



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/455/2023 -CBS

आदेश दिनांक/Date of Order: 10.04.2024

CAO No. NCH/01/AC/PAM/CBS 2024-25

जारी दिनांक/Date of issue: 10.04.2024

संख्या:

DIN : 2024047700000000C4A5

द्वारा जारी : प्रमोद ए. मेंडन
सहायक आयुक्त, सीमाशुल्क (सामान्य)
मुंबई -400 001

Issued By : Pramod A. Mendon
Asst. 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, यथोत्खंडपीठ 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 क्षेत्री यखंडपीठ, 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 ब्याजवलागाएगए जुर्माने की राशि रु. पाँच लाख या इस से कम होती रु. 1000/-, (ii) यदि यह राशि रु. पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न होती रु. 5000/- एवं (iii) यदि यह राशि रु. पचास लाख से अधिक होती रु. 10000/- के शुल्क का भुगतान क्रॉस 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. Global Links, 105, situated at Bhanot Corner, Pamposh Enclave, Greater Kailash-I, New Delhi -(hereinafter also referred to as the said CB) is a Customs Broker having CB License No. R-008/97/ DEL/CUS/2017 (PAN: AADFG5566JE) valid up to 31.12.2026, issued by the Commissioner of Customs (Airport & General), New Delhi. CB M/s. Global Links was granted permission under Regulation 7 | 3) of CBLR, 2018 to operate CB license at Mumbai Customs Station by Commissioner of Customs, Mumbai. Shri. Jitesh Premji Mav was a G Card Holder (Kardex No. M-2771) in CB M/s. Global Links (CB No. 11-1760) and as such he is bound by the regulations and conditions stipulated therein.

2. The customs Broker M/s. Global Links (CB No. 11-1760) filed Bill of Entry No. 4325118 dated 23.01.2023 for the importer M/s. Aahanna Associates (IEC 0307032027) having address Godown No. 1, First Floor, Shri Arihant Complex, Bhiwandi, Mumbai- 421302. CIU NCH booked a case of importing goods with various discrepancies/ misdeclaration which included BIS violation, mis-declaration with respect to value, quantity, Non-Payment/inappropriate payment of Anti-Dumping Duty, IPR Violation and RE-44 Violation. After investigation, offence report dated 06.02.2022 vide File No. CIU/NCH/INV-64-2022-23 was issued.

3. The importer had imported goods vide Bill of Entry No. 4325118 dated 23.01.2023 from China for home consumption through Customs Broker M/s. Global Links at Mumbai Port.

3.1 Examination of the said goods covered under the B/E dated 23.01.2023 were carried out by the officers of CIU, NCH under two panchnama dated 30.01.2023.

3.2 On examination of the Bill of Entry by CIU officers, various discrepancies were found which included BIS violation, Undeclared Goods, Examination order not followed, mis-declaration with respect to quantity and value, Non-Payment/inappropriate payment of Anti-Dumping Duty, RE-44 Violation.

3.3 Goods were found mis-declared in terms of description and quantity in addition to violation of allied acts i.e. DGFT Notification No. 44(RE-2000)/1997-2002 dated 24.11.2000 and violation of BIS in the Bill of Entry dated 23.01.2023. Also, the goods appeared to be undervalued therefore, the goods appeared to be liable for confiscation under section 111(d), 111(1) and 111(m) and subsequently the goods covered under the Bill of Entry date 23.01.2023 was seized under section 110(1) vide seizure memo no. 07/2022-23 dated 06.02.2023.

