



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

संचिका सं./F. No.- GEN/CB/196/2023 -CBS

CAO No. 69/CAC/PCC(G)/SJ/CBS-Adj

संख्या:

DIN : 20240277000000..515465

द्वारा जारी : सुनील जैन
प्रधान आयुक्त, सीमाशुल्क(सामान्य)
मुंबई -400 001

आदेश दिनांक/Date of Order: 02.02.2024

जारी दिनांक/Date of issue: 02.02.2024

Issued By : Sunil Jain
Pr. Commissioner of Customs(Gen.),
Mumbai - 400 001.

ORDER-IN-ORIGINAL मूल आदेश

ध्यान दीजिए/ N.B. :

1. यह प्रति उस व्यक्ति को निजी उपयोग हेतु निःशुल्क प्रदान की जाती है, जिसे यह जारी की जा रही है।
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2. इस आदेश के विरुद्ध अपील माँगे गए राशी के 7.5% के भुगतान पर सीमाशुल्क अधिनियम, 1962 की धारा 129A(1B)(i) के संबंधमें सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण में स्वीकार्य है, जहाँ शुल्क या शुल्क एवं जुर्माना विवादित हों, या जुर्माना, जहाँ सिर्फ जुर्माना ही विवादित हो। यह अपील इस आदेश के संप्रेषण की तारीख के तीन महीने के अंदर दायर की जाएगी। यह अपील सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण (कार्यविधि) नियमावली, 1982, के प्रावधानों के अंतर्गत, 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 क्षेत्रीय यखंडपीठ, के M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai के संदर्भ में जारी आदेश क्रमांक A/86617-86619/2018 दिनांक 31.05.2018 के अनुसार न्यायिक आदेश तदोउ प्रांत न्याय निर्णयन अधिकारी *functus officio* बन जाता है।

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

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

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

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

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

6. (i) यदि प्रतिवादित आदेश, जिसके विरुद्ध अपील की गई है, में शुल्क एवं मांगे गए ब्याजबलगाएगए जुर्माने की राशि रु. पाँच लाख या इस से कम होती रु. 1000/-, (ii) यदि यह राशि रु. पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न होती रु. 5000/- एवं (iii) यदि यह राशि रु. पचास लाख से अधिक होती रु. 10000/- के शुल्क का भुगतान क्रॉसड बैंक ड्राफ्ट के माध्यम से अधिकरण की खंडपीठ के सहायक पंजीयक के पक्ष में जिस स्थान पर खंडपीठ स्थित है, के किसी भी राष्ट्रीय क्रत बैंक की शाखा में किया जाए एवं डिमांड ड्राफ्ट अपील के साथ संलग्न किया जाए।

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

7. अपील की एक प्रति में कोर्ट फी अधिनियम, 1870 की अनुसूची मद 6 के तहत निर्धारित रु. 50 का कोर्ट फी स्टैम्प लगा होना चाहिए एवं इसके साथ संलग्न इस आदेश की उक्त प्रति में रु. 50 का कोर्ट फी स्टैम्प लगा होना चाहिए।

Once 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 OF THE CASE

M/s. Interfreight Forwarders Pvt. Ltd. (CB No. 11/500), having office address at Bldg No. 1, 401-B, 4th Floor, Star Hub Building, Sahar Road, Sahara Village, Andheri (East) Mumbai-400059 [hereinafter referred to as the Customs Broker/CB], bearing PAN based Registration No. AAFF11588BCH001 are holding a regular Custom Broker License No. 11/500 issued by Commissioner of Customs, Mumbai under Regulation 10(1) of the Customs House Agents Licensing Regulations (CHALR), 1984 [Now regulation 7(2) of Customs Broker Licensing Regulations (CBLR, 2018)] and as such they are bound by the regulation and conditions stipulated therein.

2. An offence report with respect to the role of the CB, M/s. Interfreight Forwarders Pvt. Ltd. was received from SIIB(X), ACC, Mumbai, wherein *inter alia* it was informed that a specific intelligence was developed by the Officers of Air Preventive Unit, Rummaging & Intelligence, ACC, Mumbai ('APU, R&I' in short) that certain exporters were indulged in exporting certain goods by overvaluing, with an intent to avail undue IGST Refund. Accordingly, data on ICES 1.5 System was analysed for past one month, which revealed a suspected case of overvaluation and fraudulently obtaining undue IGST Refund by M/s. Sabri Impex (IEC No. 2416902377) having GST Registration No. 24ARVPK7730M123.

3. M/s Sabri Impex have filled 5 Shipping Bills for export of Engineering Goods under CTH 8511 2090 through their Customs Broker (CB) firm, M/s. Inter Freight (Forwarders) Pvt. Ltd. (CB No. 11/500). Out of five Shipping Bills, one Shipping Bill was filed on 18.02.2021 and remaining four Shipping Bills were filed on 19.02.2021 before the Customs Authority at Air Cargo Complex (ACC), Sahar, Mumbai for assessment, examination and clearance for exportation. The consignee for all the five consignment was the same, i.e. M/s. Mohammed Al Amiri General Trading Co. LLC, P.O. Box 18794, Sultan Building, Near Al Aweer Market, Dubai, UAE. On perusal of the data retrieved from ICES System in respect of the said 05 Shipping Bills, it was observed that all the above Shipping Bills were filed as Free Shipping Bills i.e. non-claiming of any Export Incentive under any Export Promotion Schemes except for an IGST Refund totally amounting to Rs. 30,28,000/ -. It was also revealed that the goods covered under above five Shipping Bills were granted Let Export Order (LEO) on 19.02.2021 and goods were cleared for exportation, however, the IGST refund was not sanctioned and credited to the Account of the exporter. The scrutiny of the documents and GST particulars of the exporter indicated that the exporting firm was a proprietorship firm and Shri Mahamad Sultan Mahamad Yusuf Kapadiya is its Proprietor. The details of such 5 Shipping Bills are as follows:

SL No	Shipping bill no. & date	Description of goods	Net weight (in kgs)	Declared FOB Value Value (Rs.)	IGST Value (Rs.)	IGST Refund
1	8753566/18.02.2021	Electrical	23.40	2153190	2163000	605640
2	8756954/19.02.2021	Equipment	23.40	2150190	2163000	605640
3	8758083/19.02.2021	(Puce Power	23.40	2150190	2163000	605640
4	8758770/19,02.2021	Integrated	23.40	2150190	2163000	605640
5	8759505/19.02.2021	Meter (STTABA)	23.40	2150190	2163000	605640

4. The nature of consignment vis-à-vis weight & value declared covered in the above referred five Shipping Bills appeared to be suspicious due to following reasons :-

(i) The goods being overvalued. The description and FOB value of the consignments vis-à-vis weight per consignment appeared to be highly manipulated;

(ii) The subject goods were classified under HSN Code where the GST rate for the same is highest, i.e. 28%;

(iii) The exporter had intentionally filed Free Shipping Bills so that the goods might not be examined by Customs;

(iv) Also, the benefits of IGST would be accrued to the exporters' account immediately after the export of the impugned goods.

5. In furtherance of the investigation, Statement of Shri Praveen Kumar Singh, India Head-Sales & Marketing (Aerospace) and H Category Custom Pass holder of the CB firm was recorded on 24.03.2021 & 05.05.2021 under Section 108 of the Customs Act, 1962, wherein, he inter alia stated that:

(i) the CB firm deals in Custom clearance of the goods; that they have imported and exported aircraft parts, defense goods, garments and pharmaceutical items in the past; that he looked after sales, marketing and operations of the firm;

(ii) he got a call from APU/ R&I that investigation is being done for the export made by M/s. Sabri Impex through their CB firm;

(iii) he did not meet representative of the exporter as they got this business from their sub agent M/s. Shams Logistics and the exporting firm is one of the client of M/s. Shams Logistics;

- (iv) he sent KYC Form to M/s. Sabri Impex which they filled up and sent back to him; that as far as verification of KYC documents is concerned in general case, they meet the customer and verify their address and business, but in this case, work was given to them by their sub agent M/s. Shams Logistics, therefore, they trusted them and filed S/Bills and physically there was no chance to verify the address due to COVID Pandemic restrictions;
- (v) only five Shipping Bills, i.e. one on 18.02.2021 and four on 19.02.2021 were filed by them on behalf of the exporter M/s. Sabri Impex;
- (vi) DSC Dongle has been issued in the name of Shri Savio Gomes, one of the employee of their CB firm and another employee Shri Savio D'Souza filed the S/Bills;
- (vii) they had filed S/Bills as per Tax Invoice and Packing List submitted by the exporter and the same had been uploaded on E- Sanchit also;
- (viii) On being asked whether he asked the reason from the client why they had split the S/Bills into five when the goods were destined to same consignee and same country, he replied that they had asked from their sub-agent M/s. Shams Logistics regarding the same, which they replied that it is a normal practice, so they didn't raise any doubt regarding it;
- (ix) One of his office employee, namely Shri Sandeep Mohite did the carting of the cargo and was present during examination of the goods; that out of five S/Bills there was Open & Examine' order in only one S/Bill having No. 8758023 dated 19.02.2021; that as regards valuation part they didn't doubt anything as it was declared by shipper, also pictures of goods were clicked during examination, which he can provide tomorrow;
- (x) Tax Invoice was received one day prior to filing of S/Bills and goods were Electrical Equipment, so it was quiet difficult to know correct valuation;
- (xi) On being informed that they have contravened the provisions of Rule 10(n) of CBLR, 2018 and asked what he wants to say, he stated that due to COVID Pandemic restrictions they could not travel to Gujarat to verify the genuineness of firm and they took the work trusting their sub-agent M/s. Shams Logistics;
- (xii) On being asked whether he is aware that their sub-agent is not liable to verify the genuineness of export firm rather onus is on his firm, he replied that yes, they are aware and they should have done that, however due to COVID restrictions they were unable to do it;
- (xiii) On being asked when the value of the goods were so high whether he asked for copy of E-Way Bill from the exporter, he stated that the E-Way Bill is related

to transporter and shipper, they don't look after transport part, hence, they didn't see E-Way Bill copy;

