



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/211/2022-CBS

आदेश दिनांक/Date of Order: 24.02.2023

CAO No.92/CAC/PCC(G)/SJ/CBS Adj

जारी दिनांक/Date of issue: 27.02.2023

संख्या:

DIN : 202302770000052045A

द्वारा जारी : सुनील जैन

Issued By : Sunil Jain

प्रधान आयुक्त, सीमाशुल्क(सामान्य)

Pr. Commissioner of Customs(Gen.),

मुंबई -400 001

Mumbai – 400 001.

ORDER-IN-ORIGINALमूल 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 संबंध में सीमाशुल्क, केंद्रीय उत्पादशुल्क एवं सेवाकर अपील अधिकरण में स्वीकार्य है, जहाँ शुल्क या शुल्क एवं जुर्माना विवादित हों, या जुर्माना, जहाँ सिर्फ जुर्माना ही विवादित हो। यह अपील इस आदेश के संप्रेषण की तारीख के तीन महीने के अंदर दायर की जाएगी। यह अपील सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण (कार्यविधि) नियमावली, 1982, के प्रावधानों के अंतर्गत, यथोत्तरखंडपीठ 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 तदोत्प्रांत 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 ब्याज व लगाए गए जुर्माने की राशि रु. पाँच लाख या इससे कम हो तो रु. 1000/-, (ii) यदि यह राशि रु. पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न हो तो रु. 5000/- एवं (iii) यदि यह राशि रु. पचास लाख से अधिक हो तो रु. 10000/- के शुल्क का भुगतान क्रॉसड बैंक ड्राफ्ट के माध्यम से अधिकरण की खंडपीठ के सहायक पंजीयक के पक्ष में जिस स्थान पर खंडपीठ स्थित है, के किसी भी राष्ट्रीयकृत बैंक की शाखा में किया जाए एवं डिमांडड्राफ्ट 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 Spaceage Logistics (PAN No. AGQPA5206J) (CB No. 11/2001) (hereinafter referred to as the "Custom Broker or CB") having registered office at Subhan Ahmed House, R/11, Opp. Cigarette Factory, Chakala, Sahar Road, Andheri East, Mumbai-400099, is holding CB license issued by Principal Commissioner of Customs (General), Mumbai under regulation 7(1) of CBLR, 2013 (now regulation 7(2) of CBLR, 2018) and as such they are bound by the regulations and conditions stipulated therein. Mr. Iftekhhar A. Ansari is Proprietor in the CB firm.

2. An offence report in form of O-in-O No. 194/2022-23/JC/NS-V/CAC/JNCH dated 02.06.2022 was received from NS-V, CAC, JNCH. Vide the said O-in-O, it was informed that M/s. Salim Enterprises (IEC No: GJQPS4849E) (hereinafter referred to as the importer) filed a Bill of Entry No. 4599970 dated 22.08.2019 for the clearance of printers and printer spare parts through CB M/s. Spaceage Logistics at Nhava Sheva, Mumbai. The declared value was Rs. 5,58,379/- and duty was Rs.1,54,866/-. The said B/E was given First Check examination order and the Docks Officers examined 10% of the import consignment having Container No. FIU6533413 on 05.09.2019 at M/s. Kerry Indev CFS.

3. On physical examination of the above-mentioned import consignment, the Docks Officers observed the following points: -

- (i) The goods appeared to be refurbished (not new) as the goods were without proper packaging and other markings.
- (ii) The goods were declared to be of Republic of Korea origin, however, the marking on some of the goods were showing that those were of Japanese and Indonesian origin.
- (iii) The model numbers declared by the importer were not available on the goods. However, there were different model numbers available on some goods. For example, importer had declared model no. 5050 for the goods "power supply". However, on the goods, it was mentioned as PH3-2613 (01) and the same was of Indonesian Origin.
- (iv) The goods appeared to be of completely knock down second hand photocopier machines which were restricted for importation into India as per the Foreign Trade Policy-2015-2020.

