



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/262/2024-CBS

आदेश दिनांक/Date of Order: 06.03.2025

CAO No 80/2024-25/CAC/PCC(G)/RC/Adj-CBS

जारी दिनांक/Date of issue: 06.03.2025

संख्या:

DIN: 20250377000000888EF9

द्वारा जारी: राजन चौधरी

Issued By: **Rajan Chaudhary**

प्रधान आयुक्त, सीमाशुल्क (सामान्य)

Pr. Commissioner of Customs (Gen.),

मुंबई -400 001

Mumbai - 400 001.

ORDER-IN-ORIGINAL मूल आदेश**ध्यान दीजिए/ N.B. :**

1. यह प्रति उस व्यक्ति को निजी उपयोग हेतु निःशुल्क प्रदान की जाती है, जिसे यह जारी की जा रही है।
This copy is granted free of charge for the private use of the person to whom it is issued.

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, 1982, 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 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 , 1982 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 ब्याजवलागाएगए 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 . -/10000के 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।

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

Brief Facts of the Case:

M/s. Oriion Consultancy, (Pan No. AADPA5222D), having address registered at 703 B, Om Shraddha Apartments, opposite Don Bosco School, Link Road, Borivali, West Mumbai- 400091 (hereinafter referred as the Customs Broker/CB) is holder of Customs Broker License No. 11/2242, issued by the Commissioner of Customs, Mumbai under regulation 7(1) of CBLR, 2013, now regulation 7(2) of CBLR, 2018) and as such they are bound by the regulations and conditions stipulated therein.

2. An Offence Report in the form of Show Cause Notice No. 142/ADC/ADJ(X)/2022-23/ACC dated 30.03.2024 issued by the ADC, Export Assessment Cell, Air Cargo Complex, Sahar, Andheri (East), Mumbai-III, was received on 24.04.2024 through e-mail, wherein, inter-alia the following were informed:

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

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

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

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

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

2.5. Summons dated 07.11.2023 was issued to the CB M/s Oriion Consultancy (11/2242) for recording their statement and submitting KYC detail of the exporter, authorisation letter, shipping bills, invoice and packing list pertaining to the case.

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

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

2.7. BRC Status of Past Exports: It is evident from the data retrieved from ICES 1.5 system that the foreign remittance has not been realised even after expiry of the prescribed time-limit. After investigation it has been found that FOB Rs. 15,47,16,142/- is involved in 108 shipping bills which was not realized even after the prescribed time limit.

2.8. The total drawback disbursed for the 82 Shipping Bills where Drawback Scroll has been generated is liable to be rejected/recovered with interest under the provisions of Rule 17, Rule 18 (1) & 18(2) of the Customs and Central Excise Duties Drawback Rules, 2017 read with Sections 75(1) and 75A (2) of the Customs Act, 1962. Therefore, the drawback amounting to Rs. 53,63,865/- in respect of Duty Drawback availed and disbursed of the said 82 Shipping Bills appears to be rejectable/recoverable with interest under the above mentioned provisions.

2.9. Further, in terms of CBIC Notification No. 77/2021-Customs (N.T.) dated 24th September, 2021 as amended, the duty credit allowed under the ROSCTL Scheme and RODTEP scheme shall be subject to realisation of sale proceeds in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), failing which such duty credit shall be deemed to be ineligible. Thus, such duty credit allowed under ROSCTL & RODTEP Scheme becomes liable for cancellation and recovery in terms of para 3, 4 and 5 of the notification *ibid*.

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

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

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

3. In view of the above facts and findings, it is clear that the CB M/s. Oriton Consultancy (11/2242) had not advised their exporter M/s Heeba Enterprise Private Limited about complying with the provisions of the Act, other allied Acts and the rules and regulations made thereunder, and had mala fide intention to claim undue export incentives i.e. drawback as well as ROSCTL refund benefits which was not legitimately available to him and causing loss to the Government Exchequer, this shows the guilty intention of the Exporter as well as Customs Broker.

4. Based on the facts on record and applicable laws, Rules and Regulations, prima facie it appears that the CB M/s. Oriion Consultancy (11/2242) failed to comply with the provisions of regulation 10(a), 10(d), 10(e), 10(n) and 10(q) of CBLR, 2018 which are discussed as below: -

4.1. *Regulation 10 (a) of the CBLR, 2018: -* "A Customs Broker shall obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be."

As per the offence report, it is a matter of fact that the exporter M/s Heeba Enterprise Private Limited filed 108 Shipping Bills through 09 Customs Broker including CB M/s Oriion Consultancy for the period 25.12.2016 to 04.11.2018 but FOB has not been realized against exports within the stipulated time and

exporter availed export incentives (Drawback and ROSCTL). It is noticed that during investigation Summon dated 07.11.2023 was issued to the CB M/s. Oriion Consultancy for recording of statement and submitting various documents viz. authorization letter, packing list, GSTN registration copy etc., however, in response to the said Summon, the CB did not appear before the investigating agency for recording of their statement and also did not submit any document in his defence. Therefore, it appears that the CB failed to take authorization from the exporter and violated regulation 10(a) of the CBLR, 2018.

4.2. 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 noncompliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;”*

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

4.3. 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;”*

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

4.4. Regulation 10(n) of the CBLR, 2018: - *“A Customs Broker shall verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;”*

As per the investigation report, various summonses addressed to the exporter were returned with “Unclaimed” remark and the said exporter did not even come for recording of statement under section 108 of the Customs Act, 1962. During investigation it was found that the exporter was non-existent at the address mentioned in IEC and hence it shows that the CB never verified the declared address of the exporter. In addition to this, CB did not establish any communication linkage with the Exporter. Summon dated 07.11.2023 was issued to the CB M/s. Oriion Consultancy for recording of statement and submitting various documents viz. authorization letter, packing list, GSTN registration copy etc., however, in response to the said Summon, CB did not appear before the investigating agency for recording of their statement and also did not submit any document in his defence. Hence, it appears that CB failed to verify the KYC documents and also failed to verify the identity of the exporter/client and their functioning at the declared address. It may be regarded that the subject case of fraudulent exports would have been avoided if the CB

had made strenuous efforts to verify the correctness of identity of the exporter/client and their functioning at the declared address. Due to above act of commissions and omissions, it appears the said CB failed to comply with provisions of regulation 10(n) of CBLR, 2018.

4.5. *Regulation 10 (q) of the CBLR, 2018: -* “A Customs Broker shall co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees.”

As per the offence report, during investigation Summon dated 07.11.2023 was issued to the CB M/s. Oriion Consultancy for recording of statement and submitting various documents viz. authorization letter, packing list, GSTN registration copy etc., however, in response to the said Summon CB did not appear before the investigating agency for recording of their statement and also did not submit any document in his defence. Hence, it appears that the CB did not co-operate with the Customs authorities in inquiry proceedings. Due to the above act of commissions and omissions, it appears the said CB failed to comply with provisions of regulation 10(q) of CBLR, 2018.