(xiv) On being asked whether he is aware that the consignments going to sensitive ports, i.e. Dubai and the consignor and consignee are the same in all 5 S/Bills, so document should not be split into multiple S/Bills as per Board Circular No. 06/2002 dated 23.01.2002, directions and Public Notices issued by Custom Houses, he replied that presently he is not aware about the said Board Circular and any other instructions issued by the Custom Houses; that as the said Circular is 19 years old and as far as his knowledge there is no such restriction on splitting of Free S/Bills; that he will have to check and get back.

(xv) he stated that as this business came through M/s. Shams Logistics and they are in business terms, who they had a reasonable belief that they must be knowing the Proprietor of M/s. Sabri Impex;

(xvi) On being asked how will he prove now that Proprietor of M/s. Shams Logistics may be knowing Proprietor of M/s. Sabri Impex and whether CBLR allow this arrangement, he stated that as mentioned earlier they have to believe their sub-agent, M/s. Shams Logistics and they have provided documents for export shipments, i.e. Invoice, Packing List, KYC documents such as IEC Copy, AD Code, GST Registration Copy, Bank Statement along with Authorization etc.; that their sub-agent don't allow them to communicate directly with shipper as there is threat of their losing business with shipper, however, they had followed CBLR norms and took KYC before executing the shipment;

6. During course of investigation, Statement of Shri Ibrahim Shamshuddin Hirani proprietor of M/s. Shams Logistics, a sub-agent of CB firm M/s. Inter Freight (Forwarders) Pvt. Ltd. was recorded on 24.03.2023 under Section 108 of the Customs Act, 1962, wherein, he inter alia stated that:

(i) he is Proprietor of M/s. Shams Logistics and his company deals in freight forwarding of goods of import and export; that his company does not deal in domestic freight forwarding; that his company does not have IATA Licence as his firm is unable to fulfil requirements of IATA Licence;

(ii) his firm forward all the import/export related work to IATA Licencee firm and make commission; that his company offers the best possible freight rates and so he deals with the work related to freight forwarding;

(iii) generally he quotes 2% to 8% commission which he levies on the quotation received from IATA Licencee firms;

(iv) On being asked whether he does verification of importers/ exporters approaching him for import/export of their goods, he replied that usually he visits the client's office at any place, whether in Mumbai or outside before processing

the documents; that he used to meet the person on whose name the IEC is made; that he makes note of their business premises and obtain KYC documents; however, in the present case due to COVID restrictions, he was unable to verify client, M/s. Sabri Impex's office as he was unable to travel to Bhavnagar; that as the client had all the required KYC documents in order, he felt that it was okay to accept the party's shipment for export;

(v) On being asked, how did M/s. Sabri Impex approach him for export of goods, he replied that he received a call from one Mr. Mohammed on 07.12.2020 from Mobile No. 99246 36106 who told that he found M/s. Shams Logistics on Just Dial' and he enquired for export of the cargo of M/s. J.D. Enterprise; that he will provide the details of M/s. J.D. Enterprise; that thereafter he (Ibrahim) asked Mr. Mohammed to send details of cargo and documents; that he refused to do export of M/s. J.D. Enterprise for the reason that the firm was first time exporting the goods and he had to do AD registration, which was not his work: that again after 10-15 days Mr. Mohammed asked him to handle export work of M/s. Laxmi Enterprise, this work also refused by him being first time exporter; that in the first week of February, Mr. Mohammed asked him to handle work of export of M/s. Sabri Enterprise and as M/s. Sabri Enterprise was not first time exporter he accepted the documents and forwarded them to CHA M/s. Inter Freight (Forwarders) Pvt. Ltd. for Customs clearing and freight forwarding; that he (Ibrahim) did not enquire about this client on the point that they are Manufacturer Exporter or Merchant Exporter; that he also did not ask as to the history of their exports; that Mr. Mohammed forwarded the copies of M/s. Sabri Impex KYC documents, i.e. IEC, PAN Card, Aadhaar Card or GST Registration, GST Returns, Bank statement and informed that this party was registered at Customs -ACC, Sahar, Mumbai along with its AD Code;

(vi) he received no payment from M/s. Sabri Impex for these exports but he had already paid 66,000/- to CHA M/s. Inter Freight (Forwarders) Pvt. Ltd. through Net Banking;

(vii) On being asked whether he had seen the cargo exported by M/s. Sabri Impex, he stated that he had not seen the cargo that was being exported; that Shri Mohammed asked him to inform when documents were ready then he will forward the goods direct to ACC, Mumbai through his transporter; that Mr. Mohammed gave him driver's Mobile No. which he doesn't remember now; that he will give this number from his records;

7. During course of investigation, statement of Shri Salman Mohamed Husain Sheikh, Asstt. Manager- Operations of M/s. Inter Freight (Forwarders) Pvt. Ltd. was recorded on 21.04.2021 under Section 108 of the Customs Act, 1962, wherein, he inter alia stated that:

(i) he did not meet representative of the exporter as they got this business from their sub agent M/s. Shams Logistics and due to the current COVID Pandemic situation they were not able to meet up with the exporter and they have not spoken with the exporter as it was being done by M/s. Shams Logistics themselves;

(ii) On being asked how the KYC of the exporter was done, he stated that he had sent KYC Forms to M/s. Sabri Impex and after completing the process, they sent the completed KYC of the exporter back to them;

(ii) On being asked how did they verify the authenticity of KYC documents, he replied that in general case, they meet the customer and verify their address and nature of business before taking up assignment, but in this case, work was given to them by their sub-agent M/s. Shams Logistics, who was known to them since last two years and handled couple of their clients during that period, therefore they trusted M/s. Shams Logistics to have known the client and filed S/Bills;

(iv) DSC Dongle has been issued in the name of Shri Savio Gomes, one of the employee of their CB firm and another employee Shri Savio D'Souza filed the S/Bills; On being asked whether they exercise any caution to ascertain that the goods exported by M/s. Sabri Impex is declared correctly w.r.t. description, classification and value, he stated that he did not handle the work to check as to whether the goods exported by M/s. Sabri Impex is declared correctly w.r.t. description, classification and value as this work is taken care of by our other office employees who handle the clearances;

(v) On being asked whether he asked the reason from the client why they had split the S/Bills into five when the goods were destined for same consignee and same country, he replied that they have asked their sub-agent M/s. Shams Logistics regarding the same, which they replied that it is a normal practice, so they didn't raise any doubt regarding it;

(vi) On being asked whether he saw the cargo physically any time during its export, when was brought to ACC and was he satisfied with valuation of the cargo, he stated that no, as the shipments were cleared through Customs by one of their employee Shri Sandeep Mohite and it is not his job to check the valuation of the shipment;

(vii) On being asked whether he is aware that their sub-agent is not liable to verify the genuineness of export firm rather onus in on his firm, he replied that yes, they are aware and they should have done that however due to COVID restrictions they were unable to do it;

(vii) On being asked when the value of the goods were so high whether he asked for E-Way Bill copy from the exporter, he stated that this is not his job in the firm as it is done by their other employee.

