



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

संचिका सं./F.No.- Gen/CB/ACTN/60/2021 CBS

आदेश दिनांक/Date of Order: 03.01.2023

CAO No. 65/CAC/PCC(G)/SJ/CBS Adj

जारी दिनांक/ Date of issue: 03.01.2023

संख्या:

DIN: 2023017700000072227B

द्वारा जारी : सुनील जैन

Issued By : Sunil Jain

प्रधान आयुक्त, सीमाशुल्क(सामान्य)

Pr. Commissioner of Customs(Gen.),

मुंबई -400 001

Mumbai - 400 001.

ORDER-IN-ORIGINAL मूल आदेश

ध्यानदीजिए/ N.B. :

1. यह प्रतिउसव्यक्तिको निजी उपयोग हेतु निःशुल्क प्रदान की जाती है, जिसे यह जारी की जा रही है।

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2. इस आदेश के विरुद्ध अपील मांगे गए राशि के 7.5% के भुगतान पर सीमाशुल्क अधिनियम, 1962

की धारा 129A(1B)(i) के संबंध में सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवा कर अपील अधिकरण में स्वीकार्य है, जहाँ शुल्क या शुल्क एवं जुर्माना विवादित हैं, या जुर्माना, जहाँ सिर्फ जुर्माना ही विवादित है। यह अपील इस आदेश के संप्रेषण की तारीख के तीन महीने के अंदर दायर की जाएगी। यह अपील सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवा कर अपील अधिकरण (कार्यविधि) नियमावली, १९८२, के प्रावधानों के अंतर्गत, यथोत्तर खंड पीठ में स्वीकार्य है।

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

3. यह सूचित किया जाता है कि इस आदेश के अमल में आते ही, न्याय निर्णयन अधिकारी का अधिकार क्षेत्र समाप्त होता है और सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवा कर अपील अधिकरण, पश्चिम क्षेत्रीय खंड पीठ, के M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai के संदर्भ में जारी आदेश क्रमांक A/86617-86619/2018 दिनांक 31.05.2018 के अनुसार न्यायिक आदेश तदोप्रांत 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 (अपील) नियमावली, १९८२ के नियम 6 के तहत निर्धारित है एवं उसी नियमावली के नियम 3 के उपनियम 2 में उल्लेखित व्यक्ति द्वारा हस्ताक्षरित एवं सत्यापित की जाएगी।

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

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

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

7. अपील की एक प्रति में कोर्ट फी अधिनियम, 1870 की अनुसूची मद 6 के तहत निर्धारित रु. 50 का कोर्ट फी स्टैम्प लगा होना चाहिए एवं इसके साथ संलग्न इस आदेश की उक्त प्रति में रु. 50 का कोर्ट फी स्टैम्प लगा होना चाहिए।
Once copy of the Appeal should bear a Court Fee Stamp of Rs. 50 and said copy of this order attached therein should bear a Court Fee Stamp of Rs. 50 as prescribed under Schedule item 6 of the Court Fee Act, 1870, as amended.

BRIEF FACTS OF THE CASE

1. M/s S. A. Dalal and Co. having address at 277, Chandramani, Deodhar Road Matunga (CR) Mumbai-400-019 (hereinafter referred as CB/Customs Broker) having PAN based Registration No. AABFS2420HCH001 are holding a regular Customs Broker licence No.11/320 issued by Commissioner of Customs, Mumbai under Regulation 10 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 regulations and conditions stipulated therein.
2. An offence report in form of SCN No. 948/2020-SIIB(I)/CAC/JNCH dated 19.03.2021 from SIIB(I)/JNCH was received in the case of M/s Onyx Collection. Vide the offence report, it was informed that on the basis of intelligence, the container number CAIU9526385 and GESU4339136 covered under 06 Bills of Entry No 8190252, 8190250, 8190248, 8190239, 8189072 and 8189070 all dated 16.07.2020 were put on hold by the officers of Special Investigation & Intelligence Branch (Import), Jawaharlal Nehru Custom House. The said bills of entry were filed by importer M/s Onyx Collection (IEC AAFF01260P) (*hereinafter called as 'importer'*) through their authorized Customs Broker M/s S. A. Dalal and Co. (11/320) for clearance of Mobile Accessories i.e. 'Hands-free Connector with Cable, OCA Paper, Packing Material, Mobile Screen Guard, Tripod Stand, USB Cable etc.' The details of consignment covered in above said Bills of Entry and arrived in container no. CAIU9526385 and GESU4339136 are as under:

