



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.- S/8-39/2017-18-CBS

आदेश दिनांक/Date of Order: 08.06.2023

CAO No. 18/CAC/PCC(G)/SJ/CBS Adj

जारी दिनांक/Date of issue: 09.06.2023

संख्या:

DIN: 2023067700000000CB2C

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, यथोत्तखंडपीठ 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 अंगत 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 जाएगी।

In case where an order is passed by the Adjudicating Authority on an identical issue against the same party, separate appeal shall 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 ब्याजवलागाए गए जुर्माने की राशि रु. पाँच लाख या इस से कम होती है, 1000/-, (ii) यदि यह राशि रु. पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न हो तो रु. 5000/- एवं (iii) यदि यह राशि रु. पचास लाख से अधिक हो तो रु. 10000/- के शुल्क का भुगतान क्रॉस बैंक ड्राफ्ट में भारतीय रिजर्व बैंक से अधिकरण की खंडपीठ के सहायक पंजीयक के पक्ष में जिस स्थान पर खंडपीठ स्थित है, के निम्नलिखित राष्ट्रीय क्रॉस 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 स्टैम्प, 1970 की अनुसूची मद 6 के तहत निर्धारित रु. 50 का कोर्ट फी स्टैम्प लगा होना चाहिए एवं प्रत्येक अपील के संलग्न इस आदेश की उक्त प्रति में रु. 50 का कोर्ट फी स्टैम्प लगा होना चाहिए।

Once copy of the Appeal is filed, the 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 Sharda Clearing & Forwarding Agency Pvt. Ltd. (PAN No. AAFC52649H), (hereinafter referred as the Customs Broker/CB) are holder of Customs Broker License No. 11 /771, issued by Pr. the Commissioner of Customs, Mumbai under Regulation 9(1) of the Customs House Agents Licensing Regulations, 2004 (Now Regulation 7(2) of CBLR, 2018) and as such they are bound by the regulations and conditions stipulated therein.

2. An offence report bearing F. No. SG/INV-40/UKJ/17-18 SIIB (I) dated 04.10.2017 was received from office of the Commissioner of Customs (Import-I), Special Intelligence Investigation Branch (Import), New Custom House, Ballard Estate, Mumbai-400001. Vide said report, it was informed that on the basis of the Scanning Report given by the Container Scanning Division, Mumbai ('CSD, Mumbai) stating that the scanning data was not tallying with the declaration of the goods, the Container No. BSIU-9616714 was recommended for 100% examination by the CSD, Mumbai. The goods in the container were declared as ladies, girls and baby bedroom slippers. The said container was covered under Bill of Entry No. 3350653 dated 22.09.2017 filed by M/s. Al Rehman Impex (IEC No. 0308061080) through their Customs Broker M/s. SCFAPL (Customs Broker No.11/771).

2.2 During the course of examination of the consignment/container, two white HDPE woven bags, which were abnormally heavy, were found at the extreme right rear end of the container. Upon examination of the bags, it was found containing bathroom slippers which were quite heavy in weight. Cutting of the soles of these 38 slippers resulted into recovery of 38 Gold Bars of 1 KG each and purity of 99.99% of 24 Carats with foreign markings valued at Rs. 11,71,54,000/- (LMV). All the 38 Gold Bars were duly seized by the SIIB (Import), New Custom House, Mumbai, under reasonable belief that the same were smuggled into India in violation of the provisions of the Customs Act, 1962 and liable for confiscation there under.

2.3 During the course of investigation conducted by the SIIB (Import), NCH, Mumbai the statements of the following persons were recorded under the provisions of Section 108 of the Customs Act, 1962:

- i. Shri Mustaq Syed Abu Baqr, Importer (Proprietor of importing firm),
- ii. Shri Ravindra Haldankar, Director, M/s. Sharda Clearing & Forwarding Agency Pvt. Ltd. (Customs Broker No.11/771),
- iii. Shri Satish Shelar, Docks Clerk, M/s. Sharda Clearing & Forwarding Agency Pvt. Ltd.

2.4 In his statement the importer, Shri Mustaq Syed Abu Baqr, recorded under Section 108 of the Customs Act, 1962, interalia stated that he had initiated the

steps for bringing the subject Gold Bars illegally into India; that he had visited Bangkok, Thailand and had ordered for the goods i.e. ladies, girls and baby bedroom slippers along with Gold bars; that the goods were supplied by one Shri Vivek from Bangkok with a promise to pay him Rs 25000/- per bar; that Shri Vivek had told him that he would call him to inform as to whom to handover the gold after customs clearance; that one Shri Zuber and one Shri Ilyas had introduced him to Shri Ravindra V Haldankar for the clearance of said goods; that Zuber and Ilyas knew about the concealment and had promised that they would help him to clear the consignment along with concealed goods from the Customs through Ravindra Haldankar, Director, M/s SCFAPL.

2.5 Shri Ravindra Haldankar, Director, M/s SCFAPL (CB), in his statement recorded under Section 108 of the Customs Act, 1962, interalia stated that Shri Zuber Peerzade had met him one and half year back; that he promised him to bring business client, dealing in mixed Chinese goods; that he himself used to get clients dealing in chemical and pharmaceuticals through his own contacts, networking and marketing; that he used to pay Mr. Zuber Peerzade for the bringing business client; that Mr. Ilyas Peerzade and Mr. Zuber Peerzade who were brothers had introduced him to the importer Shri Mustaq Syed Abu Baqr; that he did not know about concealment of Gold in consignment; that he was informed about the concealment of the Gold in the said container by his employee, Shri Santaram Gaikwad, after the examination of the container.

2.6 Shri Satish Shelar, Docks Clerk, M/s SCFAPL in his statement recorded under Section 108 of the Customs Act, 1962 on 28.09.2017 interalia stated that he was looking after the works related to clearance of goods at Docks; that he takes order from Mr. Zuber Peerzade, who in turn, pays him Rs 22,000/.

