



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

संचिका सं./F. No.- GEN/CB/239/2024 -CBS आदेश दिनांक/Date of Order: 07.02.2025  
 CAO No. 77/2024-25/CAC/PCC(G)/RC/Adj-CBS जारी दिनांक/Date of issue: 07.02.2025

DIN: 2025027700000000C723

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

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

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



ADG, DRI, Mumbai के संदर्भ में जारी आदेश क्रमांक A/86617-86619/2018 दिनांक के अनुसार न्यायिक आदेश तदोउ प्रांत न्याय निर्णयन अधिकारी 31.05.2018' *functus officio* बन जाता है

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

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

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

5. यह अपील फॉर्म C.A.-3 में दायर की जानी चाहिए जो कि सीमाशुल्क (अपीलस) नियमावली, १९८२ के नियम के तहत निर्धारित है एवं उसी नियमावली के नियम 3 के उपनियम 2 में 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 ब्याजवलागाए गए जुर्माने की राशि रु-/पाँच लाख या इस से कम होतो रु. 1000 ., (ii)यदि यह राशि रु) पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न होतो रु. 5000/- एवं .iii) यदि यह राशि रुपचास लाख से अधिक होतो रु. 10000/- के शुल्क . का भुगतान क्रॉस्ड बैंक ड्राफ्ट के माध्यम से अधिकरण की खंडपीठ के सहायक पंजीयक के पक्ष में जिस स्थान पर खंडपीठ स्थित है, के किसी भी राष्ट्रीय क्रत बैंक की शाखा में किया जाए एवं डिमांड ड्राफ्ट अपील के साथ संलग्न किया जाए।

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

7. अपील की एक प्रति में कोर्ट फी अधिनियम, की अनुसूची मद 6 के तहत निर्धारित 1870 रु. 50का 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 Hirannya Shipping & Logistics Services, (PAN No. AYHPS8411J), having registered address: 18/4, Shree Siddhivinayak Nivas CHS Ltd., 3 Dominic Colony, Orlem Malad (West), Mumbai-400064 (hereinafter referred to as the Customs Broker/CB) is holder of Customs Broker License No. (11/2002) (PAN No. AYHPS8411J), issued by the Commissioner of Customs, Mumbai under Regulation 7(1) of CBLR, 2013 (now regulation 7(2) of CBLR, 2018) and as such they are bound by the regulations and conditions stipulated therein.

2. An Offence report in the form of Show Cause Notice No. CUS/DBK/SCN/29/2024-DBK (EDI) dated 31.03.2024 was received in CB Section, NCH, Mumbai from Drawback Section, ACC, Export, Mumbai Customs Zone-III, wherein, inter-alia following were informed:

2.1 On the basis of intelligence gathered from ADG/NCTC, Shipping Bill No. 9304674 dated 15.04.2023 having FOB Value \*1,33,072.88/- with export incentives viz. DBK 1,026/- and RODTEP 787/- was filed at ACC, Mumbai by exporter M/s Sun Impex (IEC-0305081624) (hereinafter referred to as the Exporter) through their authorised Customs Broker M/s Eastern Cargo appeared as highly risky export consignment. It was observed that the exporter intended to export an SCOMET item through that shipment viz. DIMETHYLAMINE with description "DIMETHYLAMINE SOLUTION 40% FOR SYNTHESIS" under RITC 29211990 with the declared country of destination as BENIN.

2.2 DIMETHYLAMINE with description "DIMETHYLAMINE SOLUTION 40% FOR SYNTHESIS" is an SCOMET item mentioned at Sr. No. 07 of the list of Chemicals under 1D of APPENDIX-3 to Schedule-2 of ITC (HS) Foreign Trade Policy. Export of chemicals (Excluding Software and Technology) listed in 1D below is allowed to the countries specified in Table-1 based on a one-time General authorization for export of Chemicals and related equipment (GAEC) issued by DGFT. BENIN does not feature in

the Table-1, hence, export of DIMETHYLAMINE to BENIN would require an export authorization from DGFT. It was verified from E-Sanchit of the above-mentioned Shipping Bill that no such export authorization for export of DIMETHYLAMINE was obtained by the exporter M/s Sun Impex (IEC-0305081624).

**Table 1**

Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Republic of Korea, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States.
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2.3 The goods pertaining to the shipping bill 9304674 dated 15.04.2023 was not carted at ACC, Mumbai, the said shipping bill was purged after 30 days. The past exports of last 05 years of the exporter was retrieved from the System, and it was revealed that 01 SB in the past export has been done for the subject item. This shipping bill was filed through Customs Broker **M/s Hirannya Shipping & Logistic Services (11/2002)**, details of the aforementioned Shipping Bill are given in the Table 1 below:

**Table-I**

Amount in Rs.

S. No.	SB NO	SB DATE	GOODS DESCRIPTION	COUNTRY OF EXPORT	ROS CTL	IGST	ROD TEP	DBK	FOB
1	1490020	19.05.2022	DIMETHYLAMINE 40% FOR SYNTHESIS+ 32 ITEMS	TOGO	0	0	10	2030	240693.78



2.4 During the investigation Shri Anil Sitaram Shrungare, F-card Holder of M/s Hirannya Shipping & Logistics Services was recorded on 29.12.2023 under Section 108 of the Customs Act in which he inter-alia stated that-

- They are associated with Customs Clearance work since 2015 and he is the proprietor of the said firm.
- They submitted copies of KYC and authority letter. They verified the office address of M/s Sun Impex viz. E-205, Opp Sābkuchh Super, Bhoomi Classic, Malad Link Road, Malad West, Mumbai, Maharashtra-400064.
- They were aware of the rules and compliances. They have checked all the items covered under shipping bill no. 1490020 dated 19.05.2022 in SCOMET List. They found Dimethylamine in the list, however, goods description was 'Dimethylamine 40% for synthesis' was not in the list. To be sure of description of the goods, they checked w.r.t. goods description with the exporter, who confirmed that the subject goods is Dimethylamine 40% for synthesis and gave them certificate of analysis and end-user letter. After that they have filed said shipping bill and carted the goods. The shipping bill was marked for assessment. They tendered all the related documents to the customs at the time of assessment. After checking all documents and examining the goods, the LEO was granted for the said shipping bills.

2.5 **BRC Status of Past Exports**-Past export of the exporter has been retrieved from ICES 1.5 and it has been revealed that BRC against Shipping Bills as mentioned below in Table-II have not been realised yet.

**TABLE-II**

S.No.	SB No.	SB Date	ROSCTL	IGST	RODTEP	DBK	FOB	FOB Realised	CB
1	2862601	27/05/2020	0	2190	0	1622	162158.5	0	

2	1680890	05/10/2021	0	11356	0	6488	648757.05	0	M/s
3	1488690	19/05/2022	0	0	0	0	24391.15	0	Hirannya
4	1490020	19/05/2022	0	0	10	2032	240693.78	0	Shipping
5	1490519	19/05/2022	0	0	77	2670	286186.85	0	& Logistics Services
6	2197134	17/06/2022	0	0	4718	4513	482073.84	0	M/s.
7	3293950	08/04/2022	0	0	251	408	31363.2	0	Eastern
8	3415416	08/10/2022	0	0	0	0	17600	0	Cargo Carriers
Total			0	13546	5056	17733	1893224.37	0	

Amount in Rs.

2.6 The Exporter M/s. Sun Impex (IEC-0305081624) had filed SB No. 9304674 dated 15.04.2023 having description "DIMETHYLAMINE SOLUTION 40% FOR SYNTHESIS" under RITC 29211990. As per the ICES 1.5 system, the exporter has exported SCOMET item vide Shipping Bill No. 1490020 dated 19.05.2022 (mentioned in Table-I).

2.7 From the investigation, it appears that aforesaid export was of SCOMET items which was cleared for export without having any General authorization for Export of Chemicals and related Equipment (GAEC) issued by DGFT of Appendix-3 (SCOMET List). The Export Authorization was mandatory requirement for export of such item. Without Export Authorisation the impugned goods are considered "Prohibited Goods" and should not have been cleared for exports.

2.8 As per the ICES 1.5 system, BRC for the 08 Shipping Bills as mentioned in Table-II has not been realized till date. The Exporter did not submit any Bank Realisation Certificate (BRC) for the goods exported for any shipping bill. Therefore, it appears the



exporter is not eligible for export incentives viz. Drawback & RODTEP for those 08 Shipping Bills under the provisions of Section 75 of Customs Act, 1962 read with second proviso to Rule 3(1) of the Customs and Central Excise Duties Drawback Rules, 2017, Notification No. 77/2021-Customs (N.T.) dated 24th September, 2021 and Notification No. 76/2021-Customs (N.T.) dated 23rd September 2021.

2.9 Therefore, it appears from the investigation that necessary ingredient of second proviso to Customs and Central Excise Duties Drawback Rules, 2017 is attracted in this case, which does not permit any amount of drawback in such cases. The sale proceeds of the goods exported vide Shipping Bills mentioned in Table-II have not been realized till date as per ICES 1.5 system. Further, the exporter appeared to have violated the provisions of Customs Act, 1962 and other allied acts as enumerated above. Thus, the drawback amount of Rs. 17,733/- claimed/availed vide Shipping Bills mentioned in Table-II appears to be rejectable/recoverable with interest under the provisions of Rule 17, Rule 18(1) & Rule 18(2) of the Customs and Central Excise Duties Drawback Rules 2017 read with Section 75(1) & 75A (2) of the Customs Act, 1962.

2.10 The duty credit under ROSCTL Scheme and RODTEP Scheme is allowed subject to realization of sale proceeds in respect of such goods in India within the period, allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), failing which such duty credit shall be deemed to be ineligible. The sale proceeds in respect of goods exported vide past Shipping Bills mentioned in Table-II have not been realized so far. Further, the exporter appears to have violated the provisions of Customs Act, 1962 and other allied acts as enumerated above. Thus, the FOB of amount Rs. 18,93,224.37/-for 08 Shipping Bills mentioned in Table-II appears to be liable for confiscation under the provisions of Section 113(i) & 113(ia) of the Customs Act, 1962 and the exporter's claim of Rs. 5,056/ under RODTEP Scheme as per Table-II appears to be liable for cancellation and recoverable under Notification No. 77/2021-Customs (N.T.) dated 24th September, 2021 &

Notification No. 76/2021-Customs (N.T.) dated 23rd September, 2021 as amended, read with Regulation 8 of Electronic Duty Credit Ledger Regulations, 2021.

