



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/216/2022 CBS

आदेश दिनांक/Date of Order: 22.06.2023

CAO No. 20/CAC/PCC(G)/SJ/CBS Adj

जारी दिनांक/Date of issue: 23.06.2023

संख्या:

DIN : 2023067700000000C2C3

द्वारा जारी : सुनील जैन

Issued By : Sunil Jain

प्रधान आयुक्त, सीमाशुल्क(सामान्य)

Pr. Commissioner of Customs(Gen.),

मुंबई -400 001

Mumbai - 400 001.

**ORDER-IN-ORIGINAL मूल आदेश**

**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, यथोत्तरापीठ 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 तदोत्तरापीठ 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 ब्याजवसूली एवं 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. Ghanshyam Patel Freight Forw. Pvt. Ltd. bearing PAN based Registration No. AAACG5078RCH001, is holding a regular Customs Broker License No. 11/581 issued by Commissioner of Customs, Mumbai under Regulation 10(1) of the Customs House Agents Licensing Regulations (CHALR), 1984 [Now regulation 7(2) of Customs Broker Licensing Regulations (CBLR, 2018)] and such they are bound by the regulation and condition stipulated therein.

**2.** An offence report in the form of OIO No. 48/ADC/RKS/ADJ/2022-23 dated 17.06.2022 was received from office of the Commissioner of Customs (Import-I), NCH, Mumbai-I, wherein it was informed that M/s Ghanshyam Patel Freight Forw. Pvt. Ltd. (11/581) filed Bill of Entry No. 5622646 dated 28.09.2021 on behalf of M/s J. M. Enterprises (IEC-DVYPM9958K) for import of various goods including parts for sealed lead acid battery in Container No. BSIU3210649. The declared assessable value of the goods was Rs. 22,76,153/- and duty paid thereon was Rs. 5,64,504/-.

**3.** The goods were examined by Docks officer and vide his report, he submitted that the goods, declared under CTH 78041910 (Lead Plates) of the B/E, were not lead plates (as per Note (d) (ii) to chapter 78) as they were of shape other than rectangular/square & assume the character of articles/products of Chapter 85072000 (Other lead acid Accumulators), thus falling under CTH 85072000 instead of declared CTH 78041910. For the goods declared under CTH 48236900 (MF Acid Free Fiber Paper) & CTH 40169390 (Rubber Packing Valve & Washers) of B/E were components of a Lead Acid battery & thus falling under CTH 85072000. Therefore, file was forwarded to group 5A for further necessary enquiry/action at their end.

**4.** The group officer in his report submitted that as the goods are lead acid battery parts, hence, the importer should also have registration certificate of CPCB, as per the Batteries (Management and Handling) Rules 2001 issued vide Notification dated 16.05.2001 of Ministry of Environment and Forest. Therefore, the file/case was forwarded to SIIB(I) for detailed investigation.

**5.** On the request of the importer, permission for warehousing the goods, under section 49 of Customs Act, 1962 was granted to consignment on 09.11.2021. During the course of investigation, it was found that all the goods covered under B/E no. 5622646 dated 28.09.2021 are not lead acid accumulator and do not fall under CTH-85072000 instead the same are some parts of a lead acid accumulator. The lead acid accumulator is classifiable under specific heading with CTH 85072000 and their parts are classifiable under CTH 85079090. Hence, all the goods of subject B/E are classifiable under CTH 85079090. Based



on the reports of the docks and group officers, the subject goods were seized by SIIB(Import), NCH vide seizure memo dated 23.11.2021.

**6.** During the course of investigation, summon were issued to importer M/s J M Enterprises to record their statement under section 108 of the Customs Act, 1962, however, in response to the summons, the importer M/s J M Enterprises, vide his letter dated 14.12.2021 accepted that the goods are parts for Lead acid accumulator and applicable HSN/CTH is 85079090.

**7.** Statement of Shri Tushar S. Hule, 'G' card holder of CHA firm, M/s Ghanshyam Patel Freight Forwarders Pvt Ltd (CHA no. 11/ 581) was recorded on 26.11.2021, wherein, he inter-alia stated that they verified the KYC of the importer as the importer was a first time importer; that the goods were misclassified, but they should not be classifiable under CTH 85072000 instead the goods should be classified under CTH 85079090; that the importer got registration certificate of CPCB on 22.11.2021 and he also submitted the copy of the same; that M/s J M Enterprises was importing the subject goods on behalf of M/s N V Power as per sales agreement dated 29.10.2021.

