



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

संचिका सं./F. No.- GEN/CB/391/2022 -CBS

आदेश दिनांक/Date of Order: 02.02.2024

CAO No. 68/CAC/PCC(G)/SJ/CBS-Adj

जारी दिनांक/Date of issue: 02.02.2024

संख्या:

DIN : 20240277000000.00DADP

द्वारा जारी : सुनील जैन
प्रधान आयुक्त, सीमाशुल्क(सामान्य)
मुंबई -400 001

Issued By : Sunil Jain
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, 1962 की धारा 129A(1B)(i) के संबंधमें सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण में स्वीकार्य है, जहाँ शुल्क या शुल्क एवं जुर्माना विवादित हों, या जुर्माना, जहाँ सिर्फ जुर्माना ही विवादित हो। यह अपील इस आदेश के संप्रेषण की तारीख के तीन महीने के अंदर दायर की जाएगी। यह अपील सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण (कार्यविधि) नियमावली, १९८२, के प्रावधानों के अंतर्गत, यथोत्खंडपीठ में स्वीकार्य है।

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

3. यह सूचित किया जाता है की इस आदेश के अमल में आते ही, न्याय निर्णयन अधिकारी का अधिकार क्षेत्र समाप्त होता है और सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण, पश्चिम 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 31.05.2018 के 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 (अपीलस) नियमावली, १९८२ के नियम 6 के तहत निर्धारित है एवं उसी नियमावली के नियम 3 के उपनियम 2 में 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 ब्याजवतगाएगए 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 रु. पचास लाख से अधिक होतो रु. 10000/- के शुल्क 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, 1870 की अनुसूची मद 6 के तहत निर्धारित रु. 50 का 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।

Once 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. Tulsidas Khimji Pvt. Ltd., having office address at 46, Veer Nariman Road, Fort, Mumbai - 400001 [hereinafter referred to as the Customs Broker/CB), bearing PAN based Registration No. AA ACT4123GCH001 are holding a regular Custom Broker License No. 11/34 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. On the basis of specific information received by DRI, MZU, Mumbai; investigation was conducted by SIIB (Export), Sahar, Mumbai which revealed that various export firms including M/s. Hind Exports (IEC - 0306027593) were procuring fake purchase bills against the export consignment from one Mr. Suhel Ansari, through fake firms floated by him.

3. An offence report in the form of SCN No. 25 dated 27.09.2022 issued by Commissioner of Customs, (Export), Air Cargo Complex, Sahar, Mumbai, was received on 19.10.2022, wherein, it was revealed that various export firms including M/s. Hind Exports (IEC - 0306027593) were procuring fake purchase bills against the export consignments from one Mr. Suhel Ansari, through fake firms floated by him. Searches were conducted at the premises of Mr. Suhel Ansari, which led to the recovery of copies of bogus bills in the names of several companies issued by him.

4. During the course of investigation, statement of Mr. Suhel Parvez Ansari and Mr. Shaikh Mohammed Arshad employee of Mr. Suhel Parvez Ansari were 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. Hind Exports.

5. During the course of investigation, DRI, MZU, Mumbai had issued various summons to of M/s Hind Exports, however, no one appeared in response to the Summons.

6. DRI vide its letter 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 Mr. Suhel Ansari, are procured showing higher purchase price. DRI further gave a list of exporters and stated that these exporters which included M/s. Hind Exports may have also adopted similar modus operandi.

7. DRI, MZU, Mumbai forwarded the report to SIIB(X), ACC for carrying out further investigation regarding the details of exporters including M/s. Hind Exports who have claimed undue drawback by overvaluing the exports and justifying the value of the goods by procuring fake invoices showing higher purchase price from Mr. Suhel Ansari.

8. During investigation, the details of exports made by the exporter M/s. Hind Exports were retrieved from the ICES System. During the period from 2012 to 2016, the exporter made total exports of 77 shipping bills with FOB value of Rs. 28.16 crores and availed total drawback of Rs. 12.42 lakhs.

9. Further, Special Intelligence and Investigation Branch(SIIB/X), Air Cargo Complex, Sahar, Mumbai issued various summons to proprietor of M/s. Hind Exports for his appearance between 2017 to March, 2022. Statement of Mr. Juzar Angoothiwala, proprietor of M/s. Hind Exports was recorded on 24.03.2022 , wherein, he inter-alia stated that:

(i) they were exporting the goods viz. readymade garments, imitation jewellery etc. to African and Middle-East countries.