3.4 During the course of the investigation, summons was issued to various persons under provisions of section 108 of the Customs Act 1962. Statements of the Importer Shri Punit S. Bansal, IEC holder of Firm M/s Aahanna Associates

(IEC- 0305022776) was recorded on 03.02.2023 wherein he inter alia stated that he is the IEC holder of M/s. Aahanna Associates (IEC-0305022776) he is presently dealing with two suppliers i.e. M/s. Asian Star Supply Chain Ltd and M/s. Advan Exports H K Ltd; that he place orders with them on telephone and through whatsapp that M/s. Global Links, CB Firm is doing the clearance of the consignments; that he is aware that consignment was examined by the Officers of CIU, NCH and he accepts that there are irregularities in the consignment w.r.t declarations as per the BE.; that he does not have knowledge about requirement of compliance of RE-44 notification for the goods found in pre-packaged condition during the examination; that regarding the goods found not conforming with BIS guidelines, that he do not have any proof for his say as all orders placed on telephone or whatsapp call only; that he has no knowledge of IPR rules; that the CB Firm had not informed him anything about the requirements of compliance of RE-44 and the IPR rules; that he has no evidence in support of value declared in the BE. Further statement of Shri Punit S Bansal, IEC holder of Firm Mis Aahanna Associates (IEC-0305022776) was recorded on 14.02.2023 wherein he inter alia stated that he enquired with the supplier and it was informed that they had wrongly sent 240488 pcs of mobile cover in place of declared quantity of 180000 pcs, branded goods i.e. mobile back cover of "Starbucks" brand marking, Polo brand marking and Off White brand marking and Digital Smart Watch of Brand-Gen 8 & Model No Ultra 8 which is not conformity with BIS certificate; that it was also informed by the supplier that they had wrongly sent Mobile charger of Brand-Urban Audio Model no. UA CC and R-41117358 as this is the new model and has not been added in BIS certificate. On being asked about the USB charger of Brand-Tyvon & Model No. TP-X13 wherein the Brand name is not conforming with relevant BIS Certificate, he stated that the factory is approved by the BIS for manufacturing the said goods under the BIS Certificate No R-41091626; that the Suppliers are manufacturing the goods with printed circuit board PCB as per approved BIS standard; that they print and emboss the brand as per his order; that the model no, are always printed and embossed as per the BIS certificate, that the goods i. e. USB charger is conforming with relevant BIS Certificate; that he didn't have any supportive documents or information of any guidelines allowing the printing or embossing the goods with other brands which are not mentioned in the BIS certificate: that he was not aware of requirement of WPC ETA certification for the goods Le Digital Smart Watch of Brand-Gen 8, that he was not informed by the CB in this regard.

3.5 Statement of Shri Vinod P. Nanda, Power of Attorney and G card holder, M/s. Global Links was recorded under section 108 of the Customs Act 1962 on 06.02.2023, , wherein he inter alia stated that the CB Firm license of M/s. Global

Links (CHA No. 11/1760) was issued by Delhi Commissionerate in favor of Shri Ashutosh Mohendra; that he was looking after all the work of CB Firm M/s. Global Links (CHA No. 11/1760) that he had filed the BE no. 4325118 dated 23.01.2023 as per the document submitted by the Importer; that he was present during the examination of consignment imported vide Bill of Entry No. 4325118 dated 23.01.2023 of Ms. Aahanna Associates (IEC: 0305022776); that he agree that the shipping line seal is cut and party seal/ CB seal will be affixed only after the completion of examination by the Docks Officer and the consignment is ready for delivery; that he agree it is his duty to educate his client about the Customs regulations, procedures and other relevant provisions related to import of the goods and that he had informed the importer Shri Punit S. Bansal, M/s. Aahanna Associates (IEC:0305022776) about the requirements of compliance RE-44, the IPR rules and BIS guidelines. Further statement of Shri Vinod P. Nanda, Power of Attorney & G-card holder (Kardex No. N-983) of CB Firm M/s. Global Links (CHA No. 11/1760) was recorded by CIU on 08.02.2023 wherein he inter alia stated that he is aware of the provisions of the CBLR, 2018; that the information of holding the three containers by CIU was received by him in the night on 25.01.2023 and the same was informed to the Importer immediately, that he is aware that when the containers no. SEGUS573257 and KMTU9302102 imported vide the BEs No. 4324995 and 4325182 both dated 23.01.2023 were put on hold by the CIU, they are affixed with party seal after the examination by the Docks Officers and they are ready for delivery., that the examination of the container was completed by the Docks Officer and then the container was affixed with party seal.

