



प्रधान आयुक्त, 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.-S/8-87/2020-21 –CBS आदेश दिनांक/Date of Order: 22.11.2024

CAO No.50/2024-25/CAC/PCC(G)/RC/Adj-CBS जारी दिनांक/Date of issue: 22.11.2024

DIN :2024117700000000AE10

द्वारा जारी : राजन चौधरी

Issued By : **Rajan Chaudhary**

प्रधान आयुक्त, सीमाशुल्क (सामान्य)  
मुंबई -400 001

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 खंडपीठ, 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 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 रु. पचास 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, 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:**

M/s. Joshi Jatashankar Liladhar & Sons, having office address at 89/91, Narayanrao Koli Marg, 2<sup>nd</sup> floor, Gurunanak Niwas, Mandvi, Mumbai - 400003 [hereinafter referred to as the Customs Broker/CB], bearing PAN based Registration No. AACFJ8539KCH001 are holding a regular Custom Broker License No. 11/168 issued by Commissioner of Customs (G), Mumbai under Regulation 9(1) of the Customs House Agents Licensing Regulations (CHALR), 2004 [Now regulation 7(2) of Customs Broker Licensing Regulations (CBLR, 2018)] and as such they are bound by the regulation and condition stipulated therein.

2. An Offence Report received vide F.No. SG/INV-88/2017-18 SIIB(X) JNCH//SCN No. 884/2020-21/SIIB(X)/CAC/JNCH dated 03.03.2021 from Dy. Commissioner of Customs SIIB(X), JNCH regarding attempt to export Men's Suits (Kandura) under drawback Scheme by M/s. Guru Mehar Textile Mills Pvt. Ltd. (IEC No. 0312068573) by mis-declaring them in terms of composition and value to avail undue export benefits.

3. A letter vide F.No. S/6-Gen-7429/2015 TLP (X) dated 28.12.2015 was received from the Assistant Commissioner of Customs, TLP (X), JNCH enclosing copy of Checklist of Shipping Bill No. 4748261 dated 16.12.2015, copy of Cost Sheet dated 21.12.2015 and representative sealed sample. In the above mentioned letter, it was informed that M/s Guru Mehar Textile Mills Pvt. Ltd. having address at Kuldeep Villa, Sonali Housing Complex, Gen. A K. Vaidya Marg, Panchpakhadi, Thane (W) -400602 (hereinafter referred to as "the exporter"), had filed a Shipping Bill No. 4748261 dated 16.12.2015 for the export of 36 cartons of Men's Suits through their Custom Broker M/s. Joshi Jatashankar Liladhar & Sons (CB No. 11/168). Further, it was informed that during the course of examination, the goods appeared to be highly over-invoiced. Further, It was informed that representative samples were drawn and forwarded to Textile Committee for testing the specification and content of the material declared and LEO was granted on 29.12.2015, after release of the goods covered under the impugned Shipping Bill provisionally on the Bond of full value as directed by the Commissioner of Customs, NS-1.

4. During the course of investigation, it was ascertained that the exporter had exported similar goods to claim undue drawback in the past under S/Bills No. 4748285 dated 16.12.2015 and 4748277 dated 16.12.2015.

5. The Textile Committee vide its Test Report No. 0153061516-12054 dated 21.03.2016 in-respect of S/Bill no. 4748261 dated 16.12.2015 concluded that "sample composed of polyester (84.2%) and cotton (15.8%)" and Test Report No. 0153061516-12053 dated 21.03.2016 in-respect of S/Bill no. 4748261 dated 16.12.2015 concluded that "sample composed of polyester (82.4%) and cotton (17.6%)". However, the exporter has declared the goods as made up of man-made fibers having DBK Sr. No. 62030102 (of blended fibres). Therefore, it appears that the exporter has mis-declared the goods to claim the drawback in DBK Sr. No.62030103 (of man-made fibers) to claim undue drawback benefits.