2.11 In view of the above facts and findings, it is clear that the CB M/s. Hirannya Shipping & Logistics Services (11/2002) had not advised their exporter M/s Sun Impex about the submission of mandatory Export Authorization for clearance of SCOMET items. Further, they did not verify the export documents viz. description of items mentioned in Shipping Bill, SCOMET list, Export Authorization issued from DGFT and other relevant documents etc. and were in collusion with the exporter in obtaining fraudulently Customs Clearances of SCOMET Item. CB never advised the exporter to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and CB did not upload General authorization for Export of Chemicals and related Equipment (GAEC) issued by DGFT in e-sanchit in ICES 1.5 System.

3. On perusal of the offence report it appeared that CB M/s Hirannya Shipping & Logistics Services (11/2002) had not acquired the valid mandatory General Authorization for Export of Chemicals and related Equipment (GAEC) issued by DGFT which is imperative for the export of SCOMET items. As per the investigation report, the Customs Broker did not advise the exporter about the mandatory requirement of General Authorization for Export of Chemicals and related Equipment (GAEC) and also failed to advise the exporter to comply with the provision of the Customs Act 1962 and rules and regulations made thereunder and other allied Acts. Further, the non-compliance by the exporter was not brought to the notice of Customs Authorities by the said CB. It appeared that the CB M/s Hirannya Shipping & Logistics Services was in collusion with the exporter in clearance of export consignment SCOMET item of dual usage.

4. In view of above, it appeared that CB M/s. Hirannya Shipping & Logistics Services (11/2002), Mumbai, has failed to comply with sub-regulations 10 (d), 10 (c), 10 (m) of the Customs Brokers Licensing Regulations 2018. The said regulations read as:



**10 (d)** *“advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of noncompliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;”*

**10 (e)** *“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;”*

**10 (m)** *“discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;”*

5. As per the offence report, the exporter did not acquire the valid mandatory General Authorization for Export of Chemicals and related Equipment (GAEC) issued by DGFT which is imperative for the export of SCOMET items since these items have dual usage. As per the offence report, the Customs Broker, on their own did not advise the exporter about the mandatory requirement of General Authorization for Export of Chemicals and related Equipment (GAEC) and also failed to advise the exporter to comply with the provision of the Customs Act 1962 and rules and regulations made thereunder and other allied Acts. Further, the non-compliance by the exporter was not brought in the notice of Customs Authorities by the said CB. The said CB was aware of goods to export were "DIMETHYLAMINE SOLUTION 40% FOR SYNTHESIS" which is an SCOMET item. As per statement of Shri Anil Sitaram Shrungare, F-card Holder of M/s Hirannya Shipping & Logistics Services was recorded on 29.12.2023 wherein he admitted that he knew "DIMETHYLAMINE" is in the SCOMET list. In spite of knowledge, he filed the Shipping Bill containing SCOMET item without informing the Assistant Commissioner/Deputy Commissioner of Docks. Due to the above act of commissions and omissions, it appeared the said CB failed to comply with provisions of regulation 10(d) of CBLR, 2018.

6. As per the offence report, the Customs Broker did not pay due diligence towards their work as they did not ascertain the requirement of General Authorization for Export of Chemicals and related Equipment (GAEC), whether there was misuse of any notification,

circular, public notice in clearance of cargo or not, in the instant case, the exporter only submitted 'certificate of analysis' and 'end use letter' instead of the mandatory requirement of General Authorization for Export of Chemicals and related Equipment (GAEC) for export of SCOMET items since these items have dual usage. The said CB was aware that the goods that were exported vide Shipping Bill dated 19.05.2022 which was an SCOMET item viz. "DIMETHYLAMINE SOLUTION 40% FOR SYNTHESIS which is an SCOMET item. As per statement of Shri Anil Sitaram Shrungare, F-card Holder of M/s Hirannya Shipping & Logistics Services was recorded on 29.12.2023 wherein he admitted that he knew "DIMETHYLAMINE" is in the SCOMET list. The said CB did not exercise due diligence to ascertain the correctness of the information imparted and abetted the export of restricted goods. It appeared that CB had tacitly connived with the exporter and fraudulently cleared the consignments from custom authorities. Hence, the said CB appears to have violated regulation 10(e) CBLR, 2018.

7. As per the offence report, it appeared, the said CB did not discharge their duties with utmost speed and efficiency. If the said CB had informed about the non-submission of mandatory General authorization for Export of Chemicals and related Equipment (GAEC) issued by DGFT to the custom authorities, the fraudulent export could have been stopped and the loss to government exchequer could have been averted. Hence, the said CB appeared to have violated regulation 10(m) of CBLR, 2018. The authorised signatory of the CB M/s Hirannya Shipping & Logistics Services in his statement had accepted the mistake of the Customs Broker for not doing proper documentation in respect of exported goods ie. Dimethylamine which comes under list of SCOMET Items issued by DGFT. It was responsibility of the CB to upload/e-sanchit valid mandatory General authorization for Export of Chemicals and related Equipment (GAEC) issued by DGFT for export of SCOMET Item from India. The Customs Broker appeared to have intentionally uploaded non-relevant documents to aid the illegal exports.



8. The CB has a very important role in customs clearances and lot of trust has been placed by the Department on the CB. In regime of trade facilitation and with more and more of the goods being facilitated by the Risk Management Systems without examination by the Customs, the role of CB has further increased so that economic frontiers of the country are well guarded.

9. The CB M/s Hirannya Shipping & Logistics Services (11/2002) appeared to have failed to comply with the provisions of sub-regulation 10(d), 10(e) & 10(m) of the CBLR 2018 and thereby committed misconduct rendering themselves liable to penalty under Regulation 18 of the CBLR 2018. Accordingly, action under CBLR, 2018 was taken against the Customs Broker M/s. Hirannya Shipping & Logistics Services (CB No. 11/2002).

**SUSPENSION OF CB LICENSE AND SHOW CAUSE NOTICE:-**

10. From the Offence Report received in the form of Show Cause Notice No. CUS/DBK/SCN/29/2024-DBK (EDI) dated 31.03.2024, from Drawback Section, ACC, Export, Mumbai Customs Zone-III, it appeared that the CB M/s Hirannya Shipping & Logistics Services (11/2002) has violated the provisions of Regulation 10(d), 10(e) & 10(m) of the CBLR 2018, hence under the provisions of Regulation 16(1) of CBLR, 2018, the CB License was put under immediate Suspension vide Order No. 15/2024-25 dated 21.05.2024 and was given an opportunity of Personal Hearing in this matter on 31.05.2024. The suspension of CB license was continued vide Suspension Continuation Order No. 24/2024-25 dated 11.06.2024, under Regulation 16(2) of CBLR, 2018, pending further inquiry proceedings under CBLR, 2018. Also, on the basis of the offence report, the following articles of charges were framed against the CB:

- (i) Article of Charge-I : Violation of Regulation 10(d) of CBLR, 2018.
- (ii) Article of Charge-II : Violation of Regulation 10(e) of CBLR, 2018

(iii) Article of Charge-III : Violation of Regulation 10(m) of CBLR, 2018

10.1 In light of the above, a Show Show Cause Notice (SCN) No. 24/2024-25 dated 01.07.2024, was issued to the CB under the provisions of Regulation 17(1) of CBLR, 2018 wherein the CB was called upon to show cause, as to why:

- a. The Customs Broker license bearing no. 11/2002 issued to them should not be revoked under regulation 14 read with regulation 17 of the CBLR, 2018;
- b. Security deposited should not be forfeited under regulation 14 read with regulation 17 of the CBLR, 2018;
- c. Penalty should not be imposed upon them under regulation 18 read with regulations 17 of the CBLR, 2018.

10.2 Also, Sh. Prakash Chaudhary, Deputy Commissioner of Customs was appointed as Inquiry Officer (IO) to conduct the inquiry proceedings in the matter. The IO submitted the inquiry report dated 01.10.2024, which is discussed below.

**INQUIRY REPORT:-**

11. The Inquiry officer (here in after referred to as the 'IO') concluded the inquiry proceedings and submitted the inquiry report dated 01.10.2024, wherein all the charges levelled against the CB of violation of section 10(d), 10(e) & 10(m) of CBLR, 2018 were held as "Not Proved".

**FINDINGS OF INQUIRY OFFICER (IO): -**

12. The IO had gone through the facts of the case, the reply to the Show Cause Notice (SCN) and the submissions made during the hearings by the custom broker. The IO found that this was a case where the Customs Broker had provided services to the exporter while exporting goods under shipping bill number 1490020 dated 19.05.2022. Custom Broker was issued with SCN because Customs Broker, on their own did not advise the exporter about the mandatory requirement of General Authorization for Export of Chemicals and related Equipment (GAEC) and also failed to advise the exporter to comply with the



provision of the Customs Act 1962 and rules and regulations made thereunder and other allied Acts. Further, the IO found that the non-compliance by the exporter was not brought in the notice of Customs Authorities by the said CB. Hence, the SCN was issued to the Custom Broker for their failure to comply with the provisions of CBLR, 2018 as detailed in the SCN no. 24/2024-25 dated 01.07.2024 under regulation 17 of the CBLR, 2018.