3.6 The statement of Shri Jitesh Premji Mav holding G category pass (Kardex No. M-2771) of the CB Firm Ms. Global Links (CHA No. 11/1760) was recorded on 08.02.2023 wherein he inter alia stated that he is aware of the provisions of CBLR 2018; that he presented the document related to the container no. TXGU5031954 imported vide BE No. 4325118 dated 23.01.2023 to the Docks Officers, Shri Sarfaraz Ahmed, Appraiser for clearance at about 03:00 PM on 25.01.2023: that the Docks Officer Shri Sarfaraz Ahmed, Appraiser completed the examination at about 06:30 PM: that thereafter, they affixed the party seal and loaded the container on the truck that regarding the discrepancies noticed regarding quantity/description/Re- 44 compliance/BIS compliance found by the CIU during the re-examination of said BE, he stated that the Dock Officer had not raised any query during the examination of the goods of said BE: that the Party Seal/CB Seal JZN 001119 was affixed by him after the completion of examination by the Docks Officer, that the Cut mark on the cartons were made by the laborer in presence of the Docks officer and few cartons were also opened by them in presence of the Docks Officer. Further statement of Shri Jitesh Premji

Mav. G-card holder of CB Firm M/s. IEC holder of Firm M/s. Global Links (CHA No. 11/1760) was recorded on 15.02.2023. On being asked about the discrepancies noticed during the re-examination of the consignment under the BE No. 4325118 dated 23.01.2023 by CIU, he stated that the Dock Officer had not raised any query during the examination of the goods of said BE on 25.01.2023 and he also didn't notice the same; that he was also not provided by the Importer any ETA approval for the goods i.e. digital smart watch; that the Docks Officer check only the Model no. and R No. and not the brand; that he didn't have any supportive documents or any guidelines which allow the printing or embossing the goods with other brands which are not mentioned in the BIS certificate; that he knew that it is the duty of CB to advise the importer to comply with the extant rules and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs; that in this case, the Dock Officer had not raised any query during examination of the goods of said BE on 25.01.2023; that he also didn't notice the same hence he didn't inform the DC Docks about any discrepancies.

3.7 On the basis of above offence report concluded that it appears that the noticee had violated Regulation 10(d), 10(e), 10(m) and of CBLR 2018.

4. As the CB was issued license from Delhi Customs, offence report was sent to Delhi Customs (General) who in turn requested that as G-category Pass (KARDEX NO. M-2771) of Shri Jitesh Premji Mav employee of M/s Global Links was issued by the Office of the Principal Commissioner of Customs (General), New Customs House, Mumbai, action under CBLR-2018 against Shri Jitesh P. Mav G-Card holder, employee of M/s Global Links may be initiated at our end. Accordingly, SCN dated 05.12.2023 was issued to Shri. Jitesh P. Mav was issued from this Commissionerate.

5. *SHOW CAUSE NOTICE: Shri. Jitesh P. Mav was issued a Show Cause Notice (SCN) No. 29/2023-24 dated 05.12.2023 by the Assistant Commissioner of Customs (CBS), NCH, Mumbai, Zone-I asking him to show cause as to why G-Card issued to him should not be cancelled and/or penalty should not be imposed upon him under Regulation 18 of the CBLR, 2018 for his failure to comply with the provisions of CBLR, 2018 within 30 days from the date of issue of the notice.*

6. PERSONAL HEARING AND RECORDS OF PERSONAL HEARING :-

Opportunity of personal hearing was granted to the noticee on 21.03.2024. Shri Jitesh P. Mav, G card holder of M/s Global appeared for personal hearing and he submitted KYC documents of the Importer and acknowledgement letter by the importer wherein the Importer was advised to

comply BIS, WPC and LMPC rules/acts and re-iterated the contents of his submission.

7. DISSCUSSION AND FINDINGS: -

I have carefully gone through the facts of the case, material evidence on record, the Show Cause Notice 29/2023-24 dated 05.12.2023, and written and oral submissions of the said G card holder.