**8.** The importer, M/s J M Enterprises authorized Shri Manish Goswami, CA on their behalf to represent the concerned matter. Statement of CA, Shri Manish Goswami was recorded on 03.01.2022 wherein, he inter-alia stated that the importer was first time importer that got registered as a proprietorship in July 2021; that he was not well versed in classification of the goods; that the classification was done by the CHA and not by the party; that they had told the CHA that the goods were Lead Acid Battery parts; that the goods have been misclassified; that before importation they did not know about requirement of CPCB for their consignment and they were not told by the CHA to get them registered with CPCB; that the main purpose of the importation of the goods was to sell the goods to whole-seller; that they are ready to pay differential duty as well as fine & penalty. He submitted Registration Certificate of CPCB issued on 22.11.2021.

**9.** As the importer, M/s J M Enterprises was a first time importer, hence to verify his genuineness, SIIB(I), NCH vide letter dated 07.12.2021 requested to Preventive Commissionerate, Delhi to verify the address of the importer, however, the reply was not received. The importer submitted Light Bill of the premises which showed that address was in existence and belonged to Shri Jamil Ahmed, father of Shri Shan Mohammad, proprietor of the firm M/s J M Enterprises. M/s J M Enterprises also submitted Copy of IEC certificate (IEC no. DVYPM99581), Copy of PAN Card (PAN No. DVYPM9958K), Copy of Aadhar Card No. (2785 5714 9978), Copy of GSTIN registration (07DVYPM9958K1Z5) and Bank Statement (for signature verification) which indicated that the IEC holder was the real importer and beneficiary of the imported goods.



10. As the goods were misclassified, therefore, declared value was rejected under Rule 12 of the CVR, 2007 and the actual value of the said imported goods needed to be re-determined under the provisions of CVR, 2007. Therefore, a market survey was conducted and total value was re-determined as Rs. 28,33,595/- and total payable duty as Rs. 11,92,726/-. The importer agreed with above re-determined value.

11. In view of the foregoing paras, it was seen that the declared value of the impugned goods was Rs. 22,76,153 and the duty paid therein was Rs. 5,64,504/-. Based on market survey value was re-ascertained at Rs. 28,33,595/- and differential duty was determined to be at Rs. 6,27,873/-, which was to be recovered under section 28(1) of Customs Act, 1962 along with applicable interest under section 28AA of Customs Act, 1962. The importer appeared to have under invoiced & mis-declared the impugned goods to evade customs duty and to circumvent the restriction imposed on import of 'Parts of lead acid battery'. The CB in his statement dated 26.11.2021 admitted the misclassification of the impugned goods.

12. SCN under Customs Act, 1962 was issued to importer & CB and the same was adjudicated vide O-in-O No. 48/ADC/RKS/ADJ/2022-23 dated 17.06.2022 whereby penalty of Rs. 50,000/- was imposed on CB under Section 112(A) of 1962. Redemption Fine and Penalty were also imposed on importer.

13. Based on the above facts and applicable rules and regulations, prima facie it appeared that Customs Broker M/s Ghanshyam Patel Freight Forw. Pvt. Ltd. (PAN No. AAACG5078RCH001) having Customs Broker Licence No. 11/581 did not exercise due diligence in discharging their obligation as required under provisions 10(d) and 10(e) of CBLR, 2018.

***"Regulation 10(d) of CBLR, 2018"*** *"A Custom 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 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;"*

**14. SUSPENSION OF LICENSE:** In view of the facts stated above, CB, M/s Ghanshyam Patel Freight Forw. Pvt. Ltd. (11/581) was found liable for their acts of omission and commission leading to contraventions of the provision under Regulation 10(d) and 10(e) 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



under regulation 16(1) of CBLR, 2018 vide Order No. 36/2022-23 dated 18.10.2022 and suspension was continued under regulation 16(2) of CBLR, 2018 vide Order No. 43/2022-23 dated 29.11.2022 passed by the Principal Commissioner of Customs (G), NCH in the instant case.

