



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

संचिका सं./F. No.- CUS/3337/2022 CBS

आदेश दिनांक/Date of Order: 17.10.2023

CAO No. 42/CAC/PCC(G)/SJ/CBS Adj

जारी दिनांक/Date of issue: 17.10.2023

संख्या:

DIN : 2023107700000000BDCC

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, यथोत्तुखंडपीठ 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 तदोत्तु प्रांत न्याय निर्णयन अधिकारी *functus officio* बन जाता है

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

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

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

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

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

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

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

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

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

BRIEF FACTS OF THE CASE

M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd., (PAN: AAGC52827J), having address registered at 502, SHARDA CHAMBER NO.1, 31 KESHAVJI NAIK ROAD, MASJID (WEST), MUMBAI-400009 (hereinafter referred as the Customs Broker/CB) holder of Customs Broker License No. 11/1044, issued by the Commissioner of Customs, Mumbai under regulations of CHALR, 1984, [Now regulation 7(2) of CBLR, 2018] and as such they are bound by the regulations and condition stipulated therein.

2. An offence report in the form of SCN No. 36/ADJ(X)/2022-23 dated 15.11.2022 was received in the CBS, NCH from SIIB(X)/ACC, Sahar, Mumbai wherein, it was informed that on the basis of specific information received by the DRI, MZU, Mumbai investigation was conducted which revealed that various export firms including M/s. Hasi Gold, (IEC -0312018321) were procuring fake purchase bills against the export consignments from one Mr. Suhel Ansari, through fake firms floated by him. Searches were conducted at the premises of Suhel Ansari, which led to the recovery of copies of bogus bills in the names of several companies issued by him.
3. During the course of investigation, office premises from where Shri Suhel Ansari was operating, situated at Room No. 30, 4th Floor, Chunnwala Building, 38-1 Kolsa Street, Pydhonic, Mumbai - 400003 were searched on 14.08.2015. During the course of search of the said premises, certain records/documents, three laptops and one hard disk and various rubber stamps were recovered.
4. During the course of investigation statement of Shri Suhel Parvez Ansari and Shri Shaikh Mohammed Arshad employee of Shri Suhel Parvez Ansari were recorded on 24.08.2015 by DRI, Mumbai where inter-alia they stated that they supplied fake invoices to the various export firms including M/s Hasi Gold and M/s Hasu Impex. Shri Shaikh Mohammed Arshad stated that there were about 22 firms in whose name fake invoices were issued.
5. DRI, MZU, Mumbai issued summons dated 21.08.2015 to Proprietor of M/s Hasi Gold, Shri Mitin Hasmukh Bagrecha. In response of the said summons, Mr. Hasmukh Bhimraj Bagrecha power of attorney holder of M/s. Hasi Gold and father of Proprietor Mr. Mitin Hasmukh Bagrecha vide their letter dated 29.08.2015 submitted a joint reply for their firms M/s Hasi Gold and M/s Hasu Impex to the office of DRI, MZU, Mumbai. Again Summons dated 18.09.2015, 07.12.2015, 22.12.2015 and 04.02.2016 were issued to the exporter. in response to the summon dated 04.02.2016, the exporter vide letter dated 09.02.2016 informed to the DRI that they have submitted all relevant documents to DRI, MZU, Mumbai but failed to appear for statement before DRI, MZU, Mumbai.

6. DRI, MZU, Mumbai forwarded the said case to investigating agency SIIB(X), Air Cargo Complex, Sahar, Mumbai for carrying out further investigation, the details of exporters including M/s Hasi Gold who have claimed undue drawback by overvaluing the exports, whereas cheaper material is exported, and to justify the value of the goods, fake invoices from Shri Suhel Ansari, are procured showing the higher purchase price.

7.1 During the course of investigation by investigating agency SIIB(X) summons dated 23.08.2017 was issued to Shri Mitin Hasmukh Bagrecha and Shri Hasmukh Bhimraj Bagrecha to appear before SIIB(X). Again Summons dated 05.09.2017 and 09.11.2017, 31.07.2018, 29.01.2017 and 11.02.2019 were issued to both the partner but they failed to appear for statement. Later on, Summons dated 06.03.2019 & 11.03.2019 were issued to Shri Hasmukh Bhimraj Bagrecha. In response of the said summons, Shri Hasmukh Bhimraj Bagrecha appeared before SIIB (Exports), Air Cargo Complex, Sahar, Mumbai on 06.03.2019 & on 11.03.2019. In his statement, he interalia stated that he was a power of attorney holder of M/ s Hasi Gold (IEC 0312018321) that he was actively involved in business and look after day to day basis business activity; that M/s Hasu Exporters established in 1994 and started the business of export of Readymade garments and imitation Jewellery; he used to replicate the samples brought by clients and source them through the local suppliers; that goods were exported from Air Cargo Complex and JNCH, Nhava Sheva; that he used to go to Saudi Arabia, Qatar, Bahrain and Dubai to meet customers and study market; that he contacted suppliers as per requirement of clients, after clients approves the sample, complete order was kept at his shop for packaging; that thereafter they prepared packing list and invoice and handover it to CHA M/s Sandeep freight Forwarders and M/s TICC container line Pvt Ltd for filing the Shipping Bills. After receiving the invoice and packing list, the CHA contacted freight forwarder and they book the flight to export the goods Thereafter, they booked tempo who took the goods from the shop and delivered the goods to Air Cargo Complex, Mumbai, after that the CHA handled the further customs proceedings till LEO; that he authorized CHA M/s Sandeep freight Forwarders and M/s TICC container line Pvt Ltd for export; that he used to contact Shri Sandeep, who is proprietor of CHA M/ s Sandeep Freight Forwarders and Shri Atul, Director of M/s TICC container line Pvt Ltd.; that he handover the invoice and packing list along with goods to tempo driver and telephonically informed CHA; that sometimes goods were kept at CHA's warehouse; that CHA contact the freight forwarder and booked the flight; that CHA raised the invoice and payment was done through cheque/ RTCTS/NEFT; that he knew Shri Suhel Parvez Ansari through local brokers; that Shri Suhel Parvez Ansari was a supplier of Readymade Garments and imitation jewellery;

that he contacted Shri Suhel Parvez Ansari telephonically who showed the samples to the client at exporters office and after getting approval from clients. Shri Hasmukh Bhimraj Bagrecha further stated that he purchased approved goods from Shri Suhel Parvez Ansari and paid through cheque/ RTGS/ NEFT; that invoice was handed over to him by employee of Shri Suhel Parvez Ansari which was raised in the name of M/s Cadillac Pvt Ltd., M/s Combo Traders Pvt. Ltd, M/s Alaska Trading, M/s Mahavir Enterprises, M/s Snehal Enterprises; that he does not know Shri Karan Ashoklal Ranka. On being shown a copy of statement dated 24.08.2015 of Shri Suhel Ansari, Shri Hasmukh Bhimraj Bagrecha had stated that he knew Shri Suhail Parvez Ansari through local brokers; that Shri Suhail Parvez Ansari is a supplier of Readymade Garments and imitation jewellery; that he did not know the office address of Shri Ansari; that whenever he got the orders from client telephonically, he contacted Shri Suhail Parvez Ansari as well as other local buyers and enquired about the availability of the goods; that when the goods were ready, then Shri Suhail Parvez Ansari or his employee used to come with goods and invoices which were raised in the name of M/ s Cadillac Pvt Ltd., M/s Combo Traders Pvt. Ltd, M/s Alaska Trading, M/s Mahavir Enterprises, M/s Snehal Enterprises and he paid the amount through cheque/ RTGS/NEFT upon receiving of amount from his clients in his bank account. Bank account details had given by Shri Suhail Parvez Ansari or his employee. He also stated that these companies reflect in his book of accounts for the purchases made by him against the exported goods.

7.2 During the investigation, the details of exports made by the exporter M/s Hasi Gold, were retrieved from the ICES System. During the period from 2012-2016, the exporter made total exports of 16 Shipping Bills and availed total drawback of Rs. 1.74 Lakh/- by way of overvaluation.