2.7 Investigation further revealed that Mr. Zuber Peerzade and Mr. Satish R Shelar, who were not the employees of the said Custom Broker, but were involved in the clearance of the subject goods from the Docks; that there was an understanding between Mr. Zuber Peerzade and Shri Haldankar, Director, M/s SCFAPL to the effect that Shri Zuber would bring clearance work and Shri Haldankar would get the Bills of Entry assessed from concerned Groups and thereafter Docks clearance would be taken care by Mr. Zuber Peerzade and Mr. Satish R Shelar.

2.8 It appeared that the smuggling of the gold was a pre-planned activity conspired by the importer along with Mr. Zuber Peerzade and Mr. Ilyas Peerzade & the subject Customs Broker.

2.9 Shri Mustaq Syed Abu Baqr and Shri Ravindra V Haldankar were knowingly concerned to the said seized 38 Kg Gold bars of purity 99.99% of 24 carats, totally valued at Rs 11,71,54,000/- (LMV) and Rs 10,71,12,120/- as per Customs notification and fraudulently attempted to evade duty chargeable thereon and

attempted to import the prohibited gold, Since the importer did not fulfil the stipulated conditions and did not belong to the category of persons who could bring in the said gold in to India, and thereby committed the offence under section 135(1)(a)(i) of the Customs Act, 1962.

2.10 Considering the fact that the accused persons were involved in attempting to smuggle gold into India, the value of which was more than Rs 20 lakhs, accordingly, both the persons Shri Mustaq Syed Abu Baqr and Shri Ravindra Haldankar were arrested.

2.11 In another matters, (i) Vide Show Cause Notice under F. No. SD/INT/DIU/Misc-13/2016 dated 18.11.16 issued by the Additional Commissioner Customs (P) Mumbai, it was reported that container under Bill of Entry No. 6309038 of M/s. Gupta Marketing (IEC No. 0316912280) (importer) was filed by M/s SCFAPL (CB No. 11/771); that on examination it was found that the weight of the container was 21.7 Mts instead of declared weight 15.9 Mts; that packages were of 1155 cartons instead of declared no. 1150 cartons. (ii) Further, in another similar matter, vide Show Cause Notice under F. No. SD/INT/DIU/Misc-14/2015 dated 17.11.16 issued by Additional Commissioner Customs (P) Mumbai, it was reported that Bill of Entry No.6309046 of M/s. Arihant Traders (IEC No. 03150659233) (importer) was filed by M/s SCFAPL (CB No. 11/771); that on examination it was found that packages were of 975 cartoons instead of declared no. 952 cartons.

In both above cases, it was reported that there were gross mis-declaration in description of goods was found other than the declared goods; that some items were found as not declared; that during the investigation it was found that M/s. SCFAPL had totally relied upon Shri Zuber Peerzade and received the import related documents from the said Shri Zuber without properly verifying KYC norms.

2.12 The Customs Act, 1962 as well as Custom Broker License Regulations 2018 provides strict liability on the Customs Broker to verify the antecedents and bonafides of the exporter/importer. In the instant case, it was found that the CB failed to verify the antecedents and bona fides of the importer and also failed to do the KYC norms stipulated in Regulation-11 (n) of CBLR-2013 (now Regulation 10(n) of CBLR 2018).

3. SUSPENSION OF LICENCE: - From the above facts, it appeared that Customs Broker, M/s Sharada Clearing & Forwarding Agency Pvt Ltd did not exercise due diligence in discharging their obligation as required under provisions 11(n) of the Broker Licensing Regulations, 2013. Therefore, the Customs Broker License (CB No. 11/771) was suspended vide Order No. 41/2017-18 dated 12.10.2017 and the same was continued vide order 80/2017-18 dated

13.02.2018 under Regulation 19(2) of CBLR, 2013 (now Regulation 16(2) of CBLR 2018).

4. Further, it is on record that CB license M/s Sharda Clearing & Forwarding Agency Pvt Ltd, Customs Broker license No. 11/771 (PAN No. AAFCS2649H) was suspended vide order N. 67/2017-18 dated 25.01.2018 under regulation 19(1) of the CBLR, 2013 in another case vide F.No. S/8-65/2017-18 CBS.

5. **SHOW CAUSE NOTICE AND REVOCATION OF LICENCE:-** M/s Sharda Clearing & Forwarding Agency Pvt Ltd, (11/771) was issued a Show Cause Notice F. No. 5/8- 39/2017-18-CBS, dated 25.01.2018 by the Commissioner of Customs (General), NCH, Mumbai, Zone-I asking them to show cause as to why license bearing No. 11/771 (AAFC52649H) issued to them should not be revoked and security should not be forfeited or penalty should not be imposed upon them under Regulation 18 read with 20 & 22 of the CBLR, 2013, for their failure with the provisions of Regulations 11(n) of CBLR 2013 (now Regulation 10(n) of CBLR, 2018). Shri V. Nagaraju, Asstt. Commissioner of Customs, was appointed as the Inquiry Officer to conduct inquiry into this case under Regulation 20 of CBLR, 2013. Further the said SCN F. No. 5/8- 39/2017-18-CBS, dated 25.01.2018 was adjudicated vide Order-in-Original No. 28/CAC/CC(G)/RC/CBS (Adj) dated 21.06.2019, whereby revocation of license No. 11/771 was ordered by Adjudicating authority.

6. **ORDER FOR DENOVO PROCEEDINGS:-**

In the instant case, de novo proceeding is conducted in terms of Hon'ble CESTAT, WZB, Mumbai Final Order No. N85643/2020 dated 23.07.2020 and subsequent Order dated 27.07.2022 of Hon'ble Bombay High Court, whereby it was ordered to conduct fresh inquiry in the matter by giving opportunity to the Charged CB to cross-examine the Investigating Officer and to furnish all the requisite documents in adherence of Principles of Natural Justice.

