



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/329/2023 –CBS आदेश दिनांक/Date of Order: 11.12.2024

CAO No. 59/2024-25/CAC/PCC(G)/RC/Adj-CBS जारी दिनांक/Date of issue: 11.12.2024

संख्या:

DIN:- 2024127700000996009

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 129 A(1B)(i) के संबंधमें सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण में स्वीकार्य है, जहाँ शुल्क या शुल्क एवं जुर्माना विवादित हों, या जुर्माना, जहाँ सिर्फ जुर्माना ही विवादित हो। यह अपील इस आदेश के संप्रेषण की तारीख के तीन महीने के अंदर दायर की जाएगी। यह अपील सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण)कार्यविधि (नियमावली, १९८२, के प्रावधानों के अंतर्गत, यथोत्खंडपीठ में स्वीकार्य है।

An appeal against this order lies with the Customs, Central Excise and Service Tax Appellate Tribunal in ter

ms 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 31.05.2018के अनुसार न्यायिक आदेश तदोत्प्रांत 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 6के 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 .-/10000के 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, 1870की 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।

One copy of the Appeal should bear a Court Fee Stamp of Rs. 50 and said copy of this order attached therein should bear a Court Fee Stamp of Rs. 50 as prescribed under Schedule item 6 of the Court Fee Act, 1870, as amended.

BRIEF FACTS:-

M/s. Mangaldas and Bro. (CB No. 11/352 & PAN-AACFM5468L), having office address at B 27, Matru Chhaya, Sarojini Naidu Road, Mulund West, Mumbai-400080 (hereinafter referred to as the Customs Broker/CB), is holding a regular Custom Broker License No. 11/352 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 condition stipulated therein.

2. An offence report in the form of O-i-O No. GOA-CUSTOM-ADJ(NRG)-02- 2022-23 dated 07.02.2023, issued vide F.No. GEN/ADJ/COMM/103/2021-Adjn(A)-O/o Commr-Cus-Goa received from Goa Customs on 04.05.2023. Since the offence report was received without RUDs, a letter dated 16.6.2023 and a reminder dated 04.10.2023 was issued to GOA Customs for asking the same. Accordingly, RUDs and statements received to this office via mail dated 12.10.2023 and a letter dated 01.11.2023 under subject "Suspension of license of CB, Mangaldas and Brothers (PAN No. AACFM5468L) also received, wherein it was interalia informed that:

2.1 M/s. Finolex Essex Industrial Ltd., Pune, (hereinafter referred to as the importer), cleared consignments of Copper Cathodes covered under Bills of Entry Nos. 89/04.11.1999, 102/07.12.1999 and 352/22.11.1999 from Marmagao, Goa utilizing TRAs obtained from Calcutta Custom House against the below mentioned DEPB licenses, which upon investigations were found to be bogus.

Sr. No.	DEPB license No. & Date, Name of License	TRA No. & Date	B.E. No. & Date	Credit Amount (Rs.)
1.	0210005079/2/06/00 Dated 30.07.99 issued to M/s. Indian Rayon & Industries Ltd. (Jaya Shree Textiles) Rishra, Dis-Hoogly, West Bengal-712249	S/32-E-2447/99 LIC dated 13.10.99 75/99- Lic dated 13.10.99	89/4.11.99	23,31,347/-

2.	0210004968/2/06/00 28.07.99 -do-	dated	S/32-2448/99- LIC dated 13.10.99 76/99- LIC dated 13.10.09	89/4.11.99	20,82,712/-
3.	0210005073/2/06/00 30.7.99 -do-	Dated	S/32-2686/99- 9/32-26 LIC dated 10.11.99 77/99. LIC dated 11.11.99	102/7.12.99 352/22.11 199	98,9717/- 27,08,974/-
					72,22,004/-

2.2 The Office of the Joint Director General of Foreign Trade, Calcutta, vide letter No. 18/219/99-2000-ECA/CA 1/898 dated 14.02.2000 addressed to the Deputy Commissioner of Customs, Marmagoa has furnished the details of above mentioned DEPB licenses which is as under:

Sr.No.	DEPB License No. & Date	Name of the Firm
1.	0210004968 dated 28.07.99	M/s. Ramapati Exports, Calcutta
2.	0210005073 dated 02.08.99 (Not 30.7.99)	M/s. Modern Jute Machinery Co. P. Ltd.
3.	0210005079 dated 02.08.99 (Not 30.07.99)	M/s. Orient

2.3 The Assistant Commissioner of Customs, Special Investigation Branch, Calcutta vide fax bearing F.No. S121-20/2000-SIB dated 18.1.2000 had communicated that the TRAs issued by Calcutta Custom House had been obtained fraudulently against fake documents and that the office of the Director General of Foreign Trade, Calcutta had also confirmed that the said licenses had not been issued in the name of M/s. Indian Rayon & Industries Ltd.

2.4 Statements of Shri Girish Mangaldas Shah, erstwhile partner (now non- working partner) of M/s Mangaldas and Brothers, CHA No. 11/352 was recorded under Section 108 of the Customs Act, on 28.09.2001 and 01.10.2001, wherein he interalia stated that he is one of the partners of M/s Mangaldas & Brothers who is acting as CHA for M/s Finolex group for the past 24 years; that M/s Finolex Essex Industries Ltd. were regularly importing raw materials through Goa Port as well as Mumbai Port; that for import