7.3 Further, on scrutiny of the Shipping Bills filed by the exporter M/s Hasi Gold, it was found that the Customs Brokers M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd. and M/s Popatlal Jetshi & Co. had cleared all the 16 consignments / Shipping Bills of the said exporter for the period from 2012 to 2016. Out of the said 16 consignments/Shipping Bills of the said exporter, Customs Broker M/s Shivam Clearing Agency (Mumbai) Pvt Ltd had facilitated clearance of 02 consignments / Shipping Bills.

7.4 Further, Summons dated 20.07.2022, were issued to Customs Broker M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd. for appearance of its Director/Partner/Prop. to give evidence along with KYC Documents of exporter and past export related documents. In response of the said Summons, Shri Santosh Vishram Thavi Director of M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd., (11/1044) appeared for statement wherein he

interalia stated that between the period from 2012 to 2016 they had handled export consignments of imitation jewellery and Readymade Garment exported by M/ s. Hasi Gold from Air Cargo Complex, Mumbai ; that they were appointed as Clearing Agents by the said exporters ; that he had submitted the KYC documents such as IEC Copy, copy of PAN etc. received from the exporters at the time of clearance ; that they had visited the exporters office at the address mentioned in the IEC as well as the address mentioned in the Registration Certificate of Establishment ; that they have done all the formalities before accepting the clearance work of the said exporters ; that IATA Agent M/s. Sandeep Freight Forwarders brought the export work of the said exporters ; that time they received documents from the Exporter regarding export of goods. Based on the same, they prepared the check list as per the invoice and packing list received from the exporter and shared the check list with the Exporter for approval. The documents were then uploaded on ICEGATE upon Exporters approval. Payment was received after the shipment has been exported; that as a Customs Broker they had verified all the details of correctness of classification, invoice, packing list details but not the value of the goods. On being asked Shri Santosh Vishram Thavi stated that Exporter himself used to prepare all the required documents such as Invoice, Packing List, RITC etc.; that they only prepare the checklist and filed the Shipping Bills; that the exporter submitted/ showed the samples of the consignments exported by him; that the exporter forwarded their goods directly to Air Cargo Complex, Mumbai and they used to receive the goods at Air Cargo Complex and the same were carted inside the Air Cargo Complex ; that if the customs makes any objections, they used to inform the same to the exporters. But there was no objection at any time from customs. Further Shri Santosh Vishram Thavi stated that they were always in favour of customs and they never done any unlawful activities. Whatever the work received, they have done to their satisfaction.

8. During the investigation DRI enquired with the Consulate General of India, Dubai, UAE who vide letter dated 08.03.2018 reported that from the scrutiny of the documents provided by Federal Customs Authority, Dubai it emerged that goods had been cleared and unit values had been much lower than what has been declared to Indian Customs. As per DRI the instant exporter has also adopted the similar modus-operandi.

9. During investigation a statement dated 01.07.2016 of one Shri Suryabhan Eknath Dhurphate, Proprietor of M/s. Sanket Overseas, Navi Mumbai, was recorded before the DRI, MZU, who was logistics provider and was involved in clearing the consignments through CHA, M/s. Indo Foreign Agents. From the

perusal of his statement, it was disclosed that usually the cost and expenses incurred on the export material was only around 35% of the drawback amount. He also stated that the benefits availed by them and the exporter was to the extent of 65%. This was the modus operandi which was adopted by all such exporters including this exporter, who were exporting the goods on the basis of fake supplier's invoice.

10. Further from the investigation It appears that goods were procured from Domestic Tariff Area (DTA) without any invoices so no details of its manufacturing, production, using imported material or excisable material therein were available so it could not be ascertained whether any duties have been paid or otherwise. During investigation exporter could not produce any such details in respect of manufacturing, production or use of any imported material in impugned export goods, though he was having enough opportunity as he presented himself for recording of his statement but he failed to produce any such details. Therefore, it appears from investigation that necessary ingredient of second proviso to Rule 3

"(1) Drawback Rule, 1995 is attracted in this case which does not permit any amount of drawback in such cases where no duty has been paid. Rule 3 of the Drawback Rules 1995 reads as under;

"Rule 3. Drawback - (1) Subject to provisions of -

Provided further that no drawback shall be allowed: -

(ii) if the said goods are produced or manufactured, using imported materials or excisable materials in respect of which duties have not been paid."

11. From the investigations made by DRI, MZU and the investigations conducted by SIIB(X), ACC, Mumbai following appears:

- i) The exporter M/s Hasi Gold made exports vide 16 Shipping Bills and availed total drawback amount of Rs 1.74 Lakhs/- by way of over valuation. Thus, excess drawback amount of Rs. 1.74 Lakhs/- is already disbursed to the exporter.
- ii) M/s Hasi Gold has procured fake and bogus invoices from Shri Suhel Ansari;
- iii) Goods of inferior quality were procured from the local market without any invoice.
- iv) Incorrect transactions were made with the fake suppliers, whose invoices were raised by Shri Suhel Ansari. This was done to conceal the actual transactions and give cover to the bogus transactions.

- v) This automatically explains the facts that there was no physical movement of the goods against the fake invoice raised by Shri Suhel Ansari.
- vi) As export goods were procured from local market which were of inferior quality and hang low value, therefore impugned export by M/s Hasi Gold was grossly overvalued and only done for the purpose of fraudulent claim of drawback.
- vii) Aforesaid fact of overvaluation supported by various statements as mentioned above and by the enquiry caused by DRI with the Consulate General of Dubai.

12. It is found from the investigation that Customs Broker M/s Shivam Clearing Agency (Mumbai) Pvt Ltd had facilitated clearance of 02 consignments / Shipping Bills out of total 16 SBs of the said exporter.

12.1 The CHA is an agent of exporter. He works on behalf of Exporter. He also takes authorization to work on behalf of exporter. All CHAs, fully aware that omission and commission by the exporter affects working of image of CHA. It is a business practice that CHA knows on whose behalf they are working, as CHA can face investigation for omission and commission at any time. As per CHA Regulation, a CHA also requires to know the client. Even in the absence of such requirement it is business practice that the CHA knows on whose behalf they are working as the relation between CHA and exporter is long time relation.

12.2 Unlike retail business where customer comes to retail shop and transaction concludes in a moment, the relationship between CHA and exporter is a long-term relationship so it is not possible that CHA does not know the exporter. The CHA had been dealing with such individuals to collect documents and collect goods. The CHA must have raised his fees from the same source. It is also not possible for CHA to deal with non-existing persons.

12.3 This is a case where real culprit was very well existing and dealing with CHA. The exports were fictitious as Purchase Bills were also fictitious. Actual movements of goods are always under cover of Challan and Invoices. There are some other requirements of local Government which prevent movement of goods without documentation. It is also unlikely that CHA has been receiving goods based on fictitious Bills and he was not aware. Further the CHA has responsibility to guide exporter and inform about the requirement that only in certain cases, both types of Drawbacks can be claimed by the exporter. Had the CHA seen these documents relating to meeting the criteria to claim both types of Drawbacks and checked the correctness of relevant declaration, such fraudulent export could not have possible. Therefore, under the fact and such circumstances, the CHA actively connived with exporters in claiming undue Drawback and over valuing the export goods and misdeclaring in Shipping Bill.

While coming with exporter they did not care to follow the obligation imposed through Regulation and Act.

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

Legal Provision of the CBLR, 2018:-

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

Regulation 10 (e) of the CBLR, 2018:- "A Customs broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;"

Regulation 10 (m) of the CBLR, 2018:- "A Customs broker shall discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay"

14. **SHOW CAUSE NOTICE:** M/ s. Shivam Clearing Agency (Mumbai) Pvt Ltd (11/1044) was issued a Show Cause Notice (SCN) No. 59/2022-23 dated 31.03.2023 by the Principal Commissioner of Customs (General), NCH, Mumbai, Zone-I asking them to show cause as to why the licence bearing no. 11/1044 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 defense to Shri Rajiv Arora, Assistant Commissioner of Customs who was appointed an inquiry officer to conduct inquiry under regulation 17 of CBLR, 2018.

