



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/467/2024 -CBS आदेश दिनांक/Date of Order: 20.01.2025
CAO No. 70/2024-25/CAC/PCC(G)/RC/Adj-CBS जारी दिनांक/Date of issue:20.01.2025

DIN: 20250177000000444EBA

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

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

7. अपील की एक प्रति में कोर्ट फी अधिनियम, 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 Shah Brothers Shipping Pvt Ltd. (11/1001) (CHA No. AABCS3985NCH001), having office address at C-306, 3rd Floor Eastern Business District, LBS Marg, Bhandup West, Mumbai-400078. (herein referred to as the Customs Broker/CB), are holding a regular Customs Broker License No. 11/1001 issued by the Commissioner of Customs, Mumbai under Regulation 8 of the Customs House Agents Licensing Regulations (CHALR), 1984 (Now regulation 7(2) of Customs Broker Licensing Regulations (CBLR, 2018)) and as such they are bound by the regulation and condition stipulated therein.

2. An offense report in the form of Order-in-Original No. 99/2023- 24/Commr/NS-V/CAC/JNCH dated 19.07.2024 vide F.No. 5/16- 17/2023-24/CC/NS-V/JNCH, issued by the Commissioner of Custom, NS-V, JNCH has been received on 09.08.2024, regarding import of 'Photographic Studio Lighting Equipment' declared as 'Photographic Accessories Panel Video Lights, Video Lights, Portable Video Light, Light Stick, RGB Video Light Kit, etc.' by the importer M/s Big Trends (IEC No: 1308009615) through their CB, M/s Shah Brothers Shipping Pvt. Ltd. (11/1001). Vide the Offense report, interalia, the following has been stated:-

2.1 Intelligence developed by the Directorate of Revenue Intelligence indicated that M/s. Big Trends, Jaipur (IEC No: 1308009615) having registered office at G3, Ground Floor, D50, Hari Alokik Heights, Ahinsa Circle, Subhash Marg, C- Scheme, Jaipur, was engaged in the import of Photographic Studio Lighting Equipment declared as Photographic Accessories-Panel Video Lights, Video Lights, Portable Video Light, Light Stick, RGB Video Light Kit, etc. from China, however, the importer was evading the applicable Customs duty by resorting to misclassification of these imported goods under CTH 90069100 wherein BCD @10% was payable instead of its correct CTH 94054200 wherein BCD@20% up to 31.01.2020 and @25% from 01.02.2020 was payable.

2.2 Recording of Statement of importer and Customs Broker:

2.2.1 Statement of Shri Ashok Rawat, Proprietor of M/s. Big Trends, Jaipur, was recorded under Section 108 of the Customs Act, 1962 on 27.06.2022, wherein, he interalia, stated that M/s. Big Trends was a trading firm engaged in the import of photographic accessories and further selling the same online as well as offline in the domestic market, that M/s. Big Trends ordered for import of photographic accessories i.e. lenses, flash, video light, camera bags, tripods, etc. to foreign suppliers, and after negotiation with foreign suppliers the rate of goods was fixed; that required goods were imported into India and sold in the domestic market, that he didn't have any purchase order/agreement with the foreign suppliers and all the import-related work was done through mobile and email communication, that M/s Godox Photo Equipment Company Ltd. was the manufacturer of all kinds of photographic lighting equipment ie. photography flashlight/ apparatus, photography continuous lights, and related accessories; that they used to import two types of lights i.e. some were flashlights and some were continuous light, that M/s. Big Trends was classifying these lights under CTH 9006, they had started importing photographic equipment i.e, video light under CTH 9405 from the last few months

2.2.2 Further, the statement of Shri Ashok Rawat, proprietor of M/s. Big Trends recorded under Section 108 of the Customs Act, 1962 on 21.09.2022, wherein he interalia stated that M/s. Big Trends used to send purchase orders through the email id ashokrawat@gmail.com to the email id of the exporter/supplier, that they were sending only the model number and quantity of the required goods to the supplier, that every model was unique in itself and its specifications were also unique which were well known to the supplier so they did not require to mention specifications of the products to the supplier, that all the business transactions were done as per models of the specific products, that the prices products/items imported by them were almost fixed, however when there was an order of a large number of the items then he used to negotiate the price of the items through telephonic

conversations with the suppliers, which they sometimes agreed on and sometimes not agreed on; that they used to receive import documents i.e, invoices, and packing on their email id ashokrawat@gmail.com; that the documents as received were forwarded to their CHA by them for filing Bills of Entry.

