



प्रधान आयुक्त, सीमाशुल्क (सामान्य) का कार्यालय

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
(GENERAL),

नवीन सीमाशुल्क भवन, बेलाई इस्टेट, मुंबई- 400 001.

NEW CUSTOM HOUSE, BALLARD ESTATE, MUMBAI-400 001.

संचिका सं./F. No.- GEN/CB/97/2024-CBS

आदेश दिनांक/Date of Order: 22.11.2024

CAO No.51/2024-25/CAC/PCC(G)/RC/ADJ-CBS जारी दिनांक/Date of issue: 22.11.2024

DIN :20241177000000008185E8

द्वारा जारी : राजन चौधरी

Issued By : **Rajan Chaudhary**

प्रधान आयुक्त, सीमाशुल्क (सामान्य)
मुंबई -400 001

Pr. Commissioner of Customs (Gen.),
Mumbai - 400 001.

ORDER-IN-ORIGINAL मूल आदेश

ध्यान दीजिए/ N.B. :

1. यह प्रति उस व्यक्ति को निजी उपयोग हेतु निःशुल्क प्रदान की जाती है, जिसे यह जारी की जा रही है।
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2. इस आदेश के विरुद्ध अपील माँगे गए राशी के 7.5% के भुगतान पर सीमाशुल्क अधिनियम, 1962 की धारा 129A(1B)(i) के संबंधमें सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण में स्वीकार्य है, जहाँ शुल्क या शुल्क एवं जुर्माना विवादित हों, या जुर्माना, जहाँ सिर्फ जुर्माना ही विवादित हो। यह अपील इस आदेश के संप्रेषण की तारीख के तीन महीने के अंदर दायर की जाएगी। यह अपील सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण (कार्यविधि) नियमावली, १९८२, के प्रावधानों के अंतर्गत, यथोत्खंडपीठ में स्वीकार्य है।

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

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

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

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

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

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

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

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

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

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

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

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

Brief facts of the Case:

M/s Razvi Shipping Agency (Customs Broker No. 11/314 and AAEFR3124LCH0001) (hereinafter referred to as CB), 5th floor, Evergreen apartment, Mazgaon, Mumbai-400010 had been issued with a regular Customs Broker License No. 11/314 by the Commissioner of Customs (G), Mumbai under Regulation 10(1) of the Customs House Agents Licensing Regulations (CHALR), 1984 [Now regulation 7(2) of Customs Broker Licensing Regulations (CBLR, 2018)] and as such they are bound by the regulation and condition stipulated therein.

2. An offence report in the form of O-i-O dated 28.11.2023 (**RUD-1**) issued vide file no. S/10-ADJ/15/ADC/2023-24/ADJ(I)/ACC, having Centralised Adjudication Order no. ADC/PKK/146/2023-24/Adj(I)/ACC, has been received from Group VI, ACC, Sahar Mumbai, wherein interalia a consignment under Bill of Entry (BoE) dated 14.05.2022, filed by the CB on behalf of the Importer M/ s Affinity Enterprises (IEC No. ABSFA4847J) [hereinafter referred to as the importer] was examined by Central Intelligence Unit, Air Cargo Complex, Mumbai and it was observed as hereunder:

Table: A

S. No.		Detail
1.	MAWB No.	31296565803 dated 11.05.2022
2.	Invoice No. and date	AE/ 003/ 2022 dated 11.05.2022
3.	Assessable Value	Rs.187295.72/-
4.	Duty	74044/-
5.	Weight	989 Kgs
6.	No. of Packages	48

Examination of consignment imported vide bill of entry no. 8686461 dated 14.05.2022 was carried out under Panchanama dated 18.05.2022 by CIU in the presence of the authorized Custom Broker representative and the independent panchas. The detailed inventory of the goods found during the examinations has been incorporated in the Panchanama dated 18.05.2022. Abstract of the goods found during the examination are as follows:

Table-B

S.No. (1)	Description of goods declared (2)	Quantity Declared (3)	Quantity Found During examination (4)
1.	Mobile Screen Chinese	2520 Pcs	295
2.	Mobile Back Cover	155 Pcs	946
3.	Wireless Earphone	1516 Pcs	14680
4.	Camera Lens for Mobile	26200 Pcs	26000
Not Declared Items			
5.	Tempered Glass	Not Declared	7840
6.	Mobile Back Guard Film	Not Declared	12850
7.	Smart watch Screen Guard	Not Declared	1120
8.	Capacitance pen	Not Declared	30

Consequently, the goods imported vide bill of entry 8686461 dated 14.05.2022 were seized under Section 110 of the Customs Act, 1962 vide Seizure Memo dated 30.05.2022 on the reasonable belief that the same are liable for confiscation as the goods found during examination are not declared/mis declared in terms of description, quantity and valuation. To avoid detention and demurrage charges, permission to warehouse the goods under Section 49 was allowed to the importer, however, the importer has not availed the facility.

2.1. Searches were conducted at the premises of the importer at Basement 6A/11, WEA Karol Bagh, Karol Bagh. Central Delhi - 110005 through the Jurisdictional Customs Commissionerate, New Delhi as well as at the known addresses of the CB firm M/ s Razvi Shipping Agency at Evergreen Apartment, 5th Floor, Mazgaon Mumbai-400-010 by the officials of CIU/ACC.

2.2. Statement of Shri Manish P Joshi G-card holder bearing Kardex No. 1715/ 2021 of Customs Broker, M/ s. Razvi Shipping Agency (bearing CB No. 11/314) was recorded under section 108 of the Customs Act, 1962, wherein, he interalia stated that:

He is an employee and G-card holder bearing Kardex No. 1715/2021 of Customs Broker, M/s. Razvi Shipping Agency (bearing CB No. 11/314),

working with them since 2021. He is the only G-Category Custom pass holder of the firm. The Bill of Entry No. 8686461 dated 14.05.2022 was filed by his CB and they are the authorized CB for M/s Affinity Enterprises.

He stated that he is not very much aware of the business of the importer but he had checked KYC documents, records of imports as informed by the importer, he said that they are dealing in import of mobile accessories. He also said that his manager brought the work for them and the documents were being supplied to his office by the importer. In his statement, he identified Mr. Sonu as the proprietor of the importing firm and the registered address of the importer as Basement, 6A/11, WEA, Karol Bagh, Central Delhi, Delhi- 110005.

On being shown the inventory of the goods drawn under Panchanama dated 18.05.2022 in his presence wherein many items were found mis-declared in terms of description, quantity, and Valuation and asked why he had not properly declared the goods, he stated that he prepared the bill of entry as per the invoice, packing list provided by the importer and CB filed the BoE based on the same.

He was present during the examinations of the imported goods under Panchanama dated 18.05.2022. During examination, the goods were found mis-declared in terms of description and quantity, but the CB were not aware of the same at the time of filing of the said B/Es. He had cleared 02 consignments for the said importer previously.

An agreement for clearance of Rs. 5000/- per consignment was made between the importer and the CB, but no payment had been received till date. He also did not know the bank account details of his CB at the time of the statement, but promised to submit the same in a few days. He also informed that these goods had not been imported on behalf of any third party.

3. From the above facts, the CB appeared to have violated the Regulation 10(a), 10(d), 10(e), 10(m), 10(n) and 10(q) of CBLR 2018 and it was also apprehended that the Custom Broker may adopt similar modus operandi in future consignments and department cannot remain oblivious to the danger posed by such an eventuality. Hence, the CB License held by M/s. Razvi Shipping Agency (License No. 11/314) was suspended by the Pr. Commissioner

of Customs (General), NCH vide Order No. 48/2023-24 dated 01.03.2024 under the provisions of Regulation 16(1) of CBLR, 2018 **(RUD-2)** and a post decisional hearing was offered to the CB on 14.03.2024 at 01:00 PM.

4. Shri Shah Alam Quraishi, 'F' pass holder & partner of the CB appeared for the personal hearing on 14.03.2024. During the personal hearing, he interalia stated that:

- a. Regulation 10(a) is invoked on the ground that the CB has filed BoE on behalf of importer without acquiring authorization certificate from importer.

