



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/CHNG/51/2021-CBS

आदेश दिनांक/Date of Order: 21.06.2024

CAO No. 18/CAC/PCC(G)/SJ/CBS-Adj

जारी दिनांक/Date of issue: 21.06.2024

संख्या:

DIN : 202406770000000E774

द्वारा जारी : सुनील जैन

प्रधान आयुक्त, सीमाशुल्क(सामान्य)
मुंबई -400 001

Issued By : Sunil Jain

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

ORDER-IN-ORIGINAL मूल आदेश

ध्यान दीजिए/ N.B. :

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

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2. इस आदेश के विरुद्ध अपील माँगे गए राशी के 7.5% के भुगतान पर सीमाशुल्क अधिनियम, 1962 की धारा 129A(1B)(i) के संबंधमें सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण में स्वीकार्य है, जहाँ शुल्क या शुल्क एवं जुर्माना विवादित हों, या जुर्माना, जहाँ सिर्फ जुर्माना ही विवादित हो। यह अपील इस आदेश के संप्रेषण की तारीख के तीन महीने के अंदर दायर की जाएगी। यह अपील सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण (कार्यविधि) नियमावली, १९८२, के प्रावधानों के अंतर्गत, यथोत्तखंडपीठ में स्वीकार्य है।

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

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

It is informed that the jurisdiction of the Adjudicating Authority stands alienated with the conclusion of the present adjudication order and the Adjudicating Authority attains the status of 'functus officio' as held by Hon'ble CESTAT, Mumbai in its decision in the case of M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai vide Order No. A/86617-86619/2018 dated 31.05.2018.

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

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

5. यह अपील फॉर्म C.A.-3 में दायर की जानी चाहिए जो कि सीमाशुल्क (अपीलस) नियमावली, १९८२ के नियम 6 के तहत निर्धारित है एवं उसी नियमावली के नियम 3 के उपनियम 2 में उल्लेखित व्यक्ति द्वारा हस्ताक्षरित एवं सत्यापित की जाएगी।

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

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

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

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

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

Brief facts of the Case:

M/s. SKY Shipping (Licence no. 11/690, CB code AANFS1270PCH001), 209, EMCA House, 289, SBS Road, Fort, Mumbai – 400 001 (hereinafter referred as the Customs Broker/CB) is holder of Customs Broker License No. 11/690, issued by the Commissioner of Customs, Mumbai under Regulation 8 of CHALR, 1984, [Now regulation 7(2) of CBLR, 2018] and as such they are bound by the regulations and conditions stipulated therein. The license No. 11/690 held by M/s. SKY Shipping is having lifetime validity, and Mrs. Roshan Behram Irani is the Director of M/s SKY Shipping.

2. An offence report with respect to the role of CB M/s SKY Shipping was received in this office from CIU/JNCH, wherein inter-alia the following is stated:

2.1 It was informed that the examination order of RMS/EO was not followed by the concerned officer before granting Out of Charge in Bill of Entry No. 8162485 dated 05.10.2023.

2.2 Out of Charge for the Bill of Entry No. 8162485 dated 05.10.2023 was granted on 09.10.2023 and before hold of the containers, 6 containers were gated out from Ashte CFS. Remaining 15 containers were put on hold by CIU, JNCH. These were subsequently examined under panchanama dated 13.10.2023 and 14.10.2023.

2.3 Further, it was also observed that Tariff rates of Ashte Logistics Pvt. Ltd. for Customs Examination (rate per TEU) are as under:

3	Customs Examination (rate per TEU)	20'	40'
A)	Less than 25% examination	1250/-	2500/-
B)	More than 25% examination	3000/-	6000/-

* Note: TEU stands for Twenty Equivalent Unit, and one 20 feet container means 1 TEU and one 40 feet container means 2 TEU.

2.4 Tax Invoice No. 513 of total Rs. 2, 26,501/- issued by M/s Ashte Logistics Pvt. Ltd to M/s Cigma Process Solutions Pvt. Ltd. for container handling services for their consignment of BL NO. EMAJEA20230063 having Twenty-One, 20-feet containers duly endorsed by CFS manager. The charges were paid by the importer vide cheque no. CIUBR52023101000401041 dated 10/10/2023 drawn on bank ICICI Bank.

2.5 In the above mentioned tax invoice under the head Container handling services sub-heading 3, it is mentioned that the charge for cargo

examination was taken for 3 TEU at the rate of Rs 1250/- per TEU and charged a total sum of Rs. 3750/-.