The Importer was shown Note (II) of the CTH sub-heading of 9006 of the explanatory notes and after going through it, he stated that Note (II) discusses the photographic flashlight apparatus and flashbulbs which were used for professional or amateur photography in photographic laboratories or photogravure work. The devices under the CTH subheading 9006 were the photographic flashlight apparatus that produces a very bright light for a very short duration (flash); that they had imported such Flashlight apparatus from the Chinese supplier 'Godox' under the CTH sub-heading 9006. He was shown Note (I) of the CTH sub-heading of 9405 of the explanatory notes and after going through it, he stated that it covers specialized lamps like photographic studio lamps, spotlights used in photographic or film studios apart from the other lights mentioned in the said sub-heading of 9405. He was shown the printouts of the product manual taken from the website of M/s. Godox Photo Equipment Co. Ltd. showing the technical specifications of some of the models of continuous lights and some of the models of flashlights and after going through those printouts, **he stated that one of the criteria to differentiate between continuous lights and flashlights was that power supply in case of continuous light was calculated in Watt and power supply in case of the flashlight was calculated in watt Second.** On being asked that earlier they imported "Photographic Studio Lighting Equipment" under CTH 9006 and suddenly they had changed the classification of the subject goods to CTH 9405, he stated that as per the trade practice followed by importers of photographic equipment, they were also classifying "Photographic Studio Lighting Equipment" under CTH 9006, **however, during the end of December-2021, they learned from the market that the correct CTH of these goods was 9405, therefore, after**

January 2022 they had started classifying the subject goods under CTH 9405. On being asked if he agreed that the correct classification of "Photographic Studio Lighting Equipment" was CTH 9405, he stated that yes, the "Photographic Studio Lighting Equipment" i.e., Continuous Lights imported by them were correctly classifiable under CTH 9405.

2.2.3 Statement of Shri Sonesh Shah, manager of CB, M/s Shah Brothers Shipping Pvt. Ltd. (CB No. 11/1001), was recorded under Section 108 of the Customs Act, 1962 on 29.09.2022, wherein, he interalia, stated that first M/s Big Trends, Jaipur used to send them the import documents including Bill of Lading, invoice, packing list, analysis document if applicable in pdf format & excel format through email along with details of CTH, then they prepared checklist as per the details provided by the importer and used it to share with the importer for confirmation of filing of the Bills of Entry, after confirmation from the importer, they filed Bills of Entry; that when documents were finally assessed, they used to send a copy of the Bill of Entry to the importer for Payment of duty, that all the above said document sharing was carried out through email: that for day to-day clearances of goods, they remained in contact with Shri Ashok Rawat of M/s Big Trends, Jaipur, that they had cleared consignments of photographic equipment and LED lights imported by M/s. Big Trends at Nhava Sheva Port; that M/s. Godox Photo Equipment Co Ltd. was a manufacturer of all kinds of photographic lighting equipment i.e photography flashlight/apparatus, photography continuous lights, and related accessories, on being asked about the difference between continuous lights and flashlights, he stated that he didn't know about the difference between continuous lights and flashlights, he stated that he did not have technical knowledge about the same. He was shown Note (II) of the CTH sub-heading 9006 of the explanatory notes and after going through it, he stated that Note (II) shown to him discussed about the photographic flashlight apparatus and flashbulbs which were used for amateur photography, in photographic laboratories or professional or The

devices under the CTH sub-heading of 9006 or photogravure work were the photographic flashlight apparatus which produces very bright light for a very short duration (flash). M/s. Big Trends had imported such flashlight apparatus from the Chinese supplier Godox under the CTH sub-heading of 9006. He was shown the Note (1) of the CTH sub heading of 9405 of the explanatory notes and after going through it, he stated that it covered specialized lamps like photographic studio lamps, spotlights used in photographic or film studios apart from the other lights mentioned in the said sub-heading of 9405. On being asked about the correct CTH of Continuous Lights imported by M/s Big Trends, he stated that after going through Note (II) of the CTH sub-heading of 9006 and Note (I) of the CTH sub-heading of 9405 of the explanatory notes, as per his understanding correct CTH for Continuous Lights imported by M/s Big Trends was 9405. On being asked about the difference between the photographic equipment i.e., video light earlier imported under CTH sub-heading 9006 and now imported under CTH 9405, **he stated that earlier they were classifying flashlights and continuous lights both under CTH sub-heading 9006 but afterward, they came to know that the correct classification of the continuous lights was not 9006 but 9405. He further stated that, from January- 2022, they started classifying continuous light in CTH 9405.** On being asked why they were not classifying the continuous light in CTH subheading 9405, he stated that in the invoices received from the foreign suppliers, the description of these lights was mentioned as flash accessories, and the model number of the product was also mentioned. So, they couldn't differentiate which was a flashlight and which was a continuous light, therefore, earlier they had classified the same goods under CTH subheading 9006 and not under 9405. He further stated that responsibility of the Customs Broker as per the Customs Brokers Licensing Rules, 2018 was to take the utmost care while submitting the documents to the customs at the time of filing the Bills of Entry i.e. all the details submitted by the Customs Broker should be correct; that it was the

responsibility of the Customs Broker as well of the importer to correctly classify and pay duties on the imported goods.

3. Findings of the investigation:-

3.1 On scrutiny of the import data of M/s Big Trends and from the statements recorded, it emerged that the importer had been classifying 'Flashlights and continuous lights' in CTH 9006 to evade customs duty. Shri Rawat and Shri Shah, in their respective statements stated that they had started classifying continuous lights under CTH 9405 from January-2022, however, it appeared that in some of the Bills of Entry the importer continued to classify continuous lights under CTH 90069100 up to 21.05.2022.

