



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/322/2024-CBS

आदेश दिनांक/Date of Order: 20.03.2025

CAO No. 86/2024-25/CAC/PCC(G)/RC/Adj-CBS जारी दिनांक/Date of issue: 20.03.2025

DIN: 2025037700000000DD5F

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, की धारा 129 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 (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

के अनुसार न्यायिक आदेश तदोउ प्रांत न्याय निर्णयन अधिकारी 31.05.2018' *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 के तहत निर्धारित है एवं उसी नियमावली के नियम 3 के उपनियम 2 में 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 ब्याजबलगाएगए जुर्माने की राशि रु/पाँच लाख या इस से कम होती रु. 1000 ., (ii)यदि यह राशि रु) पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न होती रु. 5000/- एवं .iii) यदि यह राशि रुपचास लाख से अधिक होती 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 कृत 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, की अनुसूची मद 6 के तहत निर्धारित 1870 रु. 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. Satyam Worldwide Clearing Forwarding and Transport Agency, (PAN No. APMPK7637N), having address registered at Office No. 405, Grohitham premises Co-operative Housing Society, Plot No. 14B, Sector 19 Sanpada, Navi Mumbai-400705 (hereinafter referred as the Customs Broker/CB) is holder of Customs Broker License No. 11/2264, 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 with respect to the role of the CB, M/s. Satyam Worldwide Clearing Forwarding and Transport Agency (CB No.11/2264) is received in this office on 22.05.2024 from the CIU, NCH, Zone-I wherein, it is informed that:-

2.1 M/s. OM SAI IMPEX (IEC: AAFF08683G) (hereinafter referred to as the importer) having address at 156, The Platinum, 2nd floor, Falkland Road, Girgaon, Mumbai, Maharashtra 400004, imported goods (herein after referred as the goods) of total assessable value declared as Rs. 88,92,650/- vide Bill of Entry No. 9585075 dated 09.01.2024, for home consumption through Customs Broker M/s Satyam Worldwide Clearing Forwarding and Transport Agency (CHA, License No. 11/2264, Kardex No. K-2103) (herein after referred as the CB) at Mumbai Port from China in violation of the provisions of the Customs Act, 1962 and other allied Acts, Rules and Regulations. Therefore, the said consignments were put on hold by Central Intelligence Unit, New Customs House (herein after referred as the CIU, NCH).

2.2 The details of the Bill of Entry are tabulated as below:

Table-1

Sr. No.	Particulars	Specifications
1.	B/E No. and Date	9585075 dated 09.01.2024
2.	Container No.	TEMU8989732
3.	B/L Number	KMTCSHK8456638
4.	Invoice No. and Date	NW-231216 dated 16.11.2023

5.	Supplier Name and address	HK HUALIDA MICROELECTRONIC PRODUCTS CO LTD, RM 1902 EASEY COMM BLDG 253-261, HENNESSY ROAD WANCHAI HONG KONG
6.	Items declared	Goods as mentioned in Bill of Entry No. 9585075 dated 09.01.2024
7.	Total declared Assessable value	Rs. 88,92,650/-
8.	Duty paid	34,99,134/-

2.3 Examination of the goods imported under B/E 9585075, dated 09.01.2024:-

2.3.1 Examination by the Docks officer:- The goods imported under the B/E No. 9585075 dated 09.01.2024 were examined by import docks officer on 10.01.2024 with remarks that "the goods were examined and found as declared. Nothing objectionable was found". The out of charge was given by the docks officer on 10.01.2024.

2.3.2 Examination of the goods imported vide B/E No. 9585075 dated 09.01.2024 by CIU, NCH: The goods imported under the B/E No. 9585075 dated 09.01.2024 were examined 100% by the Officers of the CIU, NCH on 16.01.2024 and the proceedings were recorded under Panchnama dated 16.01.2024.

2.3.3 Discrepancies were found in respect of the said imported goods filed under B/E 9585075 dated 09.01.2024. The details of the examination under Panchnama dated 16.01.2024 are given below in Table-III:

Table-II

Sr. No. in the B/E	Description of goods declared	Description of goods found	Quantity found (In pcs/kgs)	Discrepancy found/Remarks
6	Housing (Parts of mobile charger)	Charger pin and pcs of charger case	200100 pcs	►Housing (Parts of mobile charger) with declared quantity as 200100 pcs were found to be 100000 pcs of charger pin and 100100 pcs of charger case.
8	Lamp with stand	Lamp with stand - type 1	700 pcs	The Goods declared as Lamp with stand with declared quantity as 820 pcs were found to be 3 types of Lamp with stand of different sizes. Hence goods were declared, found mis-declared.
		Lamp with stand - type 2	20 pcs	

		Lamp with stand - type 3	100 pcs	
5	Headset for mobile phone	Headset for mobile phone with Make RD	2025 BCTNs/	Model No. HB-R2 and R no. R-41173711 found embossed on the goods.
		Headset for mobile phone with Make RD	6CTNs/1500	Model No. HB-R1 and R no. R-41173711 found embossed on the goods.
		Headset for mobile phone with Make Tessco Mobile	20CTNs /2000	Model No. HB-V2 and R no. R-41173711 found embossed on the goods.
Note: The item at Sr No. 5 is declared as Headset for mobile phone but different models with different make are found.				
10	Portable speaker big with AUX/USB	Portable speaker big with Make RD	200CTN 5/2000P	Paper sticker having BIS no. R-41173703 and model no. SP-R10 affixed on the goods in violation of BIS norms
12	Wireless Hands free for mobile phone	Neckband with Make RD	CS 75CTNs /30000P	Model No. HB-R7 and R no. R-41173711 found embossed on the goods.
		Neckband with Make RD	20CTNs /10000P	Model No. HB-R6 and R no. R-41173711 found embossed on the goods.
		Neckband with Make RD	40CTNs /20000P CS	Model No. HB-T2 and R no. R-41173711 found embossed on the goods.
		Neckband with Make RD	20CTNs /10000P CS	Model No. HB-T1 and R no. R-41173711 found embossed on the goods.
Note: The Item at Sr. No. 12 is declared as Wireless Handsfree for mobile phone but the goods found was Neckband with Make RD with different Model No.,				
18	Mobile Battery (1800 MAH)	Mobile Battery (2600 MAH)	100 Pcs	Model No. 426583AR and R-41143030 found embossed on the goods.
		Mobile Battery (3500 MAH)	100 Pcs	Model No. 454348AR and R-41143030 found embossed on the goods
19	Mobile Battery (1812	MAH) Mobile Battery	200 Pcs	Model No. 424353AR and R-41143030 found embossed on the goods.

		(1821 MAH)		
24	Mobile Battery (2500 MAH)	Mobile Battery (3400 MAH)	500 Pcs	Model No. 423446AR and R-41143030 found embossed on the goods
		Mobile Battery (3000 MAH)	295 Pcs	Model No. 523450AR and R-41143030 found embossed on the goods
27	Mobile Battery (3000 MAH)	Mobile Battery (3000 MAH)	1200 Pcs	Model No. 395157AR and R-41143030 found embossed on the goods Mobile Battery (2980 MAH)
		Mobile Battery (3300 MAH)	2600 Pcs	Model No. 395157AR and R-41143030 found embossed on the goods.
29	Mobile Battery (3100 MAH)	Mobile Battery (3000 MAH)	1000 Pcs	Model No. 395157AR and R-41143030 found embossed on the goods.
30	Mobile Battery (3200 MAH)	Mobile Battery (2980 MAH)	700 Pcs	Model No. 395165AR and R-41143030 found embossed on the goods
32	Mobile Battery (3300 MAH)	Mobile Battery (3010 MAH)	600 Pcs	Model No. 484655AR and R-41143030 found embossed on the goods
34	Mobile Battery (3410 MAH)	Mobile Battery (4000 MAH)	98 Pcs	Model No. 523446AR and R-41143030 found embossed on the goods
35	Mobile Battery (3500 MAH)	Mobile Battery (3400 MAH)	300 Pcs	Model No. 555571AR and R-41143030 found embossed on the goods
40	Mobile Battery (4210 MAH)	Mobile Battery (4300 MAH)	100 Pcs	Model No. 495759AR and R-41143030 found embossed on the goods, however the said Model No. is not covered under said BIS License
41	Mobile Battery (4300MAH)	Mobile Battery (4300 MAH)	100 Pcs	Model No. 495759AR and R-41143030 found embossed on the goods, however the said Model No. is not covered under said BIS License