8. During course of investigation, Statement of Shri Sandip Dharma Mohite, Export Executive (Clearance) of M/s. Inter Freight (Forwarders) Pvt. Ltd. (CB - 11/500) was recorded on 19.05.2021 u/s. 108 of the Customs Act, 1962, wherein, he inter alia stated that:

(i) M/s. Inter Freight (Forwarders) Pvt. Ltd. handles mainly freight forwarding of the cargo; that it is also a CHA firm which deals with Customs clearance of export/import cargo mainly at ACC, Sahar, Mumbai; that his role in the firm is mainly to clear the export consignments at ACC, Sahar, Mumbai;

(ii) On being asked whether he received consignments of M/s. Sabri Impex on behalf of his firm and on whose instructions, he stated that in the ACC it is a general practice that a loader named Ashish of his firm receives the export cargo and unloads this cargo in the Export Shed of ACC; that after weighment of the cargo, the loader Ashish then hand over the cargo to him for Customs clearance;

(iii) On being asked what are formalities to be followed when accepting the cargo for exports from the shipper at the time of carting, he stated that after weighment, the cargo is kept on the location which is allocated by MIAL; then he completes the process of the registration and Customs clearance formalities; that after LEO, for carting of the cargo he approach the Airline Carting Staff along with related documents, i.e. Airway Bill and Gate Pass; that Airline Carting Staff then gives them an acknowledgement of received cargo on the Gate Pass and starts carting of the cargo themselves;

(iv) at the time of carting and examination, he was present when the cargo was examined by Customs; that the cargo lot consisted of 10 packages under 05 S/Bills; that out of these 05 S/Bills, 01 S/Bill No. 8758023 dated 19.02.2021 was marked by the System for examination by Customs; that remaining S/Bills were marked for 'Inspection of Packages' by the Customs; that on opening the package he saw that there was some kind of Electric Machine; that the size of the Machine was about 1.5'X 2.5 in size; that as he does not have any knowledge of the machine, he did not think about price and weight; that as per declaration of CTH given by the shipper this consignment was classified as Electrical Machine; that the export of goods were under Free S/Bills with no benefits under any Scheme so there was no doubt about the consignment in his mind;

(v) On being asked whether anybody from the exporter side came along with the cargo to Export Shed at ACC and whether anybody from exporter's side called him, he answered in negative for both the questions;

(vi) On being asked what is the procedure for making a Gate Pass for exporting the cargo and in this particular shipment who has made the Gate Pass and who is the IATA Agent, he stated that they generate S/Bill in their CHA office and secondly they generate the Airway Bills in the office and Airway Bills forwarded to GVK and Airlines; that Airlines release the Carting in System and then we (as CHA firm) generates the Gate Pass against the Airway Bill Number; that in this case M/s. Inter Freight (Forwarders) Pvt. Ltd. is IATA Agent; that he will submit all the necessary documents as required;

(vii) On being asked whether they exercise any caution to ascertain that the goods exported by M/s. Sabri Impex is declared correctly w.r.t. description, classification and value, he stated that he noted the classification and description of the said cargo; that as it was Electrical Machine and he is not sound enough in technology and electrical machine parts, so he found no doubt in the value of the cargo; that also the cargo was being exported under no Customs Scheme benefits, so he did not have any doubt about the cargo;

(viii) On being asked whether he asked the reason from the client why they had split the S/Bills into five when the goods were destined for same consignee and same country, he replied that yes, he enquired with Mr. Salman, Sales Executive of their firm about the same to which he replied that it was shipper's requirement;

(ix) On being asked whether he is aware that their sub-agent M/s. Shams Logistics is not liable to verify the genuineness of export firm rather onus in on his firm, he replied that yes, according to procedure they have to verify the genuineness of the export/import firm, however, during COVID their office staff did not visit the exporter's place for verification; that their office received first time verification documents and AD Code documents along with all other related documents from M/s. Shams Logistics; that first time verification formalities of firm M/s. Sabri Impex was done earlier by another CHA firm, M/s. Laxmidas & Co.;

(x) On being asked when the value of the goods were so high, whether he asked for copy of E-Way Bill from the exporter, he stated that party did not send copy of E-Way Bill and even they did not ask for the copy of E-Way Bill, Purchase Order or Supplier details from the exporter;

(xi) On being asked who was the transporter, he replied that at the moment he doesn't know the name of the transporter who brought the export cargo; that he will submit the details of the transporter at the earliest;

9. To confirm the existence of the exporter, M/s. Sabri Impex at its declared address in IEC, a letter dated 28.06.2021 and subsequent reminder dated 02.08.2021 was issued to the jurisdictional Dy./Asstt. Commissioner of CGST,

Bhavnagar, Gujarat requesting them to visit the place of business and check the records of export made by the exporter. As jurisdictional Dy. Commissioner of CGST, Bhavnagar did not respond to the letters dated 28.06.2021 and 02.08.2021, a letter dated 29.09.2021 was issued to the Addl. Commissioner of Customs & GST, Bhavnagar, Gujarat, requesting to confirm the existence of the principal place of business and records of exports made by the exporter. Also another letter dated 11.07.2022 and mail dated 30.09.2022 were issued to the jurisdictional Dy. Commissioner of Customs, Bhavnagar, Gujarat seeking Bhavnagar, verification of the genuineness of IGST details of M/s. Sabri Impex, Gujarat i.e, whether M/s. Sabri Impex had paid the impugned IGST for export consignments through Cash Ledger or Input Tax Credit (ITC), the genuineness of the ITC availment of IGST paid through credit and whether the exporter, M/s. Sabri Impex had filed the GST returns or otherwise. In reply, the Joint Commissioner(AE), CGST, Bhavnagar, Gujarat vide letter GEXCOM/AE/INV/GST/1430/2020-AE dated 06.12.2022 had informed that M/s. Sabri Impex had paid the impugned IGST for export consignment through ITC; that as per the GSTR-2A data, the suppliers of M/s. Sabri Impex are suo moto (ab-initio) cancelled and therefore, ITC availed by M/s. Sabri Impex is not appearing genuine; that as per the GST portal, the taxpayer M/s. Sabri Impex had filed the GST return (GSTR-3B) till April 2022 and that further investigation in the matter is under progress.

10. Two Summons dated 02.08.2021 and 23.09.2021 were issued to Shri Mahamadsultan Mahamadyusuf Kapadiya, Proprietor of the exporting firm M/s. Sabri Impex, Bhavnagar, Gujarat directing him to appear before the Investigating Officer for giving evidence in the case on 17.08.2021 and 04.10.2021. However, Shri Kapadiya neither appeared before the Department for giving evidence in compliance of said Summons nor submitted any written submission in the matter.

11. Further Statement of Shri Savio Gomes, Senior Manager - Operations of M/s. Inter Freight (Forwarders) Pvt. Ltd. (CB-11/500) was recorded on 09.09.2021 u/s. 108 of the Customs Act, 1962, wherein, he inter alia stated that:

(i) his role in the firm is to look after the Customs clearance and operation; that the DSC Dongle is in his name which is used by the Company, i.e. M/s. Inter Freight (CB-11/500); that they normally handle shipments of Airline Spare Parts, Navy & Defence Cargo; that there are approximately 25 persons employed in the firm;

(ii) On being asked who is using his dongle in the Company and whether they are authorized by the company, he replied that the company has one dongle for filing documents in which he is holding Power of Attorney on behalf of the company

and he has been authorized by the Directors of the company; that on behalf of the company, the employees have to file the documents;

(iii) On being asked whether he met representative of the exporting firm before taking up their clearance work, if not the reason thereof, he replied that no, due to CORONA Pandemic there was very less work so the firm M/s. Inter Freight took work from M/s. Shams Logistics, whose client is M/s. Sabri Impex; that as M/s. Shams Logistics was the sub-agent for M/s. Sabri Impex, they were dealing with their client directly, hence, whatever communication was to be done was done through M/s. Shams Logistics; that they had taken up the clearance work after verifying the documents of First Time Registration of KYC done in Customs which was done through another CHA;

(iv) On being asked after receiving KYC documents how did he verify for its authenticity, he replied that they had first verified the documents for First Time Registration which was done by M/s. Laxmidas & Co. (CB - 11/280) at ACC, Mumbai; that after verifying the same they had taken an Authority Letter from M/s. Shams Logistics as well as from M/s. Sabri Impex along with other relevant documents like Bank Statement, IEC Copy etc.;

(v) On being asked how many shipping bills of M/s. Sabri Impex were cleared by them, he stated that only five S/Bills were filed by them on behalf of the exporter M/s. Sabri Impex, the details of the same have already been submitted by Mr. Praveen Singh, Sr. Manager - Sales Marketing in the firm;

(vi) On being asked who filed S/Bills in his office in whose name DSC Dongle has been issued, he replied that DSC Dongle has been issued in his name and another employee Shri Savio D'Souza filed the S/Bills;

(vii) On being asked whether they exercise any caution to ascertain that the goods exported by M/s. Sabri Impex is declared correctly w.r.t. description, classification and value, he stated that he did take caution and he is aware about description and classification but mostly rely on exporter's declaration to be true and fair;

(viii) On being asked whether he asked the reason from the client why they had split the S/Bills into five when the goods were destined for same consignee and same country, he replied that yes, they did enquired about it from M/s. Shams Logistics to which M/s. Shams Logistics further enquired with exporter M/s. Sabri Impex and replied that they have got five different Export Invoices, so five different S/Bills are to be filed and as all five S/Bills were filed under Free S/Bills Scheme, they did not raised any doubt;

(ix) On being asked did he not check whether any other incentive is being claimed by filing Free S/Bills, he replied that as per his knowledge, there was no incentive for Free S/Bills can be availed from the Customs;

(x) On being asked whether he saw the cargo physically any time during its export, when it was brought to ACC and was he satisfied with valuation of the cargo, he stated that no, he had not seen the cargo physically but one of his export/ import cargo mainly at ACC, Sahar, Mumbai; that his role in the firm is mainly to clear the export consignments at ACC, Sahar, Mumbai;