3.2 It was brought out in the investigation, that Studio flash units are rated in watt-seconds, whereas the subject Photographic Studio Lighting Equipment declared as Photographic Accessories (Panel Video Lights, Video Lights, Portable Video Light, Light Stick, RGB Video Light Kit, etc.) continuous light is rated in Watts and Kilo Watts. From the technical Literature obtained from Professional Photographers, it appeared that there is huge difference between the Studio flash units are rated in watt seconds, whereas the subject Photographic Studio Lighting Equipment declared as Photographic Accessories (Panel Video Lights, Video Lights, Portable Video Light, Light Stick, RGB Video Light Kit, etc. Thus, it appeared that the subject Photographic Studio Lighting Equipment as Photographic Accessories Video Lights, Portable Video Light, Light Stick, RGB Video Light Kit etc. are not flashlights and are rightly classifiable under CTH No. 94054200. The importer had wrongly classified the same under CTH 90069100 instead of its correct CTH 94054200 to evade payment of appropriate customs duty.

3.3 Further, Sh Ashok Rawat in his statement dated 21.09.2022 recorded under Section 108 of the Customs Act, 1962 had accepted that the continuous lights imported by M/s. Big Trends would merit classification under CTH 94054200. Further, it is pertinent to

mention that M/s Big Trends was aware of the correct classification/CTH of the imported goods, as was evident from the fact that the importer had himself started correctly classifying the subject imported goods under CTH 94055200 from January 2022 onwards and had correctly discharged the applicable duty except in some Bills of Entry. This change in the CTH of the imported goods was not adduced by any documentary evidence to substantiate their action, therefore, it appeared that this act was only done to escape the penal consequences get caught by the department. It is also pertinent to mention that BCD on Continuous lights, falling under heading CTH 94054200, was chargeable @20% upto 31.01.2020 and thereafter chargeable @25%, whereas the importer by misclassifying the same under CTH 90069100 had paid BCD @10% only. Therefore, it appeared that M/s Big Trends had misclassified the subject imported goods under CTH 90069100 with a malafide intention to pay a lower rate of BCD. The offense committed by M/s Big Trends would have gone unnoticed but for the timely investigation initiated by DRI.

3.4 The investigation into the matter revealed that M/s Big Trends, Jaipur had imported subject imported goods Photographic Studio Lighting Equipment i.e. continuous lights declared as Photographic Accessories (Panel Video Lights, Video Lights, Portable Video Stick, RGB Video Light Kit, etc.) at JNCH, Nhava Sheva (INNSAI) during the period from 09.07.2018 to 21.05.2022. During this period, the importer had filed a total of 45 Bills of Entry of these goods having a total assessable value of Rs. 6,94,99,165/ by intentionally, wrongly classifying the same under CTH 90069100 instead of its correct CTH 94054200, the importer had evaded customs duty aggregating to Rs. 1,34,21,688/- (Rupees One Crore Thirty-Four Lakhs Twenty One Thousand Six Hundred and Eighty Eight only).

4. From the statements and investigation carried in the case, it appeared that M/s Shah Brothers Shipping Pvt. Ltd. in connivance with the importer had not stated the correct CTH of the subject Photographic Studio Lighting Equipment (panel video Lights, video Lights, Portable video Light. Light Stick, RGB Video Light Kit, etc.) i.e. Continuous Lights in the

Bills of Entry as mentioned in Annexure-A. From the above stated facts, it appeared that the Customs Broker M/s Shah Brothers Shipping Pvt. Ltd. had failed to do their duty and became a party to the evasion of customs duty. A Customs Broker is duty bound to exercise due diligence to ascertain the correctness of any information concerning the work related to the clearance of cargo from customs. Instead of doing so, they abetted in the act of duty evasion. Further, M/s Shah Brothers Shipping Pvt. Ltd. had also failed to advise his client M/s Big Trends to comply with the provisions of the Customs Act, 1962 and they also failed to bring the matter of non-compliance w.r.t declaration of wrong CTH of the imported goods by the importer to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Custom

5. In view of the above, it appeared that the CB has violated the following obligations under CBLR, 2018.

5.1 Sub-regulation 10 (d) of the CBLR, 2018 which reads as:

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

(i) In the instant case, Shri Ashok Rawat, Proprietor of M/s. Big Trends, Jaipur, in his statement dated 21.09.2022 recorded under Section 108 of the Customs Act, 1962 had accepted that the continuous lights imported by M/s. Big Trends would merit classification under CTH 94054200 Further, it is pertinent to mention that M/s Big Trends was aware of the correct classification/CTH of the imported goods, as was evident from the fact that the importer had himself started correctly classifying the subject imported goods under CTH94054200 from January 2022 onwards and had correctly discharged the applicable duty except in some Bills of Entry. This change in the CTH of the imported goods was not adduced by any documentary evidence to substantiate their action, therefore, it appeared that this act was only done to escape the penal consequences if caught by the department.

(ii) Shri Sonesh Shah, Manager of CB, M/s Shah Brothers Shipping Pvt. Ltd. (11/1001), in his statement dated-29.09.2022, stated that after going through Note (II) of the CTH sub-heading of 9006 and Note (1) of the CTH sub-heading of 9405 of the explanatory notes, as per his understanding correct CTH for Continuous Lights imported by M/s Big Trends was 9405. On being asked about the difference between the photographic equipment i.e., video light earlier imported under CTH sub-heading 9006 and now imported under CTH 9405, he stated that earlier they were classifying flashlights and continuous lights both under CTH sub-heading 9006 but afterward, they came to know that the correct classification of the continuous lights was not 9006 but 9405. He further stated that, from January-2022, they started classifying continuous light in CTH 9405.