6. During the course of investigation, statement of Shri Surinderpal Singh Walia, Director of M/s. Guru Meher Textile Mills Pvt. Ltd., was recorded on 03.08.2017 and 19.06.2019, under Section 108 of the Customs Act, 1962, wherein he inter-alia stated that he is the director of M/s. Guru Meher Textile Mills Pvt. Ltd.; that he had filed the said S/Bill through the CB M/s. Joshi Jatashankar Liladhar & Sons (CB No. 11/168); that the consignment of "Men's Suits (Kandura)" covered under the subject S/Bill was going to be exported to Sudan, that the consignee was Canor Imports and Export, Khartoum; that the working staff in his company prepares the documents as per the orders from the buyer and he has the final authority to finalize the export documents; that he himself signed the invoices, packing list and other export documents as he is the authorized signatory and identified the signatures on invoices, packing list and other export documents. On being asked about the FOB of the goods decided, he stated that with the order from the buyer a sample of the item was also received from the buyer; that the sample was analysed by the team of technicians and an estimated cost of fabric, cost of stitching and labour was calculated and on the basis of this estimated cost of the product was approved by the buyer. After that the process of manufacturing started. He further submitted the following documents: (i) A copy of cost sheet certified by CA Mr. Anil Chauhan, Mem No166286 showing the total costing per set as Rs. 1400.50/- which includes Fabric charges, fusing etc. (ii) A Tax Invoice No. JE CLOTH4 dated 10.08.2015

in respect of fabric bill showing the cost of shirting 58" as Rs. 120/- per meter.

(iii) Delivery challan of fabric having challan No.04/15-16 dated 10.08.2015 showing the total quantity as 23,317.20 meters of Shirting 58". (iv) A copy of labour job, fusing charges etc. from Lavanya Enterprise showing the rate as Rs. 67/ per meter. (v) A copy of Contract No. GM/72/A/15-16 dated 01.07.2015 from Buyer M/s. Suresh Trading Co. Ltd, Dubai, UAE showing rate per set as 25 USD. The total cost of 1728 sets was 43200 USD. On being asked about foreign remittances being received against past exports, he stated that he couldn't recall the exact numbers of BRC's received and he will be submitting all the relevant details within 10 Days.; that the company was established in 2012 and they obtained IEC No. 0312068573 on 27.11.2012; that they procure goods from the market; that they started export of goods from January 2013; that the Company's office is situated at Kuldeep Villa, Sonali Housing Complex, General A.K. Vaidya Marg. Panchpakhadi, Thane West-400602; that Company's Bank Account is in Bank of India having Account No 006820110000489, Bullion Exchange Branch, Jhaveri Bazaar, Mumbai; that the shipping bill No. 4748261 dated 16.12.2015 was filed by them i.e. M/s. Guru Meher Textile Mills Pvt. Ltd. (IEC No. 0312068543) through CB, M/s Joshi Jatashankar Liladhar and Sons, that the description of the goods covered under shipping bill no. 4748261 dated 16.12.2015 was Men's Suits (Kandura); that Men's Suits (Kandura) is a traditional dress of Arab, that it is a three piece dress consisting of a top, a bottom and a cap; that they are a merchant exporter; that they purchase the goods from local market of Mumbai and then process or get them stitched (in the case of garment) as per the requirement of the overseas buyer. On being asked CA certified cost sheet submitted vide their letter dated 05.03.2019 despite being a merchant exporter, he stated that they are manufacturer also, as even packing amounts to manufacturing but as they are not registered with small scale industries & DGFT does not recognize them as a manufacture exporter; that in the subject case, they bought readymade fabric, then they gave the fabric for stitching and after that the goods were packed and exported; that they export the goods through JNCH, Nhava Sheva only. On being asked about order for export of above said readymade garments against the Shipping Bill No. 4748261 dated 16.12.2015, he stated that they met one of their agent's M/s Suresh Trading Co. LLC, Dubai & gave them order to supply the goods covered under

