



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/357/2024 -CBS आदेश दिनांक/Date of Order: 12.02.2025

CAO No. 78/2024-25/CAC/PCC(G)/RC/Adj-CBS जारी दिनांक/Date of issue:12.02.2025

DIN: 20250277000000520154

द्वारा जारी : राजन चौधरी

Issued By : **Rajan Chaudhary**

प्रधान आयुक्त, सीमाशुल्क(सामान्य)
मुंबई -400 001

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

ORDER-IN-ORIGINAL मूल आदेश

ध्यान दीजिए/ N.B. :

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

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2. इस आदेश के विरुद्ध अपील माँगे गए राशी के 7.5% के भुगतान पर सीमाशुल्क अधिनियम, 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, यथोत्तखंडपीठ में स्वीकार्य है।

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

3. यह सूचित किया जाता है की इस आदेश के अमल में आते ही, न्याय निर्णयन अधिकारी का अधिकार क्षेत्र समाप्त होता है और सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण, पश्चिम क्षेत्री यखंडपीठ, के M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai के संदर्भ में जारी आदेश क्रमांक A/86617-86619/2018 दिनांक

के अनुसार न्यायिक आदेश तदोत्तर 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, 1982 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 ब्याजवलागाए गए 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. Trade Wings Limited, having office address at Building No. 5, Unit No. A/25, Mittal Industrial Estate, Marol, Andheri (East), Mumbai-400 059 (hereinafter referred to as the Customs Broker/CB), bearing PAN based Registration No. AAAC4639FCH001 are holding a regular Custom Broker License No 11/52 issued by Commissioner of Customs, Mumbai under Regulation 10(1) of the Customs House Agents Licensing Regulations (CHALR), 1984 [Now regulation 7(2) of Customs Broker Licensing Regulations (CBLR, 2018)) and as such they are bound by the regulation and condition stipulated therein.

2. An offence report in the form of Order-in-Original CAO No: ADC/MKS/81/2023-24 Adj.(X) ACC dated 25.11.2023, issued by Additional Commissioner of Customs, ACC (Export), Mumbai was received in the Customs Broker Section wherein inter-alia following were informed:

2.1 On the basis of specific information received by the Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit (MZU), Mumbai it was observed that one Shri Rajesh Baheti, Chairman of M/s. Lorgan Lifestyle Limited, Pune formerly known as M/s Sri Sidhivinayak Marketing, Pune (Import Export Code No. 3107012696) was engaged in bogus export through Mundra port by preparing manual shipping bills, on which real exports was not affected. The said information also indicated his involvement in certain other fraudulent activities in relation to export of goods which includes bringing of illegal remittances from abroad. Further, it was revealed that another exporter M/s Ashapura Garments Ltd along with M/s Lorgan Lifestyle Limited was involved in fake/ fraudulent exports and accordingly, DRI, MZU, Mumbai conducted the searches at office and residential premises of the persons involved and investigation was initiated. Investigation revealed that M/s Lorgan Life Style Ltd. was procuring fake purchase bills against the export consignments from one Mr. Suhel Ansari, through fake firms floated by him.

Brief of investigation conducted by DRI, Mumbai Zonal Unit: -

2.2 Searches conducted under Section 105 of the Customs Act, 1962. by the officers of DRI, Mumbai Zonal Unit, Mumbai:

2.2.1 The office premises of M/s. Lorgan Lifestyles Pvt. Ltd. situated at 6, Raghukul Apartments, Sr. No. 968/969, S B Road, Shivaji Nagar, Pune-411016 was searched on 23.07.2015 and during the course of search proceeding, the documents as detailed in Annexure-A to the Panchanama and two computers were recovered and taken over under the Panchanama dated 23.07.2015 under the reasonable belief that the same would be relevant to the investigation.

2.2.2. The office premise of M/s. Karan Ranka & Associates, Chartered Accountant firm of one Shri Suhel Parvez Mohammed Sharif Ansari (Suhel Ansari, in short), who was engaged in opening the apparent bogus supplier firms for the export goods, situated at Unit No. 310, 3 Floor, Simlim Square, Lamington Road, Grant Road (East), Mumbai- 400007 was also searched on 29.07.2015. During the course of the search, letterheads of Rising Impex, Mind Space Complex, B wing, 1 Floor Office No. 14, Off Link Road, Malad (West), Mumbai-400064 and blank letter heads of Sun Metals, 124/11, Mohammed Estates, C.S.T Road, Santacruz (West), Mumbai 400098, were recovered. Samples of the letter heads of both the said companies were taken over under panchanama dated 29.07.2015 under the reasonable belief that the same would be required for further investigation.

2.2.3 The office premises from where Shri Suhel Ansari was operating, situated at Room No. 30, 4th Floor, Chunnwala Building. 38-Kolsa Street, Pydhonie, Mumbai- 400003 was searched on 14.08.2015. During the course of search of the said premises, certain records/documents, three laptops and one hard disk as mentioned in Annexure- A to the Panchanama were recovered and various rubber stamps were also recovered and impressions of the same were taken on 'a page attached to the Panchanama dated

14.08.2015, All the said records/documents and electronic items were taken over under the reasonable belief that the same would be required for further investigation.

2.3 During the course of investigation, statement of Shri Suhel Parvez Ansari and Shri Shaikh Mohammed Arshad employee of Shri Suhel Parvez Ansari was recorded on 24.08.2015 by DRI, Mumbai where they inter-alia stated that they supplied fake invoices to various export firms including M/s Mariya Exports.

2.4 Statement of Shri Karan Ashoklal Ranka Chartered Accountant was recorded under Section 108 of the Customs Act, 1962 by the DRI on 29.07.2015 wherein he gave the names of companies formed by Shri Suhel Parvez Ansari and inter-alia stated that:

- a. From March 2013, he used to be given - export documents of readymade garments, imitation jewellery, leather goods of various exporters whom he named.
- b. On the basis of the commercial invoice and packing list of exports of various exporters showing export of various export goods, supplier invoices were prepared on the printed invoices.
- c. On being asked as to how these suppliers were termed as 'bogus' by him, he stated that these existed only on paper.
- d. There was no physical movement of goods from these suppliers to the exporters although payments had been shown to be made by the exporter to the supplier through Real Time Gross Settlement (RTGS) in banks.
- e. Reconciliation of the payments received from the exporters and disbursing it amongst the supplier through banks was being made by him.

2.5 Export consignments of some of these exporters were made through M/s. Sariket Overseas, who is the provider of logistics and was clearing the consignments through M/s. Indo Foreign Agents, CHA. Statement dated 01.07.2016 of Shri Suryabhan Eknath Dhurphate, proprietor of M/s, Sanket Overseas, Navi Mumbai was recorded under Section 108 of the Customs Act, 1962 by the DRI, vide which he inter alia stated that since April 2011, he was into the business of arranging of export material by way of purchases from

open market and arranging to export the same to the overseas buyers. He gave the actual cost price and maximum purchase cost of the export goods which were purchased by him for the supply of the same to the overseas buyers. He further stated that usually the cost and expenses incurred on the export material is only around 35% of the drawback amount; that in other words the benefits availed by them and the exporter was to the extent of 65%; that on being asked to confirm the benefit percentage of 65% of the drawback amount, he confirm the same.

