



प्रधानआयुक्त, सीमाशुल्क का कार्यालय (सामान्य)
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
(GENERAL),
नवीन सीमाशुल्क भवन,बेलाई इस्टेट, मुंबई 400 400 -1. NEW CUSTOM
HOUSE, BALLARD ESTATE, MUMBAI - 400 001.

संचिका सं./F. No.- GEN/CB/151/2024 -CBS आदेश दिनांक/Date of Order: 13.12.2024

CAO No. 62/2024-25/CAC/PCC(G)/RC/Adj-CBS जारी दिनांक/Date of issue: 13.12.2024

संख्या:

DIN:-20241277000000888F70

द्वारा जारी : राजन चौधरी

Issued By : **Rajan Chaudhary**

प्रधान आयुक्त, सीमाशुल्क(सामान्य)

Pr. Commissioner of Customs (Gen.)

मुंबई -400 001

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 129 की धारा(1B)(i) के संबंधमें सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण में स्वीकार्य है, जहाँ शुल्क या शुल्क एवं जुर्माना विवादित हों, या जुर्माना, जहाँ सिर्फ जुर्माना ही विवादित हो। यह अपील इस आदेश के संप्रेषण की तारीख के तीन महीने के अंदर दायर की जाएगी। यह अपील सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण नियमावली (कार्यविधि), 1982, के प्रावधानों के अंतर्गत, यथोत्खंडपीठ में स्वीकार्य है।

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

3. यह सूचित किया जाता है की इस आदेश के अमल में आते ही, न्याय निर्णयन अधिकारी का अधिकार क्षेत्र समाप्त होता है और सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण, पश्चिम क्षेत्री यखंडपीठ, के M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai के संदर्भ में जारी आदेश क्रमांक A/86617-86619/2018 दिनांक के अनुसार 31.05.2018 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, 1982 के नियम के उपनियम 3 के तहत निर्धारित है एवं उसी नियमावली के नियम 6 में उल्लेखित व्यक्ति द्वारा हस्ताक्षरित एवं सत्य 2ापित 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. शुल्क (i) रु. 1000/- ऐसे मामले में जहां मांग की गई शुल्क और ब्याज की राशि और अपील किए गए आदेश में लगाया गया जुर्माना पांच लाख रुपये या उससे कम है, (ii) रु. 5000/- ऐसे मामले में जहां ऐसी राशि पांच लाख रुपये से अधिक है लेकिन पचास लाख रुपये से अधिक नहीं है और (iii) रु. 10,000/- ऐसे मामले में जहां ऐसी राशि पचास लाख रुपये से अधिक है, राशि भुगतान ट्रिब्यूनल की बेंच के सहायक रजिस्ट्रार के पक्ष में उस स्थान पर स्थित किसी भी राष्ट्रीयकृत बैंक की शाखा में एक रेखांकित बैंक ड्राफ्ट के माध्यम से किया जाना आवश्यक है जहां बेंच स्थित है और डिमांड ड्राफ्ट अपील के साथ संलग्न किया जाएगा।

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

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

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

BRIEF FACTS:-

M/s. Pratik International (CB No. 11/1988, CB Code AAPFP3036J CH001) having address at 131, Almeida House, Room No. 01, Road No. 02, Church Pakhadi, Sahar Village, Andheri East, Mumbai-400099 (hereinafter referred to as the Customs Broker/CB) is holder of Customs Broker License No. 11/1988, issued by the Commissioner of Customs, Mumbai under Regulation 7(1) of CBLR, 2013 (now regulation 7(2) of CBLR, 2018) and as such they are bound by the regulations and conditions stipulated therein.

2. An Offence Report in the form of Investigation Report dated 15.03.2024 issued vide F. No. SG/MISC-160/2023-24 CIU, JNCH was received from CIU, JNCH, Mumbai, wherein, inter-alia following were informed:

2.1 The Officers of CIU, JNCH on specific intelligence put on hold two Forty Feet (40) containers bearing numbers ARCU4534860 & ARCU4534475 lying in M/s. Central Warehousing Corporation (CWC), CFS D'Node, Dronagiri (Budget CFS Terminals Private Limited), covered under Bill of Entry No. 9192378 dated 12.12.2023 filed by CB M/s Pratik International, CB No. 11/1988 on behalf of importer M/s. Abhi Agro Fresh Fruits (IEC: BOWPD1234G) (hereinafter referred to as the Importer). The said importer misused the Phytosanitary Certificate bearing PC No. NPPO-ZA/2023/10/1049905 dated 03.10.2023 issued in South Africa.

2.2 Details of the live Bill of Entry No. 9192378 dated 12.12.2023 is as follows: -

Bill of Entry No. & Date.	9192378 dated 12.12.2023.
Bill of Entry Type & Assessment	Home Consumption. PAG
Importer Name and Address.	M/s. Abhi Agro Fresh Fruits (IEC: - BOWPD1234G). Address: Shop No. 3, Sai Udyam, Rohta Road, Udyam, Turupati Enclave, Meerut-250001, Uttar Pradesh
Customs Broker	M/s. Pratik International (CB Code:- AAPFP3036JCH001). Address:

Name and Address,	113, Bora Bazar Street, Doctor House, 3rd Floor, Office No.8, Fort Mumbai 400001. Email id: pratik cum@yahoo.in/ ramkrishnamshetty@gmail.com.
Description of Goods	Pear Fresh Fruit Size Mix Count.
CTH	08083000
Quantity	4158 CTN/Gross Weight-53222.400 kgs. Net Weight-49896.000 kgs.
Duty Structure	BCD-30%, SWS-10%.
Assessable Value	Rs. 27,64,809.40
Total Duty	Rs. 9,12,387.00 (BCD-Rs. 8,29,442.80, SWS-Rs. 82,944.30). Duty yet to be paid by the Importer.
Supplier/Consignor	TRIM General Trading LLC, 603, Tower A, Centurion STA, R Building, Port Saeed Deira, Dubai, PO Box-83541, UAE.
Notify Party	Mubeena Food Stuff Trading LLC, UAE.
Country of Origin	South Africa.
Port of Loading	Jebel Ali, UAE.
Container Details	2x40': ARCU4534860 & ARCU4534475.
BE Assessment	RMS FACILITATED

2.3 During 100% examination of both Containers under Panchanama dated 19.12.2023 it was found that the description and quantity of the goods were found to be same as declared by the importer. However, during examination, it was found that Phytosanitary Certificate for Re-Export No. DXB-APII-02415-2460883 dated 05.12.2023 issued in UAE was uploaded in E-Sanchit for the said import consignment. Thereafter, on scrutiny of above-mentioned Phytosanitary Certificate for Re-Export issued in UAE, the following details were found: -

- i) Name and Address of the Exporter is UAE - TRIM General Trading LLC, 603 Tower A, Centurion Star Building, Port Saeed, Deira, P.O. Box Dubai, UAE,
- ii) Declared Name and Address of Importer Abhi Agro Fresh Fruits, Shop No. 3, Sai Udyam, Rohta Road, Udyam Turupati Enclave, Meerut 250001, Uttar Pradesh, India,
- iii) Distinguishing Marks: - ARCU4534475, ARCU4534860,
- iv) Declared Port of Entry: Nhava Sheva,
- v) End Use Purpose - Consumption,

- vi) Scientific Name: *Pyrus communis*,
- vii) Common Name: - Pear,
- viii) Origin South Africa,
- ix) PC No. - NPPO-ZA/2023/10/1049905,
- x) Quantity-49896 kgs,
- xi) No. of Packages - 4158,
- xii) Commodity Class - Fruits & Vegetables,
- xiii) Place of issue: Jabel Ali Port Centre for Agricultural and Veterinary Quarantine.
- xiv) Date of Issue: 05.12.2023.
- xv) Invoice No: - TGTLFF23-354/397 Date 30.11.2023/Total Gross Weight: 53222.40 kgs.

2.3.1 Thus, from the above, it was found that the Country of Origin of the said import consignment of Fresh Pear Fruit was South Africa and the Phytosanitary Certificate No. NPPO-ZA/2023/10/1049905 dated 03.10.2023 was issued by the Plant Protection Organisation of the Republic of South Africa.

2.3.2 It has been further found that the Phytosanitary Certificate No. NPPO-ZA/2023/10/1049905 dated 03.10.2023 issued by South Africa (declared country of origin), for export from South Africa to UAE, has been issued for a quantity of 13770 Cartons & 168830 NETT KGM of Fresh Pear Fruit.

2.4 Thereafter, past consignments of Fresh Pear Fruit imported by the said importer were scrutinized. On scrutiny of the various import documents of the importer for period from 03.10.2023 to 26.12.2023, it was found that on the basis of the Phytosanitary Certificate bearing PC No. ZA/2023/10/1049905 dated 03.10.2023 issued in South Africa (declared country of origin), multiple Phytosanitary Certificates were issued in UAE which were utilized by the said importer for multiple re-export shipments from UAE to Nhava Sheva, as mentioned in the 07 Bills of Entry pertaining to the said Importer in table below:

Table-1

Sr. No.	BE No.	BE Date	Quantity in Cartons	Net Weight (in kgs)	Assessable Value (in Rs.)
Imports made within stipulated quantity of 13770 Cartons & 168830 NETT KGM of Fresh Pear Fruit in Phytosanitary Certificate bearing PC No. NPPO-ZA/2023/10/1049905 dated 03.10.2023 of South Africa.					
1	8632567	04.11.2023	7648	114720	6515155
2	8687193	08.11.2023	5402	42810	2431257
Sub-Total			13040	157530	8946412
Imports made after stipulated quantity of 13770 Cartons & 168830 NETT KGM of Fresh Pear Fruit in Phytosanitary Certificate bearing PC No. NPPO-ZA/2023/10/1049905 dated 03.10.2023 of South Africa was already imported in the above mentioned 02 BEs.					
1.	8753548	13.11.2023	8316	99792	5667367
2.	9011753	30.11.2023	6076	40127.28	2274031
3.	9176228	11.12.2023	7478	93475	5308614
4.	9176232	11.12.2023	8540	106750	6062525
5.*	9192378	12.12.2023	4158	49896	2764809
Sub-Total			34,562	3,90,040.28	2,20,77,346

***Live consignment under seizure.**

2.5 Thus, from the TABLE-1 above, it was evident that the said Importer had over-used/mis-used Country of Origin Phytosanitary Certificate bearing PC No. NPPO-ZA/2023/10/1049905 dated 03.10.2023 issued in South Africa and had fraudulently imported 05 consignments of Fresh Pear Fruit, including the live consignment, having total Assessable Value of Rs. 2,20,77,346/- after stipulated quantity of 13770 Cartons & 168830 NETT KGM of Fresh Pear Fruit in Phytosanitary Certificate bearing PC No. NPPO-ZA/2023/10/1049905 dated 03.10.2023 of South Africa, which was already imported in earlier 02 BEs.

2.6 Thus, Phytosanitary Certificate for Re-Export No. DXB-APH-02415- 2460883 dated 05.12.2023 issued in UAE against Phytosanitary Certificate bearing PC No. NPPO-ZA/2023/10/1049905 issued in South Africa, used by the said importer, was not valid for clearance of fresh pears imported vide Bill of Entry No. 9192378 dated 12.12.2023 and the same appears to be misused for fraudulently obtaining Customs Clearances by misleading the Customs Authorities. Hence, it appeared that the said 05 import consignments of Fresh Pear fruit, including the live consignment under seizure, was imported without a valid mandatory Phytosanitary Certificates, thereby putting the Indian flora & fauna at risk.

