



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

संचिका सं./F. No.- GEN/CB/89/2024 -CBS आदेश दिनांक/Date of Order: 30.01.2025

CAO No.74/2024-25/CAC/PCC(G)/RC/Adj-CBS जारी दिनांक/Date of issue: 31.01.2025

DIN:2025017700000000D1D7

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

Issued By : **Rajan Chaudhary**
Pr. Commissioner of Customs(Gen.),
Mumbai - 400 001.

ORDER-IN-ORIGINAL मूल आदेश

ध्यान दीजिए/ N.B. :

1. यह प्रति उस व्यक्ति को निजी उपयोग हेतु निःशुल्क प्रदान की जाती है, जिसे यह जारी की जा रही है।

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

An appeal against this order lies with the Customs, Central Excise and Service Tax Appellate Tribunal in 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 क्षेत्रीय खंडपीठ, के M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG,

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

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

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

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

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

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

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

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

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

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

Brief Facts of the Case: -

M/s Spaceage Logistics CB No. (11/2001) (PAN No. AGQPA5206J) (hereinafter referred to as the "Custom Broker or CB"), having registered office at Subhan Ahmed House, R/11, Opp. Cigarette Factory, Chakala, Sahar Road, Andheri East, Mumbai-400099, is holding the said CB license issued by the Commissioner of Customs (General), Mumbai-I under erstwhile regulation 7(1) of CBLR, 2013 now regulation 7(2) of CBLR, 2018). M/s Spaceage Logistics is a Proprietorship entity and Mr. Iftkhar A. Ansari is Proprietor of the said CB entity.

2. An Offence Report in the form of Show Cause Notice No. 142/ADC/ADJ(X)/2022- 23/ACC dated 30.03.2024 issued by the ADC, Export Assessment Cell, Air Cargo Complex, Sahar, Andheri (East), Mumbai-III, was received, wherein, inter-alia the following were informed:

2.1. M/s Heeba Enterprise Private Limited (IEC: 0316963721) (hereinafter referred to as "the said exporter") having registered IEC address at West Building, Shop No. 302, SV Road, Opp. Andheri Subway, Andheri (W), Mumbai-400058, exported goods for the period from 25.12.2016 to 04.11.2018 but FOB has not been realized against the said exports within the stipulated time, they fraudulently availed export incentives (Drawback and ROSCTL) against such exports.

2.2. During the course of investigation, past export records of the said exporter were retrieved from EDI 1.5 System wherein the said exporter had 108 Shipping Bills (hereinafter referred to as S/Bs) for the period from 25.12.2016 to 04.11.2018 wherein, total FOB value was Rs. 15,47,16,142/-, total drawback of Rs. 63,49,427/- & total ROSCTL Rs. 22,48,812/- and most of the export incentives have already been disbursed to the exporter. The exporter had filed 108 Shipping Bills through their Customs Brokers M/s Eagle Shipping Agency, M/s Senghi Shipping Service, M/s Atlantic Customs Brokers and M/s Spaceage Logistics etc. for clearance of Ready-Made Garments goods, home and kitchen accessories, bags and kids wear etc. The same were destined to the United States of America, Mali, Sudan, Qatar, Zambia, Canada, Tunisia, Saudi Arabia,

Malaysia, Nigeria, United Arab Emirates, Tanzania, Sri Lanka, Djibouti, Togo, Ghana and Kuwait.

2.3. During the course of investigation, SIIB (X), ACC, vide letter, dated 03.05.2023 requested Drawback (EDI) and IGST Sections to suspend all export incentives to the exporter M/s. Heeba Enterprise Private Limited (IEC 0316963721) to safeguard the government revenue.

2.4. Summons dated 02.01.2023, 10.03.2023 and 25.04.2023 were issued to the exporter for recording his statement and to submit relevant documents pertaining to the case. Exporter neither submitted the documents nor presented himself before the investigating agency for recording his statement. The Summons dated 10.03.2023 was returned with the remark **"Unclaimed"**.

2.5. Summons dated 07.11.2023 was issued to the CB M/s Spaceage Logistics (11/2001) for recording their statement and submitting KYC detail of the exporter, authorisation letter, shipping bills, invoice and packing list pertaining to the case but was **returned with the remarks "Not Known, no such person on the address and incomplete address"**.

2.6. During the course of investigation, a letter dated 03.05.2023 issued to the Branch Manager of Development Credit Bank Ltd. to provide bank statement and KYC details of bank account no. 00421300000781 of M/s Heeba Enterprise Pvt Ltd but no reply was received from the bank. Further, Reminder-I dated 24.08.2023 and Reminder-II dated 16.10.2023 were issued to the bank, then personal visit was done on 25.10.2023 and KYC details and bank statements were retrieved from the bank.

2.7. On scrutiny of bank KYC, it was found that the address of the exporter mentioned on Importer Exporter Code (IEC) and Bank KYC were same and the summonses to that address had already returned with the remark "Unclaimed". On scrutiny of the bank statement, it was found that the account was closed.

2.8. BRC Status of Past Exports: It is evident from the data retrieved from ICES 1.5 system that the foreign remittance had not been realised even after expiry of the prescribed time-limit. After investigation it had been found that

FOB Rs. **15,47,16,142/-** involved in 108 shipping bills was not realized even after the prescribed time limit.

2.9. The exporter had claimed ROSCTL under 108 shipping bills and ROSCTL scroll generated for the 8 shipping bills for which BRC was not realised even after the prescribed time period under the provisions of ROSCTL scheme. Therefore, the ROSCTL amounting to Rs. **2,85,751/-** **in respect of ROSCTL has been availed and disbursed** of the said 8 shipping bills appears to be rejectable/recoverable with interest under the above-mentioned provisions **MoT's Notification No. 14/26/2016-IT (Vol.II) (Part II) dated 02.05.2019** and **CBIC Notification No. 77/2021-Customs (N.T.) dated 24th September, 2021.**

2.10. The exporter M/s Heeba Enterprise Private Limited had exported total 108 shipping bills of Readymade Garments from Air Cargo Complex, Mumbai having total FOB amount of Rs. **15,47,16,142/-**, claiming drawback of Rs. **63,49,427/-**, ROSCTL amount of Rs. **22,48,812/-**. The export proceeds in respect of the said shipping bills have not been realised even after stipulated time is over. An amount of Rs. **15,47,16,142/-** is pending to be received and yet no concrete efforts were made by the exporter to realise that amount, shows that the export was made with the sole intention to defraud the government exchequer by way of getting undue drawback, IGST refund and ROSCTL.