47	Mobile Battery (550 MAH)	Mobile Battery (800 MAH)	2000 Pcs	Model No. 423446AR and R-41143030 found embossed on the goods
49	Mobile Battery (800 MAH)	Mobile Battery (800 MAH)	2300 Pcs	Model No. 523450AR and R-41143030 found embossed on the goods
		Mobile Battery (1050 MAH)	20000 Pcs	Model No. 423446AR and R-41143030 found embossed on the goods

2.4. INVESTIGATION IN THE CASE BY THE CIU, NCH, MUMBAI:-

2.4.1 Search was conducted under search authorization dated 18.01.2024 issued vide CBIC-DIN 20240177000000333872, at the premises of CB M/s Satyam Worldwide Clearing Forwarding and Transport Agency, situated at "Office No. 405, Grohitham Premises Co-operative Housing Society, Plot No. 14B, Sector 19 Sanpada, Navi Mumbai-400705" under panchnama dated 18.01.2024. The address was found to be in the name of the CB M/s SATYAM WORLDWIDE. During search some documents related to import of consignment vide B/E No 9585075 dated 09.01.2024 and some documents with different waybill No. were recovered.

2.4.2 Search was conducted vide search authorization dated 18.01.2024 issued vide CBIC-DIN 2024017700000000A9A8, at the address mentioned in the B/L, invoice and packing list of B/E 9585075 dated 09.01.2024 at M/s Om Sai Impex, 156, The Platinum 2nd Floor, Pathe Falkland Road, Girgaon, Mumbai- 400004". The address was found to be in the name of the Importer M/s OM SAI IMPEX. During search some documents viz. tax invoice, duty payment receipt, freight, MbPT tax invoices in respect of 17 Bills of Entries were recovered. The representative of the importer submitted IEC certificate, GST Registration, Electricity Bill, NOC certificate for the use of premises as Principle place of Business.

2.5 During examination of the goods imported vide B/E 9585075 dated 09.01.2024 under Panchnamas dated 16.01.2024 by CIU, NCH, some of the goods were found mis-

declared and in violations of BIS, RE-44 and prima facie, the goods appeared to be undervalued. Hence, the goods imported vide B/E No. 9585075 dated 09.01.2024 appeared to be in contravention of the provisions of the Customs Act, 1962 and appeared to be liable for confiscation under section 111(m), 111 (1) and 111(d) of the Customs Act, 1962 and hence, the same were seized vide seizure memos dated 25.01.2024 issued vide DIN No. 2024027700000000ADBB.

2.6 The importer vide letter dated 30.01.2024 requested for allowing warehousing of the goods imported vide B/E 9585075 dated 09.01.2024 under Section 49 of the Customs Act, 1962. The permission of the same was granted by the competent authority vide letter dated 02.02.2024.

2.7. Non-compliance of BIS:

2.7.1 The general Note 2 (C) regarding Import Policy of ITC HS Schedule is produced below.

"The import of Goods notified under the "Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012, as amended from time to time, is prohibited unless they are registered with the Bureau of Indian Standards (BIS) and comply to the labelling requirements' published by BIS, as amended from time to time or on specific exemption letter from Ministry of Electronics and Information Technology (MeitY) for a particular consignment, as per provisions of Gazette Notification SO No.3022 dated 11.09.2013. The importer shall re-export such prohibited goods reaching Customs Ports else the Customs Authorities shall deform the goods beyond use and dispose them as scrap under intimation to MeitY."

2.7.2 The details of the goods found in non-compliance of the BIS rules and regulation imported vide B/E No. 9585075 dated 09.01.2024 are given in below Table-IV:

Table -IV

Sr. No. in B/E	goods declared	Goods (make/model) found	Quantity found (pcs /kgs)	BIS certificate submitted	Make in BIS Cert	ETA Certificate submitted	Make/model in ETA certificate	Discrepancy observed
10	Portable Speaker Big with AUX/USB	Portable Speaker Big with AUX/USB	2000	R-41173703	Guangzhou Lantel Electronic Technology Co. Ltd.	ETA-0258/2018/RLO (WR)	Guangzhou Lantel Electronic Technology Co. Ltd.	Paper Sticker having BIS No. R-41173703 and Model No. SP-R10 affixed on the goods
40	Mobile Battery (4210 MAh)	Mobile Battery (4300 MAh) (Model no. 495759 A R)	100	R-41143030	Guangzhou Lantel Electronic Technology Co. Ltd.	NA	NA	Said model no. is not covered in the BIS certificate submitted by importer
41	Mobile Battery (4300 MAh)	Mobile Battery (4300 MAh) (Model no. 495759 A R)	100	R-41143030	Guangzhou Lantel Electronic Technology Co. Ltd.	NA	NA	Said model no. is not covered in the BIS certificate submitted by importer

2.7.3 Non-compliance of the BIS in respect of Portable Speaker Big with AUX/USB:

The BIS paper stickers pasted on the goods/their box were found to be delible and can be removed easily w.r.t. the goods Portable Speaker Big with AUX/USB (2000 Pcs). Make/model found on these goods were covered by the BIS submitted but paper sticker

having BIS No. R41173073 and Model no. SP-R10 affixed on the goods. Hence, these goods were found to be in non-compliance of BIS rules and regulation.

2.7.4 Non-compliance of the BIS in respect of Mobile Battery:

(i) The goods declared as Mobile Battery (4210 mAh) were found as Mobile Battery (4300 mAh) (100 Pcs) on which the Model No. 495759AR and R-41143030 found embossed. However, the Model number in the BIS License No. R-41143030 submitted by the importer is 485759AR. Hence, these goods were found to be in non-compliance of BIS rules and regulation.

(ii) The goods declared as Mobile Battery (4300 mAh) were found to be Mobile Battery (4300 mAh) (100 Pcs) on which the Model No. 495759AR and R-41143030 were found embossed. However, the Model number in the BIS License No. R-41143030 submitted by the importer is 485759AR. Hence, these goods were found to be in non-compliance of BIS rules and regulation.

2.7.5 In view of the above paras, the Portable Speaker Big with AUX/USB (2000 Pcs), Mobile Batteries (4210 mAh) (100 Pcs) and Mobile Batteries (4300 mAh) (100 Pcs) as mentioned in the Table IV above were found to be in non-compliance of the BIS Rules and Regulations.

2.8. Non-compliance of LMPC Rules, 2011 and RE-44 notification: -

2.8.1 As per General Note 5 "Packaged products of ITC(HS) read with DGFT Notification No. 44 (RE-2000)/1997-2002 dated 24.11.2000 and the Legal Metrology (Packaged Commodities) Rules, 2011 all pre-packed commodities, imported into India, shall in particular carry the following declarations:

- (a) Name and address of the importer
- (b) Generic or common name of the commodity packed

(c) Net quantity in terms of standard unit of weights and measures. If the net quantity in the imported package is given in any other unit, its equivalent in terms of standard units shall be declared by the importer:

(d) Month and Year of packing in which the commodity is manufactured or packed or imported;

(e) Maximum retail sale price at which the commodity in packaged form may be sold to the ultimate consumer. This price shall include all taxes local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertising, delivery, packing, forwarding and the like, as the case maybe.

(f) Consumer care details etc.