2.7 Further, on scrutiny of the relevant origin country Phytosanitary Certificate bearing PC No. NPPO-ZA/2023/10/1049905 dated 03.10.2023 of South Africa, in the light of the Plant Quarantine (Regulation of Import into India) Order, 2003, it was noticed that the said Phytosanitary Certificate was improper as it did not contain the additional declarations and special conditions mentioned under Chapter-II & III and Schedule-VI of the said order.

2.8 As the goods imported by the said importer vide Bill of Entry No. 9192378 dated 12.12.2023 were found liable to confiscation under section 111(m) of the Customs Act 1962, the same were placed under seizure vide Seizure Memo dated 26.12.2023, under Section 110 of the Customs Act 1962.

2.9 As per the Plant Quarantine (Regulation of Import into India) Order, 2003, every import of Fresh Fruits (Pear and Apple) into India shall be accompanied by an original Phytosanitary Certificate, containing the additional declarations and special conditions, issued by an authorized officer in the country of origin. Also, in case of re-export into India, the consignments shall be accompanied by a Phytosanitary certificate of re-exporting country along with the original/ certified copy of Phytosanitary certificate Issued by the country of origin.

2.10 In view of the above, all the imports of Fresh Pear Fruit' made by the said importer since 03.10.2023 were taken up for investigation by CIU, JNCH. From the EDI system, it was found that the said Importer had filed 14 Bills of Entry of Fresh Pear Fruit. Details of the said 14 consignments of Fresh Pear Fruit' imported by the said Importer is shown in Table below:

Table-2

Sr. No.	BE No.	BE Date	Quantity in Cartons	Net Weight (in kgs)	Assessable Value (in Rs.)	Total Duty (Rs.)
(A) 7 consignments wherein no PSCs (origin country/re-exporting country) had been uploaded and non-relevant documents had been uploaded.						
1.	8361810	18.10.2023	14969	151827.19	8622540	2845438
2.	8753423	13.11.2023	1596	18354	1042357	343978
3.	8861628	21.11.2023	4316	18127.20	1002071	330683
4.	8886917	22.11.2023	8316	99792	5516500	1820445
5.	8948727	26.11.2023	8720	100280	5682913	1875361
6.	8948775	26.11.2023	9850	113275	6419345	2118384
7.	9066736	04.12.2023	7040	88000	4987000	1645710
Total			54807	589655.39	33272726	10979999
(B) 7 consignments wherein only re-exporting country PSCs had been uploaded. Origin country PSC had not been uploaded and non-relevant documents had been uploaded instead. Same origin country (South Africa) PSC No. 'NPPO- ZA/2023/10/1049905 dated 03.10.2023 (13770 CTN/168830 kgs of Fresh Pear Fruit)' was mentioned in re-exporting country PSCs. Said origin country PSC was used repetitively.						
(B) (i) Quantity (13770 CTN/168830 kgs of Fresh Pear Fruit) mentioned in origin country PSC was imported in 2 BEs.						
8.	8632567	04.11.2023	7648	114720	6515155	2150002
9.	8687193	08.11.2023	5402	42810	2431257	802315
Sub Total			13050	157530	8946412	2952317
(B) (ii) 5 consignments imported without valid origin country PSC.						
10	8753548	13.11.2023	8316	99792	5667367	1870231
11	9011753	30.11.2023	6076	40127.28	2274031	750430
12	9176228	11.12.2023	7478	93475	5308614	1751842
13	9176232	11.12.2023	8540	106750	6062525	2000633
14	9192378	12.12.2023	4158	49896	2764809	912387

Sub Total	34568	390040.28	22077346	7285523
TOTAL (B)(i) & B(ii)	47618	547570.28	31023758	10237840
GRAND TOTAL (A) & (B)	10242	1137225.6	6,42,96,484	2,12,17,83

* Live consignment under seizure.

2.11 Thus, it has been found that both the mandatory Phytosanitary Certificates issued by the re-exporting country and country of origin were either not uploaded or only one of the said Phytosanitary Certificates were uploaded, in e-sanchit. Most of the imports are re-export shipments from UAE wherein, Phytosanitary Certificates issued by the re-exporting country (UAE) has been uploaded in e-sanchit, whereas, the mandatory Phytosanitary Certificates issued by the country of origin (South Africa), as mentioned in the said Phytosanitary Certificates issued by the re-exporting country (UAE), had not been uploaded in e-sanchit.

2.12 Letters dated 13.01.2024 & 16.01.2024 were issued to The Pr. Commissioner of Customs (Preventive), Lucknow and The Principal Commissioner of CGST, Meerut requesting for conducting search of the Importer's Premises & recording of statement w.r.t fraudulent imports of fresh fruits at Nhava Sheva, JNCH.

2.13 Assistant Commissioner of Customs (P), Division Bareilly vide their letter dated 18.01.2024 informed that a team of officers of Customs (P) Division, Bareilly along with the team of CGST Meerut visited the premises of the importer M/s Abhi Agro Fresh Fruits (IEC - BOWPD1234G) at Shop No. 3, Sai Udyam, Rohta Road, Udyam Turupati Enclave, Meerut 250001, Uttar Pradesh and conducted the search under panchanama dated 16.01.2024. During search, the said premises of the importer M/s Abhi Agro Fresh Fruits (IEC - BOWPD1234G) was found vacant and nothing was found there except a few financial records and Phytosanitary Certificates. Shri Jaineesh Dubey, the owner/proprietor of M/s. Abhi Agro Fresh Fruits was not present during the search and the search was conducted in the presence of Shree Vikas Sharma (friend of Shri Jaineesh Dubey). Also, on asking about the 05 import consignments of fresh pear fruit (which

were imported without a valid mandatory Phytosanitary certificates) during telephonic conversation with Shri Jainesh Dubey, he said that he was ignorant of the fact and would state later with the help of his CA.

2.14 Thus, all the said 14 import consignments of Fresh Pear Fruit, during the period from October-2023 to December-2023, were imported in violation of "pre-import condition" set by the said PQ Order, 2003, thereby, making them prohibited goods for import into India. This involved 1137.23 Tons of Pears valued at Rs. 6.43 crores and Customs Duty of Rs. 2.12 crores.

2.15 Statement of Shri Devendra Ramchandra Salvi, Employee of M/s Pratik International in connection with import of Fresh Pear Fruit by importer M/s Abhi Agro Fresh Fruits covered under Bill of Entry No. 9192378 dated 12.12.2023 was recorded on 05.01.2024 under Section 108 of the Customs Act, 1962 wherein he interalia stated that:

- (a) He was G-Card employee of M/s Pratik International having Kardex No. 5924/2022; was looking after all the Customs related work in M/s Pratik International at JNCH; Mr. Ram Krishna Shetty was the F Card Holder and owner of his CB firm M/s Pratik International. He further stated that Bill of Entry No. 9192378 dated 12.12.2023 was filed by his CB firm on behalf of the said Importer under proper authorization. He stated that as per records available in his office, in addition to the live shipment of 'fresh pear fruits' covered under B/E No. 9192378 dated 12.12.2023 and past import shipments of the said importer mentioned in Table-3 below was filed by his CB firm wherein Phytosanitary Certificate Number (PC Certificate No) NPPO- ZA/2023/10/1049905 dated 03.10.2023 (Country of Origin-South Africa) was mentioned in Phytosanitary Certificate for Re-export issued from UAE: -

Table-3

Sr. No	BE No.	BE Date	Shipper/ Foreign Supplier	Quantity Cartoons	Net Weight (in Kgs)	Phytosanitary Certificate for Re-Export No. issued at UAE.	Assessable Value (in Rs.)	Total Duty (in Rs.)
1.	8687193	08.11.2023	JR General Trading FZE LLC. UAE	5402	42810.000	DXB-APH-02415-2423722 dated 28.10.2023	2431257.00	802315.00
2.	8753548	13.11.2023	TRIM General Trading LLC. UAE	8316	99792.000	DXB-APH-02415-2436139 dated 10.11.2023	5667367.00	1870231.00
3.	9011753	30.11.2023	JR General Trading FZE LLC. UAE	6076	40127.280	DXB-APH-02415-2460522 dated 04.12.2023	2274031.00	750430.00
4.	9192378	12.12.2023	TRIM General Trading LLC. UAE	4158	49896.000	DXB-APH-02415-2460883 dated 05.12.2023	2764809.00	912387.00
TOTAL QUANTITY				23952	232625.28			

- (b) On being asked about issuance of country of Phytosanitary Certificate, he stated that M/s Abhi Agro Fresh Fruits had imported 23952 cartons/packages, totaling 232625.280 kilograms of 'Fresh Pear Fruit' vide three past import and one live shipment filed by his CB M/s Pratik International as mentioned in TABLE-3 above wherein Phytosanitary Certificate Number (PC No) NPPO-ZA/2023/10/1049905 has been mentioned in the Phytosanitary Certificate for Re-export issued from UAE.

- (c) On being asked about the past imports of the said importer he stated that the importer M/s Abhi Agro Fresh Fruits had provided respective Phytosanitary Certificate for Re-export issued from UAE in respect of above mentioned three past import and one live shipment of 'fresh pear fruit' in above mentioned Table-3. He stated that at the time of filing of Bill of Entry only PC No. NPPO 1 ZA/2023/10/1040005 & Origin South Africa' and quantity of individual import shipment from UAE was mentioned.
- (d) In reply to question that whether the said CB had enquired from the said importer about the previous import shipments of fresh pear fruits made by using third country Phytosanitary Certificate bearing (PC No) NPPO. ZA/2023/10/1049905 dated 03.10.2023 issued in South Africa at the time of filing of first BE No. 8687193 dated 08.11.2023 for 5402 cartons and 42810.000 kgs of fresh pear fruits' as mentioned in TABLE- 3 above, he stated that his CB firm had not enquired the same from the importer.
- (e) In reply to question that why his CB firm has not asked for copy of third country Phytosanitary Certificate bearing (PC No) NPPO-ZA/2023/10/1049905 dated 03.10.2023 issued in South Africa against which first import shipment of fresh pear fruit' of M/s Abhi Agro Fresh Fruits, filed by his firm, vide BE No. 8687193 dated 08.11.2023 for 5402 cartons and 42810.000 kgs, he stated that his CB had not asked the above documents from the importer in good faith.
- (f) In reply to question whether he agreed that by not doing the proper KYC Verification of the said importer and proper documentation in r/o imported goods prior to filing of various B/Es on behalf of the said importer, his CB Firm failed to fulfil the obligations stipulated in Regulation 10 of the CBLR, 2018; thereby facilitating the said importer in improper importation of various consignments of

'fresh pear fruits', he accepted mistake of his CB firm for not doing the proper KYC Verification of the said importer.