clearances, they regularly needed DEPBs, which they purchased through import license dealers and brokers and they helped M/s. Finolex Essex Industries Ltd. in procurement of these DEPBs Licenses; that he charged Rs. 1,500/- per R/A for DEP B value less than Rs. 10 lakhs and for DEP B value more than 10 lakhs, Rs.2500/- per R/A; that he used to finalize the deals for the DEP B licences over the phone with the brokers and dealer after acceptance of the rates by Mr. P.J Shanbhag of M/s Finolex Essex Industries Ltd; that in the case of DEP Bs issued from ports other than Mumbai and JNPT, he was to certify that R/A issued, however in the case of DEPU s for Finolex Essex Industries Ltd, certification was given by him either on debit, note or on copy of DEPS L or by the way of separate letter for releasing of payments, that in the instant case Shri Rajesh Gandhi of M/s. Madhu Overseas Pvt. Ltd, address 224, Avon Arcade, D.J. Road, Vile Parle (W). Mumbai-400056, offered DEPS, worth approximately Rs.40 lakhs by saying that these DEP Bs have been issued to some LIMITED Company; that terms of the offer was -R/As would be issued from Calcutta Customs to Goa Customs and payments towards consideration would have to be made against Customs Sealed Envelopes containing Original DEP Bs, original Transfer Letters and Copies of Shipping Bills; that he utilized the blank R/A Application forms without filling in DEP B No. date and the amounts etc. which along with the Invoices and Bills of Lading were given to the representative of M/s. Madhu Overseas Pvt. Ltd; that he had asked for payments through demand draft payable at Calcutta in favour of M/s Classic International who was a third party; that he did not convey the fact that the payment was made to a third party to Shri P.J Shanbhog of M/s. Finolex Essex Ltd; that once again in late October 1999/1st week of November 1999, Shri Rajesh Gandhi offered DEP B license on the same terms i.e. with R/A from Calcutta; that Shri Rajesh Gandhi did not divulge the name of the licensee, he only mentioned that it has been issued to a LIMITED COMPANY; that he again utilized the blank R/A Application which along-with copies of Invoices and Bills of Lading were

given to the representatives of M/s. Madhu Overseas Pvt Ltd; that during his absence, Shri Rajesh Gandhi contacted his brother Shri Hasmukh Shah and informed him to arrange for the payment as per the debit note; that he and his brother were in constant touch with each other; that he instructed his brother to inform Shri K.R. Madhekar of M/s. Finolex Essex for arranging the payment by the way of faxing the debit notes; that his brother did so in his absence; that he did not consider important that Shri Rajesh Gandhi had asked for pay-order and not demand draft as in the earlier transaction particularly when on debit note addresses of M/s. Classic International were of Jaipur and Calcutta; that Shri Rajesh Gandhi told him, M/s Classic International had purchased the DEPBs from M/s Indian Rayon at rate much lesser than the market rate in connivance with the officers of M/s Indian Rayon; that he did not insist for papers which could establish the co- relation of the intermediary i.e. of M/s Classic International with the license i.e. M/s Indian Rayon.

2.5 Statement of Shri Rajesh B. Gandhi, Director of M/s Madhu Overseas was recorded on 14.08.2001, under Section 108 of Custom Act 1962, wherein he interalia, stated that during the normal course of business of buying and selling of DEPB import licenses to the interested parties, one Mr. Subhash Agarwal of M/s. R.O. Enterprises informed him that he had some DEPBs licenses for disposal; that Mr. Subhash Agarwal was known to him as proprietor of M/s R. G. Enterprises and dealing in the license brokerage business for the past four to five years; that he (Rajesh Gandhi) was regular broker for M/s. Finolex Essex Ltd. For the last 15/20 years; that he informed Mr. Subhash Agarwal to arrange for the DEPB licenses; that Mr Subhash Agarwal informed him that DEPB licenses were from Calcutta; that he informed the same to M/s. Finolex Essex and as per their instructions, he had asked Mr. Subhash Agarwal to arrange TRA otherwise the deal was not possible; that he requested Mr. Subhash Agarwal to deliver the licenses alongwith TRAs to the office of M/s Mangaldas and Brothers, CHA; that these licenses

were handed over by Mr. Subhash Agarwal to him; that the licenses were purchased at a premium of 106.75%; that the licenses were issued in favour of M/s Indian Rayon Ltd Calcutta; that out of Rs.31,525/- brokerage received by him, Rs.30,494/- was paid to Mr. Subhash Agarwal: that this money was paid to him by M/s Finolex Essex Industries Ltd., by cheque that the premium was paid to one M/s Classic International by pay order by the company directly; that in answer to the question that when licenses were of M/s Indian Rayon Industries, then why the premium was paid to M/s Classic International he stated that the same was done as per advice of Mr Subhash Agarwal who had requested M/s. Finolex to make payments to M/s Classic International instead of M/s. Indian Rayon Ind. Ltd.; that this is the normal Practice adopted by the trade; in answer to whether he was aware that these DEPB licenses were genuine or fake before finalizing the deal, he stated that he had no idea about the same, as the licenses were transferred to M/s Finolex Essex after getting TRAs from Calcutta Customs, and the deal was finalized: that he did not know the proprietor of M/s. Classic International, since he did not deal directly with him.

2.6 Statement of Shri Subhash Agarwal of M/s R.G. Enterprises was recorded on 08.08.2001, 09.08.2001 and 14.08.2001, wherein he interalia stated that he knew Shri Lokesh Agarwal by face and it was Mr. Vishamber Buchasia who co-ordinated with Lokesh Agarwal for the Licences. In November, 1999, Mr. Rajesh Gandhi, Proprietor of M/s Madhu Overseas, contacted him and enquired about DEPB licenses which were required by M/s Finolex; that thereafter he contacted Mr Vishamber and asked him to arrange these licenses; that accordingly Mr. Vishamber arranged three DEPB licenses No. 0210005073 dated 30.07.1999 CIF value of Rs.28,07,945/-, 0210004968 dated 28.07.1999 CIF value of Rs. 20,82,712/- and 0210005079 dated 30.07.1999 CIF value of Rs.23,31,347/, issued in the name of M/s Rayon Industries Ltd. Calcutta; that the said licences thereafter were forwarded to M/s Finolex Essex Ltd. by Mr. Rajesh Gandhi proprietor of M/s Madhu Overseas; that he further stated that SIIB (Export) of Mumbai

Custom House had already questioned him and the concerned documents were surrendered by him to them, that he knew Mr Rajesh Gandhi of M/s. Madhu Overseas as a dealer/broker of this type of licenses, that he was paid his brokerage by M/s Madhu Overseas, that he did not know who had made the payment to M/s Classic International. On being specifically asked as to what documents he checks for verification while doing DEPB licence business dealings he deposed that during transaction of DEPB licences he checks the transfer letter of person company in whose name the licence is issued, photocopy of the shipping bill based on which the licence is issued, the original licence which is issued by DGFT, the date of issue of the DEPB licence as the DEPB licence is only valid for 12 months, customs verification of the licence, the punching of the licence, customs officers signature and his stamp, annexure in which the details of the shipping bills are mentioned including the rate the good which have been exported, whether the goods were actually exported and from which port, in which rate the DEPB licence has been issued etc.