Table -A

B/E No. & Date	8190252, 8190250, 8190248, 8189072, 8190239 and 8189070 all dated 16.07.2020
Importer's Name	M/s Onyx Collection (IEC AAFF01260P)
Customs Broker	M/s S. A. Dalal and Co.(11/ 320)
IGM No	2257195 dated 09.07.2020
B/L No	ONEYSZPA86524800 & ONEYSZPA87801700 dated 20.06.2020

Items Declared	1. Mobile Back Cover 2. Hands free Connector with Cable 3. Mobile Stand 4. Packing Material - Packaging Box 5. Packing Material -Sticker 6. Plastic Screen Guard 7. Packing Material - Polybag 8. Mobile Accessories - OCA Papers 9. OTG Connector for mobile 10.USB Cable for mobile 11.USB Dock for mobile
Invoice No	HITC-06/ 19A, HITC-06/ 19, HITC-06/ 19B all dated 19.06.2020, HITC-06/18B, HITC-06/18A & HITC-06/ 18 all dated ,18.06.2020
Invoice Value (in USD)	6350.77+5013.20+4804.80+4674.59+4959.40+4974.56 = 30777.32/-
	(1 USD = 76.40 INR)
Assessment Value (In INR)	4,85,198.83 + 3,83,867.22 + 3,67,664.30 + 3,81,963.64 + 4,01,073.71 + 4,07,774.30 = 24,27,542/-
Duty Assessed (In INR)	1,81,804 + 1,43,835 + 1,37,764 + 1,43,122 + 1,50,282 + 1,52,793 = 9,09,600/-

3. The goods imported through above said 06 Bills of Entry were examined 100% by the officers of the SIIB (Import), JNCH in the presence of independent panchas and the representative of the importer. Detailed inventory of goods found during examination in both containers were as below:

TABLE-B

Gross Inventory of goods found during examination

S No	Declared		Goods Found during examination	
	Description of Goods	Qty	Description of Goods	Qty.
1	Mobile Accessories-Back Cover for Mobile	25,488 pcs	Plastic Mobile Back Cover	38000 pcs
2	Handsfree Connector with Cable (Wired Earphone)	5,40,720 Pcs	Hands free Connector with Cable (Wired Earphone: Unbranded)	1,78,000 Pcs
			Wired Earphone (brand:)	3,17,000 pcs
			Wired Earphone (brand: Oppo)	27500 Pcs
			Wired Earphone (brand: Vivo)	35000 Pcs
			Wired Earphone (brand: Realme)	40500 Pcs
3	Mobile Accessories-Packing Material-Packing Box	306.3 Kg	Card Board Packing Material (Marking: MI)	900 kg
4	Mobile Accessories-Plastic Screen Guard	40395 pcs	Mobile Screen Guard	58000 (Pcs)
5	Mobile Accessories-USB Dock for Mobile	13082 pcs	Mobile Charger for use in Automobiles	3450 pcs
6	Mobile Accessories-Tripod Stand	390 pcs	Tripod Stand	210 Pcs
7	Mobile Accessories-OCA Paper	38304 Pcs	Vacuum Lamination Machine (OCA)	01 pcs
8	Mobile Accessories-Packing Material Poly Bag	234.95 kg	Mobile Accessories-Packing Material Poly Bag	800 Kg
9	Mobile Accessories-Mobile stand	164 pcs	Not found	--
10	Mobile Accessories-Packing Material-Sticker	52.92 Kg	Not found	--

