



सीमा शुल्क के प्रधान आयुक्त कार्यालय (सामान्य)
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
कस्टमब्रोकरअनुभाग, नवीनसीमाशुल्कभवन,
CUSTOMS BROKER SECTION, NEW CUSTOM HOUSE,
बेलाईस्टेट, मुंबई - I
BALLARD ESTATE, MUMBAI - I

F.NO. GEN/CB/361/2022/CBS Pt 2

Date: 20.04.2023

DIN:20230477000000333BDE

ORDER NO. 01 /2023-24

M/s. Merchant & Sons, (PAN: AAEFM0675K), having address registered at Sagar Classic, 703, Clare Road, Byculla, Mumbai - 400 008 (hereinafter referred as the Customs Broker/CB) holder of Customs Broker License No. 11/678, 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 conditions stipulated therein.

2. On the basis of specific information received by the DRI, MZU, Mumbai investigation was conducted. Investigation revealed that various export firm including M/s Ocean International 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. The office premises from where Shri Suhel Ansari was operating, situated at Room No. 30, 4th Floor, Chunnwala Building, 38-Kolsa Street, Pydhonic, Mumbai - 400003 was 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 was recorded on 24.08.2015 by DRI, Mumbai where inter-alia they stated that they supplied fake invoices to the export firms including M/s Ocean International, Shri Shaikh Mohammed Arshad stated that their were about 22 firms in whose name fake invoices were issued.

5. DRI, MZU, Mumbai forwarded to the SIIB(X)/ACC for carrying out further investigation the details of exporters including M/s Ocean International 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.

6. During the course of investigation by investigating agency SIIB(X) summons of the following persons were recorded:-

6.1 Sh Manzurali Liakatali Khan, proprietor of M/s Ocean International vide his statement dated 25.10.2018 stated that bulk of the goods for all exports from 2009 to 2014 were purchased from Shri Wasim of W N Enterprise; that the goods were bought from Shri Wasim on behalf of foreign customers only; that he requested Shri Wasim for local purchase bills; that he (Wasim) told him that he cannot provide so many local purchase bills from his own company M/s W N Enterprise but his (Shri Wasim's) friend Bholu @ Shri Suhel Parvez Ansari had several other companies from which purchase bills can be procured; that thereafter he met Bholu @ Shri Suhel Parvez Ansari in shop of Shri Wasim in Masjid; that Shri Wasim provided him the names of the companies of Bholu@ Shri Suhel Parvez Ansari and asked him to draw cheques in their favour; that thereafter he got the local purchase bills of various companies of Bhola alias Shri Suhel Parvez Ansari through Shri wasim; that bills were procured in the same manner for all the purchased goods procured during 2010-2014; that Wasim used to provide the names of companies for which he used to make cheques from his bank account No. 31870101 038272 of Union Bank of India, Null Bazaar, Mumbai-09; that Wasim used to provide bill after procuring them from Shri Suhel Parvez Ansari; that those bills were used by him for making invoices which were eventually used in filing the shipping bills for export of goods for the period 2010-2014.

Sh Manzurali Liakatali Khan further vide his statement dated 17.04.2018 stated that, **they were not able to make invoices, so the same were prepared by CB firm M/s. Merchant and Sons**, it appears that the CB was actively involved in this commercial fraud case to defraud the govt. exchequer.

6.2 During the investigation, the details of exports made by the exporter M/s Ocean International, were retrieved from the ICES System. During the period from 2012-2016, the exporter made total exports of 381 shipping bills. The Duty Drawback in respect of the 381 Shipping Bills was Rs. 387 lakhs. The said 381 Shipping Bills were cleared by CB M/s Merchant & Sons (CB No. 11/678). As stated in the Offence Report, FOB amount was not realized against 154 shipping bills in which the total drawback amount availed is Rs. 1,87,67,043/-.

Further, TRC (Exports), ACC issued an Order-in-Original to M/s. Ocean International against Demand cum Show Cause Notice dated 20.04.2016 confirming the demand of drawback amount of Rs. 1,03,40,790/- in respect of exports made against 88 shipping bills along with applicable interest under Rule 16 (A) Sub Rule (1) (2) of the Customs, Central Excise Duties and Service Tax Drawback Rules 1995 read with Section 75 A (2) of Customs Act, 1962. Further, also imposed a penalty of Rs.1,00,000/- on the exporter under Section 117 of Customs Act, 1962.