2.6 From the tariff rates of Ashte Logistics Pvt. Ltd and Tax Invoice No. 513, it appears that if all the 21, 20 feet container of BE no. 8162485 dated 05.10.2023 were examined 100%, the CFS would have charged at the rate of 3000 per container (more than 25% examination) and total charge of examination would have been Rs. 63,000/-.

2.7 During the course of investigation, the movement of goods of the subject Bill of Entry was found as below:

BE Assessment date and time	06/10/2023 at 1:21 PM
BE registration date and time	06/10/2023 at 3:06 PM
Seal Cutting time of containers	09/10/2023 at 1:25 PM
Examination report time	09/10/2023 at 5:04 PM
Out of Charge time	09/10/2023 at 6:14 PM

2.8 Furthermore, the investigation also revealed that only 3 containers had been examined by the Examining Officer as per the CCTV recordings submitted under section 65B of Indian Evidence Act, 1872 by M/s Ashte CFS Logistics Pvt. Ltd.

2.9 During the course of investigation, statement of CB's representative Shri Balu R Zinjad was recorded under the provisions of Section 108 of Customs Act 1962 on 14.10.2023. In his above recorded statement, Shri Balu R. Zinjad inter-alia, stated that:

- He works as a docks clearance worker and looks for handling of shipment like examination and delivery of containers.
- He presented the Bill of Entry No. 8162485 dated 05.10.2023 for examination to docks officer as directed by his senior Shri Sandeep Aawate, G Card Holder.
- Bill of Entry was registered from the office after the assessment of Bill of Entry on 06.10.2023. He did not know the exact timing of registration.
- He took the seal cutting permission from Shri Chitanya Wankhede, Superintendent of Customs on Monday 09.10.2023 at around 1:00 PM.
- All 21 containers reached the CFS late night on 07.10.2023 and being holiday on 08.10.2023 (Sunday) seal cutting permission was not received in the CFS 'since the weather was cloudy that day and seal cutting permission was taken on 09.10.2023.
- Docks officer examined the goods at around 3 PM on 09.10.2023 (Monday).

- He had shown the containers to the docks officer, the container contained Technical Grade Urea in 50 Kgs. white coloured gunny bags. Docks officer directed him to cut the bag and show the inside content. There were small granules of white colour. After taking the granules in hand docks officer was satisfied that the goods are of urea (TGU). The officer then inspected all the containers as the goods were of uniform packing the officer directed to draw sample in duplicate from one of the urea (TGU) bags placed in the container.
- As the weather was cloudy that day and there were high chances of rain and the goods imported vide the said Bill of entry were Urea (Technical Grade Urea) which are highly soluble in water so he requested the docks officer to examine the goods in the container itself.
- Samples were drawn by him in presence of docks officer and sample were then sealed and forwarded by docks officer for testing in RFCL, RFCL officer denied to accept the sample for testing and replied it in writing on the back side of the Bill of Entry copy. After that he submitted the RSS to docks officer.

3 In view of the above statements and offence report in the case, prima-facie it appears that the CB failed to discharge his duties to present the goods before the Customs authority for 100% examination when ordered. The CB tasked with the responsibility to ensure that the trade and business is carried out within the realm of the Customs law to safeguard the economic as well as national security interests. This act by the Custom Broker of not presenting the goods for examining the goods 100% when ordered can attract unscrupulous elements which can cause financial loss to the country and also a threat to the national security.

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

5. SUSPENSION/REVOCAION OF LICENSE: It is mentioned that, license of the CB M/s. SKY Shipping (License no. 11/690) was suspended vide order No. 35/2023-24 dated 27.10.2023 and gave an opportunity of personal hearing on 07.11.2023. Suspension of the license of the CB M/s. SKY Shipping (License no. 11/690) had been revoked vide order No. 36/2023-24 dated 20.11.2023.

6. SHOW CAUSE NOTICE:

Inquiry proceedings were initiated against CB firm M/s. SKY Shipping (Licence no. 11/690), vide Show Cause Notice No. 31/2023-24 dated 09.01.2024 issued under Regulation 17 of CBLR 2018. Further vide said notice, CB M/s. SKY Shipping (Licence no. 11/690) was called upon to show cause as to why the licence bearing no. 11/690 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 directed to appear for a personal hearing and to produce proof of evidence/documents if any, in their defence to Shri P. Sravan Kumar, Asstt. Commissioner of Customs who was appointed an inquiry officer to conduct inquiry proceedings under regulation 17 of CBLR, 2018.