It is submitted that he had authorization certificate dated 10.05.2022, received from importer, but he was not given opportunity to produce the same as all the correspondence was made at the address of his G-category employee Shri Manish Agarwal.

- b. Regulation 10(q) is invoked on the ground that CB didn't co-operate with custom authority during the course of investigation as he didn't appear for any of the personal hearing given to him.

It is submitted that only his G-category employee i.e. Shri Manish Agarwal was contacted during the course of investigation. He had neither received any summons, letters for PH, SCN, adjudication order nor any communication from department at his address.

In view of the submission of CB and findings of the case, the suspension of the CB licence was held continue vide Order No. 53/2023-24 dated 22.03.2024 **(RUD-3)**

5. Thus, from the investigations in the above-mentioned case the following commission and omission leading to violation of obligations stipulated in Regulation 10 of CBLR, 2018 are apparent:

5.1 Regulation 10(a) of CBLR

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

The CB failed to produce any authorisation obtained from the importer before the investigating authority and nor submitted the authorisation before the adjudicating authority despite being provided opportunity for the same. Thus, by doing so, the Customs Broker indicates to have violated the provisions of Regulation 10(a) of CBLR, 2018.

5.2 Regulation 10(d) of CBLR

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

As fake BIS certificates were submitted in e-Sanchit, which did not match with the goods imported. Thus, it appears that the CB neither advised the importer to submit correct BIS certificates, nor brought the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs; as they were fully aware of the fact that the BIS certificates were wrong and even submitted it for customs clearance of the said imported goods, it indicates that CB has failed to comply with Regulation 10(d) of CBLR, 2018.

5.3 Regulation 10(e) of CBLR

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

In respect of wireless earphones, the brand name found on the sample Wireless Headphone is “TECHFIRE”, however the BIS certificates no. R-41180637 uploaded on the e-Sanchit by the CB is for the Brand name “RUDRA”. In this regard, it was the duty of CB to showcase diligence by ascertaining the correctness of BIS certificates before uploading, it indicates that the CB failed to comply with Regulation 10(e) of CBLR, 2018.

5.4 Regulation 10(m) of CBLR

“A custom broker shall discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay”

It appears that the CB also failed to discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay, thereby failing to comply with the Regulation 10(m) of CBLR, 2018.

5.5 Regulation 10(n) of CBLR

“A custom 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”

CB did not verify the 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 which indicates that CB has violated Regulation 10(n) of CBLR, 2018.

5.6 Regulation 10(q) of CBLR

“A custom broker shall co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees”;

CB was given opportunities to be heard personally or virtually vide Personal Hearing Intimation letters dated 20.9.2023, 6.10.2023, 20.10.2023 and 01.11.2023 by adjudicating authority during adjudication under Customs Act, 1962, vide which PH was scheduled on 03.10.2023, 17.10.2023, 31.10.2023 and 13.11.2023 respectively, but CB didn't attend PH on scheduled dates and time. Further, CB vide letter dated 31.10.2023 had requested for extension of 7 days for the Personal Hearing in the said matter. However, he didn't appear even on 13.11.2023 for the Personal Hearing, though given fourth opportunity for the same, thus it indicates that the Customs Broker M/s. Razvi Shipping Agency failed to comply with Regulation 10(q) of CBLR, 2018.

6. Suspension/Revocation of the License:

In pursuance of the offence report received in the said matter, the CB license no. 11/314 was suspended vide Order No. 48/2023-24 dated

01.03.2024 in contravention of Regulation 10(a), 10(d), 10(e), 10(m), 10(n) and 10(q) of CBLR 2018 as per Regulation 16 of the CBLR, 2018.

Subsequently, after giving PH opportunity to the CB, the suspension of the CB License was continued vide Order No. 53/2023-24 dated 22.03.2024 under Regulation 16 of CBLR, 2018 pending inquiry proceeding under Regulation 17 of the CBLR, 2018.

7. Show Cause Notice:

Inquiry proceedings were initiated against CB M/s. Razvi Shipping Agency vide Show Cause Notice No.04/2024-25 dated 25.04.2024 issued under Regulation 17 of CBLR, 2018. Vide said notice, the CB was called upon to show cause as to why the Customs Broker license bearing no. 11/314 issued to them should not be revoked and security deposited should not be forfeited and/or penalty should not be imposed upon them under Regulation 14 read with 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018, as elaborated in the Show Cause Notice.

