



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

संचिका सं./F. No.- GEN/CB/582/2022- CBS

आदेश दिनांक/Date of Order: 19.10.2023

CAO No. 44/CAC/PCC(G)/SJ/CBS-Adj

जारी दिनांक/Date of issue: 19.10.2023

संख्या:

DIN : 2023107700000000FAA8

द्वारा जारी : सुनील जैन
प्रधान आयुक्त, सीमाशुल्क(सामान्य)
मुंबई -400 001

Issued By : Sunil Jain
Pr. Commissioner of Customs(Gen.),
Mumbai - 400 001.

ORDER-IN-ORIGINAL मूल आदेश

ध्यान दीजिए/ N.B. :

1. यह प्रति उस व्यक्ति को निजी उपयोग हेतु निःशुल्क प्रदान की जाती है, जिसे यह जारी की जा रही है।
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2. इस आदेश के विरुद्ध अपील माँगे गए राशी के **7.5%** के भुगतान पर सीमाशुल्क अधिनियम, 1962 की धारा 129A(1B)(i) के संबंधमें सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण में स्वीकार्य है, जहाँ शुल्क या शुल्क एवं जुर्माना विवादित हों, या जुर्माना, जहाँ सिर्फ जुर्माना ही विवादित हो। यह अपील इस आदेश के संप्रेषण की तारीख के तीन महीने के अंदर दायर की जाएगी। यह अपील सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण (कार्यविधि) नियमावली, १९८२, के प्रावधानों के अंतर्गत, यथोत्तुखंडपीठ में स्वीकार्य है।

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

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

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

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

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

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

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

6. (i) यदि प्रतिवादित आदेश, जिसके विरुद्ध अपील की गई है, में शुल्क एवं मांगे गए ब्याजवत्तगाएगाए 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. Mac Transoceanic Pvt Ltd (CB No. 11/2661) (AAMCM7388QCH001) hereinafter, referred to as the Customs Broker(CB) situated at B-40, Ashoka Complex, Sector-18, Vashi, Navi Mumbai-400 705, is holding a regular Custom Broker License No 11/2661 issued by Commissioner of Customs, Mumbai under Regulation 7 of the Customs Broker Licensing Regulations (CBLR, 2013) and as such they are bound by the regulations and conditions stipulated therein.

2. The validity of the CB license No. 11/2661 held by M/s. Mac Transoceanic Pvt. Ltd. is life time unless and until revoked in terms of provisions under sub-regulation (2) of Regulation 8A or regulation 14 of CBLR 2018, as amended. Shri Manish Chetwani and Shri Aditya Chetwani are the directors of said CB.

3. This office received letter vide F. No. SG/MISC- 294/2022-23/CIU/JNCH dated 09.12.2022 issued by Commissioner of Customs, (Gen.), JNCH and Investigation reports dated 14.02.2023 from Central Intelligence Unit (CIU), JNCH, Nhava Sheva against Customs Broker, M/s. Mac Transoceanic Pvt. Ltd. (CB No. 11/2661) (AAMCM7388Q) for their role in gross mis-declaration of fabric consignments.

4. Based on the NCTC alert dated 11.10.2022, goods being imported vide DTA Bill of Entry No. 2024008 dated 07.10.2022 filed by CB M/s MAC Transoceanic on behalf of importer M/s Giriraj Corporation (IEC AAFPP0396P) against In-bond Bill of Entry Number 1016547 dated 14.09.2022 through Container Number ZCSU7510665 which were being cleared at M/s Arshiya Ltd, FTWZ, were examined by CIU officers on 13.10.2022 after obtaining due permission from Development Commissioner, Arshiya, FTWZ.

During the examination of the consignment, it was found that the goods have been grossly mis-declared in terms of quantity, description and nature with intent to evade the applicable customs duty in the DTA bill of entry filed by the CB M/s MAC Transoceanic Pvt. Ltd. on behalf of importer M/s Giriraj Corporation (IEC AAFPP0396P). The Modus Operandi of the gross mis-declaration was explored and it was found that the importer/CB has declared more than one type of fabric in the Bill of Entry, one having unit in weight basis and one having measurement basis. Further, the item having less BCD was declared in huge quantity and the item having comparatively higher BCD were declared in nominal quantity, however, on examination it was found to be vice-versa. Thereafter, 16 other consignments of fabric, having similar modus operandi, lying at Arshia, FTWZ pending for clearance under DTA Bills of Entry filed by same CB M/s Mac Transoceanic Pvt Ltd on behalf of three different importers were scrutinized and kept on hold. All the consignments were examined and gross mis-declaration in terms of quantity, description and types

of fabric was found in each consignment which results to the duty evasion of applicable customs duty and same modus operandi has been observed in all BE.

5. Three different Investigation Report all dated 14.02.2023 were received from CIU/JNCH for 03 different importers filled by same CB i.e. M/s MAC Transoceanic Pvt. Ltd. for the goods imported at the same place i.e at M/s Arshiya Ltd, FTWZ for mis-declaration in terms of description, composition, quantity and value and the huge amount of evasion of customs duty.

5.1 On the basis of the Investigation Report F. No. SG/Misc-386/2022-23/CIU/ JNCH dated 14.02.2023, it is observed that the goods covered under DTA Bills of Entry No. 2024011 dated 07.10.2022, 2021681 dated 15.09.2022, 2024010 dated 07.12.2022, 2024016 dated 07.10.2022 and 2024017 dated 07.10.2022 filed by M/s. Infinity Fabric Hub LLP having (IEC- AAIFI7682J)through Customs Broker M/s. Mac Transoceanic Pvt Ltd (PAN No. AAMCM7388Q) have been found mis-declared in terms of description, composition, quantity and value and the differential duty payable for said five DTA Bills of Entry is Rs. 1,28,13,523/-.

5.2 Further, on the basis of the Investigation Report F. No. SG/Misc-385/2022-23/CIU/ JNCH dated 14.02.2023, it is observed that the goods covered under DTA Bills of Entry No. 2024009 and 2024007 both dated 07.10.2022 and 2021680 dated 15.09.2022 filed by M/s. Dixon Healthcare Nutrients & Supplements Pvt. Ltd. having IEC- AAGCD4659P through Customs Broker M/s. Mac Transoceanic Pvt Ltd (PAN No. AAMCM7388Q) have been found mis-declared in terms of description, composition, quantity and value and the differential duty payable for said three DTA Bills of Entry is Rs. 80,70,713/-

5.3 Again, on the basis of the Investigation Report F. No. SG/Misc-294/2022-23/CIU/ JNCH dated 14.02.2023, it is observed that the goods covered under DTA Bills of Entry No. 2021679 dated 15.09.2022, 2024008 dated 07.10.2022, 2024006 and 2024015 both dated 07.10.2022 filed by M/s. Giriraj Corporation having IEC- AAFPP0396P through Customs Broker M/s. Mac Transoceanic Pvt Ltd (PAN No. AAMCM7388Q) have been found mis-declared in terms of description, composition, quantity and value and the differential duty payable for said four DTA Bills of Entry is Rs. 54,21,139/-.