#### **12.1 THE CHARGE OF VIOLATION OF REGULATION 10(d) OF CBLR 2018**

*10(d) "advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof and in case of noncompliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;"*

(i) While examining the scope of Regulation 10(d) of the CBLR 2018, the IO had made reference to various orders passed by the Hon'ble Tribunal as given below:

#### **Case: M/S. Gavrams Shipping Services Versus Commissioner Of Central Excise, Tuticorin Reported in 2024 (4) TMI 731-CESTAT Chennai**

(ii) Hon'ble Tribunal observed that in the case of M/s. Max Miller Agencies (supra) this Bench has considered an almost similar issue and after considering several judicial pronouncements has found it proper to delete penalty imposed for violations of regulation in 10 (d) and 10 (e). The relevant observations are made under:

*"7. After considering the submissions of both the parties and perusal of materials on record, I find that the show cause notice was issued to the appellant alleging incorrect classification filed by colluding with the exporter intentionally by the appellant. Further, I find that the stand of the appellant from the very beginning was that CTH adopted by the appellant was based on the assessment practice for Match Skillets made out of white board. The appellant has also given justification for the said classification. Further, I find that the assessing officers were well aware of the classification and they allowed the said classification without any objection. The respondent did not raise any objection to the adopted classification even though the description of the export goods was correctly declared. Further, I find that it is not only the appellant who has followed this classification with regard*



*to impugned goods rather other exporters were also adopting the same classification which was followed at Tuticorin port during the period from April 2015 to October 2020. Further, I find that even DGFT authorities who are in charge of the Foreign Trade Policy have also allowed the MEIS benefits which also proves that there was nothing wrong in the classification of the impugned goods. Further, I find that learned Commissioner in the impugned order has not followed Advisory No.1/2002 dt. 29.12.2002 issued by the Chief Commissioner of Customs, Mumbai advising the Customs officers not to issue show cause notice to Customs Brokers for violation of CBLR, 2018 in cases involving interpretative disputes regarding classification, availment of benefits of exemption notification and valuation.*

*8. I also find that the Commissioner in the impugned order has held that the appellants are not directly benefited by their contravention hence there is no mens rea on the part of the appellant and therefore the imposition of penalty on the appellant for violation of Regulation 10 (d) and 10 (e) of CBLR 2018 is not warranted. Further, I find that it is settled law that the classification is a question of law and cannot be treated as misdeclaration or misstatement.”*

**Case: M/S. J.M. Baxi & Company Versus Commissioner Of Customs, Jamnagar (Prev.) 2015 (11) TMI 1158-CESTAT Ahmedabad**

(iii) The relevant findings of the Hon'ble Tribunal order are as following:

*“7. The Prohibition Order (supra) is issued alleging that the importer had not properly classified the said goods and the appellant had not advised them properly. When the Customs officers had initially assessed the Bill of Entry provisionally and had examined the goods, and also subsequently finalized the assessment, the appellant cannot be penalized, that too by a Prohibition from working in the Customs Station which is a stringent measure, on the mere ground that they have not advised their client properly.”*

(iv) The IO found that Customs Broker M/s Hirannya Shipping & Logistics Services filed Shipping Bill No. 1490020 dated 19.05.2022 on behalf of the Exporter. LEO was given and goods was exported. The goods exported by the exporter had been correctly classified by CB, in fact all the entries were made in the Shipping Bills on the basis of such understanding and bona fide belief. Therefore, the IO submitted that the entries in the



Shipping Bills were entered by the CB as per the instructions given by the exporter, duly assessed and LEO granted.

(v) Further, the IO submitted that SCN did not bring out any evidence as to with whom the CB had aided and abetted nor had any assessing officer been investigated or CB to the SCN. Further, the IO stated that there was no loss of revenue as the Shipping Bills filed were free Shipping Bills.

(vi) In view of the above discussion, the IO found that the goods covered in Shipping Bill No. 1490020 dated 19.05.2022 were SCOMET items. But, regarding the Role of CB, the IO did not find any occasion where the CB committed/abetted or failed to inform Customs Officers if anything was there in his mind. Further the IO stated that Customs officers had initially assessed the shipping bill provisionally and had examined the goods, and also subsequently finalized the assessment, the CB cannot be penalized, that too by a Prohibition from working in the Customs Station which is a stringent measure, on the mere ground that they had not advised their client properly.

(vii) Thus, in the view of the IO, the allegation of violation of Regulation 10(d) could not be substantiated and thus there couldn't be any charge of violation of Regulation 10(d) of CBLR 2018. As per the IO, the CB took due diligence and thus not violated Regulation 10(d) of CBLR and therefore, the charge for such violation would liable to be dropped.

## **12.2 THE CHARGE OF VIOLATION OF REGULATION 10(m) OF CBLR 2018**

*10(m) "discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;"*

(i) While examining the scope of Regulation 10(m) of the CBLR 2018, the IO had made reference to various orders passed by the Hon'ble Tribunal as given below:

**Case: Mukadam Freight Systems Pvt Ltd Versus Principal Commissioner Of Customs (General), Mumbai Reported In 2023 (6) Tmi 160-CESTAT, Mumbai**

(ii) While interpreting the scope of regulation 10(m) of CBLR,2018, Hon'ble Tribunal observed that:

*“10. The third is all about servicing of the client and would be invoked only upon grievance of a client that performance is bereft of speed and efficiency. There is no record of such complaint and there is no evidence to indicate want of speed or efficiency which is about promptness in execution and avoidance of wasteful tasks on the part of the customs broker in any aspect of engagement in the export transaction. It would appear that the charge of breach of regulation 10(m) of Customs Broker Licencing Regulations, 2018 has emanated from lack of application of mind to the norm intended by the said obligation.”*

**Case: Priya Hemant Bandarkar Versus Principal Commissioner Of Customs (General), Mumbai 2024 (4) Tmi 875 CESTAT MUMBAI**

(iii) While interpreting the scope of regulation 10(m) of CBLR,2018, Hon'ble Tribunal observed that:

*“10.2 From the facts of the case it is indicated that right from the beginning of investigation, starting from the time detailed examination of the goods under panchnama proceedings by DRI on 26.03.2019, the appellants CB's representative was present and cooperated with investigation authorities. Further, voluntary statements were also given during the investigation by the partner Ms. Priya Hemant Bandarkar of appellants CB and S/Shri Umakant Pathak, Dattaram More, Manager/employee of the appellants CB. Further, there is no case of importer or any other person having complained about the inefficiency or delay in clearance of the imported goods by the appellants CB. In the DRI investigation report recorded in inquiry proceedings also it was brought out that the smuggling of gold has been orchestrated by a syndicate in which none of the appellants CB's employees or proprietor is involved. Therefore, the conclusion arrived at by the learned Commissioner of Customs that the appellants have failed to discharge their obligations cast on him under Regulation 10(m) ibid is factually not supported by any evidence and thus it is not legally sustainable.”*

**Case: M/S, B.K. Clearing Agency Versus Commissioner Of Customs (Administration & Airport), Kolkata As Reported In 2023 (5) TMI 614-CESTAT KOLKATA**



(iv) While interpreting the scope of regulation 10(m) of CBLR,2018, Hon'ble Tribunal observed that:

*"11. Regarding violation of Regulation 10(m), we find that it obliges a Customs Broker to perform his duties with efficiency and utmost speed. There is nothing on record to prove the allegation that the Appellant has not performed their duties with speed and efficiency. They have cleared 81 shipping bills of S S Impex, Hyderabad during the period June 2019 to December 2020. There was no objection raised by the Department during the clearance of these consignments. Thus, we hold that the allegation of violation of Regulation 10 (m) by the Appellant is not substantiated."*

(v) The IO found that the examination of documents submitted revealed that there was no delay in processing the Shipping Bill or while making any correspondence with the exporter or the Customs Department. And, this clause is all about servicing of the client and would be invoked only upon grievance of a client that performance is bereft of speed and efficiency. The IO further found that there was no record of such complaint and there was no evidence to indicate want of speed or efficiency in this instant case. Further there was no anything on record to prove the allegation that the CB had not performed their duties with speed and efficiency nor there was any objection raised by the Department during the clearance of these consignments. Thus, in the view of the IO, the allegation of violation of Regulation 10(m) against the CB could not be substantiate and therefore, there couldn't be any charge of violation of Regulation 10(m) of CBLR 2018.

### **12.3 THE CHARGE OF VIOLATION OF REGULATION 10(e) OF CBLR 2018**

*10(e) "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"*

(i) In the instant case, the IO found that 'it was alleged that the CB did not exercise their duties to ascertain whether the classification of goods was under correct CTH or not, whether there was misuse of any notification, circular, public notice or not. They also failed

to check any scope for fraud or loss of Government Revenue. It appeared that the CB had tacitly connived with the exporter.'

(ii) While examining the scope of Regulation 10(e) of the CBLR 2018, the IO had made reference to various orders passed by the Hon'ble Tribunal as given below:

**Case: M/S ADVENT SHIPPING AGENCY VERSUS PRINCIPAL COMMISSIONER OF CUSTOMS (A & A), KOLKATA reported in 2022 (7) TMI 317-CESTAT KOLKATA**

(iii) Hon'ble Tribunal held:

*"4.3 The next charge confirmed against the appellant relates to violation Regulation 10(e) of CBLR, 2018. The regulation reads as follows:*

*"The 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."*

*The charge has been confirmed while asserting that there is no evidence that custom broker had imparted any information to their clients with reference to export documents which were submitted by the custom broker. It has also been held that the appellant failed to exhaustively scrutinise documents of the exporters. It is apparent that the case of misclassification has been booked on the basis of examination of cargo. The custom broker could not have in possibly detected the same from documents supplied by the exporter to the appellant without examination of goods. In this circumstance we do not find any merit in the argument that the appellant had fail to follow Regulation 10(e) of the CBLR, 2018. The issue of classification is a complex issue and the CHA/Custom Broker should not be held for any misclassification as held by Him Logistics Pvt. Ltd. v. Commissioner 2016 (338) E.L.T. 721 (Tribunal) NEW DELHI."*

**Case: SHRI JOSHY MJ, SHRI DEV NARAYAN & SHRI RAJESH MP VERSUS COMMISSIONER OF CUSTOMS, NOIDA reported in 2018 (11) TMI 580-CESTAT ALLAHABAD**

(iv) The Hon'ble Tribunal observed:

*"5. Having considered the submission from both the sides and on perusal of record we find that the allegations against the appellants were that they did not show due*



*diligence which was requirement of Customs Brokers Licensing Regulations, 2013. We have carefully gone through the said Regulations, 2013. We note that the obligations of Customs Broker are provided in Regulation*

*11. On-going through the said obligations we find that the **Customs Brokers are temporarily engaged by the companies or firms for assisting them in processing of documents and assessments of goods for clearance after import or for clearance for the purpose of export. We find from the said regulations and other provisions of the Customs Act that the obligations and responsibility of the Customs Brokers end once the goods are examined by Customs Authorities and orders for "out of charge" are issued and the goods are cleared from the control of Customs on importation. We find that in the present case the goods were duly cleared after completing customs formalities from the control of customs from ICD Dadri. The proceedings are not throwing any light as to how the Customs Authorities did not come to know about the mis declaration of the goods when the goods were examined when they were in the custody of customs. It is, therefore, not free from doubt that when the goods were cleared from customs control they were not Velvet Fabric but they were Knitted Polyester Fabric as declared by the importer. We do not find any statement recorded by the Customs Authorities from the officers in charge who were responsible for examination of goods before issuing order of out of charge. We, therefore, do not find that there was any case for imposition of any penalty under Customs Act on the present appellants. We, therefore set aside the impugned order in so far as the same is concerned about the present appellant."***

13. Based on above discussion and the fact that the proceeding vide SCN No. CUS/DBK/SCN/29/2024-DBK(EDI) was dropped by adjudicating authority and no penalty was imposed on exporter or Custom Broker, the IO was of considered opinion that the allegations against the chartered customs brokers of all the charges viz. 10(d), 10(e) & 10(m) of the CBLR, 2019 levelled against the CB M/S Customs Broker M/s Hirannya Shipping & Logistics Services (CB NO. 11/2002) could not be proved or established during the inquiry held by him.