(ii) they used to purchase the goods viz. readymade garments, imitation jewellery for export from Mumbai, Jodhpur, Delhi, Agra, Rajkot etc. from small karigars who provided them only kaccha bill and were not able to provide tax invoices as they were not registered dealers.

(iii) they know Shri Suhel Parvez Ansari, who had supplied some invoices to them but they have not purchased any goods from him. As they used to purchase the goods from local market, who issued them kachha bills and for export purpose, they required tax invoices for which they used to obtain bills/ invoices from Suhel Parvez Ansari.

(iv) further the statements of Shri. Suhel Parvez Ansari recorded by DRI, MZU, Mumbai on 24.08.2015 was shown to Juzar M. Angoothiwala, wherein, Shri. Suhel Parvez Ansari had inter-alia admitted that he had supplied fictitious invoices to various firms and M/s. Hind Exports was one of them and he put the signature as token of seen the same.

(v) further, the statements of Shri Ashoklal Ranka recorded by DRI, MZU, Mumbai on 29.07.2015 and 30.07.2015 were shown to Juzar M. Angoothiwala, wherein, Shri Ashoklal Ranka explicitly stated that there is no physical movement of goods from suppliers and that exist only on paper, although payments have been shown to be made by the exporter to the supplier through RTGS bank, he put the signature as token of seen the same.

10. Further, on scrutiny of the shipping Bills filed by the exporter M/s. Hind Exports, it was found that Customs Broker M/s. Tulsidas Khimji Pvt. Ltd. had filed/cleared the consignment of the said exporter. During investigation, statement of Shri Pawan Subhash Grover, authorized representative of Customs Broker M/s. Tulsidas Khimji Pvt. Ltd. was recorded on 21.12.2021 under Section 108 of the Customs Act, 1962.

Shri Pawan Subhash Grover in his statement inter alia stated that:

i) KYC was done and submitted documents in respect of the exporter M/s Hind Exports; they had carried out address verification of the exporter

and for the same they have submitted copy of the MTNL Telephone Bill and copy of PAN Card of the exporter;

- ii) they had not carried first time exporter procedure as the exporter was already registered; from 2010 to 2014, they carried out the export clearance;
- iii) for export procedure they used to receive the documents viz. invoice and packing List either by mail or by post; they used to verify the correctness of the classification declared by the exporter and also regarding restrictions or prohibitions, if any.

11. From the investigations, scrutiny of various documents retrieved and statements recorded by DRI, MZU, Mumbai, it appears that Shri 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 purchase and sale of the goods were effected. It appears, he got bills printed in the names of various fake firms; and there was no purchase of any kind of goods, be it in the form of garments/imitation jewellery had been made by him. 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. The same was admitted by the said Suhel Parvez Ansari in his statements recorded by DRI, MZU, Mumbai. This clearly shows that Shri Parvez Ansari had supplied fake bills in the name of a number of companies to the exporters including M/s. Hind Exports without supplying any goods. It appears from exporter's statement dated 24.03.2022 that for supply of the goods for export effected by them, invoices were not procured from actual supplier, as it was not competitive, therefore, they procured fake invoices from Shri Suhel Parvez Ansari and accordingly they made payment through RTGS/ cheque to Shri Suhel Parvez Ansari who deducted his commission and returned the balance amount to the exporter.

11.1 It appears from investigation that goods were procured from Domestic Tariff Area (DTA) without any invoices, as no details of its manufacturing, production, using imported material or excisable material therein, were available. Hence, it could not be ascertained whether any duties have been paid or otherwise. During investigation, 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.

11.2 During 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.

12. From the foregoing investigation, it appears that there was a well-organized smuggling syndicate operating to claim undue drawback from government exchequer, by overvaluing the declared value of export goods with the collusion of the exporter Mr. Juzar Angoothiwala, exporter, Shri Suhel Ansari, Shri Karan Ranka etc. It appears that they knowingly were involved in all these activities and were active members of the fraudulent export without whose abetment, the said export fraud could not have been committed. Further, it appears that the exporter M/s Hind Exports had indulged in fraudulent exports of cheaper varieties of export goods by inflating the value of export goods on the strength of forged / fabricated purchase invoices to avail duty drawback fraudulently.

