



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

संचिका सं./F. No.- GEN/CB/268/2024 -CBS आदेश दिनांक/Date of Order: 31.01.2025

CAO No.75/2024-25/CAC/PCC(G)/RC/Adj-CBS जारी दिनांक/Date of issue: 31.01.2025

DIN:20250177000000590827

द्वारा जारी : राजन चौधरी  
प्रधान आयुक्त, सीमाशुल्क(सामान्य)  
मुंबई -400 001

Issued By : **Rajan Chaudhary**  
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, 129 की धारा 1962A(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), १९८२, के प्रावधानों के अंतर्गत, यथोत्खंडपीठ में स्वीकार्य है।

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

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

3. यह सूचित किया जाता है की इस आदेश के अमल में आते ही, न्याय निर्णयन अधिकारी का अधिकार क्षेत्र समाप्त होता है और सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण, पश्चिम 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 31.05.2018

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 नियमावली (अपीलस), १९८२ के नियम में 2 के उपनियम 3 के तहत निर्धारित है एवं उसी नियमावली के नियम 6 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-/1000 .पाँच लाख या इस से कम होतो रु ., (ii)यदि यह राशि रु) एवं -/5000 .पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न होतो रु .iii) यदि यह राशि रुके शुल्क -/10000 .पचास लाख से अधिक होतो रु . का भुगतान क्रॉस्ड बैंक ड्राफ्ट के माध्यम से अधिकरण की खंडपीठ के सहायक पंजीयक के पक्ष में जिस स्थान पर खंडपीठ स्थित है, के किसी भी राष्ट्रीय क्रत बैंक की शाखा में किया जाए एवं डिमांड ड्राफ्ट अपील के साथ संलग्न किया जाए।

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

7. अपील की एक प्रति में कोर्ट फी अधिनियम, के तहत निर्धारित 6 की अनुसूची मद 1870 50 .रुका 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 of the Case:**

M/s. S.V. Shipping, (PAN: AAAPN8849ECH001), having address registered at B-28, Station Plaza, Station Road, Bhandup West, Mumbai - 400078 (hereinafter referred as the Customs Broker/CB) are holder of Customs Broker License No. 11/905, issued by the Commissioner of Customs, Mumbai under CHALR, 1984, [Now regulation 7(2) of CBLR, 2018] and as such they are bound by the regulations and conditions stipulated therein.

2. On the basis of specific information about misuse of drawback scheme by entities created specifically for the purpose received by Special Investigation & Intelligence Branch, Export, Air Cargo Complex, Sahar, Mumbai, Investigation was initiated against 37 exporters regarding fraudulent claim of drawback to the tune of multiple crores, involving fake IECs, wherein fly-by night companies were created with sole intention to avail fraudulent and unjust drawback. The syndicate was suspected to involve multiple CHAs and sub-agents. During the investigation, it was found that exporter M/s Austin Impex (IEC No.0316958859) was one of the 37 exporters. The CHAs who had cleared the consignments of M/s Austin Impex were M/s. Goodluck Forwarders Pvt. Ltd. (erstwhile Ms. G.V. Network Logistics Pvt. Ltd. 11/1644) and M/s. S.V. Shipping (11/905) wherein in case of CB M/s Goodluck Forwarders Pvt. Ltd. (11/1644), received offence report. i.e. O-in-O was forwarded to CB's Parent policy section Chennai Customs for taking necessary action against the Custom Broker.

3. The details of total exports made by the exporter of IEC No. 0316958859 were retrieved from the ICES System and during the scrutiny of the said export details, it was found that the said exporter exported consignments in respect of 43 shipping bills between the period 24.02.2017 to 10.04.2017 with a FOB value of Rs. 741.06 lakhs and total Drawback amount of Rs. 64.96 lakhs.

