



आयुक्त, सीमाशुल्क (सामान्य) का कार्यालय  
 OFFICE OF THE COMMISSIONER OF CUSTOMS (GENERAL),  
 नवीन सीमाशुल्क भवन, बेलार्ड इस्टेट, मुंबई 400 400 -1.  
NEW CUSTOM HOUSE, BALLARD ESTATE, MUMBAI-400 001.

संचिका सं./F. No.- GEN/CB/583/2022 -CBS

आदेश दिनांक/Date of Order: 30.12.2025

CAO No. 123/2025-26/CAC/CC(G)/SJS/Adj-CBS जारी दिनांक/Date of issue: 12.01.2026

संख्या:

DIN:- 20260177000000121718

द्वारा जारी : श्रद्धा जोशी शर्मा

Issued By : **Shraddha Joshi Sharma**

आयुक्त, सीमाशुल्क(सामान्य)

Commissioner of Customs (Gen.)

मुंबई -400 001

Mumbai – 400 001

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

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

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- इस आदेश के विरुद्ध अपील माँगे गए राशी के **7.5%** के भुगतान पर सीमाशुल्क अधिनियम, 129 की धारा 1962A(1B)(i) के संबंधमें सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण में स्वीकार्य है, जहाँ शुल्क या शुल्क एवं जुर्माना विवादित हों, या जुर्माना, जहाँ सिर्फ जुर्माना ही विवादित हो। यह अपील इस आदेश के संप्रेषण की तारीख के तीन महीने के अंदर दायर की जाएगी। यह अपील सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण नियमावली (कार्यविधि), 1982, के प्रावधानों के अंतर्गत, यथोत्तरांतर्भूत 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.

- यह सूचित किया जाता है की इस आदेश के अमल में आते ही, न्याय निर्णयन अधिकारी का अधिकार क्षेत्र समाप्त होता है और सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण, पश्चिम क्षेत्री यांत्रिक प्रांत, के M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai के संदर्भ में जारी आदेश क्रमांक A/86617-86619/2018 दिनांक के अनुसार 31.05.2018 न्यायिक आदेश तदोत्तर प्रांत न्याय निर्णयन अधिकारी 'functus officio' बन जाता है।

It is informed that the jurisdiction of the Adjudicating Authority stands alienated with the conclusion of the present adjudication order and the Adjudicating Authority attains the status of 'functus officio' as held by Hon'ble CESTAT, Mumbai in its decision in the

case of M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai vide Order No. A/86617-86619/2018 dated 31.05.2018.

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

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

5. यह अपील फॉर्म C.A.-3 में दायर की जानी चाहिए जो कि सीमाशुल्क नियमावली (अपीलस), १९८२ के नियम में उल्लेखित २ के उपनियम ३ के तहत निर्धारित है एवं उसी नियमावली के नियम ६ 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 ब्याजवलगाएगए जुर्माने की राशि रु-/1000 .पाँच लाख या इस से कम होतो रु ., (ii) यदि यह राशि रुपाँच लाख से . ) एवं -/5000 .अधिक हो किंतु पचास लाख से अधिक न होतो रुiii) यदि यह राशि रुपचास लाख से . के शुल्क -/10000 .अधिक होतो रु का भुगतान क्रॉस्ड बैंक ड्राफ्ट के माध्यम से अधिकरण की खंडपीठ के सहायक पंजीयक के पक्ष में जिस स्थान पर खंडपीठ स्थित है, के किसी भी राष्ट्रीय क्रत बैंक की शाखा में किया जाए एवं डिमांड ड्राफ्ट अपील के साथ संलग्न किया जाए।

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

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

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

**BRIEF FACTS OF THE CASE:**

M/s. Apson Enterprises (CB No. 11/501, PAN-AAAFA5729L), having office address at 2/B Roy Appt. Opp Air Cargo Complex, Sahar Road, Andheri (E), Mumbai-99 (hereinafter referred to as the Customs Broker/CB), is holding regular Custom Broker License No. 11/501 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 conditions stipulated therein.

**2. An Offence Report in the form of SCN No. 30/Adj(X)/2022-23 dated 15.11.2022**

issued vide F.No. Cus/Ass/M15C/525/2022 Exp.Ass received from ACC, Mumbai. Vide the above-mentioned Offence Report (SCN), wherein it was inter-alia informed that:

2.1 Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit (MZU), Mumbai investigated a case of availing of undue export benefits on the basis of fake/bogus export documents by exporter M/s. Lorgan Lifestyle Limited, Pune (IEC 3107012696). The exporter was engaged in bogus exports by way of procuring fake purchase bills against the export consignments from one Mr. Suhel Ansari, through fake firms floated by him. During the course of the investigation of the case various searches were conducted by the DRI.

2.2 The office premises of M/s. Lorgan Lifestyle Limited were searched on 23.07.2015 wherein certain documents and 02 computers were recovered.

2.3 The office premise of M/s. Karan Ranka & Associates, CA of Shri Suhel Parvez Mohammed Sharif Ansari was searched on 29.07.2015. His statements under Section 108 of Customs Act, 1962 were recorded on 29.07.2015 & 30.07.2015 wherein he admitted that invoices were being prepared on the blank invoices on the basis of Commercial Invoice and packing list of various export goods. He also admitted that suppliers were bogus and existed only on papers.

D. He purchased raw material/readymade garments from the local market and he made the payment through Cheque or by cash.

E. He did not now know Suhel Ansari and he never met with him.

F. He had not transacted any business with any of the companies floated by Shri Suhel Ansari and he will submit the bank statement for reference within 01-02 days.

G. He had done 38 shipping bills through Air Cargo Complex in the year between 2012 and 2016. Vide letter dated 18.01.2022, He had submitted copies of export invoice, Airway bill, BRC and shipping bills to the investing agency.

*H. On being asked about overvaluation of the goods exported between 2012 and 2016,*

he stated that his company never overvalued the exported goods. He stated that they used to purchase the goods from the local market and after adding 15-20% benefits, they prepared the export invoice and exported the same to foreign buyers. For the reference, he will submit the local purchase invoice.

2.10 On scrutiny of the shipping bills filed by the exporter M/s Smart International, it was found that the Customs Brokers M/s. Atlas Logistic Pvt. Ltd., M/s. Beejay Clearing and Forwarding Agency and M/s Apson Enterprises (CB No. 11/501) had cleared the export consignments/shipping bills of the said exporter. As per Annexure-A, attached with the offence report dated 15.11.2022, it is evident that M/s. Apson Enterprise cleared 02 export consignments/Shipping Bills.

2.11 Statement of Shri Jude D. Mello, General Manager of CB M/s. Atlas Logistic Pvt. Ltd has been recorded on 30.08.2022 wherein he inter alia stated that they have done KYC verification and address verification of M/s Smart International and they submitted copy of the same to the investigating agency.

2.12 Statement of Shri John K. Mathew proprietor of CB M/s. Beejay Clearing and Forwarding Agency has been recorded on 01.09.2022 wherein he inter alia stated that he

had verified their office address, IEC Code, Aadhar card of Mr. Anil Vora. He submitted the KYC documents, PAN Card and IEC Copy to the investigating agency.

2.13 This fact was also confirmed by the enquiry conducted by DRI vide its letter F No. DRI/MZU/D/INT-31/2015/7766 dated 04.10.2016 through 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, Instant exporter has also adopted the similar modus operandi.

2.14 DRI vide their letter F. No. DRI/MZU/D/INT-31/2015/7766 dated 04.10.2016 mentioned that undue drawback is being claimed by the exporters by overvaluing the exports whereas cheaper materials were exported and to justify the value of the goods, fake invoices from Shri. Suhel Ansari were procured showing the higher purchase price. DRI further gave a list of exporters and stated that these exporters Included M/s. Smart International (IEC No.-0310055822) may have also adopted a similar modus operandi and requested that the same may be investigated by SIIB (Export), ACC, Mumbai.

### 3. **Role of M/s Apson Enterprises (11/501) in case of M/s. Smart International**

From the facts of the case, it appeared that the CB M/s. Apson Enterprises (CB No. 11/501, PAN-AAAFA5729L) has failed to comply with regulation 10(d), 10(e) & 10(f) of CBLR, 2018, as amended. The relevant regulation of CBLR, 2018, are produced below for reference:

#### 3.1 **Regulation 10(d) of CBLR 2018:**

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

relevant to this case; that the remittance for both the shipments are received, drawback has been released in respect of only one Shipping Bill and drawback of another shipping bill has been suspended; that they were not involved in procurement, packaging, transportation and freight broking etc.; that there is no evidence on record which shows that the export shipments pertaining to their 02 shipping bills were cleared by the custom broker using purchase bills issued by the said fake entities formed by Mr. Suhel Ansari or his associates; that the statement of Mr. Anil Vera partner of Smart international has denied and nowhere mentioned in his statement that such purchase bills were being used; that there is also no record of any wrongdoing or any shortcoming on the part of Custom Broker in the statements; that the allegations in the order and the SCN are speculative as there is no evidence on record for any contraventions of the Customs Act or the CBLR. Further they have quoted many judgements submitting that the onus should not be put on Custom Broker.

6. Subsequently, considering the submissions by the CB, the Suspension of the CB license was revoked vide Order No. 45/2024-25 dated 14.11.2024 under Regulation 16(2) of the CBLR, 2018.

7. The evidence on record clearly indicated that the CB was working in a 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 is supposed to safeguard the interests of both the importers/exporters and the Customs department. A lot of trust is kept in CB by the Government Agencies, but by their acts of omission and commission it appeared that the said CB have violated Regulation 10(d), 10(e) & 10(f) of the Customs Brokers Licensing Regulations, 2018 and rendered themselves for penal action under CBLR, 2018.

8. Accordingly, under the provisions of Regulation 17(1) of CBLR, 2018, the Show Cause Notice No. 64/2024-25 dated 09.12.2024 was issued to the said Customs Broker

M/s. Apson Enterprises (Custom Broker-11/501, PAN No. AAAFAS729L) wherein the CB was called upon to show cause, as to why:

- I. The Customs Broker license bearing no. 11/501 issued to them should not be revoked;
- II. Security deposit should not be forfeited;
- III. 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.

8.1 Also, Shri Alok Kumar, Assistant Commissioner of Customs was appointed as Inquiry Officer to conduct the inquiry proceedings against the CB M/s. Apson Enterprises (11/501) under Regulation 17 of CBLR, 2018.

#### **INQUIRY REPORT: -**

9. The Inquiry officer (here in after referred to as the 'IO') concluded the inquiry proceedings and submitted the inquiry report dated 17.09.2025, wherein all the charges levelled against the CB of violation of Regulations 10(d), 10(e) & 10(f) of the CBLR, 2018 are held as "**Proved**".

