 2013) have been levelled against the CB on the grounds that the CB admitted that he had never met with Shri Sameer Sudhakar Renuse, Proprietor of M/s. S.R. Enterprises and he received the KYC and import related documents through Sh. Anil Anand Satpute. Therefore, it is clear that he did not know actual IEC holder (Importer) and did not advise his actual client to comply with the provisions of the Act. Also, it is alleged that the CB received KYC paper namely PAN.

IEC, Aadhar and address proof of importer M/s. S.R. Enterprises through Shri Anil Anand Satpute who is neither importer nor authorized signatory of importer. Despite of knowing that Shri Anil Anand Satpute was proxy importer, they cleared the consignments of M/s. S.R. Enterprises.

32.1 I find that it is a matter of fact that the CB has never met the importer (IEC holder) or any of the authorised signatory/representative of the importer firm/company. The CB received all the KYC documents and import documents through Sh. Anil Anand Satpute. Although the importer was not bogus or fictitious in this case and all the KYC documents were found to be genuine and valid, however, advising the importer is the primary responsibility of the CB to ensure that their client met with all the requisite conditions of Customs Act, 1962 and comply with regulation, rules and notifications issued thereunder. However, in the present case no such evidence has been produced by the CB that they have ever communicated with the importer to fulfil their obligation stipulated under regulation 10(d) of CBLR, 2018. Also, it is a matter of fact that the importer M/s. S.R. Enterprises 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 approx. Rs. 14 crores. Had the department not intervened timely such fraudulent activity would not have been unearthed. I also find that on the directions of Sh. Anil Anand Satpute, 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. S.R. Enterprises 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." Having perused the same, and having taken into cognizance of all the facts and circumstances of the case, I am of the firm opinion that the CB has contravened the provisions of Regulation 10(d) and 10(e) of CBLR, 2018 inasmuch as they have not advised their client i.e. the importer M/s. S.R. Enterprises to comply with the Notification No. 25/99- customs dated 28.02.1999 and IGCR Rules.

32.2 The CB cannot run from their obligations by citing that it was a post import violation by the importer. Also, the CB had worked in completely negligent manner and relied only on Sh. 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.

32.3 I am of the firm belief that the CB was in gross negligence as they were also dealing with a third party Sh. Anil Anand Satpute, as he was not the actual importer. The CB has an important role with respect of the filing of documents and clearance of the goods. A lot of faith has been placed on the CB by the Customs authorities in the era of trade facilitation and RMS facilitation. In this regard, reliance is also placed on the decision of Hon'ble Tribunal, New Delhi in case of KVS Cargo Vs. Commissioner of

Customs (Gen.), New Delhi, reported in 2018 (363) E.L.T. 856 (Tri. – Del.). Relevant para 8 of the said order is re-produced as under:

*“8. Regarding Regulation 11(d), the CB is expected to 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”.*

32.4 I find that ratio of the aforesaid judgments is squarely applicable in the instant case. The CB has an important role in respect of documentation and Customs Clearances. I find that in the instant case, the CB did not advise the importer which resulted in fraudulent import, also the CB did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Hence, the CB cannot shy away from the responsibilities & obligations cast upon them under the CBLR, 2018. Further, in case of accepting the documents through intermediary or third person, it is the responsibility of the Customs Broker that he ensures at the same time that the IEC is not being misused by any person other than IEC holder. The responsibility of a Customs Broker play a crucial role in protecting the interest of the Revenue and at the same time he is expected to facilitate expeditious clearance of import/export cargo by complying with all legal requirements. From the above facts and circumstances, I am of the considered view that the said Custom Broker failed to advise the actual importer. Further, the CB did not bring the said discrepancy to the notice of the Deputy or Assistant Commissioner of Customs. Therefore, I hold that the CB has violated the provisions of Regulation 10(d) and 10(e) of the CBLR, 2018 (erstwhile Regulation 11(d) & 11(e) of CBLR, 2013).

32.5 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".*

33. 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 03.12.2020 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 charged against the CB to initiate action under CBLR for apparent violations of prescribed regulations of CBLR.

34. Further, with regard to the contention of the CB that the proceedings under CBLR, in the present case, are time barred and the prescribed time limit under Regulation 17 of CBLR, 2018, has not been followed, I, relying on the following case laws, observe that the timelines under CHALR/CBLR, are directory in nature and not mandatory:

a) **Hon'ble High Court of Judicature at Bombay in the case of Principal Commissioner of Customs (General), Mumbai Versus Unison Clearing P. Ltd.** reported in 2018 (361) E.L.T. 321 (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".