**15. SHOW CAUSE NOTICE:** M/s. Ghanshyam Patel Freight Forw. Pvt. Ltd. (11/581) was issued a Show Cause Notice (SCN) No. 28/2022-23 dated 29.11.2022 by the Principal Commissioner of Customs (General), NCH, Mumbai, Zone-I asking them to show cause as to why the licence bearing no. 11/581 issued to them should not be revoked and security deposited should not be forfeited and/or penalty should not be imposed upon them under Regulation 14 read with 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018, as elaborated in the Show Cause Notice. They were directed to appear for a personal hearing and to produce proof of evidence/documents if any, in their defence to Shri Meva Ram Ola, Deputy Commissioner of Customs, NCH, Mumbai-I who was appointed an inquiry officer to conduct inquiry under regulation 17 of CBLR, 2018.

## **16. INQUIRY REPORT**

Inquiry Officer submitted Inquiry Report dated: 17.04.2023 wherein the charges against CB M/s Ghanshyam Patel Freight Forw. Pvt. Ltd. (11/581) i.e. violation of Regulation 10(d) and 10(e) of CBLR, 2018 were held 'Proved'.

IO submitted that a letter dated 12.01.2023 was issued to the Customs Broker M/s Ghanshyam Patel Freight Forw. Pvt. Ltd. to submit reply in defence to the Show Cause Notice within 30 days and to appear for personal hearing before him on 18.01.2023 in connection with the inquiry. In reply to the subject letter, CB vide letter dated 16.01.2023 submitted his reply. The gist of the same is as under:

### **16.1 Submission made by CB in defence: -**

(I) CB submitted that till the year 2021 they never handled import clearances and only specialized in handling export shipments to various destinations worldwide. It was only in early 2021 that post the Covid-19 pandemic lockdown that they faced difficulties in business due to very low export volumes and decided to diversify to handling import clearances, hence their expertise in handling import cargo was very basic and new, however irrespective of that they have always ensured to work within the rules and regulations of the Customs and the limitations set as a Customs Broker.

(II) CB also submitted that in respect of the subject import shipment of the importer M/s. J. M. Enterprises filed under B/E. No. 5622646 dated 28.09.2021 (importer Inv. No. TCPW20210903 dated 03.09.2021) and Container No. BSIU-321074-9, they understand that the cargo was found to be mis-classified under



CTH 78041910/48236900/40169390 whereas it should actually have been correctly classified under CTH 85072000/85079090. The cargo was detained and investigation was carried out by investigating agency and later cargo was released upon payment of the differential duty amount and penalty by the importer.

(III) The CB further submitted that: -

- a. The importer, M/s. J. M. Enterprises had directly approached CB and offered them business of clearance of their import cargo. On furnishing the KYC documents CB stated that they had done the verification of the same prior to commencement of the business. The importer had also given them Authority Letter for handling their clearances and also indemnifying them from any consequences arising from any lapse/issues from their import shipments.
- b. They also made inquiry later that even though the importer was a first time importer, his relatives were regular importers of the same commodity (Lead Acid Batteries and Spare Parts) under the name of M/s. N. V. Power and hence the importer was very well versed with the commodity he is importing and the classification of these goods etc. was not unknown to him.
- c. When the cargo was detained by investigating agency and the import was under investigation, they also got to know that the importer was basically an investor who regularly does imports of the said commodity and other various commodities under various IECs. It can be very legitimately seen that the importer is not new or unknown to the commodity imported.
- d. When they received the documents for the subject import shipment, as per their usual practice, they prepared the Check List and sent it to the importer who had checked and approved it and subsequently on his confirmation, the Bill of Entry was filed by the CB. The CB denied the fact that importer mentioned in their statement that they informed the CB that the items were Lead Acid Battery Accumulators and their Parts. They only provided them the documents against which they have prepared the Check List and B/E.
- e. Since they had started import clearance only for 4-5 months then and this was their very first import shipment at Mumbai Customs. This particular commodity was being handled by them for the first time and the classification of the items were done purely as per the documents provided to them and the Check List and classification approved by the importer. They had also inquired and informed the importer about the CPCB Registration which was later done by the importer in November 2022 and submitted the same to the investigating agency.