(iii) From the above statements it appeared that the CB very well knew that the Importer has misclassified the CTH of the subject goods to evade customs duty, before Jan, 2022 and for some bill of entry till June, 2022. Further, the CB should have informed the customs authority about the wrong CTH declaration by the Importer in the past before Jan. 2022. However, they failed to do so.

(iv) As per CB's own statement, they started to correctly classify the goods after Jan, 2022, however, some Bills of entry with wrong CTH were still filed till June, 2022. There does not seem a way that the CB was not aware of the misclassification. Yet, the CB chose not to inform the Customs authorities regarding the wrong classification, leading to loss to the Govt. Exchequer. Also the relationship between the Importer and CB M/s Shah Brothers Pvt Ltd., appeared to have been since long. The difference between the continuous lights imported by M/s. Big Trends as compared to Flash lights is very evident and should have been known to the Importer and the CB, but kept silence on this matter for evading customs duty. It does not seem possible that the CB was not aware of the technical difference, (as claimed in his statement) between the two for such a long time.

(v) From the above, it was also evident that the importer has violated the provisions of The Customs Act, 1962, and it seems the CB has not advised his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Instead the CB appeared to have connived with the Importer. Thus, in view of the above, it appeared that CB have failed to perform due obligation under Regulation 10(d) of CBLR, 2018.

5.2 Sub-regulation 10 (e) of the CBLR, 2018 which reads as:

"exercise due diligence to ascertain the correctness of any information which The imparts to a client usth reference to any work related to clearance of cargo or baggage."

(i) The CB in his statement dated-29.09.2022, stated that responsibility of the Customs Broker as per the Customs Brokers Licensing Rules, 2018 was to take the utmost care while submitting the documents to the customs at the time of filing the Bills of Entry i.e. all the details submitted by the Customs Broker should be correct. Further, it was the duty of the CB, while submitting the checklist for verification, to mention to the Importer that the classification of the subject goods was wrong. The CB should have been imparted knowledge to the Importer regarding the misclassification and diligently for Bills of Entry filed before Jan, 2022. Instead, subject goods were misclassified even after Jan. 2022 in some Bills of Entry. The CB further admitted that it was the responsibility of the Customs Broker as well of the importer to correctly classify and pay duties on the imported goods. However, the CB failed to perform his obligations diligently. Had the CB exercised due diligence in imparting information to the importer regarding the classification of the subject goods then such loss would not have been incurred to the Govt Exchequer.

(ii) In the instant case, the said CB did not exercise their duties with due diligence and failed to check the misclassification by the Importer. Thus, the CB appeared to have violated the obligation under Regulation 10(e) of the CBLR 2018

6. The evidence on record clearly indicates 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 Customs Broker occupies a very important position in the Customs house and supposed to safeguard the interests of both the exporters 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 appeared that the CB has violated Regulation 10(d), and 10(e) of the CBLR, 2018 and rendered themselves for penal action under Regulations 14, 17 & 18 of CBLR, 2018. Accordingly, action under CBLR, 2018 was taken against the CB M/s. Shah Brothers Shipping Pvt. Ltd. (CB No. 11/1001).

SUSPENSION OF CB LICENSE AND SHOW CAUSE NOTICE:-

7. In view of the offense report received in the form of Order-in-Original No. 99/2023-24/Commr/NS-V/CAC/JNCH dated 19.07.2024, as the penalty under Customs Act, 1962 was not imposed on the CB, by the Adjudicating Authority, hence the case was not considered appropriate for immediate suspension of CB license under Regulation 16 of CBLR, 2018. However, the inquiry under Regulation 17 of CBLR, 2018 was initiated against the CB M/s. Shah Brothers Shipping Pvt. Ltd. (CB No. 11/1001) 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

7.1 In light of the above, a Show Cause Notice (SCN) No. 54/2024-25 dated 30.10.2024 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. 11/1001 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.

7.2 Also, Shri Sanjay Kshirsagar, Assistant Commissioner of Customs was appointed as Inquiry Officer (IO) to conduct the inquiry proceedings in the matter. The IO submitted the inquiry report dated 11.12.2024, which is discussed below.

INQUIRY REPORT

8. Inquiry Officer granted personal hearings to the Customs Broker M/s. Shah Brothers Shipping Pvt. Ltd. (CB No. 11/1001) and thereafter submitted Inquiry Report dated 11.12.2024. In the IO report dated 11.12.2024, the charge against the CB M/s. Shah Brothers Shipping Pvt. Ltd. (CB No. 11/1001) i.e. violation of Regulation 10(d) of CBLR, 2018 was held as "Partially Proved" and violation of Regulation 10(e) was held as "Not Proved".