Shipping Bill No. 4748261 dated 16.12.2015 to the consignee M/s. Canor Import and Export, Khartoum, Sudan. He further stated that M/s Suresh Trading Co. LLC was their notified party as they only knew the consignee M/s Canor Import and Export, Khartoum, Sudan; that they have sales contract/purchase order no. GM/72/A/15-16 dated 01.07.2015 with their buyer/notified party M/s Suresh Trading Co. LLC based in Dubai; that he met the owner of M/s Suresh Trading Co. LLC, Mr Suresh Lala in Dubai in 2014. On being asked about the terms and conditions of payment between their company and the buyer/notified party, he stated that it was on credit basis for 90 days. Further he stated that they have received the payment for this particular shipping bill no. 4748261 dated 16.12.2015 and BRC of the same has also been received & a copy of e-BRC has been submitted vide letter dated 05.03.2019; that they have purchased the fabric of the goods from M/s. Jayram Enterprises, Mumbai; that he has the copy of purchase invoice and delivery challan; that they do not have any purchase contract/payment agreement with the supplier & generally they get 90 days credit to make the payment; that the market enquiry was conducted on 10.12.2017 along with him; that Men's Suits (Kandura) was not available in the market, therefore it was decided to ascertain the market value of the fabric used in that dress; that he agreed with Market Enquiry report dated 10.12.2017; that approximately 7 to 7.5 meters fabric was used for making 1 set of Men's Suits (Kandura) (consisting of top, bottom and cap); that he accepted that the value of goods declared by him is on higher side.

**7.** In response to letter issued by the SIIB (Export), JNCH, Nhava Seheva vide letter F.No SG/MISC-139/2015/SIIB(X) JNCII dated 01.09.2017 to provide all the necessary documents, Shri Surinderpal Singh Walia, Director of M/s. Guru Meher Textile Mills Pvt. Ltd. vide letter dated 12.09.2017 submitted (i) Copy of stitching bills, bank statements showing payments made for the stitching, fusing and accessories (ii) Authenticated certified cost sheet by CA (iii) Copy of delivery challan (iv) M/s Lavanya Enterprises bills copy.

**8.** Further, Shop Verification of M/s Lavanya Enterprises was done by officer of SIIB(X) on 07.11.2017 and the report of the same reproduced as follows:

"As directed, went to the address of M/s. Lavanya Enterprises, Ground floor, C-35, Motilal Nehru Nagar, S.M. Road, Behind Antophill Church, Near Apna Studio

next 2nd room, Mumbai-400037. On reaching said address, the said office/shop was found closed. On further enquiry, the people nearby said that the first floor of said shop is office of M/s Lavanya Enterprises. I reached on first floor exactly can be called chawl, it seems that this is a residential address but on being asked about Lavanya Enterprises, a boy sitting there said that it was office of M/s Lavanya Enterprises also. On showing Bills of M/s Lavanya Enterprises, he said that the said bills belonged to this shop. On being asked about type of work done by him, he replied that they work especially in fusing collars, cuffs, interlining. On being asked about sudani and kandura job, he said that he do not work on his own but gets work from another one. After sometime a lady came and told that she handles all work at home and the outside work is handled by his husband named Shri Ravi Master. On being asked about stitching charges of sudani and kandura, she said that she didn't know exact amount because all these works are handled by his husband Shri Ravi Master".

9. During the course of investigation, statement of Shri Ashok Joshi, F-Pass Holder (Kardex No. J2922) of CB M/s Joshi Jatashankar Liladhar & Sons (11/168), was recorded on 30.09.2020 under Section 108 of the Customs Act, 1962, wherein he inter-alia stated that he was working in this field from 1983 to 2016; that the Shipping Bill No. 4748261 dated 16.12.2015 was filed by them on behalf of the exporter M/s. Guru Meher Textiles Mills Pvt. Ltd.; that he has the KYC documents of the said exporter and submitted a copy of the same; that they had verified the KYC documents of the exporter; that they had also sent their person to verify the address of Exporter; that exporter came to their office for clearance of subject goods on reference from a common friend; that they had received the documents through E-mail from the exporter; that the goods covered under the said Shipping Bills were "Men's or Boys Suits, Ensembles, Jackets, Blazers"; that they did filling of documents, carting and customs clearance on behalf of the exporter, that the RITC and value of the said goods covered under above mentioned 03 Shipping Bills were decided by the exporter, that after generation of check list, they forwarded the same to the exporter for verification of RITC, value etc. and after confirmation from the exporter, Shipping Bills were filed; that the carting was done by their company employee Mr. Dilip Singh, H-Card Pass Holder, that they did not know about the overvalued goods & only got to know about this after hold of the above said consignment by SIIB(X), JNCH;