2.7 Statement of Shri Vishamber Umashankar Buchasia was recorded on 09.08.2001 and 14.08.2001, under section 108 of the Customs Act 1962, wherein he interalia, stated that he knew Shri Rajesh Mandelia, who was operating as exporter under the name of Cardinal Exports and his own licenses were transacted by him (Vishambher) during February 1999; that he knew that Shri Rajesh Mandelia owned M/s Classic International, that Shri Rajesh Mandelia offered him DEPB licences with TRA's issued from Calcutta and accordingly he contacted Mr. Subhash Agarwal and the deal was finalized, that Shri Rajesh Mandelia arranged three DEPB licence Nos. 0210005073 dated 30.7.99 CIF for a value of Rs. 28,07,945/-, 0210004968 dated 28.7.99 CIF for a value of Rs.20,82,712/- and 0210005079 dated 30.7.99 CIF for a value of Rs.23,31,347/- issued in the name of M/s Indian Rayon Ltd., Calcutta, that the said licences were delivered to the office of M/s

Mangaldas and Brothers, clearing agents for M/s Finolex Essex; that he came to know that the said licences were purchased by clearing agents for M/s. Finolex Essex.

2.8 Statement of Shri Prabhakar Jarappa Shetty (in whose name, bank account of M/s Classic international was opened with HDFC Versova Mumbai, Premium paid by M/s Finolex was credited to this account) was recorded on 16.08.2001 under section 108 of the Customs Act, 1962, wherein he interalia stated that in the year 1999, he was to finalize the marriage of his sister at his native place and so he was in need of some money; that his employer Shri Gangade Shetty declined to give him any money; that he came in contact with Shri Lokesh Agarwal who was a regular customer of the hotel along with one Rajesh; that he requested Shri Lokesh Agarwal to advance some loan of about RS. 30,000/- so that he could get his sister married; that after three to four days Shri Lokesh Agarwal told him he would help him and asked him to open account in HDFC Bank, Versova, Mumbai; that he had asked him for his ration card but since he could not get it then they asked him for his passport which he agreed; that he opened an account in HDFC Bank Versova along with Shri Lokesh Agarwal in the name and style of Classic International; that he was not sure whether it was Classic International or Classic Enterprises; that he signed as a proprietor of the company; that the account opening amount of Rs. 10,000/- was deposited in cash by Shri Lokesh Agarwal; that he did not know the account; that after eight to ten days Shri Lokesh Agarwal came with the blank cheque book and asked him to sign the same; that he signed about ten blank cheques and that when he asked as to what it was all about Shri Lokesh Agarwal told him not to worry as it was his company and he would take care about all and he would not be in trouble; that thereafter, he had never seen the transactions of the bank account, that in the span of about Two months after opening the account Shri Lokesh Agarwal gave him Rs.50,000/- (i.e. first Rs. 15,000/- then Rs.25,000/- and thereafter Rs. 10,000/-); that at that time, it came to his mind as to why he was being paid so much money but since he was in need

of money for sister's marriage he left for the native place with the money; that till date he had not returned the money and Shri Lokesh Agarwal had never asked him to return; that apart from opening the account in the HDFC Bank and signing the blank cheques he did not know anything about the said company Classic International or its transactions in the bank account; that nothing was told to him by Shri Lokesh Agarwal and how he could say that he was used by him for his benefit; that he was not even aware when the company (Proprietary) in the name and style of "CLASSIC INTERNATIONAL" was opened; that he recollected that Shri Lokesh Agarwal had taken his signature on two blank papers; that probably Shri Lokesh Agarwal would have used those papers and his passport for opening/floating the company; that in December 1999, Shri Lokesh Agarwal took him to the bank and got his signature for closing the bank account, that he further state that Shri Lokesh Agrawal was about 35 years old staying behind Adarsh Dugdhalaya, Marway Road, Malad (W), Mumbai; that though he came to hotel frequently with Shri Rajesh who stayed at Mira Road that he did not know much about Shri Lokesh Agrawal or his business; that he did not know about any Subhash Agrawal or Vishamber Buchasia at all; that he has never come across them nor did Shri Lokesh Agrawal told him about them; that for the first time, he had been asked about his opening the account in HDFC bank and running the company in the name of "CLASSIC INTERNATIONAL" or "CLASSIC ENTERPRISES"; that he did not have any documents in this regard to submit nor did he have anything else to add.

2.9 Statement of Shri Lokesh Ramgopal Agarwal was recorded on 16.04.2002 and 18.04.2002 under section 108 of the Customs Act, 1962 wherein he interalia stated that he was working with his brother-in-law, Mr. Rajesh Madelia in the company called M/s. Plant Technologies, in which they were the partners sharing 50:50 profits; that they used to sell a chemical called suffa which was used in tea plantations; that Shri Rajesh Mandelia used to make some export in his own Company in which he was a proprietor;

that he used to do the banking work; that during this period, as per the instruction of Shri Rajesh Mandelia, he delivered on two occasions DEPB licences, that as per the instructions of Shri Rajesh Mandelia, he got the account of Shri Prabhakar Jarrappa Shetty opened in HDFC Bank, Andheri (W), Versova; that he was carrying out all the bank related works on behalf of Shri Rajesh Mandelia, that he used to collect the pay orders and hand over the DEPB licences along-with other documents and deposit the same into the account of M/s Classic International which was opened in the name of Shri Prabhakar Jarappa Shetty, that he knew Mr. Prabhakar Jarappa Shetty as the manager of Sea Queen Hotel, Malad, Mumbai; that he along-with Shri Rajesh Mandelia used to go to the said hotel quite often during the period 1999-2000; that as per the instruction of Shri Rajesh Mandelia, he inquired with Shri Prabhakar Jarappa Shetty whether he would like to open an account in HDFC Bank, Versova Branch, to which Shri Prabhakar Jarappa Shetty agreed; that it was agreed that Shri Prabhakar Jarappa Shetty would get commission on the basis of the transaction in the account; that the account no. was 0192000004591; that on the instructions of Shri Rajesh Mandelia, he took Shri Prabhakar Jarappa Shetty to the HDFC Bank and got the Demand Draft issued from the bank, that the commission given to Shri Prabhakar Jarappa Shetty was Rs.50,000/- and the same was done as per the instructions of Shri Rajesh Mandelia.