COMMENTS OF THE INQUIRY OFFICER (IO):

9. The Inquiry Officer observed that the CB has submitted that no offence has been disclosed in the relied upon offence report i.e. the Order-In-Original No.99/2023-24/Commr/NS-V/CAC/INCH dated 19.07.2024, and therefore the SCN is baseless and therefore the proceedings should be dropped. The IO observed that the offence report has dealt with the allegations of connivance of the CB with the Importer and abet the duty evasion and applicability of the penalty thereof under the provisions of Customs Act, 1962. (para20) The Adjudicating authority has observed that the CB does not appear to be involved in mis- classification to avail benefits of Customs Duty available to the Importer and did not penalise the CB under the Customs Act. At the same time, he has refrained

from commenting about the allegations on the CB with respect to the commission/omission in respect of the responsibilities bestowed upon by CBLR, 2018. Further, the charges in the SCN under the Customs Act, 1962 which has been dealt by the Order-in-Original No. 99/2023- 24/Commr/NS-V/CAC/INCH dated 19.07.2024 and the present SCN under consideration are different. Hence, the proceedings under the present SCN no. 54/2024-25 dated 30.10.2024 are required to be dealt separately and continue.

9.1 The IO further stated that it is on record that the Importer is not fictitious and has paid the differential duty at the time of Investigation by DRI itself. He was available for the investigation and has also participated in the adjudication proceedings at the JNCH. He has not made any claim of mis guiding by the CB nor he has accused CB of any misconduct. However, the CBLR casts specific responsibilities on a CB to which they have been licensed irrespective of the Importer's character

10. Violation of Regulations of 10 (e) CBLR, 2018:

The IO submitted that as per the SCN, it appeared that the CB has violated subrule 10(e) of the CBLR, 2018 on following grounds:

(i) The IO submitted that the CB in his statement dated-29.09.2022, stated that responsibility of the Customs Broker as per the Customs Brokers Licensing Rules, 2018 was to take the utmost care while submitting the documents to the customs at the time of filing the Bills of Entry i.e. all the details submitted by the Customs Broker should be correct. Further, it was the duty of the CB, while submitting the checklist for verification, to mention to the Importer that the classification of the subject goods was wrong. The CB should have imparted knowledge to the Importer regarding the misclassification and diligently so, for Bills of Entry filed before Jan, 2022. Instead, subject goods were misclassified even after Jan, 2022 in some Bills of Entry. The CB further admitted that it was the responsibility of the Customs Broker as well of the importer to correctly classify

and pay duties on the imported goods. However, the CB failed to perform his obligations diligently. Had the CB exercised diligence in imparting information to the Importer regarding the classification of the subject goods, then such loss would not have incurred to the Govt Exchequer.

(ii) The Sub-regulation 10 (e) of the CBLR, 2018 reads as: "*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 IO observed that in the instant case, the said CB has been charged that he did not exercise their duties with due diligence and failed to check the misclassification by the Importer. Thus, the CB appeared to have violated the obligation under Regulation 10(e) of the CBLR 2018.

(iii) The IO found that the CB has submitted during the investigation to DRI and in his submissions during inquiry about the procedure followed for filing the bill of Entry in Customs. He used to prepare a draft checklist and share it with the Importer. The Importer used to finalise it and then the checklist was used to file a Bill of Entry. There is no record/evidence in the Show Cause Notice that the draft given by the CB to the Importer contained wrong information. Also, the Importer, being the expert of his item, knew what was being imported and had finalised the classification of the Imported goods. Thus, regarding classification, it appears that the Importer was taking the decisions as per his knowledge and there is no evidence to suggest that the CB was guiding/ providing information which was wrong or void of merit. There are no evidence in form of the draft checklists to verify if the CB imparted wrong/ incorrect information to the Importer.

(iv) The IO further submitted that it is clear from the statement of the CB before the investigation agency, the CB had submitted that he has formed the basis of the classification from his understanding of the terms used by Importer in describing the products under import. The CB became aware of the technical aspects of the Imported item and its impact on the classification only after he was enlightened by the investigation

agency about applicability of the chapter notes etc. Thus, it would not be proper to say that the CB provided wrong information regarding classification of the goods.

(v) The IO observed that the Importer is not fictitious and has paid the differential duty at the time of Investigation by DRI itself. He was available for the investigation and has also participated in the adjudication proceedings at the JNCH. He has not made any claim of mis-guidance by the CB nor he has accused CB of any misconduct. In fact by paying the differential duty during investigations, the Importer has absolved the CB of any material gain the CB could have gained by passing on wrong information/ collusion with the Importer to get the undue benefit of reduced Customs Duty.

(vi) The IO also stated that the adjudicating authority has specifically mentioned that the CB does not appear to be involved in mis-declaration to avail benefits of customs duty available to the Importer. Even the order-in-Original, in its brief facts do not mention that the investigation agency i.e. DRI could find any evidence of getting benefits beyond the agency charges.

(vii) In view of above, the IO held that there is no evidence to suggest that the CB has not exercised 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 in this case. Therefore, in view of his observation recorded above, the IO concluded that the allegation of charge framed for violation of Regulation 10(e) stands "NOT Proved".