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

8. Inquiry Report:

8.1 Inquiry Officer Shri Ajay Kumar Prathyani, Assistant Commissioner vide letter dated 05.08.2024 submitted inquiry report dated 30.07.2024, wherein all the charges against the CB i.e. violation of Regulation 10 (a), 10(d), 10(e), 10(m), 10 (n) and 10 (q) of the CBLR, 2018 were 'proved'. The Inquiry report inter alia stated as below:

Vide Reply to SCN dt. 25.04.2024, the CB had submitted that the said Bill of Entry was filed on the basis of documents given by the Importer after complying with KYC as per CBLR, 2018 and no documents have been relied upon in the SCN issued on either 25.04.2024 nor a copy given to the noticee. Also, the SCN is barred by limitation as the Bill of Entry pertains to the year

2022 and the SCN has been issued on 25.04.2024 which is after a period of 2 years. Therefore, the said SCN is not maintainable and liable to be withdrawn.

The CB has also submitted that they will make a detailed reply in respect of the charge of violation of Regulations 10(a) (d)(e)(m)(n) and (q) of CBLR, 2018 after the cross examination. However, CB had neither requested for cross examination of any person during personal hearing or in the reply dated 03.06.2024. Hence, there is no scope for allowing cross examination in this case. Accordingly, the allegations levelled and the sustainability thereof is discussed in the following paragraphs sequentially.

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

As per the available record during investigation, The CB failed to produce any authorisation obtained from the importer before the investigating authority and nor submitted the authorisation before the inquiry officer despite being provided opportunity for the same. Thus it is evident that the the CB did not obtain authorisation from the Importer. Thus the violation of regulation 10 (a) of CBLR 2018 by the CB is conclusively proved.

8.3 *Regulation 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 non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be."*

As per the available records during investigation, fake BIS certificates were submitted in e-Sanchit, which did not match with the goods imported. during the course of personal hearing also the CB has failed to submit any documentary proof to that extent that he had advised the importer properly with regard to declaration of values, obtaining proper invoices, realization of export proceeds within stipulated time frame allowed under Foreign Exchange

Management Act, 1999 as they were fully aware of the fact that the BIS certificates were wrong and even submitted it for customs clearance of the said imported goods, it indicates that CB has failed to comply with Regulation 10(d) of CBLR, 2018. Thus the violation of regulation 10 (d) of CBLR 2018 by the CB is conclusively proved.

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

In respect of wireless earphones, the brand name found on the sample Wireless Headphone is "TECHFIRE", however the BIS certificates no. R-41180637 uploaded on the e-Sanchit by the CB is for the Brand name "RUDRA". In this regard, it was the duty of CB to showcase diligence by ascertaining the correctness of BIS certificates before uploading, it indicates that the CB failed to comply with Regulation 10(e) of CBLR, 2018. Thus, the violation of regulation 10 (e) of CBLR 2018 by the CB is proved.

8.5 *Regulation 10(m): "A custom broker shall discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay"*

Had the CB been efficient enough, he should not have uploaded fake BIS Certificate instead at the very beginning and he should have brought it to the notice of the Department to avoid such an eventuality. Thus the CB failed on the count of exhibiting efficiency in dealing with Customs declarations and there by violation of regulation 10 (m) of CBLR 2018 by the CB is proved.

8.6 *Regulation 10(n): "A custom 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"*

CB did not verify the 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 which indicates that CB has violated Regulation 10(n) of CBLR. 2018. Thus the record on vitiates

the allegation levelled against the Customs Broker that the CB has violated Regulation 10 (n) of CBLR 2018. There by violation of regulation 10 (n) of CBLR 2018 by the CB is proved.