- f. The actual nature of the goods imported was also different from what was declared in the documents provided to them on the basis of which they had prepared and filed the B/E. The CB stated that they, as a Customs Broker whether in import or export shipments, file the B/E or S/B purely in accordance with the documents provided to them by the exporter or the importer and they have no indication of the actual nature of the goods that are actually imported or exported. That can only be authenticated by the actual importer or the exporter as in this case as well. The importer was very well aware of the goods actually being imported and the actual findings of the contents of the cargo and its mis-classification can only be attributed to the importer.
- g. Prima facie even though this commodity was handled by them for the first time, slight benefit of the doubt can be given to the importer and establish the fact from his statement given to investigating agency that he was a first time importer and what was declared by him in the shipping documents and what has actually been imported could have been mis-classified by him (being his first time) and subsequently the fact that he has accepted the mis-classification genuinely and paid the difference of the duty amount along with the Penalty as well which indicates that as a first time importer they did, through less experience and knowledge, mis declared the goods and accepted the lapse on their part and rectified their lapse by paying the duty amount with the penalty and confirmed the fact that they did not mis-classify the goods intentionally or with any motive to evade duty.
- h. They have been in the business for over three decades and having served hundreds of customers and never flouted any Customs regulations and always worked knowing their limitations as a Custom Broker, they have always fulfilled their obligations properly towards the Customs and their Clients.
- i. In this case they have fulfilled their duties and obligations to the fullest towards the importer and Customs. They have verified the KYC documents prior to taking up the business. They have filed the B/E after the necessary approval of the importer and in a proper way fulfilled all usual formalities and procedures for the clearance of the cargo. Also as earlier mentioned that this was the first import shipment handled by them at Mumbai Docks/Customs and also this particular commodity was handled by them for the first time importer. The CB stated that this was not done with any intention of misguiding the importer or any negligence



on their part or to evade duty or for any such ill-intention, with which they have never worked in the last over three decades.

- j. The statements made by their authorized persons Mr. Narayan Acharya and Mr. Tushar Hule have been recorded by investigating agency at NCH, Mumbai and also the Personal Hearing was done on 8th June 2022 and the subsequent order was passed imposing the differential duty and penalty which has been paid by the importer and also penalty of Rs. 50,000/- has been imposed on the CB which they have accepted and will be paid at the earliest.
- k. In view of the above, this was a genuine case of misclassification of goods which has been accepted by the importer and difference of duty paid by him and not to evade duty on the goods. Moreover, the importer has been available at all times and recorded their statements and has co-operated in every way and has also taken delivery of the goods.
- l. This was their first import shipment at Mumbai Customs. They have been available at all times during the entire course of the investigation and recorded their statements before the Customs Authorities. They have never done anything ever in the past which is against the Customs or the CBLR Regulations and have always extended their fullest cooperation at all times.

IO further submitted that Sh. Jayesh D. Patel, Director of M/s Ghanshyam Patel Freight Forw. Pvt. Ltd (CB No. 11/581), appeared before him on 18.01.2023 for Personal Hearing and reiterated the arguments made in their written submissions dated 16.01.2023. He requested to drop the proceedings by considering all the submissions and their past record.

**16.2 COMMENTS OF INQUIRY OFFICER:** - IO have gone through the facts of the case, Show Cause Notice dated 29.11.2022, the reply to the Show Cause Notice and the submissions by the Customs Broker, analyzed charges levelled against CB in the Show Cause Notice. Inquiry Officer now discussed the charge as under:

**16.2.1 Article of Charge I- Violation of Regulation 10(d) of CBLR, 2018:-** IO submitted that, in the instant case, based on the investigation report, the SCN mentioned that the importer namely M/s J M Enterprises was importing the goods vide B/E no. 5622646 dated 28.09.2021 for the first time and they were not well acquainted with the classification and documentation, thus, they were fully dependent on the expertise of the CB. The CB apparently failed to advise his client M/s J M Enterprises regarding classification rules and Batteries (Management and Handling) Rules 2001 and mandatory requirement of CPCB certificate by the importer and if so, the violation by the importer was not



brought to the notice of Custom's DC/AC hence it appeared that the CB violated the Regulation 10(d) of CBLR-2018.