6.3 During the course of investigation vide his statement dated 20.11.2018 Sh Nuvaid Merchant, Partner of CB M/s. Merchant & Sons stated that he was unable to remember through whom M/s. Ocean International approached them for customs clearance work; that they completed the KYC formalities before accepting their customs clearance work by them in 2010 only; that his manager Shri Shabbir along with two other staff members completed the KYC formalities; that on being asked that the Khan Munzir Ahmed Liakat Ali was not residing on the said address, he stated that he may have changed their address; that they used to receive invoices and

packing lists from their client M/s Ocean International who delivered them at their office located at Mohatta Market, Mumbai 2-3 days prior to the shipment; that they used to prepare the checklist and upload it in the system for generating shipping bill number and if everything was found to be in order, then they used to send truck to their warehouse having address Ibrahim Merchant Road, Sopariwala Bldg., Ground Floor, Shop No. 3, Mumbai-09 to pick up the goods; that the goods were taken to export shed of Air Cargo Complex for export; that then their customs staff used to do all the customs clearance work and handed over the documents to the airlines.

CB further vide statement dated 16.12.2021 stated that they do not know how the exporter acquired the goods; that exporter himself prepared all the required documents such as invoice, packing list etc: that they never printed any export documents in their office; that the exporter showed the samples whenever required; that they never found any objection regarding the value of the exported goods; that they did not see any discrepancy in the exports of M/s. Ocean International; that they never noticed that value declared by the exporter were highly inflated.

7. 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.

8. During investigation a statement dated 01.07.2016 of 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.

9. Further from the investigation It appears from investigation 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.

“(l) 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."

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

- M/s. Ocean International has procured fake and bogus invoices from Sh. Suhel Ansari.
- Goods of inferior quality were procured from local market without any invoice
- Incorrect transactions were made with the fake suppliers, whose invoices were raised by Sh Suhel Ansari. This was done to conceal the actual transactions and give cover to the bogus transactions.
- As export goods were procured from local market which was of inferior quality and having low value, therefore impugned export by M/s. Ocean International was grossly overvalued and only done for purpose of fraudulent claim of drawback.

11. From the offence report, it appears that the said CB cleared all the consignments of the said exporter, in which the exporter knowingly and deliberately submitted the fake and bogus export invoices and inflated the export value to obtain undue drawback fraudulently. The said CB in his statements admitted that he does not remember the said exporter and further it appears that the address of the exporter is different in IEC and the address in KYC documents were different. From the statement of the CB it becomes clear that he was aware that the exporter has started operating from other location than the one mentioned in the IEC. Further there is nothing on record or has been produced by CB firm that they have informed the Customs about it. From this, it appears that the said CB not verified the antecedents properly of the said exporter. **Further, the said CB in his statement inter alia admitted that they never prepared invoices and packing lists or any other documents, whereas in the statement of Shri Manzurali Liakatali Khan, Proprietor of M/s. Ocean International, he inter alia admitted that he never prepared invoices and packing lists and he do not know how to prepare the same and, in this regard, his CB M/s. Merchant & Sons always prepares the invoices and packing lists for his exports.** From this, it clearly establishes that the CB M/s. Merchant & Sons has connived with the exporter and helped exporter to get the fraudulent drawback. Further, from the offence report, it appears that the said CB never verified the genuineness of the bills, invoices, purchase invoices, value declared by the exporter with regard to the goods exported, quality of the goods etc. and never made a doubt and never contacted the exporter in this regard. As per the offence report, the said CB assisted the exporter in exporting the overvalued goods to get the higher drawback fraudulently.

Therefore, under the fact and such circumstances, the CB actively connived with exporters in claiming undue drawback and over valuing the export goods and

mis-declaring in Shipping Bill, therefore the CB has failed to comply with following regulations of the Customs Brokers Licensing Regulations 2018:-

-10(d) i.e. “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”

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. Further Sh Manzurali Liakatali Khan, proprietor of M/s Ocean International vide his statement dated 17.04.2018 stated that, they were not able to make invoices, so the same were prepared by CB firm M/s. Merchant and Sons, it appears that the CB was actively involved in this commercial fraud case to defraud the govt. exchequer.