11	Mobile Accessories- OTG Connector for Mobile	164880 Pcs	Not found	--
12	Mobile Accessories- USB Cable for Mobile	51984 pcs	Not found	--
13	Undeclared Items		Mobile Charger (Unbranded)	9150 pcs
14			Mobile Battery (Brand: Apple I-phone)	49,450 pcs
15			Mobile Battery (Brand: MI)	42,450 pcs
16			Mobile Battery (Brand: Samsung)	43,250 pcs
17			Mobile Battery (Brand: Vivo)	14,300 pcs
18			Mobile Battery (Brand: Motorola)	19,450 pcs
19		(Lenevo)	Mobile Battery (Brand:	11,900 pcs
20		(Asus)	Mobile Battery (Brand:	1,200 pcs'
21			Laptop Battery (Apple)	675 pcs
22			Bluetooth Handsfree (Brand: JBL)	1350 pcs
23			Bluetooth Handsfree (Brand: Realme)	11800 pcs
24			Air Pods (Brand: Apple)	1050 pcs
25			Bluetooth Handsfree (Brand: Boat)	17000 pcs
26			Bluetooth Handsfree (Unbranded)	4000 pcs
27			Plastic Packing Material for earphone packing	950 kg
28			Plastic tab cases	65 pcs

29			Mobile LCD screen (Unbranded)	18000 pcs
30			Mobile LCD Screen (Brand: Apple)	800 Pcs
31			Bluetooth Speaker	2500 pcs
32			Canvas Shoes (Brand: NIKE)	650 pairs
33			Smart Watch	150 pcs
34			Spray Pen	28500 pcs
35			Collar Mic	250 Pcs
36			Pub-g Gaming Trigger	300 Pcs
37			Ring Led Lights	110 Pcs
38			Empty watch box (marking : TISSOT)	4000 Pcs
39			Mobile Touch Screen (Unbranded)	11200 Pcs

4. Offence report revealed that the goods were undeclared and also grossly mis-declared with respect to the declaration in the bills of entry no. 8190252, 8190250, 8190248, 8189072, 8190239 and 8189070 all dated 16.07.2020. Thus, it appeared that the goods had been imported for evading the applicable customs duty by mis-declaring them. The imported goods were not in compliance with Bureau of Indian Standards (BIS) and were in violation of provisions of the E-waste Management Rules, 2016 issued by the Ministry of Environment, Forest and Climate Change.

5. The goods imported by the importer were found mis-declared, undeclared, in excess quantity and contrary to the import policy. Some items of Table-B were in infringement of Intellectual Property Rights, some in non-compliance of BIS (Bureau of Indian Standards) and some in violation of provisions of the E-waste Management Rules, 2016 issued by the Ministry of Environment, Forest and Climate Change as no supporting documents were tendered by the importer at the time of import.

6. In the offence report, it is mentioned that during the course of investigation, the Intellectual Property Rights (IPR) Cell, JNCH submitted that the right holders of the brands Samsung, MI, Apple, JBL, Boat, Nike, Tissot, confirmed that the respective goods were counterfeit. In respect of goods of remaining brands Oppo, Vivo, Realme, Motorola, Lenovo, Asus, NOC in respect of IPR angle was granted as the brands were not registered with customs and inspection report was not submitted by the right holders as per IPR rules, 2007.

7. IPR cell, JNCH vide their letter dated 10.03.2021 informed that the right holders of the brands Apple, MI/ Xiaomi, Nike, Boat, JBL & Tissot submitted Bond and Bank Guarantee/ FD as per IPR rules 2007 whereas for brand Samsung, both bond and Bank Guarantee were not submitted by the right holders as per IPR rules 2007. Hence, NOC was given for the brands in which both bond and Bank Guarantee were not submitted by the right holders as per IPR rules 2007.

8. Thus, referring items at Sr. No. 3, 14, 15, 21, 22, 24, 25, 30, 32 & 38 of TABLE-B are in infringement of Intellectual Property Rights Rules 2007 and NOC was not granted by the IPR Cell. The items at Sr. No. from 9, 13 to 26, 31, 33, 37 of Table-B require compliance of BIS standards (Bureau of Indian Standards) and appeared to have been imported in violation of provisions of the Electronics and Information Technology Goods (Requirement of Compulsory Registration), 2012. The items at Sr. No. from 14 to 21, 29, 30 & 39 of TABLE-B requires "Extended Producer Responsibility Authorization" from Central Pollution Control Board (CPCB) when importing the electrical and electronic equipment including their components, consumables, parts and spares categorized under schedule I of E-Waste Management Rules, 2016.