14. On-going through the inquiry report it was felt that the inquiry officer failed to bring up the facts of the case proportionally with respect to the grounds proposed in offence report & SCN vis-à-vis the defence submissions made by the CB before the inquiry officer in relation to charges of violation of Regulation 10(d) and 10(e) of CBLR, 2018. Hence, a Disagreement Memo dated 06.12.2024, disagreeing with the inquiry officer in dropping the charges of violation of Regulation 10(d) and 10(e) of CBLR, 2018, was issued to the CB. However, the observation and findings of the inquiry officer with respect to charge of violation of Regulation 10(m) of CBLR, 2018 was accepted and agreed upon. Also, for the sake of 'Principle of Natural Justice' the inquiry report dated 01.10.2024 was served to the CB under the provisions of Regulation 17(6) of CBLR, 2018, along with the Disagreement Memo dated 06.12.2024 and an opportunity of personal hearing was granted to the CB.

**RECORDS OF PERSONAL HEARING:-**

15. The Personal Hearing in the matter was fixed on 19.12.2024. Sh. Anil Sitaram Shrungare, Proprietor of CB firm and Sh, Hans Raj Garg, Consultant for CB appeared for personal hearing. They submitted their written submissions dated 19.12.2024 and reiterated the same. They also submitted copies of case laws relevant to their case.

**WRITTEN SUBMISSION OF THE CB:-**

16. The CB re-iterated that they relied upon the entire findings of the Inquiry Report to rebut the charges levelled against them in the CB Section SCN read with the Disagreement Memo with respect to the violation of a two Regulations i.e. 10(d) and 10(e) of the CBLR, 2018. The CB respectfully submitted that M/s. Hirannya Shipping & Logistics Services (HSLs) is a Proprietorship firm with Shri Anil S Shrungare as the Proprietor. HSLs is holding a Customs Broker having Licence No. 11/2002 issued by Mumbai Customs in the year around 2015. They have been operating as a Customs Broker since 2015 with unblemished record. The CB stated that the said ACC SCN (offence report) was issued



based on investigation by SIIB (Export), ACC, Sahar, Mumbai pursuant to an alert by NCTC. The ACC SCN was vague, incoherent and self-contradictory. The CB stated that as aforesaid, they had vehemently contested the ACC SCN pursuant to which the proceedings against us in the ACC SCN have been dropped in vide the aforesaid OIO CAO No. ADC/MKS/46/2024-25/Adj.(X)ACC.

17. The CB stated that they were concerned with six consignments i.e. Shipping Bill No 1490020 dated 19.05.2022 (Table - I of the ACC SCN also repeated at Sr No 4 of Table II of the ACC SCN) and Shipping Bills Nos 2862601 dated 27.05.2020; 1680890 dated 10.0.2021; 1488690 dated 19.05.2022; 1490519 dated 19.05.2022; and 2197134 dated 17.06.2022 (Sr Nos 1, 2, 3, 5, and 6 of Table II of the ACC SCN) out of the total eight export consignments impugned in the ACC SCN. they did not file the Shipping Bill mentioned at Sr Nos 7 and 8 of the Table - II of the ACC SCN. Therefore, at the outset, The CB denied all the allegations made and charges raised in the CB Section SCN against us in so far as alleged violation of Regulations 10(d) and 10(e) of the CBLR, 2018 is concerned.

18. The CB stated that various Advisories have been issued by senior officers of the Customs department in Mumbai that Customs Brokers should not be made a party to SCNs routinely unless and until their specific role in the violations committed by the exporter or importer has come on record. In this regard, CBIC Instruction No 20/2024 Customs issued form File No 520/01/2023 - Cus Vi dated 03.09.2024 refers. The above Instruction was followed by Advisory No 02/2024 dated 23.10.2024 issued by JNCH. The ACC SCN issued to the CB proposing penal action which has since been dropped as aforesaid and now therefore adjudication of the CB Section SCN cannot be continued and is contrary to the said Instructions and Advisories.

19. The CB submitted that **“as Customs Broker, they had no role in post export activities or non-compliance of legal provisions by the exporter”**. The CB stated that

realisation of export proceeds by the exporter is a post export activity of the exporter. they as Customs Broker had no role to play in this post export activities of the exporter in relation to the six export consignments. Our role began with receipt of export documents and ended with obtaining 'Let Export order and handing over of the shipping bill and other documents to freight agent of the exporter for loading in the aircraft. The CB stated that the offence, if any, committed by the exporter was extraneous to their function and role as a Customs Broker. In this regard, the referred to the provisions of Section 146 of the Customs Act, 1962 in terms of which the CBLR, 2018 were framed and enacted. For ease of reference, Section 146 is reproduced below:

*"SECTION 146. Licence for customs brokers. (1) No person shall carry on business as a customs broker relating to the entry or departure of a conveyance or the import or export of goods at any customs station unless such person holds a licence granted in this behalf in accordance with the regulations."*

19.1 In view of the above, a CB acts in relation to import or export of goods and nothing beyond that. Responsibility of the CB cannot be stretched beyond the incident when the imported goods are cleared from Customs or when the exported goods are exported after 'Let Export Order'. The CB has nothing to do with realisation of export proceeds for which otherwise a period of nine months post exportation is prescribed. No violation of the CBLR can be alleged for non- realisation of export proceeds by the exporter.

19.2 Without prejudice to the above, The CB stated that the exporter M/s Sun Impex had submitted, during the investigation vide their letter dated 27.03.2024 to the SIIB(X) ACC Mumbai as well as in their letter dated 28.04.2024 addressed to the Adjudicating Authority in reply to the ACC SCN dated 31.03.2024, that export realisation has been received. In any case, these assertions of the exporter M/s Sun Impex are verifiable independently from third party sources with the help of documentary evidences and action for non-receipt of the export proceeds, if any, lies elsewhere as per law - in any case, not against a CB under the CBLR, 2018. Without prejudice to the above, The CB stated that as held in Para 4.7.2



of the OIO, export proceeds in the case of five out of six Shipping Bills filed by the CB have been realised.

20. The CB submitted that it is noteworthy that no incriminating evidence, much less documentary evidence, on CB's role in the alleged export of SCOMET item and non-receipt of export proceeds has been marshalled against us in the CB Section SCN. The CB further stated that nobody including the exporter had deposed against the CB or has incriminated the CB in any manner in relation to the impugned exported goods. In fact, no investigation worth its name has been conducted before issue of the CB Section SCN in the matter. The oblique charge that the CB, as Customs Broker, knowingly participated in the export of the SCOMET item without export authorisation by the exporter is bereft of truth and is not supported with cogent evidences.

21. **The CB also submitted that the charges against the CB in the ACC SCN and hence in the CB Section SCN are based on assumptions & presumptions.** The ACC SCN and the CB Section SCN have raised the allegations against the CB on assumptions and presumptions. The CB stated that these are mere unjustified rebuttable presumptions & assumptions without any basis or evidence on record. The ACC SCN and the CB Section SCN do not allege and prove culpable mental state on CB's part inasmuch as there was no intention or motive to export SCOMET item and they had no knowledge of the fact of the alleged export of SCOMET item. Therefore the charges of violation of the CBLR, 2018 against the CB as raised in the CB Section SCN based on the said assumptions & presumptions cannot be sustained.

22. The CB submitted that it is settled law that mere suspicion howsoever strong or great cannot take the place of proof a dictum which can always bear repetition. In the case of Gian Mahtani reported as 1971 (7) TMI 55 - SUPREME COURT, Hon'ble Supreme Court has held that "*.....according to the system of jurisprudence which we follow, conviction cannot be based on suspicion nor on the conscience of the Court being morally*

*satisfied about the complicity of an accused person. He can be convicted and sentenced only if the prosecution proves its case beyond all reasonable doubt."*

23. The CB submitted that the CB Section SCN tacitly required the CB to prove the negative that they have not done the acts mentioned and alleged therein without leading any evidence in this regard. The CB stated that there is a legal embargo on this. they cannot prove the negative in the absence of any specific allegations supported with cogent evidence regarding the alleged acts of omissions & commission by them. It is for the department to lead the evidence relating to their role in relation to the alleged infractions which the department has miserably failed to discharge as their burden of proof. In this regard, the CB relied upon the following case laws:

- (a) M/s Ruchi Soya Industries Ltd reported as 2016 (2) TMI 1142 - CALCUTTA HIGH COURT.
- (b) M/s R K Industries reported as 2018 (8) GSTL 110 (MAD).
- (c) M/s PSL TEX-Styles Pvt Ltd reported as 2019 (8) TMI 426 BOMBAY HIGH COURT.

**Submission of the CB on alleged violation of Regulations 10(d) of the CBLR, 2018:-**

24. Regulation 10(d) reads as under:

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

24.1 The CB submitted that the Inquiry officer has 'not proved' this charge but the competent authority has not agreed with the Inquiry Officer in as stated in the Disagreement Memo dated 06.12.2024.

24.2 In this regard the CB stated that during the investigation, officers of the SIIB (Export), Air Cargo Complex Sahar Mumbai had recorded statement of Shri Anil Sitaram



Shrungare, Proprietor and F-card Holder on 29.12.2023 under Section 108 of the Customs Act, extracted in Para 2.3 of the CB Section SCN, wherein he had stated, inter-alia, as under.

- (a) They were aware of the rules and compliances.
- (b) They have checked all the items covered under Shipping Bill No. 1490020 dated 19.05.2022 in SCOMET List.
- (c) They found Dimethylamine in the list, however, goods under export described as 'Dimethylamine 40% for synthesis' was not in the list.
- (d) To be sure of description of the goods, they checked w.r.t. goods description with the exporter, who confirmed that the subject goods are Dimethylamine 40% for synthesis and gave them certificate of analysis and end-user letter.
- (e) After that they had filed said Shipping Bill and carted the goods.
- (f) The Shipping Bill was marked for assessment.
- (g) They tendered all the related documents to the customs at the time of assessment.
- (h) After checking all documents and examining the goods, the LEO was granted for the said Shipping Bill."