#### **FINDINGS OF THE INQUIRY OFFICER: -**

10. The IO stated that, the CB vide his submissions had stated that, out of the total 38 export consignments reported in SCN, only 02 consignments were cleared by their CB firm, the goods were exported to Mauritius, that the investigation carried out by the DRI was related to exports to Dubai;

10.1 The IO found that the CB is being made a noticee after proper investigation and accordingly an inquiry has been proposed vide Show Cause Notice No.64/2024-25 dated 09.12.2024 under CBLR, 2018. The CB submitted that the undersigned has to examine the case only with the article of charges levelled against the CB M/s Apson Enterprises (CB No.11/501).

10.2 The IO found that as per Order-in-Original CAO No. ADC/PKK-44/2023-24 Adj. (X) ACC dated 03.06.2023 passed by the Additional Commissioner of Customs, ACC, Mumbai, the CB M/s. Apson Enterprises was given opportunities to be heard personally vide personal hearing letters; the IO submitted that the CB M/s. Apson Enterprises neither responded to the personal hearing letters nor attended the hearing and the CB chose not to join the adjudication proceedings. Also, vide said Order dated 03.06.2023, penalty of Rs.1,00,000/-under Section 114(i). Rs.1,00,000/- under Section 114(iii) and Rs. 50,000/- under Section 114AA of Customs Act, 1962 read with CBLR 2013 was imposed on the CB M/s. Apson Enterprises.

11. Further, the IO submitted that the allegations levelled and the sustainability thereof is discussed in the following paragraphs sequentially.

### **11.1 Regulation 10(d):**

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

11.1.1 The IO submitted that the CB in their defence, stated that; that they had filed the Shipping Bill as per the documents provided by the exporter M/s Smart International. It may be seen from the facts of the case that both the shipping bills were prepared according to various documents received from the exporter w.r.t. description, quantity, price etc.; clearance was subjected to examination as per P/N No.11/2002 issued by Commissioner of Export ACC Examination norms of export goods at port of export, there was no adverse report endorsed by the examining officer w.r.t description quantity, quality or applicability of drawback the buying price or the transaction details of the exporter with the seller of the goods are not required to be mentioned anywhere in the documents required for Export clearance by law.

11.1.2 The IO submitted that the custom broker should be cautious enough to ensure that there is no violation of non-compliance of law by their client in view of facts and information/material available on record at the given point of time. The IO submitted that the custom broker's obligation would be considered as complied under Regulation 10 (d) once they have given an advice to their client in terms of law irrespective of the decision taken by client after receipt of such advice.

11.1.3 The IO found that there is no evidence on record which proves that the CB has advised his client with regard to declaration of correct value of the goods in shipping bills in terms of Circular No. 16/2009- Customs dated 25.05.2009 issued vide F. No. 609/137/2007-DBK. However, the IO submitted that from the offence report it is evident that not only the CB had not properly advised the exporter while filing the Shipping Bill(s) but abetted the wrong doer and thereby failed in his duty to inform the same to the Department. Thus, the IO submitted that the violation of regulation 10 (d) of CBLR 2018 by the CB is proved.

## **11.2 Regulation 10(e):**

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

11.2.1 The IO submitted that the CB, in their defence stated that; they have complied by provisions as the exporter was seasoned exporter with knowledge of the various acts and have done many shipments; SDF forms and the invoices etc., were as per requirements and same was checked by Customs officers before LEO was granted to the exporter, as per FEMA rules the exporter has already received the Inward Remittance's which is already on record.

11.2.2 The IO submitted that on perusal of the offence report and Order in Original, the investigation revealed that the exported items were overvalued, whereas cheap material

was exported and to justify the value of the goods, fake invoices from Shri Suhel Ansari, were procured showing the higher purchase price. The IO submitted that it was the responsibility of CB to advise the exporter to furnish the correct value of the goods. Further, the IO found that there is no evidence on record which proves that the CB had imparted correct and proper information with respect to Drawback Rules to the exporter.

11.2.3 The IO submitted that it clearly shows that transaction value is incorrect, inflated, value of goods miss-declared by the exporter thereby it is evident that CB did not exercise due diligence and did not impart the information relating to Drawback Rules to the client but aided the exporter in availing the undue drawback by overvaluing the exports, whereas in reality cheaper material was exported. Thus, the violation of regulation 10 (e) of CBLR 2018 by the CB is proved.

### 11.3 Regulation 10(f)

*"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"*

11.3.1 As per submitted by the IO the CB, in their defence stated that; they complied by provisions as they have taken utmost care in checking the documents w.r.t the tendered cargo in the joint examination with the Customs officer, as per various office orders the cargo was 100% examined under D.C (Shed) supervision for which manual report was endorsed on the checklist and C Form as per normal shed; that there was no record of any discrepancies recorded in the export report before the LEO was granted.

11.3.2 The IO submitted that on perusal of the offence report, the investigation revealed that Exporter did not declare the name and complete address of the traders from whom goods were purchased in order to claim Drawback. From this, the IO found that CB failed to advise the Exporter to comply with Rule 3, Rule 16 and Rule 16A of Drawback Rules,

1995. The IO submitted that it was the responsibility of the CB to ensure that the Exporter declare the same correctly. Further, the IO found that there is no evidence on record which proves that the CB had advised the exporter about the Circular No. 16/2009-Customs dated 25.05.2009 Issued under F.No.609/137/2007-DBK.

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

Sr. No	Charges against the CB	Findings
1	Violations of Regulation 10(d) of CBLR, 2018	Proved
2	Violations of Regulation 10(e) of CBLR, 2018	Proved
3	Violations of Regulation 10(f) of CBLR, 2018	Proved

13. Also, the IO submitted that with regard to the prescribed timeline under Regulation 17 for completion of Inquiry Proceedings, the same could not be followed as he is allotted multiple charges and there was delay in furnishing the requisite documents from Custom Broker Section.

14. The Inquiry Report dated 17.09.2025, submitted by the Inquiry Officer, was accepted and under the provisions of Regulation 17(6) of CBLR, 2018, a copy of the inquiry report was shared with the CB vide this office letter dated 26.09.2025 and for the sake of Principle of Natural Justice an opportunity of personal hearing was granted to the CB on 04.11.2025.

#### **RECORDS OF PERSONAL HEARING:-**

15. The personal hearing in the matter was held on 04.11.2025 before me and Sh. Vinay Apte, Partner of the CB firm M/s. Apson Enterprise (CB No. 11/501) appeared for the hearing and referred and reiterated their written submission dated 26.10.2024. Further, he requested to give them 5 days time for submitting an additional written reply. For

compliance of the Principle of Natural Justice, his request was accorded and he was given 5 days time for submitting their additional submission. Accordingly, the CB's additional defence submission dated 10.11.2025 was received in this office.

**WRITTEN SUBMISSIONS OF THE CB: -**

16. The CB vide their submission dated 26.10.2024, interalia submitted that as per para 2 of the Suspension Order dated 19.07.2024 which states that various letter's dated 09.01.23, 24.03.23, 04.10.23 & 09.05.2024 were sent by the CB section to the investigating agency against Offence report received without any summons & statements. The CB also stated that they have received the mentioned suspension order on 19.07.2024, After 600 days after the submission of offence report and were not given a chance either for statement or Personal hearing before the stringent suspension order was passed which has affected them and their employee's livelihoods for the past 4 months.

17. Further, the CB submitted that the whole case stands on the grounds that Mr Suhel Ansari along with his C.A Mr Ranka and others were in to the business of issuing fake invoices. There is no mention of the CB or their employees being involved in creating the supplier entities, issuance of Sale bills and collecting them from the above mentioned person's or entities in their statements or otherwise. Hence the CB submitted that it is evident on record that Custom broker was not involved in the procurement of the goods or their invoices. Here the CB would also like to bring to your notice that the employee of Suhel Ansari, Mr Shaikh Mohammed Arshad has also not mentioned any names or reference of the custom brokers in his statements and only exporters were mentioned.

18. The CB further submitted that they had done clearance for only 2 Shipping bills for the client M/s. Smart International. The shipping bills were cleared for Mauritius and not to U.A.E. The shipment being exported to alert port was examined 100% with respect to Quantity, Valuation, Quality as per various office orders issued by export commissioner. The same can be verified from the ICES System. The CB submitted that the remittances

for both the shipments are received and only the drawback against one shipping i.e. S/B No 6532879/09.12.2014 has been released. The drawback for another S/B No 6530463 dtd. 09/12/2014 is suspended. The CB also submitted that the DRI and the Consulate General from UAE were investigating exports to Dubai..The CB stated that their both shipments were exported to Mauritius country and hence it is not relevant to their case.

19. The CB stated that they have only done the custom clearance of the export consignment and have not assisted the exporter in procurement, Packing, Transportation & Freight Broking Etc. They only acting as pure custom clearance broker and do not offer the above services.

20. The CB denied the charges and argued that they had complied by provisions as the exporter was seasoned exporter with knowledge of the various acts and have done many shipments. The SDF forms and the invoices etc, were as per requirements and same was checked by Customs officers before LEO was granted to the exporter. The CB submitted that as per FEMA rules the exporter had already received the Inward Remittance's which is already on record. The CB submitted that they do not assist any of their clients for release of export benefits in Customs, Excise, DGFT Etc. The CB stated that they have taken due care in handling the export consignments. Hence the CB submitted that it is evident from the above that they have not contravened any of the provisions. Further the CB rely on the decision of the tribunal in the case of **C.C Tuticorin Vs Morika Shipping and trading Pvt Ltd in 2008 (227) ELT 577 (Tri-Chennai).**

*“The tribunal set aside the penalty on the C.B holding that the custom house agent was not required to go in to the authenticity of the declarations made by the exporter in export documents. His job is confined to submission of documents given by the exporter as also to authenticate the exporter to custom authorities.”*

The CB further submitted that a similar view has been taken by the Hon Tribunal in the **case of C.C (Airport Administration) kolkata Vs Krishna Shipping Agency reported in 2017 (348) eit 502 (Trib Kolkato).**

20.1 The CB further argued that they had taken utmost care in checking the documents w.r.t the tendered cargo in the joint examination with the Customs officers. As the cargo was being exported to alert port i.e. Mauritius as per various office orders the cargo was 100% examined under D.C (Shed) supervision for which manual report was endorsed on the checklist and 'c' Form as per normal shed practice which can be checked in Customs records. The CB submitted that as a CB they check the documents tendered for export clearances w.r.t the goods exported. The CB submitted that there was no record of any discrepancies recorded in the export report before the LEO was granted by customs officers. Hence the CB stated that it is evident from the above that they had not contravened any of the provisions. In this regard, the CB had relied on the case of **Dipankar Sen Vs Commissioner of Custom Kolkata reported in 2003 (159) ELT 260 (Trib- Kolkata)** which states that "*It has been stated that merely acting as on custom house agent for exporters does not ispo facto lead to an inevitable conclusion that the CHA was hand in glove with the exporter.*" The CB also relied on the case of **Baraskar Brothers Vs Commissioner of Customs (General) Mumbai reported in 2013 (294) ELT 415 (Tri Mumbai).**

20.2 The CB further submitted that they deny the charges levelled against them as they had complied by provisions as they had not withheld any information with them. Moreover, the CB stated that all the documents were already submitted by the exporter. The CB submitted that they had appeared before the investigating agency. The CB submitted that they had mentioned here that as per request letter dated 28.09.2022 to the S.I.I.B (Export) ACC the CB had requested them to issue hand delivery of summons and record their statement. The CB submitted that they were denied by the agency saying the investigation

was already done and they will be issued Show Cause Notice shortly. The Show Cause Notice is already pending with Commissioner of customs (Appeals).