4. It is mentioned in the offence report that Additional Commissioner of Customs, in-charge of M/s. Kerry Indev CFS instructed the Docks Officers for 100% examination of the said import consignment in the presence of Government of India empanelled Chartered Engineer. Accordingly, a letter dated 19.09.2019 was issued to both CB and importer to be present in the

examination process. Neither the CB nor the importer turned up for examination. As a result, Reminder-I dated 18.10.2019, Reminder-II dated 04.11.2019 and Reminder-III dated 14.11.2019 were issued but neither any representative of CB nor importer turned up for examination. Also, they did not make any communication with the department. On behalf of the CB M/s. Spaceage Logistics, Shri Alpesh Bhanushali received the letter dated 19.09.2019 and assured that they would do the needful but nobody appeared for the examination.

5. Subsequently, the matter was referred to SIIB(I)/JNCH for further investigation. For recording of statement u/s. 108 of the Customs Act, 1962 summons dated 24.12.2019 were issued to the Director, Shipping Lines M/s. Korea Marine Transport Co Ltd, Proprietor of CB M/s. Sunglory Agency and Proprietor of CB M/s. Spaceage Logistics.

5. Past imports of the importer were retrieved from 1.5 ICES System. The details are given below at Table No.1: -

TABLE-1

Sr. No.	B/E No.	B/E Date	Customs Broker	Goods Description
1	4726448	31.08.2019	M/s. Sunglory Agency	Spare part of MFD machine
2	5157369	03.10.2019	M/s. Sunglory Agency	Spare part of MFD machine
3	5873711	29.11.2019	M/s. Sunglory Agency	Spare part of MFD machine
4	4599970 (live)	22.08.2019	M/s. Spaceage Logistics	Copier machine parts

M/s. Sunglory Agency vide letter dated 31.12.2019 informed that they could not come on intended date of 01.01.2020 and requested for 10 days' time. The shipping Line M/s. KMTCL Line in the present case vide letter dated 02.01.2020 submitted the requisite documents like copy of B/L, copy of manifest and copy of invoice and packing list.

7. On 30.01.2020, 100% examination of the import consignment covered under B/E No. 4599970 dated 22.08.2019 was conducted under Panchanama dated 30.01.2020. The entire examination process was conducted in the presence of Proprietor Shri Mohd. Salim of M/s. Salim Enterprises and Shri G. Venkatpathy M., Chartered Engineer of M/s. Gattini & Co.

8. The Chartered Engineer vide C.E. Certificate No. INS/CER/1920-036 dated 15.02.2020 submitted that goods were used spare parts of MFD/Photocopiers. Spare parts appeared to be of Canon 3000/5000 series

MFD/ Photocopier machines. The Spare parts appeared to be old and used but not refurbished.

9. The importer, M/s. Salim Enterprises was summoned thrice vide Summons dated 19.03.2020, 10.06.2020 and 20.08.2020. The importer neither turned up nor gave any explanation either orally or in written form to the investigating agency.

Similarly, both the CBs M/s. Spaceage Logistics and M/s. Sunglory Agency were summoned twice dated 19.03.2020 & dated 10.06.2020. In response to the issued summons, both the CBs not only failed to appear before the investigating officer but also failed to give any explanation either orally or in written form.

10. During the investigation of SIIB (I)/JNCH, Customs Broker M/s Spaceage Logistics did not cooperate with the investigating agency and did not appear for statement before the investigating agency even after issuing several summons to C.B. Hence, it appeared that the CB M/s Spaceage Logistics failed in fulfilling the obligations as mandated under CBLR, 2018 and appeared to have violated the regulation 10(q) of CBLR, 2018.