3. From the above facts, it was apprehended that the Custom Broker may adopt similar modus operandi in future consignments and department cannot remain oblivious to the danger posed by such an eventuality. Thus, from the investigations in the above mentioned case the following commission and omission leading to violation of obligations stipulated in Regulation 10 of CBLR, 2018 are apparent:

4.1. Regulation 10(d) of the CBLR:-

Regulation 10(d) states that *"A custom broker shall advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations*

thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be."

(i) As per facts of the case, it appeared that Shri Girish Mangaldas Shah, erstwhile partner (now non-working partner) of M/s Mangaldas and Brothers, in spite of being aware, of the irregularity, recommended payments through demand draft in favor of a third party, viz., M/s Classic International and not M/s Indian Rayon & Industries Ltd. in whose name the licenses were actually forged. He deliberately did not convey to Shri P J Shanbhog of M/s Finolex Essex Ltd., the fact that payments are made to a third party. He actively abetted the fraud by allowing payments to a third party by the importers to a DEPB holder introduced vaguely twice as a 'LIMITED COMPANY' by his co-conspirators. Thus, it appeared that CB has failed to comply with Regulation 10(d) of CBLR, 2018.

4.2. Regulation 10(e) of the CBLR

Regulation 10(e) states that *"A custom broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage"*.

(i) It appeared that Shri Girish Mangaldas, erstwhile partner (now non-working partner) of M/s Mangaldas and Brothers allowed the certification of the debit note to M/s Finolex Essex Ltd. without actually verifying that the DEPB Scrip based on which the R/As was issued was not genuine. Shri Girish Mangaldas Gandhi did not ask for the relevant papers which could establish the co-relation of the intermediary, i.e, M/s Classic International, the bogus/ front company account into which the cheques were deposited, which indicates that CB didn't exercise due diligence to ascertain the correctness of DEPB license. Thus, it appears that CB has failed to comply with Regulation 10(e) of CBLR, 2018.

5. A Custom Broker has a very crucial role in the clearance of goods through Customs which involve application of different laws and detailed procedures which are often complex. CB makes various representations before the Customs on behalf of the importer and conditions under which they were imported/exported, their value etc. It is the responsibility of CB to have requisite knowledge to undertake such clearances. The very objective of CBLR, 2018 (Earlier CBLR, 2013) is to ensure that CB acts honestly and efficiently in the conduct of his business. It is not difficult to foresee the consequences that may arise if CB acts in a negligent manner. Hence, in view of the offence report received from Goa Customs, action under CBLR, 2018 was taken against the CB M/s. Mangaldas & Brothers (CB No. 11/352).

SUSPENSION OF CB LICENSE AND SHOW CAUSE NOTICE:

6. In view of the offence report received from Goa Customs, as discussed above, the CB License held by M/s. Mangaldas and Bro. (CB No. 11/352 & PAN-AACFM5468L) was suspended vide Order No. 09/2024-25 dated 30.04.2024 under the provisions of Regulation 16(1) of CBLR, 2018. Also, a post decisional hearing was offered to the CB, under regulation 16(2) of CBLR, 2018, on 07.05.2024 which was adjourned for date 09.05.2024 on CB request. As per the fact of case and written/oral submission of the CB it appeared that in the present case, the actual offence has occurred around 25 years ago, as import of the goods took place in the year 1999 and Show Cause Notice for the said offence was issued on 12.07.2006 and the same was served on Girish M. Shah in November 2021 (after a gap of 15 years). Hence, the suspension of the CB licence was revoked vide Order No. 13/2024-25 dated 14.05.2024. Also, on the basis of the offence reports, the following articles of charges were framed against the CB:

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

6.1 In light of the above, a Show Show Cause Notice (SCN) No. 12/2024-25 dated 05.06.2024, was issued to the CB under the provisions of Regulation 17(1) of CBLR, 2018 wherein the CB was called upon to show cause, as to why:

- (a) the Customs Broker license bearing no. 11/352 issued to them should not be revoked under regulation 14 read with regulation 17 of the CBLR, 2018;
- (b) Security deposited should not be forfeited under regulation 14 read with regulation 17 of the CBLR, 2018;
- (c) Penalty should not be imposed upon them under regulation 18 read with regulations 17 of the CBLR, 2018.

6.2 Also, Shri P Sreerama Murthy, Assistant Commissioner of Customs was appointed as Inquiry Officer (IO) to conduct the inquiry proceedings in the matter. The IO submitted the inquiry report dated 10.09.2024, which is discussed below.

INQUIRY REPORT:-

7. The Inquiry officer (here in after referred to as the 'IO') concluded the inquiry proceedings and submitted the inquiry report dated 10.09.2024, wherein all the charges levelled against the CB are held as "**Not Proved**".

FINDINGS OF THE INQUIRY OFFICER (IO):-

8. The IO had carefully gone through the facts of the case, the written submissions submitted by the CB and the submissions made by the CB during the personal hearing held by the IO. Sri. Girish Nadakarni and Sri Girish Shah appeared for Personal Hearing and re-iterated their written submissions; they have submitted elaborate written submissions and various case laws in their defence. The IO discussed all these submissions and examined their merits.

9. The IO found that, this is a case where M/s. Mangaldas & Bros (Customs Broker License No. 11/352), the Customs Broker was issued with Show cause Notice for

violations of provisions of Regulation 10(d) and 10(e), of CBLR, 2018 in the case of fraudulent use of TRAS of DEPB licenses obtained from Calcutta Custom House in Marmagoa while importing copper cathodes by M/s Finolex.

9.1 Further, the IO stated that the Customs Broker in their written submissions and submissions during personal hearing have denied all the allegations and contended that they have fulfilled all the obligations as per the CBLR, 2018. The IO quoted the following regulations of the Customs Brokers Licensing Regulations, 2018

“2. Definitions :- (1) *In these regulations, unless the context otherwise requires,*

(d) "Customs Broker" means a person licensed under these regulations to act as an agent on behalf of the importer or an exporter for purposes of transaction of any business relating to the entry or departure of conveyances or the import or export of goods at any Customs Station including audit;”

“10. Obligations of Customs Broker- A Customs Broker shall -

(a) 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; (b) transact business in the Customs Station either personally or through an authorised employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;”

10. The IO submitted that the CB's main argument/contention is that they were not appointed as Customs Broker or Agent in the case of impugned imports and hence, there was no violation of CB Act and there was enormous delay of 25 years in the initiation of proceedings under CBLR. It is seen from the different proceedings initiated under through the SCN and OIO issued by the Marmagoa Customs and statements of various persons involved, nowhere it was mentioned or stated that M/s Mangaldas and Bros were the CHA/CB in the impugned imports. Further, the CB was not made noticee and Mr. Girish Shah was the Noticee in the SCN issued and penalty was imposed on him under

Customs Act for aiding/abetting the fraudulent transaction of TRAs under DEPB licenses.