- (g) In reply to question that how many import consignments of fresh pear fruits of the said importer had been cleared by his CB firm during the period from 01.04.2023 till 05.01.2024, he stated that as per available documents in his office 09 import shipments including the live import shipment pertaining to the said importer mentioned in Table-4 below were filed by his CB firm:-

Table-4

Sr. No.	BE No.	BE Date	Shipper/ Foreign Supplier	Quantity Cartoons	Net Weight (in Kgs)	Assessable Value (in Rs.)	Total Duty (in Rs.)
1.	8361810	18.10.2023	DPS Global Trading FZE LLC, UAE	14969	151827.190	8622540.00	2845438.00
2.	8753423	13.11.2023	JR General Trading FZE LLC, UAE	1596	18354.000	1042357.00	343978.00
3.	8861628	21.11.2023	JR General Trading FZE LLC, UAE	4316	18127.200	1002071.00	330683.00
4.	8886917	22.11.2023	TRIM General Trading LLC, UAE	8316	99792.000	5516500.00	1820445.00

5.	9066736	04.12.2023	JR General Trading FZE LLC. UAE	7040	88000.000	4987000.00	1645710.00
6.	8687193	08.11.2023	JR General Trading FZE LLC, UAE	5402	42810.000	2431257.00	802315.00
7.	8753548	13.11.2023	TRIM General Trading LLC, UAE	8316	99792.000	5667367.00	1870231.0
8.	9011753	30.11.2023	JR General Trading FZE LLC. UAE	6076	40127.280	2274031.00	750430.00
9.	9192378	12.12.2023	TRIM General Trading LLC, UAE	4158	49896.000	2764809.00	912387.00

- (h) On being asked about not uploading Phytosanitary Certificates in e-sanchit at Customs ICES System in respect of 05 past import shipments of the said mentioned at Sr. No. 01 to 05 in TABLE-4 above, he stated that the same were not uploaded in e-sanchit at Customs ICES System due to some technical issues.
- (i) On being asked about providing "Country of Origin Certificate" in respect of above mentioned 09 import shipments of fresh pear fruits of the said importer filed

by his CB Firm M/s Pratik International, he stated that the same was not readily available with him and the same would be submitted in a week time.

3. On perusal of the offence report it appears that CB M/s Pratik International (11/1988) had not done proper KYC verification of the said importer. Further, they did not verify the total quantity mentioned in Phytosanitary Certificate Number (PC No) NPPO-ZA/2023/10/1049905 dated 03.10.2023 issued in South Africa (Country of Origin) and were in collusion with the importer in obtaining Customs Clearances fraudulently during the course of above mentioned past three import shipments & live import shipments of fresh pear fruits' as mentioned in Table -3 above. Also, it is found that CB did not upload Phytosanitary Certificates in e-sanchit at Customs ICES System in respect of 05 past import shipments of M/s Abhi Agro Fresh Fruits mentioned at Sr. No. 01 to 05 in TABLE-4 above. It appeared that the CB M/s. Pratik International was in collusion with the importer in clearance of excess/ineligible quantity of import consignment of Fresh Pear Fruit in India without valid Phytosanitary Certificate.

4. In view of above, it appeared that the CB M/s. Pratik International. (11/1988), Mumbai, has failed to comply with sub-regulations 10(a), 10(d), 10(e), 10(m) and 10(n) of the Customs Brokers Licensing Regulations 2018. The said regulations read as:

10(a) obtain an authorization from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorization whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be:

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

10(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

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

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

5. As per the Offence Report, the Customs Broker did not produce any evidence to prove that he had obtained proper authorization from the importer. It is also clear that CB was never in touch with importer by any means of communication or contact which indicates that the CB filed the bills of entry without taking proper authorization from importer/IEC holder and did not verify the genuineness of the importer. Hence, the said CB appears to have violated provisions of regulation 10(a) of CBLR, 2018.

6. As per the Offence Report, the said Customs Broker was aware of the requirement of the Phytosanitary Certificate in respect of clearance of the said import consignment, which was Fresh Pear Fruit. However, from investigation, it came to knowledge that fake/wrong Phytosanitary Certificate was used for clearance of the said consignment. Thus, it appeared that either the CB was in connivance with the Importer in getting said goods cleared illegally or was negligent and callous in his duties. Therefore, it appeared that the CB has not properly advised his client as per requirement of regulation 10(d) of the CBLR, 2018. Further, the Custom Broker never brought the matter to the knowledge of AC/DC docks which he was duty bound under the regulation 10(d) of the CBLR, 2018. Due to above act of omission, it appeared that the CB had failed to comply with provisions of regulation 10(d) of CBLR, 2018.

7. As per the Offence Report, fake/wrong Phytosanitary Certificate was used for clearance of the said import consignment. Investigation shows that the Custom Broker was aware of the said requirement as per the law. However, while filing the documents, it appeared that the CB has not exercised due diligence as mandated under regulation 10(e)

of the CBLR, 2018. Hence, the said CB appeared to have violated regulation 10(e) of CBLR, 2018.

8. As per the Offence Report, it is evident that the said CB did not discharge their duties with utmost speed and efficiency and without delay; if the CB had informed about the over-use/mis-use of mandatory Phytosanitary Certificate by the importer, the fraudulent import, loss to government exchequer and potential risk to Flora and Fauna of the country could have been averted. Further, the CB did not ensure the presence of the importer when summoned and was delaying the investigation. Hence, the said CB appeared to have violated regulation 10(m) of CBLR, 2018.

9. As per the Offence Report, it is evident that the said CB did not contact importer directly or indirectly and even failed to verify the functioning of the client at the declared address. During search operation conducted by the GST officers of Meerut Commissionerate, GST, Preventive Division, the premises of the importer was found vacant. Hence, the said CB appeared to have violated regulation 10(n) of CBLR, 2018.

10. The CB representative in his statement had accepted the mistake of the Customs Broker for not doing the proper KYC verification of the said importer and not doing proper documentation in respect of imported goods i.e. Fresh Pear Fruits. It was responsibility of the CB to upload/e-sanchit valid mandatory Phytosanitary Certificate for import of Fresh Pear Fruits in India, with the correct Country of Origin, such serious lapses by the CB have put the Indian flora & fauna at risk as per the PQ (Regulation of Import into India) Order, 2003. The Customs Broker appeared to have intentionally uploaded non-relevant documents to aid the illegal imports. Thus, the CB M/s Pratik International (11/1988) appeared to have failed to comply with the provisions of sub-regulation 10 (a), 10 (d), 10(e) 10 (m) & 10 (n) of the CBLR 2018 and thereby committed misconduct rendering themselves liable to penalty under Regulation 18 of the CBLR

2018. Accordingly, action under CBLR, 2018 was invoked against the CB M/s. Pratik International (CB No. 11/1988).

SUSPENSION OF CB LICENSE AND SHOW CAUSE NOTICE:-

11. The license of CB M/s. Pratik International (11/1988) was suspended vide Order No. 55/2023-24 dated 27.03.2024 and was given an opportunity of Personal Hearing in this matter on 10.04.2024. Based on the written and oral submission made by the CB the suspension of CB license was continued vide Suspension Continuation Order No. 06/2024-25 dated 17.04.2024 pending further inquiry proceedings under CBLR,2018. 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(a) of CBLR, 2018.
- (ii) Article of Charge-II : Violation of Regulation 10(d) of CBLR, 2018
- (iii) Article of Charge-III : Violation of Regulation 10(e) of CBLR, 2018
- (iv) Article of Charge-V: Violation of Regulation 10(m) of CBLR, 2018
- (v) Article of Charge-V: Violation of Regulation 10(n) of CBLR, 2018

11.1 In light of the above, a Show Show Cause Notice (SCN) No. 08/2024-25 dated 09.05.2024, 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. 11/1988 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.

11.2 Also, Shri Gracias J Saldanha, 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 09.08.2024, which is discussed below.

INQUIRY REPORT:-

12. The Inquiry officer (here in after referred to as the 'IO') concluded the inquiry proceedings under regulation 17 of CBLR, 2018 and submitted the inquiry report dated 09.08.2024, wherein all the charges levelled against the CB are held as "**proved**".

FINDINGS OF THE INQUIRY OFFICER:

13. The IO had gone through the facts of the case, the offence report dated 15.03.2024, the O-I-O No. S/26-Adjn- 128/2023-24Gr. 1 & IA/JNCH dated 02.02.2024 and various statements of the concerned persons taken during the investigation, the reply to the Show Cause Notice No 08/2024-25 dated 09.05.2024 and the submissions during the hearings by the Customs Broker and proceeded to discuss all these submissions and examine their merits.

14. The IO submitted that this is a case of misuse/overuse of Phytho-sanitary certificates by M/s. Pratik International (CB) in connivance with the Importer. M/s. Pratik International filed 06 B/Es on behalf of the Importer, M/s. Abhi Agro Fresh Fruits without a valid Phytho-sanitary certificates, where the Custom Broker was issued SCN for violations of 10(a), 10(d), 10(e), 10(m) & 10(n) of the CBLR, 2018 in as much the Importer cleared 14 B/Es involving 1137.23 Tons of Pears valued at Rs. 6.43 crores and Customs Duty of Rs. 2.12 crores for which, M/s. Abhi Agro Fresh Fruits was issued an O-I-O in JNCH.

14.1 The IO stated that one live B/E. No. 9192378 dated 12.12.2023 which was confiscated u/s 111(d) and 111(m) of the Customs Act, 1962 and also the following 05 B/Es pertaining to M/s. Abhi Agro Fresh Fruits were handled and cleared by the Customs Broker M/s. Pratik International.

LIVE CONSIGNMENT

Sr No.	BE No.	BE Date	Qty. (CTN)	Net Weight (kgs)	Assessable Value (Rs.)	Total Duty (Rs.)
1.	9192378	12.12.2023	4158 CTN	49896 KGS	27,64,809/-	82,944.30/-

CONSIGNMENT WHICH HAVE ALREADY BEEN IMPORTED

Sr. No.	BE No.	BE Date	Qty. (CTN)	Net Weight (kgs)	Assessable Value (Rs.)	Total Duty (Rs.)
(A) 5 consignments wherein no PSCs (origin country/re-exporting country) had been uploaded and non-relevant documents had been uploaded.						
1.	8361810	18.10.2023	14969	151827.19	8622540	2845438
2.	8753423	13.11.2023	1596	18354	1042357	343978
3.	8861628	21.11.2023	4316	18127.20	1002071	330683
4.	8886917	22.11.2023	8316	99792	5516500	1820445
5.	9066736	04.12.2023	7040	88000	4987000	1645710
Total			54807	589655.39	33272726	10979999
B) 5 consignments wherein only re-exporting country PSCs had been uploaded. Origin country PSC had not been uploaded and non-relevant documents had been uploaded instead. Same origin country (South Africa) PSC No. 'NPPO-ZA/2023/10/1049905 dated 03.10.2023 (13770 CTN/168830 kgs of Fresh Pear Fruit)' was mentioned in re-exporting country PSCs. Said origin country PSC was used repetitively.						

14.2 The IO stated that the Customs Broker filed the 06 B/Es for import of Fresh Pears, on the basis of documents given by the Importer, M/s. Abhi Agri Fresh Fruits. As per the investigation conducted by CIU/JNCH and from the examination report it was found that the description and quantity were same as declared but without valid Phytho-sanitary certificate from the Country of Origin i.e. South Africa. IO further stated that the said importer along with the CB, M/s. Pratik International has misused "Country of Origin" Phytho-sanitary certificate no. NPPO- ZA/2023/10/1049905 dated 03.10.2023 and had fraudulently imported 05 consignments of Fresh Pear Fruit, excluding the live consignment, having total Assessable Value of Rs. 2,20,77,346/-.

14.3 The IO stated that CB, M/s. Pratik International (11/1988) had not done proper KYC verification of the Importer. Further, they did not verify the total quantity mentioned in Phyto-sanitary certificate no. NPPO-ZA/2023/10/1049905 dated 03.10.2023 issued in South Africa (Country of Origin) and were in collusion with the importer in obtaining Customs Clearances fraudulently during the course of above mentioned past five import shipments & live import shipment of 'fresh pear fruits' as mentioned in Table-1 above. Also, it is found that CB did not upload Phyto- sanitary Certificates in e-sanchit at Customs ICES System in respect of 05 past import shipments of M/s Abhi Agro Fresh Fruits mentioned at Supra in TABLE-1 above. It appeared to IO that the CB M/s Pratik International was in collusion with the importer in clearance of excess/ineligible quantity of import consignment of Fresh Pear Fruit in India without valid Phyto-sanitary Certificate.