7. **APPOINTMENT OF INQUIRY OFFICER FOR FRESH INQUIRY:-** In de novo proceedings, Shri Gurtesh Matharu, Deputy Commissioner of Customs was appointed as the inquiry officer to conduct inquiry proceedings under Regulation 17(1) of CBLR 2018 in respect of CB M/s SCFAPL (CB No. 11/771) whereby the aforementioned order passed by Commissioner of Customs (Gen) was set aside and the matter was remanded back ordering to conduct fresh inquiry in the subject matter.

8. **INQUIRY REPORT**

Inquiry Officer submitted Inquiry Report dated: 27.03.2023 wherein the charge against CB M/s SCFAPL (CB No. 11/771) i.e. violation of Regulation 11(n) CBLR, 2013 (now regulation 10(n) of CBLR, 2018) was held 'Proved'.

8.2 IO submitted that in interest of natural justice to the CB, three Personal Hearing Memos dated 17.10.2022, 21.10.2022 and 31.10.2022, fixing dates of hearing on 21.10.2022, 28.10.2022 and 08.11.2022 respectively, were issued to the Charged CB firm, M/s. SCFAPL at their registered address through Speed Post. IO further mentioned that it has been verified from the website of Indian Post that all the three Personal Hearing Letters were delivered to the Charged CB. Further, Personal Hearing Memos dated 21.10.2022 and 31.10.2022 were also forwarded to the registered mail of the said CB but no response was received.

8.3 IO further submitted that apart from the above said three Personal Hearing Letters issued by Speed Post, a Final Personal Hearing Letter dated 22.11.2022 fixing date of PH on 29.11.2022 was pasted on the door of the Charged CB firm.

8.4 In spite of giving ample opportunities to the Charged CB firm, neither the Managing Director of the CB firm nor any authorized representative/Advocate appeared before the Inquiry Officer for giving evidence as well as cross-examining the Investigating Officer as desired by them, in the present case.

8.5 Inquiry Officer submitted that the acts of omission and commission on part of the Charged CB firm appeared to be of non-cooperation with a conscious intention of delaying the inquiry proceedings. The Charged CB has filed an Appeal before Hon'ble CESTAT alleging that the department has not provided the requisite documents as well as not granted an opportunity to cross-examine the Investigating Officer. However, now being given an all-out opportunity to appear before the Inquiry Officer for obtaining requisite documents and to cross-examine the Investigating Officer, the Charged CB has failed to obtain the opportunity granted to them in adherence of Principles of Natural Justice.

8.6 Inquiry Officer mentioned that inquiry proceedings being a time bound process, the same cannot be kept pending indefinitely. IO found that ample opportunities were granted to the Charged CB firm to present themselves before him and submit cogent evidence to prove their bona fides, however, they failed to do so. Therefore, Inquiry Officer proceeded to give Inquiry Report on the basis of facts and evidences available on record.

8.7 Past developments in Inquiry Proceedings: - IO submitted that as there is no new submission by the charged CB or CB did not present themselves before him so he took past developments in inquiry proceedings in cognizance and submitted the same as below: -

8.7.1. Referring to the Show Cause Notice F. No. 5/8- 39/2017-18-CBS, dated 29.01.2018 issued by the Principal Commissioner of Customs (General), New Customs House, Mumbai, V. Nagaraju, Asstt. Commissioner of Customs, as an Inquiry officer initiated proceedings to look into the merits of the charge leveled against the CB vis-a-vis oral submissions of the Investigation Officers, Relied

Upon Documents (RUDs) and arguments in defense by the Charged CB and/or his Advocates.

8.7.2. It could be seen that the charge levelled against the CB, M/s. SCFAPL (CB No.11/771) was that the CB had failed in exercising due diligence in discharging their obligations as required under Regulation-11 (n) of the CBLR, 2013 in as much as the CB failed to verify the antecedents and bona fides of the importer and also failed to do the KYC norms stipulated in Regulation-11(n) of CBLR-2013.

8.7.3. Thus, the emphasis was given to verify whether the Charged CB had knowingly/deliberately ignored/failed to verify the antecedents and bona fides of the concerned importer M/s. Al Rehman Impex (IEC No. 0308061080) in the present case and whether he was in possession of such evidencing documents to that effect. The guidelines regarding KYC norms to be followed by the CB while dealing with importers/exporters clients as laid down under Board's Circular No. 9/2010-Cus dated 08.04.2010 vide File No. 502/5/2008- Cus.VI had also been taken into account while dealing with the issue.

8.7.4 Pursuant to the SCN issued by the Pr. Commissioner of Customs (General), NCH, Mumbai, the Charged CB through their Advocates vide letter dated 08.02.2018 denied the charge levelled against them for violation of Regulation-11(n) of the CBLR-2013 and requested to furnish with all the RUDs including Offence Report No. SG/INV-40/UKJ/17-18-SIIB (I), dated 04.10.2017. However, the Investigation Agency, viz. SIIB (Import) vide letter F. No. SG/Misc-16/DC/2017-18-SIIB (I), dated 07.02.2018 addressed to CB Section, NCH, Mumbai expressed their inability to furnish the RUDs since the case was transferred to DRI, Mumbai and requested to correspond with DRI, Mumbai in this regard.

8.7.5 On receipt of the copies of RUDs in the form of Compact Disc (CD) from DRI, Mumbai vide letter F. No. DRUMZU/B/INV-160/2017/3089 dated 20.04.2018, the same were duly forwarded to CB Section for handing over the RUD's to the Charged CB under intimation to the Inquiry officer.