2.11. Further, it appears that the exporter had claimed export incentives viz. **Drawback of Rs. 53,63,865/- and ROSCTL Rs. 2,85,751/-** which was ineligible and intentionally did not return the incentives viz. drawback and ROSCTL even after the export proceeds in respect of the said shipments were not realised even after the expiry of stipulated time period. The exporter did not submit any proof with respect to any effort done by him in this respect. His acts of omission and commission have resulted in violation of various provisions of Customs act, 1962 and it appears that he has abetted, aided and connived in affecting the said fraudulent export for availing ineligible export incentives. Therefore, he, in person also, is liable for penal action under Section 114(iii) and/or Section 114AA of the Customs Act, 1962.

3. In view of the above facts and findings, it is clear that the CB M/s Spaceage Logistics (11/2001) had not advised their exporter M/s Heeba Enterprise Private

Limited about complying with the provisions of the Act, other allied Acts and the rules and regulations made thereunder, and had mala-fide intention to claim undue drawback as well as ROSCTL refund benefits which was not legitimately available to him and causing loss to the Government Exchequer, that shows the guilty intention of the Exporter as well as Customs Broker.

4. In view of above, it appears that CB M/s Spaceage Logistics (11/2001), Mumbai, has failed to comply with sub-regulations 10 (a), 10 (d), 10 (e), 10 (n) & 10 (q) of the Customs Brokers Licensing Regulations 2018. The said regulations read as:

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

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

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

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

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

5. As per the offence report, it is a matter of fact that the said exporter filed 108 Shipping Bills through Customs Broker M/s Spaceage Logistics (11/2001). During investigation, ample opportunities were given to exporter and the said customs broker for recording of statement and submitting various documents viz. authorization letter, packing list, GSTN registration copy etc., but all

summonses issued to the exporter were returned with remark "Unclaimed". It is evident from the investigation report that despite getting several opportunities given for recording of the statement and submitting aforementioned documents, neither the said Customs Broker appeared for recording of statement nor submitted the relevant documents viz. authorization letter, packing list, GSTN registration copy etc. Hence, the said CB did not take authorization and **failed to comply with provisions of regulation 10(a) of CBLR, 2018.**

6. As per the offence report, the said exporter filed Shipping Bills through the said Customs Broker and availed export benefits under different export incentive schemes whereas the foreign remittance against the export consignments has not been realised even after the expiry of the prescribed time-limit. From the facts of the case, it is amply clear that the fraudulent export was done so as to claim the undue export benefits. The CB also never appeared before the investigation agency despite several summons. Thus, it appears the CB abetted the said fraud and failed to perform his duties by not advising the exporter to comply with the rules and regulations regarding receiving foreign remittance timely. Such fraud and non-compliances by the said exporter were never brought to the knowledge of the Customs authorities by the CB which he was duty bound under the CBLR, 2018. Due to above act of commissions and omissions, it appears the said CB **failed to comply with provisions of regulation 10(d) of CBLR, 2018.**

7. As per the offence report, the said exporter filed the Shipping Bills through their Customs Broker and availed export benefits under different export incentive schemes whereas the foreign remittance against the export consignments has not been realised even after the expiry of the prescribed time-limit. From investigation report, it appears that CB did not exercise due diligence in ascertaining the correctness of claim of availing the export benefits under various export incentive schemes. If the said CB had exercised due diligence to ascertain the correctness of claims made under various export incentive schemes, then financial loss to government exchequer could have been averted. The said CB did not exercise the due diligence in informing the exporter with reference to work related to clearance of cargo or baggage and it appears the CB

have abetted the exporter in availing export benefits fraudulently. Hence, the said CB **appears to have violated regulation 10(e) of CBLR, 2018.**

8. As per the investigation report, the various summonses addressed to the exporter were returned with "Unclaimed" remark and the said exporter did not even come for recording of statement under section 108 of the Customs Act, 1962. During investigation it was found that the exporter was non-existent at the address mentioned in IEC and hence it shows that the CB never verified the declared address of the exporter. In addition to this, CB did not establish any communication linkage with the Exporter. It may be regarded that the subject case of fraudulent exports would have been avoided if the CB had made strenuous efforts to verify the correctness of identity of the exporter/client and their functioning at the declared address. Due to above act of commissions and omissions, it appears the said CB **failed to comply with provisions of 10(n) of CBLR, 2018.**

9. As per the offence report, during investigation summons was issued to CB M/s. Spaceage Logistics but they did not turn up for giving statement under section 108 of the Customs Act, 1962 which caused delay in investigation proceedings. The CB did not co-operate with the Customs authorities in inquiry proceedings. Due to above act of commissions and omissions, it appears the said CB **failed to comply with provisions of regulation 10(q) of CBLR, 2018.**

10. The CB has a very important role in customs clearances and lot of trust has been placed by the Department on the CB. In regime of trade facilitation and with more and more of the goods being facilitated by the Risk Management Systems without examination by the Customs, the role of CB has further increased so that economic frontiers of the country are well guarded.

11. Thus, the CB M/s Spaceage Logistics (11/2001) appeared to have failed to comply with the provisions of sub-regulation **10(a), 10 (d), 10(e), 10(n) & 10 (q) of the CBLR 2018** and thereby committed misconduct rendering themselves liable to penalty under **Regulation 18 of the CBLR 2018.** Accordingly, action under CBLR, 2018 was invoked against the CB M/s Spaceage Logistics (11/2001).