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

11. SHOW CAUSE NOTICE

M/s Spaceage Logistics (PAN No. AGQPA5206J) (CB No. 11/2001) was issued a Show Cause Notice (SCN) No. 14/2022-23 dated 20.07.2022, by the Principal Commissioner of Customs (General), NCH, Mumbai, Zone- I, asking them to show cause as to why the licence bearing no. 11 /2001 issued to them should not be revoked and security deposited should not be forfeited and/or penalty should not be imposed upon them under Regulation 14 read with 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018, as elaborated in the Show Cause Notice. They were given an opportunity to appear for a personal hearing on the date as may be fixed and to produce proof of evidence/documents if any, in their defence to Shri Eishvaryesh Bhardwaj, Deputy Commissioner of Customs, who was appointed as an inquiry officer to conduct inquiry under regulation 17 of CBLR, 2018.

12. SUSPENSION/REVOCATION OF LICENSE: -

It is pertinent to mention that license of CB was already revoked in another case in contravention of Regulation 10 (a), (d), (e), (m) and (n) of CBLR, 2018 vide Order In Original No. 141/CAC/PCC(G)/SJ/CBS Adj dated 18.02.2022 passed by Pr. Commissioner of Customs (G), New Customs House, Mumbai vide file No. S/8-82/2019-20 CBS/GEN/CB/ACTN/151/ 2021-CBS.

13. INQUIRY REPORT

Inquiry Officer submitted inquiry report dated: 19.10.2022 wherein the charge against CB M/s. Spaceage Logistics (CB No. 11/2001) i.e. violation of Regulation 10 (q) of CBLR, 2018 was held 'Proved'.

13.2 IO stated that in compliance to the subject Show Cause Notice No. 14/2022-23 CBS dated 20.07.2022, letters were issued to the CB regarding Personal Hearing. Opportunity of three Personal Hearings dated 05.08.2022, 16.08.2022 and 29.08.2022 was given to CB M/s. Spaceage Logistics and directed them to appear for hearing and to submit all evidences/ documents if any, that they intend to rely upon in their defence and to give their oral/ written submissions in the matter, as the case may be. The said PH letters were sent through Speed Post to the registered CB address and mailed to the CB on both of their official mailing addresses-spaceage112001@gmail.com as well as on iftekharansari54@yahoo.com.

However, neither the CB, M/s. Spaceage Logistics nor any of their representative appeared for the PH on any of the date fixed for Personal Hearing. Also, no written submission in their defence was submitted by the CB, either through post or through return e mail.

13.3 Since the CB had failed to appear before the inquiry officer in any of the three Personal Hearings fixed in this regard & also did not submit any written submissions/documents/evidences etc. in his defence. Therefore, Inquiry Officer was left with no option, but to proceed with the inquiry ex parte, on the basis of the documents/records available on record and provided by the department.

13.4 COMMENTS OF THE INQUIRY OFFICER: - Inquiry Officer discussed the charge as under:

ARTICLE OF CHARGE: -Regulation 10(q) of CBLR, 2018:

"A Customs Broker shall co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees".

IO submitted that it is an undisputed fact that the CB, M/s Spaceage Logistics had been non co-operative since the beginning of the investigation in respect of the subject B/E No 4599970 dated 22/08/2019. Though a letter dated 19.09.2019 was issued to the CB, M/s Spaceage Logistics, asking him to be present for 100% examination of the subject goods, as per the orders of the Additional Commissioner, in-charge of M/s Kerry Indev CFS and despite the fact that the said letter was received by Shri Alpesh Bhanushali, on behalf of the charged CB, who had assured that they would do the needful, the said CB failed to be present for the said examination.