that they did not verify the goods before filing the Shipping Bills & only saw the goods at the time of examination at TLP CFS; that the exporter had promised to pay them Rs. 1500 + taxes per shipping bill & apart from this, the exporter also promised to pay the freight charges, shipping line charges, CFS & transportation charges etc.; that the Checklists for the said Shipping Bills were signed by him.

**10.** Based on the market enquiry report and Textile Committee report, the subject goods, covered under the 03 shipping bills, entered for exportation were found to be mis-declared in terms of composition and value. The drawback was claimed under DBK Sr. No. 62030103 (of manmade fibres @ 9.8%) instead of DBK Sr. No. 62030102 (of blend containing cotton and manmade fibre @ 9.5%) and the re-determined value (FOB) of the said goods covered under three shipping bills comes out to be Rs.52,66,944 / (Rupees Fifty-Two Lakhs Sixty-Six Thousand Nine Hundred and Forty-Four only) as against the declared FOB value of Rs. 85,61,156.25/- (Rupees Eighty-Five Lakhs Sixty-One Thousand One Hundred and Fifty-Six and Twenty-Five Paisa only). In this way, it appears that the Exporter had inflated FOB value of the export goods to claim Drawback of Rs. 8,38,993.32/- (Rupees Eight Lakhs Thirty-Eight Thousand Nine Hundred and Ninety-Three and Thirty-Two Paisa only). It would be consistent with the aforesaid provisions to re-determine the total value of the consignment covered under 03 Shipping Bills after re-determination of the value of the subject goods.

**11.** Summary of Drawback benefits for 03 S/Bills is as under: -

Total Declared FOB	Rs. 85,61,156.25/-
Total Re-determined FOB	Rs. 52,66,944/-
Total Drawback Claimed	Rs. 8,38,993.32/-
Total Eligible drawback	Rs. 5,00,361/-
Excess drawback claimed	Rs. 3,38,632.32/-

**12.** From the above facts, it appears that the above omission/commission of CB M/s Joshi Jatashankar Liladhar & Sons (CB No. 11/168) (PAN No. AACFJ8539KCH001) leading to violation of Regulations 11(d), & 11(c) of the Custom Broker Licensing Regulations 2013 [now Regulations 10(d) & 10(e) of CBLR, 2018].



### **13. Show Cause Notice:**

Inquiry proceedings were initiated against CB M/s. Joshi Jatashankar Liladhar & Sons (11/168) vide Show Cause Notice No.08/2021-22 dated 18.05.2021 issued under Regulation 20(1) of CBLR 2013 (now Regulation 17 of CBLR 2018). Vide said notice, the CB were called upon to show cause as to why the Customs Broker license bearing no. 11/168 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 18 read with 20 & 22 of the CBLR, 2013 [now Regulation 14 read with 17 & 18 of the CBLR, 2018] for their failure to comply with the provisions of CBLR, 2013 [now CBLR, 2018] as elaborated in the Show Cause Notice.

Further, they were directed to appear for a personal hearing on the date as may be fixed and to produce proof of evidence/documents, if any, in their defence to the Inquiry Officer, who was appointed an inquiry officer to conduct inquiry proceedings under Regulation 20 of CBLR, 2013 [now Regulation 17 of CBLR, 2018].

### **14. Inquiry Report:**

Pr. Commissioner of Customs (G) had appointed Ms. Sumity Garg, Dy. Commissioner of Customs as Inquiry officer vide SCN No. 08/2021-22 dated 18.05.2021 to conduct inquiry into the case under Regulation 20 of CBLR, 2013 [now Regulation 17 of CBLR, 2018].