8.7.6 The CB Section, NCH, Mumbai forwarded the copies of RUDs to the Charged CB and copy of said letter was endorsed to the Inquiry Officer. Accordingly, the Charged CB was directed to submit their reply vide letter dated 11.06.2018/18.06.2018 by the Inquiry Officer. In reply, the Advocates M/s. VNA Legal on behalf of the Charged CB, vide their letters dated 18.06.2018 denied the charge leveled against their client and submitted that the importer M/s Al Rehman had given all KYC documents to them and the same were duly submitted to the officers of the SIIB (I). They also mentioned the list of documents, i.e. IEC Copy of M/s. Al Raheman Impex, 2 copies of PAN Cards of Proprietor, copy of

letter dated 20.09.2017 addressed to Bank, Ration Card of Syed Mustaq, BEST Bill and Bank Certificate and argued that they had not contravened the provisions of Regulation-11(n) of CBLR-2013. The Charged CB, through their Advocate, also expressed that they might be given a cross-examination of the Investigating Officer in the interest of Principles of Natural Justice. Accordingly, Inquiry Officer vide letters dated 06.07.2018 and 30.07.2018 requested the Investigation Agency, i.e. SIIB (Import), NCH, Mumbai to direct the Investigation Officers, Shri Vijay Kishor Tete, SIO/SIIB(I) who recorded the statement of Shri Ravindra V. Haldankar, Managing Director of the Charged CB, M/s. SCFAPL to appear before the Inquiry Officer to give an evidence in the matter.

8.7.7 Pursuant to the directions of the Inquiry Officer, Shri Vijay K. Tete, SIO/SIIB(I) presented himself before the Inquiry Officer on 12.07.2018 for offering his evidence in the Inquiry proceedings, after going through the (i). SIIB(I)'s letter dated 04.01.2018; (ii). Copy of Order No. 41/2017 dated 12.10.2017 regarding suspension of CB's License; (iii) Copy of SCN dated 25.01.2017 issued to Charged C.B. and appointment of Inquiry Officer in the matter; (iv) Copy of Search Panchanama dated 27.09.2017 drawn at the Charged CB's office; (v) Copy of statement of Shri Ravindra V. Haldankar, MD of CB firm recorded by him; (vi) Copy of CB's reply dated 18.06.2018 to SCN, Shri Vijay Tete, SIO/SIIB (I) replied that he has recorded the statement of Shri Ravindra V. Haldankar, MD of Charged CB firm M/s. SCFAPL on 28.09.2017; that during the course of investigation he asked Shri Ravindra V. Haldankar, MD of CB firm about availability of KYC documents of importer M/s. Al Rehman Impex for the relevant B/E but Shri Ravindra V. Haldankar failed to produce the same during the recording of his statement; that he also asked Shri Ravindra V. Haldankar, MD of Charged CB firm about the procedure of verification of KYC documents by him in the past cases, upon which Shri Ravindra V. Haldankar, MD of charged CB firm replied that Shri Zuber Peerzade used to handover the copies of KYC documents to him and without verifying the authenticity of KYC documents, he filed the B/E in the past on good faith; that Shri Ravindra V. Haldankar, MD of Charged CB did not submit or produce above mentioned six KYC documents during the course of recording of his statement and that he had not acknowledged the same and that he was not aware whether the CB had submitted KYC documents in the office of SIIB (I); that he had assisted in recording of statement of Shri Ravindra V. Haldankar, MD of Charged CB License and Shri Aslam Peerzade, brother of Shri Zuber Peerzade and that the case was not assigned to him for investigation; that proposal of suspension of CHA License vide SIIB's letter dated 04.10.2017 was not prepared by him as he was not the Investigating Officer in the case and opined to obtain clarification from Shri Upendra Joshi, SIO/SIIB (I) who was the Investigation Officer in the case; that he further concluded that the CB had not

complied with the KYC norms under the provisions of the Regulation 11(n) of CBLR, 2013 on the basis of statement of Shri Ravindra V. Haldankar, MD of CB firm and non-submission of KYC Documents by him and CB's submission that he did not follow the procedure established for KYC norms and merely processed the documents on the basis of trust developed with Shri Zuber Peerzade.

8.7.8 Subsequent hearing was held on 07.08.2018. The hearing was attended by the Charged CB and during the course of hearing, they were shown the following documents: (i) SIIB (I)'s letter dated 04.01.2018; (ii) Copy of Order no. 41/2017 dated 12.10.2017 regarding suspension of charged CB's license; (iii) Copy of SCN dated 25.01.2017 issued to Charged CB and appointment of Inquiry Officer in the matter; (iv) Copy of Search Panchanama dated 27.09.2017 drawn at the Charged CB's office; (v) Copy of statement of Shri Ravindra V. Haldankar, MD of CB firm dated 28.09.2017 recorded by Shri Vijay K. Tete; and (vi) Copy of CB's reply dated 18.05.2018 to SCN. On perusal of the above documents Shri Ravindra Haldankar, submitted/replied that he was aware of the CBLR-2013, obligations laid down under CBLR-2013 and also Regulation-11(n) of CBLR-2013 and that he had complied with the above provisions. That he had visited importer's shop premises at Dongri but unable to recollect the correct location or landmark nearby; that he did not know the exact area of the shop but it might be around 100 Sq. Mtrs; that he did not check importer's sales invoices or any transactions made in the past; that he felt it un-warranted to verify the bona fides of the importer through Police authority and only made enquiries with the neighbours of the importer i.e. Illiyas Bhai, who was also a Noticee in the matter; that Illiyas told him that they were in regular touch for the last 7/8 years and their credentials were not doubtful and hence he relied upon Illiyas version. On being asked about storage of a large consignment in such a small office floor area, Shri Ravindra Haldankar replied that he had made enquiries regarding storage of consignment upon which he had been told that the same would likely to be stored in the warehouse at Cotton Green which he had not seen; that in spite of knowing these facts he processed importer's documents for clearance of consignment; that he had verified the IEC of the importer with the help of his staff and the same was tallying with the details provided by the importer. On being asked how he relied upon importer's genuineness he replied that Shri Zuber introduced the importer (i.e. Shri Sayed Abu Bakar, Proprietor of M/s. Al Rehman Impex) and all import documents were given to him by Shri Zuber and he processed the documents in good faith he had with Shri Zuber and Shri Illiyas. On being asked about proof of acknowledgement of submission of KYC Documents to SIIB I) as submitted by him in reply dated 18.06.2018, Shri Ravindra Haldankar, stated that he had no such acknowledgement but he had submitted the KYC documents to SIIB (I); that SIIB (I) officers recovered all files from his office during search