35. I find that in the instant case, the CB license was suspended vide Order No. 39/2020-21 dated 02.02.2021, under Regulation 16(1) of CBLR, 2018. Also, by following the Principle of Natural Justice and granting an opportunity of personal hearing to the CB, the suspension of CB license was continued vide Order No. 02/2021-22 dated 08.04.2021, under Regulation 16(2) of CBLR, 2018, pending inquiry proceedings. I find that for the violation of obligations provided under CBLR, 2018 and for their act of omission and commission, the CB M/s. H.G. Mehta & Co. Pvt. Ltd. (CB No. 11/362) has rendered themselves liable for penal action under CBLR, 2018. Hence, while deciding the matter, I rely on the following case laws:

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

*"the CHA occupies a very important position in the Custom House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interest of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the government agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations".*

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

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

36. As discussed above, I conclude that the CB is guilty of violations of CBLR, 2018. Also, with regard to the charge of violation of Regulation 14(c) levelled against the CB, I find that the CB has committed misconduct inasmuch as he failed to fulfil his obligations as stipulated under Regulation 10(d), 10(e) and 10(m) of CBLR, 2018 (erstwhile

Regulation 11(d), 11(e) and 11(m) of CBLR, 2013) and hence the charge of violation of regulation 14(c) stands proved. However, considering all the facts and circumstances of the case, I am of the view that revoking the CB license is too grave a penalty to be imposed for the above violations, as the punishment of revocation of license and forfeiture of security deposit of the CB, is much harsh and disproportionate to the offences committed. Also, it is pertinent to note here that the license of the CB is already under suspension for almost 04 years i.e. since 02.02.2021 and the CB has been unable to work for these 04 years and thus been already penalised in this manner. The ends of justice will be met by revoking the suspension of the CB license and imposing a penalty, on the CB, under Regulation 18 of CBLR, 2018. In this regard, I place reliance on the following case laws:

**(a) Delhi High Court has in case of D S Cargo Agency vs. Commissioner of Customs [CUSAA 2/2022] dated 25.09.2023, held as follows:**

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

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

*"13. By order dated 15-7-2000, licence was revoked. It is not clear how there could be revocation when the licence itself was not functional after 13-1-2000. Licence can be suspended or revoked on any of the grounds as mentioned in Regulation 21.*

*It is, therefore, clear that if any of the grounds enumerated existed, two courses are open to the Commissioner. One is to suspend the licence and the other is to revoke it. Suspension would obviously mean that licence would be for a particular period inoperative. An order of revocation would mean that licence is totally inoperative in future, it loses its currency irretrievably. Obviously, suspension/revocation, as the case may be, has to be directed looking to the gravity of the situation in the background of facts. For minor infraction or infraction which are not of very serious nature order of suspension may suffice. On the contrary, when revocation is directed it has to be only in cases where infraction is of a very serious nature warranting exemplary action on the part of the authorities, otherwise two types of actions would not have been provided for. Primarily it is for the Commissioner/Tribunal to decide as to which of the actions would be appropriate but while choosing any of the two modes, the Commissioner/Tribunal has to consider all relevant aspects and has to draw a balance sheet of gravity of infraction and mitigating circumstances. The difference in approach for consideration of cases warranting revocation or suspension or non-renewal has to be borne in mind while dealing with individual cases. In a given case the authorities may be of the view that non-renewal of licence for a period of time would be sufficient. That would be in a somewhat similar position to that of suspension of licence though it may not be so in all cases. On the other hand, there may be cases where the authorities may be of the view that licensee does not deserve a renewal either. Position would be different there. Though we have not dealt with the question of proportionality, it is to be noted that the authorities while dealing with the consequences of any action which may give rise to action for suspension, revocation or nonrenewal have to keep several aspects in mind. Primarily, the effect of the action vis-a-vis right to carry on trade or profession in the background of Article 19(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 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."*

(e) 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"*.

37. 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."*

38. In view of the above judgements and the "Doctrine of Proportionality" which propagates the idea that a punishment for an offence should be proportional to the gravity of the offence, I am not inclined to revoke the license of the CB and to forfeit the security deposit furnished by the CB. However, for their acts of omission and commission, the CB M/s. H.G. Mehta & Co. Pvt. Ltd. (CB No. 11/362) is held liable and guilty for violating the provisions of CBLR, 2018 as mentioned above. I hold that the CB has failed to

discharge his duties cast upon him with respect to Regulation 10(d), 10(e), 10(m) & 14(c) of CBLR, 2018 (erstwhile regulation 11(d), 11(e), 11(m) & 18(c) of CBLR, 2013) and the interest of justice would be met by imposition of penalty under Regulation 18 of CBLR, 2018. Accordingly, I pass the following order:

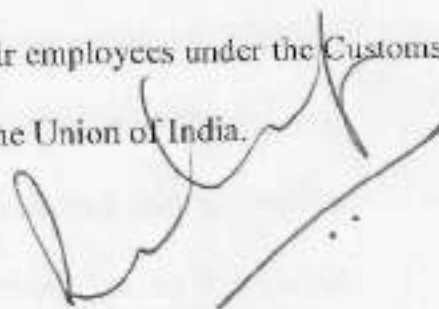
**ORDER**

39. 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. 39/2020-21 dated 02.02.2021 and continued vide order no. 02/2021-22 dated 08.04.2021.

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

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



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

To,

**M/s H.G. Mehta & Co. Pvt. Ltd. (CB No. 11/362),**  
Office No. 15, 3rd Floor,  
Friends Union Premises Co-operative Society Ltd., 227,  
P.D' Mello Road, Near GPO,  
Mumbai-400001



Copy to:

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