9. During the course of investigation, statement of Prabhat Muljibhai Tarsaria, Partner in firm M/s Onyx Collection was recorded on 16.02.2021 under section 108 of the Customs Act, 1962 wherein he inter -alia stated that:

(a) M/s. Onyx Collection is a partnership firm having two partners, Mr. Samrat Jadhav and himself. However, all import related work and selling of imported goods in local wholesale market are handled by him only.

(b) he usually imports mobile accessories i.e. Mobile back-cover, Hands free, OTG Connector, USB Cable, Mobile stands, Screen guards, packing materials.

(c) he used to import consignments from JNCH port since August, 2019.

(d) he used to take orders from local market and telephonically contacted his firm partner Mr. Samrat Jadhav who stays in China. Thereafter, his partner placed the order to overseas suppliers i.e. M/ s. Honist International & Y. D.

International Tarde Ltd.

- (e) all conversation with the supplier were made through his partner.
- (f) remittances had been made in case of previous imports but no remittance had been made for the subject consignment. Normally supplier gives 90 days credit time for payment.
- (g) he was not aware about the goods found in excess quantity and of branded goods violating IPR rules. He asked his partner to purchase only unbranded goods.
- (h) however, he agreed to pay duty, fine & penalty as applicable due to mistake on his part.
- (i) he was not aware of IPR rules, 2007 applicable to import of branded goods because he never deals in branded goods;
- (j) that the KYC verification was done by the Customs Broker.

10. During the course of investigation, Statement of Shri Samrat Chandrakant Jadhav Partner in firm M/ s Onyx Collection was recorded on 16.02.2021 wherein he inter-alia stated that:

- (a) he used to live in China Guangzhou province before Covid pandemic. He is working partner in firm and his role is to buy goods in China according to the orders given by his partner Mr. Prabhat. After receiving the order, he starts of sourcing local Chinese market for best price and quality.
- (b) In past, he used to contact with his partner on We-chat app regarding orders but due to app banned by Government, he could not be able to provide conversation details. After that, only option available to contact each other was phone call.
- (c) after receiving the order, he used to go around the market to check for best price, then he contacts his two main suppliers i.e. Honist International & Y. D. International to help for buying the same goods. The only reason to buy the goods from two above said suppliers is accepting the payment by them through banking channels.
- (d) he has submitted purchase orders showing details for his current import consignments which received in his firm email account.
- (e) he has no idea about the undeclared goods and branded goods found in current consignment.
- (f) he has never placed any order which were found by Customs. He explained that generally loading was done under his supervision but due to Covid pandemic he was not present during container loading and the same was done by Chinese labours in warehouse which was the reason for this inadvertent event.

11. Through the offence report it is informed that during the course of investigation, many summons were issued to Customs Broker firm, M/s. S.A. Dalal and Co. under section 108 of the Customs Act, 1962. However, no body appeared for recording of his statement on behalf of the Customs Broker firm. Further, Shri Chandrakant Ambalal partner of M/s. S. A. Dalal vide his letter dated 17.02.2021 informed that

(a) he is an 81 years old senior citizen with an amputated foot and undergoing dialysis since last 11 years, hence unable to appear in person before the investigating agency.

(b) Mr. Aejaaz Ali Mukadam, holding power of attorney, authorized to work and act on their behalf, could not be reached on his mobile for past few days.

12. The offence report mentioned that since the importer had mis-declared the quantity and description of the imported goods, therefore declared value were liable for rejection under Rule 12 of Customs Valuation (Determination of value of imported goods) Rules, 2007. A market inquiry was conducted on 13.03.2021 to obtain whole sale market value of subject goods. Based on market survey, the re-determined assessable value of 39 items (Annexed in Table B) were ascertained to Rs. 1,37,69,630/ -

13. From the facts stated above, it appeared that the CB M/s. S.A. Dalal and Co. (11/320) has failed in fulfilling the obligations as mandated under CBLR, 2018 and appeared to have violated the regulation 10(d), 10(p) and 10(q) of CBLR, 2018.