2.6 During the investigation by DRI, MZU, Mumbai, summons dated 21.08.2015, 01.09.2015, 18.09.2015, 24.11.2015 and 22.12.2015 were issued to Shri Abdul Aziz Mohd. Zaki for his appearance on 31.08.2015, 02.09.2015, 28.09.2015, 02.12.1015 and 29.12.2015. However, all of them were left unattended.

2.7 DRI vide its letter F.No.DRI/MZU/DJINT-31/2015/7766 dated 04.10.2016 mentioned that undue drawback is being claimed by the exporters by overvaluing the exports, whereas cheaper material is exported, and to justify the value of the goods, fake invoices from Suhel Ansari, are procured showing the higher purchase price. DRI further gave a list of exporters and stated that these exporters which included M/s Mariya Exports (IEC-0305011588) may have also adopted a similar modus operandi and requested that the same may be investigated by SIIB (X), ACC, Mumbai.

2.8 During the investigation, the details of exports made by the exporter M/s Mariya Exports (IEC-0305011588) were retrieved from the ICES System. During the period from 2012 to 2015, the exporter made total exports of 175 shipping bills and availed total drawback of Rs.6.02 lakhs. Further it was verified from the ICES system and found that the said exporter has not made any exports since year 2015.

2.9 Special Intelligence and Investigation Branch (Export)- SIIB(X) of Air Cargo Complex, Sahar, Mumbai issued summons dated 16.10.2017, 05.05.2018, 05.03.2019 &

17.08.2019 to Shri Abdul Aziz Mohd. Zaki, Proprietor of M/s Mariya Exports. In response to summons dated 30.01.2020 he authorised Mr. Shamshuddin Shaikh to act, appear, represent and give statements on behalf of him.

2.10 Shri Shamshuddin Shaikh in his statement dated 27.02.2020 inter-alia stated that:

- a. M/s Mariya Exports was in the business of export of imitation jewellery. The proprietor used to purchase the goods from local suppliers and exported the goods mainly to Dubai.
- b. He does not know the local suppliers name and addresses neither of the foreign buyers.
- c. He does not know about the transaction made by the foreign buyers.
- d. He was briefed about Shri Suhel Ansari but he does not know more in detail.
- e. He does not know any connection between Suhel Ansari and Karan Ashok Ranka.

2.11 Statement of Shri Santosh Digambar Mayekar, an authorised representative of M/s Trade Wings Ltd was recorded on 26.04.2022 wherein he inter alia stated that:

- a. Directors of the company are Shri Dr. Shailedra P. Mittal, Shri R. Vaidyanathan, Ms. Jacinta Naygani and Shri Hemant R. Panchal. He has been authorised by Shri R. Vaidyanathan to present before Customs for record of the statement under section 108 of the Customs Act, 1962, on their behalf.
- b. He has been working as branch Air Export Manager in this company since last 25 years.
- c. His sales person came into contact with Shri Abdul Aziz Zaki, the proprietor of M/s Mariya Exports, then they started the clearance work for the exporter. M/s Mariya Exports was engaged into exports of imitation Jewellery/ready-made garments/fabrics. They did clearance of imitation jewellery as per their records.
- d. They did the KYC and address verification of the firm M/s Mariya Exports.
- e. The exporter used to send the goods directly to the Air Cargo Complex, Mumbai through their logistics partners.

- f. They do not have knowledge from where and whom the exporter used to purchase the goods. They had been provided with the invoices and packing lists on the basis of the same they used to file the checklist and after getting it approved from the exporter through mail they used to file shipping bills.
- g. The exporter submitted the Invoice, Packing List, SDF Form and other required documents prepared by himself and they filed the Shipping bills according to the documents submitted by the importer/exporter.
- h. They verified the correctness of classification based on the details mentioned in invoice, packing list etc., but not the value of the goods.
- i. As and when-required, the exporter submitted/showed the samples of the consignments exported by him.
- j. They never verified the valuation part. They solved the queries related to valuation raised by the Customs as and when required.
- k. They did not notice any such kind of discrepancy regarding overvaluation of the goods during the examination.
- l. He does not know any Suhel Ansari. All the export documents were submitted by the exporter and they used to prepare the checklist and on approval of the checklist by the exporter they used to file the shipping bills. He does not know the correctness of the said fictitious bills raised by Shri Suhel Ansari.
- m. They never noticed that the declared value of the goods cleared by them for M/s Mariya Exports was highly inflated. They were never concerned about the valuation part.
- n. They have cleared approx. 12 Shipping bills in 2013 only as per his remembrance.
- o. They have not had any business with the exporter since 2013 neither they are in contact with them since their payment related terms were not good.

2.12 Further, BRC details (FOB yet to be realized) in respect of IEC-0305011588 of M/s Mariya Exports were generated from ICES System and on scrutiny of the said details it was found that the FOB amount of USD 1,33,40,809/- has not been realized in respect of 54 shipping bills with drawback amount involved of Rs.92,1881/-. It clearly shows that

transaction value is incorrect, inflated, value of goods mis-declared by the exporter M/s. Mariya Exports, hence goods appear to be liable for confiscation. Also Drawback Amount of Rs.6.02 Lakhs involved in 175 Shipping bills appears to be recoverable as per Rules 16 of the Customs, Central Excise Duties and Service Tax Drawback Rule, 1995.

2.13 From the investigations, scrutiny of various documents retrieved and statements recorded by DRI, MZU, Mumbai, it appears that Suhel Parvez Ansari was in the business of raising fictitious bills which involved just printing of bills in the names of the firms/companies which did not exist and no physical purchase and sale of the goods were effected as per details mentioned in the said bills and he got bills printed in the names of various fake firms; that no purchase of any kind of goods be it in the form of garments/imitation Jewellery had been made by him and the proprietors/directors of these firms/companies were all his friends and no sale as shown on the bills had been made to any exporters shown on the bills. The same was admitted by the said Suhel Parvez Ansari in his statements recorded by DRI, MZU, Mumbai. This clearly shows that Shri Suhel Parvez Ansari had supplied fake bills in the name of a number of companies to the exporters including M/s. Mariya Exports without supplying any goods.

2.14 Further, it appears from the perusal of the statements of Shri Karan Ranka, Chartered Accountant dated 29.07.2015, 30.07.2015 which were given before the DRI, MZU under Section 108 of the Customs Act, 1962 that Shri Suhel Ansari among other things has admitted that the supplier's invoices were being prepared on the blank invoices on the basis of Commercial Invoice and packing list of various export goods; that the entries in supplier invoices were matched with the particulars of export documents; that the suppliers were bogus and existed only on papers; that no lorry receipt and transportation document was put in these supplier invoices as there was no transportation of good; that all these things were being done by him under the instruction of Shri Suhel Ansari. In his statement he had confirmed that invoices retrieved under Panchanama dated 23.07.2015

were the same invoices which were prepared by him as per instructions of Shri Suhel Ansari. Thus, from the above it appears that Shri Suhel Ansari has supplied fake bills in the name of a number of companies to the exporters including this exporter without supplying any goods.