4. SIIB(X) issued several summonses to said exporter M/s Austin Impex/proprietor under Section 108 of the Customs Act. 1962 for giving evidence and producing all the relevant documents or any other things in respect of enquiry being made in connection with export of readymade garments made by Importer M/s Austin Impex. But the said summonses were returned back/undelivered by postal authorities with a remark as 'Left'/ 'Not Known'/

'Incomplete address'. Further the officers of S.I.I.B. (Exports) conducted address verification of the premises of exporter M/s Austin Impex at the addresses mentioned in the IEC and on verification, it was found that no office of M/s Austin Impex was existed in the said addresses. Further, from the investigation and from the personal visits made by SIIB Officers, it was found that the addresses mentioned in the IECs and other KYC documents were fake and bogus.

5. From the above, it appeared that M/s Austin Impex had obtained the IEC illegally and made exports with an intent to avail undue drawback fraudulently. The exporter purportedly gave wrong details and obtained the IEC with fake and bogus documents. Further, from the address verifications conducted by SIIB, it was found that the addresses mentioned in the KYC documents were fictitious and bogus. It also appeared that the foreign remittances in respect of exports made by the said exporter were not realized against any of the shipping bill. Further, it could not be ruled out that the said exporter grossly overvalued the impugned goods to obtain the higher drawback, as the said exporter is non-existence and never appeared to SIIB office to record his statement. Therefore, from these facts, it appeared that the exporter has not made truthful declarations in the filing of the shipping bills. The exporter did not follow the obligation imposed through Regulations and Act and had not made correct declarations, therefore, the exporter had violated the provisions of Section 7 & 11 of FT (D&R Act, 1992) and Rule 11, 12 and 14 of the Foreign Trade (Regulation) Rules, 1993. Thus, by the above mentioned acts of various omission and commission, the said exporter defrauded the government exchequer by fraudulently availing drawback and acted in a manner which rendered the goods liable for confiscation under Section 113 (d) read with Section 2 (33) of the Custom Act, 1962. Further, in absence of truthful declaration, the drawback claimed also become ineligible.

6. Further, Summonses were issued to the Customs Broker M/s. S.V. Shipping under Section 108 of the Customs Act, 1962 for giving evidence and producing all the relevant documents or any other things in respect of enquiry being made in connection with export of readymade garments made by Exporter M/s Austin Impex. But the said summonses were returned back/undelivered by postal authorities with a remark as 'Left'/ 'Not Known'. Further, efforts were



made by SIIB officers to personally deliver the summons to Customs Broker M/s. S.V. Shipping and at the address of the said Customs Broker. But, the worker available at the said address stated that the said firm was not working at the address mentioned from the last one year. As the said CHA was not attended / not cooperated for the investigation, an alert was inserted against the Customs Broker M/s. S.V. Shipping (AAAPN8849ECH001) by SIIB.

**7.** During the investigations, it appeared that the CHA had not advised his client in the light of direction contained in Regulation 11 (d) of CBLR, 2013. They have also not paid due diligence towards their work by way of not informing about the unscrupulous activity of the exporter. The Customs Broker is working as an authorized representative of exporter and takes the responsibility of export/import clearances in favour of exporter after taking due authorization from the exporter. A custom broker is always aware of all the omissions and commissions made by the exporter. It is a business practice that CHA knows on whose behalf they are working as CHA and can face investigation for omission and commission at any time. As per CHA Regulation, the CHA is also required to know their client. Even, in the absence of such requirement, it is business practice that the CHA knows on whose behalf they are working. As the relation between CHA and exporter is long time relation unlike retail business where customer comes to retail shop and transaction concludes in a moment, it is not possible that CHA does not know the details and whereabouts of the exporter. The CHA had been dealing with such individual to collect documents and collect goods. The CHA must have raised his agency charges/fees from the same source. Hence, it is not possible for a CHA to deal with a non-existing firm/person.