5. The evidence on record clearly indicates that the CB was working in a seriously negligent manner and was in violation of the obligations casted upon them under the CBLR, 2018. A Custom Broker occupies a very important position in the Customs House and supposed to safeguard the interests of both the importers and the Customs department. A lot of trust is kept in CB by the Government Agencies, but by their acts of omission and commission it appears that the said CB have violated Regulation 10 (a), 10 (d), 10 (e), 10 (n) and 10 (q) of the Customs Brokers Licensing Regulations, 2018 and rendered himself for penal action under Regulations 14, 17 & 18 of CBLR, 2018. Accordingly, action under CBLR, 2018 was invoked against the CB M/s. Oriion Consultancy (11/2242).

6. In light of the above, a Show Cause Notice (SCN) No. 28/2024-25 dated 02.07.2024, was issued to the CB under the provisions of Regulation 17 of the CBLR, 2018, wherein the CB was called upon to show cause, as to why, under Regulation 14 read with Regulation 17 & Regulation 18 of the CBLR, 2018:

- a. the Customs Broker license bearing no. 11/2242 issued to them should not be revoked;
- b. security deposited should not be forfeited;
- c. penalty should not be imposed upon them.

6.1. Also, **Ms. Rosa Fernandes, Assistant Commissioner of Customs, Import-I, Mumbai Customs, Zone- I** was appointed as Inquiry Officer (IO) to conduct the inquiry into the case under regulation 17 of CBLR, 2018. Accordingly, the IO had submitted the inquiry report dated 08.10.2024, which is discussed below.

INQUIRY REPORT: -

7. The Inquiry officer (here in after referred to as the 'IO') concluded the inquiry proceedings and submitted the inquiry report dated 08.10.2024, wherein all the charges levelled against the CB of violation of Regulations 10(a), 10(d), 10(e), 10(n) & 10(q) of CBLR, 2018 are held as **"Not Proved"**.

FINDINGS OF THE INQUIRY OFFICER: -

8. The IO had gone through the Show Cause Notice No. 28/2024-25 dated 02.07.2024 vide F.No. GEN/CB/262/2024-CBS. The IO had also gone through the records of the Personal Hearings and Defence submissions of the CB made during the personal hearings & also during the Inquiry Proceedings. The IO had further gone through the alleged Articles of Charges or contraventions mentioned in Show Cause Notice as well as legal provisions reflected in CBLR, 2018.

8.1. The IO had taken on record the submissions made by the CB and proceeded to discuss the submissions and examine their merits as below:

9. ARTICLE OF CHARGE I

Violation of Regulation 10 (a) of the CBLR, 2018

The IO found that it was alleged in the said Show Cause Notice that the exporter M/s. Heeba Enterprise Private Limited filed 108 Shipping Bills through 09 Customs Broker including CB M/s. Oriion Consultancy for the period 25.12.2016 to 04.11.2018 but FOB had not been realized against exports within the stipulated time and exporter availed export incentives (Drawback and ROSCTL). The IO further found that it was stated in the said Show Cause Notice

that during investigation, summon dated 07.11.2023 was issued to the CB M/s. Oriion Consultancy for recording of statement and submitting various documents viz. authorization letter, packing list, GSTN registration copy etc., however, in response to said Summon, the CB did not appear before the investigating agency for recording of their statement and also did not submit any document in his defence and therefore, it appeared that the CB failed to take authorization from the exporter and thus violated Regulation 10 (a) of the CBLR 2018.

9.2. In respect of non-submission of documents viz. Authorization letter, packing list, GSTN registration copy etc. against summons dated 07.11.2023 issued to the CB M/s. Oriion Consultancy, the IO found that as per para 5 of the Show Cause Notice No. 142/ADC/ADJ(X)/2022-23 dated 30.03.2024 issued by the Additional Commissioner of Customs, ACC (Export), Mumbai, Summons dated 07.11.2023 were issued to 09 (nine) Customs brokers including the charged CB M/s. Oriion Consultancy. The IO found that as per para 5.1 of the said Show Cause Notice, summons issued to four Customs Brokers Viz. M/s. S. Murugan, M/s. Indian Shipping Services and M/s. Senghi Shipping Services and M/s. Spaceage Logistics were returned back with the remarks Not Known, No such person in the address, Incomplete address respectively. The IO further found that as per paras 5.2 and 5.3 of the said Show Cause Notice, statements of proprietor of the C.B. M/s. Atlantic Customs Broker and Manager of CB M/s. Wishwa Naveen Traders were recorded on 21.11.2023 and 29.11.2023. Thus, as per the IO, out of 09 different summons all dated 07.11.2023, four summons were un-delivered and further, out of remaining five Customs brokers, statements of only two Customs Brokers were recorded.

9.3. The IO stated that the charged CB in their written submission dated 04.08.2024 had submitted that the investigation was conducted in a hasty and disorganized manner and the investigative authority did not provide an opportunity for explanation. The defence submission further stated as per the IO that they never received any summon or communication from the department on subject case during investigation; that the department had complete address and email & the telephone number of them was on customs records. The IO further stated that there was force in submission of the CB as according to the

defence submission by the CB, they had also attended personal hearing and replied to the said Show Cause Notice dated 30.03.2024, issued subsequently to issue of Summons to them.

9.4. Thus, according to the IO, it appeared from the issue of the said Show Cause Notice, no further efforts were made by the SIIB (Export), ACC, Mumbai in issuing summons to five Customs Broker including charged CB M/s. Oriion Consultancy. The IO found that subsequently the Show Cause Notice No. 142/ADC/ADJ(X)/2022-23 was issued on 30.03.2024 including CB M/s. Oriion Consultancy, being a co-noticee. Also, the IO found that there was nothing on record to indicate that further efforts had been made to contact the CB after issue of Summons dated 07.11.2023, which the CB claims as "SUMMONS dated 07.11.2023 HAVE NOT BEEN RECEIVED BY THEM" and thus CB M/s. Oriion Consultancy were unable to present themselves for recording of statement and submitting various documents viz. authorization letter, packing list, GSTN registration copy etc., for which the summons had been issued.

9.5. The IO observed that the Investigation Agency viz. SIIB (X), Air Cargo Complex should have issued a fresh summons to the charged CB M/s. Oriion Consultancy. However, the IO found that no such efforts were made by the SIIB (X), Air Cargo Complex, Mumbai in recording the statement of the charged Customs Broker and hence, benefit of doubt could be extended to the CB.

9.6. The IO stated that the CB M/s. Oriion Consultancy (CB No. 11/2242) was in possession of Authorisation and had produced copy of Authorization dated 15.12.2017 issued by the exporter M/s. Heeba Enterprises Pvt. Ltd. The IO further stated that the CB had complied with the provisions of Regulation 10 (a) of the CBLR, 2018 as the CB was in possession of the aforesaid Authorization dated 15.12.2017 issued by the exporter M/s. Heeba Enterprise Private Limited and the CB had submitted the copy of the same during the Inquiry Proceedings initiated under the provisions of Regulation 17 of the CBLR, 2018.

Accordingly, the IO held that the charges of violation of Regulation 10 (a) of the CBLR, 2018 found no merit and was '**Not Proved**'.