Also, three reminder letters dated 18.10.2019, 04.11.2019 and 14.11.2019 were issued to the CB, but no representative of the CB, M/s Spaceage Logistics, turned up for the said examination, nor they made any communication with the department. Subsequently, the investigation was referred to SIIB(I)/JNCH for further investigation. For recording of statement u/s. 108 of the Customs Act, 1962 summons dated 24.12.2019 was issued to the CB, but CB did not appear on the summons dated 24.12.2019 before the investigating agency. Accordingly, the goods were examined 100% by SIIB(I)/ JNCH under Panchnama and in the presence of the importer and the C.E. Also, it was found that the CB, M/s Spaceage logistics did not appear in response to the summons dated 19.03.2020 and 10.06.2020 issued to them by the Investigating Agency. It was pertinent to note that the CB, M/s Spaceage logistics, not only failed to appear before the investigating officer but also failed to give any explanation either orally or in written form for their failure to do so. Hence, it was found that the Charged CB, M/s Spaceage Logistics had intentionally kept themselves away from the investigations and did not honour any of the summons to give their statement, which is a clear example of non-cooperation with Customs Authorities and intentional and abject failure on their part to join investigations promptly, in utter violation of Regulation 10(q) of CBLR, 2018. It was also seen that the charged CB, M/s Spaceage Logistics failed to appear on any of the Personal Hearings given by the Adjudicating Authority, i.e., the Joint Commissioner of Customs, CAC, NS-V, Nhava Sheva, on dates 26.04.2021, 22.12.2021, 21.02.2022 & 04.03.2022. Also, it was seen from the Order-in-Original No. 194/2022-23/JC/NS-V/CAC/JNCH dated 02.06.2022, issued vide file no. S/10-108/2020-21/ADC/NS-V/CAC/JNCH, that no written submission, documentary evidence etc., was submitted by the charged CB, in his defence, before the Adjudicating Authority at Nhava Sheva.

Inquiry Officer also found that even during the inquiry proceedings initiated under Regulation 17 of CBLR, 2018, the charged CB, i.e., M/s Spaceage Logistics had been given three opportunities of Personal Hearings to appear before the inquiry officer and to give their oral and written submissions (all the three letters to this effect were sent to the CB, both through Speed Post as well as on their official e-mail ids, as detailed above), as the case may be, but they failed to do so on every occasion, which proved that the charged CB did not intentionally join the current inquiry proceedings launched against them under the relevant provisions of CBLR 2018, in abject violation of Regulation 10(q) of CBLR, 2018. In this case, the charged CB, M/s. Spaceage Logistics, (CB No. 11/2001) utterly failed to cooperate with customs authorities and failed to join the investigations

at every stage, be that of 100% examination of the subject cargo and investigation by SIIB(I)/JNCH, adjudication process before the Joint Commissioner of Customs, CAC, NS-V, Nhava Sheva, or even the inquiry proceedings before the inquiry officer initiated against them under Regulation 17 of CBLR, 2018. Regulation 10(q) casts a mandatory duty upon the CB, who is an important link between the Customs Authorities and the Importer, to co-operate with Customs Authorities and to join investigations promptly in the event of an inquiry against them or their employees. In this case, as mentioned above, the CB M/s. Spaceage Logistics, CB No. 11/2001 did not come forward to give their statements during any stage of the investigation and also did not join even the adjudication proceedings at JNCH, Nhava Sheva, thereby intentionally avoiding the entire investigation process as well as the current inquiry proceedings launched against them under CBLR, 2018, in clear violation of the duty cast upon them under Regulation 10(q) of CBLR, 2018, i.e., *to co-operate with the Customs authorities and to join the investigations promptly in the event of an inquiry against them or their employees.*

Inquiry Officer found that the CB Licence of M/s Spaceage Logistics (PAN No. AGQPA5206J) (CB No. 11/2001), had already been revoked by the Pr. Commissioner of Customs (General), NCH, Mumbai, in another case, in contravention of Regulation 10 (a), (d), (e), (m) and (n) of CBLR, 2018 vide Order In Original No. 141/CAC/PCC(G)/SJ/CBS Adj dated 18.02.2022 passed by Pr. Commissioner of Customs (G), New Customs House, Mumbai vide file no. S/8-82/2019-20 CBS/GEN/CB/ACTN/151/ 2021-CBS.