A letter dated 24.05.2021 to the Inquiry Officer was issued forwarding therewith SCN No. 08/2021-22 dated 18.05.2021 alongwith RUDs to initiate the inquiry proceedings.

The Inquiry Officer vide letter dated 29.06.2021 informed the Custom Broker Section, NCH that the letter dated 19.06.2021 sent to the Custom Broker's address has been returned with the remark "Left" and the Inquiry officer requested to provide the new address and email ID of the CB for further proceedings.

The Custom Broker Section, NCH vide letter dated 13.07.2021 provided the Address, Email Id and contact no. of the CB to the then Inquiry Officer Ms. Sumity Garg, Dy. Commissioner of Customs.

A reminder letter dated 15.09.2023 to the Inquiry Officer Ms. Sumity Garg, Dy. Commissioner was issued as the Inquiry Report in the matter was still pending even after lapse of the prescribed period for submission of the same. She informed that she was on maternity leave and also requested to appoint new Inquiry Officer in the subject matter.

To expedite the proceedings, Shri D. Prasad, Dy. Commissioner was appointed as Inquiry Officer on 03.10.2023 and a letter dated 05.10.2023 to the new Inquiry officer was issued.

A reminder letter dated 15.04.2024 was issued to the I.O. Shri D. Prasad, Dy. Commissioner.

Vide letter dated 09.08.2024, the Inquiry Officer has submitted Inquiry report dated 07.08.2024, wherein the charges against the said CB M/s. Joshi Jatashankar Liladhar & Sons (11/168) in respect of violation of Regulation 11(d) & 11(e) of CBLR, 2013 [now Regulation 10(d) & 10(e) of CBLR, 2018] were held as "Proved".

## **15. Comments of Inquiry Report:**

**15.1** Regulation 11(d) of the CBLR, 2013 [now 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."*

A perusal of the statement given by the Customs broker dt.18/07/2022 it was merely stated that he had verbally advised the client to comply with provisions of the Act and other related acts and rules and regulations, however there is no evidence to substantiate the claim that he had advised the exporter properly with regard to declaration of values, obtaining proper invoices, realization of export proceeds within stipulated time frame allowed under Foreign Exchange Management Act, 1999. On the contrary it is

obvious from the reply to the statement given at Q12 that he was not aware and that the value was not cross checked with the Purchase order. Further to the query raised if he was aware that certificate required from textile committee to ensure correctness, he replied instantly that there was no such requirement at the time of filling shipping bill. From the above it can be inferred that the customs broker is aware that certificate is not required at that moment, however he failed to ensure that the goods under export was in accordance with the declaration in the shipping bill and further made no efforts to obtain to verify the authenticity of the subject goods declared nor did he inform requirement of such a certificate, to ensure the correctness, when disputed. From the above it is obvious that, the Customs broker did not advise the exporter properly while filing the Shipping Bill(s) and further abetted by tacitly remaining silent which otherwise could have been stalled. Thus, the actions of the customs broker goes to prove that he failed in his duty to inform the exporter and also the Department where the declared goods remained questionable of its authenticity which he himself is not sure of. Thus, the violation of regulation 11 (d) of CBLR, 2013 [now Regulation 10(d) of CBLR, 2018] by the Custom Broker is conclusively proved.

**15.2** Regulation 11(e) of the CBLR, 2013 [now CBLR, 2018]: *"A Customs Broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage."*

The fact that in the instant case, Shri Surinderpal Singh Walia, Director, M/s Guru Meher Textile Mills Pvt. Ltd. admitted that he has finalized the said export documents and the customs broker merely remained mute. This can be evidenced from the reply to the statement in Q18 where it is stated that the description of the goods covered under the shipping bills No.4748261 dt.16/12/2015 was as per invoice, meaning goods and value as declared no attempt made to verify the authenticity, and thus, evidences that Custom Broker was hand in glove overtly and covertly, with the exporter and facilitated the exporter to avail undue export benefits. It is therefore evident that the Customs Broker had processed the documents without exercising due diligence to ascertain the correctness of the information and

did not impart the information relating to Drawback Rules to the client but aided the exporter in availing the undue drawback by overvaluing the exports, whereas in reality cheaper material was exported contrary to the goods declared in the invoice. Thus, the violation of Regulation 11 (e) of CBLR 2013 [now Regulations 10(e) of CBLR, 2018] by the Custom Broker is conclusively proved.