10. ARTICLE OF CHARGE II

Violation of Regulation 10 (d) of the CBLR, 2018

The IO stated that it was alleged in the said Show Cause Notice that the said exporter filed said Shipping Bills through the Customs Broker and availed export benefits under different export incentive schemes whereas the foreign remittance against the export consignments had not been realised even after the expiry of the prescribed time-limit; that the fraudulent export was done so as to claim the undue export benefits. The IO further stated that it was also alleged in the said Show Cause Notice that CB did not appear before the investigating agency in response to the Summons issued to them and it appeared that the CB abetted the said fraud and failed to perform his duties by not advising the exporter to comply with the rules and regulations regarding receiving foreign remittance timely. The Show Cause Notice further alleged as per the IO that such fraud and non-compliances by the said exporter were never brought to the knowledge of the Customs authorities by the CB which he was duty bound under the CBLR, 2018 and thus, due to the above act of commissions and omissions, it appeared the said CB failed to comply with provisions of Regulation 10(d) of CBLR, 2018.

10.2. The IO stated that according to the defence submission by the CB, all rules and regulation were advised to his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof; that the goods declared in the Shipping Bills and Export invoice were found in order which were accepted examined by the customs authorities and for which, the LEO was granted; the ICE Track record showed no discrepancy at the time of examination nor at the time of claiming Drawback/ ROSCTL, hence, question of reporting non-compliance to the customs authorities did not arise; that the non-compliance by the exporter was of not-realizing the export proceeds and claiming undue drawback, which are post export activities on which a CB has no control or supervision or any information to bring it to the notice of the Asst/Deputy Commissioner and the role of a Custom Broker is up to the time goods exported.

10.3. According to the IO, the defence stated that the further allegation that they did not guide the exporter with respect to realization of export proceeds with respect to stipulated time-frame allowed under Foreign Exchange Management Act 1999 was thoroughly misconceived; that in respect of every export, every

exporter gives undertaking at the time of export to realize the foreign exchange within the time permitted under FEMA 1999; that the exporter is therefore well aware of the requirement to realize the foreign exchange within the time limit under FEMA 1999 and does not need to be guided by the Customs Broker about such requirement. As per the IO, the CB further submitted that the realization or non-realization of the export proceeds is a post-export event, at which stage the Customs Broker is no longer acting as CB for the exporter; that if post the export, the exporter fails to realize the foreign exchange within the time permitted under FEMA 1999, the legal consequence of recovery of the drawback follows in terms of Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules 1995, in which the CHA has no role to play.

10.4. The IO found that the charged CB had submitted a letter of Authority dated 15.12.2017 issued by the exporter M/s. Heeba Enterprise Pvt. Ltd. in which Para 2. of the said authority letter stated that:

“We also hereby declare that all out shipments include our present consignment under clearance through your office, are our legitimate import/export and without any express violation of Rules & Procedures under Customs act, 1962, Foreign Exchange Regulation Act (FERA), Foreign Exchange Management Act (FEMA) & The Foreign Trade (Development and Regulation) Act, 1992 etc.”

From the aforesaid letter of Authority, the IO found that the exporter M/s. Heeba Enterprise Pvt. Ltd. was familiar with the provisions of FERA and FEMA. Further, the IO observed that the submission of BRCs is the duty of the Exporter. The IO had also perused Circular No. 05/2009-Customs dated 02.02.2009 issued by CBIC and Public Notice No. 136/2016 dated 07.10.2016 issued by the Commissioner of Customs, JNCH, Nhava Sheva on the subject monitoring of realization of export proceeds for the drawback EDI Shipping Bills-submission of BRCs. The IO found from the aforesaid Circular/ Public Notice that the submission of BRCs is the duty of the Exporter. The IO further found that the charged Customs Broker's role was limited up to the clearance of the export consignment (up to the LEO). The IO also found that the realization of export proceeds submission of the BRCs is post export/post clearance activity in which

Customs Brokers does not play any role in tracking the BRCs and its submission.

10.5. As per the IO, the defence submission stated that the goods declared in the Shipping Bills and Export invoice were found in order which were accepted by the customs authorities and the LEO was granted; that the ICE Track record showed no discrepancy at the time of examination nor at the time of claiming Drawback; that the non-compliance by the exporter is of not-realizing the export proceeds and claiming undue drawback, which are post export activities on which the CB has no control or supervision or any information to bring it to the notice of the Asst./Deputy Commissioner.

10.6. The IO found that there was force in CB's submission as there was no such allegation against the charged CB of mis-declaration or overvaluation during the clearance of the goods in the impugned Show Cause Notice. Also, the IO observed that there was no concrete evidence on record to show that the CB failed to comply with the provisions of Regulation 10 (d) of the CBLR, 2018. Since, according to the IO, in this case, the CB M/s. Oriion Consultancy did not find any objectionable fact or come across any non-compliance during filing of the Shipping Bills or assessment by the proper officer, they never referred it to the Customs Department, as required under Regulation 10(d) of CBLR 2018.

10.7. Thus, it can be safely concluded according to the IO that the CB had not failed in advising the client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof. Accordingly, the IO held that the charges of violation of Regulation 10 (d) of the CBLR, 2018 was '**Not Proved**'.

11. ARTICLE OF CHARGE III

Violation of Regulation 10 (e) of the CBLR, 2018

The IO found that it was alleged in the said Show Cause Notice that the said exporter filed the Shipping Bills through their Customs Brokers and availed export benefits under different export incentive schemes whereas the foreign remittance against the export consignments had not been realised even after the expiry of the prescribed time-limit; that CB did not exercise due diligence in ascertaining the correctness of claim of availing the export benefits under various export incentive schemes. The IO further found that it was also alleged in the

Show Cause Notice that if the said CB had exercised due diligence to ascertain the correctness of claims made under various export incentive schemes, then the financial loss to the government exchequer could have been averted; that the said CB did not exercise the due diligence in informing the exporter with reference to work related to clearance of cargo or baggage and it appeared that the CB had abetted the exporter in availing export benefits fraudulently; and thus, it also appeared that the CB had violated the Regulation 10(e) of CBLR, 2018.

11.2. According to the IO, the Defence submission stated 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 had not imparted any incorrect information to the exporter with regard to the clearance of the export cargo and therefore there was no any contravention of Regulation 10 (e) from their side; that there was also 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 was identified, which was allegedly incorrect nor was it stated how any information given by them to the exporter was incorrect.

11.3. The IO found that as per the defence submission by the CB, 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 exporter through mail they used to file shipping bills; that the exporter submitted the Invoice, Packing List, SDF Form and other required documents for filing of the shipping bill; that they only prepared the checklist and filed the shipping bill according to the documents submitted by the exporter; that they verified the correctness of classification based on the details mentioned in invoice, packing list etc.; and that they did not notice any such kind of discrepancy during the examination of goods. The IO also found that the investigations did not reveal any fact which showed that the CB was aware of the availment of undue drawback and other export incentives benefit. Also, as per the IO, there was nothing on record to indicate that the CB was aware about the non-submission of the BRCs by the exporter M/s. Heeba Enterprise Pvt. Ltd. and also, no evidence whatsoever was stated in the said Show Cause Notice regarding CB's knowledge of the offence.