IO found that during the course of investigation, Shri Manish Goswami, authorized representative of importer, in his statement dated 03.01.2022, stated that since they were first time importer and told the CB that they intended to import lead acid battery parts. He, also stated that they were not well versed in classification of the goods, therefore, it was done by the CB and they did not know about requirement of CPCB for import of impugned goods, because their CB did not tell them about the mandatory CPCB registration. Further it was also submitted that, Shri Tushar H. Hule, G Card Holder of CB M/s Ghanshyam Patel Freight Forw. Pvt. Ltd. (11/581), admitted in his statement dated 26.11.2021 that the goods were mis-classified.

IO further submitted that, CB, vide his written submission dated 16.01.2023, contended that he had suggested the given classification based on the documents submitted by the importer and he has done the KYC of importer and correctly advised the importer. He had sent a checklist to the importer and filed the given B/E only after confirmation from the importer and the CB further claimed that this misclassification can only be attributed to the importer as he only knew the nature of goods being imported.

IO submitted that, the CB failed to produce any document which indicates that he communicated or advised the importer about the mandatory requirement of the CPCB registration. The importer was new, hence it was the sole responsibility of the CB to properly advise his client about proper classification of the goods. The CB never refuted the claims of the importer that proper details of goods was provided to the CB rather he admitted that the goods were mis-classified in his statement dated 26.11.2021.

IO submitted that, there was mandatory requirement of CPCB registration by the importer which is substantiated by the fact that the importer obtained the same subsequently after detection of the mis-declaration. Also, the sales agreement of the importer with M/s N V power also indicates about the nature of goods being imported. Moreover, the CB failed to bring this fact of violations of Customs Act/Allied act, rules and regulations to the notice of DC/AC of the Customs.

As per Regulation 10(d) of CBLR-2018, it is a mandated responsibility of the CB to appropriately advise his client to follow all due procedures and to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof because the importer might not have the expertise. The expression "Shall" in Regulation 10(d) binds the CB to compulsorily advise his client to comply with



the applicable provisions. In this case, CB failed to show any evidence that he has advised his client to comply all the applicable provisions.

IO further submitted that, the CB mentioned that this was his first import case at Mumbai port, that his past tract record is clear, that he and importer cooperated with the Custom authorities in investigation, that the importer paid the differential duty and penalty etc. These submissions are not relevant as the charge levelled is for violation of the provisions of Regulation 10(d) of CBLR, 2018 and these submissions cannot help the CB in countering the violation of not advising his client properly. Accordingly, IO held the charge framed against the CB for contravention of provisions of Regulation 10(d) of CBLR, 2018 as "Proved".

#### **16.2.2 Article of Charge II- Violation of Regulation 10(e) of CBLR, 2018:-**

IO submitted that from the investigation that Shri Manish Goswami, authorized representative of importer, in his statement dated 03.01.2022, had stated that they were not well versed in the classification of goods because they were first time importer, the classification of the goods was done by CB. The CB did not impart correct classification to them but they solely relied on the CB and he mis-classified the goods. Further, Shri Tushar H. Hule, G Card Holder of CB M/s Ghanshyam Patel Freight Forw. Pvt. Ltd. (11/581), admitted in his statement dated 26.11.2021 that the goods were mis-classified.

IO submitted that, as, the importer was novice in Customs clearance procedures and fully dependent on Customs Broker to file the impugned Bill of Entry. It was the mandatory obligation of the CB under CBLR, 2018 to exercise due diligence in order to impart the correct information to the importer regarding classification rules and requirement of CPCB registration certificate with reference to goods imported vide Bill of Entry no. 5622646 dated 28.09.2021.

IO further submitted that, the CB, in his written submission submitted that since they had started import clearance only for 4-5 months then and also this was their very first import shipment at Mumbai Customs. This particular commodity was being handled by them for the first time and the classification of the items were done purely as per the documents provided to them and the Check List and classification approved by the importer. The CB further submitted that the actual nature of the goods imported also different from what was declared in the documents provided to them on the basis of which they had prepared and filed the B/E. The CB stated that they, as a Custom Broker whether in import or export shipments, file the B/E or S/Bill purely in accordance with the documents provided to them by the exporter or the importer and they have no indication of the actual nature of the goods that are actually imported or exported. That can only be authenticated by the actual importer or the exporter as in this case as



well. The importer was very well aware of the goods actually being imported and the actual findings of the contents of the cargo and its mis-classification can only be attributed to the importer.