6. It has also been reported that a past import consignment having Bill of Entry Number 2123479 dated 23.08.2022 pertaining to M/s Infinity Fabric Hub LLP (IEC-AAIFI7682J) was dealt by the CB M/s MAC Transoceanic for clearance of

item 'fabric'. This consignment contained undervalued and grossly mis- declared goods with mis-use of DFIA License with an intention to evade applicable customs duty.

7. Further, search was conducted at the premises of the Customs Broker M/s Mac Transoceanic Pvt Ltd on 29.11.2022 and during the search a "TRI PARTY SERVICE AGREEMENT" between the Customs Broker M/s Mac Transoceanic Pvt Ltd and M/s Arshiya Panvel Logistics Pvt. Ltd., a unit of Arshiya Ltd, FTWZ was recovered. From the said agreement, it appears that the Customs Broker(CB) is a registered client at M/s Arshiya Panvel Logistics Pvt Ltd to carry out business related to sale of Fabric in Domestic Tariff area of India and outside India. Prima facie, it appears that the CB is sponsoring the importers to import Fabric from M/s Arshiya Ltd, FTWZ and helping them in mis- declaring the goods in terms of quantity and description.

Also, the said CB in their written submissions dated 18.02.2023 stated that there is an agreement between them and M/s. Arshiya Panvel Logistics Services Pvt. Ltd. As per the CB, loosely states in Clause (A) that the said CB are engaged in the business of fabric product, including resale in DTA. The CB in their statement claim that a wrong statement has crept in the agreement, which was lost sight of, however, the same appears to be an afterthought to counter the allegations contained in the Offence report. Therefore, prima facie, it appears that the CB is sponsoring the importers to import fabric from M/s. Arshiya Ltd FTWZ and helping them in mis-declaring the goods in terms of quantity and description.

From the above facts, it appeared that the Customs Broker M/s Mac Transoceanic Pvt Ltd (CB No. 11/2661) did not exercise due diligence in discharging their obligations as required under Regulation 10(d) and 10(e) of the Customs Brokers Licensing Regulations, 2018 and rendered himself for penal action under Regulations 14, 17 & 18 of CBLR, 2018. Therefore, action was taken and the Customs Broker Licence held by M/s Mac Transoceanic Pvt Ltd (CB No. 11/2661) was suspended vide Order No. 73/2022-23-CBS dated 27.01.2023. Thereafter, ongoing through the case records and all the submissions made in written submission given by the CB in PH, an order to continue the suspension was issued vide order No. 79/2022-23 dated 28.02.2023 under regulation 16(2) of CBLR, 2018 pending enquiry proceedings under Regulation 17 of CBLR, 2018.

8. SHOW CAUSE NOTICE:

M/s. Mac Transoceanic Pvt Ltd (CB No. 11/2661) was issued a Show Cause Notice (SCN) No. 40/2022-23 dated 09.03.2023 vide F. No. GEN/CB/582/2022-CBS was issued by the Principal Commissioner of Customs (General), NCH, Mumbai, Zone-I asking them to show cause as to why the licence bearing no.

11/2661 issued to them should not be revoked and security deposited should not be forfeited and/or penalty should not be imposed upon them under Regulation 14 read with 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018 as elaborated in the Show Cause Notice. They were directed to appear for a personal hearing and to produce proof of evidence/documents if any, in their defense to Shri Mayur Ramesh Manekar, Deputy Commissioner of Customs who was appointed an Inquiry officer to conduct inquiry under regulation 17 of CBLR, 2018.

9. INQUIRY REPORT:

Inquiry Officer submitted Inquiry Report dated 23.08.2023, wherein, the charges against CB M/s. Mac Transoceanic Pvt Ltd (CB No. 11/2661) i.e. violation of Regulation 10(d) and 10(e) of CBLR, 2018 were held as 'proved'. The Inquiry officer stated that personal hearing was granted to the CB on 08.04.2023. The PH was attended by Shri Manish Chatwani, Director of the CB and Shri Prashant V. Kubal, Consultant before Inquiry officer and re-iterated their submission dated 29.03.2023 and submitted certain documents which are incorporated in the discussion and findings in Inquiry Report.

10. CB's WRITTEN SUBMISSION/ RECORD OF PERSONAL HEARING BEFORE Inquiry Officer :-

IO submitted that the CB replied to the SCN vide their letter dated 29.03.2023 and 02.05.2023. As the charge of violation of regulations 10(d) and 10(e) of CBLR, 2018 is concerned, CB made the submissions separately under each clause. IO submitted that he had already taken on record submission by the CB on record and proceeded to discuss all these submissions & examine on their merits:

Summary of CB submission is as under:

- i) Proceeding initiated through the present show cause notice is barred by limitation; the offence report ought to have been served in the month of November, 2022 i.e. within 30 days of the detention of the offence. But, this has not been done in the present case. Further, the suspension order ought to be issued on or before 30.12.2022, but the same was issued only on 01.02.2023 (Din Number generated on 02.02.2023) i.e. with a delay of 32 days; Relied upon documents have not been furnished along with the show cause notice; The bill of entry was filed, only based on the import documents furnished to them; CB are neither aware and not have submitted any such other/actual packing list, in respect of the goods covered by the subject bill of entry; only one packing list was filed by us at the time of filing of the bill of entry; No evidence has been cited or furnished in the impugned order,

to establish that we were aware of another packing list in respect of bill of entry filed by M/s. Infinity Fabric Hub LLP.

- ii) With regard to description, quantity, dimension of goods of the goods covered by the bill of entry filed by M/s. Infinity Fabric Hub LLP, it is submitted that after filing the DTA bill of entry, the Customs Officer who was deputed for examination of cargo, could not identify the goods, as marking and identification numbers were not given in the original packing list. As per his oral instructions, the same was revised with incorporating the identification numbers and markings and thereafter, the very same goods were examined and were subsequently found in order.
- iii) The Customs Broker has neither colluded nor abetted with the importer to evade duty and that he had only performed his role as a Customs Broker and earned reasonable service charges alone.
- iv) The goods were declared in the DTA bills of entry as per the instructions of the importers and the value of the goods was declared as per the invoice issued by the importer.
- v) We deny the allegation that CB has not imparted the correct information to the Customs Authorities. In this regard, in fact, we had imparted the correct information to the Customs Authorities, as furnished by the importers.
- vi) The agreement referred in SCN is a standard format, which is used by M/s. Arshiya and it appears that a wrong statement had crept in the said agreement, which was lost sight of. It is pertinent to note that the investigating officer has not brought out any document to establish that we were engaged in sale of fabrics for or on behalf of any third party. No invoice or sale transaction in our name has been unearthed.