13. As per the Offence report, the exporter M/s Hind Exports had grossly overvalued the impugned goods which were of very inferior quality by way of procuring fake invoices and defrauded the exchequer by fraudulently availing drawback by way of overvaluation. The exports were fictitious as purchase bills were fictitious made by Shri Suhel Ansari. Actual movements of goods is always under cover of Challan and Invoices. It is also unlikely that Customs Broker has been receiving goods based on fictitious Bills and that they were not aware of the fraud. Further, the Customs Broker 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 Customs Broker 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 circumstances, the Customs Broker M/s. Tulsidas Khimji Pvt. Ltd. actively connived with the 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) and/or 114(iii) and also under (114 AA) of Customs Act, 1962.

14. On perusal of the Offence Report, it appeared 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. Thus, the CB appears to have violated Regulation 10(d) of CBLR, 2018.

Further, it appeared that CB failed to exercise due diligence and aided the exporter in availing the undue drawback by the exporters by overvaluing the exports, whereas cheaper material was exported, and to justify the value of the goods, fake invoices from Suhel Ansari were procured showing higher purchase price. On scrutiny of the subject case, it appears that CB did not exercise due diligence and did not impart the information relating to Drawback Rules. Thus, the

CB appears to have violated Regulation 10(e) of CBLR, 2018.

Further, it appeared that CB did not inform the exporter about the instructions, circulars and public notice regarding the claiming of drawback. It appeared that CB did not guide the exporter with respect to furnishing declarations at the time of export in format annexed to Circular No. 16/2009-Customs dated 25.05.2009 issued under F. No. 609/137/2007-DBK. It was the responsibility of the CB to ensure that exporter declares the name and complete address of the traders from whom goods has been purchased in order to claim Drawback. It appeared that CB did not advise the exporter to comply with Rule 3, Rule 16 and Rule 16A of Drawback Rules, 1995. It appeared that CB has abetted the exporter by declaring incorrect value of the goods in shipping bills against the fake invoices to avail undue drawback. Thus, the CB appears to have violated Regulation 10(f) of CBLR, 2016,

15. In view of the above facts, it is evident that the CB was working in a seriously negligent manner and was in violation of the obligations casted upon them under the CBLR, 2018. By their acts of omission and commission, it appears that the said CB has violated Regulation 10(d), 10(e) and 10(f) of the Customs Brokers Licensing Regulations, 2018 and rendered himself for penal action under Regulations 14, 17 & 18 of CBLR, 2018.

Legal Provision of the CBLR, 2018:-

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

Regulation 10 (e) of the 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;"

Regulation 10 (f) of the CBLR, 2018:- "A Customs broker shall not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information;"

16. SHOW CAUSE NOTICE: M/s. Tulsidas Khimji Pvt. Ltd. (11/34) was issued a Show Cause Notice (SCN) No. 46/2022-23 dated 17.03.2023 by Principal Commissioner of Customs (General), NCH, Mumbai, Zone-I, asking them to show cause as to why the licence bearing no. 11/34 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. They were directed to appear for a personal hearing and to produce proof of evidence/documents if any, in their defense to Shri Nilay Bunker, Deputy Commissioner of Customs who was appointed an Inquiry Officer to conduct inquiry under regulation 17 of CBLR, 2018.

17. SUSPENSION/REVOCAION OF LICENSE: In a similar case with similar circumstances of a different exporter M/s. Simplex Fabware Pvt. Ltd., the license of the CB M/s. Tulsidas Khimji Pvt. Ltd. (11/34) was suspended vide Order No. 44/2022-23 dated 30.11.2022 based on the Show Cause Notice No. 03/Adj(X)/2022-23 received from SIIB(X), ACC, Mumbai. Later, the suspension was revoked vide Order No. 65/2022-23 dtd. 06.01.2023.

18. INQUIRY REPORT

Inquiry Officer submitted Inquiry Report dated 28.09.2023, wherein, the charges against CB M/s. Tulsidas Khimji Pvt. Ltd. (11/34) in respect of violation of Regulation 10(d), 10(e) and 10(f) of CBLR, 2018 were held as 'Not Proved'.