SUSPENSION OF CB LICENSE AND SHOW CAUSE NOTICE: -

12. The license of CB M/s Spaceage Logistics (11/2001) was suspended vide Order No. 16/2024-25 dated 21.05.2024 and was given an opportunity of Personal Hearing in this matter on 30.05.2024. Based on the written and oral submission made by the CB, the suspension of CB license was revoked vide Order No. 25/2024-25 dated 11.06.2024, having pending further inquiry proceedings under CBLR, 2018.

12.1. In light of the above, Inquiry proceedings were initiated against CB M/s. Spaceage Logistics vide Show Cause Notice No. 25/2024-25 dated 01.07.2024 for violations of Regulation 10(a), 10(d), 10(e), 10(n) and 10(q) of CBLR, 2018. Vide said notice, the CB was called upon to show cause as to why the Customs Broker license bearing no. 11/2001 issued to them should not be revoked and security deposited should not be forfeited and/or penalty should not be imposed upon them under Regulation 14 read with 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018, as elaborated in the Show Cause Notice.

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

INQUIRY REPORT: -

13. The Inquiry officer (here in after referred to as the 'IO') concluded the inquiry proceedings and submitted the inquiry report dated 10.10.2024, wherein the charges levelled against the CB of violation of Regulations 10(d) and 10(e) of CBLR, 2018 are held as "**Proved**" and violation of Regulations 10(a), 10(n) and 10(q) of CBLR, 2018 are held as "**Not Proved**".

FINDINGS OF THE INQUIRY OFFICER: -

14. Based on the available records, submissions & depositions of Mr. Iftexhar A. Ansari, proprietor of the Custom Broker M/s. Spaceage Logistics, the IO had concluded his report as follows:

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

15. **CHARGE:** *"As per the offence report, it is a matter of fact that the said exporter filed 108 Shipping Bills through Customs Broker M/s Spaceage Logistics (11/2001). During investigation ample opportunities were given to exporter and the said customs broker for recording of statement and submitting various documents viz. authorization letter, packing list, GSTN registration copy etc. but all summonses issued to the exporter were returned with remark "Unclaimed". It is evident from the investigation report that despite getting several opportunities given for recording of the statement and submitting aforementioned documents neither the said Customs Broker appeared for recording of statement nor submitted the relevant documents viz. authorization letter, packing list, GSTN registration copy etc. Hence, the said CB did not take authorization and failed to comply with provisions of regulation 10(a) of CBLR, 2018."*

15.1. **ANALYSIS:** The IO stated that although it had been alleged that the said exporter filed 108 Shipping Bills through Customs Broker M/s Spaceage Logistics (11/2001), the Offence report in its para 02 & 05 indicated that the said 108 Shipping Bills were also filed through 09 other CBs including M/s Eagle Shipping Agency, M/s Senghi Shipping Services, M/s Atlantic Customs Brokers, Wishva Navin Traders, Indian Shipping Agencies, Eiffel Logistics Pvt. Ltd., Oriion Consultancy, Sayani & Sons and S. Murugan, apart from M/s Spaceage Logistics. The IO further stated that the CB Section, vide their letter dt. 24.09.2024 had informed that the specific details of the Shipping Bills and the export benefit of each Custom Broker were not submitted by the SCN (Offence Report) Issuing Authority and no other details were available with them. And, thus, the IO submitted that the Inquiry had been conducted in respect of the 08 Shipping Bills, submitted by the CB M/s Spaceage Logistics.

15.2. As the Regulation 10(a) read as "obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be", the IO found during the deposition that the CB had categorically submitted that he did not receive any summons, hence he did not attend any inquiry conducted by the department. He had closed down the office and he was in depression during the period and was at home, however, he did not receive any summons. Therefore, he was not aware of any inquiry conducted in this regard. Therefore, the non-submission of the authorization to the Investigation Agency appeared to be due to ignorance about the investigations/ demand of documents by Customs Authorities as per the IO. Further, the IO found from the offence report and SCN mentioning that the documents were also available to the Investigation agency through Bank who had performed KYC.

15.3. The IO stated that during the Inquiry, the CB produced copies of all the relevant documents viz Invoice, packing lists, authorization, PAN Card, GST Registration of the Exporter and Aadhar Card of the Director of the company. Also, the CB deposed during his statement to the IO that he had visited the office of M/s. Heeba Enterprises at Andheri (W) and he also visited his residence at Andheri (W) during the shipments as well as after the shipment for his payments. As such, the IO found from his observation that the CB had received the Authorization and he had complied with the guidelines for the KYC as per the CBLR, 2018 and therefore, the IO submitted that **the allegation of charge framed for violation of Regulation 10(a) against the CB was held as "NOT Proved"**.

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

16. CHARGE: "As per the offence report, the said exporter filed Shipping Bills through the said Customs Broker and availed export benefits under different

1.	7744137/01.05.2017	2.	7255457/11.07.2017
3.	7743253/01.08.2017	4.	8437920/04.09.2017
5.	7770851/02.08.2017	6.	7911327/09.08.2017
7.	8147843/21.08.2017	8.	8147872/21.08.2017

export incentive schemes whereas the foreign remittance against the export consignments has not been realised even after the expiry of the prescribed time-limit. From the facts of the case, it is amply clear that the fraudulent export was done so as to claim the undue export benefits. The CB also never appeared before the investigation agency despite several summons. Thus, it appears the CB abetted the said fraud and failed to perform his duties by not advising the exporter to comply with the rules and regulations regarding receiving foreign remittance timely. Such fraud and non-compliances by the said exporter were never brought to the knowledge of the Customs authorities by the CB which he was duty bound under the CBLR, 2018. Due to above act of commissions and omissions, it appears the said CB failed to comply with provisions of regulation 10(d) of CBLR, 2018”.