14.4 The IO stated that the CB's representative in his statement had accepted the mistake of the Customs Broker for not doing the proper KYC verification of the said importer and not doing proper documentation in respect of imported goods i.e. Fresh Pear Fruits. It was responsibility of the CB to upload/e-sanchit valid mandatory Phyto-sanitary Certificate for import of Fresh Pear Fruits in India, with the correct Country of Origin, such serious lapses by the CB have put the Indian flora & fauna at risk as per the PQ (Regulation of Import into India) Order, 2003. The Customs Broker appears to have intentionally uploaded non-relevant documents to aid the illegal imports.

14.5 The IO further submitted 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.

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

15. The IO submitted that the Customs Broker did not produce any evidence to prove that he had obtained proper authorization from the importer. It is also clear that CB was

never in touch with importer by any means of communication or contact which indicates that the CB filed the bills of entry without taking proper authorization from importer/IEC holder and did not verify the genuineness of the importer. Hence, the said CB appears to have violated provisions of regulation 10(a) of CBLR, 2018. Accordingly, the IO concluded that the Charge alleging violation of Regulation 10(a) of the CBLR, 2018 stands "**Proved**".

Article of charge -II: Violation of Regulation 10(d) of CBLR, 2018

16. The IO submitted that the said Custom Broker was aware of the requirement of the Phyto-Sanitary Certificate in respect of clearance of the said import consignment, which was Fresh Pear Fruit. However, from investigation, it came to knowledge that fake/wrong Phyto-sanitary Certificate was used for clearance of the said consignment. Thus, it appeared to IO that either the CB was in connivance with the Importer in getting said goods cleared illegally or was negligent and callous in his duties. Therefore, it appeared to IO that the CB has not properly advised his client as per requirement of regulation 10(d) of the CBLR, 2018. Further, the Custom Broker never brought the matter to the knowledge of AC/DC Docks which he was duty bound under the regulation 10(d) of the CBLR, 2018. Due to above act of omission, it appeared to IO that CB failed to comply with provisions of regulation 10(d) of CBLR, 2018. Accordingly, the IO concluded that the Charge alleging violation of Regulation 10(d) of the CBLR, 2018 stands "**Proved**".

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

17. The IO submitted that the CB submitted fake/wrong Phyto-sanitary Certificate for clearance of the said import consignment. Investigation shows that the Custom Broker was aware of the said requirement as per the law. However, while filing the documents, it appears that the CB has not exercise due diligence as mandated under regulation 10(e) of the CBLR, 2018. Hence, the said CB appears to have violated regulation 10(e) of CBLR, 2018. Accordingly, the IO concluded that the Charge alleging violation of Regulation 10(e) of the CBLR, 2018 stands "**Proved**".

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

18. The IO submitted that the said CB did not discharge their duties with utmost speed and efficiency and without delay; if the CB had informed about the over-use/mis-use of mandatory Phyto-sanitary Certificate by the importer, the fraudulent import, loss to government exchequer and potential risk to Flora and Fauna of the country could have been averted. Further, the CB did not ensure the presence of the importer when summoned and was delaying the investigation. Hence, the said CB appears to have violated regulation 10(m) of CBLR, 2018. Accordingly, the IO concluded that the charge alleging violation of Regulation 10(m) of the CBLR, 2018 stands **"Proved"**.

Article of Charge-V: Violation of Regulation 10(n) of CBLR, 2018

19. The IO submitted that the said CB did not contact importer directly or indirectly and even failed to verify the functioning of the client at the declared address. During search of the premises of the importer, it was found vacant. Hence, IO stated that the said CB appears to have violated regulation 10(n) of CBLR, 2018. Accordingly, the IO concluded that the Charge alleging violation of Regulation 10(n) of the CBLR, 2018 stands **"Proved"**.

20. Therefore, The IO is of the considered opinion that the allegations against the Charged Customs Broker M/s. Pratik International are established on count of all charges viz. 10(a), 10(d), 10(e), 10(m) & 10(n) of the CBLR, 2018. From the foregoing discussion and findings, it is clearly established Customs Broker, M/s. Pratik International (CB 11/1988) was working in absolute disregard to the provisions of Regulation 10(a), 10(d), 10(e), 10(m) & 10(n) of the CBLR, 2018. The CB has ignored his responsibilities of verification of the importer and had an important role in the fraudulent imports. Therefore, the IO held all the charges levelled against the Customs Broker M/s. Pratik International (CB 11/1988) as 'Proved'.

20.1 Under the provisions of Regulation 17(6) of CBLR, 2018, a copy of the inquiry report dated 09.08.2024 was shared with the charged CB and for the sake of 'Principle of Natural Justice' and opportunity of personal hearing was granted to the CB on 12.11.2024.

RECORDS OF PERSONAL HEARING:-

21. On 12.11.2024, Sh. Shyam Raj Prasad, Advocate for the CB appeared for personal hearing and submitted the defence submissions dated 12.11.2024 and reiterated the same. Mr. Prasad orally submitted that the IO report is not sustainable and highly unreasonable; that the CB is not found guilty under Customs Act, 1962 as per OIO dated 02.02.2024; that the CB has fulfilled all the obligations as envisaged in the said regulations; that penalty or suspension or revocation of CB license is not commensurate with the offence; that the case laws relied upon by the CB are also enclosed with the written submission; that a lenient view may be taken in the case.

WRITTEN SUBMISSIONS OF THE CB:-

22. The CB submitted that their CB license was placed under suspension under regulation 16 (1) of CBLR 2018 with immediate effect for alleged non- fulfilment of obligation under Regulation 10(a), 10(d), 10(e), 10(m) and 10(n) of CBLR 2018 vide order No. 55/2023-24 dated 27.03.2024. Thereafter, the CB vide letter dated 08.04.2024 submitted inter-alia that they have not violated any provision of regulation 10(a), 10(d), 10(e), 10(m) and 10(n) of CBLR 2018 and that the CB had worked within the legal frame work and accordingly requested to revoke the suspension of the license. It was also submitted that the procedural lapse, if any, which happened due to inadvertent error/oversight did not cause any revenue loss to the Government. The Principal Commissioner of Customs, however, vide Order No. 06/2024-25 dated 17/18.04.2024 ordered for continuation of the suspension of the CB license, pending inquiry proceeding under Regulation 17 of CBLR 2018. Simultaneously, a SCN No. 08/2024-25 CBS dated

08/09.05.2024 was issued to the CB in terms of Regulation 17(1) of CBLR 2018, asking them to show cause as to why

- (i) the Customs Broker license bearing No. 11/1988 issued to them should not be revoked,
- (ii) security deposit should not be forfeited, and
- (iii) penalty should not be imposed upon them under Regulation 14 read with Regulation 17 & Regulation 18 of the CBLR, 2018

22.1 The SCN also required the CB to produce proof of evidence/documents, if any in their defence to the inquiry officer Shri Gracias J Saldanha, AC Customs to conduct inquiry under Regulation 17 of the CBLR, 2018.

23. The CB submitted that they vide letter dated 10.06.2024 submitted following point wise reply with reference to the Order dated 17/18.04.2024 and SCN dated 08/09.05.2024:

- (i) Non-fulfilling of obligation under Regulation 10(a) of CBLR, 2018-It is submitted that CB obtained authorisation well in advance from the importer. Therefore, the allegation is not based on facts and evidence.
- (ii) Non-fulfilling of obligation under Regulation 10(d) of CBLR, 2018-Importer being a DPD client and regular importer of fresh fruit was aware of the documents required. The importer was duly informed about the requisite documents, however, Bill of Entry was filed immediately on receipt of documents but for Phyto- sanitary certificate of origin, all documents were uploaded in e-Sanchit. The Phyto- sanitary certificate was also produced during the time of clearance and therefore there was no violation of said regulations.
- (iii) Non-fulfilling of obligation under regulation 10(e) of CBLR, 2018 No incorrect information was communicated to the importer as the genuineness of the Phyto- sanitary

certificate was verified by scanning QR-code and therefore there is no violation as alleged. The complete set of a Phyto-sanitary certificates were submitted as Annexure-C.

(iv) Non-fulfilling of obligation under Regulation 10(m) of CBLR, 2018-There was no delay or speed and efficiency related issue with respect to consignment in question and there is no such complaint either. Hence, there is no violation as alleged.

(v) Non-fulfilling of obligation under Regulation 10(n) of CBLR, 2018 The allegation regarding non verification of address of IEC holder and no contact with the importer, is not correct as the importer is a DPD client and regular importer, the correctness of KYC documents submitted by the importer was verified at DGFT, GST and other Govt. portals. The importer responded to the summons and cooperated with the investigation. As regards the Phyto-sanitary certificate issued by South Africa, it is submitted that the same only came to their notice when the investigation started hence the allegation is not sustainable.

(vi) It is also submitted further that the OIO dated 02.02.2024 issued by ADC, Gr-1 and Gr- IA, JNCH, has not penalised the CB for any violation.

(vii) Accordingly, it was submitted that the CB had worked within legal framework and therefore requested to revoke the suspension ignoring the procedural lapse, if any, which has happened due to inadvertent error or oversight, causing no revenue loss.

24. The CB submitted that the inquiry officer (AC Customs, Vigilance section) vide his Inquiry report dated 09.08.2024 held all the charges levelled against the CB as proved. The copy of Inquiry report was received by the CB only after requested by them, when a letter dated 14.10.2024 communicating the date of a personal hearing before the Principal Commissioner of Customs (G), NCH, Mumbai was received.

24.1 The CB submitted that the Inquiry officer has observed that the CB filed 6 B/Es for import of fresh pears on behalf of M/s. Abhi Agro Fresh Fruits. On investigation

conducted by CIU, it was found that the description and quantity of the goods were the same as declared but without valid Phyto sanitary certificate from the country of origin i.e. South Africa. He also observed that the said importer along with CB had misused Phyto sanitary certificate No. NPPO- ZA/2023/10/1049905 dated 03.10.2023 and had fraudulently imported 5 consignments excluding the live consignment of fresh pear fruit. The CB had not done proper KYC verification of the importer and did not verify the total quantity mentioned in the said certificate and colluded with the importer in obtaining clearances from customs fraudulently. The CB also did not upload Phyto-sanitary certificate in e-Sanchit in respect of past consignments. The CB representative in his statement had accepted his mistake of not doing proper KYC verification and not doing proper documentation in respect of imported goods.

25. With regard to the conclusion of the inquiry officer, the CB submitted the following points in their defence:-

25.1 The Inquiry report is non-speaking and unreasonable, passed without considering the facts and submission made by the CB. At the outset, it is submitted that the Inquiry report has not discussed the allegations with reference to any documents/evidences and has not considered the submissions made by the CB, thereby the same appears to be unreasoned and non-speaking and therefore, is liable to be rejected prima facie. The Inquiry officer has merely copied and pasted the contents of the SCN and has proved all the allegations against the CB ignoring the submissions made by the CB and without appreciating the facts and evidences on record. It is worth noticing that the Inquiry officer has not discarded the various submission made by the CB during the course of the proceedings and therefore, the Inquiry report does not deserve to be relied upon for further proceedings.

25.2 All the allegations against the CB are based on the fact that the Phyto-sanitary certificate for re-export no. DXB-APH-02415-2460883 dated 05.12.2023 issued in UAE

against Phyto-sanitary certificate No. NPPO-ZA/2023/10/1049905 issued in South Africa was not valid in respect of the live consignment of fresh pear fruit imported under B/E. No. 9192378 dated 12.12.2023. It is also alleged that the mandatory Phyto-sanitary certificates were not uploaded in e-Sanchit in respect of 6 B/Es filed by the CB on behalf of the said importer.