11. Violation of Regulations of 10 (d) CBLR, 2018:

The IO observed that the show cause Notice alleges that the CB has violated sub rule 10(d) of the CBLR, 2018 on following grounds:

(i) In the instant case, Shri Ashok Rawat, Proprietor of M/s. Big Trends, Jaipur, in his statement dated 21.09.2022 recorded under Section 108 of the Customs Act, 1962 had accepted that the continuous lights imported by M/s. Big Trends would merit classification

under CTH 94054200. Further, it is pertinent to mention that M/s Big Trends was aware of the correct classification/CTH of the imported goods, as was evident from the fact that the importer had himself started correctly classifying the subject imported goods under CTH94054200 from January 2022 onwards and had correctly discharged the applicable duty except some Bills of Entry. This change in the CTH of the imported goods was not adduced by any documentary evidence to substantiate their action, therefore, it appeared that this act was only done to escape the penal consequences if caught by the department

(ii) The IO stated that Shri. Sonesh Shah, Manager of CB, M/s Shah Brothers Shipping Pvt. Ltd. (11/1001), in his statement dated-29.09.2022, stated that after going through Note (II) of the CTH sub-heading of 9006 and Note (1) of the CTH sub-heading of 9405 of the explanatory notes, as per his understanding correct CTH for Continuous Lights imported by M/s Big Trends was 9405. On being asked about the difference between the photographic equipment i.e., video light earlier imported under CTH sub-heading 9006 and now imported under CTH 9405, he stated that earlier they were classifying flashlights and continuous lights both under CTH sub-heading 9006 but afterward, they came to know that the correct classification of the continuous lights was not 9006 but 9405. He further stated that, from January-2022, they started classifying continuous light in CTH 9405.

(iii) The IO observed that the CB very well knew that the Importer has misclassified the CTH of the subject goods to evade customs duty, before Jan, 2022 and for some bill of entry till June, 2022. Further, the CB should have informed the customs authority about the wrong CTH declaration by the Importer in the past before Jan, 2022. However, they failed to do so.

(iv) The IO submitted that as per CB's own statement, they started to correctly classify the goods after Jan, 2022, however, some Bills of entry with wrong CTH were still filed till June, 2022. There does not seem a way, that the CB was not aware of the misclassification. Yet, the CB chose not to inform the Customs authorities regarding the

wrong classification, leading to loss to the Govt. exchequer. Also, the relationship between the Importer and CB M/s Shah Brothers Pvt Ltd., appears to have been since long. The difference between the continuous lights imported by M/s Big Trends as compared to Flash lights is very evident and should have been known to the Importer and the CB, but kept silence on this matter for evading customs duty. It does not seem possible that the CB was not aware of the technical difference, (as claimed in his statement) between the two for such a long time.

(v) The IO submitted that from the above, it is also evident that the importer has violated the provisions of The Customs Act, 1962, and it seems the CB has not advised his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Instead, the CB appears to have connived with the Importer. The Sub-regulation 10 (d) of the CBLR, 2018 reads as: *"advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of noncompliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be"*.

(vi) The IO observed that as per the SCN and in view of the above, it appeared that CB have failed to perform due obligation under Regulation 10(d) of CBLR, 2018. The IO found that the CB has contended the allegations on the premise that the CB has no role to play as far as classification is concerned. However, it is important to note that there are two aspects of the responsibility cast upon a CB by the Regulation 10 (d) of the CBLR 2018. One is advising the client and the other is bringing the matter to the notice of the Deputy/ Assistant Commissioner in case of non-compliance. The Importer is not fictitious and has paid the differential duty at the time of Investigation by DRI itself. He was available for the investigation and has also participated in the adjudication proceedings at the JNCH. He has not made any claim of mis-guidance by the CB nor he has accused CB of any

misconduct. In fact by paying the differential duty during investigations, the Importer has absolved the CB of any material gain the CB could have gained by passing on wrong information/ collusion with the Importer to get the undue benefit of reduced Customs Duty. Further, the adjudicating authority has specifically mentioned that the CB does not appear to be involved in mis-declaration to avail benefits of customs duty available to the Importer. Even the order-in-Original, in its brief facts do not mention that the investigation agency i.e. DRI could find any evidence of getting benefits beyond the agency charges. Thus, there do not appear any omission by the CB for complying the first part i.e. advising the client. However, it is submission of the CB that some of the consignments were subjected to examination. Such examination is attended by the representative of CB. He was aware under what circumstances technical differences the Importer had changed the declared classification for some of the goods and it was easy for him to check the difference and bring it to the notice of the Examining staff or the Deputy/ Assistant Commissioner. Had he taken this care, the assessment of the field staff of Customs examining the goods would have been different and the revenue loss could have been avoided, at least for the consignments cleared between January 2022 & June, 2022.

(vii) The IO held that the CB has failed to bring this technical aspect of the imported goods and its importance on the classification to the notice of the field staff/Deputy Commissioner of Customs of Assistant Commissioner of Customs in assessment stage or the examination stage and thereby failed to adhere second part of the Regulation 10(d) of the CBLR, 2018. Thus, in view of his observation recorded above, the IO concluded that the allegation of charge framed for violation of Regulation 10(d) stands "Partially Proved"

12. Under the provisions of Regulation 17(6) of CBLR, 2018, a copy of the Inquiry Report dated 11.12.2024 was shared with the CB. Also, for the sake of 'Principle of Natural Justice' and under the provisions of Regulation 17(6) of CBLR, 2018, an opportunity of personal hearing was granted to the CB on 09.01.2025.