I note that Inquiry Officer held that all the charges framed in the said SCN i.e. violation of Regulation 11(d) & 11(e) of the CBLR, 2013 [now 10(d) & 10(e) of the CBLR, 2018] as proved.

#### **16. Personal Hearing:**

A personal hearing was granted to the CB on 25.09.2024. Shri Ashok V Joshi, Partner of the CB firm appeared for personal hearing on 25.09.2024. He prayed to close the matter as it is 9 years old and he has no role to play. He further stated that he had produced the exporter to SIIB for all further investigation and he had no role in the case. However, the CB didn't submit any written submission in the present matter either in response to the Inquiry Report nor before the Adjudicating Authority during personal hearing.

#### **17. Discussions & Finding:**

I have gone through the case, material evidence on record, the Show Cause Notice dated 18.05.2021 and Inquiry Report dated 07.08.2024.

I observe that the charges against the said CB is of violation of Regulation 11(d) & 11(e) of the CBLR, 2013 [now 10(d) & 10(e) of the CBLR, 2018] made vide Show Cause Notice No. 08/2021-22 dated 18.05.2021. The Inquiry Officer vide inquiry report dated 07.08.2024 held all the charges as "Proved".

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

##### **17.1 With regard to violation of Regulation 11(d) of CBLR, 2013 [now Regulation 10(d) of CBLR, 2018]:**

a. I observe that the said regulation 11(d) of CBLR, 2013 [now 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.”*

b. I find that there was not any evidence to substantiate the claim of the Customs broker that he had verbally advised the client to comply with provisions of the Act and other related acts and rules and regulations.

I find that the CB himself has accepted in his statement that they did not cross check the value with the purchase order. Thus, the CB failed to ensure that the goods under export was in accordance with the declaration in the shipping bill and also failed to verify the authenticity of the goods being exported.

c. I find that the subject case of fraudulent export may have been avoided, if CB made efforts to communicate with the exporter/IEC holder directly and had advised them properly in spirit of the Regulation 11(d) of the CBLR, 2013 [now Regulations 10(d) of CBLR, 2018].

d. From the above facts and circumstances, I hold that the CB has violated the provisions and Regulation 11(d) of the CBLR, 2013 [now Regulations 10(d) of CBLR, 2018]

**17.2 With regard to violation of Regulation 11(e) of CBLR, 2013 [now Regulations 10(e) of CBLR, 2018]:**

a. I observe that the said regulation 11(e) of CBLR, 2013 [now Regulations 10(e) of CBLR, 2018] reads as:

*“A Customs Broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage.”*

b. I find that while preparing the export documents the customs broker remained silent and the description of the goods covered under the shipping bill

was as per invoice and there was not any attempt made by the CB to verify the authenticity of the goods description and value declared. Thus, the CB facilitated the exporter to avail undue export benefits.

**c.** I find that the CB had processed the documents without exercising due diligence to ascertain the correctness of the information and did not impart the information relating to Drawback Rules to the client, thus facilitated the export of relatively cheaper material than the goods declared in the invoice.

**d.** From the above facts and circumstances, I hold that the CB has violated the provisions and Regulation 11(e) of the CBLR, 2013 [now Regulations 10(e) of CBLR, 2018].

**17.3** I found that the CB, while appearing for personal hearing on 25.09.2024, didn't provide any written submission in his defence and stated that they had no role to play.