Thus it is not correct and proper to claim and allege that they were aware of the rules and compliances; that they have checked all the items covered under the Shipping Bill No. 1490020 dated 19.05.2022 in SCOMET List and found Dimethylamine in the list; and that being aware of the rules and compliances, they did not advise the exporter to get mandatory export authorisation of Appendix- 3(SCOMET List) and also did not bring the matter to the notice of the Asstt/Deputy Commissioner of Customs that the exporter has filled the said Shipping Bill without the mandatory export authorisation.

24.3 The CB stated that they have always advised all their clients, including the exporter M/s Sun Impex, to comply with the provisions of the Customs Act, 1962; other allied Acts and the rules and regulations thereof. The CB stated that the SCN fails to bring out as to what should have been advised by the CB to the client but was not advised under

Regulation 10(d). the CB submitted that the department has merely resorted to Regulation 10(d) without pointing out as to the lapse on their part.

24.4 The CB stated that they sincerely believed that there was no prohibited or restricted item in the exported goods so as to advise the exporter regarding their failure to comply with any provisions of Act, Rules or Regulation. Moreover the goods were duly assessed & examined before the 'Let Export Order' by the proper officers of Customs and therefore when even the much experienced Customs officers could not point out presence of SCOMET item in the consignment, it cannot be alleged as possible for them as CB to do so. Regarding Regulation 10(d), it has been held by Hon'ble CESTAT in the case of M/s Ajay Overseas Shipping reported as 2024 (6) TMI 718 CESTAT BANGALORE that... *The said provision doesn't cast a responsibility on the Customs broker to impart each and every importer/passenger regarding provision of Customs Act or other allied Rules and Regulation. The responsibility of Customs Broker is only to advise the importer regarding concerned provisions only when it is brought to the notice of the Customs broker that the goods imported by the passenger or importer is imported or being exported in violation of any provision of law.*

24.5 The CB further submitted that in the present case, there was no way for the CB as the Customs Broker to find out whether the exported goods having total 33 items contain one item covered by SCOMET which required authorisation before export. Therefore there was nothing that was required to be brought to the notice of the Asstt/Deputy Commissioner of Customs. Thus, the charge regarding lack of due diligence on CB's part is unsustainable, as they had not contravened Regulation 10(d) as there was no failure on their part to comply with any of the provisions of the Act/Rules/Regulations.

24.6 The CB relied upon the ratio of the Hon'ble CESTAT Order in the case of M/s Sun Impex Clearing & Shipping Agency, Customs Broker, Vs Commissioner of Customs (Preventive) Jaipur reported as 2024 (4) TMI 1068 CESTAT NEW DELHI in a matter



which pertained to export of SCOMET items without export authorisation wherein it was held as under.

*"10..... In that view of the matter, we are of the view that the appellant who is merely a Customs House Agent cannot be expected to be an expert in SCOMET List and therefore the provisions of Regulation 11(d) cannot be invoked against the appellant."*

24.7 In this regard, the CB also relied upon the ratio of CESTAT Order in the case of M/s Delta Infralogistics (Worldwide) Pvt Ltd Vs C.C. Bangalore, reported in 2019 (11) TMI 621-CESTAT BANGALORE. Hon'ble CESTAT on the issue of Regulation 10(d) held as under.

*"Further the impugned order says that the appellant has not advised the importer without specifying as to what advice was required to be given by the appellant and the same was not given by the appellant to the importer"*

24.8 The CB also submitted that in the absence of any specific evidential document or factual record, it cannot be held that they had prior knowledge about the export consignment carrying the SCOMET item and this charge merits to be dropped on this ground alone. Furthermore, the allegation that the export of the SCOMET item, which should have come to light during the course of assessment and examination by the customs officers, would again have been brought to the notice of the customs officers is not a rational expectation particularly without any proof of any active knowledge on their part. In fact, for the Regulation 10(d), the charge has been invoked incorrectly and without ascertainment of their role. In view of the above, CB submitted that there was no violation of Regulation 10(d), *ibid*, by the CB.

#### **Submissions on alleged violation of Regulations 10(e) of the CBLR, 2018**

25. Regulation 10(e) reads as under:

*"(e) The CB shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage."*

25.1 The CB submitted that the Inquiry officer has 'not proved' this charge but the Competent authority has not agreed with the Inquiry Officer as stated in the Disagreement Memo dated 06.12.2024.

25.2 The CB stated that the provision of 'due diligence' in the said Regulation has been wrongly interpreted in the Disagreement Memo to mean that they were required to pay due diligence towards their work and were required to ascertain the requirement of General Authorization for Export of Chemicals and related Equipment (GAEC), whether there was misuse of any notification, circular, public notice in clearance of cargo or not. It has been further added that they were well aware about the mandatory export authorization requirement but they did not exercise 'due diligence' in imparting such information to the exporter. Effectively the language of Regulation 10(d) has been once again dovetailed in this charge whereas each charge needs to be proved independently.

25.3 Furthermore, for the Regulations 10(e), the charge has been invoked incorrectly and mechanically without ascertainment of the CB's role. This regulation was intended to be brought into play when a client of a CB claims to have had advice given to him that was found to be incorrect or information furnished to him was erroneous. These are not to be presumed merely because some offence under the Customs Act, 1962 has occurred.

25.4 The CB stated that 'due diligence is a process or effort to collect and analyse information before making a decision or conducting a transaction so a party is not held legally liable for any loss or damage' as held by Hon'ble CESTAT in the case of M/s Cappithan Agencies reported as 2024 (5) TMI 1228-CESTAT BANGALORE.

25.5 The CB submitted that it has been held in the case of M/s Siddhesh Logistics reported as 2024 (6) TMI 784 CESTAT MUMBAI regarding Regulation 10(e) that 'emphasis in the regulation is on exercising due diligence to ascertain the correctness thereof with the premise of client having acted inappropriately from such dissemination'.



In this regard, the CB also relied upon the ratio of Hon'ble Delhi High Court Order in the case of M/s Kunal Travels (Cargo) Vs Commissioner of Customs (Import & General) New Customs House, IGI Airport, New Delhi reported in 2017 (3) TMI 1494-DELHI HIGH COURT wherein it was held that:

*"Regulation 13(e) of the CHALR 2004 requires the CHA to: "exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage. The CHA's due diligence is for information that he may give to its client and not necessarily to do a background check of either the client or of the consignment. Documents prepared or filed by a CHA are on the basis of instructions/documents received from its client/importer/exporter. Furnishing of wrong or incorrect information cannot be attributed to the CHA if it was innocently filed in the belief and faith that its client has furnished correct information and veritable documents. The mis-declaration would be attributable to the client if wrong information were deliberately supplied to the CHA. Hence there could be no guilt, wrong, fault or penalty on the appellant apropos the contents of the shipping bills."*

25.6 Taking note of the said decision of the Delhi High Court, the Tribunal in Perfect Cargo & Logistics Vs. C.C. (Airport & General), New Delhi-2021 (276) ELT 649 (T-Del.) analysed the role which is required to be played by the CHA in discharge of his obligations under the Regulations as under:

*"27. It is clear from the aforesaid decision of the Delhi High Court that there is no obligation on the Customs House Agent to look into the information made available by the importer/exporter. The Customs House Agent is merely a processing agent of documents with respect to clearance of goods through Customs House and he is not an inspector to weigh the genuineness of the transaction."*

25.7 The CB also submitted that regarding the provisions of Regulation 11(e), the Tribunal in M/s. Trinity International Forwarders Vs. Commissioner of Customs (Preventive) reported as 2023 (8) TMI 133-CESTAT NEW DELHI held as under.

*"15. This Regulation requires the Customs Broker to not impart any incorrect information to the exporter. After perusing the records and the appeal we find no*



*allegation that the appellant, as the Customs Broker, has imparted incorrect information. The case of the Revenue is that the exporter had over-valued export goods and the appellant did not report it. Therefore, evidently, the appellant did not violate Regulation 11(e)."*

25.8 The CB argued that the aforesaid observations squarely apply to the facts of the present case and therefore, the CB cannot be held guilty for violating Regulation 10 (e). There is no allegation anywhere in the CB Section SCN that the CB has not exercised due diligence as Customs Broker to ascertain the correctness of any information which they have imparted to the client M/s Sun Impex with reference to any work related to clearance of the exported six consignments. The CB stated that for the violation of this Regulation what is important to be brought on record is that there was certain information imparted by the CB as the customs broker to the exporter and that the said information was incorrect as held by Hon'ble CESTAT in the case of M/s Aradhya Export Import Consultants Pvt Ltd reported as 2023 (10) TMI 78-CESTAT NEW DELHI as under.

*"12. For the violation of this Regulation what is important to be brought on record is that there was certain information imparted by the customs broker to the exporter and that the said information was incorrect. We do not find from the above facts nor from the other record of the impugned appeal that there was any such information given by the CB to the exporter which was later found false. These observations are sufficient for us to hold that violation of Regulation 10(e) of CBLR, 2018 is not apparent against the CB. The original adjudicating authority in paragraph 25.1.1 of order under challenge has appreciated the reply of the customs broker where it was stated that CB has never imparted any incorrect information to the exporter nor even it is apparent from the statement of the G-card holder of CB that certain information was imparted to the exporter which was later found false. Once there is nothing on record to show not even in the show cause notice as to what information was imparted by CB to the exporter alleging violation of Regulation 10(e) has no meaning. Hence, we have no reason to differ from the findings of the order under challenge with respect to the alleged violation of 10(e) CBLR- 2018. In the cross objections filed by the respondent/assessee it has been*



*conceded that there is no basis for alleged violation of Regulation 10(e) of CBLR. Findings to that extent in the order under challenge are confirmed."*

25.9 The CB stated that as CB they have never imparted any incorrect information to the exporter nor it is apparent from the statement of their authorised person that certain information was imparted to the exporter which was acted upon by the exporter but was later found to be wrong and incorrect. Once there is nothing on record to show not even in the show cause notice as to what false information was imparted by the CB to the exporter, the allegation regarding violation of Regulation 10(e) has no legs to stand. The CB Section SCN does not bring out any evidence that there was any such information given by the CB to the exporter which was later found to be false. In the absence of any specific evidential document or factual record, the conclusion that the CB did not exercise due diligence to impart correct information to their client cannot be arrived at and this charge cannot be sustained. The CB stated that these submissions are sufficient to hold that violation of Regulation 10(e) of CBLR, 2018 is not apparent against them and that there is no justification for alleged violation of Regulation 10(e) of the CBLR, 2018.