10.2 Further, the IO stated that as defined under regulation 2 and 10 of the CBLR, 2018, no evidence has been adduced to show that M/s Mangaldas & Bros had acted as CB/CHA in the clearance or attempt to clear the imported goods by using the bogus TRAS.

11. (i) Article of Charge-1:- Violation of Regulation 10 (d) of CBLR, 2018:

"It is the duty of the Customs Broker to advise his clients to comply with the provisions of the Customs Act, 1962, other Allied acts and the Rules and Regulations thereof, and in case of non-compliance, shall bring any discrepancies to the notice of the Customs Officers at the time of import of the said goods"

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

"With regards to the allegation of violation of Regulation 10(e) of CBLR 2018, the Customs Broker shall exercise their duties with due diligence and they shall check any scope for fraud or loss of Government Revenue."

11.1 The IO submitted that both the above charges do not appear to be applicable in the present case of M/s Mangaldas & Bros in the impugned case of SCN No. 12/2024-25 dated 5.6.2024, as no proof was brought on record to show that they were appointed or authorized as CHA/CB as per CBLR, 2018. Therefore, I am of the considered opinion that the allegations against the Charged Customs Broker M/s. Mangaldas & Bros are not established on the count of charges viz. 10 (d) and 10 (e), of the CBLR, 2018.

12. The inquiry report dated 10.09.2024 was accepted and a copy of the same was furnished to the CB under the provisions of regulation 17(6) of CBLR, 2018 and for the shake of 'Principle of Natural Justice' an opportunity of personal hearing was granted to the CB.

RECORDS OF PERSONAL HEARING:

13. Under the provisions of Regulation 17(6) of CBLR, 2018 the personal hearing in the present matter was fixed on 12.11.2024. Sh. Girish Nadkarni, Advocate for the CB, Sh. Girish Shah, Authorised representative and Sh. Mihir H. Shah, Partner of CB firm appeared for the hearing and submitted their written submissions dated 11.11.2024 and also submitted a copy of their defense submissions which was given to the inquiry officer and they reiterated the same. They also requested to give them 02 days' time to submit a brief synopsis of the issue.

WRITTEN SUBMISSIONS OF THE CB:

14. The CB submitted that:-

- (i) This is a case of utilization of (3) genuinely issued Telegraphic Release Advices (TRAS) by M/s Finolex Essex Industries Ltd., Goa (Finolex) at Marmagoa Custom House (Goa) and issued by Kolkata Custom House, Kolkata against fraudulently obtained DEPB Credit Licenses in the year 1999.
- (ii) The TRAS were neither processed nor arranged by Shri Girish Mangaldas Shah, the then Partner of CB. Even, the (3) Bills of entry which were debited against these (3) TRAS/ DEPB licenses were neither filed nor the goods were cleared by Shri Girish Mangaldas Shah of Mangaldas & Bros., Mumbai. Therefore, M/s Mangaldas & Bros have not acted as a Customs Broker for the Importer M/s Finolex Essex Industries Ltd. Goa (Finolex).
- (iii) The role of Shri Girish Mangaldas Shah, the then partner of the said CB was restricted to liasioning and coordinating with Finolex's Mumbai-based License Broker - cum Dealer Shri Rajesh Gandhi of M/s Madhu Overseas Pvt Ltd. (This was necessitated because it was convenient to do so as Finolex Group were based in Pune) in the purchase of these DEPBs against issuance of TRAS from Kolkata. On concluding the deal, as instructed by Finolex, Shri Girish Mangaldas Shah provided pre-signed TRA application

forms. These TRA application forms were signed by Finolex and had all the details except the DEPB License details and the addressee Customs' location. These type of several such application forms had been given by Finolex to him (Shri Girish Mangaldas Shah) and were given to Mumbai- based license dealers and brokers as and when instructed by Finolex.

(iv) On receiving these TRAs issued by Kolkata Customs in their sealed envelopes from Shri Rajesh Gandhi of M/s Madhu Overseas Pvt Ltd., Shri Girish Mangaldas Shah handed over to Finolex's representative in Mumbai.

(v) The payments in the form of DD/Pay order, received from Finolex, towards the consideration were handed over to the representative of Shri Rajesh Gandhi of M/s Madhu Overseas Pvt Ltd in exchange of Original TRAs and other related documents.

(vi) The TRAS /DEPBs were utilized by Finolex Essex Industrial Ltd., Goa through their appointed Customs Broker M/s A.A.F. LEITAO & SON in Goa. On seeking confirmation of genuineness of TRAS from Kolkata Customs House and genuineness of DEPB Licenses from the Office of Jt. DGFT, Kolkata (the Licenses issuing Authority) by Marmagoa Custom House, it was found that the TRAs were genuinely issued by Kolkata Customs; however, the DEPBs were found to be issued fraudulently.

(vii) The SCN dated 12/07/2006 was issued to Shri Girish Mangaldas Shah under the provisions of Customs Act 1962 only in November 2021 (after a gap of 15 years) along with PH Intimation. It may be noted that the CB firm M/s Mangaldas & Bros have not been made noticee in the SCN dated 12/07/2006.

(viii) Despite writing (10) letters between 24/11/2021 & 13/01/2023 to provide RUDs, not all RUDs were provided and vital documents like Debit Notes/ RA copies having the remarks of 'Proper Issuance of R/A of Girish Mangaldas Shah were also not provided and

the case was decided Ex-Parte denying a fair chance to Girish Mangaldas Shah to defend the charges levelled in SCN and thereby violating the principles of natural Justice.

(ix) The Order-in-Original No. GOA-CUSTOM-ADJ (NRG)-02-2022-23 was passed by the Commissioner of Customs, Marmagao, GOA on 07/02/2023 Imposing penalty on Shri Girish Mangaldas Shah under Section 112 of the Customs Act, 1962, which has been challenged before the Hon. CESTAT Mumbai on 04.05.2023. Matter pending in Hon'ble CESTAT.