IO found that, the arguments of the CB in his written submission cannot be substantiated by the findings of the statement of CB and importer. The CB was negligent in the manner that he has not exercised the precaution of demanding all the relevant documents from the importer such as details of the goods, catalogues of goods, nature of the business of importer and the sales agreement of the importer with M/s N V Power etc. The CB failed to submit any proof or any communication with importer that he has demanded further details of the goods or he cautioned the importer about the CPCB registration before the detection of the case. The CB must have carefully inquired about the nature of goods and correctly imparted the mandatory compliance like CPCB registration. He had failed to exercise the due diligence in knowing the nature of goods and failed to provide the correct information about the right classification and mandatory CPCB registration. If the CB could have exercised the due diligence and imparted the correct information to the importer, this mis-declaration could have not been possible.

IO further submitted that, the other submissions mentioned by CB cannot be applicable in the case as they cannot help in proving that the CB exercised due diligence to ascertain the correct information which he imparted to his client and this Article of Charge limits to the violation of Regulation 10(e) of CBLR, 2018. Therefore, IO held the charge framed against the CB for contravention of provisions of Regulation 10(e) of CBLR, 2018 as "Proved".

**17. PERSONAL HEARING AND RECORDS OF PERSONAL HEARING:** - Shri Jayesh Ghanshyam Patel, Director of the CB, M/s Ghanshyam Patel Freight Forw. Pvt. Ltd (CB No. 11/581) appeared for the personal hearing on 31.05.2023. During the Personal Hearing, they submitted the written submission dated 29.05.2023, wherein they reiterated the facts and circumstance stated earlier and further made their submission in reference to the inquiry report dated 17.04.2023. He also requested to drop the proceedings by considering all the submissions and their past record.

**18. DISCUSSIONS AND FINDINGS:** -

I have gone through the case, the Show Cause Notice dated 29.11.2022, Offence Report dated 17.06.2022, material evidence on record, Inquiry Report dated 17.04.2023 along with its RUDs, Submission of CB and examined the role and conduct of CB in the case before me.



**18.1** The charges against the CB i.e. violation of Regulation 10(d) and 10(e) of CBLR, 2018 made vide Show Cause Notice No. 28/2022-23 dated 29.11.2022 issued by Pr. Commissioner of Customs (General), NCH, Mumbai were held as "Proved" by the Inquiry Officer.

**18.2** From the facts stated in Show Cause Notice No. 28/2022-23 dated 29.11.2022, it appeared that the CB, M/s Ghanshyam Patel Freight Forw. Pvt. (11/581) failed to fulfil the obligation of a Customs Brokers as mandated under CBLR, 2018 and had violated the regulation 10(d) and 10(e) of CBLR, 2018.

**18.3** I refrain from reproducing the brief facts of the case which have already been discussed above. I now examine the charges in the SCN sequentially. It has been alleged that the CB did not exercise due diligence in discharging their obligation as required under Regulations 10(d) and 10(e), of CBLR, 2018.

**18.3.1 With regard to violation of Regulation 10(d) of CBLR, 2018**

*"A Custom 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 from the statement of CA, Shri Manish Goswami, authorized representative of M/s J M Enterprises dated 03.01.2022 wherein, he stated that the importer was first time importer; that they got registered as a proprietorship in July 2021; that he was not well versed in classification of the goods; that the classification was done by the CHA and not by the party; that they had told the CHA that the goods were Lead Acid Battery parts; that the goods have been misclassified; that before importation they did not know about requirement of CPCB for their consignment and they were not told by the CHA to get them registered with CPCB. Further, statement of Shri Tushar S. Hule, 'G' card holder of CB firm, M/s Ghanshyam Patel Freight Forwarders Pvt Ltd (CB no. 11/581) was recorded on 26.11.2021, wherein, he inter-alia stated that they verified the KYC of the importer as the importer was a first time importer; that the goods were mis-classified, but that should not be classifiable under CTH 85072000 instead the goods should be classified under CTH 85079090; that the importer got registration certificate of CPCB on 22.11.2021.