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

• **Regulation 10(p) of CBLR, 2018:** *"it is obligation of a custom broker that he shall maintain all records and accounts that are required to be maintained under these regulations and preserve for five years and all such record and accounts shall be made available at any time for the inspection of officers authorized for this."*

• **Regulation 10(q) of the CBLR, 2018:** *"it is obligation of a Custom Broker that he shall cooperate with Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees."*

14. SUSPENSION OF LICENCE: -

In view of the facts stated above, CB, M/s S.A. Dalal and Co. (11/320) appeared to be liable for their acts of omission and commission leading to contraventions of the provision under Regulation 10(d), 10(p), & 10(q) of the Customs Brokers Licensing Regulations, 2018 which amounts to breach of trust and faith reposed on the CB by the Customs. M/s S.A. Dalal and Co. (11/320) have, therefore, prima facie, failed to fulfil their responsibilities as per provisions of regulations of CBLR, 2018. However, the CB licence was already suspended in another two action matters vide F.No. S/8-73/2020-21/CBS and F.No. S/8-80/2020-21/CBS.

15. SHOW CAUSE NOTICE

M/s S.A. Dalal and Co. (11/320) was issued a Show Cause Notice (SCN) No. 24/2021-22 dated 17.11.2021, by the Principal Commissioner of Customs (General), NCH, Mumbai, Zone- I, asking them to show cause as to why the licence bearing no. 11 /320 issued to them should not be revoked and security deposited should not be forfeited and/or penalty should not be imposed upon them under Regulation 14 read with 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018, as elaborated in the Show Cause Notice. They were given an opportunity to appear for a personal hearing on the date as may be fixed and to produce proof of evidence/documents if any, in their defence to the inquiry officer. Shri S. Suresh Kumar, Assistant Commissioner of Customs, Import-I, NCH was appointed as an inquiry officer to conduct inquiry under regulation 17 of CBLR, 2018.

16. INQUIRY REPORT

Inquiry Officer submitted final inquiry report dated 25.08.2022 wherein the charges against CB M/s S.A. Dalal & Co. (11/320) i.e. violation of Regulation 10(d), 10(p) and 10(q) of CBLR,2018 were held '**proved**'.

16.2 Inquiry Officer submitted that despite sending letters to M/s. Dalal & CO. no reply was submitted by the charged CB. After a continuous persuasion, Shri. Aizaz Mukadam, the authorized representative as stated in the showcause notice could be contacted. A statement of Shri. Mukadam was recorded on 18.02.2022 during the inquiry proceeding by the inquiry officer. Inquiry officer submitted that based on Shri. Aizaz Mukadam's deposition, it could be ascertained that Shri. Chnadrakanth A. Dalal, the owner of M/s. Dalal & Co. expired in July, 2021. Further Shri Mukadam also deposed that he also had left

the firm and was not in possession of any records pertaining to the transaction in question. In view of this the case was taken up based on merits on record by the inquiry officer.

16.3 Inquiry Officer mentioned that on the basis of the investigation carried out in the matter, it is alleged in the show cause Notice that the Customs Broker M/s. Dalal & Co. did not exercise due diligence in discharging their obligations as mandated under Regulation 10(d), 10(p) & 10 (q) of the CBLR, 2018.

16.4 Inquiry officer further submitted that the Customs Broker M/s Dalal & Co., neither submitted any reply to the SCN nor appeared for the summons issued to them. It was only Shri Mukadam, an authorized representative of M/s. Dalal & CO could be obtained during inquiry proceedings. With regard to the allegations of the violation of Regulations of CBLR, 2018, as per the show cause Notice, inquiry officer found the following facts:

16.4.1 At the outset, this is a case of mis-declaration and not declaring the actual quantities of the Mobile Phone accessories, undervaluing the goods with an intention to evade the duty on the same.