(x) The CB submitted that the Order in-Original dated 07.02.2023 has been taken as Offence report in the present case and based on the same, Show cause Notice No. 12/2024-25 dated 05.06.2024 has been issued to the CB M/s Mangaldas & Bros under regulation 17 of CBLR,2018. It has been alleged in the said SCN that the CB abetted the fraud by allowing payment of premium of Licenses to third party and failed to advise the client thereby violating provisions of Regulation 10(d) of CBLR, 2018. That the CB allowed certification of debit note of M/s Finolex without verifying that the DEPB licenses based on which release advices were issued were not genuine thereby violating the regulation 10(e) of CBLR, 2018.

15. With regard to the facts not disputed in the said SCN dated 05.06.2024, the CB submitted that:-

(i) The (3) Transfer Release Advises were bonafidely issued by the Kolkata Customs based on which the imports made against the said (3) Bills of entry were allowed clearance by the Proper officers of customs posted in Marmagao in the year 1999

(ii) That Shri Girish Mangaldas Shah, the then partner of the CB M/s Mangaldas & Bros was neither responsible for procuring the said (3) TRAs from Kolkata Customs nor was aware of the fraudulent nature of the (3) DEPB licenses against which the said (3) TRAs were issued by the Kolkata Customs.

(iii) The fraud came to light post clearance of goods in the year 2000 on the basis of reference made by the Marmagoa Customs as a matter of routine.

(iv) The matter was investigated by the CBI Kolkata vide RC dt 19/10/2001 in the course of which name of Shri Girish Mangaldas Shah was not included in the said RC dt 19/10/2001.

16. The CB submitted that they have replied to the said SCN vide letter dated 18/07/2024 and denied all the allegations made in the said SCN. Personal hearing was held before the Inquiry Officer on 30.07.2024. Post-Hearing written submissions dated 01/08/2024 and 06/08/2024 were submitted to the Inquiry Officer appointed by the Pr. Commissioner of Customs (Gen) which was followed by additional submissions dated 02.09.2024 along with certain case laws. The CB further submitted that the compilation of reply to the said SCN and Post-Hearing written submissions made before the Inquiry officer have been presented to the Hon'ble Principal Commissioner of Customs as CB's defense on 12.11.2024 in the course of PH before him with a request to take the same on record and drop the proceedings initiated under the said SCN.

16.1 The CB submitted that the Inquiry Officer has submitted a Report dated 05.09.2024 in terms of regulation 17(6) of CBLR, 2018, by and under which, after going through the facts of the case and on the basis of written submissions made by the Noticee CB, he has concluded that the allegations made against the CB M/s Mangaldas & Bros on the counts of charges viz. Regulation 10(d) and 10 (e) of CBLR, 2018 are not established.

16.2 In consideration of above and keeping in mind especially the following submissions urged in the course of the subject proceedings in the context of the said SCN, the CB prayed that the said SCN dated 05.06.2024 be discharged and the proceedings initiated thereunder be dropped as the CB M/s Mangaldas & Bros CB no 11/352 have not filed the said (3) Bills of entry at the Marmagoa Customs and have not

acted as a Customs Broker on behalf of the Importer M/s Finolex Essex Industries Ltd.. In the subject case, M/s A.A.F. Leitao & Son, Goa. were engaged as a Customs Broker by the Importer M/s Finolex Essex Industries Ltd. and as such, no proceedings for violation of CBLR, 2018 shall lie against the CB leave alone violation of Regulation 10(d) and 10 (e) of CBLR, 2018. The CB relied upon following decisions of Hon. Tribunal in this regard: -

(a) Him logistics Pvt Ltd vs Commissioner of customs, New Delhi reported in 2015 (325) ELT 793 (Tri-Del).

(b) Star India Logistics vs Principal Commissioner of Customs (General) Mumbai Final order no A/85811/2024 dated 26.08.2024 in appeal no 85631 of 2024.

17. The CB also submitted that in the present case, the Order-in-Original dated 07.02.2023 has been treated as offence report. The CB submitted that in the light of definition of Offence report as provided under the Explanation to Regulation 17 read with provisions of Regulation 17(1) of CBLR, 2018, the Order-in-Original dated- 07.02.2023 cannot be treated as offence report. In order that a document is treated as offence report in terms of the definition of "Offence report" as provided under Regulation 17, there has to be a summary of investigation/prima facie framing of charges into allegations of acts of commission or omission of CB under the regulation which would render the CB unfit to transact business under CBLR, 2018. It may be stated that in the said Order-in-Original, there are no findings on the acts of commission or omission of the CB under these regulations which would render them unfit to transact the business as CB. The findings in the said Order- In -original are in the context of alleged violation of provisions of Customs Act, 1962 for imposition of penalty under the provisions of Section 112 of the Customs Act 1962 and not in the context of acts of commission or omission of CB under these regulations. It is submitted that in the absence of prima facie framing of charges indicating violation of provisions of CBLR 2018, the said Order- in-

Original cannot be treated as Offence Report at all. It is further submitted that as there is no offence report, the provisions of Regulation 17(1) requiring issuance of SCN within (90) days of receipt of offence report is not complied with and accordingly, the said SCN must fail. In this regard, the CB relied upon the Hon. CESTAT Bangalore decision in the case of Triway Forwarders PVT LTD vs Commissioner of Customs, Cochin reported in 2019 (10) TMI 423-CESTAT Bangalore. The other case laws relied upon by the CB in his defense are as follows:-

- (i) THE PRINCIPAL COMMISSIONER OF CUSTOMS VS UNISON CLEARING PVT LTD
- (ii) THE PRINCIPAL COMMISSIONER OF CUSTOMS VS MEHUL & CO-BOMBAY HC
- (iii) SHRI RAM & ANOTHER VS THE STATE OF UTTAR PRADESH
- (iv) AMRITLAKSHMI MACHINE WORKS VS COMMISSIONER OF CUSTOMS
- (v) G.N.D CARGO MOVERS VS COMMISSIONER OF CUSTOMS
- (vi) KUNAL TRAVELS VS COMMISSIONER OF CUSTOMS
- (vii) MAULI WORLDWIDE LOGISTICS VS COMMISSIONER OF CUSTOMS
- (viii) M.K. ENTERPRISES VS PRINCIPAL COMMISSIONER OF CUSTOMS
- (ix) SUSWASHIS CLEARING AND FORWARDING AGENCY VS PRINCIPAL COMMISSIONER OF CUSTOMS
- (x) COMMISSIONER OF CUSTOMS VS TRINETRA IMPEX PVT LTD

18. The CB submitted that in the light of above submissions and findings of the Inquiry officer in his Inquiry Report dt. 05/09/2024 stating that the charges of allegation of violation of Regulation 10(d) and 10(e) of CBLR, 2018 are not established, it is requested that the proceedings initiated under the said SCN dated 05.06.2024 be dropped and the matter be kindly treated as closed.