7. INQUIRY REPORT:

Inquiry Officer submitted Inquiry Report dated 04.04.2024, wherein, the charges against CB M/s. SKY Shipping (Licence no. 11/690) in respect of violation of Regulations 10(d), and 10(e) of CBLR, 2018 were held as 'Proved' and Regulation 10 (m) of CBLR, 2018 was held as 'Not Proved'.

In the report, Inquiry officer has stated that in compliance of the SCN No. 31/2023-24 dated 09.01.2024, the said CB firm was directed to appear for hearing & submit the evidences/documents in their defence on 08.02.2024. PH was attended by Mrs. Roshan Irani from M/s. SKY Shipping (Licence no. 11/690). In the Personal Hearing the charged CB gave both oral and written submissions. In these submissions (oral and written), they out rightly refuted the allegations of violation of Regulations 10(d), 10(e) and 10(m) of CBLR, 2018 that were levelled against them vide SCN No. 31/2023-24 dated 09-01-2024.

8. COMMENTS OF THE INQUIRY OFFICER: -

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

IO submitted that, in the Show Cause Notice, it is alleged that the CB appears to have not advised the importer and actively tried to escape from 100% examination of the goods after getting RMS instruction for 100%

examination of the subject goods. Further, the CB did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs that RMS instruction of 100% examination of the goods is being escaped, thus, it appears that the CB has violated the provisions of Regulation 10 (d) of the CBLR, 2018.

IO asserted that CB, in his defense submission, mentioned that he had informed Mr. Manoj Gupta, representative of the Importer that the cargo in question would be 100% examined and it is incorrect to allege that the CB had not advised the importer about the provisions of the Act. This is not a case where there was a non-compliance on the part of the importer at the time of examination.

IO submitted that the docks officer as well as the Customs Broker take part in the examination. It is the responsibility of both. The importer or his representative do not take part in the examination of the goods as the Customs Broker on behalf of the importer takes the job of Customs Clearance and examination is an important part of this whole exercise. Hence, IO found that it justifiable that CB had neither advised the importer about provisions of the Customs Act 1962 and the Rules & Regulations nor brought to the notice of the Customs Authorities in case of non-compliance. Accordingly, IO hold the Article of Charge alleging violation of Regulation 10 (d) of the CBLR, 2018 as "Proved".

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

IO stated that CB in his statement before CIU, INCH stated that he had requested to the docks officer to examine the goods in container itself after getting RMS 100% examination instruction. Further, the CB never took pain to bring the matter to the docks Deputy Commissioner of Customs or Assistant Commissioner of Customs as the examination of goods is being escaped after getting RMS Instruction for 100% examination. If the CB had taken efforts to examine the goods 100%, the violation of RMS instruction would have not taken place. Thus, it appears that the CB has violated the provisions of Regulation 10 (e) of the CBLR, 2018.

IO asserted that the CB in their defense submission mentioned that seals of all the 21 containers were opened; all the containers were grounded for examination are factually incorrect as there is no evidence regarding this on record. photographs are submitted by the CB as a proof of their intention for examination of the cargo. On perusal of the said photographs, there are mentioning only 6 containers and not all the 21 containers, their doors are opened and container no's are not clearly shown in the same. The goods are

stuffed in the containers and not a single package is outside the container. IO found that the CB had not a little intention to get the goods examined. IO did not find any other CCTV footages on record.

It is informed that Invoice no. 513 is mentioned in the said SCN. However, I find that the correct invoice no. is IMPT23004523. On perusal of the said invoice no. IMPT23004523 dated 09.10.2023 issued by the concerned CFS to M/s. Cigma Process Solutions Private Limited, it is very clear that cargo examination charges of the remaining 18 containers are not included in that invoice. IO found that the inherent intention of the CB was not to get the goods examined 100%. Therefore, it is complete fault of the CB that he intentionally tried to escape the examination procedure and did not take pain to bring the matter to the notice of docks Deputy Commissioner/Assistant Commissioner of Customs. In view of the foregoing discussion, I find that it was the responsibility of the CB to ensure that 100% examination of the goods were carried out. The act is deliberate and well considered. IO found that the CB did not exercise due diligence to ascertain the compliance of Regulation 10(e) of the CBLR, 2018. Accordingly, IO hold the Article of Charge alleging violation of Regulation 10 (e) of the CBLR, 2018 as "Proved".

8.3 Article of Charge-III: - Violation of Regulation 10 (m) of CBLR, 2018:

IO stated that it is alleged in the Show Cause Notice that the goods were registered at CFS on 06/10/2023 at 3:06 PM, however the seal of the container were cut on 09/10/2023 at 1:25 PM, 03 days later, further, the CB in his recorded statement could not submit any satisfactory reply for reason of delay. It appears that CB has deliberately delayed to present the goods for examination before the docks officer. Thus, it appears that the CB has violated the provisions of Regulation 10 (m) of the CBLR, 2018.