The CB in his earlier submission submitted that they also made inquiry later that even though the importer was a first time importer, his relatives were regular importers of the same commodity (Lead Acid Batteries and Spare Parts) under the name of M/s. N. V. Power and hence the importer was very well versed with the commodity he is importing and the classification of these goods etc. was not unknown to him. When the cargo was detained by investigating agency and



the import was under investigation, CB also got to know that the importer was basically an investor who regularly does imports of the said commodity and other various commodities under various IECs. CB submitted that it can be very legitimately seen that the importer is not new or unknown to the commodity imported. When they received the documents for the subject import shipment, as per their usual practice, they prepared the Check List and sent it to the importer who had checked and approved it and subsequently on his confirmation, the Bill of Entry was filed by the CB. The CB denied the fact that importer mentioned in their statement that they informed the CB that the items were Lead Acid Battery Accumulators and their Parts. They only provided them the documents against which they have prepared the Check List and filed the B/E.

In this regard, I agree with IO report that during the course of investigation, the CB failed to produce any document which indicates that he communicated or advised the importer about the mandatory requirement of the CPCB registration. It is well known fact that the importer was new; hence it was the sole responsibility of the CB to properly advise his client about proper classification of the goods. The CB never refuted the claims of the importer that proper details about goods was provided to the CB rather he admitted that the goods were mis-classified in his statement dated 26.11.2021. There was mandatory requirement of CPCB registration by the importer which is substantiated by the fact that the importer obtained the same subsequently after detection of the misdeclaration. Also, the sales agreement of the importer with M/s N V power also indicates about the nature of goods being imported. Moreover, the CB failed to bring this fact of violations of Customs Act/Allied act, rules and regulations to the notice of DC/AC of the Customs. In view of the above, I don't find any contention in CB's claim that this misclassification can only be attributed to the importer as he only knew the nature of goods being imported. I also agree with IO report on this point that the other submissions are not relevant as the charge levelled is for violation of the provisions of Regulation 10(d) of CBLR, 2018 and these submissions cannot help the CB in countering the violation of not advising his client properly.

In view of the above facts, it is evident that the CB failed to 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, therefore, I hold that the CB has violated the Regulation 10(d) of the CBLR, 2018.

### **18.3.2 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 facts on record, I find from the statement of Shri Tushar S. Hule, G card holder of CHA firm, M/s Ghanshyam Patel Freight Forwarders Pvt Ltd (CHA no. 11/581) dated 26.11.2021, wherein, he stated that they verified the KYC of the importer as the importer was a first time importer; that the goods were mis-classified, but they should not be classifiable under CTH 85072000 instead the goods should be classified under CTH 85079090; that the importer got registration certificate of CPCB on 22.11.2021 and he also submitted a copy of the same; that M/s J M Enterprises was importing the subject goods on behalf of M/s N V Power as per sales agreement dated 29.10.2021. Further, Shri Tushar H. Hule, G Card Holder of CB M/s Ghanshyam Patel Freight Forw. Pvt. Ltd. (11/581), admitted in his statement dated 26.11.2021 that the goods were mis-classified. Therefore, it is alleged that the CB failed to comply with the Regulation 10(e) of the CBLR, 2018.

The CB in his submission dated 29.05.2023 submitted that this particular commodity was being handled by CB for the first time and the classification of the items were done purely as per the documents provided to them and the Check List and classification approved by the importer. Further, it was earlier submitted by the CB that the importer was very well aware of the goods actually being imported and the actual findings of the contents of the cargo and its mis-classification can only be attributed to the importer. In this regard, I agree with the IO report that the arguments of the CB in his written submission cannot be substantiated by the findings of the statement of CB and importer. The CB was negligent in the manner that he has not exercised the precaution of demanding all the relevant documents from the importer such as details of the goods, catalogues of goods, nature of the business of importer and the sales agreement of the importer with M/s N V Power etc.

I find that the CB failed to submit any proof or any communication with importer that he has demanded further details of the goods or he cautioned the importer about the CPCB registration before the detection of the case. The CB must have carefully inquired about the nature of goods and correctly imparted the mandatory compliance like CPCB registration. In this context, CB in his submission dated 29.05.2023 submitted that they had also inquired and informed importer about the CPCB Registration which was later done by the importer in November 2021 and submitted the same to the department. However, the CB failed to produce any document which indicates that he communicated or advised the importer about the mandatory requirement of the CPCB registration, therefore, I find that the CB's submission does not holds



any ground on this point. In view of the above, it is clear that the CB had failed to exercise the due diligence in knowing the nature of goods and failed to provide the correct information about the right classification and mandatory CPCB registration.