**8.** From the investigations conducted by SIIB(X), it appears that the said exporter submitted fake and bogus documents to the CHA and the said CHA did not verify the genuineness of the same. Due to the negligence of CHA, the exporter tried to export the goods illegally to avail undue drawback fraudulently. Therefore, under the facts and such circumstances, it appears that the CHA actively connived with exporter in claiming undue drawback and mis-declaring in Shipping Bill. While dealing with exporter, the CHAs did not care to follow the obligations imposed through the Regulations and Acts.

9. In view of above, it appeared that in the instant case, the CB M/s. S.V. Shipping (11/905) (AAPN8849ECH001) had failed to comply with following regulations of the Customs Brokers Licensing Regulations, 2018:-

**9.1.** -10 (d) i.e., *“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 appeared to had not advised the exporter and abetted the exporter by declaring the incorrect value of the goods in shipping bills against the fake invoices to avail undue drawback and did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Thus, it appears that the CB has violated 10 (d) of CBLR,2018.

**9.2.** -10 (e) i.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.”*

Had CHA seen these documents relating to meeting the criteria to claim both types of Drawbacks and checked the correctness of relevant declaration, such fraudulent export could not have possible. The CB failed to exercise due diligence and aided the exporter for availing the undue drawback by the exporters.

**9.3.** -10 (n) i.e., *“verify antecedent, 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.”*

As per offence report, it was clear that that the addresses mentioned in the IECs and other KYC documents were fake and bogus. Thus, it is clear that the CHA did not verify exporter's antecedents.

**9.4.** -10(o) i.e., *“inform any change of postal address, telephone number, e-mail etc. to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, of all Customs Stations including the concerned Deputy Commissioner or Assistant Commissioner of the Commissionerate who has granted the license immediately within two days.”*

As per offence report, it was clear that the said CHA was not working at the address available with Customs Authorities and the CHA M/s S.V. Shipping did not inform the changes of its communication details such as address, telephone number, e-mail etc.

**9.5.** -10(q) i.e., “co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees.”

As per offence report, it was clear that the CB M/s. S.V. Shipping (11/905) (AAAPN8849ECH001) neither responded to the SCN and also nor responded/attended Personal hearings on the scheduled date and time.

**10.** The evidence on record clearly indicated that the CB was working in a serious negligent manner and was in violation of the obligations casted upon them under the CBLR, 2018. A Custom Broker occupies a very important position in the customs House and is supposed to safeguard the interests of both the importers and the Customs department. A lot of trust is being kept in CB by the Government Agencies, but by their acts of omission and commission, it appears that the said CB has violated Regulations 10 (d), 10 (e), 10 (n), 10 (o) and 10 (q) of CBLR, 2018 and rendered himself liable for penal action under Regulations 14, 17 & 18 of CBLR, 2018. Accordingly, action under CBLR, 2018 was invoked against the CB M/s. S.V. Shipping (11/905).

**11.** In light of the above, a Show Cause Notice (SCN) No. 21/2023-24 dated 26.07.2023, was issued to the CB under the provisions of Regulation 17 of the CBLR, 2018, wherein the CB was called upon to show cause, as to why, under Regulation 14 read with Regulation 17 & Regulation 18 of the CBLR, 2018:

- a. the Customs Broker license bearing no. 11/905 issued to them should not be revoked;
- b. security deposited should not be forfeited;
- c. penalty should not be imposed upon them.

**11.1.** Also, Shri Om Prakash Tiwary, Deputy Commissioner of Customs was appointed as Inquiry Officer (IO) to conduct the inquiry into the case under regulation 17 of CBLR, 2018. Accordingly, the IO had submitted the inquiry report dated 02.09.2024, which is discussed below.

**INQUIRY REPORT: -**

12. The Inquiry officer (here in after referred to as the 'IO') concluded the inquiry proceedings and submitted the inquiry report dated 02.09.2024, wherein all the charges levelled against the CB of violation of Regulations 10 (d), 10 (e), 10 (n), 10 (o) & 10 (q) of CBLR, 2018 are held as **"Proved"**.