2.8.2 During investigation, no such declarations as mentioned in the para 2.8.1 above, were found on the single pre-packed goods of B/E No. 9585075 dated 09.01.2024 as mentioned in Table V given below:-

Table V

Sr. No.	Description of goods	Qty. Declared in unit	Unit
1	Lamp with stand-type-1	700	PCS
2	Lamp with stand-type-2	20	PCS
3	Lamp with stand-type-3	100	PCS
4	Mobile Battery (1000MAh)	593	PCS
5	Mobile Battery (1200MAh)	5000	PCS
6	Mobile Battery (1440MAh)	100	PCS
7	Mobile Battery (1750MAh)	995	PCS
8	Mobile Battery (2600MAh)	100	PCS
9	Mobile Battery (3500MAh)	100	PCS
10	Mobile Battery (1821MAh)	200	PCS
11	Mobile Battery (2227MAh)	99	PCS
12	Mobile Battery (2300MAh)	97	PCS
13	Mobile Battery (2400MAh)	200	PCS
14	Mobile Battery (3400MAh)	500	PCS
15	Mobile Battery (3000MAh)	295	PCS
16	Mobile Battery (2815MAh)	200	PCS

17	Mobile Battery (2900MAh)	100	PCS
18	Mobile Battery (3000MAh)	1200	PCS
19	Mobile Battery (3300MAh)	2600	PCS
20	Mobile Battery (3090MAh)	200	PCS
21	Mobile Battery (3000MAh)	1000	PCS
22	Mobile Battery (2980MAH)	700	PCS
23	Mobile Battery (3225MAh)	100	PCS
24	Mobile Battery (3010MAh)	600	PCS
25	Mobile Battery (3400MAH)	200	PCS
26	Mobile Battery (4000MAh)	98	PCS
27	Mobile Battery (3400MAh)	300	PCS
28	Mobile Battery (3600MAh)	499	PCS
29	Mobile Battery (3765MAh)	100	PCS
30	Mobile Battery (4000MAh)	4294	PCS
31	Mobile Battery (4065MAh)	98	PCS
32	Mobile Battery (4300MAh)	100	PCS
33	Mobile Battery (4310MAh)	398	PCS
34	Mobile Battery (4350MAh)	99	PCS
35	Mobile Battery (4390MAh)	200	PCS
36	Mobile Battery (4500MAh)	400	PCS
37	Mobile Battery (5000MAh)	6899	PCS
38	Mobile Battery (800MAh)	2000	PCS
39	Mobile Battery (6000MAh)	2600	PCS

2.8.3 Hence the same were found to be in non-compliance of the General Note 5 "Packaged products of ITC(HS) read with DGFT Notification No. 44 (RE-2000)/1997-2002 dated 24.11.2000 and the Legal Metrology (Packaged Commodities) Rules, 2011.

2.9. Statements of the importer and the CB: -

2.9.1 During the course of investigation, statement dated 08.02.2024 and further statement dated 28.02 2024 of Shri Gitesh V Kelbaikar, Proprietor of the CB firm M/s Satyam Worldwide Clearing Forwarding and Transport Agency were recorded under Section 108 of the Customs Act, 1962, wherein he inter-alia stated that: -

- He has been working as the sole Proprietor of M/s Satyam Worldwide Clearing Forwarding and Transport Agency (APMPK7637K) (Custom Broker) since 2017.
- As a Proprietor, he supervises all the functions of M/s Satyam Worldwide Clearing, forwarding and transport agent. He supervises office work, customs house related work and any other work pertains to the company.

- Besides him, there is one Mr Nilesh B. Pednekar (H-card holder) and there are three other employees namely Shri Sudhesh Helwadkar (office incharge), Shri Mahesh L. Kundekar (helps in office and docks work), Shri Yash Gurav (helper) in M/s. Satyam Worldwide Clearing, forwarding and transport agent. Shri Yash Gurav was present on 10.01.2024 at MOD, MBPT for Customs Docks examination of the imported consignments and Mr. Nilesh B. Pednekar was also there for delivery related work.
- On being asked about the Goods at Sr. No. 6 of B/E declared as Housing (Parts of mobile charger) with declared quantity as 200100 pcs, whereas on examination 100000 pcs of charger pins and 100100 pcs of charger cases were found, he stated that he was also not aware before the examination whether these were present in the package and he only came to know at the time of examination that these were present in different packages with 100000 pcs of charger pins and 100100 pcs of charger cases and they both form the part of housing (mobile charger) and these parts cannot become a complete charger without PCB, as voltage cannot be supplied.
- On being asked about the Goods at Sr. No 8 of the B/E declared as Lamp with stand with declared quantity as 820 pcs, whereas on examination, 3, types of Lamp with stand were found, he stated that he was not aware before and he only came to know at the time of examination. When the examination started, the docks officer raised a query about the different sizes of the Lamps with stands, so he (Docks officer) went through the packing list provided by the importer and found that the goods were as per the packing list. He agreed that all three sizes do not have same value and he had not advised his importer to raise the value and pay the differential duty
- On being asked about the item at Sr. No. 10 of the B/E (Portable speaker big with AUX/USB) on which instead of being embossed BIS details, a paper sticker with

BIS No. R-41173703 and model No SP-R10 was found affixed, he stated that he also came to know at time of Examination when the docks officer raised a query about the sticker. After conversation with the importer, who informed that it was not possible to emboss the BIS on wooden Housing because it might catch fire, therefore, the same was printed on the same cartoons.

- On being asked about the item at Sr. No 40 & 41, having quantity of 100 pcs in each where it was found that BIS details were embossed but the said Model number is not covered under said BIS License, he stated that he was not aware about the same.
- On being asked about the goods at Sr. No. 8, 10, 13, 15 to 19, 21 to 48 of B/E which were found in single pre packed condition and labels/details of MRP, Manufacturer's details, date of import etc were not found on the same, he stated that during the examination by CIU officer, the same was pointed out. Earlier this was not known to him.
- On about asked being the goods at S. No. 18,19,24,27,29,30,32,34,35,40,41, 47 & 49 of B/E which had discrepancies in respect of mAh capacity of batteries, he accepted that these discrepancies were found during the examination of the goods by CIU. However, the same was not highlighted by the docks Customs Officer during examination of the goods.
- On being asked about verification of KYC of the importer, he stated that he had done KYC verification and had also submitted all relevant documents.
- That, he used to verify the checklist submitted by the Importer and also verified that the duty was as per the procedure of Customs Act, 1962. He used to take hard-copy of the check list from the importer by hand. Then he would deposit the Customs duty on behalf of the importer.

- He agreed that the mis-declaration and non-compliances of BIS and RE-44 were found in the goods imported vide the said B/E, which is non-compliances on the part of the importer and the Customs officer.
- That, he failed to inform the said non compliances to DC Docks as per the CBI.R. 2018 regulations 10(d) and it was ignorance on his part as he had presumed that if a Customs officer was clearing a cargo that meant the said cargo is import compliant and can be cleared for the home consumption.

2.9.2 During the course of investigation, statement dated 26.02.2024 and further statement dated 11.03.2024 of Shri Magana Ram Jerupaji Choudhary, Director of M/s Om Sai Impex (IEC: AAFFO8683G) was recorded under Section 108 of the Customs Act, 1962, wherein he inter alia stated:

- That, he is the IEC holder of M/s Om Sai Impex (IEC: AAFFO8683G).
- That, they registered their IEC at the address "M/s OM SAI IMPEX, 156, THE PLATINUM 2nd FLOOR, PATHE FALKLAND ROAD, GIRGAON, MUMBAI-400004" at the time of issuance of IEC in 2018 and started their work of import.
- That, he had been looking after the business of M/s Om Sai Impex (IEC: AAFFO8683G) along with his partner Shri Chetan Singh since 2018. They imported mobile accessories and sold in the domestic market as wholesale.
- They would sell all products on credit and received payments roughly after 15-30 days.
- That, before starting his own import business in 2018, he used to do trading of goods in local market.
- That, normally, 1 to 2 consignments were imported by them on monthly basis and they had never done any export.
- That, he went to the China in the year 2016 and made contacts with the supplier. After that with the help of agent in china they started importing the goods. At

present, they were dealing with the supplier i.e. HK HUALIDA MICROELECTRONIC PRODUCTS CO., LIMITED, RM. 1902, Easey Comm. Bldg., 253-261 Hennessy Road, Wanchai Hong Kong.

- That, they placed orders with the help of agent in China whose name is Procky and his contact no. is +8613794316347.
- That, he used to visit and China and physically verified the quality and features of goods with the help of an agent in China named Mr Procky.
- That, they would transfer the money through bank. He had provided the bank statements in support of his statement. That, Satyam Worldwide Clearing, forwarding and transport agent (APMPK7637K), CB
- Firm is doing the clearance of the consignments. That, normally, the bills amounting to Rs. 10,000 to 12,000 per consignment were raised by the CB Firm for clearance of the goods. They would pay the amount by online transaction.
- That, he came in contact with the CB Firm in Platinum Mall, Mumbai.
- That, they used to hand over the documents ie. invoice, packing list, authorization letter through his accountant Shri Neelesh Patil in the Platinum Mall. Shri Neelesh Patil used to give all the relevant documents to the representative of CB Firm.
- That, on showing the Panchnama dated 16.01 2024, he accepted that some discrepancies were found during examination of goods imported under the Bill of Entry No. 9585075, dated 09.01.2024 and he is ready to pay the government charges/penalties for the same. Also, he would submit his original order placed with the agent and the supplier's letter mentioning that due to shortage of some items, he (the supplier) loaded some other items. Those goods which were not supplied as per his order had no value for him so he would have to re-export the same. Hence, he telephonically coordinating with his supplier/agent to accept it back. In this sequence, he has requested them to send him his original order copy.