CB's WRITTEN SUBMISSION :

Inquiry Officer submitted that personal hearing was granted to the CB on 24.05.2023. Shri Nirav Shah, Vice President and Shri Rajan Bhatia, director from M/s. Tulsidas Khimji Pvt. Ltd. appeared on behalf of the CB firm and submitted copy of their reply dated 11.04.2023 and reiterated their submission made in the letter. They have also submitted case laws favouring their stand. They have submitted that the Show Cause Notice, the contentions raised therein, and the action proposed are totally unsustainable in law, as Show Cause Notice is vitiated by gross delay and barred by time.

CB in their letter submitted followings:

- i) that under the CHA Regulations, they were required to preserve the records for five years. It was only in 2022, which is much after 5 years (2012 & 2013), that the department issued summons to them in the matter;
- ii) they had no knowledge of the alleged overvaluation of the export goods by M/s. Hind Exports for allegedly claiming excess drawback; they had done the KYC of the said exporter and verified the address of the exporter,
- iii) they had nothing what soever to do with the alleged fake invoices of local purchase procured by the exporter;
- iv) since they had no knowledge of the alleged overvaluation of the export goods, inferior quality of the goods and fake invoices of local procurement, it cannot be said that they had aided and abetted the

- exporter,
- v) there is no evidence of knowledge on their part of the alleged overvaluation of the export goods of inferior quality by way of procuring alleged fake invoices, by the exporter, it cannot be said that they abetted the exporter. The CB placed reliance on the various judgments, which lay down that for alleged overvaluation of the export goods by the exporter the CHA cannot be held responsible, whether is evidence of knowledge on the part of the CHA that the goods were overvalued:-
 - a) Akanksha Enterprises Vs. CC - 2006 (203) ELT 125
 - b) Nirmal kumar Agarwal v CC-2013 (298) ELT 133
 - vi) CB have stressed upon the decisions in case of M/s. Geeta Clearing & Forwarding Agency Pvt. Ltd Vs CC-2019 (370) ELT 1030 and World Cargo Movers Vs CC-2002 (139) ELT 408.
 - vii) there is no violation of Regulations 10(d), (e) and (f) of CBLR 2018, the CB has prayed for dropping of proceedings against them.

18.1 COMMENTS OF THE INQUIRY OFFICER :-

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

The CB submitted that there is no any knowledge on their part about the exporter having allegedly procured fake purchase Bills or of the export goods being overvalued; that the statement of their authorized representative is exculpatory and does not afford any ground for contending that they had abetted and aided the exporter in the alleged overvaluation of the export goods; that there is no evidence against them of their having any knowledge of the alleged overvaluation and inferior quality of the export goods or of the alleged fake invoices of local procurement; that they as CHA had nothing whatever to do with the alleged fake invoices of local purchase procured by the exporter.

In this regard, Inquiry Officer have observed exporter M/s. Hind Exports in his statement has not mentioned that the CB M/s. Tulsidas Khimji Pvt. Ltd. (CB No. 11/34) had any knowledge about the allegedly procured fake purchase Bills or of the export goods being overvalued. Inquiry Officer observed that the need to advice a client would arise only if the CB was aware about such mis-declaration by the exporter/importer. Hence, IO found that there is force in the defense submission.

Inquiry Officer observed that there is no corroborative evidence in the form of statement or any other form to establish that the CB was aware about the over-valuation or existence of fake invoices. Inquiry Officer found that charges of declaration of the incorrect value of the goods in shipping bills against the fake invoices to avail undue drawback are not sustainable.

Inquiry Officer found that no material has been brought on record regarding the involvement of the CB or their directors/employees in availment of undue

drawback by the exporter. Thus, in absence of any such evidence no contravention of Regulation 10(d) of CBLR 2018 can be alleged.

Thus, Inquiry Officer conclude that the CB has not failed in advising the client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof. Accordingly, Inquiry Officer hold that the charges of violation of Regulation 10 (d) of the CBLR, 2018 is 'Not Proved'.

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

The CB submitted that Regulation 10(e) requires the Customs Broker to exercise due diligence to ensure that any information which the Custom Broker gives to the client with regard to clearance of the cargo is correct; that they have not imparted any incorrect information to the exporter with to regard to the clearance of the export cargo and therefore there is no contravention of Regulation 10 (e); that there is no evidence whatever to show that any information which they imparted to the exporter was in any way incorrect; that no information given by them to the exporter, which was allegedly incorrect.