8.7 Regulation 10(q): *"A custom broker shall co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees"*

CB was given opportunities to be heard personally or virtually vide Personal Hearing Intimation letters dated 20.9.2023, 6.10.2023, 20.10.2023 and 01.11.2023 by adjudicating authority during adjudication under Customs Act, 1962, vide which PH was scheduled on 03.10.2023, 17.10.2023, 31.10.2023 and 13.10.2023 respectively, but CB didn't attend PH on scheduled dates and time. Further, CB vide letter dated 31.10.2023 had requested for extension of 7 days for the Personal Hearing in the said matter. However, he didn't appear even on 13.11.2023 for the Personal Hearing, though given fourth opportunity for the same, thus it indicates that the Customs Broker M/s. Razvi Shipping Agency failed to comply with Regulation 10(q) of CBLR, 2018. There by violation of regulation 10 (q) of CBLR 2018 by the CB is proved.

Thus in summary, IO held that all the charges levelled against the CB; i.e. charges of violation of regulation 10(a), 10(d), 10(e), 10(m), 10(n) & 10(q) of CBLR, 2018; as proved.

9. Personal Hearing:

An opportunity of personal hearing was granted to the CB and date was fixed for personal hearing on 18.09.2024, which was later re-scheduled for 26.09.2024 as 18.09.2024 was declared as Holiday on the occasion of Eid-e-Milad. However, due to administrative reasons, PH on 26.09.2024 couldn't be held and the next date was fixed for PH on 14.10.2024 which was again re-scheduled for 22.10.2024 due to administrative reasons.

Mr. N.D. George, Advocate, Authorized representative of the CB and Mr. Shah Alam Quraishi, Partner, M/s. Razvi Shipping Agency appeared for the personal hearing on 22.10.2024 at 12.30 PM. At the time of personal hearing, they reiterated their reply to the SCN dated 25.04.2024 and also gave their

reply dated 26.09.2024. They also gave a set of relevant case laws on the matter.

10. Written Submissions:

10.1 The CB submitted that they filed vide Bill of Entry No. 8686461 dt. 14.05.2022 for clearance of Mobile Accessories. The said Bill of Entry was filed on the basis of document given by the importer. The Bill of Entry was examined by CIU, ACC, Mumbai. The goods were examined under panchnama dt. 18.05.2022 by CIU and detailed inventory was made which is as per Table-B to the SCN wherein certain goods were not declared.

10.2 They further submitted that the goods were seized vide seizure memo dt. 30.05.2022 under Section 110 of the Customs Act, 1962. The office premises of the importer as well as the CB. The statement of Shri. Manish P. Joshi G- Card holder being kardex No. 1715/2021 was recorded under Section 108 of the Customs Act, 1962 wherein he inter alia stated that the importer had authorized the CB for filing the Bill of Entry and he had verified the KYC documents. (hereto annexed and marked Exhibit 'A' colly are copies of the authorization and KYC documents.)

10.3 The CB further submitted that the SCN is barred by limitation as the Bill of Entry pertains 14.05.2022 and the SCN has been issued on 25.04.2024 which is after a period of nearly two years. Therefore, the said SCN is not maintainable and liable to be withdrawn. In this Context we rely judgment of the Hon'ble High Court in the case of the Principal Commissioner of Customs (General) versus Mehul & Co reported in 2022 (5) TMI 30- Bombay High Court.

10.4 The CB further submitted that the noticee had requested for cross examination was denied by the inquiry officer. Therefore, the inquiry officer has conducted the inquiry purely on the bases of assumption and presumption and without any documentary evidence. Further, cross examination was also not allowed despite request by the noticee vide is reply dt. 03.06.2024. (hereto annexed and marked Exhibit 'B' is a copy of the reply dt. 03.06.2024.) In this context we rely on the judgment in the case of Shasta Freight Services Pvt Ltd versus Pr. Commr of Cus., Hyderabad reported in 2019 (368) E.L.T. 41

(Telangana). The said judgment was upheld by the Hon'ble Supreme Court reported in 2022 (381) E.L.T. 436 (S.C.) That being so the SCN is not maintainable, bad in law and liable to be withdrawn.

10.5 Articles of Charges:

In so far as the charge of violation of Regulations 10(a) (d) (e) (m) (n) and (q) of CBLR, 2018 is concerned the CB makes the following submissions.