Thus, it appears that CB has violated the regulation 10(d) of CBLR 2018 by abetting the exporter and not bringing the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs

-10(e) “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”

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. Further Sh Manzurali Liakatali Khan, proprietor of M/s Ocean International vide his statement dated 17.04.2018 stated that, they were not able to make invoices, so the same were prepared by CB firm M/s. Merchant and Sons, it appears that the CB was actively involved in this commercial fraud case to defraud the govt. exchequer.

Thus, it appears that CB has violated the regulation 10(e) of CBLR 2018.

-10(f) “not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information;”

It is the responsibility of the CB to inform the exporter about the instructions and public notice regarding the claiming of drawback. In the said matter it appears that CB has abetted the exporter by declaring the incorrect value of the goods in shipping bills against the fake invoices to avail undue drawback.

Thus, it appears that CB has violated the regulation 10(f) of CBLR 2018.

-10(n)- “verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information”

The CB in his statements admitted that he does not remember the said exporter and further it appears that the address of the exporter is different in IEC and the address in KYC documents was different. From the statement of the CB it becomes clear that he was aware that the exporter has started operating from other location than the one mentioned in the IEC. Further there is nothing on record or has been produced by CB firm that they have informed the Customs about it. From this, it appears that the said CB not verified the antecedents properly of the said exporter.

Thus, it appears that the CB has violated the provisions of Regulation 10 (n) of the CBLR, 2018.

12. In view of the above, it is evident that the exporter claimed duty drawback using fake invoices and CB M/s. Merchant & Sons (11/678) abetted the exporter to avail this non-eligible duty drawback and did not bring the matter to the notice of the Customs authorities. Further Sh Manzurali Liakatali Khan, proprietor of M/s Ocean International vide his statement dated 17.04.2018 stated that, they were not able to make invoices, so the same were prepared by CB firm M/s. Merchant and Sons, it appears that the CB was actively involved in this commercial fraud case to defraud the govt. exchequer.

13. From the above facts, it appears that prima facie, Customs Broker M/s. Merchant & Sons (11/678) has violated Regulation 10(d), 10(e), 10(f) & 10(n) of CBLR, 2018. It is apprehended that the Custom Broker may adopt similar modus operandi in future consignments and department cannot remain oblivious to the danger posed by such an eventuality.

14. Further, the License of CB M/s Merchant & Sons had been inoperative since 21.02.2022 in compliance to the CBIC Notification No. 62/2021 dated 23.07.2021, Para 9.2, vide which the licenses which were inactive for one year were made inoperative by system. Further the license was deemed suspended in a similar matter vide suspension order No. 68/2022-23 dtd 11.01.2023 and 82 and 84-85/2022-23 dtd 09.03.2023.

15. The Customs Broker M/s Merchant & Sons was deemed suspended vide Order No. 83/2022-23 dated 09.03.2023 and was granted opportunity of 'Personal Hearing' in the matter on 16.03.2023. On CB request, another opportunity of 'Personal Hearing' was granted on 31.03.2023.

16. Written Submission and Personal Hearing:

16.1 In pursuance to suspension order no. 83/2022-23 dated 09.03.2023, CB M/s. Merchant & Sons submitted their written submission vide letter dated 23.03.2023 and Mr. N.D. George, advocate appeared on behalf of CB for Personal hearing and gave following submissions: -

16.2 CB vide his written submission denied all the allegations contained in the said order No. 83/2022-23 dt. 09.03.2023.

16.3 The CB stated that the preliminary objection is that the Shipping Bills were filed during the year 2012-2016 and the license was suspended on 09.03.2023 which

is after a lapse of more than 7 to 10 years. Therefore, the suspension is illegal and bad in law. In this context CB relied on the judgement in the case of Ratnadip Shipping Pvt Ltd versus Commissioner of Customs (General), Mumbai reported in 2019 (370) E.L.T 1765 (Tri Mumbai) wherein it has been held as under:

Customs House Agent - Suspension of licence - Cause of immediate action or continued action of suspension could not be deciphered from impugned order - No merits in impugned order to sustain the same Regulations 16(2) and 17 of Customs Brokers Licensing Regulations, 2018. - Proper analysis of all the decisions referred above will show that there is enough power vested in the Commissioner to suspend the license of Custom Broker, in terms of Customs Brokers Licensing Regulations, 2018. However said power which impact the livelihood of the person and his employee needs to be exercised with caution and in accordance with the inbuilt safeguards, to prevent the arbitrary and reckless use of the power. One of the safeguards that has been built in the scheme, is to decide the matter after affording the post-decision hearing in case of immediate suspension. This post-decision hearing is not an empty formality but the responsibility cast on the Commissioner to decide the issue of continuation of suspension in reasonable and logical manner by way of speaking Order, clearly recording the reasons for suspension of license. The reason obviously cannot be "enquiry is contemplated" simplicitors.