DISCUSSIONS AND FINDINGS:-

19. I have gone through the facts of the case, the documents brought on record, the offence report received in the form of O-i-O No. GOA-CUSTOM-ADJ(NRG)-02- 2022-23 dated 07.02.2023, from Goa Customs on 04.05.2023; mail dated 12.10.2023 and letter dated 01.11.2023 received from Goa Customs; the suspension Order No. 09/2024-25 dated 30.04.2024, the suspension revocation Order No. 13/2024-25 dated 14.05.2024; the SCN No. 12/2024-25 dated 05.06.2024; the inquiry report dated 10.09.2024 and the written submissions dated 11.11.2024, of the CB.

20. For the sake of brevity, I refrain from repeating the facts of the case which have already been mentioned in the preceding paragraphs. The present case has been investigated by Goa, Customs against the fraudulent import of 'Copper Cathodes' by the importer M/s. Finolex Essex Industrial Limited, Pune, vide bills of entry nos. 89/4.11.99, 102/7.12.99 and 352/22.11.99. The issue is related to clearance of goods against the bogus Telegraphic Release Advices (TRAs) in respect of DEPB (Duty Entitlement Pass Book) License Nos. 0210005079 dated 30.07.1999; 0210004968 dated 28.07.1999 and 021000573 dated 30.07.1999, which were found to be not genuine. Sh. Girish Mangaldas Shah, the then Partner in CB firm M/s. Mangaldas & Brothers (CB No. 11/352) played a part in pre-treating this fraud. Accordingly, the Adjudicating Authority has imposed penalty under Customs Act, 1962, upon Shri. Girish Mangaldas Shah of M/s. Mangaldas & Brothers.

21. I find that the imports in the present case belong to the year 1999 and the Show Cause Notice No. S/25-23/2000-AP, under Customs Act, 1962 was issued by Goa Customs on 12.07.2006 and the case was adjudicated vide OIO dated 07.02.2023, which has been considered as the offence report against the charged CB to initiate proceedings under CBLR, 2018. Accordingly, the CB license was suspended under the provisions of regulation 16(1) of CBLR, 2018 and after granting a post decisional hearing the said

suspension was revoked. Also, to initiate inquiry under regulation 17 of CBLR, 2018, the SCN No. 12/2024-25 dated 05.06.2024, was issued under regulation 17(1) of CBLR, 2018, for apparent violation of regulation 10(d) and 10(e) of CBLR, 2018.

22. I find that the inquiry officer has concluded the inquiry proceedings stating that no evidence has been adduced to show that M/s Mangaldas & Bros had acted as CB/CHA in the clearance or attempt to clear the imported goods by using the bogus TRAs hence, the charge of violation of regulation 10(d) and 10(e) could not be proved as the charged CB has not filed the impugned bills of entry for the importer M/s. Finolex Essex Industrial Limited. The CB submitted that in the present case the impugned bills of entry have been filed by the CB/CHA namely M/s A.A.F. Leitao & Son, Goa.

23. Having perused the offence reports and the facts of the case I find that though there is role of Sh. Girish Mangaldas Shah, the then partner of the CB firm, in the impugned fraudulent imports, however, it is also a matter of facts that nowhere in the offence report it is mentioned that the impugned imports were filed by the charged CB. Also, the OIO dated 07.02.2023 is silent about the CHA/CB who has filed the impugned bills of entry in the year 1999, for the said importer. I find that the CB was not made a noticee in the SCN dated 12.07.2006, issued by Goa Custom under Customs Act, 1962. However, Sh.Girish Mangaldas Shah was a noticee under the said SCN. Accordingly, for the act of omission and commission on the part of Sh. Girish Mangaldas Shah, the adjudicating authority has imposed penalty under section 112 of Customs Act, 1962, vide the said OIO dated 07.02.2023. Also, the CB has submitted that Sh. Girish Mangaldas Shah preferred an appeal against the said OIO dated 07.02.2023, before the Hon'ble CESTAT, Mumbai.

24. I find that the CB has also submitted that the present matter was also investigated by the CBI Kolkata vide RC dt 19/10/2001 in the course of which name of Shri Girish Mangaldas Shah was not included in the said RC dt 19/10/2001. The CB also submitted

that in the subject case, M/s A.A.F. Leitao & Son, Goa. were engaged as a Customs Broker by the importer M/s Finolex Essex Industries Ltd. and as such, no proceedings for violation of CBLR, 2018 shall lie against them. I have also taken into cognizance of the case laws relied upon by the CB.

25. Given the facts and circumstances of the case I find that there is lack of knowledge and evidences to establish the nexus between the importer and the charged CB as the CB was not engaged as CHA/CB for filing the impugned bills of entry and hence in absence of any documentary evidences the CB M/s. Mangaldas & Brothers (CB No. 11/352) could not be held as guilty for violation of regulation 10(d) and 10(e) of CBLR, 2018, as the omission and commission on the part of the 'CB firm' is not established. I find that the inquiry report is acceptable and tenable and the charges of violations levelled against the CB, the noticee of SCN No. 12/2024-25 dated 05.06.2024, could not be proved. The inquiry officer has substantially stated that both the above charges do not appear to be applicable in the present case of M/s Mangaldas & Bros in the impugned case of SCN No. 12/2024-25 dated 5.6.2024, as no proof was brought on record to show that they were appointed or authorized as CHA/CB as per CBLR, 2018.