15. **SUSPENSION/REVOCAION OF LICENSE:** In view of the facts stated above, CB, M/ s. Shivam Clearing Agency (Mumbai) Pvt Ltd (11/1044) was found liable for their acts of omission and commission leading to contraventions of the provision under Regulation 10(d), 10(e) and 10(m) of CBLR, 2018. Therefore, prima facie, it appeared that the CB failed to fulfil their responsibilities as per provisions of regulations of CBLR, 2018. Hence the licence of CB was put under

immediate suspension vide Order No. 63/2022-23 dated 10.01.2023 and the suspension of License of the CB was revoked vide Order No. 86/2022-23 dated 09.03.2023 under Regulation 16(2) of the CBLR, 2018 passed by the Principal Commissioner of Customs(G), NCH.

16. INQUIRY REPORT

Inquiry Officer (IO) submitted Inquiry Report dated 30.06.2023, wherein, the charges against CB M/s. Shivam Clearing Agency (Mumbai) Pvt Ltd (11/1044) i.e. violation of Regulation 10(e) of CBLR, 2018 was held as 'Proved' and Regulations 10(d) & 10(m) of CBLR, 2018 were held as 'Not Proved'.

16.1 RECORD OF PERSONAL HEARING

IO submitted that Shri Prashant Patankar, consultant appeared for personal hearing on 22.05.2023, on behalf of M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd. He submitted written submission dated 22.05.2023, along with enclosures. He also submitted that the CB is not required to verify if the value declared in the invoice is correct or not. He requested to drop the charges in the SCN.

16.2 CB's WRITTEN SUBMISSION :-

IO submitted that, the CB M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd., CB Licence No. 11/1044 in their written submissions dated 22.05.2022 submitted that :

16.2.1 Vague Reference to SCN & RUD's: Copies Not provided:

The CB submitted that the SCN under reference is apparently based on the SCN and the RUD's involving export by M/s. Hasi Gold received from SIIB (Export), ACC, Mumbai. (Refer SCN Para 13), Conspicuously, the details of the SCN (underlying the SCN under reference) are not specified. Also copies of the said SCN and RUD's (Refer Para 13 of the SCN under reference) have not been supplied to the CB.

The CB submitted that the SCN under reference cannot be proceeded with, unless the certified copies of the said SCN and the RUD's are supplied to the CB. There cannot be a presumption in this respect; that it also appears that the said SCN is related to the inadmissible drawback amounting to Rs. 1.74 Lakh claimed by M/s. Hasi Gold in respect of 16 Shipping Bills (Refer SCN Paras 10 & 11). The SCN under reference suggests that the exporter was not eligible for DBK for the reasons enumerated in Paras 10 & 12 read with Para 15 of the order, presumably in reference to the SCN No. 36/ADJ/(X)/2022-23 dated 15.11.2022 listing 16 Shipping Bills in Annexure-A thereof.

The CB submitted that they had facilitated clearance of only two Shipping Bills (Refer SCN Para 12); that they filed only two Shipping Bills nos. 3245053 & 3394363 in June 2014; that only one Shipping Bills no. 3245053 dated 11/06/2014 involves drawback claim of Rs. 11,501, the other Shipping Bill is a

'Free' Shipping Bill.

The SCN under reference dated 31.03.2023 is based on the premise that-

- They have violated Regulation 10(d), 10(e) & 10(m) of CBLR, 2018;
- Though not specified in the SCN under reference, it is apparently based on the Show Cause Notice (SCN) F. No. SCN No. 36/ADJ(X)/2022-23 dated 15/11/2022 [F. No. Cus/Ass/MISC/527/2022 Exp. Ass: SIIB/INV-33/2018-19ACC(X)] issued by Additional Commissioner of Customs (Export Assessment), ACC, Sahar, Mumbai in the matter of exports by M/s Hasi Gold (IEC 0312018321) with undue export benefits under 2 Shipping Bills filed by them on their behalf. Refer Paras 13 of the SCN under reference;

The CB submitted that the SCN is not sustainable in view of the facts of the case and under law as may be noted from the grounds discussed below, amongst other grounds, which are without prejudice to each other.

The CB submitted that they are making these interim submissions based on their understanding as of now. However, they reserve right to amend, alter or to make additional submissions, as may be necessary in the interest of justice, once the relied upon documents are made available to us (Refer Para 2 above).

The CB also submitted that they reserve the right to cross examine the persons whose statements are intended to be used in support of the grounds forming the basis of the proceedings; that none of the statements referred in the SCN under reference implicate the Noticee CB (though none of the copies are made available to them); that the statements referred to in the SCN are general in nature and in reference to the dealings between the exporter and Mr. Suhel Ansari and his associates, with which the CB was not concerned at all, at any point of time.

16.2.2 Timeline under Regulation 17(1) Not Followed:

The CB submitted that the SCN under reference void ab initio and it is not sustainable for violation of time limits prescribed under the Regulation 17(1) of the CBLR, 2018.

The CB submitted that in the instant case the SCN under reference dated 31.03.2023 has been issued to the CB on the basis of offense report which is apparently the Show Cause Notice (SCN) F. No. SCN No. 36/ADJ(X)/2022-23 dated 15.11.2022, as they understood from the Suspension Order No. 63/2022-23 dated 10.01.2023. The suspension order dated 10.01.2023 and the SCN under reference dated 31.03.2023 both are silent on the mode and exact date of receipt of the offense report in the form of the SCN dated 15.11.2022.

Thus, the SCN under reference dated 31.03.2023 has been issued after 125- days from the date of the offense report dated 15.11.2022 (if the SCN dated 15.11.2022 was considered as an offense report). Moreover, the SCN under

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reference dated 31.03.2023 was served for the first time with the CB vide the email dated 19.05.2023 meaning thereby the CB received the SCN under reference after 173 days from the date of the offense report (the SCN dated 15.11.2022).

The CB submitted that the SCN under reference needs to be dropped on the issue of non-adherence to the time limit prescribed under Regulation 17(1) of the CBLR, 2018 for issuing the SCN for inquiry. Even otherwise, the SCN under reference is not sustainable on facts and the merits.

The CB made following submissions which are without prejudice to each other in support of the contention that they have not violated any of the provisions of Regulation 10(d), 10(e) & 10(m) of CBLR, 2018.

16.2.3 In Defence of violation of Regulation 10(d) of CBLR,

2018: The CB submitted that the SCN in Para 13 has contended that the Noticee CB appeared to have not advised the exporter and abetted the exporter by declaring the incorrect value in the Shipping Bills against the fake invoices to avail undue drawback and did not bring the matter to the notice of the Dy. Or Assistant Commissioner of customs and thus the CB has violated Regulation 10(d) of CBLR, 2018.

The CB submitted that it is incorrect to suggest that the CB did not advise the exporter to comply with the provisions of the Customs Act, other allied Acts and the Rules and Regulations thereof. Moreover, the exporter was conversant with export formalities as may be noted from the fact that the exporter had handled as many as 14 consignments before the first consignment handled by the present CB. It may also be noted that the first consignment handled by the present CB under Shipping Bills no. 3245053 dated 11.06.2014 was physically examined by the officers of Customs before LEO was allowed. However, the officers did not consider the export goods to be overvalued or of inferior quality. Therefore, the CB had no reason to suspect or know that the export goods were overvalued, when the CB was not concerned with procurement, packing or transport of goods and had no occasion to examine the export goods, before the Customs officers did. It is relevant that the Customs officers did not require any purchase invoices of the exporter.

The CB submitted that it is also relevant that the exporter presented himself before the investigating officers. The exporter has not accepted the charge of overvaluation and has not blamed the CB for any wrong advice or the lack of advice; that the exporter had claimed All Industry Rate of drawback. As such the actual amount of duty borne by the exporter was not relevant, so as to require the duty paid purchase documents of the exporter. The charge that the CB did not advise the exporter about the realization of export proceeds is also incorrect in as much- The export proceeds have been actually realized in case of two Shipping Bills handled by the present CB. The exporter was aware about the

requirement of realization of export proceeds as may be noted from the SDF declarations accompanying Shipping Bills.

The CB submitted the allegation of violation of Regulation 10(d) is not sustainable; that the charge of violation of Regulation 10(d) of CBLR, 2018 is not sustainable against the Customs Broker.