2.15 Further, scrutiny of the impressions of the rubber stamps of various companies recovered by DRI during their searches revealed that the said impressions of the rubber stamps contain the stamp impressions of the bogus suppliers on whose name bogus sales invoices were raised to cover the local supply of goods to M/s Mariya Exports.

2.16 It appears from investigation that goods were procured from Domestic Tariff Area (DTA) without any invoices, so no details of its manufacturing, production, using imported material or excisable material therein were available so it could not be ascertained whether any duties have been paid or otherwise. During investigation, the exporter could not produce any such details in respect of manufacturing, production or use of any imported material in impugned export goods, though he was having enough opportunity as he presented himself for recording of his statement but he failed to produce any such details. Therefore, it appears from investigation that the necessary ingredient of second proviso to Rule 3 Drawback Rule, 1995 is attracted in this case which does not permit any amount of drawback in such cases where no duty has been paid.

2.17 During the investigation DRI enquired with the Consulate General of India, Dubai, UAE who vide letter dated 08.03.2018 reported that from the scrutiny of the documents provided by Federal Customs Authority, Dubai it emerged that goods had been cleared and unit values had been much lower than what has been declared to Indian Customs. As per DRI the instant exporter has also adopted the similar modus- operandi.

2.18 From the investigation it appears that M/s. Mariya Exports has made the export of goods by way of overvaluation and has availed fraudulent drawback from Air Cargo

Complex, Mumbai. From the investigation it also appears that during the period 2012 to 2016, the exporter made exports vide 175 shipping bills of total FOB value Rs.2308.12 Lakhs and availed total drawback amount of Rs.6.02 Lakhs by way of overvaluation.

2.19 From the investigations; made by the DRI, MZU and the investigations conducted by SIIB (Export), ACC, Mumbai it appears that:

- a. M/s Mariya Exports has procured fake and bogus invoices from Shri Suhel Ansari.
- b. Goods of inferior quality were; procured from the local market without any invoice.
- c. Incorrect bank transactions were made with the fake suppliers; whose invoices were raised by Shri Suhel Ansari.
- d. This was done to conceal the actual transactions and give cover to the bogus transactions. The bills were procured only for accounting purpose however there was not physical movement of the goods against the fake invoice raised by Shri Suhel Ansari.
- e. As export goods were procured from local market which were of inferior quality and having low value, therefore impugned export by M/s. Mariya Exports was grossly overvalued and only done for the purpose of fraudulent claim of drawback.
- f. Aforesaid fact of overvaluation supported by various statements as mentioned above and by the enquiry caused by DRI with the Consulate General of Dubai.

2.20 It was found from the investigation that Customs Brokers M/s. Trade Wings Limited was one of the Customs Brokers who had facilitated clearance of all the 175 consignments shipping bills of the said exporter.

- a. The CHA is an agent of the exporter. He works on behalf of Exporter. He also takes authorization to work on behalf of exporters. A CHA was fully aware that omission and commission by the exporter affects the working of the image of CHA, it is a business practice that CHA knows on whose behalf they are working, as CHA can face investigation for omission and commission at any time. As per CHA Regulation, a CHA also requires to know the client. Even in the absence of such a

requirement it is business practice that the CHA knows on whose behalf they are working as the relation between CHA and exporter is a long time relation.

- b. Unlike retail business where a customer comes to a retail shop and transaction concludes in a moment, the relationship between CHA and exporter is a long-term relationship so it is not possible that CHA does not know the exporter. The CHA had been dealing with such individuals to collect documents and collect goods. The CHA must have raised his fees from the same source. It is also not possible for CHA to deal with non-existing persons.
 - c. The Purchase Bills were fictitious. Actual movements of goods are always under cover of Challan and Invoices. There are some other requirements of the local Government which prevent movement of goods without documentation. It is also unlikely that CHA has been receiving goods based on fictitious Bills and he was not aware. Further the CHA has responsibility to guide exporter and inform about the requirement that only in certain cases, both types of Drawback can be claimed by the exporter. Had the CHA seen these documents relating to meeting the criteria to claim both types of Drawback and checked the correctness of relevant declaration, such fraudulent export could not have been possible. Therefore, under the fact and such circumstances, it appears the CHA actively connived with exporters in claiming undue Drawback and over valuing the export goods and mis-declaring in Shipping Bill. Therefore, CB has rendered themselves liable for Penal action under Section 114(i), 114(iii) and 114AA of Customs Act, 1962.
3. On perusal of the offence report i.e. Order-in-Original No. ADC/MKS/81/2023- 24 Adj.(X) ACC) dated 25.11.2023, it is observed that the adjudicating authority has imposed penalty of Rs. 10,000/- under Section 114(i), Rs. 10,000/-under Section 114(iii) and Rs. 5,000/- under Section 114AA of the Customs Act, 1962 on Customs Broker M/s M/s. Trade Wings Limited (CB-11/52).

4. In view of the above facts and finding of the investigation, it appeared that the Customs Broker M/s Trade Wings Limited (CB-11/52) has failed to comply with the following regulations of the Customs Brokers Licensing Regulation, 2018: -

4.1 Regulation 11(d) of CBLR, 2013 (now Regulation 10(d) of CBLR, 2018): *“A Customs Broker shall advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be.”*:

- a. On analysis of the offence report it appears that exporter M/s Mariya Exports was required to submit BRCs/negative statements in prescribed format as per the requirement of the Circular No. 5/2009-Customs dated 02.02.2009 issued vide F. No. 609/167/2007-DBK.
- b. It appeared from the offence report that the exporter has not complied with the requirement of the said circular. It was the responsibility of the CB M/s Trade Wings Limited (CB-11/52) to advise his client to submit these statements to the proper officer in respect of the drawback shipping bills.
- c. It also appeared from the offence report that exporter M/s Mariya Exports was a merchant exporter who procured the goods from Domestic Tariff Area (DTA). In terms of the requirement of the Circular No. 16/2009-Customs dated 25.5.2009 issued vide F. No. 609/137/2007-DBK, the merchant exporters who purchase goods from traders were required to furnish a declaration in the prescribed format, at the time of export of such goods. It was the responsibility of the CB to advise his client about the requirements of such declaration.
- d. In the instant case, the CB appeared to have failed to advise his client to comply with the above mentioned rules and regulation framed under the provisions of Custom Act, 1962. Moreover, the CB also failed to bring the matter of these non-

compliances to the Deputy/Assistant Commissioner of Customs. Hence, it appeared that CB failed to perform due obligation under Regulation 10(d) of CBLR, 2013.

4.2 Regulation 11(e) of CBLR, 2013 (now regulation 10(e) of CBLR, 2018): *“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. On analysis of the offence report, it appears that the CB merely relied on the information provided by the exporter in filing the documents. During the investigation in the instant case, it is well established that the exporter had overvalued the goods using fake invoices supplied by Shri Suhel Ansari so as to claim undue export incentives. The case could only be detected by the investigation carried out by the DRI, MZU.
- b. It further appeared that the CB failed to exercise due diligence and to sensitize the exporter to make proper declaration in terms of Circular No. 5/2009-Customs dated 02.02.2009 and Circular No. 16/2009-Customs dated 25.5.2009 in respect of the exported goods.
- c. Thus, it appeared that CB failed to exercise due diligence in respect of the cargo undertaken for the clearance in respect of the exporter M/s Mariya Exports. Hence, it appeared that CB failed to perform due diligence under Regulation 11(e) of CBLR, 2013.