25.1 On a careful perusal of the reasons assigned by the inquiry officer and as extracted above, it is evident that the inquiry officer has conducted a meticulous exercise to examine and appreciate the evidence on record and came to a categorical finding that the CB was not guilty of non-performance of the statutory duties cast upon them. In view of the above discussions and under the factual matrix of the present case I am inclined to accept the inquiry officer's report, as I do not find any sustainable ground for disagreement with the inquiry report. Here, I rely on the judgement of Hon'ble Tribunal in the case of **Him logistics Pvt Ltd vs Commissioner of customs, New Delhi reported in 2015 (325) ELT 793 (Tri-Del) on 07.04.2016 in Custom Appeal No. 50267/2016-CU(DB)**, wherein it is held that:-

“We find that the impugned order passed on disagreement with the inquiry report has not brought out clear sustainable grounds for such extreme action of revocation of license. Violation of CBLR, 2013 has not been brought out as all the points have been elaborately discussed in the inquiry report and no sustainable ground for differing with the same could be made out”

26. I find that the CB has argued that the time limit prescribed in Regulation 17 of CBLR 2018 have not been followed in the present case and the proceedings are therefore liable to be dropped on this ground alone. However, relying on the following case laws, I observe that the timelines under CHALR/CBLR, are directory in nature and not mandatory:

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

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

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

(b) The Hon'ble High Court of Karnataka, in the matter of The Commissioner of Customs vs M/s. Sri Manjunatha Cargo Pvt Ltd on 12 January [C.S.T.A. No. 10/2020] held that:-

"13. A reading of Regulation 17 of the C.B.L.R., 2018 makes it very clear that though there is a time limit stipulated in the Regulations to complete a particular act, non-compliance of the same would not lead to any specific consequence.

14. A reading of the Regulation 17 would also go to show that the Inquiry Officer during the course of his inquiry is not only required to record the statement of the parties but also to give them an opportunity to cross-examine and produce oral and documentary evidence. In the event of the respondents not co-operating, it would be difficult for the Inquiry Officer to complete the inquiry within the prescribed period of 90 days, as provided under Regulation 17(5). Therefore, we find force in the argument of the learned counsel for the appellant that the Regulation No.17 is required to be considered as directory and not mandatory. Though the word "shall" has been used in Regulation 17, an overall reading of the said provision of law makes it very clear that the said provision is procedural in nature and non-compliance of the same does not have any effect. If there is no consequence stated in the Regulation for non-adherence of time period for conducting the inquiry or passing an order thereafterwards, the time line provided under the 22 statute cannot be considered as fatal to the outcome of inquiry.

15. Under the circumstances, we are of the considered view that the provisions of Regulation 17 of the C.B.L.R., 2018 is required to be considered as directory and not mandatory and accordingly, we answer the substantial questions of law Nos. 1 to 3 in favour of the appellant and against the respondent."

27. In view of the above mentioned facts and circumstances of the case and as the CB M/s. Mangaldas & Brothers (CB No. 11/352), was not engaged as CHA/CB for the

impugned imports made by M/s. Finolex Essex Industrial Ltd., I do not find any merits in the present case for revocation of the CB license; for forfeiture of security deposit and for imposition of penalty, inasmuch as there is no violation of regulations 10(d) and 10(e) *ibid*. In this regard, I rely on the following judgements/case laws:

(a) Hon'ble Tribunal in the matter of Star India Logistics vs Principal Commissioner of Customs (General) Mumbai Final order no A/85811/2024 dated 26.08.2024 in appeal no 85631 of 2024, held that :

*"9.4 From the above order of the Tribunal and on the basis of the factual matrix of the present case, particularly when the appellants CB was not handling the export consignment, it cannot be said that they had violated Regulation 10(n) *ibid*. Further, it is not the case that the appellants CB is the customs broker, who had handled the export consignment, in order to apply the ratio of judgement of the Hon'ble Supreme Court in the case of K.M. Ganatra and Co., It is an undisputed fact that the appellants CB had no role to play in the export transaction and it is only M/s. Exim Management Services, Pune holding CB license No. CHA.PNR - 54 is the CB in the case. Thus, we find that the impugned order holding violation of Regulation 10(d) and 10(n) *ibid* on the appellants CB is not legally sustainable."*

(b) Hon'ble Tribunal in the matter of M/S HIM Logistics Pvt. Ltd vs Commissioner of Customs, New Delhi , pronounced on 11.09.2015, held that:-

"Perusal of the above quoted provisions makes it evident that these cast certain duties and responsibilities on a Custom Broker who has been engaged by an exporter or importer to deal with the import or export of the goods. As has been stated earlier, the appellant was not engaged by any of the exporters to deal with the export of the impugned goods and therefore the question of violation of any of the above-quoted provisions of CHALR by the appellant simply does not arise."

Thus, the ground on which the suspension of license was confirmed is totally unsustainable”.

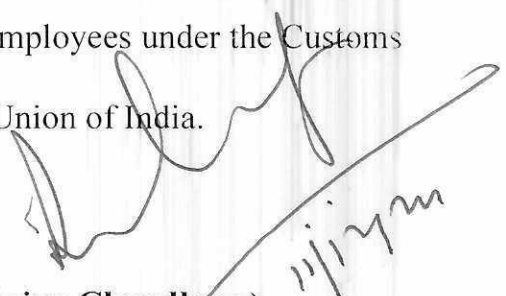
27.1 In view of the above discussions and in absence of evidences and knowledge that the CB M/s. Mangaldas & Brothers (CB No. 11/352) has handled the impugned imports, I am not inclined to revoke the license of the CB, to forfeit the security deposit or to impose penalty upon the CB. Under the facts and circumstances of the case, it would not be sustainable to take any of these penal actions against the CB under CBLR, 2018. Accordingly, I pass the following order:-

ORDER

28. 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 drop the proceedings initiated vide SCN No. 12/2024-25 dated 05.06.2024, under CBLR, 2018, against the Custom Broker M/s. Mangaldas & Brothers (CB No. 11/352, PAN- AACFM5468L).

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. Mangaldas & Brothers (CB No. 11/352),
B 27, Matru Chhaya, Sarojini Naidu Road,
Mulund West,
Mumbai-400080

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

ORDER

The Principal Commissioner of Customs, Mumbai I, II, III Zone, has been directed to issue the following order:-

(i) to drop the proceedings initiated vide MCH No. 12/2023-24 dated 06/02/2024 under CHK-3018 against the Finance Minister, Maharashtra & Union Territory of Chandernagore.

This order is passed without prejudice to any other action which may be taken in future.


(Regional Commissioner)
Central Commissioner of Customs (CB)
NCH, Mumbai

M.A. Mangalagiri & Brothers (CB No. 10323)
H-57, Marine Drive, Bandra West,
Mumbai-400050