IO submitted that in view of the above discussion, it is opined that the charged CB, M/s. Spaceage Logistics, (CB No. 11/2001) acted in utter violation of Regulation 10 (q) of the CBLR, 2018, by not cooperating with the Customs Authorities, at every stage of investigation, inquiry and even adjudication in the said matter and also by their abject failure to join the Inquiry proceedings being conducted against them under Regulation 17 of CBLR, 2018, despite having been given numerous opportunities to do so, at every stage. Therefore, inquiry officer found that the charge levelled against the CB, M/s. Spaceage Logistics, (PAN No. AGQPA5206J) (CB No. 11/2001), in the subject Show Cause Notice bearing No 14/2022-23 CBS dated 20.07.2022, issued by the Pr. Commissioner of Customs (General), NCH, Mumbai that the CB has violated Regulation 10(q) of CBLR, 2018, stands 'Conclusively Proved'.

14. PERSONAL HEARING: -

A personal hearing was granted by Principal Commissioner of Customs, NCH, Mumbai to Customs Broker on 06.12.2022, 09.01.2023

and 25.01.2023. Neither the Customs broker nor his representative attended the personal hearing. Nothing was submitted by Customs broker in their defence/reply.

15. DISCUSSIONS AND FINDINGS: -

I have gone through the case, the Show Cause Notice dated 20.07.2022, O-in-O No. 194/2022-23/JC/NS-V/CAC/JNCH dated 02.06.2022, material evidence on record, Inquiry Report dated 19.10.2022 along with its RUDs and examined the role and conduct of CB in the case before me.

15.1 The charge against the CB i.e. violation of Regulation 10(q) of CBLR, 2018 made vide Show Cause Notice No. 14/2022-23 dated 20.07.2022 issued by Pr. Commissioner of Customs (General), NCH, Mumbai was held as "Proved" by the Inquiry Officer.

15.2 From the facts stated in Show Cause Notice No. 14/2022-23 dated 20.07.2022, it appeared that the CB, M/s Spaceage Logistics (CB No. 11/2001) failed to fulfil the obligation of a Customs Brokers as mandated under CBLR, 2018 and has violated the regulation 10(q) of CBLR, 2018.

15.3 I refrain from reproducing the brief facts of the case which have already been discussed above for the sake of brevity. I now examine the charge mentioned in the SCN. It has been alleged that the CB did not exercise due diligence in discharging their obligation as required under Regulation 10(q) of CBLR, 2018.

15.4 With regard to violation of regulation 10(q) of CBLR,2018

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

As per the offence report, the imported goods were refurbished, Country of Origin of goods and model no of imported goods were not found as per declaration in the bill of entry. The imported goods were completely in knock down second hand photocopier machines which were restricted for importation into India as per the Foreign Trade Policy-2015-2020. A letter dated 19.09.2019 was issued to the charged CB to be present for 100% examination of the imported goods, as per the orders of the Additional Commissioner, in-charge of M/s Kerry Indev CFS and despite the fact that the said letter was received by Shri Alpesh Bhanushali, on behalf of the charged CB, who had assured that they would do the needful, the said CB failed to be present for the said examination. The charged CB was summoned various times by the investigation agency but neither the

charge CB responded the summons nor submitted any explanation either orally or in written form for their failure to do so. It is evident from the offence report that during the process of investigation Customs Broker M/s Spaceage Logistics did not cooperate with the investigating agency and did not appear for statement before the investigating agency even after several summons served to C.B.

Inquiry Officer in his inquiry report also stated that three Personal Hearings opportunity were given to the CB but CB failed to appear before the inquiry officer in any of the three Personal Hearings & also did not submit any written submissions/documents/evidences etc in his defence. Inquiry Officer also submitted that the charged CB had intentionally kept themselves away from the investigations and did not honour any of the summons to give their statement, which is a clear example of non-cooperation with Customs Authorities and intentional and abject failure on their part to join investigations promptly. Inquiry Officer also observed that the charged CB, failed to appear on any of the Personal Hearings given by the Adjudicating Authority, i.e., the Joint Commissioner of Customs, CAC, NS-V, Nhava Sheva.