IO submitted that CB in his defense submission submitted that the B/E was registered on October 6, 2023 (being a Friday); Duty was paid on October 7, 2023; The last container was gated in at the CFS on 23:35:00 hours late night on October 7, 2023 (being a Saturday). Next day being Sunday (October 8, 2023) seal cutting permission was not given at CFS; On October 9, 2023, seal cutting of all Containers was done. All container seals were opened which itself shows the intent was always to examine 100% cargo. Examination of cargo was done at about 3-00 p.m on October 9, 2023 (being a Monday). CFS charges was paid on October 9, 2023.

In view of the above, IO found that October 08, 2023 being Sunday a holiday for Customs and generally a Customs docks officer do not go on duty in the CFS for examination hence the CB also may not take interest in

approaching Customs for examination of the goods. On the next working day ie, on October 9, 2023, the CB got examined the goods. Hence, IO found that the CB did not delay the examination of the goods at his part. Therefore, the allegation that the CB deliberately delayed presenting goods for examination before the docks officer is without any merits and not true. Hence, IO found the charge that the CB has violated the provisions of Regulation 10 (m) of the CBLR, 2018 as "not proved".

9. PERSONAL HEARING AND RECORDS OF PERSONAL HEARING: -

A personal hearing was granted to the Customs Broker on 15.05.2024. On behalf of CB firm Mrs Kaizad B Irani, Mrs. Roshan Irani and Mr. Pankaj Rathod appeared for personal hearing and submitted a written submission and reiterated their earlier submission dated 07.05.2024.

10. Written Submission of The CB

The CB M/s SKY Shipping (Mumbai) Pvt. Ltd. (11/690) in their written submissions dated 07.05.2024 inter-alia stated that:

- a) The Learned Inquiry Officer ought to have considered the entire material on record including CCTV footage of Ashte CFS, business model of CFS and ground realities prevalent in the system before giving his erroneous findings against the CB.
- b) The photographs sent as annexures to their reply to SCN are some examples to show that some containers were opened which shows our bonafides. It does not imply that only 6 container seals were opened. The CCTV recordings of Ashte CFS Logistics Ltd would prove otherwise that all 21 container seals were opened and not only 6 containers as is sought to be made out.
- c) There is no finding or proper reasoning given by the Learned Inquiry Officer to justify his conclusions. If the Learned Inquiry Officer had made efforts to corroborate or cross check with Ashte CFS, he would not come to the erroneous conclusion that the CB had deliberately avoided 100% examination of goods. The invoice was raised upon the Importer and not on the CB. The payment was made by the Importer directly to CFS and not by the CB. The Learned Inquiry officer could have ascertained from Ashte CFS the reasons for the costings mentioned in the invoice. The CB never has control over the business model of concerned CFS.
- d) It is an admitted position that the CB has never made any attempt to influence the Custom Authority concerned to conduct his work. Further CB stated that the Learned Inquiry Officer alleged that it is the complete

fault of CB that he intentionally tried to escape the examination procedure. The allegations are based on presumptions.

- e) The Learned Inquiry officer erroneously asserts that the CB did not take pain to bring the matter to the notice of the Docks Deputy Commissioner /Assistant Commissioner of Customs. Now in the present case if the shed officer in his discretion bonafidely does not follow RMS generated examination order: A Custom Broker cannot be faulted. Surely Custom Officers have their discretionary powers or use their best judgment in examination of goods. Here the question does not arise of any violation or of any non-compliance of the Importer where the Custom Broker did not inform of such violation to the Senior Officials of the Customs. It may not be under the scope of the CB to complain to the higher authorities of the Customs when a junior staff may be doing his duty bonafidely by using his or her discretion when examining cargo. This would create a chaotic situation. The situation arisen in this case is a complete anomaly and none of the acts are deliberate. CB urges to consider the peculiar facts of this case and use discretionary jurisdiction to show sympathy /leniency towards the CB concerned and drop all charges levied.

In support of this submission the CB rely upon the following judgments:

- i) Commr. of Cus. (Preventive) vs Over Land Agency on 21 April, 2006
Equivalent citation: 2006 (204) ELT 554(CAL).

11. DISCUSSION AND FINDINGS: -

11.1 I have gone through the facts of the case, material evidence on record, Investigation Report, the said Show Cause Notice dated 09.01.2024, Inquiry Report dated 04.04.2024 & 06.06.2024, oral and written submission dated 07.05.2024 of the said CB.