25.3 The Inquiry report has confirmed that there was no discrepancy in the description and quantity of the said goods imported under the said 6 Bills of entry. The only allegation made in the SCNs is that the goods were imported without valid Phyto-sanitary certificate from the country of origin i.e. South Africa and also that the CB had not done proper KYC verification of the importer. The CB in earlier defence submissions and the submissions made during the personal hearing had stated that the importer being a DPD holder and well aware of procedures relating to customs clearance, had submitted relevant documents for filing of B/E and clearance of the said consignments. In order to avoid payment of late fees for filing of B/E, the B/E was filed along with all supporting documents but for Phyto-sanitary certificate, which was also submitted at the time of clearance.

25.4 Regarding Violation of Regulation 10(a) of CBLR, 2018, the CB obtained necessary authorisation and did KYC verification as per guidelines provided by the CBEC by obtaining copy of the Aadhar card and PAN card and checked identity from GST M-Portal, DGFT Portal and obtained KYC. The CB also submitted a copy of the same. Hence, the finding of the IO is contrary to the facts on record and therefore not sustainable.

25.5 Regarding Violation of Regulation 10(d) of CBLR, 2018, the IO has presumed that the CB was in connivance with the importer without any supporting evidence for the same. Violation of Regulation 10(e) of CBLR, 2018 has also been proved on presumption basis in as much as the IO's findings do not exhibit confidence in his observations

regarding diligence of the CB. Similarly, decision regarding violation of Regulation 10(m) of CBLR, 2018 also has been arrived on some extraneous factors which are not envisaged in the said regulations. The IO has found that since the CB did not ensure the presence of the importer when summoned and was delaying the investigation, it has violated the said regulations. The charges against the CB cannot be established on presumption, as per settled law.

25.6 The inquiry officer has proved the charges under Regulation 10(m) though there was no delay or speed related issue established against the part of CB. This shows the unreasonableness of the findings in the report, as if, all the allegations were meant to be proved by any means, though without any basis. This shows the biasness of the Inquiry officer, which makes the report unreliable as per settled law.

25.7 Neither any involvement of the CB was found nor any penalty imposed against the CB in the proceedings under Customs Act, 1962. The CB submitted that simultaneously proceedings were initiated under Customs Act in respect of the live consignment imported under B/E No. 9192378 dated 12.12.2023 after investigation by CIU, JNCH and OIO No. 1557(L)/2023-24/ADC/NS-I/Gr.1 & 1A/CAC/JNCH dated 02.02.2024 came to be passed by the Additional Commissioner, Customs, NS-I, JNCH. The said proceedings got initiated against both Importer and the CB for their involvement in alleged fraudulent import of the said consignment covered under 14 B/Es.

25.8 On analysis and discussion, the Adjudicating Authority (AA) ordered for confiscation of the impugned goods under section 111(d) and 111(m) of Customs Act, 1962 with option to redeem the goods on payment of R/F of Rs 4,50,000/- and imposed penalty under section 112(a)(i) and 114(AA) of the Customs Act, 1962 against the importer M/s. Abhi Agro Fresh Fruits only. Neither the CB was found involved in the case nor any penalty was imposed against the CB in the said OIO.

25.9 The AA in the said OIO dated 02.02.2024 has considered the same set of facts as involved in the instant proceedings under CBLR. The AA noted all the 14 consignments of fresh pear fruits imported by the importer during the period Oct 23 to Dec 23 and discussed the Phyto-sanitary certificate dated 03.10.2023 issued by the country of origin i.e. South Africa for export to UAE, on the basis of which multiple Phyto-sanitary certificates were issued in UAE for re-export of the consignments to Nhava Sheva as involved in 7 B/E pertaining to the said importer. The AA then came to the conclusion that in respect of 5 consignments including the live consignment (B/E dated 12.12.2023) the importer had fraudulently imported pear fruit after the stipulated quantity of 13770 cartons and 168830 NETT KGM as covered under PC No. NPPO-ZA/2023/10/1049905 dated 03.10.2023 of South Africa, was utilised by earlier 2 B/E. Hence, it was concluded that the said 5 consignments including the live consignment under seizure were imported without a valid mandatory Phyto-sanitary certificate on the strength of Plant Quarantine (Regulation of Import into India) Order 2003 which required submission of original Phyto-sanitary certificate.

25.10 The Importer was implicated for the offence of fraudulent import of said goods and accordingly penalised under section 112(a) (i) and 114AA of the Customs Act, 1962 but neither the CB was found involved in the case nor any penalty was imposed against the CB under section 112 or other sections of the Customs Act, 1962. This clearly reveals that the CB was nowhere involved in the said alleged fraudulent import of the said goods. Had the CB colluded with the importer in alleged fraudulent importation of the said goods, the AA would have so decided and imposed penalty under section 12 of the Customs Act, 1962, which was not done.

26. The CB placed reliance on the case of **DEVSHI BHANJI KHONA Versus COMMISSIONER OF CUSTOMS, COCHIN 2009 (237) E.L.T. 509 (Tri. - Bang.):-**

"5.1 On perusal of the records, we find that the revenue has made efforts for recovery of the dues from the importer. We find that the Adjudicating Authority

has set out the actions taken by the revenue for the recovery of the amounts from the importer. It is the contention of the Adjudicating Authority, that they made all possible efforts to secure the recovery of the sums from the importer. We find from the records that in the Bill of Entry and the invoices, which were filed by the current appellant as a CHA on behalf of the importer were cleared by the authorities in 19-9-1984 and 22-9-1984 on payment of Customs Duty as was assessed. If that be so, the duties of the Custom House Agent i.e. current appellant before us, ended the moment the goods were cleared from the customs area. Subsequent detection of the undervaluation, etc. and could have proceeded against by the revenue only against the importer, which they did so, but not on the current appellant. At no point, current appellant was made a co-noticee in those proceedings. We find there is no show cause notice issued nor there is any allegation or findings, that the current appellant had a hand in making wrong declarations in undervaluation of the goods. In the absence of any such findings, we are of the considered view that the decision of the Tribunal in the case of *M/s. Aspinwall & Co. (supra)* will cover the issue in favour of the appellant. We may reproduce the ratio, which is as under.

"4. On a careful consideration of the submissions made by both sides, we find lot of force in the submissions made by the Id. Counsel. His submission is supported by the ratio of the judgment rendered in the case of *CC, Cochin v. Trivandrum Rubber Works Ltd. (supra)* and that of Tribunal judgment in the case of *Krison Electronic Systems Ltd. v. CC, Calcutta (supra)*. Both the judgments deal in great detail about the function of the CHA as an Agent and his responsibility is to a limited purpose of arranging release of the goods, and once the goods are cleared he has no further function. The reference to the Agent under Section 147 is to the Agent of the Principal i.e. Power of Attorney holder of the importer and where the relationship of "Master and Servant" come into play and in such cases the act of an agent is held to be an act of the Principal. While CHA is acting under a separate Regulations and his function under the licence is only to present papers for clearance of imported goods under Bill of Entry and not to act an agent as contemplated under Section 147 of the Act. Therefore, both the authorities were clearly in error in the application of law. In view of the judgments cited above, the impugned order is set aside and the appeal is allowed with consequential relief, if any."

5.2 In view of the above findings, respectfully following the ratio of the order in the case of M/s. Aspinwall & Co. (supra), we set aside the impugned order and allow the appeal filed by the appellant."

26.1 The CB submitted that since in this case also, the CB has not been charged for any abetment or violation of Customs Act, 1962, the action does not hold good against the CB as per the decision above. Hence, the findings of the Inquiry officer in the said Inquiry report therefore are presumptive and without basis or any corroborative evidences. Therefore, on this ground also, the Inquiry report is not sustainable and the CB cannot be held guilty for non-fulfilment of the obligations envisaged under CBLR as alleged. The CB has fulfilled all the obligations envisaged in the said Regulation and therefore the entire charges are not tenable and suspension of licence is not warranted.

26.2 The CB submitted that their employee Mr Devender in his statement dated 05.01.2024 recorded u/s 108 stated that BE No. 9192378 dated 12.12.2023 was filed by his CB firm on behalf of the said Importer after proper authorization; that importer had provided respective Phyto- sanitary Certificates for re-export issued in UAE in respect of the past import consignments and one live consignment of "Fresh Pear Fruit" and the same were uploaded in e-sanchit in I.5 ICES System in which only PC No. NPPO-ZA/2023/10/1049905 & Country of Origin "South Africa" and quantity of individual import shipment from UAE was mentioned; that imports of "Fresh Pear Fruit were made by using Phyto-sanitary Certificate No. NPPO- ZA/2023/10/1049905 dated 03.10.2023 which was issued in South Africa.

26.3 The findings of the Principal Commissioner while placing the licence under suspension as well as the findings of the Inquiry officer in the subject Inquiry report are not legal and proper in view of the facts and circumstances of the case and submissions made by the CB above and hereinafter.

26.4 The CB submitted that the Principal Commissioner found that the CB had not done proper KYC verification of the importer and did not verify the import documents

viz. packing list, COO, Phyto-sanitary Certificates, other relevant documents etc. and were in collusion with the importer in obtaining fraudulently Customs Clearances of "Fresh Pear Fruits". It is also found prima facie that CB never advised the importer to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and CB did not upload Phyto-sanitary Certificates in e- sanchit in ICES 1.5 System. Accordingly, he tentatively proceeded to hold that the CB violated Regulation 10(a), (d), (e), (m) & (n) of CBLR 2018 and consequently suspended the licence.

27. The CB submitted that the Inquiry officer has simply copied and pasted the prima facie findings of the Pr. Commissioner in the aforesaid order dated 27.03.2024 for suspension of licence, without considering the submissions of the CB during the proceedings of Inquiry. In such circumstances, the Inquiry officer report is not sustainable as per law settled in the matter. Reliance is placed on the case of Advent Shipping Agency Vs P Pr Commr Customs Kolkata (2023) 2 Centax 157 (T-Cal) (T-Cal), wherein the charges proved against the CB without appreciation of the facts and giving any independent findings on the charges, were dropped. Hence, the Inquiry report is liable to be set aside without any penalty against the CB on this ground alone.

27.1 As regards, Regulation 10(a), the CB submitted that they obtained proper authorisation from the importer and filed the B/Es on behalf of the importer accordingly as stated by the -employee in statement dated 05.01.2024, hence the allegation is without any basis. The CB also enclosed a copy of the said authorisation. Hence, the CB has duly complied with the provisions of Regulation 10(a) of CBLR, 2018 as highlighted above.

27.2 Regarding Regulation 10(d), the CB submitted that they advised the importer to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, as required for the import of the said goods. The importer is a DPD and well conversant of the relevant provisions of the Act and Rules/regulations being a regular importer. The importer was duly advised about compliance of PQ (Regulation of Import

into India) Order, 2003 and valid Phyto-sanitary certificate also. The importer accordingly submitted the Phyto-sanitary certificate to the CB for submission before Customs authority and uploading of the same on e-Sanchit. Regarding validity, there is no means to verify the genuineness of the certificate in the hands of the CB except for checking the veracity through scanning of the QR code, which was carried out by the CB. The quantity indicated in the certificate was whether beyond the specified limit vis-à-vis the original Phyto-sanitary certificate issued by South Africa, was not possible to be checked at the end of the CB in view of the fact that the Authority of UAE issuing the certificate for re-export of the said goods to India was supposed to be ensuring the same. The CB had neither any means to disbelieve the discretion of the UAE authority nor was duty bound to verify the said aspect once the importer had submitted the valid Phyto-sanitary certificate issued by UAE. Hence, the CB cannot be held responsible for the non-compliance by the importer despite being advised by the CB. Therefore, the CB cannot be held guilty for violation of regulation 10(d) of CBLR, 2018.