(xi) On being asked whether he received consignments of M/s. Sabri Impex on behalf of his firm and on whose instructions, he stated that in the ACC it is a general practice that a loader named Ashish of his firm receives the export cargo and unloads this cargo in the Export Shed of ACC; that after weighment of the cargo, the loader Ashish then hand over the cargo to him for Customs clearance;

(xii) On being asked what are formalities to be followed when accepting the cargo for exports from the shipper at the time of carting, he stated that after weighment, the cargo is kept on the location which is allocated by MIAL; then he completes the process of the registration and Customs clearance formalities; that after LEO, for carting of the cargo he approach the Airline Carting Staff along with related documents, i.e. Airway Bill and Gate Pass; that Airline Carting Staff then gives them an acknowledgement of received cargo on the Gate Pass and starts carting of the cargo themselves;

(xiii) On being asked what did he check in the consignments of M/s. Sabri Impex at the time of its carting and examination, he stated that at the time of carting and examination, he was present when the cargo was examined by Customs; that the cargo lot consisted of 10 packages under 05 S/Bills; that out of these 05 S/Bills, 01 S/Bill No. 8758023 dated 19.02.2021 was marked by the System for examination by Customs; that remaining S/Bills were marked for 'Inspection of Packages' by the Customs; that on opening the package he saw that there was some kind of Electric Machine: that the size of the Machine was about 1.5'X 2.5 in size; that as he does not have any knowledge of the machine, he did not think about price and weight; that as per declaration of CTH given by the shipper this consignment was classified as Electrical Machine; that the export of goods were under Free S/Bills with no benefits under any Scheme so there was no doubt about the consignment in his mind;

(xiv) On being asked whether anybody from the exporter side came along with the cargo to Export Shed at ACC and whether anybody from exporter's side called him, he answered in negative for both the questions;

(xv) On being asked what is the procedure for making a Gate Pass for exporting the cargo and in this particular shipment who has made the Gate Pass and who

is the IATA Agent, he stated that they generate S/Bill in their CHA office and secondly they generate the Airway Bills in the office and Airway Bills forwarded to GVK and Airlines; that Airlines release the Carting in System and then we (as CHA firm) generates the Gate Pass against the Airway Bill Number: that in this office employee, namely Shri Sandeep Mohite was present during the physical examination of the goods; that the value seemed fair to him;

(xvi) On being asked whether he is aware that their sub-agent is not liable to verify the genuineness of export firm rather onus is on his firm, he replied that yes, he was aware, but he trusted M/s. Shams Logistics and also verified the KYC documents;

(xvii) On being asked when the value of the goods were so high whether he asked for copy of E-Way Bill from the exporter, he stated that no, they were not concerned in any way to see E-Way Bill copy as the transporter was appointed by the exporter;

(xviii) On being asked whether he want to say anything else, he stated that he was not aware that M/s. Sabri Impex is involved in any kind of fraudulent exports and was filing S/Bills trusting Sub-agent, M/s. Shams Logistics. He further stated that he is ailing from Kidney damage and his son is having autism, so he has to take care of him along with himself therefore he requested to take lenient view and exonerate him.

12. Looking into the facts of the case, it is apparent that the exporter in connivance with foreign suppliers as well as CB firms had hatched a fraudulent plan to export the impugned goods having total Value of 1,07,53,950/- by resorting to overvaluation. Though the exporter filed free Shipping Bills, their main aim was to avail undue IGST Refund. However, due to timely intervention of investigating agency i.e. APU, M/s. Sabri Impex was not successful in availing the IGST Refund for the said 05 consignments. Subsequently, the IGST Refund Section was asked to freeze the IGST Refund in the name of the exporter M/s. Sabri Impex.

13. During the course of investigation statements of various employees of CB firm M/s. Inter Freight (Forwarders) Pvt. Ltd. (CB No. 11/500) were recorded under Section 108 of the Customs Act, 1962, who uniformly submitted that the work of clearance came to them through their Sub-agent M/s. Shams Logistics; that M/s. Shams Logistics collected KYC documents and verified the same and also forwarded the requisite export documents, viz. Invoices, Packing List for filing of S/Bills; that being work routed through Sub-Agent as well as ongoing COVID restrictions, they did not verify the KYC documents; that they did not doubt the value of the goods being an Electrical Machine; that they did not suspect or enquire in detail about the reason for splitting the consignment in five S/Bills as

the consignee and place of destination was the same. The CB firm being a nodal agency between Customs and trade required to be cautious and file the documents on due verification of its client and careful about the classification and value of the goods vis-à-vis its declared description. However, in the instant case it appeared that the CB firm acted in a casual manner and relied totally on their Sub-agent for verification of the KYC of the exporter and therefore aided and abetted in wrongdoings of the exporter in violation of provisions of CBLR, 2018 and Customs Act, 1962. Though the work routed from Sub-Agent, the onus of compliance of provisions of Regulations under CBLR, 2018 is on the CB firm M/s. Inter Freight, which appeared to be contravened. Therefore, the CB has failed to comply with following regulations of the Customs Brokers Licensing Regulations 2018:

Legal Provision of the CBLR, 2018:-

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

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

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

14. SHOW CAUSE NOTICE: M/s. Interfreight Forwarders Pvt. Ltd. (11/500) was issued a Show Cause Notice (SCN) No. 20/2023-24 dated 14.07.2023 by the Principal Commissioner of Customs (General), NCH, Mumbai, Zone-I asking them to show cause as to why the licence bearing no. 11/500 issued to them should not be revoked and security deposited should not be forfeited and/or penalty should not be imposed upon them under Regulation 14 read with 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018 as elaborated in the Show Cause Notice. They were directed to appear for a personal hearing and to produce proof of evidence/documents if any, in their defense to Shri Om Prakash Tiwari, Deputy Commissioner of Customs who was

appointed an inquiry officer to conduct inquiry under regulation 17 of CBLR, 2018.

15. SUSPENSION/REVOCAION OF LICENSE: In view of the facts stated above, CB, M/s. Interfreight Forwarders Pvt. Ltd. (11/500) was found liable for their acts of omission and commission leading to contraventions of the provision under Regulation 10(a), 10(d) and 10(n) of CBLR, 2018. Therefore, prima facie, it appeared that the CB failed to fulfil their responsibilities as per provisions of regulations of CBLR, 2018. Hence the licence of CB was put under immediate suspension vide Order No. 12/2022-23 dated 23.05.2023. The Suspension of CB License was revoked vide Order No. 16/2023-24 dated 09.06.2023 under Regulation 16(2) of the CBLR, 2018 passed by the Principal Commissioner of Customs(G), NCH.

16. INQUIRY REPORT

Inquiry Officer submitted Inquiry Report dated 26.09.2023, wherein, the charges against CB M/s. Interfreight Forwarders Pvt. Ltd. (11/500) i.e. violation of Regulation 10(a), 10(d) and 10(n) of CBLR, 2018 were held as 'Not Proved'.

16.1 RECORD OF PERSONAL HEARINGS:- IO submitted that Shri Vivek Gupta, Director of the charged Customs Broker (11/500), M/s. Inter Freight (Forwarders) Pvt. Ltd. has attended the personal hearings on 04.09.2023 and 18.09.2023. In both of the PHs, the charged CB has given both oral and written submissions. The gist of the CB submissions are as follows:-

- i. The CB has contended that they have not violated regulation 10(a) of Customs Brokers Licensing Regulations, (CBLR), 2018 relying upon the latest case law of Lingama Logisol Pvt. Ltd. v/s Principal Commissioner of Customs (General), Mumbai (CESTAT Mumbai Bench).
- ii. The CB submitted that they have not violated regulation 10(d) of Customs Brokers Licensing Regulations, CBLR, 2018, arguing that the provision of non-splitting of shipping bills under free shipping bills does not come under the purview of Circular 6/2002-Customs dated 23.01.2022. As the cause of action for tendering advice to the Exporter does not arise, hence they are not duty bound under this provision to advise the exporter to not split the free shipping bills.
- iii. The CB denied any violation of regulation 10(n) of Customs Brokers Licensing Regulations, CBLR, 2018. They have relied upon the judgements of Bright Clearing (Carrier) Pvt. Ltd. Vs Commissioner of Customs (CESTAT Delhi Bench) dated 18.11.2022 and Kunal Travels (Cargo) Vs CC, 2017(354) ELT 447. They have contended that they have done the KYC as per the provisions specifically mentioned in the Board Circular 9/2010 dated 08.04.2010.