16.1. ANALYSIS: As the 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”, the IO stated that the CB submitted in his submission that the exporter had exported to various countries and claimed drawback against the said exports and non-realization of the Remittance is a post-export activity on which the CB has no control. The IO further stated that as per the CB, in the regulation what is required is that the information about the stipulated law/ procedure be passed to the client and in case of non-compliance, the matter is reported to the concern authorities. But, the IO observed that especially once an incentive is claimed by the exporter in the consignments handled by the CB, it becomes his responsibility to verify if the conditions attached to such incentive are strictly complied by the exporter. In the present case, the IO found that the CB was not expected to control the exporter and/or get the remittance in time but to keep information about the compliance of the law in cases of the consignments he handled. Further, the IO found that in case of the consignments cleared by the CB, he had full information about the remittance due and its due date. And, there is nothing on the record to show that the CB had informed this to the exporter. Also, there is nothing on the record that non-intimation by the exporter to CB had been brought to the notice of the concerned customs authorities. Therefore, the IO observed that the CB had not complied with the regulation 10 (d) of the CBLR 2018 and thus, **the**

allegation of charge framed against the CB for the violation of Regulation 10(d) was held as "Proved".

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

17. CHARGE: *“As per the offence report, the said exporter filed the Shipping Bills through their Customs Broker and availed export benefits under different export incentive schemes whereas the foreign remittance against the export consignments has not been realised even after the expiry of the prescribed time-limit. From investigation report, it appears that CB did not exercise due diligence in ascertaining the correctness of claim of availing the export benefits under various export incentive schemes. If the said CB had exercised due diligence to ascertain the correctness of claims made under various export incentive schemes, then financial loss to government exchequer could have been averted. The said CB did not exercise the due diligence in informing the exporter with reference to work related to clearance of cargo or baggage and it appears the CB have abetted the exporter in availing export benefits fraudulently. Hence, the said CB appears to have violated regulation 10(e) of CBLR, 2018.”*

17.1. ANALYSIS: As the 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 from the SCN and the Offence Report that the case was opened due to observation by the department that the remittances with respect to these cases were not received. The IO further observed that the CB did not give correct information regarding the onus of the exporter for remitting the export proceeds in due time; and in case any exporter fails to bring in the remittance in time, there is procedure to obtain extension of the time limit. In the present case, the IO found that after the time was lapsed to bring in the remittance and submit the proof to customs, the exporter could have filed extension application for the time, but there is no record that such extension application was filed. Therefore, the IO stated that CB did not exercise the due diligence in informing the exporter with reference to work related to clearance of cargo during exports, and in his view, **the allegation of charge framed against the CB for the violation of Regulation 10(e) was held as "Proved".**

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

18. CHARGE: "As per the investigation report, the various summonses addressed to the exporter were returned with "Unclaimed" remark and the said exporter did not even come for recording of statement under section 108 of the Customs Act, 1962. During investigation it was found that the exporter was non-existent at the address mentioned in IEC and hence it shows that the CB never verified the declared address of the exporter. In addition to this, CB did not establish any communication linkage with the Exporter. It may be regarded that the subject case of fraudulent exports would have been avoided if the CB had made strenuous efforts to verify the correctness of identity of the exporter/client and their functioning at the declared address. Due to above act of commissions and omissions, it appears the said CB failed to comply with provisions of 10(n) of CBLR, 2018."

18.1. ANALYSIS: As the Regulation 10(n) reads as: "verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data, or information", the IO submitted that the documents of KYC were provided by the CB during the inquiry proceedings and it had also been submitted by the CB that the subject office was existing when he had visited for the payments of the export consignments cum agency charges, and also the KYC was confirmed by the bank. Further, the IO stated that during the personal hearing, the CB deposed that the Authority letter was brought by the director in original, the PAN & Aadhar card were brought in original by him & the copies were made on the machine in CB's office; and also, the CB verified the GST & IEC registration from the website through his office staff. Therefore, the IO submitted that it may not be correct to say that the CB faulted on verification of the correctness of documents provided by the exporter. And, thus, in the view of IO's observation, **the allegation of charge framed against the CB for violation of Regulation 10(n) was held as "Not Proved".**

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

19. CHARGE: "As per the offence report, during investigation summons was issued to CB M/s. Spaceage Logistics but they did not turn up for giving statement

under section 108 of the Customs Act, 1962 which caused delay in investigation proceedings. The CB did not co-operate with the Customs authorities in inquiry proceedings. Due to above act of commissions and omissions, it appears the said CB failed to comply with provisions of regulation 10(q) of CBLR, 2018.”

19.1. ANALYSIS: As the Regulation 10(q) reads as “co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees”, the IO submitted that there was no evidence that the CB was informed about the investigations either in form of the summons or any other letter, as the summon dated 07.11.2017 was returned by the postal authorities with remark “incomplete address”. And, thus, there were no evidences suggesting that the CB did not cooperate with the investigations. Therefore, in view of IO’s observation, **the allegation of charge framed against the CB for violation of Regulation 10(q) was held as "Not Proved".**

Summary of the IO’s Findings: -

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

Sr. No	Charges against the CB	Findings
1	Violations of Regulation 10(a) of CBLR 2018	Not Proved
2	Violations of Regulation 10(d) of CBLR 2018	Proved
3	Violations of Regulation 10(e) of CBLR 2018	Proved
4	Violations of Regulation 10(n) of CBLR 2018	Not Proved
5	Violations of Regulation 10(q) of CBLR 2018	Not Proved

21. Under the provisions of Regulation 17(6) of CBLR, 2018, a copy of the inquiry report dated 10.10.2024 was shared with the charged CB and for the sake of ‘Principle of Natural Justice’, an opportunity of personal hearing was granted to the CB on 05.12.2024, which was postponed to 12.12.2024 later on due to the administration reason.