27.3 The allegation regarding non-fulfilment of Regulation 10(c) is also not sustainable in view of admitted fact that the CB had exercised due diligence to ascertain the correctness of all relevant information which he imparted to the importer. The regulation only talks about diligence regarding relevant information to be imparted by the CB to importer. Whereas, the instant case relates to genuineness or otherwise of the Phyto-sanitary certificate, which was made available by the importer to the CB and hence does not squarely fall under the ambit of Regulation 10(e) *ibid*. The CB further submits that there is no evidence relied upon by the department to allege that the CB connived with the importer in using wrong Phyto-sanitary certificate to evade duty. Had the CB connived/colluded with the importer, the Addl. Commissioner must have imposed penalty under section 112 of the Customs Act, 1962 while adjudicating the case under Customs Act, 1962, which is not the case. Hence, the allegation is baseless, misplaced

and not legally sustainable. Thus, it is not proved that the CB violated provisions of Regulation 10(e) *ibid*, therefore the Inquiry report is not correct to this extent as well.

27.4 As regards violation of Regulation 10(m) levelled against the CB, it is submitted that the CB discharged all their duties and responsibilities with required speed and efficiency and without any delay in compliance of this regulation. The Inquiry officer has held the charge proved on the ground that by informing importer about wrong mandatory Phyto-sanitary certificate, fraudulent import and loss to Government exchequer, the CB has violated the said regulation. It is submitted that the CB had not informed the importer about wrong certificate in the first place, and further there is no such evidence available on record or so admitted by the importer or anybody else during the proceedings. The said allegation is based on presumption/assumption only. Moreover, the said regulation only deals with speed and efficiency, which has not been doubted against the CB at all. As regards the Phyto-sanitary certificate issued by South Africa, it is submitted that the same only came to the notice of the CB on initiation of the investigation by CIU, hence the allegation is not sustainable. As submitted earlier, the charges have been held proved mechanically by the Inquiry officer and not based on the legal provisions and facts on record. Hence, on both grounds, the CB cannot be charged for violation of regulation 10(m) and thus the Inquiry report to that extent is also not acceptable.

27.5 As regards Regulation 10(n), the CB submits that the CB had duly verified the correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity and functioning of the importer at the declared address by using reliable, independent, authentic documents, data or information. As submitted earlier, the importer is a DPD client and regular importer, the correctness of KYC documents submitted by the importer was duly verified at DGFT, GST and other Govt. portals. The CB considering the importer to be DPD client and regular importer had no doubt about the existence of the importer. It is further submitted that the importer was not available during the search being out of station, however, he responded to the

summons and cooperated with the investigation. It is not expected from the CB to verify the premises of the importer physically as per the regulation, which is so held in several cases by the Tribunal. The CB placed reliance on following decisions:

(i) **Hon'ble High Court of Delhi held in the case of Kunal Travels (Cargo) v. Principal Commissioner of Customs (I&G), IGI Airport, New Delhi reported in 2017 (354) E.L.T. 447 (Del.)**, that the appellants CB is not an officer of Customs who would have an expertise to identify mis-declaration of goods. The relevant portion of the said judgment is extracted below:

"12.The CHA is not an inspector to weigh the genuineness of the transaction. It is a processing agent of documents with respect to clearance of goods through customs house and in that process only such authorized personnel of the CHA can enter the customs house area..... It would be far too onerous to expect the CHA to inquire into and verify the genuineness of the IE Code given to it by a client for each import/export transaction. When such code is mentioned, there is a presumption that an appropriate background check in this regard i.e. KYC etc. would have been done by the customs authorities. The grant of the IE Code presupposes a verification of facts etc. made in such application with respect to the concern or entity. If the grant of such IE Code to a non-existent entity at the address WZ- 156, Madipur, New Delhi - 63 is in doubt, then for such erroneous grant of the IE Code, the appellant cannot be faulted. The IE Code is the proof of locus standi of the exporter. The CHA is not expected to do a background check of the exporter/client who approaches it for facilitation services in export and imports. Furnishing of wrong or incorrect information cannot be attributed to the CHA if it was innocently filed in the belief and faith that its client has furnished correct information and veritable documents. The misdeclaration would be attributable to the client if wrong information were deliberately supplied to the CHA. Hence, there could be no guilt, wrong, fault or penalty on the appellant apropos the contents of the shipping bills. Apropos any doubt about the issuance of the IE Code to Ms. H.S. Impex, it was for the respondents to take appropriate action. Furthermore, the inquiry report revealed that there was no delay in processing the documents by the appellant under Regulation 13(n)"

(ii) **Poonia Brothers Vs CCP Jaipur 2019 (370) ELT 1074 (Para 6 to 8)**

(iii) **UDL Logistics P Ltd Vs CC Bangalore 2024 (387) ELT 730 (T-Bang)**
(Para 6)

(iv) **Jyoti Customs Broker Service Pvt Ltd vs Pr Commr Kolkata 2023 (385)**
ELT 404 (fara 9-10 £1748)

(v) **Dakor Clearing & Shipping P Ltd Vs CC(General) Mumbai 2015 (326)**
ELT 178 (T-Mum)

28. The CB further submitted that in view of above decisions and the facts on record, it is wrong to charge that the CB failed to adhere to the regulation 10(n) *ibid*. The Inquiry report therefore is not correct on this account as well and from the aforesaid submissions the CB cannot be charged for violation of Regulation 10(a), 10(d), 10(e), 10(m) & 10(n) of CBLR, 2018.

28.1 The CB also submitted that they have been a diligent customs broker and discharging their duties and responsibilities as a sincere broker in strict compliance of the provisions of CBLR 2018 for last about 35 years and has never been charged for any violation of the said regulations. The licence of the CB is under suspension for last more than 7 months and many persons connected thereto are jobless causing huge ramification on their livelihood, which is nothing but in the nature of severe penalty for bonafide mistake, if any, on the part of the CB. Any further penalty shall be highly unreasonable, harsh and unwarranted in the above facts and circumstances of the case.

28.2 The CB requested to drop all the proceedings under CBLR 2018; to revoke the suspension of licence with immediate effect; to allow the CB to operate as a regular CB under the said licence; after exonerating the CB from all charges levelled against them vide Order No. 55/2023-24 dated 27.03.2024, Order No. 06/2024-25 dated 17/18.04.2024, SCN No. 08/2024-25 dated 08/09.05.2024 and Inquiry report dated 09.08.2024 issued in this regard. The penalty of suspension or revocation of licence is not commensurate with the offence. Without prejudice to the aforesaid submissions made by the CB for exoneration of all the charges, it is submitted that the CB has been a diligent

custom broker and discharging their duties and responsibilities as a sincere broker in strict compliance of the provisions of CBLR 2018 for last about 35 years and has never been charged for any violation of the said regulations. It may be appreciated that the licence of the CB is under suspension for last more than 7 months since 27.03.2024 and the CB has been unable to work for last 7 months causing lot of financial losses and many persons connected thereto have become jobless causing huge ramification on their livelihood. These implications are nothing but in the nature of severe penalty for bonafide mistake, if any, on the part of the CB. Any further penalty shall be highly disproportionate, harsh and unwarranted in the above facts and circumstances of the case.

28.3 The CB further submitted that it is admitted on record that there is no loss of government revenue in the matter as there is no additional duty payable by the importer for the aforesaid alleged contraventions. Hence, severe penalty of suspension/revocation of licence is unwarranted and highly unreasonable, especially when the CB is not a habitual offender. The CB placed reliance on the following case laws, wherein it is categorically held that the punishment has to be commensurate and proportionate to the gravity of offence only.

- (i) In the case of Falcon Air Cargo and Travels (P) Ltd 2002 (140) ELT 8 (DEL), Hon'ble High Court of Delhi.
- (ii) In the case of Ashiana Cargo Services 2014 (302) ELT 161 (Del), Hon'ble High Court.
- (iii) In the case of ACE Global Industries 2018 (364) ELT 841 (T-Chennai).
- (iv) In the case of Setwin Shipping Agency Vs CC(General) Mumbai 2010 (250) ELT 141 (T- Mum).

29. The CB submitted that the aforesaid judgments support for imposition of penalty commensurate with the offence committed. Further the "Doctrine of Proportionality" also supports the concept that the punishment for an offence must be proportional to the gravity of the offence. The severe punishment of suspension or revocation of licence is

not commensurate with the offence, if any, committed by the CB. The facts and circumstances in the instant case do not support for the severe most punishment of suspension/revocation of the CB licence and therefore it is prayed that the CB may be exonerated from all the charges, which are otherwise also legally not tenable in view of the submissions made by the CB.

DISCUSSIONS AND FINDINGS:

30. I have gone through the facts of the case and the documents/materials brought on record; the offence report dated 15.03.2024 received from Commissioner of Customs (Gen), JNCH; the Suspension Order No. 55/2023-24 dated 27.03.2024; the Suspension Continuation Order No. 06/2024-25 dated 17.04.2024/18.04.2024; the Show Cause Notice No 08/2024-25 dated 08.05.2024/09.05.2024, issued under CBLR, 2018; the Inquiry Officer's Report dated 09.08.2024; the defence written submissions of the CB dated 12.11.2024 furnished at the time of personal hearing.

31. Briefly stated, the present case has been booked and investigated by CIU, JNCH, Nhava Sheva against the importer M/s. Abhi Agro Fresh Fruits (IEC-BOWPD1234G) for fraudulent import of 'fresh pear fruits' by way of over-using or mis-using the Phytosanitary Certificate No. NPPO-ZA/2023/10/1049905 dated 03.10.2023, issued by the country of origin (South Africa). As discussed under TABLE-1 above, the said Importer had fraudulently imported 05 consignments (05 Bills of Entry of Fresh Pear Fruit, including the live consignment (B/E No. 9192378 dated 12.12.2024), having total Assessable Value of Rs. 2,20,77,346/- after stipulated quantity of 13770 Cartons & 168830 NETT KGM of 'Fresh Pear Fruit' in the said Phytosanitary Certificate, which was already been imported in earlier 02 BEs viz. 8632567 dated 04.11.2023 & 8687193 dated 08.11.2024. The impugned Bills of Entry have been filed by the charged CB M/s. Pratik International (CB No. 11/1988) on behalf of the said importer. Hence, on receipt of the offence report from CIU, JNCH, action under CBLR, 2018 was initiated against the

CB, as discussed under para 11 (supra) for apparent violation of Regulation 10(a), 10(d), 10(e), 10(m) & 10(n) of CBLR, 2018. The inquiry officer has held all the charges as 'proved'. However, the CB has argued that the inquiry report is unreliable as per settled law. Now, I proceed to sequentially discuss the articles of charge levelled against the CB.

31.1 Article of Charge – I:- Violation Of Regulation 10(a) of CBLR, 2018:-

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

- (a) I find that as per the SCN dated 08/09.05.2024, the said charge has been framed on the ground that the 'Customs Broker did not produce any evidence to prove that he had obtained proper authorization from the importer'. The inquiry officer has also relied on the same fact and concluded that the CB has violated the Regulation 10(a) of CBLR, 2018.
- (b) I find that the CB, in their defence, has submitted that they had obtained necessary authorisation and did KYC verification as per guidelines provided by the CBEC by obtaining copy of the Aadhar card and PAN card and checked identity from GST M-Portal, DGFT Portal and obtained KYC of the importer. The CB also argued that the Inquiry report is non-speaking and unreasonable, passed on the basis of allegations in SCN only and without considering the facts and submission made by the CB. Further, I find that Shri Devendra Ramchandra Salvi, G-Card employee of CB in his statement recorded under Section 108 of Customs Act, 1962, has stated that Bill of Entry No. 9192378 dated 12.12.2023 was filed by his CB firm on behalf of the said Importer under proper authorization. The CB, along with their written submissions, enclosed a copy of Authorisation letter issued by M/s. Abhi Agro Fresh Fruits. The CB also submitted that the importer is a DPD client and regular importer.