16.2.4 In Defence of violation of Regulation 10(e) of CBLR, 2018: Exercise of due diligence to ascertain the correctness of information imparted to the client The SCN in Para 13 makes an averment as under:

CHA has seen these documents relating to meeting the criteria to claim both types of drawbacks and checked the correctness of relevant declaration, such fraudulent export could not have been possible. The CB failed to exercise due diligence and aided the exporter for availing the undue drawback by overvaluing the exports, whereas cheaper material was exported, and to justify the value of the goods, fake invoices from Suhel Ansari, were procured showing the higher purchase price. Thus, it appears that the CB has violated the Regulation 10(e) of CBLR, 2018.

The CB submitted that the averment is factually incorrect in as much as the CB could not have ascertained any DBK related fraud as alleged in the SCN on the basis of export invoice/ packing list based on which the Shipping Bills were filed. It is relevant that one of the two Shipping Bills filed by the CB on behalf of the exporter M/s Hasi Gold was a 'Free' Shipping Bills (No claim of DBK).

CB further submitted that, the Regulation 10(e) is about ascertaining the correctness of any information which CB imparts to the client and not about any information imparted by the client to the CB. Therefore, the charge of violation of Regulation 10(e) is not sustainable on the premise that the CB did not act diligently in ascertaining the correctness of the documents which they received from the exporter.

The CB submitted that the exporter has not complained that the CB imparted any incorrect information so as to allege violation of Regulation 10(e); that there is no hint in the SCN that CB was not diligent in ascertaining the correctness of any information imparted by them to the client exporter; that no such instance has been cited in the SCN under reference. The CB submitted that the charge of violation of Regulation 10(e) of CBLR, 2018 is not sustainable against Customs Broker.

16.2.5 In Defence of violation of Regulation 10(m) of CBLR, 2018: Speed and efficiency in discharge of duties or otherwise:

The SCN in Para 13 has contended that the CB have failed to discharge their duties with efficiently as they allegedly actively connived with exporters in claiming undue Drawback and over valuing the export goods in Shipping Bills.

The SCN has further noted that the foreign remittance of all the Shipping Bills filed using the IEC of Hasi Gold has not realised till date through formal banking channel, even after lapse of time limit prescribed by the RBI Guidelines, as per Customs database. Therefore, it appeared that the CB has violated the provision of Regulation 10(m) of CBLR, 2018.

The CB submitted that the exporter has also not complained that the CB did not handle the two subject consignments with speed and efficiency; that the subject Shipping Bills were filed on the basis of documents (export invoices/ packing lists) provided by the exporter; that it is a settled principle of law that the CB is not required to go into the authenticity (or genuineness) of the documents provided by the exporter; that the CB cannot be expected to get into the shoes of investigating officers.

In this context, the CB referred to the decision in the case of CC, Tuticorin Vs Moriks Shipping and Trading Pvt. Ltd. 2008 (227) E.L.T. 577 (Tri. - Chennai).

In the said case, the Tribunal set aside the penalty imposed on the CHA holding that the Customs House Agent was not required to go into the authenticity of declarations made by exporter in export documents; the job of CHA is confined to submission of documents given by the exporter as also to identify the exporter to the Customs Authorities; the appellant has no case that the respondents did not discharge these obligations.

The CB submitted that the allegation of violation of Regulation 10(m) is not sustainable; that as long as the Shipping Bills are filed in conformity with the documents given by the exporter, it should be understood that the CB has discharged his responsibility with efficiency; that there is also no case against the CB that they did not display speed in discharge of their duties. No specific instance of any laxity on the part of CB causing delay in clearance is cited either in order under reference or the SCN issued to the CB; that therefore, the Charge of Violation of Regulation 10 (m) of CBLR, 2018 is not sustainable.

16.2.6 Declarations as per the documents available and approved checklists:

The CB submitted that the SCN fails to appreciate that the Noticee CB has declared the relevant details based on documents made available by the exporter at the time of preparation of checklists. The Shipping Bills were uploaded on ICEGATE, only after the approval of the checklists by the exporter. Therefore, the responsibility for correct declarations in the Shipping Bills was of the exporters and CB was not responsible for it. The CB enclosed declaration from the exporter Hasi Gold in support of their submissions.

The CB submitted that the statement of the CB is referred to and relied upon in the SCN dated 15/11/2022, marked as RUD-10.

16.2.7 Value declared on the basis of documents/ information received from the exporter:

Bills

CB submitted that, it is proposed in the SCN that the export goods were over-invoiced based on fake bogus purchase invoices. However, the SCN fails to appreciate that the purchase invoices were never available with the Customs Broker and no discrepancy has been pointed out in respect of the export invoices on the basis of which the Shipping Bills were prepared. There was no reason for the Customs Broker to doubt the invoice values.

16.2.8 No occasion to examine the export consignments before the officers of Customs :

The CB submitted that the CB had no occasion to examine the export goods before filing the Shipping Bills as the CB was not involved in the procurement, packing or transportation of the goods. Also, the Noticee CB cannot be expected to open the packed goods to see those before Customs examination as it may result into unnecessary allegations about tampering with the packages and possible pilferage; that in the circumstances, the CB could not have verified the correctness of declared value in any manner.

The CB further submitted that CB is not an expert in valuation and is also not supposed to get into investigation in this regard, but only facilitates the exporter in filing the Shipping Bill on the basis of available documents. It is not a case made out in the SCN that the Customs Broker was involved in fabricating the invoice in any manner; that the Customs officers examined the cargo before permitting the clearance but did not think that the export goods were overvalued. If the experienced Customs officers could not detect any irregularity in the export goods, it is unreasonable to expect CB to notice such irregularity.

The CB submitted that similar view has been taken by the Hon'ble Tribunal in the case of M/s Krishna Shipping Agency Versus Commissioner of Customs (Airport and Administration), Kolkata reported in 2017 (348) ELT 502 (Trib. Kolkata).

16.2.9 CB cannot investigate the authenticity of the documents:

CB submitted that the SCN is issued without appreciating the settled principle of law that the Customs Broker cannot go into the authenticity of the declaration in the export documents.

In this context, the CB referred to the decision in the case of CC, Tuticorin Vs Moriks Shipping and Trading Pvt. Ltd. 2008 (227) E.L.T. 577 (Tri. - Chennai).

In the said case, the Tribunal set aside the penalty imposed on the CHA holding that the Customs House Agent was not required to go into the authenticity of declarations made by exporter in export documents; the job of CHA is confined to submission of documents given by the exporter as also to identify the exporter to the Customs Authorities; the appellant has no case that the respondents did not discharge these obligations.

The CB submitted that a similar view has been taken in the case of

Akanksha Enterprises Vs CC. Mumbai-1 [2006 (203) ELT 125 (Tri. Delhi)] following the decision of the tribunal in the case of Vetri Impex Vs CC, Tuticorin [(2004 (172) ELT 347 (Tri. Chennai)].

The CB submitted that the Customs Broker in the present case has discharged its obligations by filing the Shipping Bills as per the documents given by the exporter.

16.2.10 CB NOT responsible for declarations in the Shipping Bills:

CB submitted that the proposal in the SCN for penalty on the Customs Broker flows from the mis-declaration of value in the Shipping Bills leading to the claim of inadmissible drawback. However, the SCN fails to appreciate that the Customs Broker is not responsible for the value declared in the Shipping Bills. Only the exporter is responsible for the declarations in the Shipping Bills filed as per his documents (Invoice/packing list) and with his approval. The CB submitted that the Customs Broker is 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. It needs to be appreciated that the exporter has not contested the authenticity of the invoices/ packing lists basis which the Shipping Bills were filed. The CB submitted that presuming that there were errors in the declaration in the Shipping Bills, the Noticee CB cannot be held responsible for the same as the Noticee CB placed complete information and documents as supplied by the exporter before the Customs authorities for clearance of the consignment.

16.2.11 Limited role of the CB:

The CB submitted that the role of Customs Broker is limited to filing of the documents as received from the exporter; that the CB cannot be expected get in the role of an investigating agency and probe the exporter.; that they did not have the expertise and the resources to cause such investigations; that CB has responsibility of clearance without undue delay.