CB further submitted that the case has been adjudicated and all the importers have paid differential duty and penalty. CB have submitted copy of letter dated 22.04.2023 issued by all three importers; wherein, the importers submitted that the Customs Broker M/s. MAC Transoceanic Pvt. Ltd. have been engaged by them for the purpose of providing Custom Broker service and they were not sponsoring them(importers) in any way for import of fabric; that the Customs Broker filed the Bill of Entry based on the import documents given by them and they were not aware about the nature and quality of fabrics or its value. They further submitted that all three importer's statements were recorded by the investigation authority and at no point of time having stated that the Customs Broker were sponsoring or facilitating the import of fabric on their behalf or that they had helped in undervaluing the goods.

The CB submitted that, all the importers have paid the differential duty,

penalty etc.

The CB submitted that suspension of the Customs Broker license has endangered the livelihood of the families of their employees. The CB requested to take sympathetic view.

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

Obligations of CB:

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

Department's contention: -

In the instant case, the said CB has contravened the provisions of Regulation 10(d) as they did not advise his client to comply with the provisions of the Act and the rules and regulations. They did not advise their client (importer) for following the due procedure and to declare the correct quantity and UQC for different fabrics in the DTA bills of entry. The packing list submitted along with DTA bills of entry was not proper and do not contain specific quantity and UQC fabric wise. During the Examination of the Goods by CIU Officers being imported by M/s Infinity Fabric Hub LLP the Customs Broker provided the actual and detailed packing list; wherein, quantity of goods was mentioned which was found during the examination, however, the same was not provided to the Customs while filing DTA Bills of Entry which led to gross mis-declaration. CB failed to produce detailed packing list rather they filed the DTA bills of entry with improper packing list which shows that the CB was aware of the mis-declaration and they appear to have connived with the importer to evade the applicable customs duty by way of undervaluation and mis-declaration in terms of description, quantity and type of fabrics.

Inquiry Officer's report: -

The Charged CB has produced copies of the following Order-in-Originals :

- i) Order No. 1654/2022-23/ADC/NS-G/CAC/JNCH dated 17.03.2023 in respect of Importer M/s. Infinity Fabric Hub LLP (IEC – AAIFI7682J)
- ii) Order No. 1598/2022-23/ADC/NS-G/CAC/JNCH dated 13.03.2023 in respect of Importer M/s. Giriraj Corporation (IEC – AAFP0396P)
- iii) Order-in-Original No. 1597/2022-23/ADC/NS-G/CAC/JNCH dated 13.03.2023 in respect of Importer M/s. Dixon Healthcare Nutrients & Supplements Pvt. Ltd. (IEC – AAGCD4659P)

IO have perused the aforesaid Order-in-Originals and found that in para 5 of the said Order-in-Originals, details of the Test Reports were mentioned as follows :

- (A) Para No. 5 (Table – A) of the Order No. 1654/2022-23/ADC/NS-G/CAC/JNCH dated 17.03.2023 in respect of Importer M/s. Infinity Fabric Hub LLP (IEC – AAIFI7682J)
- (B) Para No. 5 (Table – A) of the Order No. 1598/2022-23/ADC/NS-G/CAC/JNCH dated 13.03.2023 in respect of Importer M/s. Giriraj Corporation (IEC – AAFP0396P)
- (C) Para No. 5 (Table – A) of the Order No. 1597/2022-23/ADC/NS-G/CAC/JNCH dated 13.03.2023 in respect of Importer M/s. Dixon Healthcare Nutrients & Supplements Pvt. Ltd. (IEC – AAGCD4659P)

Based on the examination and testing of the samples by the Textile Committee, correct description of the goods along with the classification and quantity found during the examination, IO found that the importers have grossly mis-declared the impugned goods in terms of description, composition and quantity; PU Coated fabrics was also found in one consignment.

Further, as per the Notification Number 14/2022 -Customs (ADD.) dated 20.05.2022, Anti-Dumping Duty has been imposed on Poly Urethane Leather, which includes any kind of textile coated one-sided or both sided with polyurethane.

From Investigation report, findings of the O-in-O and relied upon documents, IO found that the CB did not advise their client (importers) for following the due procedure and to declare the correct quantity and UQC for different fabrics in the DTA Bills of Entry. The packing list submitted along with DTA Bills of Entry was not proper and do not contain specific quantity and UQC fabric-wise. During the examination of the goods being imported by M/s. Infinity Fabric Hub LLP, the Customs Broker provided the actual and detailed packing list and wherein, quantity of goods was mentioned which was found during the examination. However, the same was not provided to the Customs while filing DTA Bills of Entry which led to gross mis-declaration. IO found that the CB failed to produce detailed packing list rather they filed the DTA bills of entry with improper packing list, which shows that the CB was aware of the mis-declaration and hence it can be concluded that the CB connived with the importer to evade the applicable customs duty by way of undervaluation and mis-declaration in terms of description, quantity and type of fabrics. IO found that in spite of knowledge of the aforesaid discrepancies in the packing list, the CB did not bring these facts to the notice of the Assistant Commissioner of Customs/ Deputy Commissioner of Customs.

IO perused statements of the all three importers viz. M/s. Infinity Fabric Hub LLP, M/s. Dixon Healthcare Nutrients & Supplements Pvt. Ltd. and Statement of Shri Kishore Manjrekar, G-Card holder of Customs Broker M/s. Mac Transoceanic Pvt. Ltd. in three Order-in-Originals. IO found that there was deliberate effort to evade the applicable custom duty and Anti-dumping duty as discussed in the fore-going paras. IO found that penalty has been imposed by the adjudicating authority on the Charged Customs Broker in all three cases for his active involvement in mis-declaration of the impugned goods.

The Charged CB relied upon the following case Laws :

- (I) *Bajaj Enterprises* [2017 (347) ELT 675 (Tri)]
- (II) *Parvath Shipping Agency Vs. Commissioner of Customs (Gen.)*, Mumbai [2017(357)ELT. 296(Tri. Mumbai)]
- (III) *Giavudan Indian Pvt. Ltd. Versus Commissioner of Customs*, Bangalore {2010 (261) E.L.T. 975 (Tri. - Bang.)}, Affirmed in 2016 (337) ELT A42 (Supreme Court)
- (IV) *G.N.D. Cargo Movers Vs. Commissioner of Customs (General)*, New Delhi,
- (V) *Dex Logistics P. Ltd. Vs. Commissioner of Customs*, New Delhi reported in 2019 (369) E.L.T. 1168 (Tri. Del.)
- (VI) *Commissioner Vs Thawerdas Wadhoomal* 2009(240) ELT A143 (Bom.) where the Hon'ble High Court Bench in a judgement reported in 2008 (221) ELT 252
- (VII) *CC, Mumbai Vs M. Vasi* 2003 (151) ELT 312 (Tri.- Mumbai)
- (VIII) *Deepankar Sen Vs CC, Kolkata* 2003 (159) ELT 260 (Tri. Kolkata)
- (IX) *Advent Shipping Agency Versus Principal Commissioner of Customs (A & A)*, Kolkata, reported in (2023) 2 Centax 157 (Tri.-Cal)

Considering the active involvement of the CB in the mis-declaration of the goods and connivance with the importers in this case, the ratios of the judgment sought to be relied upon by the CB are not applicable in the present case as the facts and circumstances are different and clearly distinguishable.