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

(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;

The CB stated that they had already submitted a copy of the authorization dt. 01.05.2022 received from the importer. Further, a copy of the authorization is annexed as Exhibit 'A' to the reply. Further the BIS Certificates is wrong or not is verified by the assessing officers and only after the goods are examined. Therefore, at the time of filing of the Bill of Entry the CB is not aware whether the BIS is wrong or not. Therefore, charge of not obtaining the authorization is not proved.

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

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

The CB submitted that Bill of Entry was filed as per the documents given by the importer. The said documents whether genuine or not cannot be decided by the CB. Further, the document given by the importer is deemed to be correct and genuine till the goods are examined. The CB's are not experts to identify whether the documents are genuine or not. It is after a prolonged investigation the department has come the conclusion that the goods were mis-declared.

In the inquiry report one fail to understand as to how the inquiry officer has arrived on the finding that the CB did not carried out any verification physically when the goods were inside the container. Therefore the charge under regulation 10(d) of CBLR, 2018 does not sustain and merits to be withdrawn.

We also rely in the case of Jaiswal Import Cargo Services Ltd versus Commissioner of Customs., New Delhi reported in 2019 (370)E.L.T.1366 (Tri. - Del.)

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

(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;

In this context we say and submit that documents were given by the importer and after due verification compliance of KYC the Bill of Entry was filed. Further, the Bill of Entry is assessed by the assessing officer and thereafter out of charge granted. The BIS certificates are given by the importer. Therefore, to arrive at such finding has no basis and therefore the charge under 10(e) deserves to be set aside.

We also rely on judgment in the case of Baraskar Brothers versus Commissioner of Customs (General), Mumbai reported in 2013- (294) E.L.T. 415 (Tri. - Mumbai) in support of the said contention.

Regulation 10. Obligations of Customs Broker. A Customs Broker shall

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

In this context we say and submit that the documents were given by the importer and on the basis of which the Bill of Entry was filed. Thereafter the officers of CIU detained the goods which were examined under Panchnama dt. 18.05.2022 and thereafter seized by the officers of CIU vide seizure memo dt. 03.05.2022. Therefore, there cannot be a charge of delay in discharging their

duties. Further, the IO has not given any finding against the CB for violation and regulation 10(m) of CBLR, 2018. Therefore, the said charge is not proved.

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

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

In so far as article of charge 10(n) is concerned the CB has done due diligence before the filing of the Bill of Entry. The CB has verified the IEC and complied with the KYC norm before filing of Bill of Entry. This fact is on record in the statement recorded under Section 108 of the Customs Act, 1962. Further, there is no findings against the CB as the KYC documents are annexed to the reply including IEC, GSTIN etc. therefore the charge of violation of Regulation 10(n) deserves to be set aside.

In this context we rely on the judgment in the case of Poonia & Brothers versus Commissioner of Customs (Preventive), Jaipur reported in 2019 (370) E.L.T. 1074 (Tri. - Del.)

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

(q) co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees.

The noticee says and submitted that they have cooperated with the investigation and had appeared whenever summoned and the statement of the employee and the partner have been recorded under Section 108 of the Customs Act, 1962. Further, in the inquiry report the IO has held that the partner appeared for personal hearing and complied with regulation 10(q) [para4]. Therefore, the violation of Regulation 10(q) does not survive.

Further, the inquiry officer is silent on the case laws cited with respect to limitation and cross examination.

The CB craves leave to be heard in person before the case is finally adjudicated and would like to cross examine the persons whose statements have been

relied upon and the officers who recorded the statements. We crave leave to file further reply after the cross examination.

The CB submitted that the SCN is unsustainable in law and the CB is liable to be discharged and the SCN dropped.

11. Discussion and Findings:

I have gone through the case, material evidence on record, the Show Cause Notice dated 25.04.2024, Inquiry Report dated 30.07.2024 & written submission dated 26.09.2024 submitted during personal hearing.

11.1 I observe that the charges against the said CB is of violation of Regulation 10(a), 10(d), 10(e), 10(m), 10(n) & 10(q) of the CBLR, 2018 made vide Show Cause Notice No. 04/2024-25 dated 25.04.2024. The Inquiry Officer vide inquiry report dated 30.07.2024 held all the charges of violation of Regulation 10(a), 10(d), 10(e), 10(m), 10(n) & 10(q) of the CBLR, 2018 as "Proved".