11.4. The IO stated that in support of the above submissions, the CB had placed reliance on the decision of the Hon'ble Delhi High Court in the case of

(i) **Kunal Travels (Cargo) v CC-2017 (354) ELT 447**, in which it is held in **Para 12** as follows:

“Clause (e) of the aforesaid Regulation requires exercise of due diligence by the CHA regarding such information which he may give to his client with reference to any work related to clearance of cargo. Clause (1) requires that all documents submitted, such as bills of entry and shipping bills delivered etc. reflect the name of the importer/exporter and the name of the CHA prominently at the top of such documents. The aforesaid clauses do not obligate the CHA to look into such information which may be made available to it from the exporter/importer. The CHA is not an inspector to weigh the genuineness of the transaction. It is a processing agent of documents with respect to clearance of goods through customs house and in that process only such authorized personnel of the CHA can enter the customs house area.....There is nothing on record to show that the appellant had knowledge that the goods mentioned in the shipping bills did not reflect the truth of the consignment sought to be exported. In the absence of such knowledge, there cannot be any mens rea attributed to the appellant or its proprietor”.

(ii) **Parvath Shipping Agency Vs. Commissioner of Customs (Gen.), Mumbai [2017 (357) ELT. 296(Tri. Mumbai)]**, wherein it was observed that:

*“Customs House Agents Licence - Rendering advice to clients - Violation of Regulation 13(d) of Customs House Agents Licensing Regulations, 2004 (CHALR) - **Nothing on record to indicate that CHA was aware of any misdeclaration in import consignment or misuse of IEC or did not properly advise his client - On record that CHA had taken care to enquire about genuineness of consignment and only then accepted assignment** - Findings of adjudicating authority being based on surmises and assumption, not sustainable - Regulation 13(d) of Customs House Agents Licensing Regulations, 2004 [para 15]”.*

11.5. The IO had taken cognizance of the aforesaid case laws. The IO found that there was no evidence to prove that the CB was having prior knowledge of the alleged non-realization of the foreign remittance against the export consignments. The IO stated that she had already discussed the aspect of the submission of the BRCs in the Article of Charge 10 (d) of the CBLR, 2018, but as the Regulation 10(e) of the CBLR, 2018 being individual charge levelled against the CB, the IO re-iterated the same as under:

"I find that submission of BRCs is the duty of the Exporter. I have perused Circular No. 05/2009-Customs dated 02.02.2009 issued by CBIC and Public Notice No. 136/2016 dated 07.10.2016 issued by the Commissioner of Customs, JNCH, Nhava Sheva on the subject monitoring of realization of export proceeds for the drawback EDI Shipping Bills- submission of BRCs. I find from the aforesaid Circular/ Public Notice that submission of BRCs is the duty of the Exporter. I find that the charged Customs Broker's role is limited up to the clearance of the export consignment (up to the LEO) and that realization of export proceeds/submission of the BRCs is post export/post clearance activity. I find that charges of knowledge of non-submission of BRCs cannot sustain in absence of any corroborative evidence against the Customs Broker".

11.6. The IO submitted that the ratio of the aforesaid judgement was applicable in the instant case as nothing had come on record to indicate that the false information was given to the exporter M/s. Heeba Enterprise Pvt. Ltd. by the charged CB M/s. Oriion Consultancy (CB No. 11/2242). The IO further submitted that there was no allegation by the client/exporter and also, the SIIB (X), ACC, Mumbai could not find any mis-declaration regarding quality, quantity and value of the impugned goods. The IO stated that the CB could only file the Shipping Bills on the basis of documents furnished to them by the exporter and hence, the violation of the provisions of Regulation 10(e) of CBLR, 2018 was not conclusively proved. Accordingly, the IO held that the charges of violation of Regulation 10(e) of the CBLR, 2018 was **'Not Proved'**.

12. ARTICLE OF CHARGE IV

Violation of Regulation 10 (n) of the CBLR, 2018

The IO found that it was alleged in the said Show Cause Notice that the various summonses addressed to the exporter were returned with "Unclaimed" remark and the said exporter did not even come for recording of statement under section 108 of the Customs Act, 1962; that during investigation, it was found that the exporter was non-existent at the address mentioned in IEC and hence it showed that the CB never verified the declared address of the exporter; that in addition to this, the CB did not establish any communication linkage with the Exporter; that the Summon dated 07.11.2023 was issued to the CB M/s. Oriion Consultancy for recording of statement and submitting various documents viz. authorization letter, packing list, GSTN registration copy etc., however, in response to the said Summon, the CB did not appear before the investigating agency for recording of their statement and also did not submit any document in his defence. The Show Cause Notice further alleged as per the IO that it appeared that the CB failed to verify the KYC documents and also failed to verify the identity of the exporter/client and their functioning at the declared address; that the subject case of fraudulent exports would have been avoided if the CB had made strenuous efforts to verify the correctness of identity of the exporter/client and their functioning at the declared address; and thus due to the above act of commissions and omissions, it appeared that the said CB failed to comply with provisions of regulation 10(n) of CBLR, 2018.

12.2. According to the IO, the defence submission by the CB stated that they had verified the IEC, GSTIN, and PAN card of the exporter; that they visited the exporter's office premises at the declared address in Andheri West, Mumbai, a respectable location, to confirm the antecedents and accuracy of the IEC and also, the bank documents were verified by the department and were found to be authentic and genuine, in compliance with Rule 10(n) of the CBLR 2018; that they had fulfilled the obligations prescribed under Rule 10 of the CBLR 2018 and Circular No. 09/2010-Cus. dated April 8, 2010, issued by the CBIC.

12.3. The IO found that the CB had submitted following documents along with their written submission:

- i. Copy of Authority Letter dated 15.12.2017 issued by M/s. Heeba Enterprise Pvt. Ltd.;

- ii. Copy of IEC No. 0316963721 of M/s. Heeba Enterprise Pvt. Ltd.;
- iii. Copy of Form GST REG-06 No. 27AADCH9087Q1ZM of M/s. Heeba Enterprise Pvt. Ltd.;
- iv. Copy of PAN Card No. AADCH9087Q of M/s. Heeba Enterprise Pvt. Ltd.;
- v. Copy of AADHAR Card No. 445626231113 of Shri Salem Shaikh, Director of M/s. Heeba Enterprise Pvt. Ltd.

12.4. The IO submitted that as per the defence submission by the CB, it is well settled that Customs Broker does not require them to maintain vigil and continuous surveillance on the client to ensure that they continue to operate from the address as given in the various KYC documents and in case of change as such get the documents amended; that the officers of the customs visited after 05 years of export and did not found the exporter in place and decided that the exporter is non-existence.

12.5. According to the IO, the defence submission stated that as per Regulation 10 (n) of the CBLR, 2018, the obligation of the Customs Broker only requires him to verify that he is dealing with the exporter/importer, who is having valid IEC and GST registrations at the time of import/export of the goods; that at the time of filing of export documents, the IEC and GSTIN of the exporter were very much valid as verified on the online Government portals, which are the reliable source.

12.6. As per the IO, the defence submission by the CB stated that before filing the export documents, they had satisfied themselves regarding the authenticity of KYC documents of the exporter since the documents were also verified by the Bank. The IO submitted that the CB had relied upon the recent decision of the Hon'ble Delhi High Court in the case of KVS Cargo vs. Commissioner of Customs (General), NCH, New Delhi reported in 2019 (365) E.L.T. 392 (Del.), wherein the Hon'ble Court observed that

“4.The role of the appellant was merely one of a facilitator. There is no material on record to show that the KYC documents were fraudulent or incorrect or in any manner irregular. In these circumstances, to expect the CB holder to carry out further investigations

and independent inquiry not only about the existence of importing firm but also about its real owner is beyond the mandate of the law”.