IO found that it was duty of the Customs broker to bring the existence of two sets of Packing List to the notice of the Customs officers at the time of filing the DTA bills of entry, but they appear to have not done their duty. IO found that CB neither advised the importers about provisions of the Customs Act 1962 and the Rules & Regulations nor brought to the notice of the Customs Authorities in case of non-compliance. Accordingly, IO hold the Article of Charge alleging violation of Regulation 10 (d) of the CBLR, 2018 as "Proved".

10.2. Article of Charge-II :- 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";

Department's contention: -

In the instant case, from the documents on the record, the said CB have contravened the provisions of Regulation 10(e) as they have failed to exercise due diligence to ascertain the correctness of the information that they were imparting to their client (importer). It was the responsibility of the CB to exercise due diligence while filing the DTA bills of importer by declaring the true and correct value, description, quantity and UQC. It appears that without any due diligence, the CB has filed the DTA bills of entry on the basis of invoice and packing list which contain vague description and improper quantity. The CB has failed to ascertain the exact quantity and type of fabrics as per their UQC rather filed the DTA bills of entry with improper packing lists. From the gross mis-declaration found in all the consignments of M/s Giriraj Corporation, M/s Dixon Healthcare Nutrients & Supplements Pvt Ltd and M/s Infinity Fabric Hub LLP, it appears that the CB was in hand and gloves with the importer in the mis-declaration of consignments with an intent to evade the applicable customs duty. Further, Regulation 10(e) of CBLR, 2018 obliges the CB to exercise due diligence in ascertaining the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo and baggage. The correct information was not imparted to the Customs Authorities by the CB or its clients which contravenes the Regulation 10(e) of CBLR, 2018.

Inquiry Officer's report: -

The CB has produced copies of the following Order-in-Originals :

- i) Order No. 1654/2022-23/ADC/NS-G/CAC/JNCH dated 17.03.2023 in respect of Importer M/s. Infinity Fabric Hub LLP (IEC – AAIFI7682J)
- ii) Order No. 1598/2022-23/ADC/NS-G/CAC/JNCH dated 13.03.2023 in respect of Importer M/s. Giriraj Corporation (IEC – AAFF0396P)
- iii) Order-in-Original No. 1597/2022-23/ADC/NS-G/CAC/JNCH dated 13.03.2023 in respect of Importer M/s. Dixon Healthcare Nutrients & Supplements Pvt. Ltd. (IEC – AAGCD4659P)

IO have perused statements of the all three importers viz. M/s. Infinity Fabric Hub LLP, M/s. M/s. Dixon Healthcare Nutrients & Supplements Pvt. Ltd. and Statement of Shri Kishore Manjrekar, G-Card holder of Customs Broker M/s. Mac Transoceanic Pvt. Ltd. in three Order-in-Originals. IO found that during the course of adjudication by Addl. Commissioner of Customs, JNCH, the aforesaid importers contended that it was mistake of the supplier while packing the aforesaid consignments. IO found that the importers/CB have not produced

any documentary evidence/ e-mail correspondence with supplier regarding wrong shipment prior to interception of the aforesaid consignments by the CIU, JNCH. Hence, the contention of the importer/CB regarding packing mistake by the supplier is nothing but afterthought. Thus, it is apparent that the Customs Broker M/s. MAC Transoceanic Pvt. Ltd. was hand in glove with the aforesaid importers. IO observed that even adjudicating authority found involvement of the CB in the aforesaid cases of duty evasion and accordingly imposed penalty of Rs. 50,000/- under Section 112 (a) of the Customs Act, 1962 in each aforesaid 03 cases for their omission and commission.

The Charged CB relied upon the following case Laws:

- i) *Kunal Travels (Cargo) Vs. CC, IGI Airport, New Delhi* [2017 (354) ELT 447 (Del. HC)]
- ii) *Vetri Impex v. CC, Tuticorin* as reported at [2004 (172) ELT 347 (Tri.)]
- iii) *M/s. L.M.S. Transport Co. V/s Commissioner of Customs (G) Mumbai*, 2014(299) E.L.T.368(Tri-Mumbai)
- iv) *Commissioner Vs Thawerdas Wadhoomal* 2009(240) ELT A143 (Bom.)
- v) *CC, Mumbai Vs M. Vasi* 2003 (151) ELT 312 (Tri.- Mumbai)
- vi) *Deepankar Sen Vs CC, Kolkata* 2003 (159) ELT 260 (Tri. Kolkata)
- vii) *Akanksha Enterprises Vs. Commissioner of Customs* [2006 (203) ELT 125 (Tri-Del)],
- viii) Hon'ble Tribunal in the case of *Bajaj Enterprises* [2017 (347) ELT 675 (Tri)]

Considering the active involvement of the CB in the mis-declaration of the goods and connivance with the importers in this case, the ratios of the judgment sought to be relied upon by the CB are not applicable in the present case as the facts and circumstances are different and clearly distinguishable.

IO found from the investigation report, findings of the adjudicating authority as well through scrutiny of the relied upon documents, that the Customs Broker has failed to exercise their due diligence and to sensitize the importer to make proper declaration in terms of description, composition, quantity and value. The Customs Broker have not acted in the vigilant manner and not performed their duty efficiently and violated the obligation cast upon them. The charged customs broker has violated the provisions of Regulation 10 (e) of CBLR, 2018 as they have failed to exercise due diligence to ascertain the correctness of the information that they were imparting to their clients (importers). It was the responsibility of the CB to exercise due diligence while filing the DTA bills of entry by declaring the true and correct value, description, quantity and UQC. It is clear that without any due diligence, CB has filed the

DTA Bills of Entry on the basis of invoice and packing list, which contain improper quantity and vague description rather than filing it with correct packing list. IO found that there was deliberate effort to evade the Anti-dumping duty as discussed in the foregoing paras. Accordingly, all the aforesaid three importers and Charged Customs Broker have been penalized by the adjudicating authority. IO found that facts and circumstances of case laws mentioned above by the CB are different from the instant case. Hence, ratio of the above judgement not applicable in the present case. Accordingly, IO hold that article of Charge alleging violation of Regulation 10 (e) of the CBLR, 2018 as "Proved".