RECORDS OF PERSONAL HEARING: -

22. On 12.12.2024, Sh. Iftexhar Ansari (F-card holder), proprietor of the Custom Broker M/s. Spaceage Logistics, had appeared for the personal hearing on behalf of the CB and requested to allow him to submit the written submission

within 05 days. Later on, he submitted the defence submissions dated 16.12.2024, wherein the CB has submitted the following:

WRITTEN SUBMISSIONS OF THE CB: -

CB Submission in the matter of show cause notice no. 25/2024-25 dated 01.07.2024 issued by the Principal Commissioner of Customs (General), Mumbai-1 against M/s Spaceage Logistics, CB No. (11/2001) (PAN No. AGQPA5206J) (hereinafter referred to as the "Custom Broker or CB"), having registered office at Subhan Ahmed House, R/11, Opp. Cigarette Factory, Chakala, Sahar Road, Andheri East, Mumbai-400099, under Regulation 17 of the Customs Broker Licensing Regulations, 2018 [CBLR. 2018]-regd.

23. At the outset, the CB denies all the allegations made in the show cause notice under reply, as if the same were set out herein and denied in seriatim. Nothing that is alleged in the show cause notice under reply was admitted or deemed to be admitted by the CB either by the reason of not specifically dealt with in this reply or otherwise.

24. The CB submitted that the SCN did not allege any violation of the Custom Act, 1962 against them and the statement of the CB was not recorded under section 108 of the Custom Act, 1962. Also, the CB stated that no documentary evidence was forthcoming in the SCN against them about violating provision of the Custom Act or Allied acts.

25. The CB submitted that the entire case was booked for the non-realization of BRC against the export done by the exporter and the wrong availment of Drawback and ROSCTL. And, according to the CB, these are the post export activities on which Custom Brokers have neither any role nor control over the exporter.

26. The CB submitted that as per Master Direction No.16/2015-16 dated 01/01/2016, updated from time to time in terms of Para A.2(ii), the period of realization and repatriation to India of the amount representing the full export value of the goods exported is nine months from the date of export. In the present case, the CB stated that the goods had been exported in January 2018 and the Show Cause Notice was of dated March 2024 i.e., six years after the export for

recovery of drawback amount. The CB further stated that powers for non-compliance of the statute and recovery are vested on the respective department of Govt. of India and not with the Customs Broker, and failure on part of the exporter to realise export proceeds cannot be attributed to as a violation of CBLR 2018 or the Customs Act 1962, when the Customs Broker has no role or control over the post export activity.

27. The CB relied upon the case of **Ota Fallons Forwarders Pvt Ltd V/s Commissioner of Customs., Ludhiana, reported in 2021 (337) E.L.T.456 (Tri- Chan)**, wherein the tribunal held that *“even in case of miss-declaration of export goods, the role of Custom broker ended when examination conducted by the customs officer at CFS and consignment was allowed to be transported to port of export. In absence of any evidence, penalty imposed on the Custom Broker was set aside.”*

28. The CB submitted that they had followed KYC guidelines before taking up the assignments of the exporter. They had obtained an authorization from the export. They transacted business at ACC, Sahar on behalf of the exporter. They had advised and informed the exporter to comply with the provision of the act, other allied act and rules and regulation thereof, and thus complied with the Regulations 10(d) & (e) of CBLR 2018. The CB further submitted that the goods declared in the shipping Bills and Export invoice were found in order which were accepted by the customs authorities and for which, the LEO was granted. Also, the ICE Track record showed no discrepancy at the time of examination nor at the time of claiming Drawback, ROSCTL not claimed for the above shipping bills. Hence, the CB stated that the question of reporting non-compliance to the customs authorities did not arise. The CB further stated that the non-compliance by the exporter is of not-realizing the export proceeds and claiming under drawback, which are post export activities on which a Custom Broker has no control or supervision or any information to bring it to the notice of the Asst./Deputy Commissioner.

29. The CB further submitted that they had verified IEC, GSTIN as well as PAN card of the exporter. In addition, they had also visited the office premises of the exporter at the declared address to verify the antecedents and correctness of IEC. The bank documents were also verified which were found authentic and

genuine, complying with rule 10(n) of CBLR 2018. Thus, the CB stated that it is evidently clear that they had performed obligation as prescribed under rule 10 of CBLR, 2018 and Circular No. 09/2010-cus. Dated 08/04/2010 issued by CBIC.

30. According to the CB, it is well settled that Custom Broker do not require them to maintain vigil and continuous surveillance on the clients to ensure that they continue to operate from the address as given in the various KYC documents; and in case of change as such, get the documents amended.

31. The CB relied upon the case of **BAID INTERNATIONAL SERVICES LTD. Versus COMMISSIONER OF CUSTOM (AIRPORT & AIR CARGO COMPLEX, COMMISSIONERATE), KOLKATA, REPORTED IN (2023) 10 Centex (Tri-Cal)** wherein the tribunal held that:

"..... the Customs Broker cannot be held responsible for the exporters found to not exist during subsequent verification undertaken, by the officers or there has been unrealized IGST, availed of by the untraceable exporters."

32. As per the CB, ratio of above judgement is squarely applicable to the present case, in as much as that they had verified all the documents required for KYC and the documents were also not disputed by the department. Additionally, they had verified the address of exporter physically as well; and, therefore, the requirement of KYC was fulfilled and complied and not faulted. Further, the CB submitted that as held by tribunal, non-realization of IGST from the importer was beyond the role and scope of Customs broker, hence cannot be penalized. According to the CB, the responsibility of the Customs Broker ends when the goods are handed over to the transporter in case of import and in case of export, after LEO is obtained and documents are handed over to the freight forwarder.

33. The CB stated that in the present case, the goods were exported on the basis of documents forwarded by the exporter. And, the genuineness of the documents had not been doubted by the department. Also, the LEO had been given by the Customs officers and the goods had been exported. Hence, the CB submitted that the provisions of the customs act were not contravened attracting penalty.