16.2 SUBMISSION OF CUSTOMS BROKER:- The Customs Broker M/s. Inter Freight (Forwarders) Pvt. Ltd., having CB Licence No. (11/500) in their written submissions dated 04.09.2023 and 18.09.2023 *inter alia* submitted that:

i. In defence of violation of Regulation 10(a) of CBLR, 2018:- CB submitted that it has been alleged that they never met the Exporter or visited his office for verification and dealt through the third party and also the CB did not obtain the authorisation letter directly from the exporter. In this regard, CB submitted that Regulation 10(a) of Customs Brokers Licensing Regulations CBLR, 2018 nowhere casts any obligation upon the CB to obtain the authorisation directly from the importer/exporter. The CB relied upon the case law of M/s. Lingama Logisol Pvt. Ltd vs Principal Commissioner of Customs (General), New Customs House, Mumbai (Final Order No. A/86348/2023 dt. 07.09.2023) passed by Hon'ble CESTAT Mumbai Bench. The CB argued that there is no statutory requirement under Regulation 10(a) of CBLR 2018, to personally/physically meet the importer/exporter or make a physical visit to the premise of the importer/exporter in order to obtain the authorisation letter from the importer/exporter. Hence regulation 10(a) does not mandate to directly/physically obtain the authorisation letter from the importer/exporter. CB further submitted that they had received the Authorisation Letter of the exporter M/s. Sabri Impex through their sub agent M/s Shams Logistics via email. CB also mentioned that they were in contact with the Exporter through telephone. The CB asserts that they have not violated any of the obligations mentioned in Regulation 10(a) of Customs Brokers Licensing Regulations CBLR, 2018.

ii. In defence of violation of Regulation 10(d) of CBLR, 2018:- The CB submitted that the allegation on them is that the CB did not meet the representatives of the exporting firm and also there is no communication between CB and exporter, and that the CB should have advised the exporter not to split the Shipping Bill. CB submitted that, since the consignments were going to sensitive port i.e. Dubai and the consignor and consignee are the same in all five shipping bills, so documents should not be split as per Board Circular number 06/2002 dated 23.01.2022. CB further submitted that it has been alleged vide SCN No. 262/ADC/PKK/2022-23 dated 06.03.2023 issued by the Additional Commissioner of Customs (Exports), Air Cargo Complex, Mumbai, that the CB has abetted/connived with M/s. Sabri Impex (the Exporter) in the overvaluation of the five (05) shipping bills and it was the duty of CB to advise the client, i.e. the Exporter, regarding the overvaluation of the five (05) shipping bills.

CB submitted that Regulation 10(d) of CBLR, 2018 does not cast any obligation upon the CB to personally meet the importer/exporter for giving advice. The same can be done through agents'/sub agents or over telephone, especially when the credentials of the Exporter were duly verified following the KYC

procedures as mandated by Regulation 10(d) of Customs Brokers Licensing Regulations, CBLR, 2018, explained in detail in Board Circular No. 06/2002 dated 23.01.2023. Moreover, the CB states that there was no reason to believe on record or prior information about the overvaluation of the exported items. From the plain reading of the above mentioned Board Circular it is apparent that there is no scrutiny/examination suggested in the case of free shipping bills. In the light of above circumstances, the charged CB argues that there was no statutory requirement to advise the Exporter regarding non-splitting of the five (05) Shipping Bills. As regarding the allegation of connivance that the CB has abetted/connived with M/s. Sabri Impex (the Exporter) in die overvaluation of the five (05) shipping bills, the CB argues that all the exported items under five (05) shipping bills were complex Electrical Machineries, and it would be almost impossible to deduce the exact market price of the items. The CB further mentioned that one of the shipping bill no 8758023 was duly opened and examined by one Customs officer., and the Customs officer did not give any adverse comment in EDI system. The CB further states that although they did not meet personally/physically with the exporter, they communicated with the Exporter over telephone. So the cause of action for giving any sort of advice to the Exporter did not arise at the first place. Hence, the CB asserts that they have not violated any of the obligations mentioned in Regulation 10(d) of CBLR, 2018.

iii. In defence of violation of Regulation 10(n) of CBLR, 2018:- The CB submitted that the allegation regarding that the CB did not meet the representatives of the Exporter, and also there is no communication between CB and the Exporter and that the CB did not verify the address of the exporter M/s Sabri Impex.

CB submitted that they had duly verified the necessary documents in respect of the exporter M/s Sabri Impex, strictly as per Regulation 10(n) of CBLR, 2018 and Board Circular No. 9/2010 dated 08.04.2010. As per said circular, there is no obligation upon the CB to physically visit the premises of the importer/exporter to verify the correctness of the declared address of the importer/exporter. The same can be verified by verifying the correctness of the list of documents illustrated in Board Circular No. 09/2010 dated 08.04.2010. They further argued that it is not obligatory for CB to personally/physically meet any of the representatives of exporter/importer to obtain the list of documents for verification. The same can be obtained through agents/sub agents. CB relied upon the following case laws:

- i. M/s Bright Clearing (Carrier) Pvt. Ltd. Vs Commissioner of Customs (CESTAT Delhi Bench) dated 18.11.2022
- ii. Kunal Travels (Cargo) Vs Commissioner of Customs (Import & General), New Delhi (Delhi High Court) dated 27.03.2017.

- iii. Hon'ble CESTAT (Delhi Bench) in the matter of Perfect Cargo & Logistics Vs. CC (Airport & General), New Delhi reported vide 2021(376) E.L.T.649(Tri-Del).

The CB further mentioned in their defence that they had duly obtained the first time export certificate of M/s Sabri Impex (Exporter). The CB states that they would still have visited the premises of exporter although it is not obligatory upon them but due to the unprecedented situation of complete lock down due to COVID-19 the movements were severely restricted, Hence the charged CB asserted that they have not violated any of the obligations mentioned in Regulation 10(n) of CBLR, 2018.

16.3 Comments of the Inquiry Officer:-

i. IO submitted that on perusal of the records it was noticed that the entire investigation/proceedings of ACC export are based upon a specific intelligence, which was developed by the Officers of Air Preventive Unit, Rummaging & Intelligence, ACC. Mumbai (APU, R&I in short) that certain exporters were indulged in exporting certain goods by overvaluing, with an intent to avail undue IGST Refund. Accordingly, data on ICES 1.5 System was analysed, which revealed a suspected case of overvaluation and fraudulently obtaining undue IGST Refund by M/s. Sabri Impex (IEC No.2416902377) having GST Registration No. 24ARVPK7730M1Z3. Vide the same SCN the CB has been implicated for alleged connivance or abatement in the act of overvaluation together with the exporter M/s Sabri Impex. However, after perusal of all the available records, IO submitted that no corroborative evidence has been brought on record to indicate that the Custom Broker has been in active connivance with the exporter Sabri impex in the act of attempt to export overvalued goods in order to obtain excessive IGST refund. IO further submitted that the charged Custom Broker acted in the capacity of a Custom Broker only; and to perform his role as CB, he is not required to make any declaration of the value, nor does he require under any law to file description of goods.

ii. Article of Charge-I :- Violation of Regulation 10 (a) of CBLR, 2018:

IO submitted that the charge levelled against the CB is that they have violated Regulation 10(a) of CBLR, 2018. it has been alleged that the CB never met the Exporter or visited his office for verification and dealt through the third party and also the CB did not obtain the authorisation letter directly from the exporter.

IO further submitted that on perusal of the records available it was clearly observed that the charged CB has obtained the authorization from M/s. Sabri Impex (Exporter), through their sub agent, M/s Shams Logistics, via email. It is

also observed that they did not physically/personally meet with the Exporter or any of their representatives.

IO submitted that the onus of physically meeting with the importer/exporter or visiting his premises physically is nowhere found while reading the provisions of Regulation 10(a) of CBLR, 2018. Perhaps it has been assumed or interpreted by the department while framing the allegations against the CB that obtaining authorization from the importer/exporter can only be held legal if the CB obtains the letter of authorization directly from the importer/exporter by meeting him physically or making a visit to the premises of the importer/exporter. This presumption is based on faulty premises and is ill conceived. IO also submitted that on perusal of available records, investigations and statements made by different people, and enquiry, it was noted that the CB had indeed received the letter of authorisation through their sub agent, M/s Shams Logistics. The CB had contacted the Exporter over telephone. Moreover, it is also noticed that throughout the process of investigation the Department has never alleged or questioned the genuineness of the letter of authorisation.

IO relied upon the decision of

- i. Hon'ble CESTAT, Ahmedabad Bench in the matter of N Thakkar & Amp Co vs Commissioner of Customs, Kandla, (CUSTOMS Appeal No. 12628 of 2019). IO further submitted that the ratio of the above judgement is squarely applicable in the present case.
- ii. Hon'ble CESTAT, Mumbai Bench in the matter of M/s Lingama Logisol Pvt. Ltd. vs Principal Commissioner of Customs (General), New Custom House, Mumbai (CUSTOMS Appeal No. 87260 of 2022).

IO submitted that the ratio of the above judgements are squarely applicable in the present case.

IO further submitted that CB while obtaining the letter of authorisation from the said Exporter through their sub agent via email, has not violated the provisions under Regulation 10(a) (CBLR), 2018. Accordingly, IO held that the charges of violation of Regulation 10(a) of CBLR, 2018 is 'Not Proved'.

iii. **Article of Charge-II :- Violation of Regulation 10 (d) of CBLR, 2018:**

IO submitted that it has been alleged that the CB did not meet the representatives of the exporting firm and also there is no communication between CB and the Exporter, and that CB should have advised the exporter not to split the shipping bill since the consignments were going to sensitive port i.e. Dubai and the consignor and consignee are the same in all five shipping bills, so documents should not be split as per Board Circular No. 06/2002 dated 23.01.2022. It has been further alleged vide SCN No. 62/ADC/PKK/2022-23

dated 06.03.2023 issued by the Additional Commissioner of Customs (Exports), Air Cargo Complex, Mumbai, that the CB has abetted/connived with M/s. Sabri Impex (the Exporter) in the overvaluation of the five (05) shipping bills. It was the duty of CB to advise the client, i.e. the Exporter, regarding the overvaluation of the five (05) shipping bills.