16.4.2 Inquiry officer found that during the course of investigations, despite issuing summons to CB, neither any authorized person from M/s. Dalal & Co. appeared before the investigating officers nor they submitted any reply/ defence to the notice issued to them.

16.4.3 With respect to deposition of Sri. Mukadam, I.O. found that during the course of investigation, neither Shri. Mukadam, being authorised representative did not appear nor could be reached by the investigation team because of non availability over his mobile phone. Further, late Shri Chnadrakanth Dalal, partner of M/s. Dalal & Co. expressed his inability to appear before the investigation agency as he got his foot amputated.

16.5 Inquiry Officer now discusses the charge as under:

16.5.1 Articles of charge- I: - (Regulation 10 (d) of CBLR, 2018)

In this regard, inquiry officer submitted that in the instant case, the import was carried out by M/s. Onyx Collection (IEC AAFF01260P). The statement of Shri Prabhat Muljibhai Tarsaria, partner of M/s. Onyx Collection revealed that he was not aware of the IPR Rules, 2007 applicable to the imported goods. In his statement, he further stated that the KYC verification was done by their custom broker, M/s. Dalal & Co. In the absepnce of any reply to this from M/s. Dalal & Co, it appeared that M/s. Dalal & Co., did not fulfil their obligation reposed under Regulation 10(d) of CBLR, 2018 and thus,

Article of Charge-I for contravention of Regulation 10 (d) of CBLR, 2018 framed against them appeared to be PROVED conclusively.

16.5.2 Articles of charge- II:- (Regulation 10 (p) of CBLR, 2018)

In this regard, inquiry officer submitted that in the instant case M/s. Dalal & Co. failed to furnish the records as called for by the investigation team. Further it could be known from the deposition of Shri Mukadam that the documents/papers are with the firm only. Since no response was given to the summons issued and no reply was furnished to the Show Cause Notice, it is clearly evident that M/s. Dalal & Co. have not complied with the Regulation 10(p) of CBLR, 2018 and thus the Article of Charge for contravention of Regulation 10(p) of CBLR, 2018 framed against them appeared to be proved.

16.5.3 Articles of charge- III:- (Regulation 10 (q) of CBLR, 2018)

In this regard, inquiry officer submitted that in the instant case, at no point of investigation, the Customs Broker M/s. Dalal & Co. cooperated or responded to the call given in this regard by the investigating team. It is clearly evident that M/s. Dalal & CO., have not complied with the Regulation 10(q) of CBLR, 2018 and thus the Article of Charge for contravention of Regulation 10(q) of CBLR, 2018 framed against them appeared to be proved conclusively.

16.6 In view of the facts discussed herein above, I.O. found that M/s. Dalal & Co. have contravened the mandatory Regulations of the CBLR, 2018 which rendered them liable to be penalized under the relevant Regulations of CBLR, 2018.

17. PERSONAL HEARING & RECORDS OF PERSONAL HEARING

A personal hearing was granted by Principal Commissioner of Customs, NCH, Mumbai to Customs Broker on 13.10.2022, 07.11.2022 and 24.11.2022. Neither the Customs broker nor his representative attended the personal hearing. Nothing was submitted by Customs broker in their defence/reply. The charged CB also did not try to contact in this regard.

18. DISCUSSION AND FINDINGS

I have carefully gone through the case, the Show Cause Notice dated 19.03.2021 issued by investigating agency, material facts on record, Inquiry Report dated 25.08.2022 along with its RUDs and examined the role and conduct of CB in the case before me.

18.2. The charges against the CB i.e. violation of Regulation 10(d), 10(p) and 10(q) of CBLR, 2018 made vide Show Cause Notice No. 24/2021-22 dated 17.11.2021 issued by Pr. Commissioner of Customs (General), NCH, Mumbai were held as proved by the Inquiry Officer.

18.3 From the facts stated in Show Cause Notice No. 24/2021-22 dated 17.11.2021, it appeared that the CB M/s S. A. Dalal and Co. (11/ 320) failed in fulfilling the obligation of a Customs Brokers as mandated under CBLR, 2018 and violated the regulation 10 (d), 10(p) and 10(q) of CBLR, 2018.