SHOW CAUSE NOTICE (SCN):

5. In view of the Offence Report received in the form of Order-in-Original CAO No: ADC/MKS/81/2023-24 Adj.(X) ACC dated 25.11.2023, issued by Additional Commissioner of Customs, ACC (Export), Mumbai, action under Custom Brokers Licensing Regulations (CBLR), 2018 was taken against the CB M/s. Trade Wings Limited (CB No. 11/52). Accordingly, in terms of Regulation 17(1) of CBLR, 2018, a Show Cause

Notice (SCN) No. 29/2024-25 dated 04.07.2024, was issued to the CB M/s. Trade Wings Limited (CB No. 11/52), for apparent violation of Regulation 11(d) & 11(e) of the Customs Broker Licensing Regulation (CBLR), 2018 (now Regulation 10(d) and 10(e) of CBLR, 2018), wherein the CB was called upon to show cause, as to why:

- i. the Customs Broker license bearing no. 11/52 issued to them should not be revoked under Regulation 14 read with Regulation 17 of CBLR, 2018.
- ii. security deposited should not be forfeited under Regulation 14 read with Regulation 17 of CBLR, 2018, and/or
- iii. penalty should not be imposed upon them under Regulation 18 read with Regulation 17 of CBLR, 2018.

5.1 Also, vide the said SCN No. 29/2024-25 dated 04.07.2024, Shri B.S. Akode, Assistant Commissioner of Customs, was appointed as the Inquiry Officer to conduct inquiry into the case under regulation 17 of CBLR, 2018. The Inquiry Officer completed the inquiry proceedings under regulation 17(5) of CBLR, 2018 and submitted the Inquiry Report dated 28.09.2024, as detailed below.

INQUIRY REPORT: -

6. The Inquiry officer (here in after referred to as the 'IO') concluded the inquiry proceedings and submitted the inquiry report dated 28.09.2024, wherein the charges levelled against the CB of violation of Regulations 10(d) and 10(e) of CBLR, 2018 are held as "**Proved**".

FINDINGS OF THE INQUIRY OFFICER: -

7. The IO had gone through the various case laws referred by the CB in his submission and observed that the ratio of judgment of the said case laws were not squarely applicable in the instant case as the fact and circumstances were different and clearly distinguishable.

7.1 The IO had also gone through the case law Escorts Ltd. vs Commissioner of Customs 2000(122) ELT576(TRI-DEL) quoted by the CB and found that Appellants

imported Hardware Interface and Software and they had made a misdeclaration on the Bill of Entry with a view to avail Nil rate of duty and as such the penalty under Section 114A of the Customs Act was imposable; that in addition as the Customs House agent was working as their agent and the wrongful acts done by agent would make them vicariously liable for penalty. The description of the goods was mentioned in the bill of entry on the basis of the description given in the invoice received from the foreign supplier. In the light of these facts which had not been disputed, it couldn't be claimed that the Appellants had made any wilful mis-statement. In absence of any of the ingredients mentioned in Section 114A of the Customs Act, the penalty under that section couldn't be imposed on the Appellants. Accordingly, under Section 114A of the Act, set aside the penalty imposed on the Appellants.

7.2 The IO observed that Customs Brokers M/s Trade Wings Ltd. facilitated the clearance of all 12 consignments/shipping bills for the exporter M/s Maria Export. It is important to note that a Customs Broker is fully aware that any omissions or commissions by the exporter can impact their own professional reputation.

7.3 The IO further observed that the Customs Broker (CB), M/s Trade Wings Ltd., was actively engaged with the exporter, frequently collecting documents and goods during the relevant period. The IO stated that given the regulatory requirements imposed by local authorities, which mandate proper documentation for the movement of goods, it was unbelievable that the CB was dealing with non-existent entities. It also seemed unlikely by IO that M/s Trade Wings Ltd. received goods based on fictitious bills without being aware of the nature of the transactions. And, thus the IO found that the CB appeared to have failed in its duty to guide the exporter and provide accurate information regarding the procedure for claiming Drawback. Also, as per the IO, a thorough review and verification of documents, including an examination of the accuracy of relevant declarations, could have prevented such fraudulent exports.

7.4 Therefore, given these facts and circumstances, the IO found that the Customs Broker, M/s Trade Wings Ltd., actively colluded with exporters to claim undue Drawback, overvalue export goods, and mis-declared information in the Shipping Bills. As a result, the IO stated that the Customs Broker was liable for penal action under Section 114(i), 114(iii), and 114 AA of the Customs Act, 1962.

8. Regulation 10(d):

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

8.1 On perusal of the Show Cause Notice issued by SIIB(E), Air Cargo Complex, Sahar, Mumbai, the IO found that the CB did not advise the exporter and abetted the exporter by declaring the incorrect value of the goods in shipping bills against the fake invoices to avail undue drawback and did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Further, the IO stated that in terms of Boards Circular No. 5 of 2009 Customs dated 02.02.2009 vide F. No. 609/ 167/2003-DBK, the exporter was required to submit the proof of export realization to the Custom House within the stipulated time-limit.

8.2 Except oral submission, during the course of personal hearing also, the IO stated that the CB had failed to submit any documentary proof to that extent that he had advised the exporter properly with regard to declaration of values, obtaining proper invoices, realization of export proceeds within stipulated time frame allowed under Foreign Exchange Management Act, 1999. However, according to the IO, from the offence report it was evident that the CB had properly not advised the exporter while filing the Shipping Bill(s) but also abetted the wrong doer and thereby failed in his duty to inform the same to the Department. Thus, as per the IO, the violation of regulation 10 (d) of CBLR 2018 by the CB was conclusively proved.

9. Regulation 10(e):

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

9.1 The IO stated that the BRC details (FOB yet to be realized) in respect of IEC-0305011588 of M/s Mariya Exports were generated from ICES System and on scrutiny of the said details, it was found that the FOB amount of USD 1,33,40,809/- had not been realized in respect of which clearly showed that the transaction value was incorrect, inflated & the value of goods was mis-declared by the exporter M/s. Mariya Exports.

9.2 The IO further stated that it had been confirmed through the statement of Mr Shikh Mohamd Arshad, an employee of Mr. Suhel Ansari, Mr. Karan Ashoklal Raka, chartered Accountant, Mr Shamsuddin Shaikh, authorised representative of Mr. Abdul Aziz Mohamad Zaki owner of Maria Export that:

- I. M/s Mariya Exports had procured fake and bogus invoices from Shri Suhel Ansari;
- II. As export goods were procured from local market which were of inferior quality and having low value.
- III. The suppliers listed were fictitious and existed only on paper.
- IV. No lorry receipts or transportation documents were associated with these invoices, as no goods were actually transported.
- V. These fraudulent actions were carried out under the instructions of Mr. Suhel Parvez Ansari.
- VI. Aforesaid fact of overvaluation supported by various statements as mentioned above and by the enquiry caused by DRI with the Consulate General of Dubai.