IO submitted that the CB in their defence submitted that Regulation 10(d) of CBLR, 2018 does not cast any obligation upon the CB to personally meet the importer/exporter for giving advice. The same can be done through agents'/sub agents or over telephone, especially when the credentials of the Exporter were duly verified following the KYC procedures as mandated by Regulation 10(d) of CBLR, 2018 and explained in detail in Board Circular No. 06/2002 dated 23.01.2023. Moreover, the CB states that there were no reasons to believe on record or prior information about the overvaluation of the exported items.

IO submitted that the cause of action for CB's advice to his client arises only when there is some sought of non-compliance of the provisions of the Act, other allied Acts and the rules and regulations, on the part of his client, and that the CB is having prior information of such non-compliance. Hence if there is complete compliance, or such non-compliance of statutory provisions which is beyond the scope or obligation of the CB or the CB is not having any prior information about such non-compliance, then the question of giving advice to his client does not arise in the first place.

IO further submitted that on perusal of the available records, submissions and statements made, it is noted that although the CB did not personally/physically meet any of the representatives of the exporting firm, they had been indeed in communication over telephone. Even the department has not at any point of time, contradicted this statement of CB that they had communicated with the Exporter over telephone. Neither did the department produce any evidence on record to prove otherwise.

IO submitted that on careful perusal of Board Circular No. 06/2002-Cus dated 23.01.2002, it is observed that its para 2.3 states that *"it is to be ensured that exporters do not split up the consignments so as to fall within the lower examination norms therefore wherever on the same day the same exporter attends to export a consignment other than free shipping bills involving export incentive of Rs. 1 lakh or less (Drawback/DEPB) or in other cases having the FOB value upto Rs. 5 lakh to the same country."*

IO submitted that on perusal of Board Circular No. 01/2009-Cus dated 23.01.2002, it is observed that- "if the exports are made on free shipping bill without any declaration of any claim under Chapter 3 of FTP, the existing norms

of "no examination except where there is specific intelligence" would continue to apply.

IO submitted that on conjoint reading of the provisions of both the above mentioned Circulars it becomes aptly clear that the provision of non-splitting of shipping bills does not apply for free shipping bills. Hence if the export is made under "free shipping bills, without any declaration of any claim under Chapter 3 of FTP", then such consignments shall not be subject to any examination norms, irrespective of the value of consignment. On perusal of all the five (05) shipping bills 8753566, 8756954, 8758023, 8758023 and 8759505, it is observed that all the five (05) shipping bills were free shipping bills and none of them had any declaration for availing any claim under Chapter 3 of FTP. Hence the provisions of para 3.2 of Board Circular 6/2002-Cus dated 23.01.2002 that prohibits splitting of bills under single consignment exported by the same exporter on the same day to export the consignment to the same country, does not apply in the present case. Since there was no non-compliance of the provisions of non-splitting of shipping bills, so the cause of action for giving any sort of advice to the Exporter did not arise at the first place.

It has been further alleged vide SCN No, 262/ADC/PKK/2022-23 dated 06.03.2023 issued by the Additional Commissioner of Customs (Exports), Air Cargo Complex, Mumbai, that the CB has abetted/connived with M/s. Sabri Impex (the Exporter) in the overvaluation of the five (05) shipping bills. It was the duty of CB to advise the client, i.e. the Exporter, regarding the overvaluation of the five (05) shipping bills. The CB in their defence states that there were no reasons to believe on record or prior information about the overvaluation of the exported items. The CB argues that all the exported items under five (05) shipping bills were complex Electrical Machineries, and it would be almost impossible to deduce the exact market price of the items. The CB further mentions that one of the shipping bill no 8758023 was duly opened and examined by one Customs officer, and the Customs officer did not give any adverse comment in EDI system.

IO submitted that after perusal of all the available records, no corroborative evidence has been brought on record to indicate that the Customs Broker was aware of the overvaluation of exported goods done by the Exporter, in order to obtain excessive IGST refund. IO further submitted that the charged CB has acted in the capacity of a Custom Broker only and to perform his role as CB. He is not required to make any declaration of the value, nor does he require under any law to file description of goods.

IO relied upon the decision of

- i. Hon'ble Delhi High Court in the case of Kunal Travels (Cargo) Vs CC, 2017(354) ELT 447. IO submitted that the ratio of the above judgement is squarely applicable in the present case.
- ii. Hon'ble CESTAT, New Delhi Bench in the matter of GND Cargo Movers V/s Commissioner of Customs (General).

IO submitted that the ratio of the above judgements is squarely applicable in the present case.

IO submitted that unless it is found that false details in the import/export documents filed with the department were entered by the CB knowingly, CB cannot prima facie be held to have abetted the overvaluation of the exported goods. IO further submitted that there is no evidence to prove that CB was having prior knowledge of the alleged overvaluation of the exported goods. Therefore, IO held that the charges of violation of Regulation 10(d) of CBLR, 2018 is 'Not Proved'.

iv. **Article of Charge-III :- Violation of Regulation 10 (n) of CBLR, 2018:**

IO submitted that it is alleged that the CB did not meet the representatives of the Exporter, and also there is no communication between CB and the Exporter and that the CB did not verify the address of the exporter M/s Sabri Impex.

IO submitted that the correctness of IEC no., and GSTIN can easily be done by checking online in their respective web portals. Regarding KYC, detailed illustration has been given in Circular 9/2010-Cus dated 08.04.2010. IO submitted that on perusal of Board Circular 9/2020-Cus dated 08.04.2010, the para 6 mentions in detail the procedure of KYC, that is to be mandatorily followed by the CB.

IO submitted that the CB relied upon the decision of Hon'ble CESTAT, New Delhi Bench in the matter of M/s. Bright Clearing & Carrier Pvt. Ltd. vs Commissioner of Customs, (Airport & General), New Delhi 2022(11) TMI 935-CESTAT New Delhi. IO submitted that he had taken cognizance of this case law. on perusal of this judgement, IO submitted that the ratio of the decision in this judgement is squarely applicable in the present case.

IO submitted that on careful perusal of available records, it is clear that the CB had collected both IEC (Code: 2416902377) and GSTIN (24ARVPK773OM123) documents as mandated by Regulation 10(n) of CBLR 2018. As per the records, the CB has duly verified the credentials of both documents through online portal. This can be done through online verification, comparing with the original documents, etc. and does not require an investigation into the documents by the Customs Broker. Hence, there is no obligation for CB and physically meet his client to collect and verify GSTIN and IEC documents. The same can be done in online mode.

In the present case the documents collected for verification purpose *inter alia* were:

1. PAN Card
2. IEC document
3. GSTIN Registration document
4. Bank Statement

IO submitted that all the above-mentioned documents are issued by different government agencies, which can be considered reliable and independent. Even the bank statement was issued by HDFC bank, which is a Scheduled Bank. IO further submitted that for the purpose of verification of address, it is noted that the address mentioned in the IEC document (issued by Ministry of Commerce), matches exactly with the address addressed in the shipping bills.

IO submitted that it can be safely said that there is no need for CB to personally visit the declared premises of his client to verify the correctness of the declared address. The same can be done by online verification of GSTIN/IEC documents. IO further submitted that the CB had collected PAN Card (No ARVPK7730M) and Bank Statement of HDFC Bank (Bhavnagar Branch, Branch Code -1686), thus fulfilling the obligation mentioned in Column 4 of the Annexure in Board Circular No. 9/2010-Cus dated 08.04.2010,

The crux which comes out from this para-24 is that the earlier judgement in the case M/s Baraskar Brothers v/s CC dated 16.07.2009, Hon'ble Tribunal Mumbai Bench ruled that it is obligatory for the CB to physically visit the premise of client for verification of the declared address. But later in Kunal Travels (Cargo) Vs Commissioner of Customs (Import & General), New Delhi (Delhi High Court) dated 27.03.2017 a contrary view was taken by Hon'ble Delhi High Court. Following the principle of stare decisis the Tribunals which is subordinate to High Court has followed the decision that it is not obligatory for the CB to physically visit the premise of his client for verification of the declared address. This decision was honoured by M/s Bright Clearing (Carrier) Pvt. Ltd. V/s CC (Airport & General) New Delhi., then in case of M/s Lingama Logisol Pvt. Ltd. vs Principal Commissioner of Customs (General), New Custom House, Mumbai (CUSTOMS Appeal No. 87260 of 2022) and numerous other judgements.

IO submitted that the ratio of the above judgements is squarely applicable in the present case. IO submitted that CB had obtained the GSTIN, IEC, PAN Card, Bank Statement and other documents. They duly verified the documents online which matches with the details mentioned in KYC Form and Shipping Bills which was declared by the Exporter although they did not meet the Exporter

physically, but received these documents through their sub-agent. IO submitted that by doing so CB had not violated Regulation 10(n) of CBLR 2018.