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

11.3 I find that the CB has contended that the SCN has been issued after a period of nearly two years from the Bill of Entry dated 14.05.2024. I find no merit in this argument as the SCN dated 25.04.2024 was issued against the CB for the violations of Regulations of the CBLR, 2018 after receiving the offence report from the ADC, ACC (I) in form of the O-in-O No. ADC/PKK/146/2023-24/Adj.(I)/ACC dated 28.11.2023 in the office of the Pr. Commissioner of Customs (G), Mumbai, Zone-I and the Date of filing of the Bill of Entry has no such effect on issuing SCN under the provisions of CBLR, 2018 and is irrelevant.

11.4 I find that the Inquiry officer has properly dealt with the request of cross examination by the CB and submitted in his report that the CB has neither requested for cross examination of any person during personal hearing or in his submission.

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

a. I observe that the said regulation 10(a) of CBLR, 2018 reads as: -

“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 or Assistant Commissioner of Customs, as the case may be.”

b. I find that the CB failed to produce any authorisation obtained from the importer before the investigating authority and nor submitted the authorisation before the adjudicating authority for the charges invoked under the Customs Act, 1962 despite being provided opportunity for the same. However, during the personal hearing on 22.10.2024 he had submitted authorization letter dated 10.05.2022 from Importer.

c. From the above facts and circumstances, I find that the charges of violations of Regulation 10(a) of the CBLR, 2018 couldn't be held as proved.

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

a. I observe that the said regulation 10(d) of CBLR, 2018 reads as: -

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

b. I find that the fake BIS certificates were uploaded in E-sanchit and the CB accepted that they didn't verify the documents before filling the bill of entry. The CB failed to submit any documentary proof to that extent that he had advised the importer properly with regard to declaration of values, obtaining proper invoices, realization of export proceeds within stipulated time frame allowed under Foreign Exchange Management Act, 1999.

c. I find that the subject case of fraudulent import may have been avoided, if CB made efforts to communicate with the Importer/IEC holder and had advised them properly in spirit of the Regulation 10(d) of the CBLR, 2018.

d. From the above facts and circumstances, I hold that the CB has violated the provisions and Regulation 10(d) of the CBLR, 2018.

11.7 With regard to violation of Regulation 10(e) of CBLR, 2018:

a. I observe that the said regulation 10(e) of CBLR, 2018 reads as:

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

b. I find that the CB failed to verify the genuineness of the BIS certificate and fake BIS certificate was uploaded on E-sanchit. The CB failed to show due diligence by ascertaining the correctness of BIS certificates before uploading.

c. I find that the subject case of fraudulent import may have been avoided, if CB had made efforts to verify the BIS certificate before uploading the same and had advised the Importer properly after exercising due diligence in spirit of the Regulation 10(e) of the CBLR, 2018.

d. From the above facts and circumstances, I hold that the CB has violated the provisions and Regulation 10(e) of the CBLR, 2018.

11.8 With regard to violation of Regulation 10(m) of CBLR, 2018:

a. I observe that the said regulation 10(m) of CBLR, 2018 reads as :-

“A Customs Broker shall discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay”

b. I find that the CB uploaded the fake BIS certificate without verifying it's correctness, eventually the CB failed to prove it's efficiency while dealing with the customs declaration and uploading of mandatory documents.

c. From the above facts and circumstances, I am of the considered view that the CB in the present case showed an act of carelessness which resulted

in fraudulent activities of the importer. Therefore, I hold that the CB has violated the provisions of Regulation 10(n) of the CBLR, 2018.

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

a. I observe that the said regulation 10(n) of CBLR, 2018 reads as :-

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

b. I find that the CB relied on the KYC documents provided by the IEC holder and failed to verify the correctness of the documents provided by the Importer and functioning of the importer at the declared address by using reliable, independent, authentic documents, data or information.