20.3 The CB further submitted that they had filed the shipping bill as per Invoice and packing list supplied by the exporter. The same is evident from the documents on record with the investigating agency. The CB further stated that as per the various public notices it was mandatory to submit Annex I & Annex II and Appendix III for clearance of the export consignments under drawback along with the shipping bill duly filled and signed by the exporter only. The CB submitted that as per the format approved by authorities there was no column to declare the purchase value. The CB submitted that the forms were checked and attested by the examination officers w.r.t to the declarations and goods tendered and the same is also mentioned in the examination report wherein no discrepancy were found. The CB submitted that the PMV as declared was duly checked by the officers and have also endorsed the same in report which can be verified from ICES System.

20.4 The CB submitted that, in the said 2 shipping bills there is no evidence on record which shows that the export shipments they cleared by the custom broker using purchase bills issued by the said fake entities formed by Mr Suhel Ansari or his associates. The CB have nowhere mentioned the same in any of the statement given. Also the statement of Mr Anil Vora partner of Smart international has denied and nowhere mentioned in his statement that such purchase bills being used. The CB submitted that there is also no record of any wrong doing or any shortcoming on the part of Custom Broker in the statements. The allegations in the order and the SCN are speculative as there is no evidence on record for any contraventions of the Customs Act or the CBLR.

21. The CB also submitted an additional submission dated 10.11.2025, wherein the CB interalia submitted that they deny the allegations levelled against them in the Show Cause Notice. 64/2024-25 CBS dated 09.12.2024, which is baseless, as the same is not supported with documentary or oral evidence. The CB submitted that the observation made by the

learned Inquiry Officer in the said Inquiry Report date 17.09.2025 are contrary to the facts of this case and legal position as laid down by various judicial pronouncements on the issues similar to this case.

**21.1 CUSTOMS BROKER IS REQUIRED TO MAINTAIN RECORDS OF 5 YEARS ONLY:**

The CB submitted that as per provisions of Regulation 11(p) of CBLR, 2013/10(p) of Regulation CBLR, 2018, the Customs broker are under obligation to maintain records of five years. Hence, the CB submitted that no records can be demanded from them pertaining to period 2014.

**21.2 NO DISCREPANCY WAS NOTED AT THE TIME OF CLEARANCE OF THE CONSIGNMENTS COVERED BY THE TWO SHIPPING BILLS FILED BY US:**

The CB submitted that in para 2.28 of the impugned Show Cause Notice, it is mentioned of LEO in respect of total 38 Shipping Bills. The CB submitted that they had attached invoice, Packing List, necessary declaration in respect of non-availment of CENVAT, SDF and Annexure as per Circular No. 16/2009-Customs dated 25.5.2009 issued vide F.No.609/137/2007-DBK and other Annexures etc. The CB submitted that in respect of all two shipping bills filed by them on behalf of exporter M/s Smart International, the same were submitted to the proper officer and LEO was granted in all two shipping bills. As the LEO was granted by the proper officer, it is evident that scrutiny of the Shipping Bills and Annexures attached was done. The CB submitted that no inquiry had not been made with the proper officers who granted LEO. The CB submitted that in absence of the version of the proper officer who granted LEO, it cannot ascertain whether requirement of Circular No. 16/2009-Customs dated 25.5.2009 issued vide F.No.609/137/2007-DBK were compiled or not.

**21.3 BOARD'S INSTRUCTION REGARDING IMPLICATING CUSTOMS BROKER AS CO-NOTICEL:**

The CB submitted the Board has issued instruction No. 20/2024-Customs dated 03.09.2024 vide F. No. 520/01/2023-Cus. VI, wherein it is instructed to avoid implicating Customs Brokers as co-notice 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. 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. Relevant paras of the said Board's instructions are re-produced 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".*

**21.4 SHOW CAUSE NOTICE (OFFENCE REPORT) ISSUED BEYOND THE PERIOD OF FIVE YEARS OF PAYMENT OF THE DUTY DRAWBACK HENCE HARBED BY LAMITATION.**

The CB submitted that in the impugned Show Cause Notice that M/s. Smart International, have exported goods for the period from 01.01.2012 to 31.12.2016. As far as the period of shipping bills filed is concerned, as per impugned Show Cause Notice, the CB submitted that they had filed two shipping bills, which pertains to period 2014 and the impugned Show Cause Notice No. 30/Adj(X)/2022-23 is issued on 15.11.2022 i.e. after more than eight (08) years. Further, the CB relied on the following case laws as mentioned below:

- I. S.J.S. INTERNATIONAL VS. UNION OF INDIA, reported in 2022 (380) E.L.T. 577 (Guj.)
- II. RAGHAV INTERNATIONAL VS. UNION OF INDIA, reported in 2023 (384) E.L.T. 653 (GUJ)/(2023) 5 Centax 83 (Guj.)
- III. Decision of the Hon'ble High Court of Punjab and Haryana in the case of FAMINA KINT FABS Versus UNION OF INDIA, reported in 2020 (371) E.L.T. 97 (P&H). Relevant paras 10, 11 and 12 of the said decision are re-produced as under:

#### **21.5 TIME LINE UNDER CBLR, 2013 NOT MAINTAINED:**

The CB submitted that the impugned Show Cause Notice No. 64/2024-25 dated 09.12.2024 was issued on the basis of offense report in form of Show Cause Notice No. 30/Adj(X)/2022-23 dated 15.11.2022 issued vide F.No. Cus/Ass/MISC/525/2022-Exp-Ass. In this regard, the procedure for revoking a Custom Broker's Licence or for revoking license or imposing a penalty is governed by Regulation 17(1) of CBLR, 2018, the relevant extract is set forth below: -

*“The Principal Commissioner or Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report stating the grounds on which it is proposed to revoke the licence or impose penalty requiring the said Customs Broker to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defence and also to specify in the said statement whether the Customs Broker desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs”.*

21.5.1 Hence, the CB submitted that the office of the Respondent Principal Commissioner of Customs (General), Mumbai-I is bound to issue a Show Cause Notice within 90 days from 15.11.2022 i.e. from the date receipt of said SCN dated 15.11.2022 (offense report)

on or before 13th February 2023. In the instant case, the CB submitted that the impugned Show Cause Notice No. 64/2024-55 under Regulation 17 (1) of CBLR, 2018 has been issued on 09.12.2024. Hence, there is a delay after 90 days' time limit is 390 days in issuance of Show Cause Notice. The CB submitted that in view of the provisions of Regulation 17 (1) of the CBLR, 2018, the Principal Commissioner or Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report. Thus, the CB submitted that the Respondent Commissioner of Customs (General), Mumbai-I has not followed the timeline set forth in Regulation 17 (1) of the CBLR, 2018. Further, the CB submitted that on this ground itself the impugned Show Cause Notice is liable to be dropped. Further, the CB had placed reliance upon the decision of:

- i. The Hon'ble CESTAT, Chennai in case of Seasky EXIM (P) Ltd. Vs. Commissioner of Customs, Chennai, reported in 2021 (378) E.L.T. 652 (Tri-Chennai).
- ii. The Hon'ble High Court, Madras in case of KTR logistics solutions Pvt. Ltd. Vs. Commissioner of Customs, Chennai, reported in 2020 (371) E.L.T. 685 (Mad.)
- iii. The Hon'ble High Court, Delhi in case of Leo Largo Services Vs Commissioner of Customs, Airport & General, New Delhi, reported in 2022 (382) E.L.T. 30 (Del.).
- iv. The Hon'ble CESTAT, Mumbai in case of Vipul Plastic Industrias Vs. Commissioner of Customs (ACC), Mumbai reported in 2022 (141) E.L.T. 777 (Tr-Mumbai).
- v. Reliance is placed upon the decision of Hon'ble High Court Delhi in case of LEO Largo Services vs. Commissioner of Customs, Airport & General, New Delhi, reported in 2022 (385) E.L.T. 30 (Del.).

21.5.2 The CB further submitted that Order-in-Original is required to be passed within 90 days from the date of Inquiry Report as per provisions of Regulation 17(7) of the CBLR, 2018. In this regard, the CB submitted that the procedure for revoking suspension of the

license or revoking the license of the Customs Broker or imposing penalty is governed by Regulation 17(7) of CBLR, 2018 the relevant extract is set forth below: -

**Regulation 17(7)-**

*"The Principal Commissioner or Commissioner of Customs shall, after considering the report of the Inquiry and the representation thereon, if any, made by the Customs Broker, pass such orders as he deems it either revoking the suspension of the license or revoking the licence of the Customs Broker within ninety days from the date of submission of the report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, under sub-regulation (5) Provided that no order for revoking the license shall be passed unless an opportunity is given to the Customs Broker to be heard in person by the Principal Commissioner or Commissimer of Customs as the case may be".*

21.5.3 Further, the CB had placed reliance upon the decision of Hon'ble CESTAT, Ahmedabad in the case of Ashapura Shipping Agency Vs. Commissioner of Customs, Mundra, reported in 2024 (389) E.L.T 236 (Tri-Ahmd.). The CB submitted that there have been various decisions on the issue whether time limits prescribed in the CBLR, 2018 are directory or mandatory in nature. The CB submitted that the crux of the contentions of the petitioners is as follows:

a	(i)	The period of limitation prescribed in the relevant Regulation for doing each act is mandatory and not directory
	(ii)	Even though the Regulations do not provide the consequence event, if the Imitation period is not adhered to, the nature of business being done and the action initiated against the petitioners would show that such consequences are

		obvious and very serious in nature affecting the business and livelihood of the petitioners in toto. 46
	(iii)	When substantial right is affected, the Authorities are bound to comply with the time limit.
	(iv)	The order of suspension cannot be perpetuated by not passing the follow up actions within the time prescribed. Therefore, if the time prescribed is not mandatorily followed, the order of suspension would become perpetual
	(v)	Since irretrievable loss is being caused by not passing the proceedings within the time frame, interest of the petitioners are very much affected Therefore, the limitation period is mandatory.