- That, he has basic knowledge of the Customs regulations, procedures and other relevant provisions related to import of the goods. He follows the procedure as guided by the CB. In this matter, his staff Mr Nilesh Patil was more conversant than him, so he did maximum coordination.
- That, he has ordered all the goods with BIS, ETA and RE-44 compliance only Due to shortage of time and upcoming closure of market due to Chinese new year, his agent did everything under time pressure and made unnecessary hurry and failed to send all goods as per the order. Hence, they failed to comply government compliance inadvertently. That, his buyers are RD Telenet Private Ltd., Active Sells Private Ltd. and Red Teleworld LLP
- On being asked about the authenticity of the print out of email conversation happened between him (aberam1980@gmail.com) and the supplier Mr. Porky [huangzebo@126.com) he stated that the mistake had happened on the part of supplier for which he submitted the copy of gmail conversation between him and the supplier where he had accepted his mistake and verified the fact that the sender in that conversation was the supplier of the said goods and agent who helped him in placing order in china.

2.10 Since the goods was in non-compliance of LMPC Rules 2011/RE-44 Notification, BIS regulations and mis-declared goods has been found in the instant consignment, the valuation provided by the importer does not appeared to be sustainable and was liable to be rejected under Rule 12 of the Customs Valuation Rules, 2007. Therefore, value was re-determined as per Customs Valuation Rules, 2007. The re-determined value and duty of the goods imported vide B/E No. 9585075 dated 09.01.2024 is given as below: -

(i) The value and duty of the goods of the B/E No. 9585075 dated 09.01.2024 is re-determined and the total assessable value of the goods covered under Bill of Entry No.

9585075 dated 09.01.2024 comes out to be Rs. 1,29,33,119/- and the total differential duty for the goods comes out to be Rs. 15,68,508/-.

(ii) The differential duty of the goods except the non-BIS compliant goods mentioned in the Table-IV works out to be Rs. 14,74,687/-

3. Based on the facts on record and applicable laws, Rules and Regulations, prima facie it appeared that the CB M/s. Satyam Worldwide Clearing Forwarding and Transport Agency (11/2264) failed to comply with the provisions of regulation 10 (d), 10(c) and 10(m) of CBLR, 2018.

4. As the CB Licence of M/s. Satyam Worldwide Clearing Forwarding and Transport Agency (CB No. 11/2264) has already been suspended in another case vide Order No. 18/2024-25 dated 27.05.2024 & Suspension of the CB licence was continued vide Order No. 26/2024-25 dated 21.06.2024, Hence action under regulation 16(1) of the CBLR, 2018 is not taken in the instant case.

5. It appeared from the offence report and facts as discussed above that CB M/s. Satyam Worldwide Clearing Forwarding and Transport Agency (11/2264), helped the importer M/s. Om Sai Impex with their acts of commission / omission for having attempted to clear the goods in non-compliance of LMPC Rules 2011/RE-44 Notification, BIS regulations and mis-declared goods through NCH, Mumbai. Hence, the CB appears to have failed to comply with following regulations of the Customs Brokers Licensing Regulations 2018:-

5.1 *Regulation 10(d) of the CBLR, 2018: "A Customs Broker shall advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be"*

From the offence report, it appears that CB has failed to properly advise their client M/s. Om Sai Impex regarding the rules and regulations of customs and allied acts. As per examination of the Container No. ZCSU7958897 imported vide B/E 9585075 dated 09.01.2024 under Panchnama dated 16.01.2024 by CIU, NCH, violations of BIS rules and regulation, violations of LMPC Rules 2011/RE-44 Notification, mis-declaration w.r.t. capacity (in mAh) of batteries and mis-declaration w.r.t. sizes of lamps and their stands were observed. It is the responsibility of the CB to inquire about the condition (i.e. pre-packed or bulk), specifications of the goods etc. with the importer and advise the importer to comply with the extant rules which was not done in the instant case. It is also noticed that CB in his statement recorded under section 108 of the Customs Act, 1962 on 08.02.2024 stated that he was present during the examination of the Bill of Entry by Customs Docks Officer on 10.01.2024, which were under 100% examination order. However, the CB failed to bring true facts regarding these violations/discrepancies to the knowledge of Assistant/Deputy Commissioner of Customs at the time of examination by the Customs Docks Officer. Therefore, it appears that the CB has violated the of Regulation 10(d) of CBLR, 2018.

5.2 Regulation 10(e) of the CBLR, 2018: - "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"

From the offence report, it appears that on examination of the Container No. ZCSU7958897 imported vide B/E 9585075 dated 09.01.2024 under the Panchnamas dated 16.01.2024 by CIU, NCH, violations of BIS rules and regulation, violations of LMPC Rules 2011/RE-44 Notification and mis-declaration of goods were observed. It appears that CB did not enquire about the condition of the goods i.e. pre-packaged and about actual make/model of the goods before filling the Bills of Entry 9585075 dated 09.01.2024 on behalf of the importer. The CB filed the Bill of Entry without mentioning make/models of the goods required for verification of BIS certificates. Hence, it appears that CB has not

exercised due diligence to ascertain the correctness of information imparted to his client for clearance of the cargo, thereby violating the provisions of Regulation 10(e) of the CBLR, 2018.

5.3 Regulation 10(m) of the CBLR, 2018: "A Customs Broker shall discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay"

From the offence report, it appears that on examination of the Container No. ZCSU7958897 imported vide B/E 9585075 dated 09.01.2024 under panchamas dated 16.01.2024 by CIU, NCH, violations of BIS regulation, violations of LMPC Rules 2011/RE-44 Notification and mis-declaration of goods were observed. CB in his statement recorded under section 108 of the Customs Act, 1962 on 08.02.2024 stated that he was present during the examination of Bill of Entry by Docks Officer on 10.01.2024, which were under 100% examination order. Hence, it appears that CB, by not informing the importer and Customs Authorities or seeking necessary clarifications from the importer regarding these violations or discrepancies failed to discharge his duties with utmost efficiency and caused a significant delay in Customs clearance thereby violating the provisions of Regulation 10(m) of the CBLR, 2018.

6. The evidence on record clearly indicates that the CB was working in a seriously 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 supposed to safeguard the interests of both the importers and the Customs department. A lot of trust is kept in CB by the Government Agencies, but by their acts of omission and commission it appears that the said CB have violated Regulation 10 (d), 10(e) and 10(m) of CBLR, 2018 and rendered himself for penal action under Regulations 14, 17 & 18 of CBLR, 2018.

7. In view of the offence report received from CIU, NCH, Mumbai Zone-I, action under CBLR, 2018 was initiated against the CB M/s. Satyam Worldwide Clearing, Forwarding and Transport Agency (CB No. 11/2264). The Regulation 16 of CBLR, 2018 was not invoked in present case, as discussed above under para 4. However, the inquiry under Regulation 17 of CBLR, 2018 was initiated against the CB M/s. Satyam Worldwide Clearing, Forwarding and Transport Agency (CB No. 11/2264) and accordingly, on the basis of the offence reports, the following articles of charges were framed against the CB:

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

7.1 In light of the above, a Show Cause Notice (SCN) No. 26/2024-25 dated 02.07.2024 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. 11/2264 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.

8. Also, Shri G L. Narasimham, Deputy Commissioner of Customs was appointed as Inquiry Officer (IO) to conduct the inquiry proceedings in the matter. The IO submitted the inquiry report dated 02.10.2024, wherein all the charges levelled against the CB of violation of section 10(d), 10(e) and 10(m) of CBLR, 2018 are held as "Not Proved".