The CB submitted that the proposition of involvement of the Customs Broker in facilitating exports is speculative of its role and therefore cannot be sustained. Only because the CB handled the export consignments, does not mean that the CB facilitated/ abetted the exporters in claiming undue IGST refund/ export benefits.

The CB referred to the decision in the case of Deepankar 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; that the CB cannot be faulted in any manner when CB has placed the information available with them before the customs authorities and also identified the exporter before Customs

Authorities.

16.2.12 Speculative Allegations: No accusation by the exporter; No Confession from Any Employee

The CB submitted that nobody has accused the CB of their involvement in the alleged fraudulent exports by the present exporter.

16.2.13 Speculative charge:

It may be appreciated that the role of Customs Broker is limited to filing of the documents as received from the exporter. The CB cannot be expected get in the role of an investigating agency and probe the exporter. In fact, CB has responsibility of clearance without undue delay. Therefore, the proposition of involvement of the Customs Broker in facilitating allegedly fraudulent exports is speculative of its role and therefore cannot be sustained.

16.2.14 CB did not abet the exporter in alleged 'overvaluation of exports' and the resulting claim of drawback:

The SCN under reference in Para 13 alleges that the Customs Broker M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd. appears to have not advised the exporter and abetted the exporter by declaring the incorrect value of the goods in Shipping Bills against the fake invoices to avail undue drawback and did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

However, the SCN has misinterpreted the meaning of the expression 'abetting' used in section 114 of the Customs Act, 1962. It is a settled position law that the 'the essential ingredients of abetment are (a) 'knowledge of the proposed offence' and (b) benefit to be derived by the abettors therefrom',

In the present case, CB was not aware about the overvaluation of export goods and also did not benefit in any manner from the ineligible claim of drawback.

Therefore, the CB did not "abet" the exporter.

In this context, the CB referred to the decision of the Tribunal in the case of Commissioner of Customs, Mumbai Versus M. Vasi reported in 2003 (151) E.L.T. 312 (Tri. - Mumbai). # Para 20, and The decision of High Court of Judicature at Bombay in case of Amritlakshmi Machine Works Vs CC (Import), Mumbai reported in 2016 (335) ELT 225 (Bom.) # Para 25

Only because the CB handled the export consignments, does not mean that the CB facilitated/ abetted the exporter in claiming undue IGST refund/ export benefits. In this context, we refer to the decision in the case of Deepankar 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

16.3 COMMENTS OF THE INQUIRY OFFICER:- IO submitted that he had gone through the Show Cause Notice No. 59/2022-23 dated 31.03.2023 vide F.No. CUS/3337/2022-CBS, records of the Personal Hearing and Defense submissions made during the personal hearing and statements of all the persons taken during the investigation. IO further submitted that he had also gone through the alleged Articles of Charges or contraventions mentioned in Show Cause Notice as well as legal provisions reflected in CBLR, 2018.

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

IO submitted that it is alleged in the said SCN that the CB appears to have not advised the exporter and abetted the exporter by declaring the incorrect value of the goods in Shipping Bills against the fake invoices to avail undue drawback and did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

IO submitted that the defense submission stated that it is incorrect to suggest that the CB did not advise the exporter to comply with the provisions of the Customs Act, other allied Acts and the Rules and Regulations thereof; that the exporter was conversant with export formalities as may be noted from the fact that the exporter had handled as many as 14 consignments before the first consignment handled by the present CB. It may also be noted that the first consignment handled by the present CB under Shipping Bill no. 3245053 dated 11.06.2014 was physically examined by the officers of Customs before LEO was allowed. The defense submission further stated that the officers did not consider the export goods to be overvalued or of inferior quality; that the CB had no reason to suspect or know that the export goods were overvalued, when the CB was not concerned with procurement, packing or transport of goods and had no occasion to examine the export goods, before the Customs officers did; that the Customs officers did not require any purchase invoices of the exporter.

IO also submitted that the defense submission further stated that the exporter presented himself before the investigating officers; that the exporter has not accepted the charge of overvaluation and has not blamed the CB for any wrong advice or the lack of advice; that the exporter had claimed All Industry Rate of drawback; that as such the actual amount of duty borne by the exporter was not relevant, so as to require the duty paid purchase documents of the exporter; that the export proceeds have been actually realized in case of two Shipping Bills handled by the present CB; that the exporter was aware about the requirement of realization of export proceeds as may be noted from the SDF declarations accompanying Shipping Bills.

IO submitted that the defense submission stated that they had facilitated clearance of only two Shipping Bills (Refer SCN Para 12); that they have filed only

two Shipping Bill nos. 3245053 & 3394363 in June 2014; that only Shipping Bill no. 3245053 dated 11.06.2014 involves drawback claim of Rs. 11,501, the other Shipping Bill is a 'Free' Shipping Bill. IO submitted that he had perused copies of the aforesaid two Shipping Bills. IO found that Shipping Bill No. 3245053 dated 11.06.2014 involves drawback claim of Rs.11,501/-. IO found that the Charged CB has filed the Shipping Bills on the basis of the documents provided by the exporter M/s. Hasi Gold. IO found that neither the employee of the Customs Broker M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd. nor the exporter M/s. Hasi Gold in their statement have admitted that the CB M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd. was aware about the over-valuation or fake invoices. IO found that charges of knowledge about the over-valuation in the said export consignments or fake invoices cannot sustain in absence of any corroborative evidence against the Customs Broker. The defense submission stated that the Shipping Bills were uploaded on ICEGATE, only after the approval of the checklists by the exporter; that the responsibility for correct declarations in the Shipping Bills was of the exporters and CB was not responsible for it. IO found that there is force in the submission of the CB.

IO further submitted that the defense submission stated that first consignment handled by the present CB under Shipping Bill no. 3245053 dated 11.06.2014 was physically examined by the officers of Customs before LEO was allowed; that the officers did not consider the export goods to be overvalued or of inferior quality, therefore, the CB had no reason to suspect or know that the export goods were overvalued, when the CB was not concerned with procurement, packing or transport of goods and had no occasion to examine the export goods, before the Customs officers did. The defense submission stated that similar view has been taken by the Hon'ble Tribunal in the case of M/s Krishna Shipping Agency Versus Commissioner of Customs (Airport and Administration), Kolkata reported in 2017 (348) ELT 502 (Trib. Kolkata). IO had taken cognizance of the aforesaid case law. IO perused the Show Cause Notice and there is no mention in the said Show Cause Notice that goods were found overvalued or of inferior quality in case of examination of the goods covered under Shipping Bill No. 3245053 dated 11.06.2014.

IO 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).

IO also rely upon the decision of the Hon'ble Tribunal, Mumbai in the case of Parvath Shipping Agency Vs. Commissioner of Customs (Gen.), Mumbai [2017(357) ELT. 296(Tri. Mumbai),

IO submitted that the CB has not failed in advising the client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof. Accordingly, IO held that the charges of violation of Regulation 10 (d) of

the CBLR, 2018 is 'Not Proved'.

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

IO submitted that, it is alleged in the Show Cause Notice that CHA seen these documents relating to meeting the criteria to claim both types of Drawbacks and checked the correctness of relevant declaration, such fraudulent export could not have possible; that the CB failed to exercise due diligence and aided the exporter for availing the undue drawback by the exporters by overvaluing the exports, whereas cheaper material was exported, and to justify the value of the goods, fake invoices from Suhel Ansari, were procured showing the higher purchase price.

IO further submitted that the defense submission stated that the averment is factually incorrect in as much as the CB could not have ascertained any DBK related fraud as alleged in the SCN on the basis of export invoice/ packing list based on which the Shipping Bills were filed; that one of the two Shipping Bills filed by the CB on behalf of the exporter M/s Hasi Gold was a 'Free' Shipping Bill (No claim of DBK).

IO further submitted that the defense submission stated that the Regulation 10(e) is about ascertaining the correctness of any information which CB imparts to the client and not about any information imparted by the client to the CB; that the charge of violation of Regulation 10(e) is not sustainable on the premise that the CB did not act diligently in ascertaining the correctness of the documents which they received from the exporter.