**FINDINGS OF THE INQUIRY OFFICER: -**

13. The IO stated that the present inquiry against the charged Customs Broker had been limited to ascertain whether the Customs Broker had violated any of the provisions, mentioned in Customs Brokers Licensing Regulations (CBLR), 2018, by any act or omission. On perusal of the Show Cause Notice 21/2023-24 dated 26.07.2023, the IO observed that the CB had been alleged to have violated the provisions of Regulation 10(d), Regulation 10(e), Regulation 10(n), Regulation 10(o), and Regulation 10(q) of Customs Brokers Licensing Regulations (CBLR), 2018.

13.1. On perusal of the records, the IO noticed that the entire investigation/proceedings was based upon a specific intelligence received by Special Investigation & Intelligence Branch, Export, Air Cargo Complex, Sahar, Mumbai, about misuse of drawback scheme by entities created specifically for the purpose; that the investigation was initiated against 37 exporters regarding fraudulent claim of drawback to the tune of multiple crores, involving fake IECs, wherein fly-by night companies were created with sole intention to avail fraudulent and unjust drawback; that the syndicate was suspected to involve multiple CHAs and sub- agents; that during the investigation, it was found that exporter M/s Austin Impex (IEC No.0316958859) was one of the 37 exporters and M/s. S.V. Shipping (11/905) was one of the CHA who had cleared the consignments of M/s Austin Impex.

13.2. The IO observed that the Charged Customs Broker, M/s. S.V. Shipping (CB No. 11/905) was absent from their declared place of working and they had also not tried to reach out to the department to present their case.

14. The IO had carefully perused all the available records, including the contents of the Show Cause Notice 21/2023-24 dated 26.07.2023, issued by the Principal Commissioner of Customs (General), Mumbai Zone-I.



14.1. The IO stated that it is pertinent to mention that in **Srikant Upadhyay vs State of Bihar, 2024 SCC 282, decided on 14-03-2024**, Hon'ble Supreme Court observed that *courts must keep reminded of the position that law aides only the abiding and certainly not the resistant*. Further, the IO stated that in the case of **Sujit Biswas Vs State of Assam, AIR 2013 SC 3917**, Hon'ble Supreme Court stated that *"Abscondance is in fact relevant evidence, but its evidentiary value depends upon the surrounding circumstances, and hence, the same must only be taken as a minor item in evidence for sustaining conviction"*. In this extant case, the IO observed that the CB clearly appears to be absconding and evading the investigation and, hence the current inquiry was being conducted in totality of the fact and circumstances of the case acknowledging the commonsensical wisdom that wilful abscondance is prima facie evidence of guilt if supported by some circumstantial or corroborative evidences.

15. The IO further discussed the relevant provisions of the Customs Brokers Licensing Regulations (CBLR), 2018, as below: -

**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."*

**Regulation 10(e)**

*"It states that the CB should 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."*

**Regulation 10(n)**

*"verify antecedent, 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."*

**Regulation 10(o)**

*“Inform any change of postal address, telephone number, e-mail etc. to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, of all Customs Stations including the concerned Deputy Commissioner or Assistant Commissioner of the Commissionerate who has granted the license immediately within two days.”*

**Regulation 10(q)**

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

**16. Article of Charge-I: Violation of the provisions of Regulation 10 (d) of Customs Brokers Licensing Regulations (CBLR), 2018.**

**16.1** The IO stated that the first charge levelled against the CB is that they had violated Regulation 10 (d) of Customs Brokers Licensing Regulations, (CBLR), 2018. From the plain reading of Regulation 10 (d) of Customs Brokers Licensing Regulations, (CBLR), 2018, the IO observed that this regulation casts two obligations upon the Customs Broker:

- “1. The Customs Broker shall advise his client to comply with the provisions of the Customs Act, other allied Acts and the other relevant rules and regulations.*
- 2. In case of non-compliance, he shall report the matter to the notice of the concerned Deputy Commissioner of Customs or Assistant Commissioner of Customs.”*

**16.2.** The allegations against the charged CB can be simply decomposed into following points:

*“that the Customs Broker did not only advise and also abetted the exporter by declaring incorrect value of the exported goods in the shipping bills, using fake purchase invoices to avail the undue drawback; that the Customs Broker did not bring the matter mentioned above to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs.”*

**16.3.** According to the IO, it is to be noted that the Customs Broker acts as an authorized representative of the exporter and assumes responsibility for export/

import clearances on behalf of the exporter after receiving proper authorization from the exporter. The IO observed that the charged CB was working in a serious negligent manner and was in violation of the obligations casted upon them under the CBLR 2018; that it was the duty of the charged CB to advise his client to comply with the provisions of the Customs Act, other allied Acts and the other relevant rules and regulations. Rather looking into the circumstances of the case, the IO found that the CB abetted the exporter in illegal and irregular export. And, thus, the IO held the charge of the violation of Regulation 10 (d) of Customs Brokers Licensing Regulations (CBLR), 2018 as "**Proved**".

**17. Article of Charge-II: Violation of the provisions of Regulation 10 (e) of Customs Brokers Licensing Regulations (CBLR), 2018.**

**17.1** The IO submitted that the second charge levelled against the CB is that they had violated Regulation 10 (e) of Customs Brokers Licensing Regulations, (CBLR), 2018, which states that *the CB should 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.*

**17.2.** From the plain reading of the Regulation 10 (e) of CBLR, 2018, the IO observed that it becomes clear that the Customs Broker is duty bound to exercise **due diligence or appropriate care** to verify the correctness of any **information that the CB imparts to his client** in any work related to Customs clearance. According to the IO, it appears that the legislative intention is presupposing that it would be cumbersome for any exporter/importer in the works related to customs clearance which is complex in nature. And, hence, through Regulation 10 (e), the IO stated that it has obligated the Customs Broker to be very careful to verify the correctness of any information, be it statutory or procedural which the Customs Broker imparts to the client in the works related to Customs clearance.

**17.3.** From the investigations conducted by SIIB(X), the IO found that the said exporter submitted fake and bogus documents to the CHA and the said CHA did not verify the genuineness of the same; that due to the negligence of CHA, the exporter tried to export the goods illegally to avail undue drawback fraudulently. Therefore, under the facts and such circumstances, the IO observed that the

**20.2.** From the facts and circumstances of this case, the IO evidently stated that the efforts were made by SIIB officers to personally deliver the summons to the Customs Broker M/s. S.V. Shipping and at the address of the said Customs Broker, but the worker available at the said address stated that the said firm was not working at the address mentioned from the last one year, which clearly showed that the charged CHA had not attended/not cooperated for the investigation. The IO further stated that in this extant case, instead of cooperating with the department, the CB clearly appeared to be absconding and evading the investigation. Also, according to the IO, the evidence on record clearly indicated that the CB had clearly violated the provisions of the Regulation 10 (q) of the Customs Brokers Licensing Regulations (CBLR), 2018. And, thus, the IO held the charge of the violation of Regulation 10 (q) of Customs Brokers Licensing Regulations (CBLR), 2018 as **"Proved"**.

**Summary of the IO's Findings: -**

**21.** From the aforesaid discussions as mentioned above, the IO finally concluded his findings as under: -

<b>Sr. No</b>	<b>Charges against the CB</b>	<b>Findings</b>
1	Violations of Regulation 10 (d) of CBLR 2018	Proved
2	Violations of Regulation 10 (e) of CBLR 2018	Proved
3	Violations of Regulation 10 (n) of CBLR 2018	Proved
4	Violations of Regulation 10 (o) of CBLR 2018	Proved
5	Violations of Regulation 10 (q) of CBLR 2018	Proved