11.2 I observe that the charge against the said CB is of violation of Regulations 10(d), 10(e) and 10(m) of CBLR, 2018 made vide Show Cause Notice No. 31/2023-24 dated 09-01-2024. The inquiry Officer vide Inquiry report dated 04.04.2024 held the charges of violation of Regulations 10(d) and 10(e) of CBLR 2018 as "Proved" and Regulation 10 (m) of CBLR, 2018 was held as 'Not Proved'.

11.3 From the perusal of the Investigation report, I find the evidences and facts relevant in this case as per the records: -

- a)** In regard of Bill of Entry No. 8162485 dated 05.10.2023, the RMS instruction for 100% examination of the subject goods was not followed by the concerned officer before granting Out of Charge.

- b) Out of Charge for the Bill of Entry No. 8162485 dated 05.10.2023 was granted on 09.10.2023 and before holding the containers and 6 containers were gated out from Ashte CFS. Remaining 15 containers were put on hold by CIU, JNCH on dated 13.10.2024. These were subsequently examined under panchanama dated 13.10.2023 and 14.10.2023.
- c) Tax invoice issued by Ashte CFS towards cargo examination showed that charges for cargo examination was paid for only 3 TEU at the rate of Rs 1250/- per TEU (charged a total sum of Rs. 3750/-) instead of payment of all 21 containers. Furthermore, the investigation also revealed that only 3 containers had been examined by the Examining Officer as per the CCTV recordings submitted under section 65B of Indian Evidence Act, 1872 by M/s Ashte CFS Logistics Pvt. Ltd.
- d) Statement of CB's representative Shri Balu R Zinjad was recorded under the provisions of Section 108 of Customs Act 1962 on 14.10.2023. In the said statement, Shri Balu R. Zinjad inter-alia, stated that 'since the weather was cloudy that day and there were high chances of rain and the goods imported vide the said Bill of entry were Urea (Technical Grade Urea) which are highly soluble in water so he requested the docks officer to examine the goods in the container itself'.
- e) Mr. Balu R Zinjad, possessing an "H" category card and acting on behalf of the Customs Broker M/s Sky Logistics, admitted in his statement that he presented Bill of Entry No. 8162485 dated October 5, 2023 for examination to the docks officer, instead of complying with the requirement that such documents must be presented by an authorized signatory holding a "G" category pass.
- f) On perusal of the inquiry report dated 06.06.2024, it has been observed that samples were drawn from the subject goods and sent to CRCL, New Delhi for testing. According to the test reports and Clarification letter dated March 12, 2024, issued by CRCL New Delhi. it is confirmed that the goods imported under Bill of Entry No. 8162485 dated October 5, 2023, are classified as "Urea Fertilizer Grade" instead of declared goods as "Technical Grade Urea" which is restricted item.

11.4 I observe that in the said SCN, it has been alleged that the CB has violated **regulation 10(d) of the CBLR, 2018**. The said regulation reads as:

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

11.4.2 On perusal of Investigation report dated 06.06.2024, Mr. Balu R Zinjad, holder of an "H" category card and representing the Customs Broker Firm M/s Sky Logistics, acknowledged during his statement that he presented Bill of Entry No. 8162485 dated October 05, 2023 for examination to the docks officer, Mr. Chaitanya Wankhade, as instructed by his superior, Mr. Sandeep Aawate, who holds a "G" category card.

11.4.3 According to Paragraph 4.2 of Board Circular No. 09/2010-Customs issued under F. No. 502/5/2008-Cus. VI dated April 8, 2010, only a "G" pass holder is allowed to sign the declarations filed before Customs for transacting the work at any Custom station. An employee of a Customs House Agent (CHA) possessing an "H" category card may only assist the CHA and is not authorized to conduct examinations or take delivery of cargo. Consequently, Customs Broker M/s Sky Logistics neglected to deploy a "G" category card holder to present Bill of Entry No. 8162485 dated October 5, 2023 for examination before the Docks Officer.