Further, it is the modus operandi followed by the all three importers viz. M/s. Dixon Healthcare Nutrients and Supplements Pvt. Ltd., M/s. Infinity Fabric Hub LLP and M/s. Giriraj Corporation operating along with CB M/s. MAC Transoceanic Pvt. Ltd. at the specific place i.e. M/s. Arshiya Ltd., FTWZ as syndicate. It is pertinent to mention that the CB M/s. MAC Transoceanic Pvt. Ltd. has been engaged for the clearance of the various consignment wherein, same modus operandi have been observed. Thus, the Customs Broker M/s. MAC Transoceanic Pvt. Ltd. was hand in glove with the aforesaid importers. IO observed that even adjudicating authority found involvement of the CB in the aforesaid case of duty evasion and accordingly imposed penalty of Rs. 50,000/- under Section 112 (a) of the Customs Act, 1962 in each aforesaid cases for their acts of omission and commission.

The C.B. has relied on the various case laws as mentioned above.

The Inquiry Officer concluded in his Inquiry report that the charges framed against the Customs Broker M/s MAC Transoceanic Pvt. Ltd. (11/2661) in the provisions under Regulation 10(d) and 10(e) of the CBLR, 2018 levelled in the SCN are "proved".

11. PERSONAL HEARING :-

Shri Prashant V. Kubal, authorized representative of CB and Mr. Kishor Manjreker G-card holder with Power of Attorney (PA) of the CB M/S. MAC Transoceanic Pvt. Ltd. appeared for the personal hearing on 03.10.2023, wherein, he stated that he had already submitted written reply to this office on 03.10.2023 (Vakalatnama dtd 29.09.2023 submitted through E-mail on 02.10.2023) and letter dtd. 04.10.2023.

11.1 CB SUBMISSION IN RESPONSE TO INQUIRY REPORT: -

A written submission received in this office on dtd 14.09.2023 against Inquiry Report dtd 23.08.2023; wherein, CB had denied all the allegations and charges contained in the Inquiry report & inter alia submitted following points wise:

A) Inquiry has been conducted and finalized beyond the time limit specified under Regulation 17(5) of CBLR, 2018. Therefore, the proceedings are liable to be set aside on the grounds alone. In the last paragraph of the Inquiry Report dated August 23, 2023 it has been stated that the delay of submission was caused due to the fact that the Inquiry Officer was holding multiple charges at JNCH, Nhava Sheva and due to his subsequent transfer to GST Bhawan. The Inquiry Officer has admitted that he could not finalize the Inquiry within the time limit stipulated. It is submitted that the time limit prescribed for revocation of Customs Broker License, such as issue of show cause notice, submission of Inquiry Report, and issue of order are held to be mandatory. In support of the said contention, CB relied on following judgments:

(i) KTR Logistics Solutions Pvt. Ltd Vs. C.C., Chennai (Order dated 28.11.2019 in W.P.No.3366 of 2019 passed by the Hon'ble High Court of Madras) (ii) Santon Shipping Services Vs. C.C., Tuticorin (Order dated 13.10.2017 in C.M.A.No.730 of 2016 passed by the Hon'ble High Court of Madras) (iii) Impexnet Logistics Vs. C.C. (General) reported in 2016 (338) ELT 347 (Del.) (iv) M/s. R.M. Purushotham Vs. C.C., Chennai (Final Order No. 40609/2019 dated 26.03.2019 passed by the Hon'ble CESTAT, Chennai

B) CB submitted that they had sent representations dated 10.07.23 and 20.07.2023 requesting the Licensing Authority to drop further proceedings in view of the delay caused by the Inquiry Officer in concluding the Inquiry. They had filed a complaint with CPGRAMS which was registered bearing No. CBOEC/E/2023/ 0004631 and it was only thereafter, that the Inquiry Officer has issued the present Inquiry report dated 23.08.2023. Without prejudice to the above contentions regarding the mandatory time limits for completion of inquiry, CB place reliance on the decision of the Hon'ble High Court of Bombay in the case of Principal Commissioner of Customs (General), Mumbai Vs. Unison Clearing P. Ltd. reported in 2018 (361) ELT 321 (Bom.). The Hon'ble High Court has held in paragraph 20 of the said judgment that the Inquiry Officer is bound to explain the delay in completion of the inquiry within the time limits stipulated in the Regulation. Therefore, it is submitted that on this account also the present proceedings are time barred.

C) Without prejudice to the above submission, it is submitted that the Inquiry Officer has not given a detailed finding on the various factual and legal submissions made by us and therefore, the order is non-speaking to this extent. The Inquiry Officer has failed to note that it is now well settled that the role of a Customs Broker is to file the documents as given to him by the importer and he is not expected to weigh the genuineness of any document or the transaction in question.

D) It is submitted that the Inquiry officer has repeatedly held that CB did not

advise the client (importer) declare the correct quantity and UQC for the different fabrics in the DTA bills entry. Firstly, the Inquiry Officer has not explained as to how a Customs Broker is expected to independently verify and analyze the quantity said to contained in the imported consignments unless it is examined and weighed. A Customs Broker only goes by the import documents and the declarations contained herein. They had filed the bills of entry in question based on the invoice and packing list given to us which contained the quantity of the fabrics and the unit price. The packing list contained the bale number, the length (in meters) and the weight of the fabrics. These are the basic declarations that is expected to be mentioned in the Invoice and packing list. The Inquiry Officer has not explained as to what is the so called correct UQC" that has to be declared. It is submitted that there is not a shred of documentary or oral evidence that is placed on record or relied upon by the Inquiry officer to arrive at a conclusion that CB knew about the alleged mis-declaration and quantity or that they had deliberately advised the importer to wrongly declare the UQC. The Inquiry officer has based his conclusion on presumptions and assumptions.

E) A Customs Broker only forwards and files the documents as given to him by his client. This view has also been upheld by the Principal Bench of the Hon'ble CESTAT in the cases of Skytrain Services Vs. Commissioner of Customs (Airport & general) New Delhi reported in 2019 (3690 ELT 1739 (Tri- Del) and in the case of Perfect Cargo & Logistics Vs. CC (Airport-General) New Delhi reported in 2021(376) ELT 649(Tri-Del).