From the above facts, I find that the charged CB utterly failed to cooperate with customs authorities and failed to join the investigations at every stage. It is evident that the charged CB was not present during the 100% examination of the subject cargo, the charged CB also failed to appear before investigation agency during the investigation process. The charged CB also did not present himself during adjudication process before the Joint Commissioner of Customs, CAC, NS-V, Nhava Sheva, or even the inquiry proceedings before the inquiry officer initiated against them under Regulation 17 of CBLR, 2018. At every stage, starting from the examination of goods to till date, the charged CB did not co-operate with the Customs authorities in the investigation of the matter. It is seen that several letters were issued to the CB but they neither reply to any of the letters nor appeared before any Customs Authorities and also did not submit any written submissions/documents / evidences etc in his defence. The above facts shows that the charged CB intentionally avoided the entire investigation process as well as inquiry proceedings launched against them under CBLR, 2018, is clear violation of the duty cast upon them under Regulation 10(q) of CBLR, 2018, i.e., to co-operate with the Customs authorities and to join the investigations promptly in the event of an inquiry against them or their employees. Therefore, I hold that the CB has violated the provisions Regulation 10(q) of the CBLR, 2018.

16. Further, I rely on the following judgement and hold that in the instant case, CB, M/s Spaceage Logistics has failed to adhere to the responsibilities as

was expected of them in terms of the Regulations made under CBLR, 2018 and therefore rendered himself liable for penal action under CBLR, 2018.

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

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

17. 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 gives room for unscrupulous persons to get away with import-export violations and revenue frauds. In this case, it is noticed that the charged CB, M/s. Spaceage Logistics, (CB No. 11/2001) acted in utter violation of Regulation 10 (q) of the CBLR, 2018, by not cooperating with the Customs Authorities, at every stage of investigation and adjudication in the said matter and also by their abject failure to join the Inquiry proceedings being conducted against them under Regulation 17 of CBLR, 2018, despite having been given numerous opportunities to do so, at every stage which clearly prove that CB violated Regulation 10 (q) of CBLR 2018 with mens rea.

18. I hold that the proof of charge in inquiry are acceptable and tenable based on the available evidence, the facts and circumstances of the case and judicial pronouncement mentioned supra which certainly warrant penal action against the CB. Therefore, for their acts of omission and commission, CB M/s. Spaceage Logistics (Customs Broker No. 11/2001) is held liable and guilty for not cooperating with the Customs Authorities, at every stage of investigation and even adjudication & inquiry. I hold that the CB has failed to discharge duties cast on them with respect to Regulation 10(q) of CBLR,2018 and are liable for penal action. Accordingly, I pass the following order :-

ORDER

19. 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:

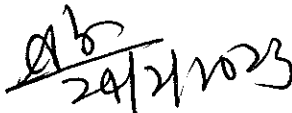
(i) I hereby impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on M/s Spaceage Logistics (PAN No. AGQPA5206J) (CB No. 11/2001) under Regulation 18 of the CBLR, 2018.

(ii) I note that entire amount of security deposit furnished by the CB has already been forfeited in another case under Regulation 14 of the CBLR, 2018. I hereby order deemed forfeiture of the entire amount of security which shall come into force if any contrary decision is taken at any higher appellate forum in another case.

(iii) The CB License No.11/2001 is already revoked in another case under Regulation 14 of the CBLR, 2018. Therefore, I hereby order deemed revocation of the CB License No.11/2001 which shall come into force if any contrary decision is taken at any higher appellate forum in another case.

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

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


(SUNIL JAIN)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
MUMBAI ZONE-I

To,
M/s Spaceage Logistics (CB No. 11/2001),
Subhan Ahmed House, R/11,
Opp. Cigarette Factory Chakala,
Sahar Road, Andheri East,
Mumbai-400-009

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. Special Investigation and Intelligence Branch (Import), NS-V, JNCH

4. CIU's of NCH, ACC & JNCH
5. EDI of NCH, ACC & JNCH
6. ACC (Admn), Mumbai with a request to circulate among all departments.
7. JNCH (Admn) with a request to circulate among all concerned.
8. Cash Department, NCH, Mumbai.
9. Notice Board
10. Office Copy
11. Guard File (Admin)