11.4.4 In this context, I rely upon the judgment of Hon'ble CESTAT, Delhi in the case of While deciding the matter in the case of **M/s SKH FREIGHT LOGISTICS PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS, (AIRPORT & GENERAL) NEW DELHI 2023 (11) TMI 270** - wherein though the matter was different yet the ratio of judgement can be applied to the present case. In this case, Hon'ble CESTAT, New Delhi has held (relevant portion) that *"Since the custom broker is responsible for all acts and means of his employees during their employment as per Regulation 13 (12) of CBLR of 2018, it was mandatory for the appellant to advise the exporter to comply with the provisions of the Customs Act, else to have brought to the notice of the Dy. Commissioner Customs about the non-compliance. But neither the appellant nor his G card holder has ever brought the impugned fraud to the notice of the competent authorities - there are no reason to differ from the findings arrived at against the appellant.*

11.4.5 I observe that the instant case was booked by CIU JNCH. The subject Bill of Entry (B/E) no. 8162485 dated 05.10.2023 was filed by the said CB for import of Technical Grade Urea in the 21 container (20 feet container). The RMS instruction for the said Bill of Entry was for 100% Examination by the Docks officer. However, the CIU JNCH on investigation detected that the RMS/EO was not followed by the concerned officer before granting Out of Charge on 09.10.2023. Before the hold of containers, six containers were gated out from Ashta CFS and remaining containers were put on hold by the CIU, JNCH. While observing the container handling services fee charges i.e. 3750/- (1250/- each TEU) mentioned in the said TAX Invoice issued to the importer M/s Cigma Process Solution Pvt. Ltd & CCTV footage of the examination area of the Ashta CFS, it is clearly established that only three containers were

examined out of the 21 containers in defiance to the said RMS instruction. Further, even though the three containers were not examined 100%.

11.4.6 I find from the test reports and Clarification letter dated March 12, 2024, issued by CRCL New Delhi. it is confirmed that the goods imported under Bill of Entry No. 8162485 dated October 5, 2023, are classified as “Urea Fertilizer Grade” instead of declared goods as “Technical Grade Urea” which is restricted as per Notification No. 61/2015-20 dated 22.03.2023 issued by DGFT. Importing such restricted goods as mis-declared raises serious concerns regarding compliance with import regulations and tariff classifications. Given these discrepancies, there is reasonable inference to suspect collusion involving Customs Brokers (CB) in the entire process of examination of subject goods.

11.4.7 I observe that this is a clear case of non-observation of the RMS instruction by the Docks officer with the collusion of the CB. The CB has an important role between importer/exporter and the Customs authorities and lot of trust has been placed on him through the CBLR, 2018. The said regulation clearly mandates that the CB should bring non-compliance of the client to the notice of the DC/AC of the Customs.

11.4.8 The importer or their representative does not partake in the examination of goods, as the Customs Broker, acting on behalf of the importer, assumes responsibility for customs clearance, of which examination constitutes a significant component. Therefore, I am of the view that the plea of the CB that they had informed their client of the 100% examination of the subject cargo and thus they have complied with the provision of regulation 10(d) is not sustainable.

11.4.9 From the factual matrix of the case, I observe that the CB was well aware of the non-compliance of the said RMS instruction and he knowingly defied his statutory obligation as provided under regulation 10(d) of the CBLR, 2018 by not informing such non-compliance to the AC/DC docks. From the facts of the case, it is quite evident that the CB had colluded with the Docks officer in removing the imported goods illegally. Thus, I am of the considerate view that charge of violation of regulation 10(d) of the CBLR, 2018 against the said CB is sustainable and CB is liable for the penal action under CBLR, 2018.

11.4.10 While deciding the charges of the said Regulation, I rely upon in a recent decision of this Tribunal in the case of **M/s Falcon India (Customs Broker) Vs. Commissioner of Customs, (Airport and General) New Delhi** in Customs Appeal No. 50934 of 2021 dated 21.03.2022, it has been observed:

“33. The above decisions lay down that the Customs Broker (or Custom House Agent) is a very important person in the transactions in the Custom House and it

is appointed as an accredited broker as per the Regulations and is expected to discharge all its responsibilities under them. **Violations even without intent are sufficient to take action against the appellant.** While it is true, as has been decided in a number of cases, that the Customs Broker is not expected to do the impossible and is not expected to physically verify the premises of the importer or doubt the documents issued by various Governmental authorities for KYC, it is equally true that the Customs Broker is expected to act with great sense of responsibility and take care of the interests of both the client and the Revenue. **It is expected to advise the client to follow the laws and if the client is not complying, it is obligated under the Regulations to report to the Assistant Commissioner or Deputy Commissioner. Fulfilling such obligations is a necessary condition for the CB licence** and it cannot be termed as 'spying for the department' as argued by the appellant before us. It has also been argued that if it spies for the department, it will lose its business. It is evident from the facts of this case, that the appellant was not only aware of the benami Bills of Entry but has actually filed them with the full knowledge that they were benami and they were filed by Anil after a case of undervaluation has been booked by DRI against him. It is afraid of losing business because it has built its business model on violators who, it does not want to upset by reporting to the department. Therefore, we find no reason to show any leniency towards the appellant. At any rate, once violation is noticed, it is not for the Tribunal to interfere with the punishment meted out by the disciplinary authority, viz., the Commissioner unless it shocks our conscience. In this case, it does not."