18.4 I now examine the charges in the SCN sequentially. It was alleged that CB did not exercise due diligence in discharging their obligation as required under 10 (d), 10(p) & 10(q) of CBLR, 2018.

18.4.1 With regard to violation of regulation 10(d) of CBLR, 2018: -

"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."

It is evident from the offence report that the imported goods were in violation of Foreign Trade Policy as the consignment comprised of goods which require BIS certification, Extended Producer Responsibility Authorization under E-waste Management Rules, 2016 and have IPR violation as per IPR rules, 2007. Shri Prabhat Muljibhai Tarsaria, partner of M/s Onyx Collection in his statement dated 16.02.2021 stated that he was not aware about the IPR rules.

I.O. in his inquiry report stated/observed that various summons were issued to the charged CB but neither anyone appeared nor submitted any reply in the said matter.

I find that the importer was not aware about the IPR rules, 2007 applicable on the imported goods as he stated in his statement, this shows that the charged CB M/s S. A. Dalal and Co. (11/ 320) did not advise the importer with regard to the provisions of the Act, other allied Acts and the rules and regulations thereof. I also find that imported goods were related to mobile accessories which are commonly imported goods so the charged CB should have advised the importer regarding IPR rules, BIS applicability and EPRA. It clearly indicates that the charged CB did not advise the importer about any rules and regulation related to the imported goods.

Therefore, I hold that the CB has violated the provisions of Regulation 10(d) of CBLR, 2018.

18.4.2 With regard to violation of regulation 10(p) of CBLR, 2018: -

"it is obligation of a custom broker that he shall maintain all records and accounts that are required to be maintained under these regulations and preserve for five years and all such record and accounts shall be made available at any time for the inspection of officers authorized for this."

In this regard, offence report revealed that the CB M/s S.A. Dalal and Co. did not respond and submit any documents in their defence. It is also mentioned by investigating agency that CB did not preserve the documents as neither the CB M/s S.A. Dalal and Co. nor Mr. Aejaz Ali Mukadam, the power of attorney holder or any authorized representative of CB appeared in response to Summons issued under section 108 of the Customs Act, 1962 to give statements or tender documents/ evidence.

Inquiry officer in his report also submitted that in the instant case M/s. Dalal & Co. failed to furnish the records as called for by the investigation team. Further it could be known from the deposition of Shri Mukadam that the documents/papers are with the firm only. Since no response was given to the summons issued and no reply was furnished to the Show Cause Notice.

I find that as per Regulation 10(p) of CBLR, 2018, it is the obligation of a Custom Broker that he shall maintain all records and accounts that are required to be maintained under these regulations and preserve for at least five years and all such records and accounts shall be made available at any time for the inspection of officers authorized for this purpose. It is clear that CB M/s S.A. Dalal and Co. did not provide the documents neither to the investigating agency nor the Inquiry Officer which shows that the charged CB failed to maintain requisite records and accounts and was unable to make available for the inspection before competent authority.

Therefore, Therefore, I hold that the CB has violated the provisions of Regulation 10(p) of CBLR, 2018.

18.4.3 With regard to violation of regulation 10(q) of CBLR, 2018: -

" it is obligation of a Custom Broker that he shall cooperate with Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees."

The offence report mentioned that the CB did not respond to the summons issued for recording of statement u/s 108 of the Customs Act, 1962 and appeared to have actively involved in mis-declarations as they never produced themselves before investigation agency to produce documents and give statements/ evidence.

In this regard, Inquiry Officer submitted that at no point of investigation, the Customs Broker M/s. Dalal & Co., cooperated or responded to the call given in this regard by the investigating agency.

I find that as per Regulation 10(q) of CBLR, 2018, it is the obligation of a Custom Broker that he shall co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees. Since, CB M/s S.A. Dalal and Co. failed to join investigations promptly in the event of an inquiry against them and did not co-operate with Customs Authorities. From the starting of investigation, the charged CB never tried to contact with the investigating agency or the inquiry officer. The charged CB also did not communicate to the department through any mode of communication.