34. The CB discussed that the SCN had proposed penalty under Section 117 of the Customs Act 1962. Section 117 of the Customs Act 1962 reads as under:

117. Penalties for contravention, etc., not expressly mentioned.

“Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [one lakh rupees] [Substituted by Act 18 of 2008, Section 70, for ‘ten thousand rupees’].”

Rule 18 of CBLR 2018 reads as under: -

18. Penalty -

“(1) The Principal Commissioner or Commissioner of Customs may impose penalty not exceeding fifty thousand rupees on a Customs Broker or F card holder who contravenes any provisions of these regulations or who fails to comply with any provision of these regulations;

(2) The Deputy Commissioner or an Assistant Commissioner of Customs may impose penalty not exceeding ten thousand rupees on a G card holder who contravenes any provisions of these regulations in connection with the proceedings against the Customs Broker;

(3) The imposition of penalty or any action taken under these regulations shall be without prejudice to the action that may be taken against the Customs Broker or F card holder or G card holder under the provisions of the Customs Act, 1962 (52 of 1962) or any other law for the time being in force.”

35. The CB stated that on plain reading of the above, it is seen that specific penalty exists in case of violation of CBLR 2018. The CB further stated that the SCN did not mention breach of sub regulation of Regulation 10 by them and there was nothing on record to show that they had been subjected to action under C.B.L.R, 2018. Therefore, when specific penalty under C.B.L.R for violation of any Regulation exists, same cannot be relegated to residual provisions of penalty under section 117 of the Customs Act, 1962, according to the CB.

36. The CB relied upon the case of **LOUIS DREYFUS COMPANY INDIA PVT. LTD.V/S.COMMISSIONER OF CUSTOMS, KANDLA, REPORTED IN 2024 (16) CENTAX 184 (TRI-AHMD)**, wherein the Tribunal held in the para 10 that:

10. *"However, as far as penalty under section 117 on appellant M/s. NARENDRA FORWARDERS P LTD is concerned, it is noted that breach of sub regulation of Regulation 10 has not been mentioned, further CHA is not required to advise on assessment aspects to its clients unless solicited. Again there is nothing on record to show that he has been subjected to action under C.B.L.R, 2018. Looking at all facts and legalities of the matter and also that we find that when specific penalty under C.B.L.R for violation of any Regulation exists, same cannot be relegated to residual provisions of penalty under section 117 of the Customs Act, 1962. Same is therefore set aside and appeal of NARENDRA FORWARDERS P LTD is allowed."*

37. The CB submitted that the ratio of the above decisions is squarely applicable to the present case, in as much as that SCN alleges to levy penalty under Section 117 of the Customs Act 1962, when specific penalty under CBLR exists. They further submitted that neither any circumstantial evidence nor direct evidence against them of violating provisions of the either customs act or CBLR 2018 was alleged in the SCN in absence of which the SCN is bad in law and requires to be set aside.

38. The CB stated that without prejudice to the above, it is well settled that penalty under the Customs Act cannot be imposed for any alleged violation of CBLR. The CB relied upon the following judgements in this connection:

a) Hera Shipping Solutions Pvt. Ltd.-2022 (382) ELT 552 (Tri.):

"Since Appellant-Customs Broker merely filed shipping bills based on documents received from logistic company of exporter and not actively colluded with exporter for smuggling of red sanders, imposition of penalty under Sections 114 and 114AA ibid for failure to obtain authorization from exporter and non-verification of IEC as required under Regulations 11(a), 11(d) and 11(n) of Customs Brokers Licensing Regulations, 2013, not justified in absence of any mensrea on his part."

b) Adani Wilmar Ltd. 2015 (330) ELT 549 (T):

"Breach of Customs House Agents Licensing Regulations, 2004 for not advising importer to comply with relevant provisions of law- No evidence on record that CHA aware of alleged irregularity- For breach of Regulations of CHALR 2004, same to be adjudicated under said Regulations and not under Customs Act, 1962- Imposition of penalty on CHA not justified."

c) Quick Systems- 2019 (365) ELT 558(Tri. - Chennai):

"There may be acts and omissions on the part of the CHA which may render them liable for proceedings under Customs House Licensing Regulations (CHALR) but that definitely cannot be a reason to impose penalty under Customs Act. The penalty under Section 112(a) imposed on the CHA is therefore cannot sustain and is set aside."

d) P.N. Shipping Agency-2019 (369) ELT 1560 (Tri. Mum):

"Though CHA admitted violation of Customs Brokers Licensing Regulations, 2013, penalty under Section 112(a) of Customs Act, 1962 not imposable when there is no evidence of his abetment in illegal importation of contraband goods or that he had wrong intent or prior knowledge about such violation. Negligence/ omission by CHA may attract proceedings under said Regulations and not penalty under Section 112(a) ibid which requires mala fide act/ omission rendering goods liable to confiscation."

e) Neptune's Cargo Movers Pvt. Ltd. 2007 (219) ELT 673 (T):

"CHA or their Manager being negligent, facilitated attempt to unauthorisedly export prohibited goods cannot be held to have been substantiated in impugned order. Section 114(i) of Customs Act, 1962 nor contemplates penalty for negligence."

f) Sethu Samudhra Shipping Services 2010 (262) ELT 570 (T):

"Lack of care to verify genuineness of export/exporters and filing export documents which were not from actual exporter- Allegations cannot lead to conclusion that CHA aided attempt to smuggle goods, though it may lead to action for failure to discharge duty under CHALR- In absence of

action/inaction rendering goods liable to confiscation, penalty could not be sustained on CHA under Section 114 of Customs Act, 1962."