11.4.11 I find that ratio of the aforesaid judgment is squarely applicable in the instant case. Therefore, I find that the such modus operandi could not be possible without active participation of the CB. The CB has an important role in respect of documentation and Customs Clearances. I find that in the instant case, the CB did not advise the actual exporter and abetted the fraudulent export and did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Hence, the CB cannot shy away from the responsibilities & obligations cast upon them under the CBLR, 2018.

11.4.12 In view of the above, I hold that the CB has violated the provisions of Regulation 10(d) of the CBLR, 2018.

11.5 I observe that in the said SCN, it has been alleged that the said CB has violated **regulation 10(e) of the CBLR, 2018**, which reads as follows: -

"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":

11.5.1 I find that the CB in their defense submission mentioned that seals of all the 21 containers were opened and all the containers were grounded for examination are factually incorrect as there are evidence on record to prove that the intention of the CB was never to get all the containers examined by the officer as they have paid container handling charges for only 3 containers as per the tax invoice raised by Ashte CFS. On perusal of the photographs submitted by the CB, I observe that they are mentioning only 6 containers and not all the 21 containers, their doors are opened and container no's are not clearly shown in the same. The goods are stuffed in the containers and not a single package is outside the container. I find that the CB had no intention to get the goods 100 % examined, which is proved beyond doubt.

11.5.2 From the facts of the case, as discussed above, I observe that the CB had colluded with the Docks officer in removing the subject goods illegally. CB's representative Shri Balu R Zinjad in his statement 14.10.2023 before the investigation agency stated that *'since the weather was cloudy that day and there were high chances of rain and the goods imported vide the said Bill of entry were Urea (Technical Grade Urea) which are highly soluble in water so he requested the docks officer to examine the goods in the container itself'*. I observe that such decision was taken unilaterally by the CB without informing the importer. The CB in his written submission dt. has submitted that the CB had informed Mr. Manoj Gupta, representative of the importer that the cargo in question would be 100% examined. Even If we consider this reasoning, before taking the delivery of 6 containers, the CB should have ensured that all the containers are examined but in the given case, only 3 containers were examined and payment of container handling charges were made only for 3 containers. If the CB had taken efforts to examine the goods 100%, the violation of RMS instruction would have not taken place. Thus, it appears that the CB has violated the provisions of Regulation 10 (e) of the CBLR, 2018.

11.5.3 It is informed that Invoice no. 513 is mentioned in the said SCN. However, I find that the correct invoice no. is IMPT23004523 dated 09.10.2023. On perusal of the said invoice issued by the concerned CFS to M/s. Cigma Process Solutions Private Limited, it is very clear that cargo examination charges of the remaining 18 containers are not included in that invoice. I observe that this fact shows the inherent intention of the CB not to get the goods examined 100%. Therefore, it is complete fault of the CB that he intentionally tried to escape the examination procedure and did not take pain

to bring the matter to the notice of docks Deputy Commissioner/Assistant Commissioner of Customs.

11.5.4 In view of the foregoing discussion, I find that it was the responsibility of the CB to ensure that 100% examination of the goods were carried out. The act is deliberate and well considered. Thus, I am of the considerate view that the CB was not diligent in his working and shared wrong or incomplete information with the client with reference to the said cargo clearance and hence I observe the said charge of violation of regulation 10(e) is sustainable and CB is liable for the penal action under CBLR, 2018.

11.5.5 In this context, I rely upon the judgment of Hon'ble CESTAT Delhi in case of M/S. Rubal Logistics Pvt. Ltd. Versus Commissioner of Customs (General) wherein in (para 6.1) opined that: -

"Para 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 mens rea 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."

11.5.6 Bases on the foregoing discussion it is concluded that the CB did not exercise due diligence to ascertain the compliance of Regulation 10(e) of the CBLR, 2018. **Accordingly, I hold the Article of Charge alleging violation of Regulation 10 (e) of the CBLR, 2018 as "Proved".**

11.6 I observe that in the said SCN it has been alleged that the said CB has violated **regulation 10(m) of CBLR 2108**, which reads as: -

"A customs Broker shall discharge his duties as a Customs Broker with utmost speed and efficiency without any delay".