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

11.10 With regard to violation of Regulation 10(q) of CBLR, 2018:

a. I observe that the said regulation 10(e) of CBLR, 2018 reads as:

“A Customs Broker shall co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees.”

b. I find that the CB failed to appear before the Adjudicating Authority during adjudication under Customs Act, 1962, although they were given sufficient opportunities to defend themselves and co-operate in the investigations against them.

c. The CB has contended that they appeared before the Inquiry Officer for inquiry in the charges levelled against them under the provisions of CBLR. However, there is not any defence submitted by the CB regarding not joining the investigations under the Customs Act, 1962 in a prompt manner.

d. From the above facts and circumstances, I hold that the CB has violated the provisions and Regulation 10(q) of the CBLR, 2018.

12. I find that the case laws relied upon by the CB are not squarely applicable in the present matter. While deciding the matter, I rely upon following judgement:

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

“A Custom Broker occupies a very important position in the customs House.....The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed.....Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations.....”

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

i) “The very purpose of granting a licence to a person to act as a Customs House Agent is for transacting any business relating to the entry or departure of conveyance or the import or export of goods in any customs station. For that purpose, under Regulation 9 necessary examination is conducted to test the capability of the person in the matter of preparation of various documents determination of value procedures for assessment and payment of duty, the extent to which he is conversant with the provisions of certain enactments, etc. Therefore, the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as CHA, it is seen that while CHA should be in a position to act as agent for the transaction of any business relating to the entry or departure of

conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an Agent for carrying on certain illegal activities of any of the persons who avail his services as CHA. In such circumstances, the person playing the role of CHA has got greater responsibility. The very description that one should be conversant with the various procedures including the offences under the Customs Act to act as a Custom House Agent would show that while acting as CHA, he should not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as CHA by taking advantage of his access to the Department. The grant of licence to a person to act as CHA is to some extent to assist the Department with the various procedures such as scrutinizing the various documents to be presented in the course of transaction of business for entry and exit of conveyances or the import or export of the goods. In such circumstances, great confidence is reposed in a CHA. Any misuse of such position by the CHA will have far reaching consequences in the transaction of business by the customs house officials. Therefore, when, by such malpractices, there is loss of revenue to the custom house, there is every justification for the Respondent in treating the action of the Petitioner Applicant as detrimental to the interest of the nation and accordingly, final order of revoking of licence has been passed.

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

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

"Para 6.1 These provisions require the Customs Broker to exercise due diligence to ascertain the correctness of any information and to advise the client accordingly. Though the CHA was accepted as having no mens rea of the noticed mis-declaration/under-valuation or mis-qualification but from his own statement acknowledging the negligence on his part to properly ensure the same, we are of the opinion that CHA definitely has

committed violation of the above mentioned regulations. These regulations caused a mandatory duty upon the CHA, who is an important link between the Customs Authorities and the Importer/Exporter. Any dereliction/lack of due diligence since has caused the Exchequer loss in terms of evasion of Customs Duty, the original adjudicating authority has rightly imposed the penalty upon the appellant herein.”

13. In a regime of trade facilitation, a lot of trust is being placed on the Customs Broker who directly deals with the importers/exporters. Failure to comply with regulations by the CB mandated in the CBLR, 2018 gives room for unscrupulous persons to get away with import-export violations and revenue frauds. The CB deliberately and knowingly ignore the verification of declared place of business and didn't verify the KYC of the importer. The facts on record prove that CB had violated various provisions of CBLR, 2018.

14. I hold that the proof of charges are acceptable and tenable based on the available evidence, the facts and circumstances of the case, which certainly warrant penal action against the CB. Therefore, for their acts of omission and commission, CB M/s. Razvi Shipping Agency (11/314) 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(e), 10(m), 10(n) & 10(q) of CBLR, 2018 and is liable for penal action. Accordingly, I pass the following order:

ORDER

15. 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) The CB License No. 11/314 is ordered to be revoked under Regulation 14 of the CBLR, 2018.

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

(iii) I, hereby impose penalty of Rs. 50,000/- (Fifty Thousand Rupees Only) on M/s. Razvi Shipping Agency (11/314) under Regulation 18 of the CBLR, 2018.

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

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


(RAJAN CHAUDHARY)

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

To,

M/s. Razvi Shipping Agency,

5th floor, evergreen apartment,
Mazgaon, Mumbai 400010

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