F) The CB placed his reliance on the following judgments:

- i) Hon'ble Delhi High Court in the case of Kunal Travels (Cargo) Vs. CC, IGI Airport, New Delhi (2017 (354) ELT 447 (Del. HC).
- ii) *Vetri Impex v. CC, Tuticorin* as reported at [2004 (172) ELT 347 (Tri.)]
- iii) *Akanksha Enterprises Vs. Commissioner of Customs* [2006 (203) ELT 125 (Tri-Del),
- iv) Hon'ble Tribunal in the case of *Bajaj Enterprises* [2017 (347) ELT 675 (Tri)
- v) *GND Cargo Movers* [2017 (357) ELT 1184(Tri.)
- vi) *Advent Shipping Agency Versus Principal Commissioner of Customs (A & A), Kolkata*, reported in (2023) 2 Centax 157 (Tri.-Cal)
- vii) High Court of Delhi in the case of *Vishnu Kumar Vs. Commissioner of Customs, New Delhi*

G. The CB submitted that the Inquiry Officer further states that "based on examination and testing of the samples by the Textile Committee, correct description of the goods along with the classification and quantity found during the examination, it is clear that the importers have grossly mis-declared the

impugned goods in terms of description, composition and quantity." The very fact that the Department could arrive at a conclusion for finding of mis-declaration only after testing the samples, would further substantiate our case that we were not aware about the mis-declaration just like the Department and came to know about the alleged act of mis-declaration only after the completion of investigation. The Department cannot expect us to know something, which they themselves found after utilizing their resources and after testing the goods. We are merely Customs Brokers who work on small margins and we cannot be expected to weight the genuineness of the any declaration or documents.

H. It is submitted that the second charge is regarding the failure to exercise due diligence to ascertain the correctness of any information which they have imparted to the importer and it is therefore alleged that they have violated Regulation 10(e) of CBLR, 2018. It is submitted that the legal submissions and case laws quoted above would equally apply to the allegation of violation of Regulation 1(e) of CBLR, 2018. The Inquiry Officer has held that CB had failed to ascertain the exact quantity and type of fabrics before filing the bill of entry. However, the Inquiry officer has failed to point out any specific law which mandates such an act by the Customs Broker. The Inquiry Officer has merely gone by the adjudication order passed under the Customs Act, 1962.

I. Further, CB vide letter dtd. 04.10.2023 submitted that during the personal hearing held on 03.10.2023 issue of agreement between Arshiya Ltd., FTWZ and CB was raised. During search conducted by the investigating agency (CIU, JNCH, Nhava Sheva) at the premises of Customs Broker on 29.11.2022 a TRI PARTY SERVE AGREEMENT' between Customs Broker company M/s Mac Transoceanic Pvt Ltd and M/s Arshiya Panvel Logistics Pvt Ltd, a unit of Arshiya Ltd, FTWZ was recovered; the Customs Broker is a registered client at M/s Arshiya Panvel Logistics Pvt Ltd to carry out business related to Sale of Fabric in Domestic Tariff area of India and outside India and prima facie, it appeared that the CB is sponsoring the importers to import Fabric from M/s Arshiya Ltd, FTWZ and helping them in mis- declaring the goods in terms of quantity and description.

CB submitted that the agreement with M/s. Arshiya Panvel Logistics Services Pvt. Ltd clearly states in page No.2 that Customs Broker have been authorized by M/s. Dixon Healthcare Nutrients & Supplement Pvt. Ltd, M/s. Giris Corporation and by M/s. Inifitiy Fabric Hub LLP to carryout various transactions in India including Customs clearance, handling, transportation, warehousing etc., Though the agreement loosely states in clause (A) that they are engaged in the business of fabric product, including resale in DTA, the actual fact is that they were only engaged in Customs clearance and allied services and they are not at all engaging him in sale of any fabric either for or on behalf of any

person. The agreement is a standard format, which is used by M/s. Arshiya and it appears that a wrong statement had crept in the said agreement, which was lost sight of. It is pertinent to note that the investigating officer has not brought out any document to establish that CB were engaged in sale of fabrics for or on behalf of any third party. No invoice or sale transaction in their name has been unearthed. It may also be kindly appreciated that the existence of this agreement does not presume their knowledge regarding the alleged mis-declaration in the imported consignment; no incriminating documents such as financial transactions, invoice, bills, purchase orders etc. were recovered by the investigating Agency during the search conducted on 29.11.2023, to substantiate the claim of sponsoring the import. Apart from the Agreement with Arshiya Ltd, FTWZ no other concrete evidence was found; submitted copies of the letters all dated 22.04.2023 issued by the importers viz. M/s. Dixon Healthcare Nutrients and Supplements P. Ltd., M/s. Giriraj Corporation, and M/s. Infinity Fabric Hub LLP, wherein, they have stated that we have not sponsored them for import of fabrics. None of the three importers have admitted that CB have sponsored them for the import of fabrics.

J. CB submitted that the charges of sponsoring the importers have neither been levelled in the Article of Charge -I- Regulation 10 (d) of the CBLR, 2018 nor in the Article of Charge – II Regulation 10(e) of the CBLR, 2018 of the impugned Show Cause Notice. Hence, this issue is out of scope of the inquiry proceedings. Accordingly, CB written submission viz. 02.10.2023 and 03.10.2023 were restricted to charges of Regulation 10(d) and 10 (e) of the CBLR, 2018.

12. DISCUSSIONS AND FINDINGS: -

I have gone through the case, the Show Cause Notice No. 40/2022-23 dated 09.03.2023, Investigation report dated 09.12.2022, Inquiry Report dated 23.08.2023, material evidence on record, submissions of CB and examined the role and conduct of CB in the case before me.

12.1 The charges against the CB i.e. violation of Regulation 10(d) and 10(e) of CBLR, 2018 made vide Show Cause Notice No. 40/2022-23 dated 09.03.2023 issued by Pr. Commissioner of Customs (General), NCH, Mumbai were held as "Proved" by the Inquiry Officer.

12.2 As per the records, three different Investigation Report all dated 14.02.2023 were received from Central Intelligence Unit(CIU), JNCH, Nhava Sheva for 03 different importers [M/s. Infinity Fabric Hub LLP, M/s. Dixon Healthcare Nutrients & Supplements Pvt. Ltd., and M/s Giriraj Corporation] filled by same CB i.e. M/s MAC Transoceanic Pvt. Ltd. for the goods imported at the same place i.e at M/s Arshiya Ltd, FTWZ for mis-declaration in terms of

description, composition, quantity and value and the huge amount of evasion of customs duty.

Earlier, CIU/JNCH has made case based on the NCTC Alert dated 11.10.2022 for different importers. Goods being imported vide DTA Bill of Entry No. 2024008 dated 07.10.2022 filed by CB M/s MAC Transoceanic on behalf of importer M/s Giriraj Corporation (IEC AAFPP0396P) against In-bond Bill of Entry Number 1016547 dated 14.09.2022 through Container Number ZCSU7510665, were being cleared at M/s Arshiya Ltd, FTWZ. These goods were examined by CIU officers on 13.10.2022 after obtaining due permission from Development Commissioner, Arshiya, FTWZ.