RECORDS OF PERSONAL HEARING:-

13. The personal hearing in the matter was fixed on 09.01.2025. Shri Sonesh M Shah, Authorized Signatory of the CB M/s. Shah Brothers Shipping Pvt. Ltd. (CB No. 11/1001), appeared for the hearing and submitted their written submission dated 08.01.2025 and reiterated the same.

WRITTEN SUBMISSION OF THE CB:

14. The CB vide their written submission dated 08.01.2025 submitted that the Inquiry Report dated 11.12.2024 holds that violation of Regulation 10(e) of CBLR, 2018 is not proved, however, it also holds that the violation of Regulation 10(d) is partially proved. In this connection, the CB submitted that:

- (a) In Order-in-Original dated 19.07.2024, the learned Commissioner of Customs, NS-V held that the CB who received documents from the importer is not involved in the mis-classification.
- (b) There is no evidence of abetment or wrong intent or prior knowledge of the alleged violation.
- (c) Further para 13(b) of the inquiry Report proves that the CB became aware about the classification only after going through the explanatory notes which were shown to them while recording the statement.
- (d) Hence, the findings in paras 13(c) and 13(d) that the CB should have informed the Department about the wrong classification before January 2022 is not correct as at the relevant time the CB did not have any prior knowledge.
- (e) The allegation of connivance in para 13(c) is false, baseless and unsubstantiated. It is not supported by any credible evidence.

- (f) The IO failed to appreciate that classification is the sole prerogative of the Department and the importer is very much available for facing the consequences of the alleged mis-classification.
- (g) The CB have an excellent track record since 1994 and they employ seven persons and provides services to many reputed parties.
- (h) In the circumstances the CB prayed that the charges against them be held to be not proved and the instant proceedings against them kindly be dropped.

DISCUSSIONS AND FINDINGS:-

15. I have gone through the facts of the case, the material brought on record, the Order-in-Original No. 99/2023- 24/Commr/NS-V/CAC/JNCH dated 19.07.2024 issued vide F.No. 5/16- 17/2023-24/CC/NS-V/JNCH, by the Commissioner of Custom, NS-V, JNCH; the Show Cause Notice No. 54/2024-25 dated 30.10.2024 issued under CBLR, 2018; the Inquiry Report dated 11.12.2024 and the written submissions made by the CB at the time of personal hearing.

16. I find that the intelligence developed by the Directorate of Revenue Intelligence revealed that the importer M/s. Big Trends, Jaipur (IEC No: 1308009615) was engaged in the import of 'Photographic Studio Lighting Equipment' declared as 'Photographic Accessories-Panel Video Lights, Video Lights, Portable Video Light, Light Stick, RGB Video Light Kit', etc. from China, however, the importer was evading the applicable Customs duty by resorting to mis-classification of these imported goods under CTH 90069100 wherein BCD @10% was payable instead of its correct CTH 94054200 wherein BCD@20% up to 31.01.2020 and @25% from 01.02.2020 was payable. The charged Customs Broker in the present case i.e. M/s. Shah Brothers Shipping Pvt. Ltd. (CB No. 11/1001) was engaged as CB by the said importer i.e. M/s. Big Trends, to file the Bills of Entry and handle the customs clearance work of import consignments at Nhava Sheva Port.

17. I find that Sh. Ashok Rawat, Proprietor of M/s. Big Trends, in his statement recorded under Section 108 of Customs Act, 1962 has admitted that after January 2022 they had started classifying the subject goods under CTH 9405 and he agreed that the "Photographic Studio Lighting Equipment" i.e., Continuous Lights imported by them were correctly classifiable under CTH 9405 instead of CTH 9006. I also find that having gone through the Note-II of the CTH sub-heading of 9006 and Note-I of the CTH sub-heading 9405 of the explanatory notes, Sh. Sonesh Shah, Manager of CB firm/company has admitted in his statements recorded under Section 108 of Customs Act, 1962 that the correct CTH of Continuous Lights importer by M/s. Big Trends is CTH 9405 instead of CTH 9006. He also admitted that from January-2022, they have started classifying 'continues lights' under CTH 9405.

18. Having perused the Order-in-Original No. 99/2023- 24/Commr/NS-V/CAC/JNCH dated 19.07.2024 issued by the Commissioner of Custom, NS-V, JNCH, I find that the Adjudicating Authority (AA) under para 35.1 & 35.2 of said OIO, observed that:-

35.1 I find that in the SCN, M/s Shah Brothers Shipping Pvt. Ltd. has been held liable for penalty under section 112(a) of the Customs Act, 1962. The Customs Broker viz., M/s Shah Brothers Shipping Pvt. Ltd. was aware about the imported goods by the importer, I find that the Customs broker, who in case of this import is furnished by the importer with all relevant documents for filing of bill of entry, does not appear to be involved in the mis-classification to avail benefits of Customs duty available to importers and in the case the imported goods' are held liable for confiscation under Section 111 of Customs Act, 1962 and made importers liable to penalty under Customs Act, 1962.