FINDINGS OF INQUIRY OFFICER (IO): -

9. The IO had gone through the facts of the case, the reply to the show cause notice the submissions made by the Customs Broker during the Personal hearings. On perusal of

the records, the IO noticed that the entire investigation/proceedings of the import was done by the Officers of CIU, NCH, Mumbai customs Zone-I. The IO found that M/s. OM SAI IMPEX (IEC AAF08683G) having address at 156, The Platinum, 2nd floor, Falkland Road, Girgaon, Mumbai, Maharashtra 400004, had imported goods therein after referred as the goods) of total assessable value declared as Rs. 88,92,650/- vide Bill of Entry No. 9585075 dated 09.01.2024, for home consumption through Customs Broker M/s Satyam Worldwide Clearing Forwarding and Transport Agency (CHA, License No. 11/2264, Kardex, No. K-2103) (herein after referred as the CB) at Mumbai Port from China in violation of the provisions of the Customs Act, 1962 and other allied Acts, Rules and Regulations. Therefore, the said consignments was put on hold by Central Intelligence Unit, New Customs House (herein after referred as the CIU, NCH).

9.1 The IO found that a Show Cause Notice No. 26/2024-25 dated 2-7-2024 vide F.No.GEN/CB/294/2024/CBS was issued by Principal Commissioner of Customs (General), Mumbai Zone-I to the Customs Broker M/s. Satyam Worldwide Clearing Forwarding and Transport Agency (CB No. 11/2264), under the Customs Broker Licensing Regulations (CBLR), 2018 vide which an inquiry was ordered to be conducted against him.

9.2 On perusal of this Show Cause Notice, the IO observed that the CB had been alleged to have violated the provisions of regulation 10 (d), 10(e) and 10(m) of CBLR 2018. However, after perusal of all the available records, the IO found that no corroborative evidence, like Email, Chat, messages etc. had been brought on record to indicate that the custom broker had been in active connivance with the importer M/s Om Sai Impex in their acts of commission/omission for not declaring violations of BIS rules and regulation, violations of LMPC Rules 2011/RE-44 Notification, mis-declaration w.r.t. capacity (in mAh) of batteries and mis-declaration w.r.t. sizes of lamps and their stands.

9.3 The IO stated that the present enquiry against the charged CB is limited to ascertain whether the CB has violated any of the provisions mentioned in Customs Brokers

Licensing Regulations (CBLR), 2018, as mentioned in the Show Cause Notice no. 26/2024-25 dated 2-7-2024 issued by Principal Commissioner (General), New Customs House, Mumbai.

9.4 Relevant Provisions of Customs Brokers Licensing Regulations (CBLR), 2018.

Regulation 2(1)(d)

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

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)

"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"

Regulation 10 (m)

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

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

10.1 The IO stated that the first charge levelled against the CB is that they have violated Regulation 10(d) of Customs Brokers Licensing Regulations, (CBLR), 2018. As per the SCN No. 26/2024-25 dated 2-7-2024 issued by Principal Commissioner (General), Mumbai Customs Zone 1, it has been alleged that CB has failed to properly advise their client M/s. Om Sai Impex regarding the rules and regulations of customs and allied acts. As per examination of the Container No. ZCSU7958897 imported vide B/E 9585075 dated

09.01.2024 under Panchnama dated 16.01.2024 by CIU, NCH, violations of BIS rules and regulation, violations of LMPC Rules 2011/RE-44 Notification, mis-declaration w.r.t. capacity (in mAh) of batteries and mis-declaration w.r.t. sizes of lamps and their stands were observed. It was alleged that it was the responsibility of the CB to inquire about the condition (ize, pre-packed or bulk), specifications of the goods etc. with the importer and advise the importer to comply with the extant rules which was not done in the instant case. It was also alleged that CB, in his statement recorded under section 108 of the Customs Act, 1962 on 08.02.2024 stated that he was present during the examination of the Bill of Entry by Customs Docks Officer on 10.01.2024, which were under 100% examination order whereas he failed to bring true facts regarding these violations/discrepancies to the knowledge of Assistant/Deputy Commissioner of Customs at the time of examination by the Customs Docks Officer. Therefore, it was alleged that the CB has violated the Regulation 10(d) of CBLR, 2018.

10.2 The IO further stated that on examination by CIU, NCH, the goods in violation of non-compliance or violations of BIS rules and regulation, violations of LMPC Rules 2011/RE-44 Notification, mis-declaration w.r.t. capacity (in mAh) of batteries and mis-declaration w.r.t. sizes of lamps and their stands were found. During investigation importer failed to produce mandatory BIS certificate and WPC certificate for the imported goods. Therefore, CB failed to advise the importer regarding BIS rules and LMPC Rules 2011/RE-44 Notification, mis-declaration w.r.t. capacity (in mAh) of batteries and mis-declaration w.r.t. sizes of lamps. Hence, it was alleged that the CB failed to advise the importer to comply with the provisions of the Act, other allied Acts and the rules and regulations. Further, the CB failed to bring to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs about the same. Therefore, it was alleged that CB failed to comply with the provisions of regulation 10 (d) of the CBLR, 2018.

10.3 The IO also stated that the CB in their defence submitted that there was no violation of Regulation 10(d) of CBLR,2018. Based on the invoice supplied by M/s. Om Sai Impex, the Importer, they had filed a Bill of Entry. That he had informed M/s. Om Sai Impex about the requirements of compliance of RE-44, BIS guidelines and this fact was admitted by the latter in his statement dated 26-2-2024 by Shri Magana Ram Jerupaji Choudhary, H:C holder of M/s. Om Sai Impex. That Shri Ghanshyam Swami, Superintendent of Customs has not raised any objection about BIS during examination of goods, hence, there was no intention on his part to contravene Regulation 10(d) of CBLR,2018

10.4 The IO observed that on plain reading of Regulation 10(d) of Customs Brokers Licensing Regulations (CBLR), 2018, it can be safely said that this regulation casts two obligations upon the CB:

- I. The CB shall advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations.
- II. In case of non-compliance, shall report the matter to the notice of the concerned Deputy Commissioner of Customs or Assistant Commissioner of Customs.

10.5 The IO submitted that from above it is clear that the cause of action for CB's advice to his client arises only when there is some sought of non-compliance of the provisions of the Act, other allied Acts and the rules and regulations, on the part of his client, and that the CB is having prior information of such non-compliance. Hence if there is complete compliance, or such non-compliance of statutory provisions which is beyond the scope or obligation of the CB or the CB is not having any prior information about such non-compliance, then the question of giving advice to his client does not arise in the first place. The allegations against the charged CB can be simply decomposed into following points:

- (i) The CB did not inquire about the condition (i.e. pre-packed or bulk), specifications of the goods etc. with the importer.
- (ii) That the CB did not advise the importer to comply with the extant rules which were contravened in the instant case as detailed supra
- (iii) That the CB failed to bring true facts regarding these violations discrepancies to the knowledge of Assistant Deputy Commissioner of Customs at the time of examination even though he was present at that time

10.6 The IO further submitted that during the course of investigation, statement dated 26.02.2024 and further statement dated 11.03.2024 of Shri Magana Ram Jerupaji Choudhary Director of M/s Om Sai Impex (IEC AALTO8683G) under Section 108 of the Customs Act, 1962 was taken wherein he inter alia stated that, he has basic knowledge of the Customs regulations, procedures and other relevant provisions related to import of the goods. That he follows the procedure as guided by the CB. In this matter Mr Nilesh Patil did maximum coordination. That, he had ordered all the goods with BIS, ETA and RE-44 compliance. That it was only due to shortage of time and upcoming closure of market due to Chinese new year, his agent did everything under time pressure and made unnecessary hurry and failed to send all goods as per the order. Hence, they failed to comply to the government regulations inadvertently. The IO observed that this clarifies that CB had advised the importer, as evident from the statement of the latter, to comply with the extant rules which were contravened in the instant case as detailed supra. If the Importer does not adhere to the BIS, ETA and RE-44 compliance as advised by CB the latter cannot be held responsible as he cannot physically examine the goods before filing of the Bill of entry and other works pertaining to Customs Act 1964.