21.5.4 In support of the above contentions, the CB submitted that the Learned Counsel for the petitioners relied on the following decisions:

- i. Order made in W.P. Nos. 26923 and 26934 of 2018, dated 22-11-2018;
- ii. 2016 (338) E.L.T. 347 (Del.- DB), Impexent Logistic Vs. Commissioner of Customs (General).
- iii. 2014 (310) E.L.T. 673 (Mad DB), Commissioner of Customs (Seaport Import) Chennai Vs. CESTAT, Chennai;
- iv. a Division Bench decision of this Court made in CMA No. 730 of 2016 dated 13.10.2017.
- v. 2016 (340) E.L.T. 119 (Del), Overseas Air Cargo Vs. CC;
- vi. 2016 (337) E.L.T. 41 (Del), Indian Carrier P. Ltd. Vs. CC.

**22. LIMITED ROLE OF THE NOTICEE CUSTOMS BROKER:**

22.1 The CB submitted that the role of Customs Broker is limited to filing of the documents as received from the exporter. The CB submitted that they cannot be expected to get in the role of an investigating agency and probe the exporter. Also, the CB submitted that they do not have the expertise and the resources to cause such investigations. In fact, the CB submitted that they have responsibility of clearance without undue delay. Therefore, the CB stated that the proposition of involvement of the Customs Broker in facilitating exports is speculative of its role and therefore cannot be sustained. The CB submitted that only because they had handled the export consignment covered under two Shipping Bills, does not mean that they had facilitated/abetted the exporters in claiming undue higher amount of Drawback benefits.

22.2 Further, the CB submitted that they had relied upon the decision in the case of Dipankar Sen Vs Commissioner of Customs, Kolkata reported in 2003 (159) ELT 260 (Tri. Kolkata) it has been held that merely acting as a Customs House Agent for the exporters, does not, ipso facto, lead to an inevitable conclusion that he was in hand in glove with the exporters in absence of any record to that effect.

22.3 The CB submitted that only because they had handled the export consignments, does not mean that the CB facilitated/ abetted the exporter in claiming undue higher amount of Drawback. The CB submitted that they cannot be faulted in any manner when they have placed the information available with them before the customs authorities.

**23. THE NOTICEE CUSTOMS BROKER NOT RESPONSIBLE FOR THE DECLARED EXPORT VALUE:**

23.1 The CB submitted that apparently, the proposal in the Show Cause Notice for penalty on the Customs broker flows from the mis-declaration of value in the shipping bills leading to the claim of undue higher amount of Drawback benefits. However, the CB

submitted that the impugned Show Cause Notice fails to appreciate that the Customs Broker is not responsible for the value declared in the shipping bills. The CB stated that only the exporter is responsible for the declarations in the shipping bills filed as per his documents (invoice/packing list) and with his approval. Further, the CB stated that they are not responsible for entry made under section 50 of the Customs Act, 1962 (the shipping bill) when it is consistent with the export documents made available by the exporter.

23.2 Further the CB had relied upon the decision in the case of Mov & Go Logistics Vs CC, Chennai 2022 (381) ELT 808 (Tri. - Chennai), wherein it is categorically held that the said Section applies to exporter who presents the shipping Bill and hence Customs House Agent cannot be fastened with the penalty if the Revenue finds any wrong quoting etc. in the presented shipping bill.

**24. NOTICEE CUSTOMS BROKER IS NOT AN AUTHORITY TO DETERMINE VALUE OF THE GOODS:**

24.1 The CB submitted that they had no authority to determine the value of the goods when the value declared by the exporter M/s. Smart International has been accepted by the proper officer of the department. The CB submitted that the proper officer had allowed to export the impugned goods after examination. It means, the declared value was accepted by the department. Now, the department is making allegation arbitrarily on Customs Broker for overvaluation, though the department knows that the valuation of the goods has no relevancy with the role of the Customs Broker. Therefore, the CB submitted that the allegations made against the Customs Broker/Noticee in the impugned Show Cause Notice is absurd and improper. Hence, the CB submitted that the Show Cause Notice is liable to be dropped.

**25. NO MALA-FIDE INTENTION IS ATTRIBUTABLE IN AS MUCH AS THERE NO PECUNIARY GAIN OCCURRED TO NOTICEE CUSTOMS BROKER IN THE INSTANT CASE:**

25.1 Further, the CB submitted that that no mala-fide intention is attributable in as much as the no pecuniary gain occurred to us in the instant case. The CB submitted that for the above proposition following case law is relied upon:

- i. Dex Logistics P. Ltd. Vs. Commissioner of Customs, New Delhi reported in 2019 (369) E.L.T. 1168 (Tri. – Del.)

**26. NO EVIDENCE THAT THE NOTICEE CUSTOMS BROKER WAS DIRECTLY INVOLVED IN ANY MISDECLARATION:**

26.1 The CB submitted that there was no allegation by the department of any forging or manipulation of any documents by them. Further, the CB stated that there was no case or allegation that we knowingly made wrong declaration in the two shipping bills on behalf of the exporter M/s. Smart International. Further, the CB submitted that there was no statement by any person suggesting connivance or knowledge of any mis-declaration on the part of us. In fact, as per para 2.9 of the impugned Show Cause Notice, statement of Shri Anil Vasanii Vohra was recorded on 18.06.2019 and 09.03.2022. The CB submitted that M/s. Smart international never stated that Customs Broker (M/s Apson Enterprises) were aware about the mis-declaration. Moreover, the CB submitted that it was a common sense that when they were not the beneficiary, then they had not done any mis-declaration. The CB submitted that the allegation made by the department was not sensible and proper. The CB submitted that they deny allegations made in the impugned Show Cause Notice as the same are baseless, devoid of facts and merits. The CB submitted that the allegations levelled are also not sustainable in Law as they had not contravened any provisions of the

Customs Act, 1962 or any other law for the time being in force. There are no statements or any whisper that they had connived with, anyone for any unlawful monetary gains.

**27. Refutation on Article of Charge-1 viz. Regulation 10(d) of the CBLR. 2018:**

27.1 The CB submitted that in the Show Cause Notice that as per offence report, it appears that the CB did not advise the exporter about Circular no. 16/2009-Customs dated 25.05.2009 issued vide F.N.0609/137/2007-DBK and abetted the exporter by declaring the incorrect value of the goods in shipping bills against the fake invoice to avail undue drawback and did not bring the matter to the notice of the Deputy commissioner of Customs or Assistant Commissioner of Customs.

27.2 The CB submitted that as regards to the allegation of violation of Regulation 10(d) of CBLK, 2018, they submit that there has been no violation of Regulation 10(d) of CBLR, 2018 in the instant case. The CB notified that in order to establish the charge under Regulation 10[d] of CBLR, 2018. It is required to point out specific instances where the CB had failed to advise their clients to comply with the provisions of the Act or when the CB had failed to report any non-compliance of the provisions of the Act by their clients to the Customs authorities.

27.3 The CB further submitted that there is no evidence in the form of statement of any person or any corroborative evidence to prove that they as Customs Broker, have ever given wrong advice. The CB submitted that para 2.9 of the Show Cause Notice No: 64/2024-25 dated 09.12.2024 issued under Regulation 17 of the CBLR, 2018, wherein the CB stated that statement of exporter Shri Anil Vasanji Vohra was recorded on 18.06.2019 and 09.03.2022. From the aforesaid statement it is evident that any wrong advice was never given by the CB to the exporter M/s. Smart International. In fact, the CB submitted that no such question regarding Circular no. 16/2009-Customs dated 25.5.2009 issued vide F.N.0609/137/2007-DBK was asked by the investigating authorities. The CB submitted

that It is evident from the offense report as well as impugned Show Cause Notice 64/2024-25 dated 09.12.2024 that neither the Investigating Agency DRI, MZU, Mumbai nor SIIB (Export), ACC, Mumbai had verified any Shipping Bill and documents attached with the Shipping Bill such as SDF, non-availment of CENVAT, Annexures, Invoice, Packing List etc. Further, the CB submitted that in absence of any scrutiny of Shipping Bill filed by them, it cannot consider as offence report at all.

27.4 Further, the CB submitted that copy of the two Shipping Bills and documents are not available with them as stated in foregoing paras, as they are required to maintain records for five years as per the provisions of regulation 11(p) of the CBLR, 2013/regulation 10(p) of CBER, 2018.

27.5 The CB submitted that there is absolutely no evidence cited in the Show Cause Notice to suggest that the requirement of declaration as per any law, rules, regulation, notification, circular etc. was not followed in the presence case. It is well settled law that while levelling any charges against CB, the Department has to be very specific. The CB submitted that they had attached invoice, Packing List, necessary declaration in respect of non-availment of CENVAT. Annexure as per Circular No. 16/2009-Customs dated 25.5.2009, SDF and other Annexures etc. and they were submitted to the proper officer and LEO was granted. The CB submitted 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 it is no part of the obligation of the Customs Broker to investigate into the correctness of such declaration filed by the exporter. In support of the said submission, The CB had 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.

27.6 The CB submitted that in case of all two shipping bills, LEO has been granted by the proper officer. Further, there is neither any mention in the Show Cause Notice No.

64/2024-25 dated 09.12.2024 about any discrepancy at the time of examination nor at the time of claiming Drawback, hence, question of reporting non-compliance to the customs authorities does not arise.

27.7 The CB submitted that they had relied upon the following decisions:

- i. The Hon'ble Tribunal's decision in the case of Bajaj Enterprises [(2017) (347) ELT 675 (Tri.)].
- ii. The Hon'ble Tribunal, Kolkata in the case of Advent Shipping Agency Versus Principal Commissioner of Customs (A & A), Kolkata, reported in (2023) 2 Centex 157 (Tri. Cal.)
- iii. The Tribunal in the case of Commissioner of Customs, Mumbai Versus M. Vasi reported in 2003 (151) E.L.T.312 (Tri-Mumbai).
- iv. The Hon'ble CESTAT, Chennai in case of Hera Shipping Solutions Pvt. Ltd. Vs Commissioner of Customs, Chennai-IV reported in 2022 (382) ELT 552 (Tri-Chennai)).
- v. The Hon'ble CESTAT, Mumbai in case of John K. Mathew of M/s. Beejay Clearing and Forwarding Agency Vs Principal Commissioner of Customs (General), Mumbai, Final Order No. 85750/2024 dated 05.08.2024.
- vi. The Hon'ble CESTAT, Mumbai in case of C.V. Karia Clearing & Forwarding Private Limited Vs. Principal Commissioner of Customs (General), Mumbai, Final Order No A/87535/2024 dated 18.12.2024.