26. In view of the above, the said charges regarding violation of Clauses (d) and (e) of Regulation 10 of the CBLR, 2018 are contrary to the law & practice and evidence on record in this regard.

27. **The CB further submitted that the matter concerns livelihood of the CB as well as that of its employees.** The CB stated that any adverse findings in these proceedings will severally impact our as well as our employees' only source of livelihoods negatively which may please be taken into account while deciding violation of the CBLR, 2018 as alleged in the CB Section SCN.

28. **The CB plead for extension of 'benefit of doubt' to them in view of certain mitigating facts & circumstances of the case.** The CB stated that considering the totality

of facts and circumstances of the case, including the following, 'benefit of doubt may please be extended to them by considering these as mitigating factors:

- (a) That there is no charge that the goods were mis-declared or that something was concealed from the Customs authority;
- (b) That there is no charge of active facilitation of the exporter's infraction by the CB i.e. export of SCOMET item and no mens rea has been proved against them;
- (c) That no modus operandi has been alleged and the allegation, of export of one SCOMET item of nominal quantity of two litres valued at 16 Euro only along with 32 other items totally valued at Euro 3,029.50 FOB, is in relation to only one solitary Shipping Bill out of the total six Shipping Bills filed by the CB on behalf of the exporter;
- (d) That there is nothing in the CB Section SCN to counter CB's assertion that the impugned export consignment was handled by them in good faith and in a bona fide manner,
- (e) That the goods were assessed and examined by the department before the 'Let Export Order and were not facilitated by RMS and even the much experienced Customs officers could not point out the discrepancy:
- (f) That no conscious knowledge of the alleged infractions on CB's part has been proved or even alleged in the CB Section SCN;
- (g) That the quantity and value of the impugned exported SCOMET item was absolutely nominal i.e. only two litres valued at 16 Euro;
- (h) That the exporter is not a dummy, is existing and has actively participated in the proceedings;
- (i) That the description of the impugned exported item was not free from doubt inasmuch as the description of the item mentioned at ID007 of Appendix 3 to Schedule 2 to the FTP is 'Dimethylamine' whereas the item exported was described as 'Dimethylamine 40% for Synthesis';
- (j) That the item was exported to actual user consignee for the purpose of testing in their manufacturing unit;
- (k) That 'Dimethylamine' is a raw material for the production of many agrichemicals and pharmaceuticals such as dimefox and diphenhydramine apart from other uses;



(l) That the CB had no role to play in the post export activity of the exporter such as alleged non-realisation of export proceeds;

(m) That the provisions of the CBLR, 2018 including those of the Regulations 10(d) and 10(e) are harsh & stringent impacting livelihoods of a CB & its employees and therefore the Regulations have to be strictly interpreted and any charge regarding violation of the provisions of the Regulations cannot be based on assumptions & presumptions and any allegation regarding their violation has to be led by positive evidence on record; and

(n) That there is no positive and cogent evidence brought on record in support of the alleged violation by the CB of the said three Regulations and the violation has been alleged perfunctorily and mechanically merely by use of statutory language of the three Regulations.

29. **The CB further submitted that the Customs Broker cannot be penalised in the absence of Proof of his Complicity.** The CB stated that they cannot be penalised in the absence of their complicity and knowledge of the offences on their part. In this regard, the CB relied upon the ratio of the following case laws:

(a) National Traders and Agencies-2019 (6) TMI 371-CESTAT BANGALORE:

(b) Poonia & Brothers - 2019 (4) TMI 911 CESTAT NEW DELHI:

(c) Merchant & Sons - 2018 (5) TMI 1067 - CESTAT MUMBAI:

(d) Millard Logistics Pvt Ltd - 2018 (1) TMI 960 - CESTAT ALLAHABAD.

30. The CB submitted that it is well settled by now that as per the established Doctrine of Proportionality, punishment/penalty should be commensurate with the offence alleged to have been committed. Assuming but without admitting that the CB had a role in export of nominal quantity of the SCOMET item without export authorisation by the exporter, even then considering their role, punishment should be proportionate to the offence. Every such alleged misdemeanour did not warrant imposition of harsh penalties under Section 114AA, Section 114(iii) & Section 117 which have been correctly dropped in the OIO and justice has prevailed. The impugned CB Section SCN proposing revocation of their CB

Licence No 11/2002; forfeiture of their security deposit; and imposition of penalty on them under Regulation 14 read with Regulation 17 and 18 of the CBLR, 2018 is therefore extremely harsh and excessive. The said alleged lapses and violations on their part, in the facts & circumstances of the matter and evidence on record, do not call for such precipitative action. In this regard, the CB relied upon the ratio of the following recent case laws:

- (a) M/s. HSN Shipping Pvt Ltd Vs Commissioner of Customs, Chennai - 2021 (2) TMI 1149-CESTAT CHENNAI.
- (b) Setwin Shipping Agency Vs Commissioner of Customs (Chennai - VIII) - 2021 (1) TMI 818-CESTAT CHENNAI.
- (c) M/s Jetwing Freight Forwarders Vs C.C Bangalore - Cus-2020 (6) TMI 316 - CESTAT, BANGALORE.
- (d) M/s Mallick Clearing Agency Vs CC (Admn & Airport), Kolkata - 2020 (1) TMI 489-CESTAT KOLKATA.
- (e) M/s Tanmay Global Logistics Vs Commissioner of Customs (Airport & General) - 2019 (12) TMI 529-CESTAT NEW DELHI.
- (f) Commr of Cus & C. Ex Hyderabad Vs H. B. Cargo reported as 2011 (3) TMI 816 ANDHRA PRADESH HIGH COURT
- (g) M/s Ashiana Cargo Services Vs Commissioner of Customs (I&G) - 2014 (3) TMI 562
- (h) M/s R R Shipping Agency reported as 2021 (12) TMI 857 CESTAT MUMBAI

30.1 In view thereof, the CB argued that the allegations of violation of Regulations 10(d) and 10(e) of the CBLR, 2018 merely citing legal provisions without any cogent evidence are not sustainable.

31. The CB stated that the CB Section SCN has been issued on the ground that they have failed to fulfil their obligations as laid down in Regulations 10(d) and 10(e) of the CBLR, 2018. Therefore, it appears that the CB Section SCN Invokes Clause (b) of



Regulation 14 of the CBLR, 2018 which states that the license of a Customs Broker may be revoked on the ground, inter-alia, for 'failure to comply with any of the provisions of the regulations. The CB has demonstrated above that there was no failure on their part to comply with the provisions of the CBLR, 2018 and that they have not violated the Regulations 10(d) and 10(e) of the CBLR, 2018 as alleged in the CB Section SCN in any manner. Therefore the CB Section SCN is without jurisdiction.

31.1 The CB stated that according to the system of jurisprudence which we follow, conviction cannot be based on suspicion or on the conscience of the Competent Authority being morally satisfied about the complicity of an accused person who can be convicted and sentenced only if the prosecution proves its case beyond all reasonable doubt. Moreover when the less serious charge to propose monetary penalties on the CB have been dropped in adjudication under the provisions of the Customs Act, 1962, much serious charges to propose revocation of our CB Licence cannot be sustained.

32. The CB submitted that in all common law jurisdictions judgments play a vital role in setting up precedents for the future and therefore Principle of Judicial Discipline requires that the Orders of the higher appellate authorities unless stayed as quoted before them should have been followed unreservedly by the subordinate Authority. In this regard, the Noticee relies upon the ratio of the following case laws:

(a) Kamlakshi Finance Corporation - 1991 (9) TMI 72 - SUPREME COURT.

(b) T.V. Sundram Iyengar & Sons Pvt Ltd- 2021 (5) TMI 159 MADRAS HIGH COURT.

(c) XL Health Corporation India Pvt Ltd - 2018 (10) TMI 1565-Karnataka High Court

32.1 The CB stated that the Adjudicating Authority has to take into consideration the case laws cited by them as above and these may not be simply brushed aside by terming them as irrelevant. This will be contrary to the well laid out jurisprudence that the

Competent Authorities are under obligation to act judiciously. The CB referred to the recent Order of Hon'ble CESTAT in this regard in the case of M/s Vandana Global Ltd reported as 2023 (7) TMI 72-CESTAT MUMBAI.

32.2 The CB also submitted that the adjudication proceedings are examination of the allegations levelled vis a vis the replies repelling the same and the purpose of the adjudication is to arrive at a proper conclusion on the allegations levelled. Since the primary aim is to meet out justice, the adjudication proceedings should be a search for the truth and must be conducted in a fair and transparent manner. The proof of CB's role in the export of the SCOMET item without export authorisation by the exporter, as alleged, hence would depend upon a proper evaluation of the totality of the evidences brought on record, which is lacking in the instant case.

33. The CB therefore stated that the allegations made against them in the ACC SCN and the CB Section SCN are mere bald allegations and are not based on any sound, cogent, tangible & reliable evidences. It is an accepted principle that "he who asserts must prove". The department has failed to discharge the burden cast upon it in a manner known to law. Such serious allegations having criminal overtones have been made on the basis of assumptions & presumptions without proper appreciation of the facts of the case, of the evidences available on record as well as of the legal provisions invoked in the ACC SCN and the CB Section SCN and hence have been made without due and proper application of mind.