IO also submitted that the defense submission stated that the exporter has not complained that the CB imparted any incorrect information so as to allege violation of Regulation 10 (e); that there is no hint in the SCN that CB was not diligent in ascertaining the correctness of any information imparted by them to the client exporter; that no such instance has been cited in the SCN under reference.

IO further submitted that the defense submission stated that it is proposed in the SCN that the export goods were over-invoiced based on fake bogus purchase invoices, however, the SCN fails to appreciate that the purchase invoices were never available with the Customs Broker and no discrepancy has been pointed out in respect of the export invoices on the basis of which the Shipping Bills were prepared; that there was no reason for the Customs Broker to doubt the invoice values.

IO submitted that the defense submission stated that they CB had no occasion to examine the export goods before filing the Shipping Bills as the CB was not involved in the procurement, packing or transportation of the goods; that they cannot be expected to open the packed goods to see those before Customs examination as it may result into unnecessary allegations about tampering with the packages and possible pilferage; that in the circumstances, the CB could not

have verified the correctness of declared value in any manner.

IO also submitted that the defense submission stated that CB is not an expert in valuation and is also not supposed to get into investigation in this regard, but only facilitates the exporter in filing the Shipping Bill on the basis of available documents; that it is not a case made out in the SCN that the Customs Broker was involved in fabricating the invoice in any manner; that the Customs officers examined the cargo before permitting the clearance but did not think that that the export goods were overvalued.

IO submitted that the CB relied upon the decision of Hon'ble Tribunal in the case of M/s Krishna Shipping Agency Versus Commissioner of Customs (Airport and Administration), Kolkata reported in 2017 (348) ELT 502 (Trib. Kolkata).

IO further submitted that the CB relied upon the decision in the case of CC, Tuticorin Vs Moriks Shipping and Trading Pvt. Ltd. 2008 (227) E.L.T. 577 (Tri. - Chennai) and further submitted that in the said case, the Tribunal set aside the penalty imposed on the CHA holding that the Customs House Agent was not required to go into the authenticity of declarations made by exporter in export documents; the job of CHA is confined to submission of documents given by the exporter as also to identify the exporter to the Customs Authorities; the appellant has no case that the respondents did not discharge these obligations.

IO found that ratio of the aforesaid judgment relied upon by the CB is not applicable in the instant case, as the aforesaid case is related to imposition of penalty under Customs Act, 1962. IO also found that the charges levelled against the Customs Broker are under CBLR, 2018, which are distinct from the charges levelled under provisions of Customs Act, 1962.

IO submitted that the defense submission 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; that the Customs Broker is 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. The defense submission further stated that the exporter has not contested the authenticity of the invoices/ packing lists basis which the Shipping Bills were filed; that presuming that there were errors in the declaration in the Shipping Bills, the Noticee CB cannot be held responsible for the same as the Noticee CB placed complete information and documents as supplied by the exporter before the Customs authorities for clearance of the consignment.

IO found that the investigations revealed that that impugned goods were procured from Domestic Tariff Area (DTA) without any invoices so no details of its manufacturing, production, using imported material or excisable material therein were available so it could not be ascertained whether any duties have been paid or otherwise; that exporter could not produce any such details in

respect of manufacturing, production or use of any imported material in impugned export goods, though he was having enough opportunity as he presented himself for recording of his statement but he failed to produce any such details.

The Customs Broker M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd. (CB No. 11/1044) was supposed to ascertain that goods were produced or manufactured, using imported material or excisable materials by payment of duty. In this regard Drawback Rules, 1995, are re-produced as under:

"(1) Drawback Rule, 1995 is attracted in this case which does not permit any amount of drawback in such cases where no duty has been paid. Rule 3 of the Drawback Rules 1995 reads as under,

"Rule 3. Drawback (1) Subject to provisions of-

Provided further that no drawback shall be allowed: -

(ii) if the said goods are produced or manufactured, using imported materials or excisable materials in respect of which duties have not been paid."

IO found that M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd. (CB No. 11/1044) was required to guide the exporter M/s Hasi Gold 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.

IO found that it was the responsibility of the CB to ensure that exporter M/s Hasi Gold declares the name and complete address of the traders from whom goods has been purchased in order to claim Drawback. IO found that the CB has not produced any evidence regarding communicating Circular No. 16/2009- Customs dated 25.05.2009 issued under F.No. 609/137/2007 – DBK to the exporter. IO found that the CB did not exercise due diligence to ascertain the compliance of Rule 3, Rule 16 and Rule 16A of Drawback Rules, 1995 by the exporter. Accordingly, IO held the Article of Charge alleging violation of Regulation 10 (e) of the CBLR, 2018 as "Proved".

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

IO submitted that it is alleged in the Show Cause Notice that the CB M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd. (11/1044) (PAN-AAGC52827JCH001) have failed to discharge their duties with efficiently as they allegedly actively connived with exporters in claiming undue Drawback and over valuing the export goods in Shipping Bill; that the foreign remittance of all the Shipping Bills filed using these IEC's have not been realized till date through format banking channel, even after lapse of the time limit prescribed by the RBI guidelines, as per database available with the customs.

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IO also submitted that the defense submission stated that the exporter has also not complained that the CB did not handle the two subject consignments with speed and efficiency; that the subject Shipping Bills were filed on the basis of documents (export invoices/ packing lists) provided by the exporter; that it is a settled principle of law that the CB is not required to go into the authenticity (or genuineness) of the documents provided by the exporter; that the CB cannot be expected to get into the shoes of investigating officers.

IO further submitted that the CB relied upon the decision in the case of CC, Tuticorin Vs Moriks Shipping and Trading Pvt. Ltd. 2008 (227) E.L.T. 577 (Tri. - Chennai) and further submitted that in the said case, the Tribunal set aside the penalty imposed on the CHA holding that the Customs House Agent was not required to go into the authenticity of declarations made by exporter in export documents; the job of CHA is confined to submission of documents given by the exporter as also to identify the exporter to the Customs Authorities; the appellant has no case that the respondents did not discharge these obligations.

IO also submitted that the defense submission stated that as long as the Shipping Bills are filed in conformity with the documents given by the exporter, it should be understood that the CB has discharged his responsibility with efficiency; that there is also no case against the CB that they did not display speed in discharge of their duties; that no specific instance of any laxity on the part of CB causing delay in clearance is cited either in order under reference or the SCN issued to the CB. IO find that there is force in charged Customs Broker's submission.

IO submitted that the Defense submission stated that the SCN has misinterpreted the meaning of the expression 'abetting' used in section 114 of the Customs Act, 1962. It is a settled position law that the 'the essential ingredients of abetment are (a) 'knowledge of the proposed offence' and (b) benefit to be derived by the abettors therefrom'. The defense submission further stated that in the present case, CB was not aware about the overvaluation of export goods and also did not benefit in any manner from the ineligible claim of drawback, therefore, the CB did not "abet" the exporter.

In this context, the CB relied upon the decision of the Tribunal in the case of Commissioner of Customs, Mumbai Versus M. Vasi reported in 2003 (151) E.L.T. 312 (Tri. - Mumbai). # Para 20, and The decision of High Court of Judicature at Bombay in case of Amritlakshmi Machine Works Vs CC (Import), Mumbai reported in 2016 (335) ELT 225 (Bom.). # Para 25

IO submitted that he found force in the CB's submission and had taken cognizance of the aforesaid case law.

IO submitted that the defense submission stated that only because the CB handled the export consignments, does not mean that the CB facilitated/ abetted the exporter in claiming undue IGST refund/ export benefits. In this context, we

refer to the decision in the case of Deepankar Sen Vs Commissioner of Customs, Kolkata reported in 2003 (159) ELT 260 (Tri. Kolkata); that 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

IO submitted that he found force in the CB's submission and had taken cognizance of the aforesaid case law.

IO submitted that It is alleged in the said Show Cause Notice that the foreign remittance of all the Shipping Bills filed using these IEC's have not been realized till date through format banking channel, even after lapse of the time limit prescribed by the RBI guidelines, as per database available with the customs.