During the examination, it was found that the goods have been grossly mis-declared in terms of quantity, description and nature with intent to evade the applicable customs duty in the DTA bill of entry filed by the CB M/s MAC Transoceanic Pvt. Ltd. on behalf of importer M/s Giriraj Corporation (IEC AAFPP0396P). The modus operandi of the gross mis-declaration was explored and it was found that the importer/CB has declared more than one type of fabric in the Bill of Entry, one having unit in weight basis and one having measurement basis. Further, the item having less BCD was declared in huge quantity and the item having comparatively higher BCD were declared in nominal quantity, however, on examination it was found to be vice-versa. Thereafter, 16 other consignments of fabric, having similar modus operandi, lying at same place i.e. Arshia, FTWZ pending for clearance under DTA Bills of Entry filed by same CB on behalf of three different importers were scrutinized and kept on hold. All the consignments were examined and gross mis-declaration in terms of quantity, description and types of fabric was found in each consignment which results to the duty evasion to the tune of Rs. 2,63,05,375/- as applicable customs duty.

Further, search was conducted at the premises of the Customs Broker M/s Mac Transoceanic Pvt Ltd on 29.11.2022 and during the search a "TRI PARTY SERVICE AGREEMENT" between the Customs Broker M/s Mac Transoceanic Pvt Ltd and M/s Arshiya Panvel Logistics Pvt. Ltd., a unit of Arshiya Ltd, FTWZ was recovered. From the said agreement, it appears that the Customs Broker(CB) is a registered client at M/s Arshiya Panvel Logistics Pvt Ltd to carry out business related to Sale of Fabric in Domestic Tariff area of India and outside India and also appears that the CB is sponsoring the importers to import Fabric from M/s Arshiya Ltd, FTWZ and helping them in mis- declaring the goods in terms of quantity and description.

13. I refrain from reproducing the brief facts of the case which have already been discussed above. I, now examine the charges levelled in the said 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.

13.1. With regard to violation of Regulation 10(d) of CBLR, 2018: -

" a CB 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".

IO in his Inquiry Report found that during the course of adjudication by Additional Commissioner, JNCH; all the three importers contended that it was mistake of the supplier, while packing the aforesaid consignments; importers/CB have not produced any documentary evidence/ e-mail correspondence with supplier regarding wrong shipment prior to interception of the aforesaid consignment by the CIU, JNCH. Hence, the contention of the importer/CB regarding packing mistake by the supplier is nothing but afterthought. Further, IO also observed that adjudicating authority has imposed penalty on the CB in all three cases for his active involvement in mis-declaration of the impugned goods. Hence, the inquiry officer opined that the allegation of violation of Regulation 10(d) of the CBLR, 2018 stands "proved".

It clearly shows that CB failed to advise his all clients to comply with the provisions of the Customs Act, 1962 and the rules and regulations thereof and the said regulation has been violated by the CB. IO found that it was the duty of the Customs Broker to bring the existence of two sets of packing list to the notice of Customs Officers at the time of filing the DTA bills of entry, but CB have not done their duty, rather it shows complacency and involvement of CB in the offence committed by the importers; CB obviously did not advised the importers about provisions of the Customs Act, 1962 and the Rules & Regulations nor brought to the notice of the Customs Authority in case of non-compliance, as they themselves are aware about all these offences, but still wanted to clear the goods.

I find that CB vide their letter dtd. 29.03.2023, 14.09.2023 and 04.10.2023 submitted that, CB can be held to be violating Regulation 10 (d) , only if it established that he was aware about the attempt made by the importer to clear the goods by mis-declaration by undervaluation and that despite knowing this he has abetted or colluded with the importer; they filed the bills of entry in question based on the invoice and packing list given to them, which contained the quantity of the fabrics and the unit price; there is not a shred of documentary evidence or oral evidence to prove that CB knew about alleged mis-declaration and quantity/ UQC.

I find that the case was made by CIU, JNCH, Nhava on NCTC alert. The goods were grossly mis-declared in terms of quantity, description, nature and value to evade huge amount of Customs revenue. There were all along other 16 DTA Bills of exporter for three importers, which were filled by CB on the basis of wrong invoices & packing list at the same place Arshiya, FTWZ, Panvel to evade the duty to the tune of Rs. 2,63,05,375/-. In the Investigation Report, it is mentioned that all the correct packing list were supplied by CB during examination of cargo, which they were already possessing. Further, CB/importers have not produced any documentary evidence / e-mail correspondence with supplier regarding wrong shipment prior to interception of the aforesaid cargo by the CIU, JNCH. Such a large scale of mis-declaration by various importers in various DTA Bills of entry is not possible without the help/connivance of CB. So, I opined that CB was hand in glove with the aforesaid all importers to clear the fabrics from Arshiya, Panvel. Moreover, I am of the considered opinion that a "TRI PARTY SERVICE AGREEMENT" between the Customs Broker M/s Mac Transoceanic Pvt Ltd and M/s Arshiya Panvel Logistics Pvt. Ltd., a unit of Arshiya Ltd, FTWZ was made to carry out business related to sale of fabric in Domestic Tariff area of India and CB is sponsoring the importers to import Fabric from M/s Arshiya Ltd, FTWZ and helping them in mis-declaring the goods in terms of quantity and description.

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

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

Custom House Agent thus can the status of a professionally qualified person akin to an advocate, Chartered Accountant or number of other professions which requires a minimum standards of knowledge for minimum standards of conduct. If the Custom House Agent acts negligently or dishonestly, the Custom House can be defrauded money due to the Government, and in good faith permit import or export of prohibited goods."

From the above facts and circumstances, I am of the considered view that the CB failed to advise the exporter to *comply with the provisions of the Act, other allied Acts (i.e. erstwhile Central Excise Act, 1944) and the rules and regulations thereof* and in case of non-compliance did not bring the matter to the notice of the *Deputy Commissioner of Customs or Assistant Commissioner of Customs*. Therefore, I hold that the CB has violated the provisions of Regulation 10(d) of the CBLR, 2018.

13.2 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;"

It has been mentioned in the Inquiry Report that the contention of the importer/ CB regarding packing mistake by the supplier is nothing but afterthought. The Additional Commissioner of Customs, JNCH (adjudicating authority) found involvement of the CB in the aforesaid cases of duty evasion and accordingly, imposed penalty of Rs. 50,000/- under Section 112 (a) of the Customs Act, 1962 in each aforesaid cases for their omission and commission. IO found that on scrutiny of the relied upon documents, it is apparent that the Customs Broker has failed to exercise due diligence and to sensitize the importer to make proper declaration in terms of description, composition, quantity and value. It was the responsibility of the CB to exercise due diligence while filing the DTA Bills of entry by declaring the true and correct value, description, quantity and UQC. It is clear that without any due diligence, CB has filed the DTA Bills of entry on the basis of invoice and packing list, which contain improper quantity and vague description rather than filing it with correct packing list. There was deliberate effort to evade the anti-dumping duty as discussed in the fore-going paras.