which might contain all the KYC Documents of the importer; that importer informed him that it was his first time import. However, after feeding data, system did not raise any query, so he processed document and he did not file any First Import Documents. On seeing the statement of SIIB (I) Officer Shri Vijay Tete, he again re-iterated that he had given KYC Documents in SIIB (I) office when he was called by that office for investigation in the matter but he did not have any acknowledgment; that his statement saying that he admitted that he had not followed the established procedure of KYC norms and processed the documents merely on trust developed with Shri Zuber Peerzade. After the above hearing, as requested by the Advocate of the Charged CB, the copies of IEC Code of M/s. Al Rehman Impex, Public Notice No. 03/2015 dated 15.01.2015 regarding First Time Import-verification of documents and a copy of submissions by Shri Vijay K. Tete, SIO/SIIB (I) on 12.07.2018 were given to the charged Customs Broker vide letter dated 08.08.2018.

8.7.9 Pursuant to the above, the Charged CB through his Advocates vide letter dated 10.08.2018 submitted that, the recording of the statement of Shri Vijay Tete, SIO/SIIB(I) prior to hearing granted to the Charged CB in his absence was bad in law and not valid statement and cannot have an evidentiary value. He again re-iterated that they had complied with KYC norms and requested for Presenting Officer's Report for filing their counter defense. The opportunity for personal hearing was again granted to the Charged CB on 16.08.2018 and informed him vide letter dtd. 13.08.2018. Also, Shri Vijay K. Tete Supdt. SIIB (I) was asked to be present on 16.08.2018 if the Charged CB wanted to cross-examine him. In spite of Inquiry Officer's specific directions, the Advocate of Charged CB vide letter dated 14.08.2018 again remained absent and maintained their stand for providing copies of Presenting Officer's Report and further stated that after receipt of copies of Presenting Officers Report, then only they would appear for hearing.

8.7.10 The hearing in the Inquiry proceedings was held on 16.08.2018 and was attended by Shri Vijay Tete, SIO/SIIB(I). However, neither the Charged CB nor his Advocate attended the hearing. The Advocate of Charged CB was also telephonically contacted and requested to remain present but he refused to appear for cross examination of Shri Vijay Tete and stated that only after receiving Presenting Officers Report they would appear along with defense submissions.

8.7.11 Observations with respect to Provisions/Obligations under Customs Brokers Licensing Regulations:

- I. M/s. SCFAPL upon obtaining an Authorization from his client, M/s. Al Rehman Impex (IEC No. 0308061080) by whom they have been for the time being employed as a Customs Broker and shall produce such Authorization

whenever required by the Department and shall transact clearance activity on their behalf. However, in the present case, while dealing with the clearance activity on behalf of M/s. Al Rehman Impex, there was an understanding between Shri Zuber Peerzade and Shri Ravindra Haldankar that Shri Zuber would bring business and Shri Ravindra Haldankar would get the Bs/E assessed from concerned Appraising Groups and thereafter docks clearance work would be taken care by Shri Zuber Peerzade and Shri Satish R. Shelar, who were not an employees of the CB and not holding the Customs passes.

- II. The acts of the CB clearly indicate his negligent and casual approach towards law, rules and regulations. His intention to earn money by illegal means and subletting of his License to other private persons for transacting Customs clearance business through their own private employees evidences that the CB M/s. SCFAPL aided & abetted the smugglers attempting to clear the smuggled goods with an intention to defraud government revenue.

8.7.12 The then Presenting Officer, Shri Santosh Shelar, Appraiser, held that the CB failed to establish his bona fides in dis-charging his liability as required under the provisions of CBLR 2013. Accordingly, the Presenting Officer concluded that the charge framed by the Department against the CB are sustainable.

8.7.13 The then Inquiry Officer submitted his Report dated 16.10.2018 to the Adjudicating Authority, viz. the Pr. Commissioner of Customs (General), NCH, Mumbai. In the said Inquiry Report, the then IO concluded that:

"Based on the above findings, I hold that, the allegations of non-compliance of due and care by Customs Broker M/s Sharda Clearing & Forwarding Agency Pvt., Ltd., by the Department in verifying the KYC norms of the Importer and processing the documents merely trust developed by them with the people connected with the Importer as alleged in the subject SCN issued under F. No. SI 8-39/2017-18 (CBS) dated 29.01.2018 are proved. As their negligence in discharging their responsibility has caused illegal Importation of 40 Nos. of Gold Bars of 1 KG each with Purity of 99.99% of 24 Carats with foreign markings valued at Rs 11,71,54,000/- (LMV) as the same could have been entered in the Indian market as the same was not noticed by the Customs Container Yard staff and other Dock Officials at the port of Importation, which is a serious lapse on their part. This casual or negligent attitude of the Customs Broker may lead to importation of any banned or prohibitory articles into Indian Territory which is completely against the interest of the Department as well as in the interest of the nation. Hence, the violations of Regulation 11(n) of the Customs Brokers Licensing Regulations, 2013, alleged therein, are

strongly proved and the charges framed against them are proper and correct. Accordingly, I hold that the Article of charge- is proved".