16.4 CB stated that in the said case exporter has been exporting goods to African countries have submitted the negative statement.

16.5 CB further submitted that as per regulation 16(1) the suspension in appropriate cases should be where immediate action is necessary. In the present case as the Shipping Bills were filed during the period 2012-2016. The Statements were recorded on 20.11.2018 and 16.12.2021 under Section 108 of the Customs Act, 1962. Therefore, there was no immediate reason to suspend the license. Show Cause Notice in the matter was issued on 25.10.2022 and the license was suspended on 09.03.2023 and the license was operational during the interregnum period and nothing adverse has been observed against the charged CB. In this context CB has relied upon the following case laws.

Principal Commissioner of Customs(General) versus Mehul & Co reported in 2022(5) TMI 30 - BOMBAY HIGH COURT wherein it has been held as under:

The Tribunal has listed a chronology of dates and events before the inquiry officer. The Tribunal has made factual observations that from the date sheet, as submitted, there appears to be considerable un explained delay in various steps of proceedings. The Tribunal has made factual observations that:

a) no explanation has come forth for the delay in issuance of notice which was issued beyond 90 days of the receipt of offence report;

(b) the delay in start of inquiry proceedings after the issuance of notice also is not explained;

(c) what was the reason for not calling Mr. Mehul Sanghavi immediately after 11th February 2014 has also not come forth;

(d) Why Mr. Mehul Sanghavi was called for examination after lapse of nearly six months is also not explained;

(e) if non availability of Mr. Mehul Sanghavi was the cause for delay, the fact is, proceedings were concluded and report submitted on 15th December 2014 without any actual examination of Mr. Mehul Sanghavi. The Tribunal therefore, felt that there was delay at every stage of proceedings and the delay has not been justified or explained satisfactorily.

7. *In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.*

8. *The appeal is devoid of merits and it is dismissed with no order as to costs.*

16.6 CB has further submitted that the CB has complied with the KYC document. The said Shipping Bills were filed by the CB and was processed by their employees which were assessed by the officers of the Customs and thereafter LEO granted.

16.7 CB has further submitted that statements of various persons recorded under section 108 of Customs Act, 1962 which is also exculpatory in nature. That the CB has been efficient in performing their duties and there is not a single complaint against the charged CB. The CB has done due diligence in so far as the documents filed by them. In the above context it is submitted that the CB files the Shipping Bill/Bill of Entry on the basis of documents provided by the exporter/importer. Therefore, to fasten any responsibility on the CB for any bogus shipping bills/BoE would be totally against the established norms and practice. For any violation or contravention in this regard, the entire responsibility would devolve on the investigation made and the evidence before the investigating authorities. Therefore, there is no question of continuation of the suspension of CB license.

16.8 CB further stated that they have not violated the Regulations 10 (d), (e), (f)& (n) of the CBLR, 2018 as they have complied with the KYC norms and CBLR, 2018.

16.9 CB further submitted that in identical case of M/s Shivam Clearing Agency, (Mumbai) Pvt Ltd vide Order No. 86/2022-23 dtd 09.03.2023 and in the case of M/s Beejay Clearing and forwarding Agency vide Order No. 87/2022-23 dtd 10.03.2023 the ld. Pr. Commissioner Of Customs(G) was pleased to set aside the suspension of CB license.

16.10 CB has further submitted that on due appreciation of the suspension order dt. 09.03.2023 and there being no evidence to allege violation of CBLR,2018 warranting continuation of the suspension is not required.

16.11 CB further stated that in view of abovementioned governing facts and attendant circumstances of the present case we submit that there is no substance in any of the charges leveled against the charge CB. The license is in operation since more than 35 years and the CB has an unblemished record and their license is being renewed time to time which goes to show the bonafide of the noticee.