- (c) I find that as per the investigation records, the said importer has filed 14 Bills of Entry of 'Fresh Pear Fruit' from Oct. 2023 to Dec. 2023. I also find that Shri Devendra Ramchandra Salvi, G-Card employee of CB in his statement recorded under Section 108 of Customs Act, 1962, has admitted that the CB has filed 09 bills of entry for the said importer as mentioned in Table-4 (supra).
- (d) Having perused the offence report and the inquiry report, I find that no sustainable grounds have been made to establish the violation of Regulation 10(a) on the part of the CB. The inquiry officer has not expeditiously examined and appreciated the evidence on record and the defence submission of the CB. Hence, under the facts and circumstances of the case I am not inclined to accept the inquiry officer's conclusion in holding the charge of violation of Regulation 10(a) as proved.

31.2 Article of Charge – II:- Violation Of Regulation 10(d) of CBLR, 2018:-

"10(d)- 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 noncompliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be."

- (a) I find that the said charge has been framed against the CB on the grounds that the CB was aware of the requirement of the Phytosanitary Certificate in respect of clearance of the said import consignment of 'Fresh Pear Fruit', however, it appeared that either the CB was in connivance with the Importer in getting said goods cleared illegally or was negligent and callous in his duties. While holding the said charge as 'proved', the inquiry officer observed that it was responsibility of the CB to upload/e-sanchit valid mandatory Phyto- sanitary Certificate for import of 'Fresh Pear Fruits' in India, with the correct Country of Origin and such serious lapses by the CB have put the Indian flora & fauna

at risk as per the PQ (Regulation of Import into India) Order, 2003. The CB appears to have intentionally uploaded non-relevant documents to aid the illegal imports and fake/wrong Phyto-sanitary Certificate was used for clearance of the said consignment. The inquiry officer held that either the CB was in connivance with the Importer in getting said goods cleared illegally or was negligent and callous in his duties and also, the Custom Broker never brought the matter to the knowledge of AC/DC Docks which he was duty bound under the regulation 10(d) of the CBLR, 2018.

- (b) I have also perused the defence submissions of the CB wherein the CB has submitted that they advised the importer to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, as required for the import of the said goods. The importer is a DPD and well conversant of the relevant provisions of the Act and Rules/regulations being a regular importer. The importer was duly advised about compliance of PQ (Regulation of Import into India) Order, 2003 and valid Phyto-sanitary certificate also and the CB cannot be held responsible for the non-compliance by the importer despite being advised by the CB
- (c) I find that the as per the investigation conducted by CIU, JNCH, it is a matter of fact that the necessary compliance of producing a valid Phytosanitary certificate for the import of 'Fresh Pear Fruits' has not been complied with by the importer. Also, the Phytosanitary Certificate No. NPPO-ZA/2023/10/1049905 dated 03.10.2023, has been overused beyond its stipulated quantity of 13770 Cartons & 168830 NETT KGM of 'Fresh Pear Fruit'. Further, the investigation also revealed that the said Phytosanitary Certificate was improper as it did not contain the additional declarations and special conditions mentioned under Chapter-II & III and Schedule-VI of the Plant Quarantine (Regulation of Import into India) Order, 2003. It is also

evident that most of the imports are re-export shipments from UAE wherein, Phytosanitary Certificates issued by the re-exporting country (UAE) has been uploaded in e-sanchit, whereas, the mandatory Phytosanitary Certificates issued by the country of origin (South Africa), as mentioned in the said Phytosanitary Certificates issued by the re-exporting country (UAE), had not been uploaded in e-sanchit. I also find that it is matter of fact that all the 14 import consignments of 'Fresh Pear Fruit', imported by the said importer, during the period from October-2023 to December-2023, out of which, as admitted by CB, 09 bills of entry have been filed by the CB M/s. Pratik International, were imported in violation of "pre-import condition" set by the said PQ Order, 2003, thereby, making them prohibited goods for import into India. This involved 1137.23 Tons of Pears valued at Rs. 6.43 crores and Customs Duty of Rs. 2.12 crores.

- (d) From all these facts and circumstances of the case, I find that it is evidentiary that a gross violation of Plant Quarantine (Regulation of Import into India) Order, 2003 has been committed by the importer and as such, by not advising their client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, the CB has failed to fulfil their obligation as stipulated under regulation 10(d) of CBLR, 2018. Also, the CB did not bring these facts of illegal imports to the notice of the department and kept quiet. In such circumstances the CB failed to comply with the duty and obligation imposed by the provisions of Regulation 10(d) of CBLR, 2018 and accordingly I approves the decision of inquiry officer in establishing the violation of regulation 10(d) as proved.

31.3 Article of Charge – III:- Violation Of Regulation 10(e) of CBLR, 2018:-

"10(e)- 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";

- (a) I find that the said charge has been framed against the CB on the ground that fake/wrong Phytosanitary Certificate was used for clearance of the said import consignment and while filing the documents, the CB has not exercised due diligence as mandated under regulation 10(e) of the CBLR, 2018. I find that, the inquiry officer, while holding the said charge as proved, observed that Investigation shows that the Custom Broker was aware of the said requirement as per the law, however, while filing the documents, the CB has not exercise due diligence. The CB submitted in defence that the violation of Regulation 10(e) of CBLR, 2018 has been proved on presumption basis in as much as the IO's findings do not exhibit confidence in his observations regarding diligence of the CB.
- (b) I find that Shri Devendra Ramchandra Salvi, G-Card employee of CB in his statement recorded under Section 108 of Customs Act, 1962, has admitted that his CB firm had not enquired about the previous import shipments, made by using third country Phytosanitary Certificate, of 'Fresh Pear Fruits' from the importer; that his CB firm has not asked for copy of third country Phytosanitary Certificate from the importer in good faith; that they have not uploading Phytosanitary Certificates in e-sanchit at Customs ICES System in respect of 05 past import shipments as mentioned at Sr. No. 01 to 05 in TABLE-4 (supra). In view of the statement of the Sh. Devendra Ramchandra Salvi and under the factual matrix of the present case, I find that Hence, it is evident that the CB was working in a seriously negligent manner and in violation of the obligations casted upon them under the CBLR, 2018. The above facts and acts accepted by the CB shows their lackadaisical approach

towards their responsibility to exercise due diligence in handing the import documents. Hence, given these facts of the case, I am of the firm opinion that the charge of violation of Regulation 10(e) of CBLR, 2018, levelled against the CB, is sustainably proved by the inquiry officer.

31.4 Article of Charge – IV:- Violation Of Regulation 10(m) of CBLR, 2018:-

"10(m)-A customs broker shall 10(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay";

- (a) I find that the said charge has been levelled against the CB on the grounds that if the CB had informed about the over-use/mis-use of mandatory Phytosanitary Certificate by the importer, the fraudulent import, loss to government exchequer and potential risk to Flora and Fauna of the country could have been averted and also, the CB did not ensure the presence of the importer when summoned and was delaying the investigation. I find that relying on the very same grounds the inquiry officer has concluded that the charge of violation of regulation 10(m) of CBLR, 2018 is proved. Having perused the defence submissions of the CB in this regard, I find that the CB argued that the decision regarding violation of Regulation 10(m) of CBLR, 2018 has been arrived by the inquiry officer, on some extraneous factors which are not envisaged in the said regulations. The inquiry officer has found that since the CB did not ensure the presence of the importer when summoned and was delaying the investigation, it has violated the said regulations. The charges against the CB cannot be established on presumption, as per settled law. Further, the CB submitted that the inquiry officer has proved the charges under Regulation 10(m) though there was no delay or speed related issue established against the part of CB. This shows the unreasonableness of the findings in the report, as if, all the allegations were meant to be proved by any

means, though without any basis. This shows the biasness of the Inquiry officer, which makes the report unreliable as per settled law.

- (b) In this regard, I reiterate the facts as discussed under para 31.3 (b) (supra). The statement of Sh. Shri Devendra Ramchandra Salvi, G-Card employee of CB is evidentiary in nature that the CB has not discharged his duties with utmost speed and efficiency and without any delay. As per his own statement, the CB has not worked efficiently in discharging their duty as a Customs Broker. Despite that CB did not act with due diligence or with utmost efficiency in advising the importer or bringing this fact of discrepancies in Phytosanitary Certificate, to the knowledge of the department. Consequently, the CB contravened Regulation 10(m) of the CBLR, 2018 and hence, I approve the conclusion of the inquiry officer in establishing the charge of violation of regulation 10(m). Here, I rely on the apex court judgement in the matter of Systems & Components [2004 (165) E.L.T. 136 (S.C.)] which says as under:-

"It is a basic and settled law that what is admitted need not be proved".

31.5 Article of Charge – V:- Violation Of Regulation 10(n) of CBLR, 2018:-

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

- (a) I find that the said charge has been framed against the CB on the ground that the said CB did not contact importer directly or indirectly and even failed to verify the functioning of the client at the declared address and during search operation conducted by the GST officers of Meerut Commissionerate, GST, Preventive Division, the premises of the importer was found vacant. The

inquiry officer has also held the said charge as 'proved' reiterating the same ground.

- (b) Having perused the defence submissions made by the CB in this regard, I find that the CB had duly verified the correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity and functioning of the importer at the declared address by using reliable, independent, authentic documents, data or information. The CB also submitted that the importer is a DPD client and regular importer, the correctness of KYC documents submitted by the importer was duly verified at DGFT, GST and other Govt. portals. The CB considering the importer to be DPD client and regular importer had no doubt about the existence of the importer. It is further submitted that the importer was not available during the search being out of station, however, he responded to the summons and cooperated with the investigation. The CB also argued that it is not expected from the CB to verify the premises of the importer physically as per the regulation, which is so held in several cases by the Tribunal. The CB placed reliance on following decisions:

- (i) **Hon'ble High Court of Delhi held in the case of Kunal Travels (Cargo) v. Principal Commissioner of Customs (I&G), IGI Airport, New Delhi reported in 2017 (354) E.L.T. 447 (Del.),**
- (ii) **Poonia Brothers Vs CCP Jaipur 2019 (370) ELT 1074 (Para 6 to 8)**
- (iii) **UDL Logistics P Ltd Vs CC Bangalore 2024 (387) ELT 730 (T-Bang) (Para 6)**
- (iv) **Jyoti Customs Broker Service Pvt Ltd vs Pr Commr Kolkata 2023 (385) ELT 404 (fara 9-10 £1748)**
- (v) **Dakor Clearing & Shipping P Ltd Vs CC(General) Mumbai 2015 (326) ELT 178 (T-Mum)**

- (c) Having perused the records of the case, I find that the physical existence of the importer is not disputed in the present case. I have also gone through the O-I-O No. 1557(L)/2023-24/ADC/NS-I/Gr. 1 & 1A/CAC/JNCH dated 02.02.2024,

passed by ADC, NS-I, JNCH. Having gone through the same, I find that the importer M/s. Abhi Agro Fresh Fruits had approached the Hon'ble Bombay High Court for provisional release of their perishable cargo imported vide B/E No. 9192378 dated 12.12.2023. Under the facts and circumstances of the case I am not inclined to take arbitrary decision in holding the charge of violation of Regulation 10(n) of CBLR, 2018, as 'proved'. Hence, I am of the considered view that the charge of violation of regulation 10(n) of CBLR, 2018 cannot be proved sustainably. Hence, I drop the same. In this regard, I rely on the judgement of **Hon'ble CESTAT in the case of M/s. Anax Air Services Pvt. Ltd. Vs. Commissioner of Customs, (Airport and General), New Delhi.** The relevant portion of said judgement is reproduced below:

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

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

32. I find that the CB has submitted a copy of O-I-O No. 1557(L)/2023-24/ADC/NS-I/Gr. 1 & 1A/CAC/JNCH dated 02.02.2024, passed by ADC, NS-I, JNCH. The CB submitted that neither any involvement of the CB was found nor any penalty imposed against the CB in the proceedings under Customs Act, 1962. The CB submitted that simultaneously proceedings were initiated under Customs Act in respect of the live consignment imported under B/E No. 9192378 dated 12.12.2023. The said proceedings got initiated against both Importer and the CB for their involvement in alleged fraudulent import of the said consignment covered under 14 B/Es. On analysis and discussion, the Adjudicating Authority (AA) ordered for confiscation of the impugned goods under section 111(d) and 111(m) of Customs Act, 1962 with option to redeem the goods on payment of R/F of Rs 4,50,000/- and imposed penalty under section 112(a)(i) and 114(AA) of the Customs Act, 1962 against the importer M/s. Abhi Agro Fresh Fruits only. Neither the CB was found involved in the case nor any penalty was imposed against the CB in the said OIO.