33.1 The CB agued that it may not be out of place to mention that the ACC SCN and the CB Section SCN exhibit casual, mechanical, biased & prejudiced approach and colourable exercise of power so far as The CB is concerned. The proposals in the impugned CB Section SCN proposing revocation of their CB Licence No 11/2002; forfeiture of their security deposit; and imposition of penalty on them under Regulation 14 read with Regulation 17 and 18 of the CBLR, 2018 are exceptionable, too harsh and arbitrary



considering their role. It has recently been held by Hon'ble CESTAT Mumbai vide Order dated 11.05.2023 in the case of M/s Jupiter Dyechem Pvt Ltd & Others reported as 2023 (5) TMI 670 CESTAT MUMBAI that,..... *it is obligatory on the part of adjudicating authority to evaluate the proposals put forth in the show cause notice on the basis of available facts and law and that any detriment, of duty or fine/penalties, visited upon an importer without examination of the role of the noticee on the circumstances leading to the conclusion of having breached Customs Act, 1962 is not only inappropriate but tantamount to executive overreach that rule of law abhors!*

34. The CB prayed that all the said charges against them regarding violation of two Regulations i.e. 10(d) and 10(e) of the CBLR, 2018 as alleged in these proceedings may please be dropped inasmuch as the ACC SCN and the CB Section SCN have been issued on assumptions and presumptions based on inadequate, incomplete & inconclusive investigation without proper application of mind and appreciation of facts & evidence including those of the legal provisions invoked raising wild, baseless, bald and unsubstantiated charges. The CB prayed that the facts & the circumstances of the matter may please be appreciated and justice may be rendered. The allegations made against the CB without any cogent evidence are serious affecting their livelihood as well as livelihood of their employees on day to day basis.

34.1 The CB further prayed with folded hands that their CB Licence remains suspended for the past more than seven months. The CB stated that the said Licence was their only source of livelihood. His whole family as well as those of his employees are on the verge of starvation. The CB prayed that even if it is concluded, without prejudice to their pleadings as above, that they are at fault and hence liable for punishment, the period of suspension of the CB Licence already undergone may please be considered as adequate & sufficient punishment and no more punishment may please be inflicted upon them and their CB Licence may please be restored as early as possible.

**DISCUSSIONS AND FINDINGS:-**

35. I have gone through the facts of the case, the materials brought on record; the Offence Report received in the form of Show Cause Notice No. CUS/DBK/SCN/29/2024-DBK (EDI) dated 31.03.2024 from Drawback Section, ACC, Export, Mumbai Customs Zone-III; the Suspension Order No. 15/2024-25 dated 21.05.2024; the Suspension Continuation Order No. 24/2024-25 dated 11.06.2024; the Show Cause Notice No. 24/2024-25 dated 01.07.2024, issued under CBLR, 2018; the Inquiry Report dated 01.10.2024; the written submission of the CB dated 19.12.2024; and the Order-in-Original No. ADC/MKS/46/2024-25/Adj.(X) ACC dated 05.08.2024, issued under Customs Act, 1962, in the present matter.

36. At the outset, I find that the present case has been investigated by SIIB (Export), ACC, Mumbai on the basis of the NCTC alert on the Shipping Bill No. 9304674 dated 15.04.2023 for the export of an SCOMET item viz. DIMETHYLAMINE with description "DIMETHYLAMINE SOLUTION 40% FOR SYNTHESIS" under RITC 29211990 with the declared country of destination as BENIN. The said Shipping Bill was filed by the exporter M/s. Sun Impex (IEC-0305081624) through their CB M/s. Eastern Cargo. The goods pertaining to the said SB No. 9304674 dated 15.04.2023 was not carted at ACC, Mumbai. However, the past exports of last 05 years of the exporter was retrieved from the System, and it was revealed that 01 SB (1490020 dated 19.05.2022) in the past export has been done for the same goods/ item. This shipping bill was filed by the exporter through Customs Broker M/s Hirannya Shipping & Logistic Services (11/2002), the charged CB in the present case. The details of the aforementioned Shipping Bill are given in the Table 1 under para 2.3 above. The investigation also revealed that the BRCs against the 08 Shipping Bills (as mentioned in Table-II, under para 2.5 above) have not been released yet. Out of these 08 Shipping Bills, 06 Shipping Bills were fills were filed by the CB M/s. Hirannya Shipping & Logistics Services (CB No. 11/2002), including the shipping bill



1490020 dated 19.05.2022. Hence, in view of these facts, a Show Cause Notice No. CUS/DBK/SCN/29/2024-DBK (EDI) dated 31.03.2024 was issued under Customs Act, 1962, by the Additional Commissioner of Customs, Export, ACC, Mumbai and accordingly, on the basis of said SCN the action under CBLR, 2018 was initiated against the CB M/s. Hirannya Shipping & Logistics Services (CB No. 11/2002) for apparent violation of Regulation 10(d), 10(e) and 10(m) of CBLR, 2018. I find that the Inquiry Officer, vide his report dated 01.10.2024 held that the charges framed against the CB in the present case, viz. charges of violation of Regulation 10(d), 10(e) and 10(m) of CBLR, 2018 are 'not proved'. The observation and findings of the Inquiry Officer with respect to the charge of violation of Regulation 10(m) of CBLR, 2018 has been accepted. However, a Disagreement Memo dated 06.12.2024 has been issued to the CB with respect to the charges of violation of Regulation 10(d) and 10(e) of CBLR, 2018. The CB submitted their defence submission, to the Disagreement Memo dated 06.12.2024, during personal hearing on 19.12.2024.

37. I find that as regards the allegation on the CB for violation of Regulation 10(d) of CBLR, 2018, the Inquiry Officer has observed that the entries in the Shipping Bill No. 1490020 dated 19.05.2022 were entered by the CB as per the instructions given by the exporter, duly assessed and LEO granted. Also, the SCN did not bring out any evidence as to with whom the CB had aided and abetted nor had any assessing officer been investigated or CB to the SCN. Further, the IO stated that there was no loss of revenue as the Shipping Bills filed were free Shipping Bills. The IO observed that the goods covered in Shipping Bill No. 1490020 dated 19.05.2022 were SCOMET items, however, regarding the Role of CB, the IO did not find any occasion where the CB committed/abetted or failed to inform Customs Officers if anything was there in his mind. The IO also relied upon the judgements in the matter of M/s. Gavrams Shipping Services Versus Commissioner Of Central Excise, Tuticorin Reported in 2024 (4) TMI 731-CESTAT Chennai and M/s. J.M. Baxi &

Company Versus Commissioner Of Customs, Jamnagar (Prev.) 2015 (11) TMI 1158-CESTAT Ahmedabad. Accordingly, the IO held that the charge of violation of Regulation 10(d) is 'not proved' against the CB.

37.1 I find that the disagreement memo with respect to the charge of violation of Regulation 10(d) of CBLR, 2018 has been issued to the CB on the ground that CB vide his statement recorded under Section 108 of Customs Act, 1962 admitted that they were aware of the rules and compliances and they have checked all the items covered under shipping bill no. 1490020 dated 19.05.2022 in SCOMET List and found Dimethylamine in the list. Being aware of the rules and compliances they did not advise the exporter to get mandatory export authorisation of Appendix-3(SCOMET List) and also the CB did not bring the matter to the notice of Deputy Commissioner of Customs or Assistant Commissioner of Customs, that exporter has filled the said shipping bill without mandatory export authorisation. As per provision of 10(d) of CBLR 2018, it is the responsibility of CB to advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of noncompliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Therefore, it is evident that the regulation 10(d) of the Customs Brokers Licensing Regulations (CBLR), 2018, as referenced in the Show Cause Notice (SCN) dated 01.07.2024, has been contravened by the CB.

37.2 I find that the CB, in this regards, has submitted that they have always advised all their clients, including the exporter M/s Sun Impex, to comply with the provisions of the Customs Act, 1962; other allied Acts and the rules and regulations thereof. The CB stated that the SCN fails to bring out as to what should have been advised by the CB to the client but was not advised under Regulation 10(d). The CB argued that the department has merely resorted to Regulation 10(d) without pointing out as to the lapse on their part. The CB also argued that the goods were duly assessed & examined before the 'Let Export Order' by the



proper officers of Customs and therefore when even the much experienced Customs officers could not point out presence of SCOMET item in the consignment, it cannot be alleged as possible for them as CB to do so hence there was no way for the CB as the Customs Broker to find out whether the exported goods having total 33 items in one shipping bill, contain one item covered by SCOMET which required authorisation before export. The CB also argued that in the absence of any specific evidential document or factual record, it cannot be held that they had prior knowledge about the export consignment carrying the SCOMET item and this charge merits to be dropped on this ground alone. I have also gone through the case laws relied upon by the CB, in this regard.

37.3 Having taken into cognizance of all the arguments made by the CB in their defence submissions and the case laws relied upon by them, some ratio of which is applicable in present case also, I am of the opinion that there is force in CB's submission to substantiate the un-sustainability of charge of violation of Regulation 10(d) of CBLR, 2018. Hence, under the facts and circumstances of the case I am inclined to drop the charge of violation of Regulation 10(d) of CBLR, 2018 levelled against the CB.

38. I find that, as regards the violation of Regulation 10(e) of CBLR, 2018, the IO has relied upon the judgments in the matter of M/s. ADVENT SHIPPING AGENCY VERSUS PRINCIPAL COMMISSIONER OF CUSTOMS (A & A), KOLKATA reported in 2022 (7) TMI 317-CESTAT KOLKATA and SHRI JOSHY MJ, SHRI DEV NARAYAN & SHRI RAJESH MP VERSUS COMMISSIONER OF CUSTOMS, NOIDA reported in 2018 (11) TMI 580-CESTAT ALLAHABAD. Based on above case laws and the fact that the proceeding vide SCN No. CUS/DBK/SCN/29/2024-DBK(EDI) was dropped by adjudicating authority and no penalty was imposed on exporter or Custom Broker, the IO was of considered opinion that the allegations against the chartered customs brokers of all the charges viz. violation of Regulation 10(e) of the CBLR, 2019 levelled against the CB

M/s. Customs Broker M/s Hirannya Shipping & Logistics Services (CB NO. 11/2002) could not be proved or established during the inquiry held by him.

38.1 I find that the the disagreement memo with respect to the charge of violation of Regulation 10(e) of CBLR, 2018 has been issued to the CB on the ground that the Customs Broker did not pay due diligence towards their work as they did not ascertain the requirement of General Authorization for Export of Chemicals and related Equipment (GAEC), whether there was misuse of any notification, circular, public notice in clearance of cargo or not. In the instant case, the exporter only submitted certificate of analysis' and 'end use letter' instead of the mandatory requirement of General Authorization for Export of Chemicals and related Equipment (GAEC) for export of SCOMET items since these items have dual usage. Even CB was well aware about the mandatory export authorization requirement but they did not exercise due diligence in imparting such information to the exporter. Therefore, it appears that regulation 10(e) of the Customs Brokers Licensing Regulations (CBLR), 2018, as referenced in the Show Cause Notice (SCN) dated 01.07.2024, has been contravened by the CB.