16.12 CB further stated that there is no ground for continuation of the suspension. The CB has cooperated during the course of investigation and is ready and willing to cooperate in the inquiry under CBLR, 2018.

16.13 CB further requested that the suspension levelled against the charged CB be withdrawn and/or dropped.

DISCUSSIONS AND FINDINGS

17. I have gone through the facts of the case. The issue before me at the present instance is limited to determining whether the continuation of suspension of the CB Licence is warranted or otherwise in the instant case in the light of the material on record.

18. I find that the license of the Customs Broker M/s. Merchant & Sons (11/678) was suspended vide Order No. 83/2022-23 of F.No. GEN/CB/361/2022/CBS Pt 2 dated 09.03.2023 based on the Offence Report received from SIIB(X), ACC that the CB have failed to fulfil their obligations laid down under Regulation 10(d), 10(e), 10(f)& 10(n) of CBLR, 2018.

19. I find that the CB license has been inoperative since 21.02.2022 in compliance to the CBIC Notification No. 62/2021 dated 23.07.2021, Para 9.2, vide which the licenses which were inactive for one year were made inoperative by system. I further find no submissions of negative statement has been made by the exporter as per the offence report, nor the CB has submitted any proof confirming the same.

20. I have perused the statement of Sh Manzurali Liakatali Khan, proprietor of M/s Ocean International dtd 25.10.2018 vide which he has stated that how he had purchased goods from the local markets and how later he had procured the fake invoices from the companies of Sh Suhel Ansari which were later used in filing of the Shipping Bills. Further I find that Sh Manzurali Liakatali Khan vide his statement dtd 17.04.2018 has stated that they were not able to make invoices, so the same were prepared by CB firm M/s. Merchant and Sons, it appears that the CB was actively involved in this commercial fraud case to defraud the govt. exchequer.

21. I have perused the statement dtd 20.11.2018 of Sh Nuvaid Merchant, partner M/s Merchant & Sons (11/678) vide which he has admitted that he does not remember the said exporter and further it appears that the address of the exporter is different in IEC and the address in KYC documents were different. From the statement of the CB, it becomes clear that he was aware that the exporter has started operating from other location than the one mentioned in the IEC. From this, it appears that the said CB not verified the antecedents properly of the said exporter. Further, CB in his statement inter alia admitted that they never prepared invoices and packing lists or any other documents, whereas in the statement of Shri Manzurali Liakatali Khan, Proprietor of M/s. Ocean International, he inter alia admitted that he never prepared invoices and packing lists and he do not know how to prepare the same and, in this regard, his CB M/s. Merchant & Sons always prepared the invoices and packing lists for his exports.

22. I find that CB has further relied on the following case laws:

- *Ratnadip Shipping Pvt Ltd versus Commissioner of Customs (General), Mumbai reported in 2019 (370) E.L.T 1765 (Tri. -Mumbai)*
- *Hon'ble High Court in the case of the Principal Commissioner of Customs (General) versus Mehul & Co reported in 2022 (5) TMI 30 - BOMBAY HIGH COURT*

I find that the above judgments relied upon by the CB in their defence is not squarely applicable in the matter as there has not been any delay in ordering of Suspension as per Regulation 16 of CBLR 2018 on receipt of Offence Report, further the CB has been granted opportunity of personal hearing post the suspension of the license.

23. Further from the offence report I find that as per statement dated 01.07.2016 of Shri Suryabhan Eknath Dhurphate, Proprietor of M/s. Sanket Overseas, who was logistics provider and was involved in clearing the consignments through CHA, M/s. Indo Foreign Agents, 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.

24. I find that it was the responsibility of the CB to guide Exporter M/s. Ocean International with respect to furnishing declarations at the time of export in format annexed to Circular No. 16/2009-Customs dated 25.05.2009 issued under F. No. 609/137/2007 – DBK. It was the responsibility of the CB to ensure that exporters declare the name and complete address of the traders from whom goods have been purchased in order to claim Drawback. Further, CB should have advised the Exporter to comply with Rule 3, Rule 16 and Rule 16A of Drawback Rules, 1995.