I find that CB has a very significant role to play in the clearance of goods through Customs and Port Trust. Such clearance involves application of many specialised laws and detailed procedures often contain complex statutory requirements. It is for this reason that Customs Brokers have been licensed. 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 negative consequences that may arise if CB fails to perform their due obligations as mandated under CBLR, 2018. In the subject case, the CB failed to exercise due diligence in knowing the nature of goods and failed to provide the correct information about the right classification and mandatory CPCB registration. I find that if the CB could have exercised the due diligence and imparted the correct information to the importer, this mis-declaration could have not been possible. Further, as discussed above, the other submissions mentioned by CB cannot be applicable in the case as they cannot help in proving that the CB has not violated the provision of the Regulation 10(e) of the CBLR, 2018.

In view of the above facts, it is evident that the CB failed to 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 therefore, I hold that the CB has violated the Regulation 10(e) of the CBLR, 2018.

**19.** I rely on the following judgements and hold that in the instant case, CB, M/s Ghanshyam Patel Freight Forw. Pvt. Ltd. (11/581) have failed to adhere to the responsibilities as was expected in terms of the Regulations made under CBLR, 2018 and therefore rendered themselves liable for penal action under CBLR, 2018.

**19.1** 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 following observation of Hon'ble CESTAT Mumbai in M/s. Noble Agency V/s. Commissioner of Customs, Mumbai:

*"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)".*



**19.2.** Similarly, in case of M/s Cappithan Agencies Versus Commissioner of Customs, Chennai-Viii, (2015(10) LCX 0061), the Hon'ble Madras High Court had found that: -

*“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.”*

*“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.”*

**19.3** Further, I rely upon the judgment of Hon'ble CESTAT Delhi in case of M/S. Rubal Logistics Pvt. Ltd. Versus Commissioner of Customs (General) wherein in para 6.1. Hon'ble Tribunal held as under:

*"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-1 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.** In a regime of trade facilitation, a lot of trust is placed on the Customs Broker who acts as a vital link between Customs Authorities and Importers/Exporters. The CB M/s Ghanshyam Patel Freight Forw. Pvt. Ltd. (11/581) failed to advise the correct classification of the imported goods, requirement of the necessary documents i.e CPCB certificate and did not exercise due diligence in imparting the correct information to the importer. I am of the firm belief and opinion that the CB has failed to discharge duties cast upon him under Regulation 10(d) and 10(e) of CBLR, 2018.

**21.** I hold that the proof of charges in inquiry are acceptable and tenable based on the available evidence, the facts and circumstances of the case and judicial pronouncement mentioned supra which certainly warrant penal action against the CB. Therefore, for their acts of omission and commission, CB M/s Ghanshyam Patel Freight Forw. Pvt. Ltd., (CB No. 11/581) is held liable and guilty for not advising his client regarding the correct classification of the imported goods, requirement of the necessary documents i.e CPCB certificate. I hold that the CB has failed to discharge duties cast upon them with respect to Regulation 10(d) and 10(e) of CBLR, 2018 and are liable for penal action. Accordingly, I pass the following order.

### **ORDER**

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



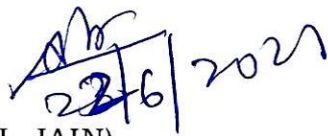
(i) I hereby impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on M/s Ghanshyam Patel Freight Forw. Pvt. Ltd., (CB No. 11/581) (PAN No. AAACG5078RCH001) under Regulation 18 of the CBLR, 2018.

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

(iii) The CB License No.11/581 is ordered to be revoked under Regulation 14 of the CBLR, 2018.

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

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

  
22/6/2021

(SUNIL JAIN)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)  
MUMBAI ZONE-I

To,

M/s Ghanshyam Patel Freight Forw. Pvt. Ltd.  
(CB No. 11/581) (Pan No. AAACG5078RCH001)  
16, Orion, 3rd Floor, Oomer Park,  
Warden Road, Mumbai – 400036

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. SIIB(I), NCH, Mumbai-I
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)