Thus, IO held that the charges of violation of Regulation 10(n) of Customs Brokers Licensing Regulations (CBLR), 2018 is Not Proved.

17. DISAGREEMENT MEMO: - The Inquiry Officer in his report dated 26.09.2023 held the charges for violation of Regulation 10(a), 10(d) and 10(n) as 'Not Proved'. Pr. Commissioner of Customs (G), Mumbai-I, disagreed with the Inquiry Officer's report in respect of the charges under regulation 10(a) and 10(n) in the light of available evidences on record. Therefore, a Disagreement Memo dated 04.12.2023 was issued by Pr. Commissioner of Customs (G), Mumbai-I with respect to charges 10(a) and 10(n) of the CBLR, 2018.

18. PERSONAL HEARING AND RECORDS OF PERSONAL HEARING :-

A personal hearing was granted to Customs Broker on 08.01.2024. Shri Vivek Gupta, Managing Director of the CB firm alongwith Shri Praveen Singh V.P. Operations & Sales appeared for personal hearing wherein, they stated that :-

- i. they verified all the documents of exporter including Bank statements.
- ii. It was free Shipping Bill and shipper was already registered with Customs, so giving them verification confidence.
- iii. They requested to take lenient view.

19. DISCUSSION AND FINDINGS:-

I have gone through the facts of the case, material evidence on record, the said Show Cause Notice dated 14.07.2023, and Inquiry Report dated 26.09.2023, written and oral submissions of the said CB.

19.1 I observe that the charges against the said CB is violation of regulation 10(a), 10(d) and 10(n) of CBLR, 2018 made vide Show Cause Notice No. 20/2023-24 dated 14.07.2023. The Inquiry Officer vide inquiry report dated 26.09.2023 held the charges of violation of Regulations 10(a), 10(d) and 10(n) of CBLR, 2018 as "Not Proved".

19.2 For brevity, I refrain from reproducing the brief facts of the case which have already being discussed above. I, now, examine the charges in the SCN sequentially.

19.3.1 With regard to violation of Regulation 10(a) of CBLR, 2018:

19.3.1.1 The said regulation 10(a) of CBLR, 2018 reads as :-

"A Customs Broker shall obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker

and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be."

19.3.1.2 IO in his report submitted that on perusal of the available records it was observed that the CB had obtained the authorization from exporter M/s. Sabri Impex through their sub agent, M/s Shams Logistics, via email. IO also submitted that CB did not physically/personally meet with the exporter or any of their representatives and contacted the exporter over telephone. Moreover, it is also noticed that throughout the process of investigation the Department has never alleged or questioned the genuineness of the letter of authorisation. IO in his report submitted that CB while obtaining the letter of authorisation from the exporter through their sub agent via email, has not violated the provisions under Regulation 10(a) of CBLR, 2018. Accordingly, IO held that the charges of violation of Regulation 10(a) of CBLR, 2018 is 'Not Proved'.

19.3.1.3 The CB in his defence argued that there is no statutory requirement under Regulation 10(a) of CBLR 2018, to personally/physically meet the importer/exporter or make a physical visit to the premise of the importer/exporter in order to obtain the authorisation letter from the importer/exporter. CB further submitted that they had received the Authorisation Letter of the exporter M/s. Sabri Impex through their sub agent M/s Shams Logistics via email. CB also mentioned that they were in contact with the exporter through telephone.

19.3.1.4 I find from the offence report that CB in his statement admitted that they did not physically/personally meet with the exporter or any of their representatives. The CB admitted that they received the Authorisation Letter of the exporter M/s. Sabri Impex through their sub agent M/s Shams Logistics via email. I find that the CB was obliged under Regulation 10(a) of CBLR, 2018 to, amongst other things "*Obtain an authorization from.....firms or individuals by whom he is for the time being employed as a Customs Broker*". In the words of 'by whom', it is implied that authorisation was to be directly obtained from the firm (exporter) who had employed the CB. In the words of the 'Obligation', there is a pro-active undertone to the act of obtaining Authorization from the exporter who employed the Customs Broker. In the instant case, I find that CB was never in contact with the exporter and obtained the Authorisation Letter of the exporter M/s. Sabri Impex through their sub agent M/s Shams Logistics and failed to submit any evidence that he was in direct contact with the exporter through any means of communication. Since CB dealt through the third party and did not obtain authorization letter directly (neither personally nor through formal correspondence) from the exporter, which constitutes violation of Regulation 10(a) of CBLR, 2018.

From the above facts and circumstances, I am of the considered view that the CB failed to obtain authorization directly from the exporter in respect of exported goods. Therefore, I hold that the CB has violated the provisions of Regulation 10(a) of the CBLR, 2018.

19.3.2 With regard to violation of Regulation 10(d) of CBLR, 2018:

19.3.2.1 The said regulation 10(d) of CBLR, 2018 reads as :-

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

19.3.2.2 IO in his report submitted that on perusal of the available records, submissions and statements made, it is noted that although the CB did not personally/physically meet any of the representatives of the exporting firm, they had been indeed in communication over telephone. IO also submitted that on conjoint reading of the provisions of Board Circular No. 06/2002-Cus dated 23.01.2002 and Board Circular No. 01/2009-Cus dated 23.01.2002, it becomes aptly clear that the provision of non-splitting of Shipping Bills does not apply for free Shipping Bills. Hence, if the export is made under "free shipping bills, without any declaration of any claim under Chapter 3 of FTP", then such consignments shall not subject to any examination norms, irrespective of the value of consignment. IO in his report submitted that all the five (05) Shipping Bills handled by CB were free shipping bills and none of them had any declaration for availing any claim under Chapter 3 of FTP. Hence, the provisions of para 3.2 of Board Circular No. 6/2002-Cus dated 23.01.2002 that prohibits splitting of bills under single consignment exported by the same exporter on the same day to export the consignment to the same country, does not apply in the present case. IO further submitted that there was no non-compliance of the provisions of non-splitting of Shipping Bills, so the cause of action for giving any sort of advice to the exporter did not arise at the first place.

IO in his report further submitted that after perusal of all the available records, no corroborative evidence has been brought on record to indicate that the Customs Broker was aware of the overvaluation of exported goods done by the exporter, in order to obtain excessive IGST refund. IO further submitted that the charged CB has acted in the capacity of a Custom Broker only and to perform his role as CB. He is not required to make any declaration of the value, nor does he require under any law to file description of goods. Therefore, IO held that the charges of violation of Regulation 10(d) of CBLR, 2018 is 'Not Proved'.

19.3.2.3 CB in his defence submitted that Regulation 10(d) of CBLR, 2018 does not cast any obligation upon the CB to personally meet the importer/exporter for

giving advice. The same can be done through agents'/sub agents or over telephone, especially when the credentials of the exporter were duly verified following the KYC procedures as mandated by Regulation 10(d) of CBLR, 2018, explained in detail in Board Circular No. 06/2002 dated 23.01.2022. The CB also stated that there was no reason to believe on record or prior information about the overvaluation of the exported items. CB submitted that from the plain reading of the above mentioned Board Circular, it is apparent that there is no scrutiny/examination suggested in the case of free Shipping Bills. CB also argues that there was no statutory requirement to advise the exporter regarding non-splitting of the five (05) Shipping Bills. CB submitted that regarding the allegation of connivance that they abetted/connived with M/s. Sabri Impex (the Exporter) in die overvaluation of the five (05) shipping bills, the CB argues that all the exported items under five (05) shipping bills were complex Electrical Machineries, and it would be almost impossible to deduce the exact market price of the items. The CB further states that although they did not meet personally/physically with the exporter, they communicated with the exporter over telephone. So the cause of action for giving any sort of advice to the Exporter did not arise at the first place. Hence, the CB asserts that they have not violated any of the obligations mentioned in Regulation 10(d) of CBLR, 2018.

19.3.2.4 I find that IO in his report submitted that CB did not personally/physically meet any of the representatives of the exporting firm but they had been indeed in communication over telephone. IO in his report further submitted that all the five (05) Shipping Bills handled by CB were free shipping Bills and none of them had any declaration for availing any claim under Chapter 3 of FTP. Hence, the provisions of para 3.2 of Board Circular No. 6/2002-Cus dated 23.01.2002 that prohibits splitting of bills under single consignment exported by the same exporter on the same day to export the consignment to the same country, does not apply in the present case. Hence, there was no non-compliance of the provisions of non- splitting of Shipping Bills. IO in his report further submitted that after perusal of all the available records, no corroborative evidence has been brought on record to indicate that the Customs Broker was aware of the overvaluation of exported goods done by the exporter, in order to obtain excessive IGST refund. In this regard, I agree with the findings of the Inquiry Officer and hold that CB has not violated the regulation 10(d) of the CBLR, 2018.

From the above facts and circumstances, I am of the considered view that there is no substantial proof/ records to establish that CB has contravened provisions of Regulation 10(d) of the CBLR, 2018. Therefore, I hold that the CB has not violated the provisions of Regulation 10(d) of the CBLR, 2018.