The IO summarized that the CB did not take all the possible measures for due diligence mandated in 10(e) of CBLR, 2018. Hence, the IO opined that the allegation of violation of Regulation 10(e) of the CBLR, 2018 stands "proved"

On analysis of the records, I found that CB has failed to exercise due diligence to ascertain the correctness of the information that they were imparting to their client (importer). It was the responsibility of the CB to exercise

due diligence while filing the DTA bills of importer by declaring the true and correct value, description, quantity and UQC. The CB has failed to ascertain the exact quantity and type of fabrics as per their UQC rather filed the DTA bills of entry with improper packing lists. From the gross mis-declaration found in all the consignments of 03 importers i.e. M/s Giriraj Corporation, M/s Dixon Healthcare Nutrients & Supplements Pvt Ltd and M/s Infinity Fabric Hub LLP, it is clear that CB was hand in gloves with the importer in the mis-declaration of consignments with an intent to evade the applicable customs duty. As per investigation Report, though CB was having original packing list, but they neither file the DTA BE with correct packing list, nor inform the Customs Authorities which contravenes the Regulation 10(e) of CBLR, 2018. I also found that, the CB cannot shy away from the responsibilities cast upon them under the regulation 10(e) of the CBLR, 2018 by stating that determining the mis-declaration in terms of valuation is the officer's responsibility. Therefore, I found that there is no merit in the CB's submission in this regard.

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

14. CB submitted that the SCN dated 09.03.2023 was issued after lapse of 90 days' time limit as provided in the Regulation 17 of CBLR 2018. CB also submitted that Inquiry Report has not been submitted within 90 days of SCN. CB requested to drop the proceedings initiated under Regulation 17(1) of CBLR, 2018.

15. In this regard, it is pertinent to mention that all the three Investigation Report in the case were issued on 14.02.2023 and SCN was issued on 09.03.2023, which is well within 90 days' period. Further, I observe that the IO in his Inquiry Report dated 23.08.2023, has specifically mentioned that the reason for delay in submission of said report was caused due to the holding multiple charges at JNCH, Nhava Sheva during material period and his subsequent transfer to GST formation, PCCO, Mumbai. I find that the reasons given by the IO are reasonable and beyond his control, and was considered on the administrative ground.

15.1 In this regard, I rely on the decision of Hon'ble High Court of Judicature at Bombay in the case of Principal Commissioner of Customs (General), Mumbai versus Unison Clearing P. Ltd. reported in 2018 (361) E.L.T. 321 (Bom.), which stipulates that:

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

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

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

17.1 The Hon’ble Supreme Court in the case of Commissioner of Customs V/s. K. M. Ganatra and Co. in civil appeal no. 2940 of 2008 upheld the observation of Hon’ble CESTAT Mumbai in M/s. Noble Agency V/s. Commissioner of Customs, Mumbai that:

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

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

- i. *The very purpose of granting a licence to a person to act as a Customs House Agent is for transacting any business relating to the entry or departure of conveyance or the import or export of goods in any customs station. For that purpose, under Regulation 9 necessary examination is*

conducted to test the capability of the person in the matter of preparation of various documents determination of value procedures for assessment and payment of duty, the extent to which he is conversant with the provisions of certain enactments, etc. Therefore, the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as CHA, it is seen that while CHA should be in a position to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an Agent for carrying on certain illegal activities of any of the persons who avail his services as CHA. In such circumstances, the person playing the role of CHA has got greater responsibility. The very description that one should be conversant with the various procedures including the offences under the Customs Act to act as a Custom House Agent would show that while acting as CHA, he should not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as CHA by taking advantage of his access to the Department. The grant of licence to a person to act as CHA is to some extent to assist the Department with the various procedures such as scrutinizing the various documents to be presented in the course of transaction of business for entry and exit of conveyances or the import or export of the goods. In such circumstances, great confidence is reposed in a CHA. Any misuse of such position by the CHA will have far reaching consequences in the transaction of business by the customs house officials. Therefore, when, by such malpractices, there is loss of revenue to the custom house, there is every justification for the Respondent in treating the action of the Petitioner Applicant as detrimental to the interest of the nation and accordingly, final order of revoking his licence has been passed.

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

17.3 The Hon'ble CESTAT Delhi in case of M/S. Rubal Logistics Pvt. Ltd. Versus Commissioner of Customs (General) wherein in (para 6.1) opined that :-

"Para 6.1 These provisions require the Customs Broker to exercise due diligence to ascertain the correctness of any information and to advice the

client accordingly. Though the CHA was accepted as having no mensrea of the noticed mis-declaration /under- valuation or mis-quantification but from his own statement acknowledging the negligence on his part to properly ensure the same, we are of the opinion that CH definitely has committed violation of the above mentioned Regulations. These Regulations caused a mandatory duty upon the CHA, who is an important link between the Customs Authorities and the importer/exporter. Any dereliction/lack of due diligence since has caused the Exchequer loss in terms of evasion of Customs Duty, the original adjudicating authority has rightly imposed the penalty upon the appellant herein."

17.4 In a regime of trade facilitation, a lot of trust is being placed on the Customs Broker who directly deals with the importers/exporters. Failure to comply with regulations by the CB mandated in the CBLR, 2018 gives room for unscrupulous persons to get away with import-export violations and revenue frauds. The CB deliberately and knowingly indulged himself in declaring goods of lower rate of duty and value of the goods, to evade huge amount of Customs duty to the tune of Rs. 2,63,05,375/-. The facts on record prove that CB had violated mentioned provisions of CBLR, 2018 with mensrea.

18. I hold that the proof of charges in inquiry are acceptable and tenable based on the available evidence, the facts and circumstances of the case, which certainly warrant penal action against the CB. Therefore, for their acts of omission and commission, I hold that the CB M/s. Mac Transoceanic Pvt Ltd (11/2661) has failed to discharge his duties cast upon him with respect to Regulation 10(d) and 10(e) of CBLR, 2018 and is liable for penal action.

Accordingly, I pass the following order:

ORDER


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) The CB License No. 11/2661 is ordered to be revoked under Regulation 14 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) I hereby impose penalty of Rs. 50,000/- (Rupees fifty thousands only) on M/s Mac Transoceanic Pvt Ltd (11/2661) under Regulation 18 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.


19/10/2023

(SUNIL JAIN)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)

MUMBAI ZONE-I

To,

M/s. Mac Transoceanic Pvt Ltd (11/2661)

EM6830815228N

B-40, Ashoka Complex, Sector-18,

Vashi, Navi Mumbai-400 705,

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