The IO further submitted that the CB had relied upon the decision in the case of APS Freight & Travels Pvt. Ltd. Vs. Commissioner of Customs (General), New Delhi, reported in 2016 (344) ELT 602 (Tri. - Del) wherein the Hon'ble Tribunal held that:

“4.The admitted facts of the case are that the importer's details as available in IEC, PAN Cards, Bank Account and electricity have been checked by the appellant. No physical verification of importer's premises is mandated in the regulations nor it is a general requirement as per business practice. No violations have been noticed in respect of transactions with Customs with reference to consignment cleared through the appellants. As such the order of revocation of license, only on the ground that on later verification the importer was not found in the indicated premises, is not justifiable”.

12.7. The IO found that it is stated in the para 2.4 of the Show Cause Notice No. 28/2024-25 dated 02.07.2024 that:

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

The IO submitted that the delivery status of the Summons dated 10.03.2023 had been mentioned i.e. ‘Unclaimed’, but the status of other Summons Viz. Dated 02.01.2023 and 25.04.2023 issued to the exporter M/s. Heeba Enterprise Pvt. Ltd. had not been mentioned in the impugned Show Cause Notice. The IO found that as per para 2.6 of the impugned SCN, during the course of investigations, the personal visit was done on 25.10.2023 to Development Credit Bank Ltd. and the KYC details and the bank statements were retrieved from the Bank.

12.8. The IO stated that the CB had relied upon the decision of the Hon'ble CESTAT, Kolkata in case of

(i) Baid International Services Ltd. Versus Commissioner Of Customs (Airport & Air Cargo Complex, Commissionerate), Kolkata, reported in (2023) 10 Centax 321 (Tri-Cal) wherein, the tribunal in following paras held that;

“20. As far as revenue loss on account of IGST, or RECOVERY OF DRABACK is concerned, nothing in the CBLR, even remotely suggests that it is the responsibility of the Customs Broker to ensure its realisation. The Customs Broker has no real role to play in availment or payment of IGST. To pass on this burden as a responsibility on the Customs Broker is simply hypothetical wishful and beyond the parameters of law.

27. *The responsibility of the Customs Broker as held by judicial bodies does not require then to maintain vigil and continuous surveillance on the client to ensure that they continue to operate from the address as given in the various KYC documents and in case of change as such get the documents amended.*

28. *Under the circumstances that none of the documents entertained by the Customs Broker obtained for KYC, have been indicated to be fictitious and not genuine, we find that the Customer Broker has not violated Regulation 10(n) of CBLR with regard to the said fifteen exporters.*

29. *We, therefore, hold that Customs Broker has not failed in discharging his responsibilities under Regulation 10(n) of CBLR, 2018 Under the circumstances, the Customs Broker cannot be held responsible for the exporters found to not exist during subsequent verification undertaken, by the officers or there has been unrealized IGST, availed of by the untraceable exporters”.*

(ii) the decision of the Hon'ble CESTAT, New Delhi reported in S. Prakash Kushwaha & Co. Vs. Commissioner of Customs (Airport & General), New Delhi, reported in 2023 (384) E.L.T 89 (Tri. - Del.), wherein in para 26 of the said Order, the Hon'ble CESTAT observed that:

“26. The responsibility of the Customs Broker under Regulation 10(n) does not include keeping a continuous surveillance on the client to ensure that he continues to operate from that address and has not changed his operations. Therefore, once verification of the address is complete as discussed in the above paragraph, if the client moves to a new premises and does not inform the authorities or does not get his documents amended, such act or omission of the client cannot be held against the Customs Broker.

27. We, therefore, find that the Customs Broker has not failed in discharging his responsibilities under Regulation 10(n). The impugned order is not correct in concluding that the Customs Broker has violated Regulation 10(n) because the exporters were found to not exist during subsequent verification by the officers”.

12.9. The IO found that the ratio of the aforesaid judgements is applicable in the instant case and hence, as per the IO, the violation of the provisions of Regulation 10(n) of CBLR, 2018 couldn't sustain. Accordingly, the IO held that the charges of violation of Regulation 10 (n) of the CBLR, 2018 was **Not Proved**.

13. ARTICLE OF CHARGE V

Violation of Regulation 10 (q) of the CBLR, 2018

The IO found that it was alleged in the said Show Cause Notice that during investigation, the Summon dated 07.11.2023 was issued to the CB M/s. Oriion Consultancy for recording of statement and submitting various documents viz. authorization letter, packing list, GSTN registration copy etc., however, in response to the said Summon, the CB did not appear before the investigating agency for recording of their statement and also did not submit any document in his defence; that it appeared that the CB did not co-operate with the Customs authorities in inquiry proceedings and thus, due to the above act of commissions and omissions, it appeared the said CB failed to comply with provisions of regulation 10 (q) of CBLR, 2018.

13.2. According to the IO, the defence submission by the CB stated that they never received any summon or communication from the department on subject case during investigation; that the department had complete address and email, Telephone number of them was on customs record; that the first communication

received after 06 years of export i.e. the show cause notice from Cargo; that they had well responded, replied to concerned authority on record, attended all the PHs, replied to the SCN/RUD; that there was no question of non-cooperation with custom department from their side; that it was time barred notice, even the investigation had been started by the department after 05 years as per record.

13.3. The IO found that the CB M/s. Oriion Consultancy had submitted reply to the said Cause Notice dated 30.03.2024 vide their letter dated 22.05.2024 addressed to the Additional/Joint Commissioner of Customs, Adjudication Cell, Air Cargo Complex, Mumbai, but no efforts were made by the Investigating Agency in recording the statement of the charged Customs Broker. The IO further stated that according to the CB, the investigation was conducted in a hasty and disorganized manner and the investigative authority did not provide an opportunity for explanation, and they also never received any summon or communication from the department on subject case during investigation. The IO observed that the department had complete address and email of the CB; the telephone number of them was on customs records. The IO also observed that the said CB had attended the personal hearing and also replied to the said Show Cause Notice, issued after the issue of Summons to the CB. The IO stated that the CB enclosed a copy of the Personal Hearing Memo dated 12.06.2024 issued by the Appraising Officer, Adjudication (Export), Zone-III, ACC, Mumbai, issued to them on 703-B, Om Shraddha Coop HSL, Link Road, Borivali (West), Mumbai-400 091 and also enclosed a copy of their reply dated 22.05.2024 to Show Cause Notice No. 142/ADC/ADJ (X)/2022-23 dated 03.03.2024, addressed to the Additional/Joint Commissioner of Customs (Export), Adjudication Cell, ACC, Mumbai, (Received by the department on 24.05.2024).

13.4. As per the IO, there was nothing on record to show that the efforts had been made to track the delivery status of the summons No. NHG/512/2023-24 dated 07.11.2023 (CBIC-DIN-202311790E0000444ECE) issued to the CB M/s. Oriion Consultancy. As contended by the CB that they had not received the said summons and were unaware of the investigation being carried out against the exporter M/s Heeba Enterprise Private Limited (EC: 0316963721), the IO stated that they became eligible for the benefit of doubt and the same was being extended to the CB. According to the IO, if the summons dated 07.11.2023 had

been received by the CB, then it could be presumed that he would have co-operated/not co-operated with the Customs authorities and in the absence of this evidence, the charge of not cooperating with the Customs authorities did not hold much water and thus, the violation of the provisions under Regulation 10 (q) did not sustain. Accordingly, the IO held that the charges of violation of Regulation 10 (q) of the CBLR, 2018 was '**Not Proved**'.