8.8 COMMENTS OF THE INQUIRY OFFICER IN PRESENT DE NOVO PROCEEDINGS: -

8.8.1 IO submitted that he has perused the brief facts of the Case, details of Inquiry Proceedings conducted by the then IO, the deposition of the Investigating Officer before the then IO, oral submissions of the CB firm during the then inquiry proceedings, Presenting Officers' Report and the then Inquiry Officers' Report. Inquiry Officer submitted that he has gone through Article of Charge leveled against the Charged CB firm, M/s. SCFAPL (CB No. 11/771, PAN No. AAFCS2649H).

8.8.2 IO submitted that sufficient opportunity has been granted to the CB firm in adherence of the Principles of Natural Justice, however, the Charged CB firm has failed to avail the opportunity and present themselves before him. Therefore, IO did not have any other way but to decide the case ex-parte on the basis of evidence available on record.

8.8.3 IO has scrutinized the submissions made by M/s. SCFAPL, both written and oral, on the Articles of Charge.

8.8.4 Violation of Regulation 11(n) of the CBLR, 2013 by the CB [now Regulation 10(n) of the CBLR 2018]: -

"A CB shall verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;"

With regard to this charge, IO submitted that: -

I. Shri Ravindra Haldankar, Director of CB firm in his voluntary statement recorded under Section 108 admitted that he had not verified the antecedents of the importing firm; that one Zuber Peerzade, an unauthorized person handed over the KYC documents and without verifying the same he filed the impugned B/E No. 3350653 dated 22.09.2017 under good faith; that in spite of first import of the importer he had not filed documents for first import with SIIB (I), NCH, Mumbai in terms of Public Notice No. 03/2015 dated 15.01.2015; that he allowed Shri Zuber Peerzade and Shri Satish R. Shelar to handle the clearance work at Docks in spite of the fact that they were neither employees of CB firm nor Customs has issued any Customs Pass to them. Therefore, it is crystal clear that the CB firm has contravened the provisions of Regulation 11 (n) of CBLR, 2013 by not verifying the antecedents of the importer and following the KYC verification norms as stipulated under mandatory Regulations of CBLR, 2013.

- II. the CB firm is a nodal agency between trade and Customs. It is expected from them that they sensitize their clients to follow the provisions of Customs Act, 1962 and other Allied Acts in force at the time being. They should verify the KYC of their clients and check the antecedents of their clients through authentic sources. It is expected that they should carry out the business in the Customs Notified Area through their authorized employees to whom Customs has issued an Identity Card. The CB firms are bound by various obligations under Regulation 10 of CBLR, 2018 and it is expected that they should comply with the provisions of said Regulation strictly.
- III. however, on perusal of the facts of the present case, it is emerged that the CB firm had accepted the work of clearance of import consignment of M/s. Al Rehman Impex (IEC No. 0308061080) merely on the basis of KYC documents received from Shri Zuber Peerzade, who was neither an importer nor employee of Charged CB firm. Further, the CB firm failed to verify the antecedents of the importer before undertaking the clearance job. They failed to submit First Import Documents to the Department as required under Public Notice No. 03/2015 dated 15.01.2015. They filed the Bs/E and got it assessed from concerned Appraising Group, however, they entrusted work of Docks clearance with Shri Zuber Peerzade and Shri Satish Shelar, both of them neither employee of CB firm nor of importing firm nor they were authorized by Customs to handle clearance work.
- IV. during the course of investigation, it also came on record that the CB firm was not only involved in fraudulent import first time, however, 2-3 cases were being booked and investigated where the Charged CB firm was found to have used the same modus operandi where the cases were registered for gross mis-declaration. Therefore, it appeared that the CB firm is a habitual offender and his acts of negligence may have resulted in importation of prohibited goods such as drugs, arms & ammunition etc.
- V. during the course of earlier Inquiry Proceeding Shri Ravindra Haldankar, Director of Charged CB firm appeared before the then IO and deposed that he had visited the place of the importer and he had submitted the KYC documents to the SIIB(I), however, he failed to substantiate his deposition by producing acknowledgement for submission of KYC documents to the Investigating Agency during the course of investigation. However, it is a matter of fact during his voluntary statement recorded u/s 108 that he failed to give proper answers to the questions about KYC documents and failed to produce the same before the Investigating Agency. Therefore, it appeared that the CB firm did not obtain any KYC documents and merely on the basis of good faith filed the BoE which resulted in recovery of 38 Kgs of Gold Bars attempted to be smuggled in guise of declared goods. Due to timely reporting of CSD, Mumbai and subsequent examination of goods by SIIB (1). NCH, Mumbai foiled the attempt of the syndicate to clear smuggled gold.

VI. the Charged CB firm, M/s. SCFAPL has failed to comply with the provisions of Regulation 11 (n) of CBLR, 2013 and instead of alerting the Department, CB took active part in the gold smuggling by way of filing B/E on the basis of documents received from unauthorized persons and allowed them to handle clearance work at Mumbai Docks. Therefore, it is apparent that the Adjudicating Authority has correctly revoked the License of the Charged CB firm under the provisions of CBLR, 2013/2018.

In view of the facts discussed hereinabove, IO found that the Charged CB firm had contravened the mandatory Regulation 11 (n) of the CBLR, 2013 and habitual nature of committing offences, rendered the CB Licence revocable under the relevant Regulations of CBLR, 2018. The act of omission on part of the CB firm facilitates smuggling of foreign made Gold Bars by way of concealment in the import consignment with an intent to evade applicable Customs Duty as well as import of Restricted Goods without valid authorization. Therefore, IO held the charge against the Customs Broker for violation of the Regulation 11(n) of CBLR 2013 (now Regulation 10(n) of CBLR, 2018) as 'proved'.