Inquiry Officer found that there is no allegation and evidence in the Show Cause Notice of the Customs Broker having any knowledge of the alleged overvaluation by the exporter M/ s. Hind Exports. IO found that there is no evidence whatever to show that any information which the CB imparted to the exporter was in any way incorrect. IO also found that the Show Cause Notice does not identify any information given by the CB to the exporter, which allegedly was incorrect nor does the Show Cause notice state how any information given by them to the exporter was incorrect. There is nothing on record that the Customs Broker has not exercised due diligence.

Hence, the violation of the provisions of Regulation 10 (e) of CBLR, 2018 is not conclusively prove. Accordingly, IO hold that the charges of violation of Regulation 10 (e) of the CBLR, 2018 is 'Not Proved'.

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

It is alleged in the said Show Cause Notice that CB did not inform the exporter about the instructions, circulars and public notice regarding the claiming of drawback; that CB did not guide the exporter with respect to furnishing declarations at the time of export in format annexed to Circular No.16/2009-Customs dated 25.05.2009 issued under F. No. 609/137/2007 — DBK; that it was the responsibility of the CB to ensure that exporter declares the name and complete address of the traders from whom goods has been purchased in order to claim drawback; that that CB did not advise the exporter to comply with Rule 3, Rule 16 and Rule 16A of Drawback Rules, 1995. It appeared that CB has abetted the exporter by declaring the incorrect value of the goods in shipping bills against the fake invoices to avail undue drawback.

The CB submission stated that it is contended in Para 18 of the Show Cause Notice that it appears that they did not inform the exporter about the requirement that excise component of drawback is available only where declaration is filed by the exporter in accordance with Circular No. 16/2009-Cus dated 25-5-2009; that the said contention is totally misconceived and untenable in law; that there is absolutely no evidence cited in the Notice to suggest that the requirement of declaration as per the said Circular was not followed in the present case. The defense submission further stated that it is not the case in the Show Cause Notice that investigation was done in the customs export department where the Shipping Bills were filed in this behalf; that no statement is recorded of the customs officers who granted the drawback.

Inquiry Officer found that submission of declaration providing the name and complete address of the traders from whom goods has been purchased in order to claim drawback, is the duty of the exporter. Inquiry Officer found that the charged Customs Broker's role is limited up to the clearance of the export consignment.

The CB submission further stated that the very fact that the exports were allowed by the proper officers of customs under the claim for drawback itself means that the declaration required by the said Circular was given by the exporter.

The CB submitted that issuance of the Notice after 8 to 11 years seriously prejudices in their defence, since complete records after so many years would not be available.

The Charged CB relied upon the decision of the Hon'ble Delhi High Court in the case of Kunal Travels (Cargo) v CC-2017 (354) ELT 447.

Inquiry Officer have taken cognizance of the aforesaid case law.

Inquiry Officer found that there is nothing on record to suggest in what ways the Customs Broker withheld any information that would involve violation of Regulation 10 (f). Accordingly, IO hold that the charges of violation of Regulation 10 (f) of the CBLR, 2018 is 'Not Proved'.

19. Inquiry Officer further submitted that delay of submission in report was caused due to holding charges of two Assessment Groups in JNCH, Nhava Sheva which involves attending to assessment of Bills of Entry on daily basis alongwith multiple other functions as well as the time bound matters including issuance of SCNs, hence, stipulated time frame was not able to maintain and requested to condone.

20. PERSONAL HEARING AND RECORDS OF PERSONAL HEARING :-

A personal hearing was granted to Customs Broker on 10.01.2024, Shri Nirav Shah, Vice president of the CB, Shri Rajen Bhatia, director of CB firm

appeared for personal hearing before me and requested for dropping the proceedings in view of IO's report.

21. DISCUSSION AND FINDINGS:-

I have gone through the case, material evidence on record, the Show Cause Notice dated 17.03.2023, Inquiry Report dated 28.09.2023 and submissions of the said CB.

21.1 I observe that the charges against the said CB is of violation of regulation 10(d), 10(e) and 10(f) of CBLR, 2018 made vide Show Cause Notice No. 46/2022-23 dated 17.03.2023. The Inquiry Officer vide inquiry report dated 28.09.2023 held the charges of violation of Regulations 10(a), 10(d) and 10(f) as "Not Proved".