**RECORDS OF PERSONAL HEARING: -**

**22.** Under the provisions of Regulation 17 (6) of CBLR, 2018, a copy of the inquiry report dated 02.09.2024 was furnished to the charged CB and for the sake of 'Principle of Natural Justice', total 04 opportunities of the personal hearing were granted to the CB on the respective dates 16.10.2024 (later postponed to 24.10.2024 due to Administrative reasons), 14.11.2024, 12.12.2024 and 30.12.2024. However, neither the CB nor anyone on the behalf of the CB had attended the Personal Hearing, either in person or through video conferencing and no communication had been received from their side for submitting their reason of absence. It is also learnt that the CB has never responded to the Customs Authorities, neither during the investigation by SIIB



(Export), Air Cargo Mumbai nor during the inquiry proceedings under CBLR, 2018. Hence, the matter was taken up for adjudication on ex-parte basis.

**DISCUSSIONS AND FINDINGS:-**

**23.** I have gone through the facts of the case, the materials brought on record, the offence report received in the form of O-in-O CAO No.ADC/PKK/95/2022-23 Adj.(X) ACC Dated 31.03.2023, received from SIIB (Export), ACC, Mumbai; the Show Cause Notice No. 21/2023-24 dated 26.07.2023 issued under CBLR, 2018 and the inquiry report dated 02.09.2024.

**24.** I find that the present case has been booked and investigated by SIIB (Export), Air Cargo Complex, Mumbai Zone-III against 37 exporters, including M/s Austin Impex (IEC No. 0316958859), regarding fraudulent claim of drawback to the tune of multiple crores, involving fake IECs, wherein fly-by-night companies were created with sole intention to avail fraudulent and unjust drawback. One of the three CHAs, who filed the above shipping bills of M/s Austin Impex was M/s. S.V. Shipping (11/905).

**25.** I find that during investigation, SIIB(X) issued various summons to the exporter for giving evidence and producing all the relevant documents in respect of the investigation, but the said summons were returned back/undelivered by postal authorities with a remark as 'Left'/'Not Known'/'Incomplete Address'. On verification, no office of exporter was found at the declared address, hence KYC documents were fake and bogus.

**26.** I found from the offence report O-in-O CAO No.ADC/PKK/95/2022-23 Adj.(X) ACC Dated 31.03.2023 that penalties under various sections of the Customs Act, 1962 were imposed on the exporter and the Customs Broker.

I refrain from reiterating the brief facts of the case as the same have already been discussed above in detail.

**27.** I find that summonses were issued to the Custom Broker M/s. S.V. Shipping (CB No. 11/905), however no one appeared on behalf of the CB before

the investigation agency for recording of statements under section 108 of Customs Act, 1962.

28. I find that the inquiry officer has also granted adequate opportunities to the CB for appearing for hearing during the inquiry proceedings however, no any response has been received from the CB. I refrain from reiterating the findings of the inquiry officer as the same have been discussed in detail in forgoing paras, however, on a careful perusal of the reasons assigned by the inquiry officer and as extracted above, I find that the inquiry officer has conducted a meticulous exercise to examine and appreciate the evidence on record and came to a categorical finding that the CB was guilty of non-performance of the statutory duties cast upon them and accordingly the inquiry officer has held that the all the charges levelled against the CB, are 'conclusively proved'. In view of the above discussions and under the factual matrix of the present case I find that the conclusion of the inquiry officer is sustainable and accordingly I am inclined to accept the inquiry officer's report and hold that the CB M/s. S.V. Shipping (CB No. 11/905) has violated the provisions of Regulation 10(d), 10(e), 10(n), 10(o) and 10(q) of CBLR, 2018.