Summary of the IO's Findings: -

14. From the aforesaid discussions as mentioned above, the IO finally concluded her findings as under: -

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

15. Under the provisions of Regulation 17(6) of CBLR, 2018, a copy of the inquiry report dated 08.10.2024 was shared with the charged CB and for the sake of 'Principle of Natural Justice', an opportunity of personal hearing was granted to the CB on 19.12.2024.

RECORDS OF PERSONAL HEARING: -

16. On 19.12.2024, Sh. Shambhu Dayal Agrawal, proprietor of the Custom Broker M/s. Oriion Consultancy (11/2242), had appeared for the personal hearing on behalf of the CB and submitted the defence submissions dated 19.12.2024 and reiterated the same.

WRITTEN SUBMISSIONS OF THE CB: -

CB Submission in the matter of show cause notice no. 28/2024-25 dated 02.07.2024 issued by the Principal Commissioner of Customs (General), Mumbai-I against M/s. Oriion Consultancy (CB No. 11/2242) (PAN No. AADPA5222D) (hereinafter referred to as the "Custom Broker or CB"), having registered office at 703 B, Om Shraddha Apartments, opposite Don Bosco

School, Link Road, Borivali, West Mumbai- 400091, under Regulation 17 of the Customs Broker Licensing Regulations, 2018 [CBLR. 2018]-regd.

17. At the outset, the CB denied all the allegations under Regulations 10(a), 10(d), 10(e), 10(n) and 10(q) of the CBLR, 2018, levelled against them in the Show Cause Notice 28/2024-25 dated 02.07.2024 and deny in seriatim. Nothing that was alleged in the show cause notice under reply was admitted or deemed to be admitted by the CB.

18. The CB stated that as the Inquiry Officer in the IO report dated 08.10.2024 held that there had been no violation of Regulations 10(a), 10(d), 10(e), 10(n) and 10(q) under the CBLR, 2018 on their part, the observations made by the IO in the aforesaid Inquiry Report were as per the facts of this case and legal position as laid down by various judicial pronouncements given on the issues similar to this case.

19. The CB further stated that it is pertinent to mention that no Disagreement Memo had been issued against the Inquiry Officer's Report dated 08.10.2024, and hence, they assumed that the Department was agreed with the findings of the Inquiry Officer and there was no adverse material and/or reason for difference with findings of the Inquiry Officer.

20. The CB respectfully submitted that without communication of adverse material and/or reasons for difference, would not enable them to rebut, qualify or explain the adverse material and show cause against the proposed adverse action. Further, the CB submitted that the Principle of natural justice requires that the said material/ reasons must be communicated to the Customs Broker to rebut or explain proposed adverse action in Show Cause Notice as well as in Disagreement Memo issued. In this regard, the CB had placed reliance on the decision of the Hon'ble High Court, New Delhi in the case of M/s. HIM Logistics Pvt. Ltd. Vs. The Commissioner of Customs (General), in WP (C) No. 9660/2015, wherein it was held under the relevant para 16 and 18 as:

“16..... In the present case, the inquiry report is in favour of the petitioner and exonerates him. Mere communication of the inquiry report, which is in favour of the petitioner and without communication of adverse material and/or reasons for difference, would not enable the petitioner to rebut,

qualify or explain the adverse material and show cause against the proposed adverse action. Principles of natural justice required that before an adverse decision was taken against the petitioner, the petitioner should have been communicated the adverse material/reasons for disagreement. The fact that the reasons for disagreement were not communicated to the petitioner prior to the adverse decision being taken by the Commissioner of Customs, there was clearly a violation of principles of natural justice. The Commissioner of Customs should have recorded the reasons for disagreement and forwarded the same to the petitioner for his comments before passing the impugned order. Because of failure to do so, the impugned order is clearly in violation of the principles of natural justice.

18. We answer question no. (ii) by holding that where the principal commissioner or commissioner of customs, as the case may be, intends to disagree with the inquiry report, that is in favour of the Customs Broker, then it is mandatory for him to communicate the adverse material/reasons for disagreement to the Custom Broker and require him to show cause/represent against the proposed adverse order”.

21. The CB submitted, on the basis of facts of the case & the SCN, the following points, already mentioned in reply to the show cause notice and observed by various judicial pronouncements /observations, as below: -

A. The entire case is booked for non-realization of BRC of export done by the exporter. This SCN is issued after 06 (six) years of export which is beyond a reasonable period of time as observed by various judicial bodies. It's time-barred SCN. In the present case, the goods have been exported in January 2018. Show Cause Notice is dated March 2024 i.e., six years after the export for recovery of drawback amount. Powers for non-compliance of the statute and recovery are vested on the respective department of Govt. of India and not with the Customs Broker. Failure on part of the exporter to realize export proceeds cannot be attributed to as a violation of CBLR 2018 or the Customs Act 1962

B. Customs Broker's role is limited up to the clearance of the export consignment (up to the LEO) and that realization of export proceeds/submission of the BRCs is post export/post clearance activity. Custom Broker has neither role in it nor any control on it.

C. BRC/DRAWBACK is not the responsibility/obligation of the customs broker. It's remotely suggested in CBLR regulation.

D. It's between the exporter and the government. It's whole exporters' responsibility.

E. There is no correlation between shipping bills filed and custom brokers. The offense report is vague. It's against natural law of justice.

F. There is no abetment by the Custom Broker in this case. There is no means rea or knowledge established or proved by the investigating agency in the SCN/Offence report as per board circular 20/2024.

G. Offence report sent by the organization booking such offence case should clearly contain the role played by the Custom Broker in the offence case. The Custom Broker being a Co-noticee in the offence case under Customs Act 1962 has to be linked to the proceedings initiated against the Custom Broker under CBLR, 2018. In these Offence cases, it is necessary to prove the element of 'abetment' of Custom Broker in the offence.

22. The CB also submitted the **BOARD'S INSTRUCTION REGARDING IMPLICATING CUSTOMS BROKER AS CO-NOTICEE**, which had issued vide Instruction No. 20/2024-Customs dated 03.09.2024, having F.No.-520/01/2023-Cus. VI, wherein it is instructed to avoid implicating Customs Brokers as co-noticee in a routine manner, in matters involving interpretation of statute, unless the element of **abetment of the Customs Brokers in the investigation is established by the investigating authority**. As per the CB, it is further instructed that the element of abetment should be clearly elaborated in the Show Cause Notice issued for the offence case under the provisions of the Customs Act, 1962.

23. The CB further submitted the relevant paras of the said Board's instructions as under:

“Representations have been received by the Board from the Customs Brokers' Associations in respect of implicating Customs Brokers as co-noticee in the show cause notices issued to importers/exporters in matters involving interpretative disputes.