9.3 The IO observed that the Customs Broker (CB) failed to exercise due diligence and facilitated the exporter in obtaining undue benefits by overvaluing the exported goods, while cheaper materials were actually exported. To justify the inflated value, the IO found that the fake invoices from Mr. Suhel Ansari were used to indicate a higher purchase price.

Upon reviewing the case, according to the IO, it was evident that the CB did not perform the necessary due diligence and failed to provide the client with information regarding the realization of export proceeds within the required time frame. Consequently, the IO stated that the CB appeared to have violated Regulation 10(e) of the CBLR, 2018. Thus, as per the IO, the violation of regulation 10 (e) of CBLR 2018 by the CB is proved.

10. Hence, as discussed above, the Inquiry Officer vide his inquiry report dated 28.09.2024 held that the charges of violation of regulation 10(d) and 10(e) are “proved”. Under the provisions of Regulation 20(6) of CBLR, 2013 (now Regulation 17(6) of CBLR, 2018) a copy of the inquiry report was shared with the CB and for the sake of Principle of Natural Justice an opportunity of personal hearing was granted to the CB.

RECORDS OF PERSONAL HEARING:-

11. The personal hearing, under Regulation 20(6) of CBLR, 2013 (now Regulation 17(6) of CBLR, 2018), was fixed on 05.12.2024. However, due to administrative reasons the personal hearing was adjourned on 18.12.2024. On 18.12.2024, Sh. Ranjeet Singh, Advocate for the CB and Sh. Santosh Mayekar, Sr. Manager (Operations) of the CB firm/company appeared for hearing and submitted their written submissions dated 05.12.2024 and reiterated the same. They also submitted that ‘*no drawback shipping bills were handled by them and as such they have no role to play in the matter*’.

WRITTEN SUBMISSIONS OF THE CB:-

12. As regards the violation of Regulation 10(d) of CBLR, 2018, the CB submitted that the violation of this regulation has been alleged on the following premise:

(i) On analysis of the offence report it appeared that the exporter M/s. Mariya Exports was required to submit BRCs/negative statements in prescribed format as per the requirement of Circular No. 05/2009-Cus dated 02.02.2009 issued vide file number 609/167/2007-DBK:

(ii) It appeared from the offence report that the exporter has not complied with the requirement of the said circular. It was the responsibility of the CB to advise his client to submit these statements to the proper officer in respect of the drawback shipping bills:

(iii) It also appears from the offence report that exporter M/s. Mariya Exports was a merchant exporter who procured the goods from Domestic Tariff Area (DTA). In terms of the circular No. 609/137/2007-DBK, the merchant exporter who purchase goods from traders were required to furnish a declaration in the prescribed format, at the time of export of such goods. It was the responsibility of the CB to advise his client about the requirements of such declaration.

(iv) In the instant case, the CB appears to have failed to advise his client to comply with the above mentioned rules and regulations framed under the provisions of Customs Act, 1962. Moreover, CB appears to have failed to bring the matter to the notice of the Deputy Asstt. Commissioner of Customs Thus, the CB has violated Regulation 10(d) of CBLR. 2018 (Para-4.1);

12.1 The CB submitted that there is no DBK claim against the Shipping Bills handled by the CB. In other words shipping bills handled by CB are free shipping bills i.e. without claim of any incentive. The mentioned circulars are applicable only in case of DBK claim. Therefore, question of following the circulars or for that matter advising his client does not arise. It has wrongly been claimed that CB has handled all the 175 shipping bills. The CB has handled only 12 shipping bills as mentioned in forgoing Paras.

12.2 The CB submitted that the inquiry officer while proving the charge recorded the following findings:

"On perusal of the show cause notice issued by SIIB(Export), ACC. Sahar Mumbai it appears that the CB did not advice the exporter anet abetted the exporter by declaring the incorrect value of the goods in the Shipping Bill". [Para-24.4].

The CB submitted that the shipping Bills were filed on the basis of export invoices and the CB is not expected to conduct enquiry about the procurement of the export goods

particularly when the goods were exported against free shipping bills. Therefore, the alleged violation of Regulation-10(d) is not sustainable.

13. **Regulation 10(e):**

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

13.1 The CB submitted that the violation of this regulation has been alleged on the following premise:

*(i) On analysis of the offence report, it appears that the B merely relied on the information provided by the exporter in filing the documents. During the investigation in the instant case, **it is well established that the exporter had overvalued the goods using fake invoices supplied by shri Suhel Ansari so as to claim undue export incentives.** The case could only be detected by the investigation carried out by the DRI MZU.*

(ii) It further appears that CB failed to exercise due diligence and sensitize the exporter to make proper declaration in terms of Circular No. 5/2009-cus dated 02.02.2009 and Circular No. 16/209-cus dated 25.05.2009 in respect of the exported goods. Thus, the CB has violated Regulation 10(e) of CBLR. 2018;

13.2 The CB submitted that no shipping bill under claim of DBK was handled by CB. No any other export incentives were claimed against the shipping bills handled by CB. Further, the due diligence is with respect to the information which he imparts to his client. In this regards, the judgment of Hon'ble Tribunal in M/s. Kunal Travels (Cargo) Vs CC(I&G), IGI Airport, New Delhi reported in 2017 (354) E.L.T. 447 (Del.) can be gainfully utilized which read as under:

"Regulation 13(e) of the CHALR. 2004 requires the CHA to "exercise due diligence to ascertain the correctness of any information which he imports to a client with reference to any work related to clearance of cargo or baggage". The CHAs due diligence is for information that he may give to its client and not necessarily to do a background check of either the client or of the consignment. Documents prepared or filed by a CHA are on the basis of instructions/documents received from its client

importer exporter. Furnishing of wrong or incorrect information cannot be attributed to the CHA if it was innocently filed in the belief and faith that its client has furnished correct information and veritable documents. The mis declaration would be attributable to the client if wrong information were deliberately supplied to the CHA. Hence there could be no guilt, wrong, Jatuh or penalty on the appellant apropos the contents of the shipping bills. Apropos any doubt about the issuance of the IE Code to M/s. H.S. Impex, it was for the respondents to take appropriate action. Furthermore, the inquiry report revealed that there was no delay in processing the documents by the appellant under Regulation 13(n)". [para 12]

13.3 The CB submitted that the facts stated herein above and the judicial pronouncement thereon clearly indicates that the CB has not violated the said provision in as much as there is nothing on record (in the form of statements or otherwise) to suggest that CB has furnished in correct information. The inquiry officer proved the charge on the following premises:

"I observe that the CB failed to exercise due diligence and facilitated the exporter in obtaining the undue benefit by overvaluing the export goods..."

13.4 The CB submitted that the Learned Inquiry officer has failed to appreciate the fact of the case in as much as the shipping bills handled by CB were free shipping bills. Therefore, the alleged violation of Regulation-10(e) is not sustainable.