32.1 I find that the consignment of 'Fresh Pear Fruits' imported vide live Bill of Entry No. 9192378 dated 12.12.2023 was seized by CIU, JNCH. The importer approached Hon'ble Bombay High Court for provisional release of the said consignment of perishable cargo. The Hon'ble Bombay High Court, vide order dated 30.01.2024, held that:

"2. We are of the considered opinion that, as the Petitioner has already moved an application for provisional release of the goods, itb would be appropriate that the application ofg the petitioner for release of provisional goods dated 12th January, 2024 needs to be expeditiously decided on its own merits.

3. Let such application be decided, on or before 2nd February, 2024."

32.2 I find that in compliance of the above order of Hon'ble Bombay High Court, only the Bill of Entry No. 9192378 dated 12.12.223 was taken up for adjudication. Also, as per

the request of the importer, the SCN under Customs Act, 1962, was waived of in this case. Further, the adjudicating authority under para 33 of OIO dated 02.02.2024, mentioned that:

"I find that the country of origin of the subject goods may be other than the declared one which may have impact on Assessable value, as Freight etc. will vary depending upon the Country of Origin. However, as the investigation with regards to ascertaining the actual Country of Origin of the subject goods is under progress in CIU, JNCH. I inclined to decide the issue under live bill of entry no. 9192378 dated 12.12.2023 only".

32.3 In view of the above discussions, I find that the investigation in present matter is under progress in CIU, JNCH. Considering this fact, the contention of the CB that 'neither any involvement of the CB was found nor any penalty imposed against the CB in the proceedings under Customs Act, 1962' is not sustainable. Also, it is pertinent to mention here that the proceedings under CBLR, 2018 are independent, separate and distinct from that under Customs Act, 1962. The present proceedings under CBLR, 2018 are initiated on the basis of Offence Report dated 15.03.2024, received from the Commissioner of Customs (Gen), JNCH, Nhava Sheva.

33. I find that a Custom Broker occupies a very important position in the Custom House and supposed to safeguard the interests of both the importers/exporters and the Customs Department. A lot of trust is kept in CB by the Government Agencies, however, by their acts of omission and commission it appeared that the CB M/s. Pratik International has violated Regulation 10(d), 10(e) & 10(m) of the Customs Broker Licensing Regulation (CBLR), 2018. I find that in the instant case, the CB license was suspended under Regulation 16(1) of CBLR, 2018. Also, by following the Principle of Natural Justice and granting an opportunity of personal hearing to the CB, the suspension of CB license was continued under Regulation 16(2) of CBLR, 2018, pending inquiry proceedings. I find that for the violation of obligations provided under CBLR, 2018 and for their act of omission and commission, the CB M/s. Pratik International has rendered

themselves liable for penal action under CBLR, 2018. Hence, while deciding the matter, I rely on the following case laws:

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

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

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

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

34. As discussed above, I conclude that the CB is guilty of violations of CBLR, 2018. However, considering all the facts and circumstances of the case and taken into cognizance of the decisions/ case laws of higher forum, relied upon by the CB, ratio of

which is reasonably applicable in this case also, I am of the view that revoking the CB license and forfeiture of security deposit is too grave a penalty to be imposed for the above violations, as the punishment of revocation of license is much harsh and disproportionate to the offences committed. Also, it is pertinent to note here that the license of the CB is already under suspension for almost 09 months i.e. since 27.03.2024 and the CB has been unable to work for these 09 months and thus been already penalised in this manner. The ends of justice will be met by revoking the suspension of the CB license and imposing a penalty, on the CB, under Regulation 18 of CBLR, 2018. In this regard, I place reliance on the following case laws:

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

"13. By order dated 15-7-2000, licence was revoked. It is not clear how there could be revocation when the licence itself was not functional after 13-1-2000. Licence can be suspended or revoked on any of the grounds as mentioned in Regulation 21. It is, therefore, clear that if any of the grounds enumerated existed, two courses are open to the Commissioner. One is to suspend the licence and the other is to revoke it. Suspension would obviously mean that licence would be for a particular period inoperative. An order of revocation would mean that licence is totally inoperative in future, it loses its currency irretrievably. Obviously, suspension/revocation, as the case may be, has to be directed looking to the gravity of the situation in the background of facts. For minor infraction or infraction which are not of very serious nature order of suspension may suffice. On the contrary, when revocation is directed it has to be only in cases where infraction is of a very serious nature warranting exemplary action on the part of the authorities, otherwise two types of actions would not have been provided for. Primarily it is for the Commissioner/Tribunal to decide as to which of the actions would be appropriate but while choosing any of the two modes, the Commissioner/Tribunal has to consider all relevant aspects and has to draw a balance sheet of gravity of infraction and mitigating circumstances. The difference in approach for consideration of cases warranting revocation or suspension or non-renewal has to be borne in mind while dealing with individual cases. In a given case the authorities may be of the view that non-renewal of licence for a

period of time would be sufficient. That would be in a somewhat similar position to that of suspension of licence though it may not be so in all cases. On the other hand, there may be cases where the authorities may be of the view that licensee does not deserve a renewal either. Position would be different there. Though we have not dealt with the question of proportionality, it is to be noted that the authorities while dealing with the consequences of any action which may give rise to action for suspension, revocation or nonrenewal have to keep several aspects in mind. Primarily, the effect of the action vis-a-vis right to carry on trade or profession in the background of Article 19(1)(g) of the Constitution has to be noted. It has also to be borne in mind that the proportionality question is of great significance as action is under a fiscal statute and may ultimately lead to a civil death."

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

"11. Viewing these cases, in the background of the proportionality doctrine, it becomes clear that the presence of an aggravating factor is important to justify the penalty of revocation. While matters of discipline lie with the Commissioner, whose best judgment should not second-guessed, any administrative order must demonstrate an ordering of priorities, or an appreciation of the aggravating (or mitigating) circumstances. In this case, the Commissioner and the CESTAT (majority) hold that —there is no finding nor any allegation to the effect that the appellant was aware of the misuse of the said G cards, but do not give adequate, if any weight, to this crucial factor. There is no finding of any mala fide on the part of the appellant, such that the trust operating between a CHA and the Customs Authorities (as a matter of law, and of fact) can be said to have been violated, or be irretrievably lost for the future operation of the license. In effect, thus, the proportionality doctrine has escaped the analysis".

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

"6. We are unable to appreciate such a peremptory conclusion. The CBLR, 2013 lays down that stepwise procedures are to be followed before ordering any punishment to the Customs broker. True, the said regulations do contain provisions for revocation of the license and for forfeiture of full amount of security deposit, however these are maximum punishments which should be awarded only

when the culpability of the Customs broker is established beyond doubt and such culpability is of very grave and extensive nature. In case of such fraudulent imports, for awarding such punishment, it has to be established without doubt that the Customs broker had colluded with the importer to enable the fraud to take place. No such culpability is forthcoming in respect of the appellant herein.....”

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

35. Further, I find that the CB has submitted that ‘they have been a diligent customs broker and discharging their duties and responsibilities as a sincere broker in strict compliance of the provisions of CBLR 2018 for last about 35 years and has never been charged for any violation of the said regulations. The licence of the CB is under suspension for last more than 7 months and many persons connected thereto are jobless causing huge ramification on their livelihood, which is nothing but in the nature of severe penalty for bonafide mistake, if any, on the part of the CB. Any further penalty shall be highly unreasonable, harsh and unwarranted in the above facts and circumstances of the case’. In this regard, I rely on the judgement of **Hon’ble CESTAT Mumbai in the case of Friends Syndicate Clearing Pvt Ltd vs Commissioner Of Customs-Mumbai** which **observed as follows:**

“4.16 We also take note of the following submissions made by the appellant which have not been disputed by the revenue authorities:-

-They have been performing as CB for nearly 40 years and have developed goodwill for their firm in trade. They have performed their functions throughout as Custom Brokers with utmost care and diligence, and their past record is evidence for their goodwill, integrity and efficiency in handling the customs related works. → They have branches spread across the country and employ a large number of persons for supporting their business at various ports in India. The order of revocation of their license will not only be harsh on them but will deprive all the persons employed by them from their livelihood.”

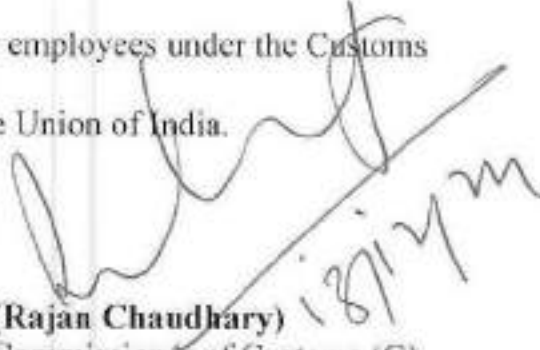
36. In view of the above judgements and the "Doctrine of Proportionality" which propagates the idea that a punishment for an offence should be proportional to the gravity of the offence, I am not inclined to revoke the license of the CB and to forfeit the security deposit furnished by the CB at the time of issuance of their CB license. However, for their acts of omission and commission, the CB M/s. Pratik International (CB No. 11/1988) is held liable and guilty for violating the provisions of CBLR, 2018 as mentioned above. I hold that the CB has failed to discharge his duties cast upon him with respect to Regulation 10(d), 10(c) and 10(m) of CBLR, 2018 and the interest of justice would be met by imposition of penalty under Regulation 18 of CBLR, 2018. Accordingly, I pass the following order:

ORDER

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

- (i) I hereby revoke the suspension of CB License held by M/s. Pratik International (CB No. 11/1988, License No. AAPFP3036J), which was ordered vide order no. 55/2023-24 dated 27.03.2024 and continued vide order no. 06/2024-25 dated 17.04.2024.
- (ii) I hereby impose penalty of Rs. 30,000/- (Rs. Thirty Thousand Only) on M/s. Pratik International (CB No. 11/1988, License No. AAPFP3036J) under Regulation 18(1) of the CBLR, 2018.

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


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

To,

M/s. Pratik International (CB No. 11/1988),
 131, Almeida House, Room No. 01,
 Road No. 2, Church Pakhadi, Sahar Village,
 Andheri East, Mumbai - 400099

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