2. *The matter has been examined. Customs Brokers Licensing Regulations, 2018 (CBLR, 2018) regulates provisions for action to be initiated against Custom Brokers for lapses on their part. Therefore, proceedings contemplated against a Customs Broker should be done as per the provisions contained in the CBLR, 2018 and must be distinguished from the proceedings for demand of duty/interest/imposing penalty under Customs Act, 1962. The competent authority must ensure the strict compliance of detailed procedure and timelines as prescribed under Regulation 16 and 17 of CBLR, 2018 while contemplating any action against a Customs Broker under CBLR, 2018.*

3. *Pr. Bench of CESTAT, New Delhi in its Study Report on the Final Orders has also highlighted that the **offence report sent by the organization booking should clearly contain the role played by the Custom Broker in the offence case. The Custom Broker being a Co-noticee in the offence case under Customs Act 1962 has to be linked to the proceedings initiated against the Custom Broker under CBLR, 2018. In these Offence cases, it is necessary to prove the element of 'abetment' of Custom Broker in the offence.**”*

24. The CB stated that in view of the above, all the charges levelled against them viz. Regulation 10(a), 10(d), 10(e), 10(n) and 10(q) of the CBLR, 2018 in the Show Cause Notice No. 28/2024-25 dated 02.07.2024 were not sustainable as the same had been held as “Not Proved” by the Inquiry Officer and no Disagreement Memo had been issued against the Inquiry Officer. And, therefore, according to the CB, the Show Cause Notice No. 28/2024-25 dated 02.07.2024 should liable to be dropped.

25. Lastly, the CB pleaded that there is no corroborative evidence on any of the charges levelled against them OR established. It is thus prayed by the CB that a lenient view may kindly be taken in the matter and drop the show cause notice.

DISCUSSIONS AND FINDINGS: -

26. I have gone through the facts of the case, the material available on record, the offence report received in the form of Show Cause Notice No. 142/ADC/ADJ(X)/2022-23/ACC dated 30.03.2024, issued under Customs Act, 1962, by the Addl. Commissioner of Customs, Export Assessment Cell, Air Cargo Complex, Sahar, Andheri (East), Mumbai-III; the SCN 28/2024-25 dated 02.07.2024, issued under regulation 17(1) of CBLR, 2018; the inquiry report dated 08.10.2024 and the submissions dated 19.12.2024, made by the CB during the personal hearing.

27. Briefly stated, the present case has been investigated by SIIB (Export), Air Cargo Complex, Mumbai Zone-III against the exporter M/s Heeba Enterprise Private Limited for claiming undue export incentives (Drawback and ROSCTL) against the exports made between 25.12.2016 to 04.11.2018. Scrutiny of past export records revealed that the exporter had filed total 108 shipping bills during this period and M/s Oriion Consultancy was one of the 9 Custom Brokers involved in the filing of the above shipping bills. When summoned during the investigation, neither the exporter nor the Custom Broker M/s Oriion Consultancy appeared before the investigating agency. The SCN under Customs Act 1962, was issued by the Additional Commissioner of Customs, ACC (Export), Mumbai wherein the charged CB has also been made a noticee. Accordingly, for the apparent act of omission and commission, action under CBLR, 2018 was initiated against the CB and inquiry was initiated under regulation 17 of CBLR, 2018. The inquiry officer submitted the inquiry report dated 08.10.2024 wherein all the articles of charge levelled against the CB were held as 'not proved'.

28. I find that 05 articles of charges have been framed against the CB viz. violation of regulation 10(a), 10(d), 10(e), 10(n) and 10(q) of CBLR, 2018, which

have been held as 'not proved' by the inquiry officer. Now, I proceed to discuss the articles of charge, sequentially.

28.1 Violation of Regulation 10(a) of CBLR, 2018, ibid:

(a) The Inquiry Officer has reported that the CB has argued that they never received any summon or communication from the department on subject case during investigation. The Inquiry Officer has found that the CB was in possession of Authorisation and had produced copy of Authorization dated 15.12.2017 issued by the exporter M/s. Heeba Enterprises Pvt. Ltd.

(b) Keeping in view of the fact that the CB was in possession of the Authorization letter issued by the exporter, I found no reasonable grounds to counter the findings of the inquiry officer and accordingly I approve the conclusion of inquiry officer in holding that the charge of violation of regulation 10(a) as 'not proved'. I find that the inquiry officer has substantially dropped the said charges.

28.2 Violation of Regulation 10(d) and 10(e) of CBLR, 2018, ibid:

(a) The inquiry officer has observed that "the exporter M/s Heeba Enterprise Pvt. Ltd. was familiar with the provisions of FERA and FEMA and submission of BRCs was the duty of the Exporter. The inquiry officer found merit in CB's submission that the goods declared in the Shipping Bills and Export invoice were found in order which were accepted by the department while granting LEO and there was no discrepancy at the time of examination nor at the time of claiming drawback; and non-compliance by the exporter is of not-realizing the export proceeds are post export activities on which the CB has no control or supervision. Accordingly, the IO held that the charges of violation of regulation 10(d) & 10(e) are 'not proved'.

(b) I find that the shipping bills involved were of a long period of time i.e. from 2016 to 2018, wherein the FOB had not been realised even after the expiry of the prescribed time limit. The CB failed to advise the exporter about mandatory provisions of FERA and FEMA and submission of BRCs. Also, the inquiry officer has not mentioned or found any evidence that the exporter was informed about

the fulfilment of obligations of realization of foreign remittance. Also, the ineligible amount of drawback was claimed in regards of the above mentioned shipping bills and wrongful availment of drawback was never brought to the notice of the department. It's also a matter of fact that the CB did not appeared before the investigating agency during the investigation.

(c) The inquiry officer relied upon various judgements/case laws in this regard. The CB has also relied upon various case laws in their favour, which have already been mentioned in preceding paras. For the sake of brevity, I refrain from reproducing the said case laws as the same have already been discussed in preceding paras of this order. I find that under the facts and circumstances of the case, the ration of case laws relied upon by the inquiry officer are not squarely applicable in the present case.

(d) Keeping in view of all the aspects of the inquiry report, I find that there are reasonable grounds to counter the findings of the inquiry officer as discussed above and accordingly I hold the charges of violation of regulation 10(d) and 10(e) of CBLR, 2018 as 'proved'.

28.3 Violation of Regulation 10(n) of CBLR, 2018: -

(a) I find that the charges of violation of Regulation 10(n) of CBLR, 2018 was included in present SCN as various summons were issued to the Exporter for recording the statement and to submit relevant documents pertaining to the case, but the exporter failed to present himself before the investigating agency. I find that the Inquiry Officer has observed that in offence report Para 2.4 it was mentioned that summons dated 02.01.2023, 10.03.2023 and 25.04.2023 were issued to the exporter and summons dated 10.03.2023 was returned with the remark "Unclaimed", however, status of other summons are not mentioned in the SCN.

(b) I find that the Inquiry officer has relied on the CB's submission that if an IEC holder moves to a new premises, it would be his duty to inform the authorities and get the documents amended and once verification by the CB is completed, they can not be expected to keep continuous surveillance on their client to ensure that he continues to operate from the initially declared address.

I have also gone through the case laws relied upon by the IO and the CB and finds merit in the Inquiry officer's observations.