9. PERSONAL HEARING & RECORDS OF PERSONAL HEARING

A personal hearing was granted by Principal Commissioner of Customs, NCH, Mumbai to Customs Broker on 27.04.2023, 10.05.2023 and 23.05.2023. Neither the Customs broker nor his representative attended the personal hearing. Nothing was submitted by Customs broker in their defence/reply.

10. DISCUSSIONS AND FINDINGS: -

I have gone through the case, the Show Cause Notice F. No. 5/8- 39/2017-18-CBS, dated 25.01.2018, Offence Report dated 04.10.2017, material evidence on record, Inquiry Report dated 27.03.2023 and examined the role and conduct of CB in the case before me.

10.1 The charge against the CB i.e. violation of Regulation 11(n) of CBLR 2013 (now Regulation 10(n) of CBLR, 2018) made vide Show Cause Notice F. No. 5/8-39/2017-18-CBS, dated 25.01.2018 issued by Commissioner of Customs (General), NCH, Mumbai was held as "Proved" by the Inquiry Officer.

10.2 From the facts stated in Show Cause Notice F. No. 5/8- 39/2017-18-CBS, dated 25.01.2018, it appeared that the CB, M/s Sharda Clearing & Forwarding Agency Pvt. Ltd. (CB No. 11/771) failed to fulfil the obligation of a Customs Broker as mandated under CBLR, 2013 and had violated the regulation 11(n) of CBLR 2013 (now Regulation 10(n) of CBLR, 2018).

10.3 I refrain from reproducing the brief facts of the case which have already been discussed above. Now, I examine the charge levelled in the SCN. It has been alleged that the CB did not exercise due diligence in discharging their obligation

as required under Regulations 11(n) of CBLR 2013 (now Regulation 10(n) of CBLR, 2018).

10.4 Violation of Regulation 11(n) of the CBLR, 2013 [now Regulation 10(n) of the CBLR 2018]: -

"A CB shall verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;"

In the offence report, it is mentioned that Shri Ravindra Haldankar, Director of M/s SCFAPL (CB), in his statement recorded under Section 108 of the Customs Act, 1962, stated that Shri Zuber Peerzade had met him one and half year back and Mr. Ilyas Peerzade & Mr. Zuber Peerzade who were brothers had introduced him to the importer Shri Mustaq Syed Abu Baqr. Offence report also reveals that the importer, Shri Mustaq Syed Abu Baqr, in his statement recorded under Section 108 of the Customs Act, 1962, stated that one Shri Zuber and one Shri Ilyas had introduced him to Shri Ravindra V Haldankar for the clearance of said goods; that Zuber and Ilyas knew about the concealment and had promised that they would help him to clear the consignment along with concealed goods from the Customs through Ravindra Haldankar, Director, M/s SCFAPL. Shri Satish Sehlar, Docks Clerk, M/s SCFAPL in his statement stated that he was looking after the works related to clearance of goods at Docks and he used to take order from Mr. Zuber Peerzade, who in turn, used to pay him Rs. 22,000/.

Investigation further revealed that Mr. Zuber Peerzade and Mr. Satish R Shelar, who were not the employees of the said Customs Broker, but were involved in the clearance of the subject goods from the Docks; that there was an understanding between Mr. Zuber Peerzade and Shri Haldankar, Director, M/s SCFAPL to the effect that Shri Zuber would bring clearance work and Shri Haldankar would get the Bills of Entry assessed from concerned Groups and thereafter Docks clearance would be taken care by Mr. Zuber Peerzade and Mr. Satish R Shelar.

IO submitted in his inquiry report that Shri Ravindra Haldankar, Director of CB firm in his voluntary statement recorded under Section 108 of Customs Act, 1962, admitted that he had not verified the antecedents of the importing firm; that one Zuber Peerzade, an unauthorized person handed over the KYC documents and without verifying the same he filed the impugned B/E No. 3350653 dated 22.09.2017 under good faith; that in spite of first import of the importer he had not filed documents for first import with SIIB (I), NCH, Mumbai in terms of Public Notice No. 03/2015 dated 15.01.2015; that he allowed Shri Zuber Peerzade and

Shri Satish R. Shelar to handle the clearance work at Docks in spite of the fact that they were neither employees of CB firm nor Customs has issued any Customs Pass to them.

I agree with the findings of the Inquiry Report that during the course of investigation, it also came on record that the CB firm was not only involved in fraudulent import first time, however, 2-3 cases were being booked and investigated where the Charged CB firm was found to have used the same modus operandi where the cases were registered for gross mis-declaration. Therefore, it appeared that the CB firm is a habitual offender and his acts of negligence may have resulted in importation of prohibited goods such as drugs, arms & ammunition etc.; that during the course of earlier Inquiry Proceeding Shri Ravindra Haldankar, Director of Charged CB firm appeared before the then IO and deposed that he had visited the place of the importer and he had submitted the KYC documents to the SIIB(I), however, he failed to substantiate his deposition by producing acknowledgement for submission of KYC documents to the Investigating Agency during the course of investigation.

Going through the above facts, I find that in the instant case, the charged CB blindly entered into clearance activity of the consignment imported by M/s. Al Rehman Impex without going into verification of their antecedents and other relevant documents (KYC). I also find from past proceedings that the charged CB also failed to submit KYC documents to investigating agency. Moreover, the charged CB shall transact clearing business in the Customs Station either personally or through an employee duly approved by the Department. However, in the present case, it was pre-planned that after assessment of Bs/E from concerned Appraising Groups, docks clearance work would be taken care by Shri Zuber Peerzade and Shri Satish R. Shelar, who were not employees of the CB and not holding the Customs passes.