25. I find that CB has a very crucial role in the clearance of goods through Customs which involve application of different laws and detailed procedures which are often complex. CB 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/exported, their value etc. It is the responsibility of CB to have requisite knowledge to undertake such clearances. The very objective of CBLR, 2018 (Earlier CBLR, 2013) is to ensure that CB acts honestly and efficiently in the conduct of his business. It is not difficult to foresee the consequences that may arise if CB acts in a negligent manner.

26. I further find the CB submission that the Show Cause Notice in the case of M/s Ocean International was issued on 25.10.2022 by SIIB(X), ACC and the license was suspended on 09.03.2023 and the license was operational during the interregnum period and nothing adverse has been observed against the charged CB is not valid. As the CB license has been inoperative since 21.02.2022 in compliance to the CBIC Notification No. 62/2021 dated 23.07.2021, Para 9.2, vide which the licenses which were inactive for one year were made inoperative by system, further the license was already deemed suspended in another fake invoices matter vide Order dtd 11.01.2023. Further, I also find that in another offence report of M/s Pritam Overseas, Sh Nuvaid Merchant, partner in CB firm, vide his statement dated 16.12.2021 to investigating

agency has already stated that the CB firm is not operative since 1st April 2017 and they do not have any work related to Customs Broker now.

27. I further find it is pertinent to mention that other offence reports in the similar matter have been received against the CB M/s Merchant & Sons, wherein the exporter has admitted in their statement before the investigating agency that CB had prepared the invoices and packing lists in their office. Thus, it appears that CB abetted the exporter by declaring the incorrect value of the goods in shipping bills against the fake invoices to avail undue drawback. Action against the CB has already been initiated in the said offence reports.

28. Further I find that the CB's argument that in similar matters suspension of other CBs have already been set aside is not relevant here. As the suspensions were revoked in case of different offence reports, on the basis of the submissions made by the CB's. Further in the instant case I find that the suspension merits continuation till the inquiry proceedings are completed on the basis of facts as discussed above. Further, the CB in his statement dtd 16.12.2021 inter alia admitted that they never prepared invoices and packing lists or any other documents, whereas in the statement dtd 17.04.2018 of Shri Manzurali Liakatali Khan, Proprietor of M/s. Ocean International, he inter alia admitted that he never prepared invoices and packing lists and he do not know how to prepare the same and, in this regard, his CB M/s. Merchant & Sons always prepares the invoices and packing lists for his exports. From this, it clearly establishes that the CB M/s. Merchant & Sons has connived with the exporter and helped exporter to get the fraudulent drawback.

29. I find it pertinent to mention the judgement of 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 which approved the observation of Hon'ble CESTAT Mumbai in M/s. Noble Agency V/s. Commissioner of Customs, Mumbai [2002 (142) E.L.T. 84 (Tri. - Mumbai)]:-

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

30. The evidence on record indicate clearly that the CB was working in an absolute negligent manner and was completely in violation of the obligations cast upon them under the CBLR 2018. Thus, on the basis of the discussions and findings I find that, the suspension merits continuation till the inquiry proceedings are completed.

31. Accordingly, I pass the following order:

ORDER

01. I, Principal Commissioner of Customs (General), in exercise of powers conferred upon me under the provisions of Regulation 19 (2) of CBLR, 2013 [now Regulation 16 (2) of CBLR, 2018] order that **the suspension of the Customs Broker Licence M/s. Merchant & Sons (CHA No. 11/678) suspension vide Order No. 83/2022-23 dated 09.03.2023 shall continue** pending inquiry proceedings under Regulation 20 of CBLR, 2013 (now Regulation 17 of CBLR, 2018).

02. This order is being issued without prejudice to any other action that may be taken against the CB or any other person(s)/firm(s) etc under the provisions of the Customs Act, 1962 and Rules/Regulations framed there under or under any other law for the time being in force.

ad
20/4/2023
(SUNIL JAIN)
Principal Commissioner of Customs (G)
NCH, Mumbai - I

To,

M/s Merchant & Sons (11/678), (PAN: AAEFM0675K),
Sagar Classic, 703,
Clare Road, Byculla,
Mumbai - 400 008

Copy to:

1. The Pr./Chief Commissioner of Customs, Mumbai I, II, III Zone
2. CIU's of NCH, ACC & JNCH
3. The Commissioner of Customs, Mumbai I, II, III Zone
4. EDI of NCH, ACC & JNCH
5. Bombay Custom House Agent Association
6. Office copy
7. Notice Board