35.2 I find that numerous judicial pronouncements are in existence where it has been, inter-alia, held that when there is no evidence of abetment in illegal importation of goods or wrong intent or prior knowledge about violation, penalty cannot be imposed on the Customs Broker. I also find that there is an advisory issued by the office of Chief Commissioner of Customs vide File No. CCC/LGL/MISC/277-ADMN-0/o CC-CUS-Zone II- Nhava Sheva dated 02.12.2022

on this issue and it was advised that practice of routinely proposing penal provisions under the Customs Act, 1962 against Customs Brokers should be avoided. I find that as importer has not cast any aspersion on the role of Customs Broker in the said import, therefore, the charges proposed against M/s Shah Brothers Shipping Pvt. Ltd., who is the Customs Broker of the Importer does not hold good and hence the consequential penalty are not imposable on Customs Broker, M/s Shah Brothers Shipping Pvt. Ltd. under section 112(a) of the Customs Act, 1962.

18.1 I find that in view of the above observations, the AA has not imposed any penalty, in the present case, under Customs Act, 1962 on the CB M/s. Shah Brothers Shipping Pvt. Ltd. (CB No. 11/1001). However, it is pertinent to mention here that the proceedings under CBLR, 2018 are independent, separate and distinct from that under Customs Act, 1962. Hence, action under CBLR, 2018 was initiated against the CB for apparent violation of Regulation 10(d) and 10(e) of CBLR, 2018.

19. I find that with regard to violation of Regulation 10(d) of CBLR, 2018, the Inquiry Officer has observed that “the CB very well knew that the Importer has misclassified the CTH of the subject goods to evade customs duty, before Jan, 2022 and for some bill of entry till June, 2022. Also, the CB should have informed the customs authority about the wrong CTH declaration by the Importer in the past before Jan, 2022. However, they failed to do so. Further, as per CB's own statement, they started to correctly classify the goods after Jan, 2022, however, some Bills of entry with wrong CTH were still filed till June, 2022. There does not seem a way, that the CB was not aware of the misclassification, yet, the CB choose not to inform the Customs authorities regarding the wrong classification, leading to loss to the Govt. exchequer”.

19.1 I find that the above-discussed observation of the inquiry officer makes a sustainable ground to substantiate and hold that the CB has failed to fulfil their obligation stipulated under Regulation 10(d) of CBLR, 2018 inasmuch as they did not inform the Assistant/Deputy Commissioner of Customs, about the mis-classification of goods that were imported before January 2022. Under the facts and circumstances of

the case, I am of the firm opinion that the CB has contravened the provisions of Regulation 10(d) of CBLR, 2018.

20. I find that with regard to violation of Regulation 10(e) of CBLR, 2018, the Inquiry Officer has observed that “the Importer is not fictitious and has paid the differential duty at the time of Investigation by DRI itself. He was available for the investigation and has also participated in the adjudication proceedings at the JNCH. He has not made any claim of mis-guidance by the CB nor he has accused CB of any misconduct. In fact by paying the differential duty during investigations, the Importer has absolved the CB of any material gain the CB could have gained by passing on wrong information/ collusion with the Importer to get the undue benefit of reduced Customs Duty”. I find that the inquiry officer has appreciated the facts that ‘the CB and the importer have started classifying the subject goods under correct CTH 9405 from January 2022 onwards when they came to know about the correct classification of ‘Continuous Lights’ also the importer has paid the amount of differential duty during investigation’ and accordingly the inquiry officer held that the charge of violation of Regulation 10(e) levelled against the CB is ‘not proved’.

20.1 Having perused the offence report, the inquiry report and the written submission of the CB, I find that the inquiry report is acceptable and tenable in holding that the charge of violation of Regulation 10(e) of CBLR, 2018, levelled against the CB could not be proved.

21. I find that in the instant case, the CB license was not suspended under Regulation 16(1) of CBLR, 2018. I find that for the violation of obligations provided under CBLR, 2018 and for their act of omission and commission as discussed above, the CB M/s. Shah Brothers Shipping Pvt. Ltd. (CB No. 11/1001) 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 entire amount of security deposit furnished by the CB, is much harsh and disproportionate to the offences committed. However, 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 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”*.

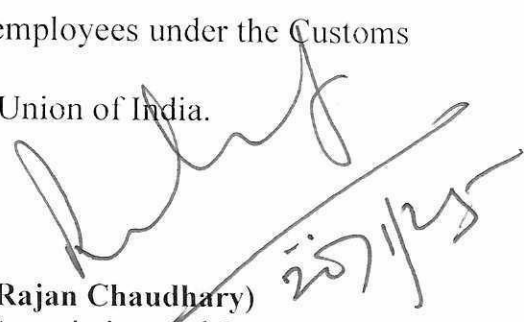
23. In view of the above judgements and the “Doctrine of Proportionality” which propagates the idea that a punishment for an offence should be proportional to the gravity of the offence, I am not inclined to revoke the license of the CB and to forfeit the security deposit furnished by the CB at the time of issuance of CB license. However, for their acts of omission and commission, the CB M/s. Shah Brothers Shipping Pvt. Ltd. (CB No. 11/1001) 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) 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

24. 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. 15,000/- (Rs. Fifteen Thousand Only) on M/s. Shah Brothers Shipping Pvt. Ltd. (CB Code AABCS3985NCH001, CB No. 11/1001) 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. Shah Brothers Shipping Pvt. Ltd. (CB No. 11/1001),
C-306, 3rd Floor Eastern Business District,
LBS Marg, 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