Therefore, Therefore, I hold that the CB has violated the provisions of Regulation 10(q) of CBLR, 2018.

19. I rely on the following judgements and hold that in the instant case, CB, M/s. S.A. Dalal and Co. (Customs Broker No. 11/320) have failed to adhere to the responsibilities as was expected of them in terms of the Regulations made under CBLR, 2018 and therefore rendered themselves liable for penal action under CBLR, 2018.

Ratio of The Hon'ble Tribunal judgement in the case of Rubal Logistics Pvt. Ltd. Vs. Commr. of Cus. (General), New Delhi reported in 2019 (368) E.L.T. 1006 [Tri. - Del.] is applicable in the present issue. The relevant para 6.1 of the said judgement are as under:

"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 misdeclaration/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 CHA 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".

Further, 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 approved the observation of Hon'ble CESTAT Mumbai in M/s. Noble Agency V/s. Commissioner of Customs, Mumbai that:

"A Custom Broker occupies a very important position in the customs House and was supposed to safeguard the interests of both the importers and the Customs department. A lot of trust is kept in CB by the Government Agencies and to ensure made under CBLR, 2013 and therefore rendered themselves liable for penal action under CBLR, 2013 (now CBLR, 2018)".

20. In a regime of trade facilitation, a lot of trust is placed on the Customs Broker who directly deals with the importers/exporters as the department does not interface with the importers/exporters. Failure to comply with regulations by the CB mandated in the Regulations gives room for unscrupulous persons to get away with import-export violations and revenue frauds. In this case, the CB neither advised his client about rules and regulations related to the imported goods nor submitted any reply or related documents to the investigation agency which clearly prove that CB violated various provisions of CBLR 2018 with mens rea.

21. I hold that the proof of charges in inquiry are acceptable and tenable based on the available evidence, the facts and circumstances of the case and judicial pronouncement mentioned supra which certainly warrant penal action against the CB. Therefore, for their acts of omission and commission, CB M/s. S.A. Dalal and Co. (Customs Broker No. 11/320) is held liable and guilty for involving in import of misdeclared and restricted/prohibited goods. The CB also did not cooperate with the Customs authorities by way of not submitting the records and reply to SCN. I hold that the CB have failed to discharge duties cast on them with respect to Regulation 10(d), 10(p) and 10(q) of CBLR, 2018 and are liable for penal action. Accordingly, I pass the following order.

ORDER

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

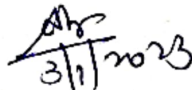
(i) I hereby impose penalty of Rs.50,000/-(Rupees Fifty thousand only) on M/s. S.A. Dalal and Co. (Customs Broker No. 11/320) (PAN No. AABFS2420HCH001) under Regulation 18 of the CBLR, 2018.

(ii) I hereby order for forfeiture of entire amount of security deposit furnished by the CB, under Regulation 14 of the CBLR, 2018.

(iii) The CB License No.11/320 is ordered to be revoked under Regulation 14 of the CBLR, 2018.

(iv) I hereby order that the CB surrender the original License as well as all the 'F', 'G' & 'H' cards issued there under immediately.

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


(SUNIL JAIN)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
MUMBAI ZONE-I

To,

M/s S.A. Dalal & Sons (PAN No. AABFS2420HCH001),
CB License No. 11/320, 277, CHANDRAMANI, DEODHAR ROAD,
MATUNGA, (CR) MUMBAI-400-019. — EM 1261333022W

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. Commissioner of Customs, SIIB, JNCH, Mumbai. Zone-II Vide F.No. SG/Misc-207/2021-22/A cell/SIIB(I)/JNCH dated 19.03.2021
4. CIU's of NCH, ACC & JNCH
5. EDI of NCH, ACC & JNCH
6. ACC (Admn), Mumbai with a request to circulate among all departments.
7. JNCH (Admn) with a request to circulate among all concerned.
8. Cash Department, NCH, Mumbai.

9. Notice Board

10. Office Copy.

11. Guard File (Admin)