14. The CB submitted that in their usual course of business filed various shipping Bills on behalf of M/s. Mariya Exports (IEC No. 0305011588) for export of imitation jewellery against Shipping Bills. The details of shipping Bills are tabulated hereunder:

Sr. No.	SB No.	SB Date	Consignee	DEST	Contents	Invoice Value	Drawback
1.	7337894	05/09/2013	MS. AL-RUSHDA INTERNATIONAL FZC, PO BOX NO 52561 TEL 050 9461870	DUBAI	OTHER IMITATION JEWELLERY Bangles	C&F USD 15479.52	0
2.	7372342	07/09/2013	SAME AS ABOVE	DUBAI	OTHER IMITATION JEWELLERY AS PER INVOICE	C&F USD 19267.50	0

3.	7504161	17/09/2013	M/S. AL-RAYAHEEN TRADING LLC. P.O.BOX NO.51228 DEIRA DUBAI TEL 050-3176434	DUBAI	OTHER IMITATION JEWELLERY AS PER INVOICE	C&F USD 17300.75	0
4.	7629528	24/09/2013	MIS. AL-RUSHDA INTERNATIONAL FZC P.O. BOX NO.52561. DUBAI TEL 050 9461870	DUBAI	OTHER IMITATION JEWELLERY AS PER INVOICE	C&F USD 22557.60	0
5.	7660637	25/09/2013	SAME AS ABOVE	DUBAI	OTHER IMITATION JEWELLERY AS PER INVOICE	C&F USD 23461.50	0
6.	7851368	07/10/2013	SAME AS ABOVE	DUBAI	OTHER IMITATION JEWELLERY AS PER INVOICE	C&F USD 24361.92	0
7.	8096042	23/10/2013	SAME AS ABOVE	DUBAI	OTHER IMITATION JEWELLERY AS PER INVOICE	C&F USD 25644.72	0
8.	8115861	24/10/2013	M/S. AL-RAYAHEEN TRADING LLC P.O.BOX NO.51228 DEIRA DUBAI TEL 050-3176434	DUBAI	OTHER IMITATION JEWELLERY AS PER INVOICE	C&F USD 24717.85	0
9.	8138750	25/10/2013	M/S JOHN UDEDIBIA KINSHASA, CONGO TEL 0898 922033	KINSHASA	OTHER IMITATION JEWELLERY AS PER INVOICE	C&F USD 8478.00	0
10.	8286538	02/11/2013	MIS. FRIENDS INTERNATIONAL. SIITE#226. 2ND FLOOR SEEMA ELECTRONIC CENTER, SADDAR, KARACHI PAKISTAN TEL 0300- 9214409	KARACHI	OTHER IMITATION JEWELLERY AS PER INVOICE	C&F USD 20782.40	0
11.	8324046	06/11/2013	MS. SAIF AL MOMMARI TRADING HOTEL ESTIAIAL BLDG, IRANI BAZAR AL-RAS, PO BOX NO 65059 DEIRA DUBAI	DUBAI	OTHER IMITATION JEWELLERY AS PER INVOICE	C&F USD 23893.50	0

12.	8513884	19/11/2013	M/S MBAMALUI C RAPHAEL KINSHASA, CONGO, TEL. +243 995641865	KINSHASA	OTHER IMITATION JEWELLERY AS PER INVOICE	C&F USD 19819.40	0
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14.1 At the outset, the CB denied all the allegations made in the SCN and further submitted that the allegations made are baseless and not sustainable, both on facts and law. The CB also submitted that nothing that is alleged in the SCN is admitted or deemed to have been admitted unless specifically admitted.

14.2 The CB argued that they have duly complied with all the statutory obligations prescribed under Customs Broker Licensing Regulation. They obtained an authorization from the exporter and verify their credentials. They transacted business in the Customs Station through an employee duly authorized; advised their client to comply with the provisions of the Act and exercised due diligence in performing their duty as Customs Broker. The CB humbly state that no provisions of the Act or Regulation, as applicable to them had been violated.

14.3 The CB submitted that the Checklist was prepared for clearance of impugned consignment for export on the basis of documents furnished by the exporter. Further, the prior approval was also obtained from the exporter before finally submitting the checklist. This was done to doubly ensure that the declaration are up to the satisfaction of the exporter who is well experienced in the import/export formalities / procedure being in the business since years together. Hon'ble CESTAT in the matter of M/s. Tata Motors Ltd. V/s. Commissioner of Customs (Import), Mumbai reported in 2015(316) E.L.T. 257 (Tri-Mumbai) wherein it was held that:

"We find that the CHA acted on the instructions of the importer which fact has not been disowned by the importer. The Tribunal in the case of Transocean Discoverer 534 LLC (supra) held that where the Bill of Entry/Declarations filed were as given to CHA by their clients and the main companies/importers owned up to their mistake, the CHA cannot be considered instrumental in any mis-declaration. Thus,

we find that the penalty on CHA is not sustainable in law. Therefore, the same is set aside and CHA's appeal is allowed."

14.3.1 The identical views had been expressed in the following judgment and had been referred in the above cited case:

(i) Escorts Ltd. v. CC, New Delhi reported in 2000 (122) E.L.T. 576.

(ii) Transocean Discoverer 534 LLC v. CC, Visakhapatnam-II reported in 2009 (236) E.L.T. 56 (Tri.)

(iii) P.D. Manjrekar v. CC, Mumbai reported in 2007 (213) E.L.T. 405.

14.4 The CB submitted that the CB dutifully delivered checklist along with all the export documents to proper officer for examination and assessment. There is no allegation that the CB withheld / suppressed any information / document either from his client or from the Customs Authority.

14.5 The CB submitted that the CB has conducted due diligence and provided all the requisite information pertaining to the export and as per the documents made available to them by the exporter. The CB wish to draw your kind attention to the judgment delivered by Hon'ble Tribunal, Mumbai in the matter of M/s. L. M. S. Transport Co. V/s Commissioner of Customs (G) Mumbai, 2014(229) E.L.T.368 (Tri- Mumbai) wherein it was held that:

"CHA files documents on the basis of material given to him by his clients and if in the case of such exercise of his functioning, he believes in good faith that these documents were genuine, he is not liable for penal action".

14.6 The CB submitted that the impugned SCN alleges violation of Regulation 10(d) & 10(e) of CBLR, 2018. However, the alleged violation is diabolically opposed to the facts of the case. Therefore, in order to appreciate the issue in its right perspectives, the alleged violation vis-a-vis facts of the case are elaborated above individually. The facts stated herein above and the judicial pronouncement thereon clearly indicates that the CB has not violated the said provision in as much as there is nothing on record (in the form of

statements or otherwise) to suggest that CB has furnished in correct information. Therefore, the alleged violation of Regulation-10(d) & 10(e) is not sustainable. In view of the above submissions, the CB prayed that the proceeding through the subject Show Cause Notice may be dropped.

DISCUSSIONS AND FINDINGS:-

15. I have gone through the facts & records of the case; the offence report received in the form of Order-in-Original CAO No: ADC/MKS/81/2023- 24 Adj.(X) ACC dated 25.11.2023, issued by Additional Commissioner of Customs, ACC (Export), Mumbai; the SCN no. 29/2024-25 dated 04.07.2024 issued under regulation 17(1) of CBLR, 2018; the inquiry report dated 28.09.2024, the oral and written submissions dated 05.12.2024 made by the CB and their advocate at the time of personal hearing.