IO found that the charged Customs Broker's role is limited upto the clearance of the export consignment (upto the LEO). IO submitted that realization of export proceeds and submission of the BRCs is post export clearance activity. The defense submission stated that that the first consignment handled by the present CB under Shipping Bill no. 3245053 dated 11/06/2014 was physically examined by the officers of Customs before LEO was allowed, however, the officers did not consider the export goods to be overvalued or of inferior quality; that therefore, the CB had no reason to suspect or know that the export goods were overvalued, when the CB was not concerned with procurement, packing or transport of goods and had no occasion to examine the export goods, before the Customs officers did.

IO submitted that he had perused Circular No. 05/2009-Customs dated 02.02.2009 issued by CBIC and Public Notice No. 136/2016 dated 07.10.2016 issued by the Commissioner of Customs, JNCH, Nhava Sheva on the subject monitoring of realization of export proceeds for the drawback EDI Shipping Bills – submission of BRCs. IO found from the aforesaid Circular/ Public Notice that submission of BRCs is the duty of the Exporter. IO found that Customs Brokers does not play any role in tracking the BRCs and its submission. Thus, IO conclude that the CB has not failed in discharging his duties with utmost speed and efficiency. Accordingly, IO held that the charges of violation of Regulation 10 (m) of the CBLR, 2018 is "Not Proved".

IO found that there is no mention of the date of receipt of the offence report in the Show Cause Notice No. 59/2022-23 dated 31.03.2023. Hence, no conclusion can be drawn regarding delay in issuance of the said Show Cause Notice.

17. DISAGREEMENT MEMO: - The Inquiry Officer in his report dated 30.06.2023 held the charges for violation of Regulation 10(d) and 10(m) of the CBLR, 2018 as "Not Proved". Pr. Commissioner of Customs (G), Mumbai-I disagreed with the Inquiry Officer's report in respect of the charge under

Regulation 10(d) of the CBLR, 2018 in the light of available evidences on record. Therefore, a Disagreement Memo dated 30.08.2023 was issued by Pr. Commissioner of Customs (G), Mumbai-I with respect to charge under Regulations 10(d) of the CBLR, 2018.

18. PERSONAL HEARING & WRITTEN SUBMISSION OF THE CB IN RESPONSE TO DISAGREEMENT MEMO: -

A personal hearing was granted by Principal Commissioner of Customs, NCH, Mumbai to Customs Broker on 26.09.2023. Mr. Prashant Patankar, Advocate, authorised representative of the CB appeared for personal hearing. He explained in detail why the charges mentioned in SCN are not sustainable and stated that he will submit a written statement of whatever has been presented by him during the Personal Hearing. He submitted his submission dated 26.09.2023 against the disagreement memo dated 30.08.2023 wherein he reiterated his submissions made in his earlier submission dated 23.01.2023 during revocation of license and dated 22.05.2023 submitted to Inquiry Officer.

19. DISCUSSION AND FINDINGS:-

I have gone through the case, material evidence on record, the Show Cause Notice dated 31.03.2023, and Inquiry Report dated 30.06.2023, submissions of the said CB dated 26.09.2023.

19.1 I observe that the charges against the said CB is of violation of regulation 10(d), 10(e) and 10(m) of CBLR, 2018 made vide Show Cause Notice No. 59/2022-23 dated 31.03.2023 issued by Pr. Commissioner of Customs (General), NCH, Mumbai. The charge of violation of regulation 10(e) was held as "Proved" and charges of violation of regulations 10(d) and 10(m) as "Not Proved" by the Inquiry Officer vide inquiry report dated 30.06.2023. A Disagreement Memo dated 30.08.2023 was issued with respect to charge under Regulations 10(d) of the CBLR, 2018.

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

19.2.1 With regard to violation of 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;"

On perusal of the offence report, I find that exporter M/s. Hasi Gold was procuring fake purchase bills against the export consignments from one Mr. Suhel Ansari. M/s Hasi Gold claimed higher and undue drawback by overvaluing the exports, by exporting cheaper material.

The CB's argument that the goods exported under claim for drawback were assessed and examined by the proper officers. As such the CB could not be alleged to have violated the advice mentioned in the said Drawback Circular. As such there was a contributory default on the part of the officers who assessed the Shipping Bill, examined the consignment and allowed the export. Therefore, the CB alone cannot be blamed and penalized.

I found from the offence report that various export firms including M/s. Hasi Gold was procuring fake purchase bills against the export consignments from one Mr. Suhel Ansari. M/s Hasi Gold claimed higher and undue drawback by overvaluing the exports, exporting cheaper material. During investigation the exporter failed to produce any documents in respect of manufacturing, production or use of any imported material in impugned export goods and thus violated the provisions of Drawback Rule, 1995. I also found that the exporter failed to produce any documents related to transportation and delivery of goods by Shri Suhel Ansari or his employees. I found that as per Consulate General of India, UAE, Dubai, enquiry report, original/actual unit value of the exported goods were found abnormally low compared to declared value in the Shipping Bills. Hence, it is not possible that the exporter without wilful collusion with CB, exported the impugned goods. Hence, the CB cannot shy away from the responsibilities & obligations cast upon them under the CBLR, 2018.

In this context, I rely upon the judgment of Hon'ble CESTAT, Mumbai in the case of M/s Eagle Transport Services Vs Commissioner of Customs, Mumbai in 1997 (96) E.L.T. 469 (Tribunal) wherein though the matter was different yet the ratio of judgement may be applied to the present case. In this case, Hon'ble CESTAT, Mumbai has held at para no. 7 (relevant portion) that

"a Custom house agent has a very significant role to play in the clearance of goods through Customs and Port Trust. Such clearance involves application of many specialized laws and detailed procedures often contain complex statutory requirements. It is for this reason that Customs Brokers have been licensed. Before he is granted permanent license, he has to qualify an examination in which his knowledge of relevant procedures is vested. The object of these regulations is to ensure that the Customs Brokers acts honestly and efficiently in the conduct of their business. It is not difficult to foresee the consequences that would aim the Custom House Agent does not co-act in such a manner. The Custom House Agent makes various representations before the Custom House on behalf of the importer and exporter relating to the nature of the goods conditions under which they were imported their value etc. The statements that he makes and the information that he provide are crucial for assessing the

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goods to duty and deciding whether the import is prohibited or not. The Custom House Agent thus can the status of a professionally qualified person akin to an advocate, Chartered Accountant or number of other professions which requires a minimum standards of knowledge for minimum standards of conduct. If the Custom House Agent acts negligently or dishonestly, the Custom House can be defrauded money due to the Government, and in good faith permit import or export of prohibited goods."

From the above facts and circumstances, I am of the considered view that the CB failed to advise the exporter to comply with the provisions of the Customs Act, other allied Acts (i.e. Drawback Rule, 1995) and the rules and regulations made thereof and did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Therefore, I hold that the CB has violated the provisions of Regulation 10(d) of the CBLR, 2018.

19.2.2 With regard to violation of Regulation 10 (e) of CBLR, 2018:

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

On perusal of the offence report, I found that various export firms including M/s Hasi Gold was procuring fake purchase bills against the export consignments from one Mr. Suhel Ansari. M/s Hasi Gold claimed higher and undue drawback by overvaluing the exports, by exporting cheaper material. As per Consulate General of India, Dubai, UAE enquiry report, original/actual unit value of the exported goods were found abnormally low compared to declared value in the Shipping Bills. On perusal of the offence report I also find that goods were procured from Domestic Tariff Area (DTA) without any invoices, so no details of its manufacturing, production, using imported material or excisable material therein were available, so it could not be ascertained whether any duties have been paid or otherwise.

IO submitted that it was the responsibility of the CB to ensure that exporter M/s Hasi Gold declares the name and complete address of the traders from whom goods has been purchased in order to claim Drawback. IO further submitted that the CB has not produced any evidence regarding communication of Circular No. 16/2009- Customs dated 25.05.2009 to the exporter. IO submitted that the CB did not exercise due diligence to ascertain the compliance of Rule 3, Rule 16 and Rule 16A of Drawback Rules, 1995 by the exporter.