39. The CB submitted that without prejudice to the above, in respect of the exports made in January, 2018, the Notice was issued more than 06 years thereafter on 03.03.2024. Although there is no time limit under Section 124, the CB stated that in the following judgements, it is held that even if there is no limitation stipulated under the statute, the notice must be issued within a maximum period of 5 years: -

(a) **State of Punjab vs. Bhatinda District Co-op. Milk P. Union Ltd.-2007 (217) ELT 325 (SC);**

(b) **S.J.S. International-2022 (380) ELT 577 (Guj.);**

(c) **Famina Knit Fabs- 2020 (371) ELT 97 (P&H);**

(d) **Madina (UZ) Impex-2019 (368) ELT 555(Del.);**

(e) **Gemini Dyeing & Printing Mills Ltd. - 2015 (316) ELT11(Kar.);**

(f) **PratibhaSyntexLtd. 2013 (287) ELT 290 (Guj.);**

(g) **Padmini Exports 2012 (284) ELT 490 (Guj.).**

Hence, in view of the above judgements, the CB submitted that the Notice for penal proceedings against them was grossly time barred.

40. The CB, therefore, prayed that all the said charges against us in these proceedings may please be dropped as far as these pertain to us in as much as the SCN had been issued on assumptions and presumptions based on inadequate, incomplete & inconclusive investigation.

41. The CB finally submitted that in view of the above submissions, proceedings initiated pursuant to the show cause notice under reply, would liable to be dropped and accordingly be dropped.

Discussion and Findings: -

42. I have gone through the record of the case, Show Cause Notice dated 01.07.2024, Inquiry Report dated 10.10.2024, written submissions of the CB dated 16.12.2024.

42.1. The Inquiry Officer vide inquiry report dated 10.10.2024 held the charges of violations of Regulation 10(d) & 10(e) of the CBLR, 2018 as 'proved'

and violations of Regulation 10(a), 10(n) & 10(q) of the CBLR, 2018 as 'Not Proved'.

42.2. For brevity, I refrain from reproducing the brief facts of the case in details as the same has already been discussed above. I, now, examine the charges in the SCN sequentially.

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

I observe that the said regulation 10(a) of CBLR, 2018 reads as: - *"obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;"*

- a) I observed that the CB didn't appear for the statement before the investigating agency i.e., SIIB(X) and also didn't submit the relevant documents i.e., authorization letter, packing list, GSTN registration copy etc. Hence, it appeared that the CB violated the provisions of regulation 10 (a) of the CBLR, 2018.
- b) From perusal of the IO report, I find that the CB had produced copies of all the relevant documents viz Invoice, packing lists, authorization, PAN Card, GST Registration of the Exporter and Aadhar Card of the Director of the company to the Inquiry Officer. The CB had submitted to the IO that they didn't receive any summons and they were not aware of any Investigation/Demand of documents from Customs Authorities.
- c) I find that the CB submitted all the relevant documents including authorization from the exporter to the Inquiry Officer. In view of the above facts, **I find the charges of violation of provisions of Regulation 10(a) of CBLR, 2018 as not proved.**

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

I observe that the said regulation 10(d) of 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 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"*

- a) From perusal of the show cause notice, I observe that the foreign remittance against the export consignments has not been realised even after the expiry of the prescribed time-limit. The fraudulent export was done so as to claim the undue export benefits.

- b) I found that the CB never appeared before the investigation agency despite several summons. There is nothing on record that the CB had informed the exporter about non-compliances of prescribed rules regarding realisation of foreign remittance. The fraud and non-compliances by the exporter were also never brought to the knowledge of the Customs Authorities. I observe that the Inquiry Officer in his report stated that the CB failed in his responsibilities to verify that the conditions attached in the law/procedure governing export incentives are complied with.
- c) I find that 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. In this regard, reliance is also placed on the decision of Hon'ble Tribunal, New Delhi in case of **KVS Cargo Vs. Commissioner of Customs (Gen.), New Delhi, reported in 2018 (363) E.L.T. 856 (Tri. - Del.)**. Relevant para 8 of the said order is re-produced as under:
- "8. Regarding Regulation 11(d), the CB is expected to advise their client, to comply with the provisions of the Customs Act, it stands established that the appellant has not met the actual importer. In view of above, the failure to observe Regulation 11(d) stands established".*
- d) I find that ratio of the aforesaid judgments is squarely applicable in the instant case. 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 exporter and abetted the fraudulent export and did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Hence, the CB cannot shy away from the responsibilities & obligations cast upon them under the CBLR, 2018.
- e) From the above facts and circumstances, I am of the considered view that the said Custom Broker failed to advise the actual exporter. Further, the CB did not bring the said discrepancy to the notice of the Deputy or Assistant Commissioner of Customs. Therefore, **I hold that the CB has violated the provisions of Regulation 10(d) of the CBLR, 2018.**

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

I observe that the said regulation 10(e) of CBLR, 2018 reads as: *"A Customs broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;"*

- a) From perusal of the SCN, I observe that the remittances related with the shipping bills processed by the CB were not received. The CB didn't advise the exporter for remitting the export proceeds in due time. The Inquiry Officer in his report has also mentioned that the CB didn't advise the export to bring the due foreign remittance for the export shipments or ask for the extension of time.
- b) I found that If CB had exercised due diligence to ascertain the correctness of claims made under various export incentive schemes, then financial loss to government exchequer could have been averted.
- c) In view of the same, **I hold that the CB has violated the provisions of Regulation 10(e) of CBLR, 2018**

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

I observe that the said regulation 10(n) of CBLR, 2013 reads as: "*A Customs Broker shall verify correctness of Importer Exporter Code (IEC) number, Goods and Service Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information.*"

- a) From perusal of the SCN, I observe that the exporter neither came for recording their statements nor were they found at the mentioned address in their IEC. It appears that the exporter was non-existent at the address mentioned in IEC.
- b) The CB in his written submission has submitted that they have had verified all the documents required for KYC and verified address of the exporter physically.
- c) Inquiry Officer in his report has mentioned that the CB had provided all the documents of KYC during the Inquiry Proceedings and the KYC details are also confirmed by the Bank. Inquiry Officer has reported that the CB had verified the GST & IEC registration details from the respective websites as well as physically.
- d) From the above facts and circumstances, I find that charges of violation of **provisions of Regulation 10(n) of the CBLR, 2018 as not proved.**