From the above facts. I find that regulation 11(n) of CBLR,2013 (now 10(n) of CBLR, 2018) casts a binding responsibility on the CB to enquire about the KYC documents, identity and functioning of his client by reliable and independent sources or documents. It is clear that the charged CB blindly entered into clearance activity of the consignment imported by M/s. Al Rehman Impex (IEC No. 0308061080) without going into verification of their antecedents and other relevant documents (KYC). CB allowed other private persons for transacting Customs clearance business through their own private employees evidences that the charged CB aided & abetted the smugglers attempting to clear the smuggled goods with an intention to defraud government revenue.

Therefore, I find that the charge against the Customs Broker for violation of the Regulation 11(n) of CBLR 2013 (now Regulation 10(n) of CBLR, 2018) as

'proved' and thus I hold that the CB has violated the provisions of Regulation 11(n) of CBLR 2013 (now Regulation 10(n) of CBLR, 2018).

11. With regard to the CESTAT and Hon'ble high court order, whereby it was ordered to conduct fresh inquiry in the matter by giving opportunity to the Charged CB to cross-examine the Investigating Officer and to furnish all the requisite documents in adherence of Principles of Natural Justice. In this regard, I find that: -

- (i) Inquiry Officer during de novo inquiry proceedings granted sufficient Personal Hearing (04) opportunities but the CB failed to attend the same.
- (ii) three Personal Hearing were also granted by the Pr. Commissioner of Customs in response to Inquiry Report but the CB did not attend the personal hearing this time also.
- (iii) IO submitted in his Inquiry Report that then IO also granted sufficient Personal Hearing opportunity, neither the Charged CB nor his Advocate attended the hearing. The Advocate of Charged CB was also telephonically contacted and requested to remain present but he refused to appear for cross examination of Shri Vijay Tete and stated that only after receiving Presenting Officer's Report they would appear along with defense submissions.
- (iv) the CB never tried to contact the Customs Broker Section after passing the order by Hon'ble High Court. The CB should have contacted to CB Section to know the latest proceedings in the matter.

Considering the above facts, I find that the charged CB was non cooperative during the entire proceedings in the subject matter with a conscious intention of delaying the proceedings in the matter. Therefore, I find that the order of Hon'ble Courts has been followed and ample opportunities were given to the charged CB to cross-examine the Investigating Officer and to get all the requisite documents in adherence of Principles of Natural Justice.

12. Further, I rely on the following judgements and hold that in the instant case, CB, M/s Sharda Clearing & Forwarding Agency Pvt. Ltd. (CB No. 11/771) has failed to adhere to the responsibilities as was expected of them in terms of the Regulations made under CBLR, 2013 and therefore rendered themselves liable for penal action under CBLR, 2013.

12.1 Ratio of The Hon'ble Tribunal judgement in the case of Rubal Logistics Pvt. Ltd. Vs. Commr. of Cus. (General), New Delhi reported in 2019 (368) E.L.T. 1006 [Tri. – Del.] is fairly applicable in the present issue. The relevant para 6.1 of the said judgement are as under:

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 misdeclaration/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 CHA 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”.

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

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

12.3 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:-

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 n 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.

13. In a regime of trade facilitation, a lot of trust is being placed on the Customs Broker who directly deals with the importers/exporters. Failure to comply with regulations by the CB mandated in the CBLR gives room for unscrupulous persons to get away with import-export violations and revenue frauds. In this case, it is noticed that the charged CB, M/s. Sharda Clearing & Forwarding Agency Pvt. Ltd. (CB No. 11/771) acted in utter violation of Regulation 11(n) of the CBLR, 2013 and facilitated smuggling of foreign made Gold Bars by way of concealment in the import consignment with an intent to evade applicable Customs Duty as well as import of Restricted Goods without valid authorization, which clearly prove that CB has violated Regulation 11(n) of CBLR 2013 (now Regulation 10(n) of CBLR, 2018) with mens rea.

14. I hold that the proof of charge in inquiry are acceptable and tenable based on the available evidence, the facts and circumstances of the case and judicial pronouncement mentioned supra which certainly warrant penal action against the CB. Therefore, for their acts of omission and commission, CB M/s. Sharda Clearing & Forwarding Agency Pvt. Ltd. (CB No. 11/771) is held liable and guilty for actively involved in the smuggling of foreign made Gold Bars by way of concealment in the import consignment with an intent to evade applicable Customs Duty as well as import of Restricted Goods without valid authorization and being a part of syndicate with mala fide intentions. I hold that the CB has failed to discharge duties cast upon them with respect to Regulation 11(n) of CBLR 2013 (now Regulation 10(n) of CBLR, 2018) and are liable for penal action. Therefore, there is an apprehension that the Custom Broker may adopt similar modus operandi in future and department cannot remain oblivious to the danger

posed by such an eventuality. Accordingly, I am inclined to revoke the CB Licence and pass the following order.

ORDER

15. I, Principal Commissioner of Customs (General), in exercise of the power conferred upon me under Regulation 20(7), of the CBLR, 2013 (Now 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 Sharda Clearing & Forwarding Agency Pvt. Ltd. (PAN No. AAFC52649H) (CB No. 11/771) under Regulation 22 of the CBLR, 2013 (Now Regulation 18 of the CBLR, 2018).

(ii) I hereby order for forfeiture of entire amount Rs. 25000/- (Rupees Twenty-Five Thousand only) of security deposit furnished by the CB, under Regulation 18 of the CBLR, 2013 (Now Regulation 14, of the CBLR, 2018).

(iii) The CB License No.11/771 is ordered to be revoked under Regulation 18 of the CBLR, 2013 (Now 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.


(SUNIL JAIN)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
MUMBAI ZONE-I

To,

M/s Sharda Clearing 86 Forwarding Agency Pvt Ltd (11/771),
174-180, Kusum Vijay House,
2nd Floor, Room No. 5, Modi Street, Fort, Mumbai-400001.

EM 171706633 IN

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.
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 (Adml)