16. Having perused the Order-in-Original CAO No: ADC/MKS/81/2023- 24 Adj.(X) ACC dated 25.11.2023, issued by Additional Commissioner of Customs, ACC (Export), Mumbai, it briefly stated that the investigation in the present case was initiated by DRI, MZU against an exporter namely M/s. Lorgan Lifestyle Limited, Pune who was engaged in bogus exports through Mundra port by preparing manual shipping bills, on which real exports had not been affected. The investigation revealed that the exporter M/s. Lorgan Lifestyle Limited was procuring fake purchase bills against the export consignment from one Mr. Suhel Ansari. Also, it was revealed that Mr. Suhel Ansari was indulged in supplying bogus bills in the names of several companies floated by him. During the further course of investigation it was found that Mr. Suhel Ansari was issuing fake invoices, to the exporters, in the name of Twenty Two firms, all of which were being floated by Mr. Suhel Ansari. Mr. Suhel Ansari was supplying the fake invoices to Fifty Nine export firms. M/s. Mariya Exports is one out of these 59 export firms apprehended by DRI, MZU, for indulging in bogus exports using fake invoices procured through Mr. Suhel Ansari. Hence, as per the specific information received from DRI, MZU, the SIIB, Export, ACC, Mumbai,

initiated investigation with respect to all the exports made by the exporter M/s. Mariya Exports, during the material time. SIIB, Export, ACC, Mumbai retrieved past export data of M/s. Mariya Exports from ICES 1.5 and found that from the period 2012 to 2015, the exporter had filed total 175 shipping bills for which the total FOB value is 2308.12 lakhs and total Drawback availed is Rs. 6.02 lakhs. Also, the investigation revealed that out of 175 Shipping Bills the BRCs have been realised in all 121 shipping bills, however it was found that the FOB amount of USD 1,33,40,809/- has not been realised in respect of 54 Shipping Bills with drawback amount involved of Rs. 92,188/-. As per the offence report, the impugned 175 Shipping Bills were filed by the exporter M/s. Mariya Exports through various Custom Brokers including M/s. Trade Wings Limited (CB No. 11/52), the charged CB in the present case. The Order-in-Original CAO No: ADC/MKS/81/2023- 24 Adj.(X) ACC dated 25.11.2023 was received in this office and considering that as an offence report, the action under CBLR, 2018 was initiated against the CB M/s. Trade Wings Limited (CB No. 11/52).

17. I find that the first charge levelled against the CB is violation of Regulation 11(d) of CBLR, 2013 (now Regulation 10(d) of CBLR, 2018). The said charge has been levelled on the ground that the exporter M/s Mariya Exports was required to submit BRCs/negative statements in prescribed format as per the requirement of the Circular No. 5/2009-Customs dated 02.02.2009 issued vide F. No. 609/167/2007-DBK and it was the responsibility of the CB M/s Trade Wings Limited (CB-11/52) to advise his client to submit these statements to the proper officer in respect of the drawback shipping bills. Also, the exporter M/s Mariya Exports was a merchant exporter who procured the goods from Domestic Tariff Area (DTA), however, in terms of the requirement of the Circular No. 16/2009-Customs dated 25.5.2009 issued vide F. No. 609/137/2007-DBK, the merchant exporters who purchase goods from traders were required to furnish a declaration in the prescribed format.

at the time of export of such goods and it was the responsibility of the CB to advise his client about the requirements of such declaration.

17.1 I find that the Inquiry Officer, in this regard, has observed that the CB had failed to submit any documentary proof to that extent that he had advised the exporter properly with regard to declaration of values, obtaining proper invoices, realization of export proceeds within stipulated time frame allowed under Foreign Exchange Management Act, 1999. And, also from the offence report it was evident that the CB had properly not advised the exporter while filing the Shipping Bill(s) but also abetted the wrong doer and thereby failed in his duty to inform the same to the Department. Accordingly, the Inquiry Officer has held that the charge of violation of Regulation 11(d) of CBLR, 2013, *ibid* (now Regulation 10(d) of CBLR, 2018) is conclusively proved.

17.2 I find that the CB, in this regard, has submitted that there is no DBK claim against the 12 Shipping Bills handled by the CB, out of the total 175 Shipping Bills. In other words shipping bills handled by CB are free shipping bills i.e. without claim of any incentive. The mentioned circulars are applicable only in case of DBK claim. Therefore, question of following the circulars or for that matter advising his client does not arise. The CB also argued that the Shipping Bills were filed on the basis of export invoices and the CB is not expected to conduct enquiry about the procurement of the export goods particularly when the goods were exported against free shipping bills. Therefore, the CB argued that the alleged violation of Regulation-10(d) is not sustainable.

17.3 Having perused the offence report viz. OIO dated 25.11.2023, I find that total 175 Shipping Bills have been filed by the exporter M/s. Mariya Export during the period 2012 to 2015. These shipping bills have been handled by various CHAs/CBs, including M/s. Trade Wings Ltd. (CB No. 11/52), the charged CB in the present case. I find that as per the statement dated 26.04.2022, of Sh. Santosh Digambar Mayekar, Authorised Representative of the CB, recorded under Section 108 of the Customs Act, 1962, the CB M/s. Trade Wings

Ltd has filed approx. 12 Shipping Bills in 2013, out of total 175 shipping bills and all the 12 shipping bills are free shipping bills. I also, find that the CB has furnished a list of these 12 shipping bills in their written submissions dated 05.12.2024 and to the Inquiry Officer as well. However, to cross check the same, the offence report does not specify the CB/CHA wise list of 175 shipping bills. Having perused the offence report, I also find that it is a matter of fact that the BRCs of 54 shipping bills have not been realised yet. The charged CB in present case has not produced any documentary evidence to prove that the BRCs in respect of all the shipping bills filed and handled by them, have been realised. Hence, under the facts and circumstances of the case, approves the findings of the inquiry officer and hold that the CB M/s. Trade Wings Ltd. (CB No. 11/52) has contravened the Regulation 11(d) of CBLR, 2013 (now Regulation 10(d) of CBLR, 2018).

18. I find that the second charge levelled against the CB is violation of Regulation 11(e) of CBLR, 2013 (now Regulation 10(e) of CBLR, 2018). The said charge has been levelled on the ground that the investigation well established that the exporter had overvalued the goods using fake invoices supplied by Shri Suhel Ansari so as to claim undue export incentives and hence it appeared that the CB failed to exercise due diligence and to sensitize the exporter to make proper declaration in terms of Circular No. 5/2009-Customs dated 02.02.2009 and Circular No. 16/2009-Customs dated 25.5.2009 in respect of the exported goods.

18.1 I find that the Inquiry Officer, in this regard, has observed that the Customs Broker (CB) failed to exercise due diligence and facilitated the exporter in obtaining undue benefits by overvaluing the exported goods, while cheaper materials were actually exported. To justify the inflated value, the IO found that the fake invoices from Mr. Suhel Ansari were used to indicate a higher purchase price. Upon reviewing the case, according to the IO, it was evident that the CB did not perform the necessary due diligence and failed

to provide the client with information regarding the realization of export proceeds within the required time frame.