(c) Keeping in view all the aspects of the inquiry report, I find that there are no reasonable grounds to counter the findings of the inquiry officer and accordingly I approve the conclusion of inquiry officer in holding that the charges of violation of regulation 10(n) are 'not proved'. I find that the inquiry officer has substantially dropped the said charges.

28.4 Violation of Regulation 10(q) of CBLR, 2018: -

(a) I find that the charges of violation of Regulation 10(q) of CBLR, 2018 was included in present SCN as summon dated 07.11.2023 was issued to the CB M/s. Oriion Consultancy for recording the statement and to submit relevant documents viz. authorization letter, packing list, GSTN registration copy etc, however, in response to the said Summon CB did not appear before the investigating agency for recording their statement.

(b) I find that the CB has contended that they never received any summon or communication from department during investigation and were unaware about any investigation being carried out against the exporter, hence there is no question of non-cooperation with custom department. I find merit in the CB's submission as Inquiry Officer has observed that the CB had submitted reply to the Show Cause Notice dated 30.03.2024 vide their letter dated 22.05.2024 to the Addl./Joint Commissioner of Customs, Adjudication Cell, ACC, Mumbai.

(c) I find that there are no reasonable grounds to counter the findings of the inquiry officer and accordingly I approve the conclusion of inquiry officer in holding that the charges of violation of regulation 10(q) are 'not proved'. I find that the inquiry officer has substantially dropped the said charges.

29. Further, I find that the Show Cause Notice No. 142/ADC/ADJ(X)/2022-23 Dated 30.03.2024 was issued by the Addl. Commissioner of Customs, ACC (Export), Mumbai against the exporter M/s. Heeba Enterprise Pvt. Ltd. and others including the CB M/s. Oriion Consultancy under the relevant provisions of Customs Act, 1962 and Customs and Central Excise Duties Drawback Rules,

2017. However, it is pertinent to mention here that the proceedings under CBLR, 2018 are independent, separate and distinct from that under Custom Act, 1962.

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

a) Hon'ble High Court of Judicature at Bombay in the case of Principal Commissioner of Customs (General), Mumbai Versus Unison Clearing P. Ltd. reported in 2018 (361) E.L.T. 321 (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 High Court of Karnataka, in the matter of The Commissioner of Customs vs M/s. Sri Manjunatha Cargo Pvt Ltd on 12 January [C.S.T.A. No. 10/2020] held that:-

“13. A reading of Regulation 17 of the C.B.L.R., 2018 makes it very clear that though there is a time limit stipulated in the Regulations to complete a particular act, non-compliance of the same would not lead to any specific consequence.

14. A reading of the Regulation 17 would also go to show that the Inquiry Officer during the course of his inquiry is not only required to record the statement of the parties but also to give them an opportunity to cross-examine and produce oral and documentary evidence. In the event of the respondents not co-operating, it would be difficult for the Inquiry Officer to complete the inquiry within the prescribed period of 90 days, as provided under Regulation 17(5). Therefore, we find force in the argument of the learned counsel for the appellant that the Regulation No.17 is required to be considered as directory and not mandatory. Though the word "shall" has been used in Regulation 17, an overall reading of the said provision of law makes it very clear that the said provision is procedural in nature and non-compliance of the same does not have any effect. If there is no consequence stated in the Regulation for non-adherence of time period for conducting the inquiry or passing an order there afterwards, the time line provided under the 22 statute cannot be considered as fatal to the outcome of inquiry.

15. Under the circumstances, we are of the considered view that the provisions of Regulation 17 of the C.B.L.R., 2018 is required to be considered as directory and not mandatory and accordingly, we answer the substantial

questions of law Nos.1 to 3 in favour of the appellant and against the respondent.”

31. Considering all the facts and circumstances of the case and taken into cognizance of the findings of inquiry officer, defence submissions of the CB and the decisions/case laws of higher forum, relied upon by the IO and the CB, as discussed above, I conclude that the CB is not guilty of violations of regulations 10(a), 10(n) and 10(q) of CBLR, 2018. However, violations of regulations 10(d) and 10(e) of CBLR, 2018 stands proved. Here, I am of the considered view that revoking the CB license, forfeiture of security deposit would not be justified and sustainable in the eyes of law and only imposition of penalty would be sufficient for the violations.

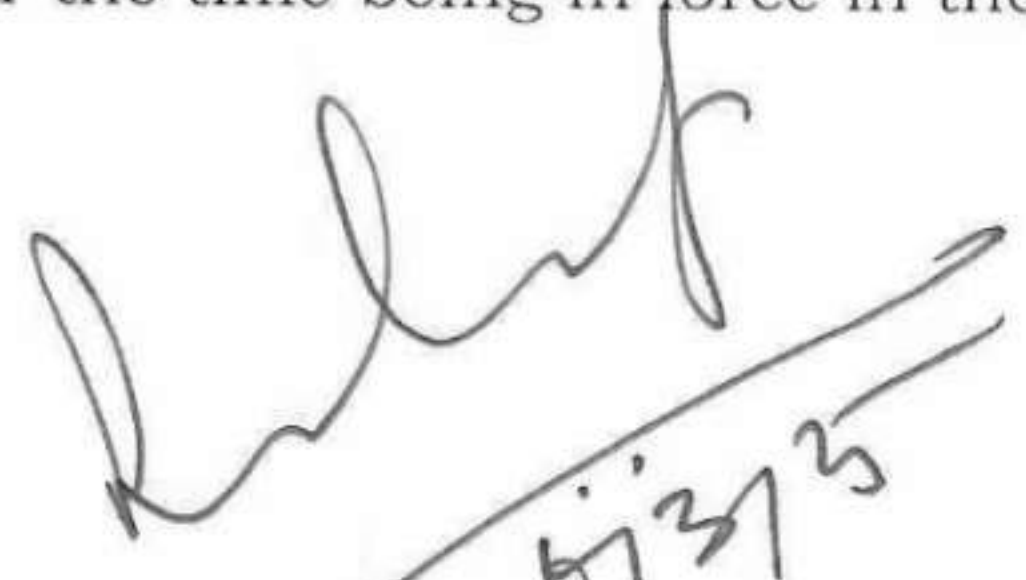
32. In view of the above mentioned judgements and the “Doctrine of Proportionality” which propagates the idea that a punishment for an offence should be proportional to the gravity of the offence, I am not inclined to revoke the license of the CB and to forfeit the security deposit furnished by the CB at the time of issuance of CB license. However, for their acts of omission and commission, the CB M/s. Oriion Consultancy (CB No. 11/2242, PAN: AADPA5222D) is held liable and guilty for violating the provisions of CBLR, 2018 as mentioned above. I hold that the CB has failed to discharge his duties cast upon him with respect to Regulation 10 of CBLR, 2018 and the interest of justice would be met by imposition of penalty under Regulation 18 of CBLR, 2018. Accordingly, I pass the following order:

ORDER

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

(i) I, hereby impose penalty of Rs. 20,000/- (Rs. Twenty Thousand Only) on Custom Broker M/s. Oriion Consultancy (CB No. 11/2242, PAN: AADPA5222D) under Regulation 18(1) of the CBLR, 2018.

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



(Rajan Chaudhary)

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

To,

M/s. Oriion Consultancy (CB No. 11/2242),
703 B Om Shraddha Apartments, opposite Don Bosco School,
Link Road, Borivali (West),
Mumbai 400091

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