11.6.2 I find that IO in his report held that the violation of regulation 10 (m) of CBLR, 2018 by the CB stands not proved.

16.6.3 From the facts of the case, I observe that the subject goods were registered at CFS on 06/10/2023 at 3:06 PM, however, the seal of the container were cut on 09/10/2023 at 1:25 PM, 03 days later. Further, the CB in his recorded statement could not submit any satisfactory reply for reason of

delay. It appears that CB has deliberately delayed to present the goods for examination before the docks officer. Thus, it appears that the CB has violated the provisions of Regulation 10 (m) of the CBLR, 2018.

11.6.4 In the defense submission, the CB has submitted that the said B/E was registered on October 6, 2023 (being a Friday); Duty was paid on October 7, 2023. The last container was gated in at the CFS on 23:35:00 hours late night on October 7, 2023 (being a Saturday). Next day being Sunday (October 8, 2023) seal cutting permission was not given at CFS. On October 9, 2023, seal cutting of all Containers was done. Examination of cargo was done at about 3-00 p.m on October 9, 2023 (being a Monday). CFS charges was paid on October 9, 2023.

11.6.5 Based on the circumstances outlined above, I observe that October 8, 2023, being a Sunday, is recognized as a holiday for Customs, during which Customs docks officers typically do not conduct examinations at the Container Freight Station (CFS). Consequently, it is reasonable to conclude that the Customs Broker (CB) may not have pursued the examination of the goods on October 8, 2023. Subsequently, on the subsequent working day, October 9, 2023, the CB arranged for the examination of the goods. Therefore, it is evident that the CB did not contribute to any delay in the examination process. Hence, I am of the considerate view that the charge of violation of regulation 10(m) by deliberate delay in presenting goods for examination before the docks officer by the CB is not sustainable and I drop the same.

12. I find that CB has placed his reliance on judgment in the matter of Commr. Of Cus. (Preventive) vs Over Land Agency as mentioned in the CB's submission is irrelevant to the instant case. This case was related to irregularities of the loading of goods for export from IWAI Jetty, Haldia that was not approved place for loading of export goods under section 8 of the Customs Act, 1962 and hence I observe that the as the facts of the case are different the ratio of the judgement is not squarely applicable in the instant case.

13. Further, I find that it is pertinent to state that the CBLR, 2018 is a self-contained code regulating the issue of Customs Broker Licence. Actions taken under the CBLR, 2018 are without prejudice to the action that may be taken under Customs Act, 1962, thereby making it explicit that the proceedings under the Act as well as the Regulation are distinct and separate. I therefore find that the case laws relied upon by the CB regarding the violation of the provisions of the Customs Act, 1962 viz Section 112 or any other Section of the Customs Act, 1962 does not have any bearing on the action CBLR, 2018 at this stage

14. In a regime of trade facilitation, a lot of trust is being placed on the Customs Broker who directly deals with the importers/exporters. Failure to comply with regulations by the CB mandated in the CBLR, 2018 gives room for unscrupulous persons to get away with import-export violations and revenue frauds. The CB deliberately and knowingly indulged himself an act of carelessness which resulted in fraudulent way to clear import consignment. The facts on record prove that CB had violated various provisions of CBLR, 2018 with mens rea.

15. 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, which certainly warrant penal action against the CB. Therefore, for their acts of omission and commission, CB M/s. SKY Shipping (Licence no. 11/690) is held liable and guilty for violating the provisions of CBLR, 2018 as mentioned above. I hold that the CB has failed to discharge his duties cast upon him with respect to Regulation 10(d) and 10(e) of CBLR, 2018 and is liable for penal action. Accordingly, I pass the following order.

ORDER

16. 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 CB M/s. SKY Shipping (Licence no. 11/690) (CB Code-AANFS1270PCH001) 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. 11/690 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.

21/6/2020

(SUNIL JAIN)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
MUMBAI ZONE-I

To,

M/s Sky shipping, (CB No. 11/690)

(PAN No. AANFS1270P)

209, EMCA House,

289, SBS Road,

Fort, Mumbai – 400 001

The Pr. Chief Commissioner/Chief Commissioner of Customs, Mumbai I, II, III
Zone.

All Pr. Commissioners/Commissioners of Customs, Mumbai I, II, III Zone

DRI, New Delhi.

JC, NS-II, JNCH

CIU's of NCH, ACC & JNCH

EDI of NCH, ACC & JNCH

ACC (Admn), Mumbai with a request to circulate among all departments.

JNCH (Admn) with a request to circulate among all concerned.

Cash Department, NCH, Mumbai.

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