18.2 I find that the CB, in this regard, has argued that no shipping bill under claim of DBK was handled by the CB and no any other export incentives were claimed against the shipping bills handled by CB and they exercised due diligence with respect to the information which he imparts to his client. The CB placed reliance on the judgment of Hon'ble Tribunal in M/s. Kunal Travels (Cargo) Vs CC(I&G), IGI Airport, New Delhi reported in 2017 (354) E.L.T. 447 (Del.).

18.3 Having taken into cognizance of the facts of the case, the findings of the inquiry officer and the defense of the CB, I am of the view that it is evident that the CB has not verified the genuineness of the documents and necessary compliances as per law, which is the primary duty of the CB and which the CB has ignored and completely relied on the documents furnished by the exporter. This shows their lackadaisical approach towards their responsibility to see that their client comply with the provisions of the Customs Act, 1962, follow laid down procedure and neither they brought the fact to the notice of the Customs staff on duty. It is fact on record that the goods attempted to be exported were of inferior value. Hence, under the facts and circumstances of the case, I am of the opinion that the inquiry officer has tenably proved the charge of violation of Regulation 11(e) of CBLR, 2013 (now Regulation 10(e) of CBLR, 2018), hence I approve the same.

19. I find that the present matter has been adjudicated under Customs Act, 1962 vide CAO No:ADC/MKS/81/2023-24Adj.(X) ACC dated 25.11.2023 wherein the Adjudicating Authority imposed penalty of Rs. 10,000/- under Section 114(i) and penalty of Rs. 10,000/- under Section 114(iii) and penalty of Rs. 5,000/- under Section 114AA of the Customs Act, 1962, on the CB M/s. Trade Wings Ltd. (CB No. 11/52). However, it is pertinent to mention

here that the proceedings under CBLR, 2013 (now CBLR, 2018) are independent, separate and distinct from that under Customs Act, 1962.

20. I find that in the instant case, the CB license was not put under immediate suspension under Regulation 16(1) of CBLR, 2018. However, I find that for the violation of obligations provided under CBLR, 2018 and for their act of omission and commission, the CB M/s. Trade Wings Ltd. (CB No. 11/52) has rendered themselves liable for penal action under CBLR, 2013 (now 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 advice 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."

21. Further, with regard to the timelines prescribed under Regulation 20 of CBLR, 2013 (now Regulation 17 of CBLR, 2018), relying on the following case laws, I observe that the timelines under CHALR/CBLR, are directory in nature and not mandatory:

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

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

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

"42. Therefore, if the tests laid down in Dattatreya Moreshwar, which have so far held the field, are applied, it would be clear (i) that the time limit prescribed in Regulation 20 (7) is for the performance of a public duty and not for the exercise of a private right; (ii) that the consequences of failure to comply with the requirement

are not spelt out in Regulation 20(7) (iii) that no prejudicial consequences flow to the aggrieved parties due to the non-adherence to the time limit; and

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

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

“Para 4.2:- As regards the third issue regarding non-adherence to the time-limit prescribed in CHALR, there is some merit in the argument. But nevertheless, it has to be borne in meind that time-limit prescribed in the law though required to be followed by the enforcement officers, at times could not be adhered to for administrative reasons. That by itself does not make the impugned order bad in law”.

22. As discussed above, I conclude that the CB is guilty of violations of CBLR, 2013 (now CBLR, 2018). However, considering all the facts and circumstances of the case, I am of the view that revoking the CB license and forfeiture of security deposit of the CB is too grave a penalty to be imposed for the above violations, as the punishment of revocation of license is much harsh and disproportionate to the offences committed. The ends of justice will be met by imposing a penalty, on the CB, under Regulation 22 of CBLR, 2013 (now 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(l)(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 if the said G cards, but

do not give adequate, if any weight, to this crucial factor. There is no finding of any mala fide on the part of the appellant, such that the trust operating between a CHA and the Customs Authorities (as a matter of law, and of fact) can be said to have been violated, or be irretrievably lost for the future operation of the license. In effect, thus, the proportionality doctrine has escaped the analysis.

c) In the case of ACE Global Industries [2018 (364) ELT 841 (Tri Chennai)], Hon'ble Tribunal observed as follows:

"6. We are unable to appreciate such a peremptory conclusion. The CBLR, 2013 lays down that stepwise procedures are to be followed before ordering any punishment to the Customs broker. True, the said regulations do contain provisions for revocation of the license and for forfeiture of full amount of security deposit, however these are maximum punishments which should be awarded only when the culpability of the Customs broker is established beyond doubt and such culpability is of very grave and extensive nature. In case of such fraudulent imports, for awarding such punishment, it has to be established without doubt that the Customs broker had colluded with the importer to enable the fraud to take place. No such culpability is forthcoming in respect of the appellant herein. On the other hand, the Inquiry Officer, appointed under CBLR, 2013, has opined that there is no substantive case to level charges violation of Regulation 11(a), (b), (n), (e) & (k) of the CBLR, 2013. The Inquiry Officer has in fact clearly stated that he has not found anything substantial that can merit proposing revoking the license of the appellant or imposing the penalty. The Inquiry Officer has categorically reported that at the most, appellant may be given a strict warning."

d) Hon'ble CESTAT, Mumbai in the matter of Setwin Shipping Agency Vs. CC (General), Mumbai – 2010 (250) E.L.T 141 (Tri.-Mumbai) observed that "it is a settled law that the punishment has to be commensurate and proportionate to the offence committed".

23. 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. However, for their acts of omission and commission, the CB M/s. Trade Wings Ltd. (CB No. 11/52) is held liable and guilty for violating the provisions of CBLR, 2013 (now CBLR, 2018) as mentioned above. I hold that the CB has failed to

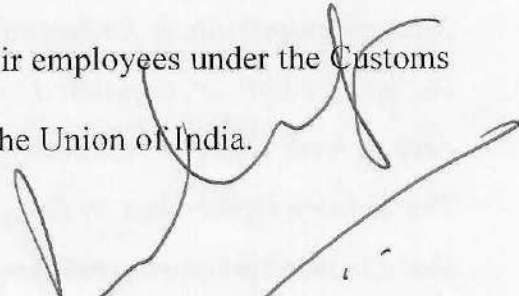
discharge his duties cast upon him with respect to Regulation 11(d) & 11(e) of CBLR, 2013 (now Regulation 10(e) of CBLR, 2018) and the interest of justice would be met by imposition of penalty under Regulation 22 of CBLR, 2013 (now Regulation 18 of CBLR, 2018). Accordingly, I pass the following order:

ORDER

24. I, Principal Commissioner of Customs (General), in exercise of the power conferred upon me under Regulation 17(7) of the CBLR, 2018 (erstwhile Regulation 20(7) of CBLR, 2013), pass the following order:

(i) I, hereby impose penalty of Rs. 20,000/- (Rs. Twenty Thousand Only) on M/s. Trade Wings Ltd. (CB Code- AA ACT4639FCH001J, CB No. 11/52) under Regulation 18(1) of the CBLR, 2018 (erstwhile Regulation 22 of CBLR, 2013).

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. Trade Wings Ltd. (CB No. 11/52)
Building No. 5, Unit No. A/25,
Mittal Industrial Estate, Marol,
Andheri (East), Mumbai-400 059

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