19.3.3 With regard to violation of Regulation 10(n) of CBLR, 2018:

19.3.3.1 The said regulation 10(n) of CBLR, 2018 reads as : -

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

19.3.3.2 IO in his report submitted that on perusal of available records, it is clear that the CB had collected both IEC (Code: 2416902377) and GSTIN (24ARVPK7730M1Z3) documents as mandated by Regulation 10(n) of CBLR 2018 and has duly verified the credentials of both documents through online portal. This can be done through online verification, comparing with the original documents, etc. and does not require an investigation into the documents by the Customs Broker. Hence, there is no obligation for CB to physically meet his client to collect and verify GSTIN and IEC documents. The same can be done in online mode. CB collected the following documents for verification purpose :-

1. PAN Card
2. IEC document
3. GSTIN Registration document
4. Bank Statement

IO in his report further submitted that all the above-mentioned documents are issued by different government agencies, which can be considered reliable and independent. Even the bank statement was issued by HDFC bank, which is a Scheduled Bank. IO further submitted that for the purpose of verification of address, it is noted that the address mentioned in the IEC document (issued by Ministry of Commerce), matches exactly with the address addressed in the Shipping Bills.

IO in his report also submitted that it can be safely said that there is no need for CB to personally visit the declared premises of his client to verify the correctness of the declared address. The same can be done by online verification of GSTIN/IEC documents. IO further submitted that the CB had collected PAN Card (No ARVPK7730M) and Bank Statement of HDFC Bank (Bhavnagar Branch, Branch Code -1686), thus fulfilling the obligation mentioned in Column 4 of the Annexure in Board Circular No. 9/2010-Cus dated 08.04.2010.

IO submitted that CB had obtained the GSTIN, IEC, PAN Card, Bank Statement and other documents. They duly verified the documents online which matches with the details mentioned in KYC Form and Shipping Bills which was declared by the Exporter although they did not meet the exporter physically, but received these documents through their sub-agent. IO submitted that by doing so

CB had not violated Regulation 10(n) of CBLR 2018. Thus, IO held that the charges of violation of Regulation 10(n) of CBLR,2018 is Not Proved.

19.3.3.3 CB in his defence submitted that they had duly verified the necessary documents in respect of the exporter M/s Sabri Impex, strictly as per Regulation 10(n) of CBLR, 2018 and Board Circular No. 9/2010 dated 08.04.2010. CB submitted that as per said circular, there is no obligation upon the CB to physically visit the premises of the importer/exporter to verify the correctness of the declared address of the importer/exporter. The same can be verified by verifying the correctness of the list of documents illustrated in Board Circular No. 09/2010 dated 08.04.2010. They further argued that it is not obligatory for CB to personally/physically meet any of the representatives of exporter/importer to obtain the list of documents for verification. The same can be obtained through agents/sub agents. In this regard CB relied upon the certain case laws:

The CB also submitted in their defence that they had duly obtained the first time export certificate of exporter, M/s Sabri Impex. The CB stated that they would still have visited the premises of exporter, although it is not obligatory upon them but due to the unprecedented situation of complete lock down due to COVID-19 the movements were severely restricted, Hence the charged CB asserted that they have not violated any of the obligations mentioned in Regulation 10(n) of CBLR, 2018.

19.3.3.4. I find that CB in his statement admitted that he never met with the exporter and received the KYC documents i.e. IEC and GSTIN of the exporter from their sub-agent M/s. Shams Logistics and has duly verified the credentials of both documents through online portal. Hence, it is clear that the CB received KYC documents through their sub-agent M/s. Shams Logistics and only verified the IEC and GSTIN of the exporter through online mode and failed to submit any evidences that they verified the functioning of the exporter by authentic and reliable sources. The casual approach of the CB to verify the identity of the IEC holder from online platforms is not acceptable because Regulation 10(n) of CBLR, 2018 is specially prescribed to verify identity and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. It is very clear from the records that the CB failed to verify even the basic requirements of knowing who is his actual client, and has of course not done any elaborate verification of his client and has not verified the business premises of the exporter. I also find that if the charged CB should have verified the functioning of his client by authentic & reliable sources then the possibility of the said offence could be minimized or stopped. Therefore, I hold that CB has violated the regulation 10(n) of the CBLR, 2018.

From the above facts and circumstances, I am of the considered view that the CB in the present case showed an act of carelessness which resulted in fraudulent activities of export. Therefore, I hold that the CB has violated the provisions of Regulation 10(n) of the CBLR, 2018.

20. While deciding the matter, I rely upon following judgements :-

20.1 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:

"A Custom Broker occupies a very important position in the customs House and was supposed to safeguard the interests of both the importers and the Customs department. A lot of trust is kept in CB by the Government Agencies and to ensure made under CBLR, 2013 and therefore rendered themselves liable for penal action under CBLR, 2013 (now CBLR, 2018)".

20.2 In case of M/s Cappithan Agencies Versus Commissioner Of Customs, Chennai-Viii, (2015(10) LCX 0061), the Hon'ble Madras High Court had opined that :-

- i. *The very purpose of granting a licence to a person to act as a Customs House Agent is for transacting any business relating to the entry or departure of conveyance or the import or export of goods in any customs station. For that purpose, under Regulation 9 necessary examination is conducted to test the capability of the person in the matter of preparation of various documents determination of value procedures for assessment and payment of duty, the extent to which he is conversant with the provisions of certain enactments, etc. Therefore, the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as CHA, it is seen that while CHA should be in a position to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an Agent for carrying on certain illegal activities of any of the persons who avail his services as CHA. In such circumstances, the person playing the role of CHA has got greater responsibility. The very description that one should be conversant with the various procedures including the offences under the Customs Act to act as a Custom House Agent would show that while acting as CHA, he should not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as CHA by taking advantage of his access to the Department. The grant of licence to a person to act as CHA*

is to some extent to assist the Department with the various procedures such as scrutinizing the various documents to be presented in the course of transaction of business for entry and exit of conveyances or the import or export of the goods. In such circumstances, great confidence is reposed in a CHA. Any misuse of such position by the CHA will have far reaching consequences in the transaction of business by the customs house officials. Therefore, when, by such malpractices, there is loss of revenue to the custom house, there is every justification for the Respondent in treating the action of the Petitioner Applicant as detrimental to the interest of the nation and accordingly, final order of revoking his licence has been passed.

- ii. In view of the above discussions and reasons and the finding that the petitioner has not fulfilled their obligations under above said provisions of the Act, Rules and Regulations, the impugned order, confirming the order for continuation of prohibition of the licence of the petitioner is sustainable in law, which warrants no interference by this Court. Accordingly, this writ petition is dismissed.

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

"Para 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."

21. In a regime of trade facilitation, a lot of trust is being placed on the Customs Broker who directly deals with the importers/exporters. Failure to comply with regulations by the CB mandated in the CBLR,2018 gives room for unscrupulous persons to get away with import-export violations and revenue frauds.

22. I have gone through the various Case Laws referred by the said CB in his various submissions and observed that the ratios of the judgment of said Case

Laws are not squarely applicable in the instant case, as the facts and circumstances are different and clearly distinguishable.

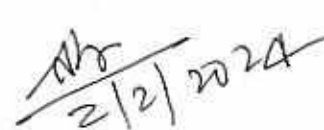
23. Thus in view of the above, I hold that the CB M/s. Interfreight Forwarders Pvt. Ltd. (11/500) failed to comply with the Regulation 10(a) & 10(n) of the CBLR, 2018, as discussed Supra and is liable for penal action under Regulation 14 and 18 of CBLR, 2018. Further, it cannot be substantiated that the Custom Broker connived with the exporter in the said fraud, hence mens rea could not be established. Hence, I am of the view that maximum penalty of revocation of license under Regulation 14 of the CBLR, 2018 is not justifiable. Accordingly, I pass the following order.

ORDER

24. 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 impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on M/s. Interfreight Forwarders Pvt. Ltd. (PAN No. AAIFI1588BCH001) (CB No. 11/500) under Regulation 18 of the CBLR, 2018.
- (ii) I hereby order for forfeiture of entire amount of security deposit furnished by the CB, under Regulation 14 of the CBLR, 2018.
- (iii) However, I refrain from revoking the CB License No.11/500 under Regulation 14 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.


(SUNIL JAIN)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
MUMBAI ZONE-I

M/s. Inter Freight Forwarders Pvt. Ltd.

(CB No. 11/500) (PAN: AAIFI1588BCH001),

1C, 1st Floor, Global 1, Near Phoenix Market City,

252 L.B.S. Marg, Kurla (West),

Mumbai - 400 070.

Copy to,

D/C

(EM683080558IN)

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. CIU's of NCH, ACC & JNCH
4. SIIB(X), ACC, Sahar, Mumbai
5. EDI of NCH, ACC & JNCH
6. ACC (Admn), Mumbai with a request to circulate among all departments.
7. JNCH (Admn) with a request to circulate among all concerned.
8. Cash Department, NCH, Mumbai.
9. Notice Board
10. Office Copy
11. Guard File (Admin)