27.8 The CB submitted that ratio of the aforesaid various judgements is applicable in the instant case. The CB submitted that all are related to alleged forged invoice by Shri Suhel Ansari, CA Karan Ranka and others, which are decided by the Hon'ble CESTAT. The CB submitted that they had not violated the provisions of Regulation 11(d) of the CBLR, 2013 and allegation levelled against them is without basis. The CB submitted that as they had not violated the provisions of Regulation 10(d) of the CBLR, 2018, therefore, the

allegation of violation of Regulation 10(d) of CBLR, 2018 levelled against them no leg to stand.

**28. Refutation on Article of Charge II viz. Regulation 10(e) of the CBLR, 2018:**

28.1 The CB submitted that it is alleged in the Show Cause Notice that it appears that the CB aided the exporter in availing the undue drawback by the exporters by overvaluing the exports, whereas cheaper materials was exported and to justify the value of the goods, fake invoices from Shri. Suhel Ansari, were procured showing the higher purchase price.

28.2 The CB submitted that as regards to the allegation of violation of Regulation 10(e) of CBLR, 2018 it is to submit that the said Article of Charge of violation Regulation 10(e) of CBLR, 2018 is nothing but repetition of Article of Charge-I viz, Regulation 10(d) of CBLR, 2018. Hence, the CB submitted that their submission in respect of Regulation 10(e) of CBLR, 2018 is exactly same as Regulation 10(d) of CBLR, 2018. Since, the CB submitted that being the separate Article of charge, they submitted their defence submission as under.

28.3 As regards to the allegation of violation of provisions under Regulation 10(e) of the CBLR, 2018, the CB submitted that for attracting provisions of Regulation 10(e) of CBLR, 2018 quoted above, there must be certain Information which had been imparted by CB in respect of which the CB is required to 'exercise due diligence to ascertain the correctness'. The CB submitted that the Show Cause Notice issued to the Customs Broker does not point out any such information imparted to his client. Therefore, the CB submitted that the question of exercising due diligence to ascertain the correctness of any information imparted to the exporter M/s Smart International does not arise at all.

28.4 The CB submitted that Regulation 10(e) of CBLR, 2018 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. The CB submitted that they had

not imparted any incorrect information to the exporter with regard to the clearance of the export cargo and therefore there is no contravention of Regulation 10(e) of CBLR, 2018. The CB submitted that there is no evidence whatever to show that any information which they had imparted to the exporter M/s. Smart International was in any way correct. The CB further submitted that no Information given by them to the exporter is identified, which was allegedly incorrect nor is it stated how any information given by them to the exporter was incorrect. The CB submitted that no statement was recorded of the customs officer who granted the LEO/drawback. The CB stated that as submitted herein above, issuance of the Notice after 08 years seriously prejudices them in their defence since complete records after so many years would not be available. The CB submitted 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.

28.5 The CB submitted that they had relied on the decision of:

- i. The Hon'ble Delhi High Court in the case of Kunal Travels (Cargo) Vs. CC-2017 (354) ELT 447.
- ii. The Hon'ble High Court Calcutta in case of Commissioner of Customs (Airport & Admn.) Vs. Shipping & Clearing Agents Pvt. Ltd. reported in 2023 (386) E.L.T. 544 (Cal.).
- iii. Parvath Shipping Agency Vs. Commissioner of Customs (Gen.), Mumbai [2017 (357) ELT, 296 (Tri. - Mumbai)]
- iv. G.N.D. Cargo Movers Vs. Commissioner of Customs (General), New Delhi
- v. Akanksha Enterprises Vs. Commissioner of Customs [2006 (203) ELT 125 (Tri-Del),

28.6 Further, the CB submitted that they as custom broker did not physically see the impugned goods before the same were received in custom area. The CB submitted that they

had filed two Shipping Bills on behalf of the exporter M/s Smart International on the basis of document supplied to them. in this regard The CB submitted that they had relied upon the decision of the Hon'ble Tribunal, Kolkata in the case of Advent Shipping Agency Versus Principal Commissioner of Customs (A & A), Kolkata, reported in (2023) 2 Centax 157 (Tri. -Cal),

28.7 The CB submitted that in identical case pertaining to Customs Broker M/s. Tulsidas Khimji Pvt. Ltd. (CB No. 11/34), wherein the DRI, MZU, Mumbai investigated case which revealed that various export firms were procuring fake purchase bills against the export consignments from one Mr. Suhel Ansari, though fake firms floated by him. in the case, charges of violation of Regulation 10(d) 10(e) and 10(f) of CBLR, 2018 were levelled against the said CB, which were held as 'Not Proved' by the Inquiry Officer. Subsequently, the CB submitted that all the aforesaid charges levelled against the said Customs Broker were dropped by the Principal Commissioner of Customs, NCH, Mumbai.

28.8 Further the CB submitted that they had relied upon the following decisions:

- i. The Hon'ble CESTAT, Mumbai in case of John K. Mathew of M/s Beejay Clearing and Forwarding Agency Vs. Principal Commissioner of Customs (General), Mumbai, Final Order No. 85750/2024 dated 05.08.2024.
- ii. The Hon'ble CESTAT, Mumbai in case of C.V. Karia Clearing & Forwarding Private Limited Vs. Principal Commissioner of Customs (General), Mumbai, Final Order No. 87535/2024 dated 18.12.2024.

28.9 The CB submitted that ratio of the aforesaid various judgements is applicable in the instant case. The CB submitted that all are related to alleged forged invoice by Shri Suhel Ansari, CA Karan Ranka and others, which are decided by the Hon'ble CESTAT. The CB submitted that they had not violated the provisions of Regulation 10(e) of the CBLR, 2018 and allegation levelled against them is without basis. The CB submitted that as they had

not violated the provisions of Regulation 10(e) of the CBLR, 2018, therefore, the allegation of violation of Regulation 10(e) of CBLR, 2018 levelled against them no leg to stand.

**29. Refutation on Article of Charge III viz. Regulation 10(f) of the CBLR, 2018:**

29.1 It is alleged in the Show Cause Notice that CB did not informed the exporter about the Instructions, Circular and public notice regarding claiming of drawback. It further appears that CB did not guide the exporter M/s. Smart International 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 responsibility of the CB to ensure that the exporter declares the name and complete address of the traders from whom goods has been purchased in order to claim Drawback. It appears that CB did not advise the exporter to comply with Rule 3, Rule 16 and Rule 16A of Drawback Rules, 1995. It appears 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.

29.2 As regards to the allegation of violation of Regulation 10(f) of CBLR, 2018 the CB submitted that the said Article of charge of violation regulation 10(f) of CBLR, 2018 is nothing but repetition of Article of Charge-I viz. Regulation 10(d) of CBLR, 2018. Hence, the CB submitted that their submission in respect of Regulation 10(f) of CBLR, 2018 is exactly same as Regulation 10(d) of CBLR, 2018. Since being the separate Article of charge, the CB submitted their defence submission as under:

29.3 The CB stated that as stated in foregoing paras there is no mention about the shipping bill numbers and date in the impugned Show Cause Notice. Thus, the CB stated that it is evident from Show Cause Notice that Department had not ascertained exact shipping bills filed by them, as shipping bills numbers had not been mentioned in the said Show Cause Notice. Thus, the CB submitted that the charges levelled against them is without scrutiny of shipping bills filed by them. Thus, the CB submitted that it is evident

that neither the investigating Agency DRI, MZU, Mumbai nor SIIB (Export), ACC, Mumbai have verified any Shipping Bill and documents attached with the Shipping Bill such as SDF, non-availment of CENVAT, Annexures, Invoice, Packing List etc.

29.4 The CB submitted that copy of the two Shipping bills and documents are not available with us as stated in foregoing paras, as they are required to maintain records for five years as per the provisions of regulation 11(p) of the CRLR, 2013/ regulator 10(p) of CBLR, 2018. The CB submitted that there is absolutely no evidence cited in the Show Cause Notice to suggest that the requirement of declaration as per any law, rules, regulation, notification, circular etc. was not followed in the present case. The CB submitted that it is well settled law that while levelling any charges against Noticee, the Department has to be very specific. The CB submitted that they had attached invoice, Packing List, necessary declaration in respect of non-availment of CENVAT, Annexure Circular No. 16/2009-Customs dated 25.5.2009 issued vide F.No.609/137/2007-DBK, SDF etc., and they were submitted to the proper officer and LEO was granted. 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 stated that it is no part of the obligation of the Customs Broker to investigate into the correctness of such declaration filed by the exporter. In support of the said submission the CB submitted that they had placed reliance on the decision of the Hon'ble Delhi High Court in the case of Kunal Travels (Cargo) v CC-2017 (354) ELT 447.

29.5 As far as the allegation regarding advising exporter M/s. Smart international is concerned regarding furnishing a declaration in respect of Circular No. 16/2009-Customs dated 25.05.2009, issued vide F. No. 609/137/2007-DHK, the CB submitted that they had filed the two shipping bills and had submitted Invoice, Packing List, SDF, declaration in respect of non-availment CENVAT and Annexures. Thus, the CB submitted that the exporter had complied with Circular No. 16/2009- Customs dated 25.05.2009. However,

the CB submitted that copy of the two shipping bills and the aforesaid documents are not available with them as the shipping bill pertains to year 2013 and they had not maintained records of past 5 years as provided under provisions of Regulation 11(p) of the CBLR, 2013 and 10(p) of CBLR, 2018. Also, the CB submitted that the two shipping Bills filed by them had neither been scrutinized by the investigating agency nor had been provided to them as relied upon documents (RUDS). The CB submitted that the allegation of non-compliance of the Circular No. 16/2009-Customs dated 25.05.2009 issued vide F. No 609/137/2007/- DBK had been levelled against them is without scrutiny of the 34 shipping bills and 1 solely on the basis of assumption and presumptions.

29.6 The CB submitted that serious allegations of connivance or over-valuation cannot be made only assumption and presumption or any kind on generalised allegations without cogent evidence. In the instant on Export Consignment covered under two Shipping Bills, all the Invoices/Packing Lists, Annexures, Declaration etc. submitted by M/s. smart International were placed on records along with relevant documents were examined by the Proper Officer, chose to allege that CB was known to the facts that exporters were over-valuing the goods to claim undue Drawback.