I note that the said CB in his submission date 26.09.2023 has *inter alia* stated that the said the Shipping Bills were filed on the basis of documents viz. invoice, packing list given by the exporter and as per the respective checklists

approved by the exporter. The CB had no role in procurement, packing or transport of the export goods and as such the CB had no occasion to examine / inspect the export consignment before the Customs Officers examined it.

In this regard, I found that there is no evidence of any communication with the exporter in regard to the Circular No. 16/2009-Customs dated 25.05.2009, which requires certain declaration to be submitted with export documents when the exporter is claiming Drawback. I found that it was the responsibility of the CB to ensure that the said exporter declares the name and complete address of the traders from whom goods has been purchased in order to claim drawback. I also found that as per Consulate General of India, Dubai, UAE enquiry report, original/actual unit value of the exported goods were found abnormally low compared to declared value in the Shipping Bills. It is obligations and duty of the CB to exercise due diligence to ascertain the correctness of information in respect of any information which they impart to a client with reference to any work related to cargo, the CB failed to do so, otherwise exporter could not have made an attempt to export goods at such high valuations on the basis of fake invoices, which is a gross violation on the part of the CB under the provisions of the Regulation 10(e) of the CBLR, 2018. I also found that, the CB cannot shy away from the responsibilities cast upon them under the regulation 10(e) of the CBLR, 2018 by stating that determining the mis-declaration in terms of valuation is the officer's responsibility. Therefore, I found that there is no water in the CB's submission in this regard.

In view of the above, I am of the considered view that the CB failed to exercise due diligence to ascertain the correctness of information in respect of fraudulent exported goods. Therefore, I hold that the CB has violated the provisions of Regulation 10(e) of the CBLR, 2018.

19.2.3 With regard to violation of Regulation 10 (m) of CBLR, 2018:

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

On perusal of the offence report, I find that CB M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd. have failed to discharge their duties efficiently as they allegedly connived with exporters in claiming undue Drawback and over valuing the exported goods in Shipping Bill. The foreign remittance of all the Shipping Bills filed using these IECs have not been realized till date through formal banking channel; even after lapse of the time limit prescribed by the RBI guidelines, as per database available with the custom.

On perusal of the Circular No. 05/2009-Customs dated 02.02.2009 issued by CBIC and Public Notice No. 136/2016 dated 07.10.2016 issued by the Commissioner of Customs, JNCH, Nhava Sheva in the matter of "monitoring of realization of export proceeds for the drawback EDI Shipping Bills", submission

of BRCs is the duty of the Exporter. Thus, I agree to the IO report in this regard and found that primarily CB has not failed in discharging his duties with utmost speed and efficiency.

In view of the above, I am of the considered view that the CB does not failed to discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay in respect of the exported goods. Therefore, I hold that the CB has not violated the provisions of Regulation 10(m) of the CBLR, 2018.

While deciding the matter, I rely upon following judgements :-

20.1 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:

"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)".

20.2 In case of M/s Cappithan Agencies Versus Commissioner Of Customs, Chennai-Viii, (2015(10) LCX 0061), the Hon'ble Madras High Court had opined that :-

- i. *The very purpose of granting a licence to a person to act as a Customs House Agent is for transacting any business relating to the entry or departure of conveyance or the import or export of goods in any customs station. For that purpose, under Regulation 9 necessary examination is conducted to test the capability of the person in the matter of preparation of various documents determination of value procedures for assessment and payment of duty, the extent to which he is conversant with the provisions of certain enactments, etc. Therefore, the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as CHA, it is seen that while CHA should be in a position to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an Agent for carrying on certain illegal activities of any of the persons who avail his services as CHA. In such circumstances, the person playing the role of CHA has got greater responsibility. The very description that one should be conversant with the various procedures including the offences under the Customs Act to act as a Custom House Agent would show that while acting as CHA, he should*

not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as CHA by taking advantage of his access to the Department. The grant of licence to a person to act as CHA is to some extent to assist the Department with the various procedures such as scrutinizing the various documents to be presented in the course of transaction of business for entry and exit of conveyances or the import or export of the goods. In such circumstances, great confidence is reposed in a CHA. Any misuse of such position by the CHA will have far reaching consequences in the transaction of business by the customs house officials. Therefore, when, by such malpractices, there is loss of revenue to the custom house, there is every justification for the Respondent in treating the action of the Petitioner Applicant as detrimental to the interest of the nation and accordingly, final order of revoking his licence has been passed.

- ii. In view of the above discussions and reasons and the finding that the petitioner has not fulfilled their obligations under above said provisions of the Act, Rules and Regulations, the impugned order, confirming the order for continuation of prohibition of the licence of the petitioner is sustainable in law, which warrants no interference by this Court. Accordingly, this writ petition is dismissed.

20.3 The 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 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."

20.4 CB submitted that the SCN dated 31.03.2023 was issued after lapse of 90 days' time limit as provided in the Regulation 17 of CBLR 2018. CB also submitted that Inquiry Report has not been submitted within 90 days. CB requested to drop the proceedings initiated under Regulation 17(1) of CBLR, 2018.

However, in this context, I rely on the judgement in the case of M/s Unison

Clearing P. Ltd. reported in 2018 (361) E.L.T. 321 (Bom.) which stipulates that the time lines stipulated in Regulations are directory in nature and not mandatory.

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

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

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

20.5 Further, CB in his written submission dated 26.09.2023 requested a chance to cross-examine the witnesses relied upon in the SCN (the exporter, Shri. Suhel Ansari and his associates).

20.6 In this regard, I find that the CB's request for cross examine is devoid of any cogent and valid reason and therefore same is not tenable under CBLR, 2018 read with Customs Act, 1962. In this regard, I rely upon the judgment of Hon'ble CESTAT Kolkata in the case of Fortune Impex Vs. Commissioner of Customs, Calcutta [2001(138) E.L.T.556 (Tri. -Kolkata)], wherein the Hon'ble Tribunal held

at Para 12 that:

"...it is not required that in each and every case, cross-examination should necessarily be allowed. There is no absolute right of cross-examination provided in the Customs Act. The Advocate had given a list of 26 persons for cross-examination without indicating the specific reasons for cross-examining the...it cannot be said that there was violation of principles of natural justice.

21. I have gone through the various Case Laws referred by the said CB in his various submissions and observed that the ratios of the judgment of said Case Laws are not squarely applicable in the instant case, as the facts and circumstances are different and clearly distinguishable.

22. 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 in declaring higher value of the goods using fake invoices, to avail higher export benefits. The facts on record prove that CB had violated various provisions of CBLR, 2018 with mens rea.

23. Thus in view of the above, I hold that the CB M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd (11/1044) failed to comply with the Regulation 10(d) and 10(e) of the CBLR, 2018, as discussed Supra and is liable for penal action under Regulation 14 and 18 of CBLR, 2018. Accordingly, I pass the following order.

ORDER

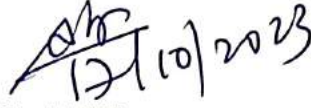
24. I, Principal Commissioner of Customs (General), in exercise of the power conferred upon me under Regulation 17(7) of the CBLR, 2018, pass the following order:

(i) I hereby impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd (PAN No. AAGC52827J) (CB No. 11/1044) 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) However, I refrain from revoking the CB License No.11/1044 under Regulation 14 of the CBLR, 2018.

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



(SUNIL JAIN)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)

MUMBAI ZONE-I

To,

M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd.,
(CB No. 11/1044) (PAN No. AAGC52827J)

EM683081584IN

Sharda Chamber No.1, 31 Keshavji Naik Road,
Masjid (West), Mumbai-400009

Copy to,

1. The Pr. Chief Commissioner/Chief Commissioner of Customs, Mumbai I, II, III Zone.
2. All Pr. Commissioners/Commissioners of Customs, Mumbai I, II, III Zone
3. DRI, MZU, Mumbai.
4. SIIB(X), ACC, Sahar, Mumbai
5. CIU's of NCH, ACC & JNCH
6. EDI of NCH, ACC & JNCH
7. ACC (Admn), Mumbai with a request to circulate among all departments.
8. JNCH (Admn) with a request to circulate among all concerned.
9. Cash Department, NCH, Mumbai.
10. Notice Board
11. Office Copy
12. Guard File (Admin)