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

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."*

**30.** Further, with regard to the timelines prescribed under Regulation 17 of CBLR, 2018, I rely on the following case laws and observe that the timelines under CHALR/CBLR, are directory in nature and not mandatory:

**a) Hon'ble High Court of Judicature at Bombay in the case of Principal Commissioner of Customs (General), Mumbai Versus Unison Clearing P. Ltd.** reported in 2018 (361) E.L.T. 321 (Born.), which stipulates that:

*"15. In view of the aforesaid discussion, the time limit contained in Regulation 20 cannot be construed to be mandatory and is held to be directory. As it is already observed above that though the time line framed in the Regulation need to be rigidly applied, fairness would demand that when such time limit is crossed, the period subsequently consumed for completing the inquiry should be justified by giving reasons and the causes on account of which the time limit was not adhered to. This would ensure that the inquiry proceedings which are initiated are completed expeditiously, are not prolonged and some checks and balances must be ensured. One step by which the unnecessary delays can be curbed is recording of reasons for the delay or non-adherence to this time limit by the Officer conducting the inquiry and making him accountable for not adhering to the time schedule. These reasons can then be tested to derive a conclusion whether*

the deviation from the time line prescribed in the Regulation, is "reasonable". This is the only way by which the provisions contained in Regulation 20 can be effectively implemented in the interest of both parties, namely, the Revenue and the Customs House Agent."

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

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

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

**31.** In view of the above discussed facts and for their acts of omission and commission, the CB M/s. S.V. Shipping (CB No. 11/905) 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(b), 10(d), 10(e), 10(m) & 10(q) of CBLR, 2018 and is liable for penal action. Accordingly, I pass the following order:

#### **ORDER**

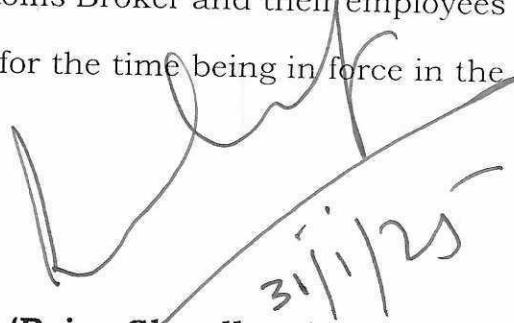
**32.** I, Principal Commissioner of Customs (General), in exercise of the power conferred upon me under Regulation 17(7) of the CBLR, 2018, pass the following order:

- i. I hereby order for revocation of the CB license held by M/s. S.V. Shipping (CB No. 11/905; PAN – AAAPN8849E) under Regulation 14 of CBLR, 2018.



- ii. I hereby order for forfeiture of entire amount of security deposit furnished by the CB M/s. S.V. Shipping (CB No. 11/905; PAN - AAAPN8849E) under Regulation 14 of CBLR, 2018.
- iii. I hereby impose penalty of Rs. 50,000/- (Rs. Fifty Thousand Rupees Only) on M/s. S.V. Shipping (CB No. 11/905; PAN - AAAPN8849E) under Regulation 18 of the CBLR, 2018.
- iv. I hereby order that the CB immediately surrender the original License as well as all the F, G & H cards issued there 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. S.V. Shipping (CB No. 11/905)**

PAN: AAAPN8849E

B-28, Station Plaza, Station Road,  
Bhandup West, Mumbai 400078

**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

I hereby certify that the following information is true and correct to the best of my knowledge and belief. I am the owner of the above described property and I am the person who has authorized the sale of the same. I have not received any offers for the purchase of the same and I have not received any offers for the purchase of the same.

This order is given without prejudice to any other order which may be given or proposed to be given with respect to the above described property and the same shall be subject to any other order which may be given or proposed to be given with respect to the above described property.

*[Handwritten Signature]*  
3/1/50

Witness my hand and seal of office this 1st day of March 1950.

Notary Public for the State of New York  
My Commission Expires on 11/1/50

The undersigned hereby certifies that the above described property is the property of the undersigned and that the undersigned is the person who has authorized the sale of the same. I have not received any offers for the purchase of the same and I have not received any offers for the purchase of the same.