38.2 I find that the CB, in this regard, has submitted that for the Regulations 10(e), the charge has been invoked incorrectly and mechanically without ascertainment of the CB's role. This regulation was intended to be brought into play when a client of a CB claims to have had advice given to him that was found to be incorrect or information furnished to him was erroneous. These are not to be presumed merely because some offence under the Customs Act, 1962 has occurred. The CB argued that 'due diligence is a process or effort to collect and analyse information before making a decision or conducting a transaction so a party is not held legally liable for any loss or damage' as held by Hon'ble CESTAT in the case of M/s Cappithan Agencies reported as 2024 (5) TMI 1228-CESTAT BANGALORE. The CB further argued that as CB they have never imparted any incorrect information to the exporter nor it is apparent from the statement of their authorised person that certain



information was imparted to the exporter which was acted upon by the exporter but was later found to be wrong and incorrect and once there is nothing on record to show not even in the show cause notice as to what false information was imparted by the CB to the exporter, the allegation regarding violation of Regulation 10(e) has no legs to stand.

38.3 I find that Shri Anil Sitaram Shrungare, F-card Holder of M/s Hirannya Shipping & Logistics Services during his statement recorded on 29.12.2023 under Section 108 of the Customs Act, inter-alia stated that “they were aware of the rules and compliances. They have checked all the items covered under shipping bill no. 1490020 dated 19.05.2022 in SCOMET List. They found Dimethylamine in the list, however, goods description was 'Dimethylamine 40% for synthesis' was not in the list. To be sure of description of the goods, they checked w.r.t. goods description with the exporter, who confirmed that the subject goods is Dimethylamine 40% for synthesis and gave them certificate of analysis and end-user letter. After that they have filed said shipping bill and carted the goods.” I find that the Proprietor of CB was aware of the facts that “Dimethylamine” is a SCOMET item mentioned under SCOMET List. However, he processed the clearance of Shipping Bill No. 1490020 dated 19.05.2022 as the goods description was “Dimethylamine 40% for synthesis” and not “Dimethylamine”. However, the CB failed to exercise due diligence in ascertaining and confirming the actual nature of the goods, as the description and composition of the goods itself indicate a suspicion towards the goods to be SCOMET item. It is the primary duty of a CB to check, verify and ascertain the correctness of any information or documents which he submits to the Customs Authorities and by not doing so, in the present case, the CB has violated the provisions of Regulation 10(e) of CBLR, 2018. Having perused the OIO No. ADC/MKS/46/2024-25/Adj.(X) ACC dated 05.08.2024, passed in the present matter under Customs Act, 1962, I also find that it is a matter of fact that out of the 6 shipping bills (including SB No. 1490020 dated 19.05.2022) the BRC for one Shipping Bill No. 1490519 dated 19.05.2022 has not been realised yet.

Under the facts and circumstances of the case, I am of the firm belief that the CB has not exercised due diligence in their work as Customs Broker and thus contravened the Regulation 10(c) of CBLR, 2018.

39. With respect to charge of violation of Regulation 10(m) of CBLR, 2018, I find that the Inquiry Officer has observed that the examination of documents submitted revealed that there was no delay in processing the Shipping Bill or while making any correspondence with the exporter or the Customs Department. And, this clause is all about servicing of the client and would be invoked only upon grievance of a client that performance is bereft of speed and efficiency. The IO further found that there was no record of such complaint and there was no evidence to indicate want of speed or efficiency in this instant case. Further, there was no anything on record to prove the allegation that the CB had not performed their duties with speed and efficiency nor there was any objection raised by the Department during the clearance of these consignments. Accordingly, the inquiry officer has held that the charge of violation of Regulation 10(m) is not proved. Under the facts and circumstances of the case, I approves the findings and conclusion of the inquiry officer and hold that the charge levelled against the CB for violation of Regulation 10(m) of CBLR is not sustainable and hence the same is dropped.

40. I find that the present matter has been adjudicated under Customs Act, 1962 vide OIO No. ADC/MKS/46/2024-25/Adj.(X) ACC dated 05.08.2024 wherein the Adjudicating Authority has dropped the penalty proposed against the CB M/s. Hirannya Shipping & Logistics Services (CB No. 11/2002). However, it is pertinent to mention here that the proceedings under CBLR, 2018 are independent, separate and distinct from that under Customs Act, 1962.

41. I find that in the instant case, the CB license was suspended under Regulation 16(1) of CBLR, 2018. Also, by following the Principle of Natural Justice and granting an opportunity of personal hearing to the CB, the suspension of CB license was continued



under Regulation 16(2) of CBLR, 2018, pending inquiry proceedings. I find that for the violation of obligations provided under CBLR, 2018 and for their act of omission and commission, the CB M/s. Hirannya Shipping & Logistics Services (CB No. 11/2002) has rendered themselves liable for penal action under CBLR, 2018. Hence, while deciding the matter, I rely on the following case laws:

a) ***The Hon'ble Supreme Court in the case of Commissioner of Customs V/s. K. M. Ganatra and Co. in civil appeal no. 2940 of 2008 upheld the observation of Hon'ble CESTAT Mumbai in M/s. Noble Agency V/s. Commissioner of Customs, Mumbai that:***  
*"the CHA occupies a very important position in the Custom House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interest of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the government agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations".*

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

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



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

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

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

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

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



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

**(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 meind 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”.*

43. As discussed above, I conclude that the CB is guilty of violations of CBLR, 2018. However, considering all the facts and circumstances of the case, I am of the view that revoking the CB license is too grave a penalty to be imposed for the above violations, as the punishment of revocation of license and forfeiture of security deposit of the CB, is much harsh and disproportionate to the offences committed. Also, it is pertinent to note here that the license of the CB is already under suspension for almost 08 months i.e. since 21.05.2024 and the CB has been unable to work for these 08 months and thus been already penalised in this manner. The ends of justice will be met by revoking the suspension of the CB license and imposing a penalty, on the CB, under Regulation 18 of CBLR, 2018. In this regard, I place reliance on the following case laws:

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

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



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

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

*"11. Viewing these cases, in the background of the proportionality doctrine, it becomes clear that the presence of an aggravating factor is important to justify the penalty of revocation. While matters of discipline lie with the Commissioner, whose best judgment should not second-guessed, any administrative order must demonstrate an ordering of priorities, or an appreciation of the aggravating (or mitigating) circumstances. In this case, the Commissioner and the CESTAT (majority) hold that —there is no finding nor any*



*allegation to the effect that the appellant was aware of the misuse of the said G cards, but do not give adequate, if any weight, to this crucial factor. There is no finding of any mala fide on the part of the appellant, such that the trust operating between a CHA and the Customs Authorities (as a matter of law, and of fact) can be said to have been violated, or be irretrievably lost for the future operation of the license. In effect, thus, the proportionality doctrine has escaped the analysis.*

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

*"6. We are unable to appreciate such a peremptory conclusion. The CBLR, 2013 lays down that stepwise procedures are to be followed before ordering any punishment to the Customs broker. True, the said regulations do contain provisions for revocation of the license and for forfeiture of full amount of security deposit, however these are maximum punishments which should be awarded only when the culpability of the Customs broker is established beyond doubt and such culpability is of very grave and extensive nature. In case of such fraudulent imports, for awarding such punishment, it has to be established without doubt that the Customs broker had colluded with the importer to enable the fraud to take place. No such culpability is forthcoming in respect of the appellant herein. On the other hand, the Inquiry Officer, appointed under CBLR, 2013, has opined that there is no substantive case to level charges violation of Regulation 11(a), (b), (n), (e) & (k) of the CBLR, 2013. The Inquiry Officer has in fact clearly stated that he has not found anything substantial that can merit proposing revoking the license of the appellant or imposing the penalty. The Inquiry Officer has categorically reported that at the most, appellant may be given a strict warning."*

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

44. 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. Hirannya Shipping & Logistics Services (CB No. 11/2002) is held liable and guilty

for violating the provisions of CBLR, 2018 as mentioned above. I hold that the CB has failed to discharge his duties cast upon him with respect to Regulation 10(e) of CBLR, 2018 and the interest of justice would be met by imposition of penalty under Regulation 18 of CBLR, 2018. Accordingly, I pass the following order:

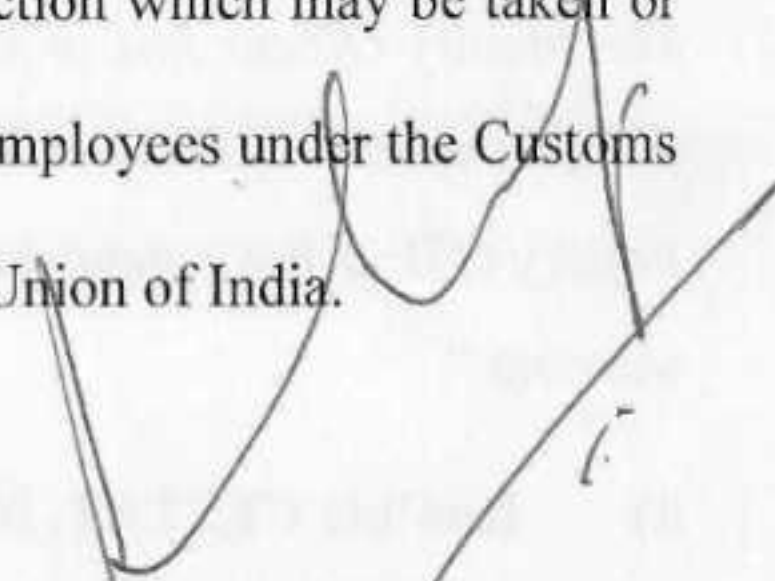
**ORDER**

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

(i) I, hereby revoke the suspension of CB License held by M/s. Hirannya Shipping & Logistics Services (PAN no. AYHPS8411J, CB No. 11/2002), which was ordered vide order no. 15/2024-25 dated 21.05.2024 and continued vide order no. 24/2024-25 dated 11.06.2024

(ii) I, hereby impose penalty of Rs. 20,000/- (Rs. Twenty Thousand Only) on M/s. Hirannya Shipping & Logistics Services (PAN no. AYHPS8411J, CB No. 11/2002) under Regulation 18(1) of the CBLR, 2018.

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

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

To,

**M/s. Hirannya Shipping & Logistics Services (CB No. 11/2002),**  
18/4, Shree Siddhivinayak Nivas CHS Ltd.,  
3 Dominic Colony, Orlem Malad (West),  
Mumbai-400064



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