47. With regard to violation of Regulation 10(q) of CBLR, 2018

I observe that the said regulation 10(q) of CBLR, 2013 reads as: "*co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees*"

- a) From perusal of the SCN, I find that various summons were issued to the Customs Broker but he never presented himself before the investigating agency.
- b) Inquiry Officer in his report has submitted that the CB had not received any summons and they were not aware of any Investigation/Demand of documents from Customs Authorities. The Inquiry Officer didn't find any evidence that the CB was informed about the investigations either in form of the summons or any other letter. I also find that the CB was appeared before the Inquiry Officer as well as before the Adjudicating Authority during proceedings under CBLR, 2018.
- c) Therefore, as discussed above, I find the charges of **violation of provisions of Regulation 10(q) of the CBLR, 2018 as not proved.**

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

a) **The Hon'ble Supreme Court in the case of Commissioner of Customs V/s. K. M. Ganatra and Co.** in civil appeal no. 2940 of 2008 upheld the observation of Hon'ble CESTAT Mumbai in M/s. Noble Agency V/s. Commissioner of Customs, Mumbai that: *"the CHA occupies a very important position in the Custom House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interest of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the government agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations"*.

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

"15. In view of the aforesaid discussion, the time limit contained in Regulation 20 cannot be construed to be mandatory and is held to be directory. As it is already observed above that though the time line framed in the Regulation need to be rigidly applied, fairness would demand that when such time limit is crossed, the period subsequently consumed for completing the inquiry should be justified by giving reasons and the causes on account of which the time limit was not adhered to. This would ensure that the inquiry proceedings which are initiated are completed expeditiously, are not prolonged and some checks and balances

must be ensured. One step by which the unnecessary delays can be curbed is recording of reasons for the delay or non-adherence to this time limit by the Officer conducting the inquiry and making him accountable for not adhering to the time schedule. These reasons can then be tested to derive a conclusion whether the deviation from the time line prescribed in the Regulation, is "reasonable". This is the only way by which the provisions contained in Regulation 20 can be effectively implemented in the interest of both parties, namely, the Revenue and the Customs House Agent."

49. I find that the Custom Broker License of the CB M/s. Spaceage Logistics (CB No. 11/2001) stands revoked since 2020. Also, in another case adjudicated vide CAO No. 141/CAC/PCC(G)/SJ/CBS Adj dated 18.02.2022, the CB license has been revoked and security deposit forfeited. Further, in two more offences, reported against the CB and adjudicated vide Order-in-Originals CAO No. 92/CAC/PCC(G)/SJ/CBS Adj. dated 24.02.2023 and vide CAO No.36/CAC/PCC(G)/RC/CBS-Adj dated 23.09.2024, wherein the CB license of M/s. Spaceage Logistics (CB No. 11/2001) has been 'deemed revoked' and 'security deposit deemed forfeited' which shall come into force if any contrary decision is taken at any higher appellate forum in another case. I find that the instant case is fifth consecutive offence case against the said CB which is evidentiary that the CB is a habitual offender. I am inclined to revoke the CB license in this case also which shall prevail or come into force if any contrary decision is taken at any higher appellate forum in other cases mentioned above.

50. In view of the above, for their acts of omission and commission, the CB M/s. Spaceage Logistics CB No. (11/2001) 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) of CBLR, 2018 and is liable for penal action. Accordingly, I pass the following order:

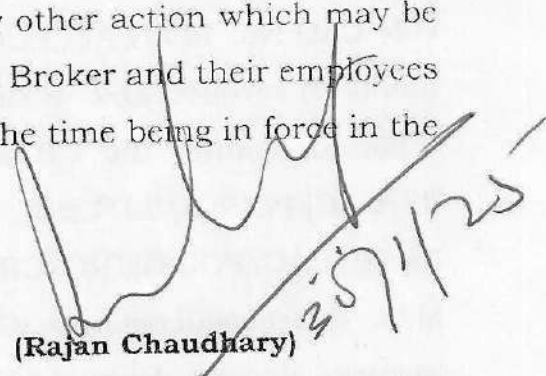
ORDER

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

- i. I hereby order for revocation of the CB license held by M/s. Spaceage Logistics (CB No. 11/2001; PAN - AGQPA5206J) under Regulation 14 of CBLR, 2018, which shall come into force if any contrary decision is taken at any higher appellate forum in other cases.

- ii. I hereby order for forfeiture of entire amount of security deposit furnished by the CB M/s. Spaceage Logistics (CB No. 11/2001; PAN – AGQPA5206J) under Regulation 14 of CBLR, 2018, which shall come into force if any contrary decision is taken at any higher appellate forum in other cases.
- iii. I, hereby impose penalty of Rs. 50,000/- (Rs. Fifty Thousand Rupees Only) on M/s Spaceage Logistics (CB No. 11/2001; PAN – AGQPA5206J) under Regulation 18 of the CBLR, 2018.
- iv. I hereby order that the CB immediately surrender the original License as well as all the F, G & H cards issued there under immediately.

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


(Rajan Chaudhary)

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

To,

M/s. Spaceage Logistics (CB No. 11/2001),
Subhan Ahmed House, R/11,
Opp. Cigarette Factory, Chakala,
Sahar Road, Andheri East,
Mumbai-400099.

Copy to:

1. The Pr. Chief Commissioner/ Chief Commissioner of Customs, Mumbai I,II, III Zone.
2. All Pr. Commissioners/Commissioners of Customs, Mumbai I, II, III Zone.
3. DRI, MZU, Mumbai.
4. SIIB (X), ACC, Sahar, Mumbai.
5. CIUs of NCH, ACC & JNCH
6. EDI of NCH, ACC & JNCH
7. ACC (Admn), Mumbai with a request to circulate among all departments.
8. JNCH (Admn) with a request circulate among all the concerned.
9. Cash Department, NCH, Mumbai.
10. Notice Board
11. Office Copy