10.7 The IO relied upon the decision of Hon'ble Delhi High Court in the case of *Kunal Travels (Cargo) Vs CC*, 2017(354) FLT 447, the para 12 states that,

"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 on that process only such authorized personnel of the CHA can enter the customs house area. There is nothing on record to show that the appellant had knowledge that the goods mentioned in the shipping bills did not reflect its truth of the consignment sought to be exported in the absence of such knowledge, there cannot be any mens rea attributed to the appellant or its proprietor"

The IO found that the ratio of the above judgement is squarely applicable in the present case. This is because, in absence of corroborative evidence like Email, Chat, messages etc., on record to indicate that the customs broker has been in active connivance with the importer M/s. Om Sai Impex in their acts of non-compliance of BIS rules and regulation, violations of LMPC Rules 2011/RE-44 Notification and mis-declaration of goods, it can be deemed that the charged custom broker has acted in the capacity of a custom broker only, and to perform his role as CB he is not required to check physically, the description of goods. Therefore, the obligation on part of CB, to inquire about the condition (i.e. pre-packed or bulk) specifications of the goods etc. with the importer, does not arise.

10.8 The IO further relied upon the decision of Hon'ble CESTAT, New Delhi Bench in the matter of GND Cargo Movers V/s Commissioner of Customs (General), which said:

"Merely because the importer has accepted their mistake or mis-declaration of the brand and quantity and have shown their willingness to pay differential duty, fine and penalty, it cannot be concluded that Customs Broker did not exercise due diligence to ascertain the correctness of the information. If the side effect only is relevant for holding against the Customs Broker, then each and every case of mis-declaration by the importer, it can be concluded that Customs Broker did not suitably informed his client. There has to be some evidence on record to show that either the Customs Broker was aware of such mis-declaration and suppressed the same with a mala fide mind or he has taken efforts to get the goods cleared from the Customs on the basis of wrong declaration made by him or has connived with the importer so as to aid and abet the wrong declaration".

The IO found that the ratio of the above judgement is squarely applicable in the present case. I find that unless it is found that false details in the import documents filed with the department were entered by the CB knowingly, CB cannot prima facie be held to have abetted the non-compliance of BIS, ETA and RE-44. The IO found that there is no evidence to prove that CB was having prior knowledge of the alleged non-compliance of the regulations as discussed supra.

10.9 The IO further observed that Examination of the imported goods of total assessable value declared as Rs. 88,92,650/-vide Bill of Entry No. 9585075 dated 09.01.2024, for home consumption, happened under supervision of Deputy Commissioner. Therefore, the need to inform Deputy Commissioner, by CB, doesn't arise in this situation. In this case, the goods were examined with supervision of concerned Assistant Commissioner of Customs in charge of docks. It is the responsibility of the Docks Officer to get the goods examined as per the examination order instructions and he is duty bound to follow the RMS instructions before making OOC once the Bill of Entry was presented to him by the Customs broker. In view of the above, there is not enough ground to invoke this charge against the CB. Therefore, the allegation that the CB failed to bring true facts regarding the Violation discrepancies to the knowledge of Assistant/Deputy Commissioner of Customs at the time of examination, even though he was present at that time, cannot sustain in law.

10.10 For the reasons discussed (supra), the IO found that the charges, against CB, of contravention of Regulation 10(d) of Customs Brokers Licensing Regulations (CBLR), 2018 without producing any corroborative evidence, cannot sustain in law. Hence, the IO held that the charges of violation of Regulation 10(d) of Customs Brokers Licensing Regulations (CBLR), 2018 is 'Not Proved'.

11. **Article of Charge-II:** Violation of the provision Regulation 10(e) of Customs Brokers Licensing Regulations (CHLR), 2018

11.1 The IO stated that the second charge levelled against the CB is that they have violated Regulation 10(e) of Customs Brokers Licensing Regulations, (CBLR), 2018. As per the SCN no.26/ 2024-25 dated 2-7-2024 issued by Principal Commissioner (General), Mumbai Customs Zone I, it has been alleged that on examination of the Container No. ZCU7958897 imported vide B/E 9585075 dated 09.01.2024 under the Panchnama dated 16.01.2024 by CIU, NCH, violations of BIS rules and regulation, violations of L.MPC Rules 2011/RE-44 Notification and mis-declaration of goods were observed. Hence it was alleged that CB did not enquire about the condition of the goods i.e., pre-packaged and about actual make/model of the goods before filling the Bills of Entry 9585075 dated 09.01.2024 on behalf of the importer. It was, further, alleged that the CB filed the Bill of entry without mentioning make models of the goods required for verification of BIS certificates. Therefore, it was alleged that CB has not exercised due diligence to ascertain the correctness of information imparted to his client for clearance of the cargo, thereby violating the provisions of Regulation 10(e) of the CBLR, 2018.

11.2 The IO also stated that on the plain reading of reading of Regulation 10(e) of Customs Brokers Licensing Regulations, (CBLR), 2018, it can be safely said that this regulation casts the below obligation upon the CB:

"CB shall Verify the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage."

11.3 The IO observed that the charged custom broker has acted in the capacity of a custom broker only, and to perform his role as CB he is not required to check, physically, the description of goods. This is because the obligations casted on him as per provisions of CBLR, 2018 does not enable him to check physically, the description of goods before filing of BE.

11.4 The IO submitted that the CB stated that he had verified the correctness of any information which he imparted to his client with reference to the work related to clearance

of cargo at the customs area. This is evident from the statement of the Importer, that he followed the procedure as guided by the CB and had ordered all the goods with BIS, ETA and RE- 44 compliance in spite of which the compliance were contravened in the instant case due to unforeseen circumstances as the goods were sent in a hurry without adhering to rules by his supplier. This clarifies that CB had verified the correctness of any information which he imparted to his client with reference to the work related to clearance of his cargo.

11.5 The IO observed that the Hon'ble CESTAT, New Delhi Bench in the matter of GND Cargo Movers V/s Commissioner of Customs (General), held that merely because the importer has accepted their mistake or mis-declaration of the brand and quantity and have shown their willingness to pay differential duty, fine and penalty, it cannot be concluded that Customs Broker did not exercise due diligence to ascertain the correctness of the information.

11.6 The IO observed that unless the physical check on the goods, inside the Container with No. TEMU8989732 imported vide B/E 9585075 dated 09.01.2024, was done it cannot be ascertained by him before filing of BE about the contraventions done by the Importer as detailed in table III. He was not given any information, through written communication, from the officers who did the examination work at the customs station. If the Importer does not adhere to the BIS, ETA and RE-44 compliance as advised by CB the latter cannot be held responsible as he cannot physically examine the goods before filing of the Bill of entry and other works pertaining to Customs Act 1964. Thus, the IO held that the charges of violation of Regulation 10(e) of Customs Brokers Licensing Regulations (CBLR), 2018 is "Not Proved"

12. **Article of Charge-III:** Violation of the provisions of Regulation 10(m) of Customs Brokers Licensing Regulations (CBLR), 2018

12.1 The IO stated that the third charge levelled against the CB is that they have violated Regulation 10(m) of Customs Brokers Licensing Regulations, (CBLR), 2018. As per the SCN no.26/2024-25 dated 2-7-2024 issued by Principal Commissioner (General), Mumbai Customs Zone I, it appears that on examination of the Container No. TEMU8989732 imported vide B/E 9585075 dated 09.01.2024 under panchnama dated 16.01.2024 by CIU, NCH, violations of BIS regulation, violations of LMPC Rules 2011/R1-44 Notification and mis-declaration of goods were observed. CB in his statement recorded under section 108 of the Customs Act, 1962 on 08.02.2024 stated that he was present during the examination of Bill of Entry by Docks Officer on 10.01.2024, which were under 100% examination order. Hence, it was alleged that CB, by not informing the importer and Customs Authorities or seeking necessary clarifications from the importer regarding these violations or discrepancies failed to discharge his duties with utmost efficiency and caused a significant delay in Customs clearance, thereby violating the provisions & Regulation 10(m) of the CBLR, 2018.

12.2 The IO stated that on the plain reading of Regulation 10 of Customs Broker Licensing Regulations (CBLR), 2018, it can be safely said that this regulation casts below obligations upon the CB:

- 1) *CB shall do his duties with speed without any delay.*
- 2) *CB shall do his duties efficiently.*

It would amount to contravention of Regulation 10(m) of (CBLR), 2018 if there is any delay in processing of export documents and inefficient performance of his role, by CB during examination of goods at the Customs territory.

12.3 The IO observed that as per the statements and other documents on record reveal that there was NO DELAY in Processing EXPORT Documents, therefore, question of CB delaying the process does not arise. There was no allegation against CB for unorganised presentation of the documentation and for not following the procedure during the

examination of goods. Thus, The IO held that the charges of violation of Regulation 10(m) of Customs Brokers Licensing Regulations (CBLR), 2018 is 'Not Proved'.