29.7 The CB submitted that the alleged violations of 10(d) and 10(f) of CBLR 2018 refers to non submission of declarations as per board circular 16/2009 dated 25.05.2009 based on assumptions without any basis or scrutiny of shipping bills. However, the CB submitted that the same was not noticed at the time of export by the department and no objections have been raised by any Department of Customs before granting drawback. Even during investigations shipping bills along with other documents with the said declaration was sought from the Customs Brokers. The CB submitted that even though all the records were available in the EDI system, the same was not scrutinized by SIIB (Export), ACC, Mumbai. The respondent has concluded that non production of the said documents after ten years has led to breach of Regulation 10(d) and 10[f] of CBLR, 2018 and consequent imposition

of penalty. The CB submitted that as per provisions of Regulation 10(p) of CBLR, 2018 read with erstwhile regulations of 2013, Customs Brokers are supposed to maintain records for only five years. Hence, the CB submitted that the Respondent and the investigating authority has no power to demand the any documents from the Appellant after five years of export. in our case exports were effected during 2014. The CB had also placed reliance upon the decision of the Hon'ble CESTAT, Delhi in the case of Nanki Fashion Versus Commissioner of Customs (Export), New Delhi, reported in 2012 (282) E.L.T. 577 (Tri-Del), wherein it was held that if the Board wants to give full drawback at 'all Industry rate' including excise portion of drawback to merchant exporters without insisting on production of evidence regarding non-availment of input/Input service Cenvat credit in respect of the goods being exported, the provisions of Rule 3 of the Drawback Rules must be suitably amended to permit this. It was further held that without amending the Rule 3, the Board's Circular dated 25-5-2009 is without the authority of law. It is to submit that in view of the facts stated above and the case laws, the show cause notice (offence report) for recovery of Drawback as per Board's Circular no. 16/2009 dated 25.05.2009 is contrary to statutory provisions and not sustainable and hence, impugned Show Cause Notice No. 64/2024-25 dated 09.12.2024 is liable to be dropped. In the inquiry proceedings by the learned inquiry officer has not provided a single fact or document or any other material to even suggest that the we have breached the obligations cast upon us by CBLR 2013. It is duty of the of inquiry officer to prove the allegations beyond any doubt. Implicating the us without any proof on the basis of assumptions and presumptions is bad in the eyes of law and the order is liable to be set aside on this ground only.

29.8 The CB submitted that the impugned goods covered under two Shipping Bills were carted directly in the shed by the logistic agent of the exporter and the CB submitted that as the consignment was not opened for examination by customs, they had no occasion to see the goods. The CB submitted that there is nothing in the impugned Show Cause Notice

in the form of documentary or oral evidence to the effect that we were aware of the mis-declaration of value of the export goods if any. In this regard the CB submitted that they had relied upon the decision of the Hon'ble Tribunal, Kolkata in the case of Advent Shipping Agency Versus Principal Commissioner of Customs (A & A), Kolkata, reported in (2023) 2 Centax 157 (Tri-Cal.). The CB submitted that they had relied upon the following decisions:

- i. the Hon'ble CESTAT, Mumbai in case of John K. Mathew of M/s. Beejay Clearing and Forwarding Agency Vs. Principal Commissioner of Customs (General), Mumbai, Final Order No. 85750/2024 dated 05.08.2024.
- ii. The Hon'ble CESTAT, Mumbai in case of C.V. Karia Clearing & Forwarding Private Limited Vs. Principal Commissioner of Customs (General), Mumbai, Final Order No. A/87535/2024 dated 18.12.2024.

29.9 The CB submitted that ratio of the aforesaid various judgements is applicable in the instant case. The CB submitted that all are related to alleged forged invoice by Shri Suhel Ansari, CA Karan Ranka and others, which are decided by the Hon'ble CESTAT. The CB submitted that they had not violated the provisions of Regulation 11(f) of the CBLR, 2013 and allegation levelled against them is without basis. The CB submitted that as they had not violated the provisions of Regulation 11(f) of the CBLR, 2013, therefore, the allegation of violation of Regulation 10(f) of CBLR, 2013 levelled against them no leg to stand.

30. The CB further submitted that the punishment meted out to the Customs Broker should be commensurate with such omission. The CB stated that it is a settled law that penalty should be proportionate to the offence committed. The CB submitted that it should be too harsh to revoke the license of the Customs Broker and to leave the right to livelihood of their as well as their employees. Further, the CB submitted that for the above proposition they had relied upon the following case laws.

- I. HM Logistics Pvt. Ltd. Vs. CC, New Delhi-2016 (338) E.L.T. 725 (Tri. – Del.)
- II. Ashiana Cargo Services VS. CC (I&G), Delhi in their Final Order No. Cus.AA.24/2012, C.M. APPL. 19694/2012, dated 14.03.2014 [2014 (302) E.L.T. 161 (Del.)]

30.1 Further, the CB submitted that:

- i. The CB submitted that the suspension of the license has endangered the livelihood of all the families related to their Business. The CB requested to adjudicating authority's good self to take lenient view in the matter.
- ii. The CB submitted that they had not been penalized in the last 40 years of their association with the industry.
- iii. The CB submitted that they had already suffered huge loss on accounts of regular clients last year on suspension of their Custom Broker licence for 2 months and have lost most of the business.
- iv. The CB submitted that all the remittance of the 2 shipments cleared are released and there is nothing adverse found against both the shipments. Also only 1 drawback of 45146/- was released and the other was suspended.
- v. The CB submitted that Both shipments cleared by them were destined to Mauritius and not UAE against which the Investigation was done as per the consulate general letter.

#### **DISCUSSIONS AND FINDINGS:-**

31. I have gone through the facts and records of the case; the offence report received in the form of SCN No. 30/Adj(X)/2022-23 dated 15.11.2022 from Export, ACC, Mumbai; the Suspension Order No. 30/2024-25 dated 19.07.2024; the Suspension revocation Order No. 45/2024-25 dated 14.11.2024; the Show Cause Notice No. 64/2024-25 dated

09.12.2024, issued under Regulation 17(1) of CBLR, 2018; the Inquiry Report dated 17.09.2025 and the written submissions dated c26.11.2024 & 10.11.2025 of the CB.

32. Having perused the offence report viz. the SCN No. 30/Adj(X)/2022-23 dated 15.11.2022, it is briefly stated that the investigation in the present case was initiated by DRI, MZU against an exporter namely M/s. Lorgan Lifestyle Limited, Pune who was engaged in bogus exports through Mundra port by preparing manual shipping bills, on which real exports had not been affected. The investigation revealed that the exporter M/s. Lorgan Lifestyle Limited was procuring fake purchase bills against the export consignment from one Mr. Suhel Ansari. Also, it was revealed that Mr. Suhel Ansari was indulged in supplying bogus bills in the names of several companies floated by him. During the further course of investigation it was found that Mr. Suhel Ansari was issuing fake invoices to the exporters, in the name of Twenty Two firms, all of which were being floated by Mr. Suhel Ansari. Mr. Suhel Ansari was supplying the fake invoices to fifty-nine export firms. M/s. Smart International is one out of these 59 export firms apprehended by DRI, MZU, for indulging in bogus exports using fake invoices procured through Mr. Suhel Ansari. Hence, as per the specific information received from DRI, MZU, the SIIB, Export, ACC, Mumbai, initiated an investigation with respect to all the exports made by the exporter M/s. Smart International, during the material time. SIIB, Export, ACC, Mumbai retrieved past export data of M/s. Smart International from ICES 1.5 and found that from the period 2012 to 2016, the exporter had filed total 38 shipping bills for which the total FOB value is 179.92 lakhs and total Drawback claimed is Rs. 13.79 lakhs out of which a drawback amount of Rs. 6.82 lakhs had already been disbursed to the exporter, also it is found that the BRCs have been realised fully in all the 38 shipping bills filed by M/s. Smart International. Now, on further scrutiny of the 38 shipping bills, it was noticed that 02 shipping bills were filed by the charged CB in present case i.e. M/s. Apson Enterprises (CB No. 11/501) on behalf of the exporter M/s. Smart International. Accordingly, after completion of the investigation

by SIIB, Export, ACC, Mumbai, the Custom Broker M/s. Apson Enterprises (CB No. 11/501) was made the co-noticee in the Show Cause Notice No. 30/Adj(X)/2022-23 dated 15.11.2022. On the basis of the SCN dated 15.11.2022 and considering the same as an offence report, the action under CBLR, 2018 was initiated against the CB M/s. Apson Enterprises (CB No. 11/501).

33. I find that the provisions of Regulation 16 were invoked in the present case and in terms of Regulation 16(1) of CBLR, 2018 the CB license was put under immediate suspension vide order no. 30/2024-25 dated 19.07.2024. However, after grating a post decisional hearing to the CB, such suspension was revoked vide order no. 45/2024-25 dated 14.11.2024, pending inquiry proceedings under Regulation 17 of CBLR, 2018. The inquiry under Regulation 17 of CBLR, 2018 was initiated against the CB M/s. Apson Enterprises (CB No. 11/501) with respect to the contravention of Regulation 11(d), 11(e) and 11(f) of CBLR, 2013 (now Regulations 10(d), 10(e) and 10(f) of CBLR, 2018). I find that the inquiry officer has held that all articles of charge with respect to violation of Regulation 11(d), 11(e) and 11(f) of CBLR, 2013 (now Regulations 10(d), 10(e) and 10(f) of CBLR, 2018) as '*Proved*'.

34. I find that the charges of violation of Regulations 11(d), 11(e) and 11(f) of CBLR, 2013 (now Regulation 10(d), 10(e) & 10(f) of CBLR, 2018) have been levelled against the CB on the grounds that 'the CB did not advise the exporter about Circular No. 16/2009- Customs dated 25.05.2009 issued vide F. No. 609/137/2007 DBK 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; that the CB 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 Shri Suhel Ansari, were procured showing the higher purchase price, hence it

appeared that CB failed to exercise due diligence to ascertain the correctness of the invoice produced by the exporter; that the CB did not inform the exporter about the instructions, circulars and public notice regarding claiming of drawback and did not guide the Exporter M/s. Smart International 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 the Exporter declares the name and complete address of the traders from whom goods has been purchased in order to claim Drawback'.

34.1 I find that the inquiry officer, in this regard, has interalia observed that' the custom broker should be cautious enough to ensure that there is no violation of non-compliance of law by their client in view of facts and information/material available on record at the given point of time; that the custom broker's obligation would be considered as complied under Regulation 10 (d) once they have given an advice to their client in terms of law irrespective of the decision taken by client after receipt of such advice; that on perusal of the offence report and Order in Original, the investigation revealed that the exported items were overvalued, whereas cheap material was exported and to justify the value of the goods, fake invoices from Shri Suhel Ansari, were procured showing the higher purchase price; that it was the responsibility of CB to advise the exporter to furnish the correct value of the goods; that there is no evidence on record which proves that the CB had imparted correct and proper information with respect to Drawback Rules to the exporter; that it clearly shows that transaction value is incorrect, inflated, value of goods miss-declared by the exporter thereby it is evident that CB did not exercise due diligence and did not impart the information relating to Drawback Rules to the client but aided the exporter in availing the undue drawback by overvaluing the exports, whereas in reality cheaper material was exported; that the investigation revealed that Exporter did not declare the name and complete address of the traders from whom goods were purchased in order to claim

Drawback; that the CB failed to advise the Exporter to comply with Rule 3, Rule 16 and Rule 16A of Drawback Rules, 1995; that it was the responsibility of the CB to ensure that the Exporter declare the same correctly; that there is no evidence on record which proves that the CB has advised his client with regard to declaration of correct value of the goods in shipping bills in terms of Circular No. 16/2009- Customs dated 25.05.2009 issued vide F. No. 609/137/2007-DBK.'