**18.** While deciding the matter, I rely upon following judgement:

**18.1** 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.....The CHA is supposed to safeguard the interests 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.....Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations.....”*

**18.2** 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 of 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.

**18.3** The Hon'ble CESTAT Delhi in case of M/s. Rubal Logistics Pvt. Ltd. Versus Commissioner of Customs (General) wherein 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 advise the*

*client accordingly. Though the CHA was accepted as having no mens rea of the noticed mis-declaration/under-valuation or mis-qualification but from his own statement acknowledging the negligence on his part to properly ensure the same, we are of the opinion that CHA 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.”*

**18.4** With regard to submission of the CB in respect of present inquiry is barred by time limitation, I rely on the decision of Hon'ble High Court of Judicature at Bombay in the case of Principal Commissioner of Customs (General), Mumbai versus Unison Clearing P. Ltd. reported in 2018 (361) E.L.T. 321 (Bom.), which stipulates that:

*“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 the reasons for the delay or non-adherence to this time limit by the Officer conducting the inquiry and making him accountable for non- 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.*

*In the light of the aforesaid discussion, the appeals filed by the Revenue succeed and the question of law framed in the appeals is answered by holding that the CESTAT was not justified in setting aside the order or suspension of the Customs Brokers' Licence on the ground of delay between suspension and the notice of deviation or omission and it cannot be laid down as an absolute proposition of law that delay in taking immediate*



*action of suspension of initiation of inquiry within a period of 90 days would vitiate the action of the Commissioner. ....”.*

**19.** 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, 2013 [now CBLR, 2018] gives room for unscrupulous persons to get away with import-export violations and revenue frauds. The CB deliberately and knowingly ignore the verification of identity of the person to be dealing with on behalf of the exporter and didn't verify the KYC of the exporter. The facts on record prove that CB had violated various provisions of CBLR, 2013 [now CBLR, 2018].

**20.** I hold that the proof of charges are acceptable and tenable based on the available evidence, the facts and circumstances of the case, which certainly warrant penal action against the CB. Therefore, for their acts of omission and commission, CB M/s. Joshi Jatashankar Liladhar & Sons (11/168) is held liable and guilty for violating the provisions of CBLR, 2013 [now CBLR, 2018] as mentioned above. I hold that the CB has failed to discharge his duties cast upon him with respect to Regulation 11(d) & 11(e) of CBLR, 2013 [now Regulations 10(d) & 10(e) of CBLR, 2018] and is liable for penal action. Accordingly, I pass the following order:

### **ORDER**

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

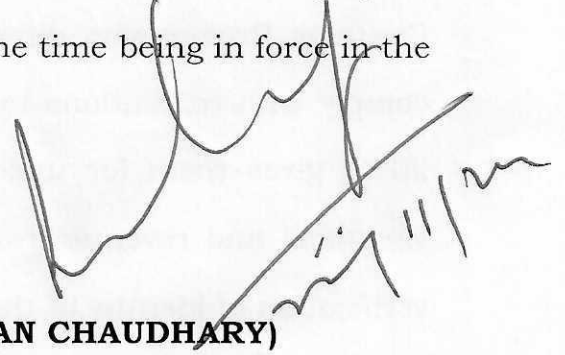
(i) The CB License No. 11/168 is ordered to be revoked under Regulation 18 of the CBLR, 2013 [now Regulation 14 of the CBLR, 2018].

(ii) I hereby order for forfeiture of the entire amount of security deposit furnished by the CB, under Regulation 18 of the CBLR, 2013 [now Regulation 14 of the CBLR, 2018].

(iii) I, hereby impose penalty of Rs. 50,000/- (Fifty Thousand Rupees Only) on M/s. Joshi Jatashankar Liladhar & Sons (11/168) under Regulation 22 of the CBLR, 2013 [now Regulation 18 of the CBLR, 2018].

(iv) I hereby order that the CB surrender the original License as well as all the F, G & H cards issued under immediately.

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. Joshi Jatashankar Liladhar & Sons,**  
89/91, Narayanrao Koli Marg,  
2<sup>nd</sup> Floor, Gurunanak Niwas, Mandvi,  
Mumbai - 400003

**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