13. Under the provisions of Regulation 17(6) of CBLR, 2018, a copy of the Inquiry Report dated 02.10.2024, was shared with the CB and for the sake of Principle of Natural Justice an opportunity of personal hearing was granted to the CB on 08.01.2025.

RECORDS OF PERSONAL HEARING:-

14. On 08.01.2025, Sh. Gitesh V. Kelbaikar, Proprietor of CB firm M/s. Satyam Worldwide Clearing, Forwarding and Transport Agency (CB No. 11/2264) appeared for hearing and submitted written submission dated 08.01.2025 and reiterated the same.

WRITTEN SUBMISSIONS OF THE CB:-

15. The CB submitted that with regard to the allegation of violation of Regulation 10(d) of CBLR 2018 it is to be stated that as per the decision of Hon'ble CESTAT Principal Bench of New Delhi in the case of M/S TRINITY INTERNATIONAL APPELLANT FORWARDERS VS. COMMISSIONER OF CUSTOMS (PREVENTIVE) - CUSTOMS APPEAL NO. 54942 OF 2023-It was held as under-

"11. Thus, while the transaction value is decided between the exporter and importer, value for determining the duty under the Customs Act is a part of assessment. The power to assess including determining the value lies with the importer/exporter (self-assessment) or with the proper officer (re-assessment). The Customs Broker has neither any authority nor any responsibility to assess the value of the imported goods or export goods.

12. In all the Shipping Bills, exports were allowed by the Customs in the normal course. It is only the subsequent intelligence and investigations by the DRI which revealed the alleged over valuation of exports. The Customs Broker is neither authorized under the Act nor is obligated under the CBLR to re-determine the value of any goods. Transaction value (be it FOB, CIF or C&F) is a matter of negotiation between the overseas buyer and the Indian exporter. It is the consideration which is paid or payable to the Indian exporter by the overseas buyer. The Customs Broker

is a stranger to this contract and has no locus standi with respect to the transaction value. Any value determined under the Customs Act is a part of assessment which is the prerogative of the importer/exporter (self-assessment) or the proper officer (re-assessment). The Customs Broker has neither any authority nor any power to determine or re-determine the value for customs purposes either. The Customs Broker also has no authority to inspect or examine the goods and so the possibility of the Customs Broker suspecting that the goods may have been over valued also does not arise."

15.1 The CB further relied upon the decision of Hon'ble CESTAT Chennai Bench in the case of Tuticorin Vs. Moriks Shipping and Trading (2008) ELT 577(Tri-Chennai), it states that:-

"As rightly held in the case of Akanksha Enterprises (supra) a CHA is not required to go into the authenticity of the declarations made in the export documents. His job is confined to submission of the documents given by the exporter as also to identify the exporter to the Customs authorities." Hence, the we assert that we have not violated any of the obligations mentioned in Regulation 10(d) of Customs Brokers Licensing Regulations, (CBLR), 2018."

15.2 The CB submitted that with regard to the allegation of violation of Regulation 10(d) of CBLR 2018 it is to be stated that as per the decision in Kunal Travels (Cargo) Vs CC, 2017(354) ELT 447, the para 12 states that:

"Clause (e) of the aforesaid Regulation requires exercise of due diligence by the CHA regarding such information which he may give to his client with reference to any work related to clearance of cargo. Clause (1) requires that all documents submitted, such as bills of entry and shipping bills delivered etc. reflect the name of the importer/ exporter and the name of the CHA prominently at the top of such documents. The aforesaid clauses do not obligate the CHA to look into such information which may be made available to it from the exporter/importer. 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 There is nothing on record to show that the appellant had knowledge that the goods mentioned in the shipping bills did not reflect the truth of the

consignment sought to be exported. In the absence of such knowledge, there cannot be any mens rea attributed to the appellant or its proprietor."

15.3 Moreover in the case of D S Cargo Agency vs Commissioner of Customs on 25 September, 2023 it states that:-

"The said Regulation casts a duty on the Customs Broker to exercise due diligence in communicating correct information to a client with reference to any work related to clearance of cargo. The said Regulation has no concern/application with the acts or omissions of the importer firms itself. (Re: Kunal Travels (Cargo) v. Commissioner of Customs (Import & General), 2017 SCC OnLine Del 7683). There is no finding in the order of the Commissioner that the Appellant had given any incorrect information to the importer firms in the process adopted for the clearance of the goods at the Customs Station or in any manner abetted the importer firms in the diversion of the goods from the public bonded warehouse to the domestic market".

16. Hence, the CB asserted that they had not violated any of the obligations mentioned in Regulation 10(c) of Customs Brokers Licensing Regulations, (CBLR), 2018. With regard to the allegation of violation of Regulation 10(m) of CBLR 2018 it is to be stated that there has been no delay recorded in the processing of export documents attributable to the CB. Hence, the CB asserted that they had not violated any of the obligations mentioned in Regulation 10(m) of Customs Brokers Licensing Regulations, (CBLR), 2018. Hence The CB prayed that they deserved to be exonerated in this case.

DISCUSSIONS AND FINDINGS:-

17. I have gone through the facts of the case, the materials / documents brought on record; the offence report received on 22.05.2024 from CIU, NCH, Mumbai Zone-I; the Show Cause Notice No. 26/2024-25 dated 02.07.2024, issued under CBLR, 2018; the Inquiry Report dated 02.10.2024 and the written submission dated 08.01.2025 submitted by the CB during Personal Hearing.

18. Briefly stated, I find that the consignment bearing B/E no. 9585075 dated 09.01.2024 (Container No. TEMU8989732) was given out of charge on 10.01.2024 and the same was put on hold by CIU, NCH. The said B/E was filed by CB M/s. Satyam Worldwide Clearing and Transport Agency (CB No. 11/2264) on behalf of the importer M/s. Om Sai Impex (IEC-AAFF08683G). The consignment was examined by officers of CIU, NCH, Zone-1, under Panchnama dated 16.01.2024 and several discrepancies in respect of the declaration of quantity of goods and violation of the BIS norms, LMPC Rules 2011 and DGFT Notification No. 44 (RE-2000)/1997-2002 dated 24.11.2000 was observed. There were total 49 items declared in the invoice by the importer and discrepancies were noticed in the items mentioned in Table-II (supra) under para 2.3 above. I find that the CIU of NCH apparently booked this case on the basis of (i) mis-declaration in terms of quantity of goods; (ii) violation of BIS (Bureau of Indian Standards) norms inasmuch as white paper stickers, mentioning wrong model details, were pasted on some goods instead of BIS no. embossed on the goods; (iii) violation of LMPC (Legal Metrology Packaged Commodity) Rules, 2011 and (iv) violation of DGFT Notification No. 44 (RE-2000)/1997-2002 dated 24.11.2000, inasmuch as the goods in single pre-packed condition did not have labels/details of MRP, Manufacturer details, Import date etc.

18.1 I find that for the apparent act of omission and commission on the part of the CB in abetting the importer in such fraud imports, the action under CBLR, 2018 was initiated against the CB. However, I find that as the CB Licence of M/s. Satyam Worldwide Clearing Forwarding and Transport Agency (CB No. 11/2264) has already been suspended in another case vide Order No. 18/2024-25 dated 27.05.2024 & Suspension of the CB licence was continued vide Order No. 26/2024-25 dated 21.06.2024. Hence action under regulation 16(1) of the CBLR, 2018 is not taken in the instant case. The SCN No. 26/2024-25 dated 02.07.2024, was issued to conduct inquiry proceedings under Regulation 17 of

CBLR, 2018 for the violation of Regulation 10(d), 10(e) and 10(m) of CBLR, 2018 which are reproduced below:

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 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”;

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”;

19. I find that the charge of violation of regulation 10(d) of CBLR, 2018 has been levelled against the CB on the ground that ‘as per examination of the Container No. ZCSU7958897 imported vide B/E 9585075 dated 09.01.2024 under Panchnama dated 16.01.2024 by CIU, NCH, violations of BIS rules and regulation, violations of LMPC Rules 2011/RE-44 Notification, mis-declaration w.r.t. capacity (in mAh) of batteries and mis-declaration w.r.t. sizes of lamps and their stands were observed and it is the responsibility of the CB to inquire about the condition (i.e. pre-packed or bulk), specifications of the goods etc. with the importer and advise the importer to comply with the extant rules which was not done in the instant case’. I find that the inquiry officer has observed that ‘Examination of the impugned imported goods happened under supervision of Deputy Commissioner, therefore, the need to inform Deputy Commissioner, by CB, doesn’t arise in this situation as in this case, the goods were examined with supervision of concerned Assistant Commissioner of Customs in charge of docks and it is the responsibility of the Docks Officer to get the goods examined as per the examination order instructions and he is duty bound to follow the RMS instructions before making OOC once the Bill of Entry was presented to him by the Customs broker, hence, in view of the above,

there is not enough ground to invoke this charge against the CB'. I have also perused the defence submissions of the CB and the case laws relied upon by the CB.