34.2 I find that the CB, in defence, has submitted that 'the employee of Suhel Ansari, Mr Shaikh Mohammed Arshad has also not mentioned any names or reference of the custom brokers in his statements and only exporters were mentioned; that they had done clearance for only 2 Shipping bills for the client M/s. Smart International and the said shipping bills were cleared for Mauritius and not to U.A.E.; that the remittances for both the shipments are received and only the drawback against one shipping i.e. S/B No 6532879/09.12.2014 has been released and the drawback for another S/B No 6530463 dtd. 09/12/2014 is suspended; that they deny the charges of violation of Regulation 10(d), 10(e) and 10(f) of CBLR, 2018 and argue that they had complied by provisions as the exporter was seasoned exporter with knowledge of the various acts and have done many shipments; that they have taken due care in handling the export consignments and they have not contravened any of the provisions of CBLR, 2018; that they rely on the decision of the tribunal in the case of C.C Tuticorin Vs Morika Shipping and trading Pvt Ltd in 2008 (227) ELT 577 (Tri-Chennai); that they had taken utmost care in checking the documents w.r.t the tendered cargo in the joint examination with the Customs officers and there was no record of any discrepancies recorded in the export report before the LEO was granted by customs officers; that all the documents were already submitted by the exporter and they did have appeared before the investigating agency; that they had filed the shipping bill as per Invoice and packing list supplied by the exporter; that in the said 2 shipping bills there is no evidence on record which shows that the export shipments they cleared by the custom

broker using purchase bills issued by the said fake entities formed by Mr Suhel Ansari or his associates; that as per provisions of Regulation 11(p) of CBLR, 2013/10(p) of Regulation CBLR, 2018, the Customs broker are under obligation to maintain records of five years, hence, no records can be demanded from them pertaining to period 2014; that only because they had handled the export consignment covered under two Shipping bills, does not mean that they had facilitated/abetted the exporters in claiming undue higher amount of Drawback benefits; that they are not responsible for entry made under section 50 of the Customs Act, 1962 (the shipping bill) when it is consistent with the export documents made available by the exporter; that no mala-fide intention is attributable in as much as the no pecuniary gain occurred to the CB in the instant case; that it was a common sense that when they were not the beneficiary, then they had not done any mis-declaration; that there is no evidence in the form of statement of any person or any corroborative evidence to prove that they as Customs Broker, have ever given wrong advice; that it is evident from the offense report as well as impugned Show Cause Notice 64/2024-25 dated 09.12.2024 that neither the Investigating Agency DRI, MZU, Mumbai nor SIIB (Export), ACC, Mumbai had verified any Shipping Bill and documents attached with the Shipping Bill such as SDF, non-availment of CENVAT, Annexures, Invoice, Packing List etc.; that it is no part of the obligation of the Customs Broker to investigate into the correctness of such declaration filed by the exporter; that there is neither any mention in the Show Cause Notice No. 64/2024-25 dated 09.12.2024 about any discrepancy at the time of examination nor at the time of claiming Drawback, hence, question of reporting non-compliance to the customs authorities does not arise; that as regards to the allegation of violation of Regulation 10(e) of CBLR, 2018 it is to submit that the said Article of Charge of violation Regulation 10(e) of CBLR, 2018 is nothing but repetition of Article of Charge-I viz, Regulation 10(d) of CBLR, 2018; that the allegation of no-compliance of the Circular No. 16/2009-Customs dated 25.05.2009 issued vide F. No 609/137/2007/- DBK had been

levelled against them is without scrutiny of the 34 shipping bills and solely on the basis of assumption and presumptions; that the alleged violations of 10(d) and 10(f) of CBLR 2018 refers to non submission of declarations as per board circular 16/2009 dated 25.05.2009 based on assumptions without any basis or scrutiny of shipping bills; that such discrepancy was not noticed at the time of export by the department and no objections have been raised by any Department of Customs before granting drawback'.

34.3 Having perused the facts of the case, the comments of the inquiry officer and the defence arguments of the CB, I find that the regulation 10(d), 10(e) and 10(f) of the CBLR, 2018, mandate the CB *(i) to 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; (ii) to 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; (iii) to 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 the CB has argued that the allegation of no-compliance of the Circular No. 16/2009-Customs dated 25.05.2009 has been levelled against them is without scrutiny of the 38 shipping bills and solely on the basis of assumption and presumptions and the alleged violations of 10(d), 10(e) and 10(f) of CBLR 2018 refers to non submission of declarations as per board circular based on assumptions without any basis or scrutiny of shipping bills and such discrepancy was not noticed at the time of export by the department and no objections have been raised by any officer of Customs before granting the drawback. I also find that the CB has argued that the impugned exports under consideration was to Mauritius and not to UAE. I find that this argument of the CB does not take into consideration of the fact that the present case is of a serious nature of fake billing, over

valuation and fraudulent exports. The exporter had procured fake and bogus invoices from Shri Suhel Ansari who was running a racket of fake bills and exports were made on the basis of such fake bills. Goods of inferior quality were procured from the local market without any invoice to facilitate this. The CB has also mentioned that the SCN does not cite any evidence suggesting that the CB had provided advice contrary to the provisions of the Customs Act, other allied Acts and the rules and regulations thereof. This argument of the CB does not take into account that the regulation requires the CB to 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, the CB should bring the matter to the notice of the Deputy/ Assistant Commissioner of Customs. A CB has been given an active role vide the CBLR, 2018 and is required to actively provide proper advice to his client and if the client is not showing non-compliance, then the CB should bring it to the knowledge of the Deputy/ Assistant Commissioner of Customs. Evidence that the CB advised contrary to the provisions of the Customs Act, other allied Acts and the rules and regulations thereof is not needed. However, the valuation of the goods is an important aspect of compliance of the legal provisions and they should have been actively gone into the valuation and advised the exporter properly. The CB being an experienced and licensed entity, ought to have recognised the apparent overvaluation of the goods. If the CB would have actively gone into the valuation and advised the exporter properly, this fraud would not have happened.

34.4 I am of the opinion that the responsibility of a Customs Broker play a crucial role in protecting the interest of the Revenue and at the same time he is expected to facilitate expeditious clearance of import/export cargo by complying with all legal requirements. I also find that it is a matter of fact that the CB had worked in completely negligent manner and relied blindly on the exporter's declaration and documents and the CB himself/themselves did not exercised due diligence with respect to the fact that whether the exporter is complying with all the rules, regulation and Notifications pertaining to the

impugned exports. In view of the above discussions and under the factual matrix of the present case I am inclined to accept the inquiry officer's report, in this regard and accordingly I hold the charges of violation of Regulation 11(d), 11(e) and 11(f) of CBLR, 2013 (now Regulation 10(d), 10(e) and 10(f) of CBLR, 2018) as 'proved and established' against the charged CB.

35. I find that a Custom Broker occupies a very important position in the Custom House and supposed to safeguard the interests of both the importers/exporters and the Customs Department. A lot of trust is kept in CB by the Government Agencies, however, by their acts of omission and commission it appeared that the CB M/s. Apson Enterprises (CB No. 11/501) has violated Regulation 11(d), 11(e) and 11(f) of the Customs Broker Licensing Regulation (CBLR), 2013 (now Regulation 10(d), 10(e) and 10(f) of CBLR, 2018). I find that for the violation of obligations provided under CBLR, 2018 (erstwhile CBLR, 2013) and for their act of omission and commission, the CB M/s. Apson Enterprises (CB No. 11/501) has rendered themselves liable for penal action under CBLR, 2013 (now CBLR, 2018). Hence, while deciding the matter, I rely on the following case laws:

a) **The Hon'ble Supreme Court in the case of Commissioner of Customs V/s. K. M. Ganatra and Co.** in civil appeal no. 2940 of 2008 upheld the observation of Hon'ble CESTAT Mumbai in M/s. Noble Agency V/s. Commissioner of Customs, Mumbai that:

*"the CHA occupies a very important position in the Custom House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interest of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the government agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations".*

**b) The Hon'ble CESTAT Delhi in case of M/s. Rubal Logistics Pvt. Ltd. Versus Commissioner of Customs (General) wherein in (para 6.1) it is opined that:-**

*"6.1 These provisions require the Customs Broker to exercise due diligence to ascertain the correctness of any information and to advise the client accordingly. Though the CHA was accepted as having no mensrea of the noticed mis-declaration /under- valuation or mis-quantification but from his own statement acknowledging the negligence on his part to properly ensure the same, we are of the opinion that CH definitely has committed violation of the above mentioned Regulations. These Regulations caused a mandatory duty upon the CHA, who is an important link between the Customs Authorities and the importer/exporter. Any dereliction/lack of due diligence since has caused the Exchequer loss in terms of evasion of Customs Duty, the original adjudicating authority has rightly imposed the penalty upon the appellant herein."*

36. As discussed above, I conclude that the CB is guilty of violations of Regulation 11(d), 11(e) and 11(f) of CBLR, 2013 (now Regulation 10(d) of CBLR, 2018). However, considering all the facts and circumstances of the case and taken into cognizance of the decisions arguments and case laws relied upon by the CB and the facts that the impugned export goods vide the two shipping bills consignments for the exporter M/s. Smart International were destined to Mauritius and not to UAE; that the export proceeds of all the 38 shipping bills filed by the exporter M/s Smart International have been realised; that the revocation of license of the CB held by M/s. Beejay Clearing and Forwarding Agency, involved in the same case has been set aside by the Hon'ble CESTAT, Mumbai vide its Final Order No. 85750/2024 dated 05.08.2024, I am of the view that revoking the CB license and forfeiture of security deposit of the CB is too grave a penalty to be imposed for the above violations, as the punishment of revocation of license is much harsh and disproportionate to the offences committed. However, I am of the considered view that the ends of justice will be met by imposition of penalty on the CB under Regulation 22 of CBLR, 2013 (now Regulation 18 of CBLR, 2018) which suffices both as punishment for

the infraction and deterrent for future violations. In this regard, I place reliance on the following case laws:

**a) Delhi High Court has in case of Falcon Air Cargo and Travels (P) Ltd [2002 (140) ELT 8 (DEL)] held as follows:**

*"13. By order dated 15-7-2000, licence was revoked. It is not clear how there could be revocation when the licence itself was not functional after 13-1-2000. Licence can be suspended or revoked on any of the grounds as mentioned in Regulation 21. It is, therefore, clear that if any of the grounds enumerated existed, two courses are open to the Commissioner. One is to suspend the licence and the other is to revoke it. Suspension would obviously mean that licence would be for a particular period inoperative. An order of revocation would mean that licence is totally inoperative in future, it loses its currency irretrievably. Obviously, suspension/revocation, as the case may be, has to be directed looking to the gravity of the situation in the background of facts. For minor infraction or infraction which are not of very serious nature order of suspension may suffice. On the contrary, when revocation is directed it has to be only in cases where infraction is of a very serious nature warranting exemplary action on the part of the authorities, otherwise two types of actions would not have been provided for. Primarily it is for the Commissioner/Tribunal to decide as to which of the actions would be appropriate but while choosing any of the two modes, the Commissioner/Tribunal has to consider all relevant aspects and has to draw a balance sheet of gravity of infraction and mitigating circumstances. The difference in approach for consideration of cases warranting revocation or suspension or non-renewal has to be borne in mind while dealing with individual cases. In a given case the authorities may be of the view that non-renewal of licence for a period of time would be sufficient. That would be in a somewhat similar position to that of suspension of licence though it may not be so in all cases. On the other hand, there may be cases where the authorities may be of the view that licensee does not deserve a renewal either. Position would be different there. Though we have not dealt with the question of proportionality, it is to be noted that the authorities while dealing with the consequences of any action which may give rise to action for suspension, revocation or nonrenewal have to keep several aspects in mind. Primarily, the effect of the action vis-a-vis right to carry on trade or profession in the background of Article 19(l)(g) of the Constitution has to be*

*noted. It has also to be borne in mind that the proportionality question is of great significance as action is under a fiscal statute and may ultimately lead to a civil death."*

**b) Delhi High Court has in case of Ashiana Cargo Services [2014 (302) ELT 161 (DEL)] held as follows:**

*"11. Viewing these cases, in the background of the proportionality doctrine, it becomes clear that the presence of an aggravating factor is important to justify the penalty of revocation. While matters of discipline lie with the Commissioner, whose best judgment should not second-guessed, any administrative order must demonstrate an ordering of priorities, or an appreciation of the aggravating (or mitigating) circumstances. In this case, the Commissioner and the CESTAT (majority) hold that —there is no finding nor any allegation to the effect that the appellant was aware of the misuse if the said G cards, but do not give adequate, if any weight, to this crucial factor. There is no finding of any mala fide on the part of the appellant, such that the trust operating between a CHA and the Customs Authorities (as a matter of law, and of fact) can be said to have been violated, or be irretrievably lost for the future operation of the license. In effect, thus, the proportionality doctrine has escaped the analysis".*

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

*"6. We are unable to appreciate such a peremptory conclusion. The CBLR, 2013 lays down that stepwise procedures are to be followed before ordering any punishment to the Customs broker. True, the said regulations do contain provisions for revocation of the license and for forfeiture of full amount of security deposit, however these are maximum punishments which should be awarded only when the culpability of the Customs broker is established beyond doubt and such culpability is of very grave and extensive nature. In case of such fraudulent imports, for awarding such punishment, it has to be established without doubt that the Customs broker had colluded with the importer to enable the fraud to take place. No such culpability is forthcoming in respect of the appellant herein....."*

**d) Hon'ble CESTAT, Mumbai in the matter of Setwin Shipping Agency Vs. CC (General), Mumbai – 2010 (250) E.L.T 141 (Tri.-Mumbai) observed that "it is a settled**

*law that the punishment has to be commensurate and proportionate to the offence committed”.*

37. I find that the CB has argued that the Board has issued instruction No. 20/2024- Customs dated 03.09.2024 vide F. No. 520/01/2023-Cus. VI, wherein it is instructed to avoid implicating Customs Brokers as co-notice 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. In this regard, having taken into cognizance of the above cited Board’s circular, I find that implication of the Customs Brokers as co-noticee in SCNs issued under Customs Act, 1962, in cases involving interpretative disputes regarding classification, availment of the benefit of exemption notifications and valuation etc., should not be exercised in routine or mechanical manner. However, it is pertinent to note here that the proceedings under CBLR are distinct, separate and independent from that under Customs Act, 1962. The proceedings under CBLR, 2018 involve the violations of the stipulated obligations, roles and responsibilities of the Customs Brokers under CBLR only, however the proceedings under Customs Act, 1962 involve the violations of the provisions of the Customs Act, 1962 and other allied Acts. Hence for the sake of ‘Principle of Natural Justice, which aims to prevent arbitrary actions and ensure fair decision making process with allowing everyone a chance to be heard and to be treated without bias to safeguard impartial decision making, the disciplinary proceedings contemplated against a Customs Brokers 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.

37.1 Also, I find that the Show Cause Notice No. 30/Adj(X)/2022-23 dated 15.11.2022 has been adjudicated under Customs Act, 1962 vide OIO dated 03.06.2023, wherein penalties of Rs.1,00,000/-under Section 114(i); Rs.1,00,000/- under Section 114(iii) and Rs. 50,000/- under Section 114AA of Customs Act, 1962 read with CBLR 2013 have been

imposed on the CB M/s. Apson Enterprises. However, the present proceedings under CBLR, 2013 (now CBLR, 2018) are independent, separate and distinct from that under Customs Act, 1962.

38. Further, I find that the CB has argued that impugned Show Cause Notice No. 64/2024-55 under Regulation 17 (1) of CBLR, 2018 has been issued on 09.12.2024 after a delay of 390 days over and above the prescribed time limit of 90 days from the date of receipt of the offence report (i.e. Show Cause Notice No. 30/Adj(X)/2022-23 dated 15.11.2022) under Regulation 17(1) of CBLR, 2018. However, I find that this office had not received the RUDs (i.e. statements of the CB) of the case along with the proper offence report and accordingly this office has issued multiple letters seeking the RUDs from the investigation agency, however the requisite documents were not received by this office. These facts have already been taken on record. In May 2024, it was decided to take action under CBLR, 2018, on the basis of the available documents and accordingly necessary action was taken against the CB and the CB license was put under immediate suspension under Regulation 16(1) of CBLR, 2018, ordered vide order No. 30/2024-25 dated 19.07.2024. After granting a post decisional hearing such suspension was revoked vide Order No. 45/2024-25 dated 14.11.2024 under Regulation 16(2) of the CBLR, 2018. Thereafter, a Show Cause Notice No. 64/2024-55 dated 09.12.2025 was issued under Regulation 17 (1) of CBLR, 2018. The inquiry officer submitted the inquiry report on 17.09.2024 wherein with regard to the prescribed timeline under Regulation 17(5) for completion of inquiry proceedings, the inquiry officer submitted that the same could not be followed as he was allotted with multiple charges. Also, I find that the former adjudicating authority, the then Pr. Commissioner of Customs (Gen) retired on superannuation in between and the new adjudicating authority took over the charge and granted an opportunity of personal hearing to the CB for the sake of Principle of Natural Justice. During the personal hearing, the CB also requested for some additional time for

submitting their final defence submission. Hence, due to the administrative reasons, as discussed supra, this order could not be passed within the prescribed time limit under Regulation 17(7) of CBLR, 2018. Also, in view of the above discussed facts and with regard to non-adherence with the time limits prescribed under Regulation 20 of CBLR, 2013 (now Regulation 17 of CBLR, 2018), I observe that the timelines under CHALR/CBLR, are directory in nature and not mandatory. In this regard, I place reliance on the following case laws:-

**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 (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. "*

**(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 thereafterwards, 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.”*

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

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

38.1 I find that the CB has also submitted that they had not been penalized in the last 40 years of their association with the industry and they have already suffered huge loss on accounts of regular clients last year on suspension of their Custom Broker licence for 2 months and have lost most of the business. In this regard, I place reliance on the judgement of **Hon'ble CESTAT Mumbai in the case of Friends Syndicate Clearing Pvt Ltd vs Commissioner Of Customs-Mumbai** which observed as follows:

*"4.16 We also take note of the following submissions made by the appellant which have not been disputed by the revenue authorities:-*

*-They have been performing as CB for nearly 40 years and have developed goodwill for their firm in trade. They have performed their functions throughout as Custom Brokers with utmost care and diligence, and their past record is evidence for their goodwill, integrity and efficiency in handling the customs related works. → They have branches spread across the country and employ a large number of persons for supporting their business at various ports in India. The order of revocation of their license will not only be harsh on them but will deprive all the persons employed by them from their livelihood."*

39. In view of the above judgements and the "Doctrine of Proportionality" which propagates the idea that a punishment for an offence should be proportional to the gravity of the offence, I am not inclined to revoke the license of the CB and to forfeit the security deposit of the CB. However, for their acts of omission and commission, the CB M/s. Apson Enterprises (CB No. 11/501) is held liable and guilty for violating the provisions of CBLR, 2013 (now CBLR, 2018) as mentioned above. I hold that the CB has failed to discharge their duties cast upon them with respect to Regulation 11(d), 11(e) and 11(f) of CBLR,

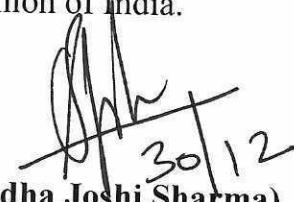
2013 (now Regulation 10(d), 10(e) and 10(f) of CBLR, 2018) and the interest of justice would be met by imposition of penalty under Regulation 22 of CBLR, 2013 (now Regulation 18 of CBLR, 2018). Accordingly, I pass the following order:

**ORDER**

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

(i) I, hereby impose penalty of Rs. 50,000/- (Rs. Fifty Thousand Rupees Only) on CB M/s. Apson Enterprises (CB No. 11/501, PAN-AAAFA5729L) under Regulation 22 of CBLR, 2013 (now 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.

  
**(Shraddha Joshi Sharma)**  
 Commissioner of Customs (G),  
 NCH, Mumbai-I

To,

M/s. Apson Enterprises (CB No. 11/501)  
 2/B Roy Appt. Opp Air Cargo Complex,  
 Sahar Road, Andheri (E),  
 Mumbai-400099

Copy to:

1. The Pr. Chief Commissioner/ Chief Commissioner of Customs, Mumbai I, II, III Zone.
2. All Pr. Commissioners/Commissioners of Customs, Mumbai I, II, III Zone.
3. SIIB (X), ACC, Sahar, Mumbai.
4. EDI of NCH, ACC & JNCH
5. Cash Department, NCH, Mumbai.
6. Notice Board
7. Office Copy