21.2 For brevity, I refrain from reproducing the brief facts of the case which have already being discussed above. I, now, examine the charges in the SCN sequentially.

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

I observe that the said regulation 10(d) of CBLR, 2018 reads as: -

"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;"

I find that the Inquiry Officer (IO) submitted that investigations do not reveal any fact which shows that CB was aware about the over-valuation or existence of fake invoices, availment of non-eligible drawback by the exporter M/s. Hind Exports and that the CB nowhere had the opportunity to know about export of inferior quality of goods by overvaluing the export goods to claim undue drawback incentive. IO found that no evidence cited in Show Cause Notice to show that any advice contrary to the provisions of the Customs Act, 1962 & other allied Acts and the rules was given by CB to the exporter. Thus, IO held that the violation of regulation 10 (d) of CBLR, 2018 by the CB is not proved.

I observe that there is no material evidence on record, which proves that there was any knowledge or collusion of the CB with exporter for over-valuation. Further, it was found that BRC in respect of all shipping bills had been realized in respect of M/s. Hind exports.

Hence, I agree with the findings of IO report dated 28.09.2023 that charges of aiding and abetting the exporter, cannot sustain in absence of any corroborative evidence in the form of statements or any documents. I find that no substantial evidence is brought on record against the CB in the Investigation report/SCN dated 27.09.2022 issued by SIIB(X), ACC, Mumbai to implicate the CB.

From the above facts and circumstances, I agree with the IO report and am of the considered view that there is no substantial proof/ records to establish that CB has failed to advise the exporter thereof and did not bring the matter to the notice of Deputy/Assistant Commissioner of Customs and hence contravened provisions of Regulation 10(d) of the CBLR, 2018. Therefore, I hold that the CB has not violated the provisions of Regulation 10(d) of the CBLR, 2018.

21.2.2 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,"

The CB submitted that they have not imparted any incorrect information to the exporter with regard to clearance of the export cargo and therefore, there is no contravention of Regulation 10(e). The CB has placed reliance on the decision of the Hon'ble Delhi High Court in the case of Kunal Travels (Cargo) Vs. CC-2017 (354) ELT 447. The CB submitted that there is nothing on record to show that the CB had knowledge, that the goods mentioned in the shipping bills did not reflect the truth of the consignment sought to be exported; no information given by them to the exporter is identified, which was allegedly incorrect.

Inquiry Officer(IO) have taken cognizance of the aforesaid case law. IO found that charges of knowledge of overvaluation of the exports, export of cheaper material and fake invoices showing the higher purchase price cannot sustain in absence of any corroborative evidence against the Customs Broker.

Inquiry Officer found that there was no evidence whatsoever to show that any information which the CB imparted to the exporter was in any way incorrect or CB has not exercised due diligence. Thus, IO held that the violation of regulation 10 (e) of CBLR, 2018 by the CB is not proved.

From the investigation report, I observe that there is no evidence to show that CB has imparted wrong information to the exporter or failed to exercise due diligence and aided the exporter for availing undue drawback by overvaluing the exports. Hence, I agree with the findings of IO report dated 28.09.2023, that in absence of any substantial evidence, the CB cannot be held responsible for negligence to ascertain the correctness of information in respect of fraudulent exported goods.

In absence of any substantial evidence, I am of the considered view that CB has exercised due diligence to ascertain the correctness of information in respect of exported goods. Therefore, I hold that the CB has not violated the

provisions of Regulation 10(e) of the CBLR, 2018.

21.2.3 With regard to violation of Regulation 10(f) of CBLR, 2018:

I observe that the said regulation 10(f) of CBLR, 2018 reads as: -

"A Customs broker shall not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information; "

I find that Inquiry Officer(IO) in his report submitted the fact that he has perused Circular No. 16/2009-Cu dated 25-5-2009 issued by CBIC and found that the charged Customs Broker's role is limited up to the clearance of the export consignment. IO found that submission of declaration providing the name and complete address of the traders from whom goods has been purchased in order to claim drawback, is the duty of the exporter. Circular No. 16/2009-Cu dated 25-5-2009 issued by CBIC, cast burden on the exporter for claiming drawback, vide its para 7, which is reproduced below:

"7. In view of the above, the Board has decided to accept the recommendation of the Drawback Committee in this regard. Thus merchant exporters who purchase goods from the local market for export shall henceforth be entitled to full rate of duty drawback (including the excise portion). However, such merchant exporters shall have to declare at the time of export, the name and address of the trader from whom they have purchased the goods. They shall also have to declare that no rebate (input rebate and also the final product rebate) shall be taken against the Shipping bills under which they are exporting the goods. The merchant exporters who purchase goods from traders may therefore furnish the declaration, at the time of export, in the format annexed with this circular. This is issued in supersession of para (vi) of Circular No, 64/98-Cus dated 01.09.1998".

The CB has submitted that exports were allowed by the proper officers of Customs under the claim for drawback itself means that the declaration required by the said Circular was given by the exporter and it's not part of CB obligation to investigate into the correctness of such declaration filed by exporter.

Inquiry Officer found that there is nothing on record to suggest or to substantiate the claim, that in what way the Customs Broker withheld any information that would involve violation of Regulation 10 (f) of CBLR, 2018. Thus, Inquiry Officer held that the violation of regulation 10 (f) of CBLR, 2018 is not proved.

Further, Inquiry Officer submitted that as per provisions of regulation 10(p) of the CBLR, 2018, a CB shall maintain all records for at least five years.

I find that CB does not play any role in tracking the BRCs and its submission. Moreover, in this case, on scrutiny of Bank Realization Certificate(BRC) in respect of exports made by M/s. Hind Exports, it was found that BRC in respect of all shipping bills had been realized. Thus, I find that Customs Broker has not failed in advising the client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof.

The exporter was required to declare that they were not the manufacturer of the export goods and were not registered under the erstwhile Central Excise Act, 1944. They were also required to declare that no rebate would be taken against the exports made against the shipping bills. As the time of export is more than 10 years old and complete records is not available with CB, benefit of doubt may be extended to the CB in this regard. Hence, I agree with the findings of Inquiry Officer report dated 28.09.2023.

From the above facts, I am of the considered view that the CB role to inform the exporter about the circular No.16/2009-Customs dated 25.05.2009 is limited. Therefore, I hold that the CB has not violated the provisions of Regulation 10(f) of the CBLR, 2018.

22. CB submitted that the SCN dated 17.03.2023 was issued after lapse of 90 days' time limit as provided in the Regulation 17 of CBLR 2018. CB requested to drop the proceedings initiated under Regulation 17(1) of CBLR, 2018.

However, in this context, I rely on the judgement in the case of M/s Unison Clearing P. Ltd. reported in 2018 (361) E.L.T. 321 (Bom.) which stipulates that the time lines stipulated in Regulations are directory in nature and not mandatory.

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

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

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

In the light of the aforesaid discussion, the appeals filed by the Revenue succeed and the question of law framed in the appeals is answered by holding that the CESTAT was not justified in setting aside the order or suspension of the Customs Brokers' Licence on the ground of delay between suspension and the notice of deviation or omission and it cannot be laid down as an absolute proposition of law that delay in taking immediate action of suspension or initiation of inquiry within a period of 90 days would vitiate the action of the Commissioner.".

23. While deciding the matter, I rely upon the judgements as mentioned above in Inquiry Officer report. Thus, I hold that none of the charges levelled against the CB are sustainable.

In view of the facts as discussed supra, I find that the charged CB fulfilled his duties and no evidences were produced by the investigating agency that the CB was aware about the wrong availment of export incentives. So, I agree with the finding of the Inquiry Officer and conclude that there is nothing substantial to prove that CB has violated Regulations 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, hereby drop the charges levelled against Customs Broker M/s. Tulsidas Khimji Pvt. Ltd. (11/34) under Regulation 18 of the CBLR, 2018.

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

SUNIL JAIN
2/2/2020

(SUNIL JAIN)

**PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
MUMBAI ZONE-I**

To,

M/s. Tulsidas Khimji Pvt. Ltd., (11/34)

(PAN No. AA ACT4123GCH001)

46, Veer Nariman Road, Fort, Mumbai - 400001

(EM683080677IN)

OTC

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. CIU's 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 to circulate among all concerned.
9. Cash Department, NCH, Mumbai.
10. Notice Board
11. Office Copy
12. Guard File (Admin)