19.1 I also find that the charge of violation of Regulation 10(e) of CBLR, 2018, has been levelled against the CB on the ground that 'CB did not enquire about the condition of the goods i.e. pre-packaged and about actual make/model of the goods before filling the Bills of Entry 9585075 dated 09.01.2024 on behalf of the importer and he filed the Bill of Entry without mentioning make/models of the goods required for verification of BIS certificates'. I find that the inquiry officer, in this regard, has observed that 'unless the physical check on the goods, inside the Container with No. TEMU8989732 imported vide B/E 9585075 dated 09.01.2024, was done it cannot be ascertained by the CB before filing of BE about the contraventions done by the Importer as detailed in table III and the CB was not given any information, through written communication, from the officers who did the examination work at the customs station, hence, if the Importer does not adhere to the BIS, ETA and RE-44 compliance as advised by CB the latter cannot be held responsible as he cannot physically examine the goods before filing of the Bill of entry and other works pertaining to Customs Act 1964'.

19.2. I find that the charge of violation of regulation 10(m) of CBLR, 2018 has been levelled against the CB on the ground that 'CB in his statement recorded under section 108 of the Customs Act, 1962 on 08.02.2024 stated that he was present during the examination of Bill of Entry by Docks Officer on 10.01.2024, which were under 100% examination order and hence by not informing the importer and Customs Authorities or seeking necessary clarifications from the importer regarding these violations or discrepancies failed to discharge his duties with utmost efficiency and caused a significant delay in Customs clearance thereby violating the provisions of Regulation 10(m) of the CBLR, 2018'. I find that the inquiry officer, in this regard has observed that 'as per the statements and other documents on record reveal that there was NO DELAY in Processing import Documents,

therefore, question of CB delaying the process does not arise since there was no allegation against CB for unorganised presentation of the documentation and for not following the procedure during the examination of goods*.

19.3 Having taken into cognizance of all the facts of the case, the findings of the inquiry officer and the submissions of the CB, I find that it is a matter of fact that Shri Gitesh V Kelbaikar, Proprietor of the CB firm has interalia admitted during his statement dated 08.02.2024 & 28.02.2024, recorded under Section 108 of Customs Act, 1962 that 'the mis-declaration and non-compliances of BIS and RE-44 were found in the goods imported vide the said B/E, which is non-compliances on the part of the importer and he failed to inform the said non compliances to DC Docks as per the CBLR, 2018 regulations 10(d) and it was ignorance on his part as he had presumed that if a Customs officer was clearing a cargo that meant the said cargo is import compliant and can be cleared for the home consumption'. From the statement of Sh. Gitesh V Kelbaikar, I find that the CB has acted in a negligent and lackadaisical manner towards his work. I rely on the apex court judgement in the matter of **Surjeet Singh Chhabra Vs. Union of India reported in 1997 (89) E.L.T. 646 (S.C.) and in the case of Systems & Components [2004 (165) E.L.T. 136 (S.C.)]** respectively, which sates as under:-

"The Customs Officials are not police officers. The confession, though retracted, is an admission and binds the petitioner".

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

19.4 I find that Regulation 10(d) requires the CB to advise his client to comply with the provisions of the Act and other rules and regulations thereof, and in case of non-compliance is required to bring the matter to the notice of the department. As discussed above, the CB in his statement has admitted that 'during examination the mis-declaration and non-compliances of BIS and RE-44 were found in the goods imported vide the said B/E, which is non-compliances on the part of the importer'. Though the CB was well

aware of the illegal imports after examination of the goods, yet he did not bring these facts 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.

19.5 I find that Regulation 10(e) requires the CB to exercise due diligence to ascertain the correctness of any information, which he imparts to a client with reference to any work related to clearance of cargo or baggage. The facts of the present case reveal that the CB knowingly and actively abetted the act of illegal imports. I am of the firm belief that the CB was in gross negligence as he was only relying on the importer and did not exercised due diligence during clearance of the impugned goods. As the CB was unable to exercise due diligence and impart correct position of law as regards the nature of the imports, hence, there could not be any compliance of the provisions of Regulation 10(e) of CBLR, 2018.

- 19.6 In the facts and circumstances of the present case, as discussed above, it is apparent that CB has failed to discharge his duties with utmost speed and efficiency and without any delay. As per his own statement, the CB had knowledge of the illegal imports. Despite that CB did not act with due diligence or with utmost efficiency in advising the firms of bringing this fact to the knowledge of the department. Consequently, the CB contravened Regulation 10(m) of CBLR, 2018.

20. The CB has an important role with respect of the filing of documents and clearance of the goods. A lot of faith has been placed on the CB by the Customs authorities in the era of trade facilitation and RMS facilitation. I find that the CB has an important role in respect of documentation and Customs Clearances. I find that in the instant case, the CB did not advise the importer which resulted in fraudulent import, also the CB did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. As per his own statement, the CB has knowledge of mis-

declaration of goods. Despite that the CB did not act with due diligence in advising the firms or bringing this fact to the knowledge of the department. The CB cannot shy away from the responsibilities & obligations cast upon them under the CBLR, 2018. The responsibility of a Customs Broker play a crucial role in protecting the interest of the Revenue and at the same time he is expected to facilitate expeditious clearance of import/export cargo by complying with all legal requirements. From the above facts and circumstances, I hold that the CB has violated the provisions of Regulation 10(d), 10(e) and 10(m) of CBLR, 2018.

21. I find that for the violation of obligations provided under CBLR, 2018, as discussed above, and for their act of omission and commission, the CB M/s. M/s. Satyam Worldwide Clearing Forwarding and Transport Agency (CB No. 11/2264) 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."

22. 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, I am of the view that revoking the CB license is too grave a penalty to be imposed for the above violations, as the punishment of revocation of license and forfeiture of security deposit is much harsh and disproportionate to the offences committed. 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. On the other hand, the Inquiry Officer, appointed under CBLR, 2013, has opined that there is no substantive case to level charges violation of Regulation 11(a), (b), (n), (e) & (k) of the CBLR, 2013. The Inquiry Officer has in fact clearly stated that he has not found anything substantial that can merit proposing revoking the license of the appellant or imposing the penalty. The Inquiry Officer has categorically reported that at the most, appellant may be given a strict warning."

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"*.

23. Further, with regard to the timelines prescribed under Regulation 17 of CBLR, 2018, relying on the following case laws, I 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 (Bom.), 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."

(c) The Hon'ble CESTAT Mumbai in the matter of M/s. Muni Cargo Movers Pvt. Ltd. Vs. Commissioner of Customs (General), Mumbai [Order No. A/996/13CSTB/C-1 dated 23.04.2013] held that:-

"Para 4.2:- As regards the third issue regarding non-adherence to the time-limit prescribed in CHALR, there is some merit in the argument. But nevertheless, it has to be borne in mind that time-limit prescribed in the law though required to be followed by the enforcement officers, at times could not be adhered to for

administrative reasons. That by itself does not make the impugned order bad in law”.

24. 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. However, for their acts of omission and commission, the CB M/s. Satyam Worldwide Clearing Forwarding and Transport Agency (CB No. 11/2264) 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) 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

25. 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 impose penalty of Rs. 30,000/- (Rs. Thirty Thousand only) on M/s. Satyam Worldwide Clearing Forwarding and Transport Agency, (PAN No. APMPK7637N, CB NO. 11/2264) 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. Satyam Worldwide Clearing Forwarding and Transport Agency (CB No. 11/2264),
Office No. 405, Grohitham Premises Co-operative Housing Society,
Plot No. 14B, Sector 19 Sanpada,
Navi Mumbai-400705

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. SIB (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