7.1 I observe that the charges against the noticee is for violation of Regulation 10(d) 10(e) and 10(m) of CBLR, 2018 has been made vide the Show Cause Notice.

7.2 Now I examine the charges in the SCN sequentially. For clarity I am reproducing, the charges levelled against the noticee in the SCN, his submissions w.r.t to specific charges.

7.3 With regard to violation of Regulation 10(d) of CBLR, 2018:

7.3.1 *The Regulation 10(d) of CBLR, 2018 reads as: -*

“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;”

I find that the said SCN alleges that on perusal of the offence report, it appears that M/s Global Links and their employee Shri. Jitesh Premji Mav, G Card Holder failed to properly advise their client M/s. Aahanna Associates regarding the rules and regulations of customs and allied acts by not informing them about the declarations to be made for pre-packaged goods falling under the purview of General Note 5 "packaged products" of ITC (HS) read with DGFT Notification No. 44(RE-2000)/1997-2002 dated 24.11.2000 and also for the wireless equipment which require mandatory requirements of ETA certification from WPC. It is the responsibility of the Customs Broker and their employees to inquire about the condition (i.e. pre-packaged or bulk), specifications of the goods etc. with the importer and advise the importer to comply with the extant rules which was not done in the instant case. The Customs Broker and their employee Shri. Jitesh Premji Mav has also failed to inform/bring this to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Further Shri Jitesh P Mav, G-card holder was present during the examination by the Docks Officer on 25.01.2023 but he didn't bring out the discrepancies in the goods regarding quantity, non-compliance of RE-44 provisions. BIS norms and ETA certification in the notice of the Docks Officer nor inform the DC/Docks. By doing so, it appears that the

Customs Broker and their employee Shri. Jitesh Premji Mav have violated the provisions of Regulation 10(d) of CBLR, 2018.

7.3.2 w.r.t. violation of Regulation 10(d) the noticee submitted that:

i) The Noticee has complied with the Regulation 10(d) as after carrying out KYC of the importer M/s Aahana Enterprise, the importer provided documents i.e. Import invoice, Packing List, BIS Certificate for filing the bill of entry. On perusal of the documents, CB M/S Global Links vide letter dated 24/12/2023 informed the importer regarding compliances of BIS, WPC Licence and LMPC, to be fulfilled for import clearance of their consignment.

ii) Further, Shri Vinod Nanda, Power of Attorney and G-Card holder of CB M/s Global Links in his statement recorded on 06/02/2023 under Section 108 of the Customs Act 1962, stated that he had advised the importer Shri Pawan Bansal about the requirement of compliance of Re-44, IPR Regulations and BIS guidelines.

iii) Offence Report dated 20/02/2023, culminated in issuance of SCN. The SCN has relied upon the Statement of Shri Punit Bansal recorded under Section 108 of the Customs Act 1962 on 02/03/2023, wherein he stated that he was not aware of requirement of RE-44 notification, IPR Rules and CB did not inform about such requirements to allege noncompliance by CB resulting in violation under CBLR 2018.

iv) However, the authorities while issuing SCN has not given cognizance to statement of Shri Vinod Nanda, Power of Attorney and G-Card holder of the CB recorded under Section 108 of the Customs Act 1962 on 06/02/2023, wherein he stated that he had informed the importer Shri Punit Bansal about the requirements of compliance of RE-44, the IPR Rules and BIS Guidelines in para 5 (2) of the SCN.

v) It is well settled in law; that in cases of such contradictory statements, the custom officer recording the statement has to ensure the truthfulness of the statement so recorded before arriving at the decision to level charges against any person. Whereas, in the present case, the SCN has relied upon the statement of the importer without ensuring the truthfulness and correctness, framing charges against the noticee is not correct and not permissible in law.

vi) Reliance is placed on the decision of the Hon'ble Supreme Court in case of Commissioner of Customs (Imports), Mumbai V/s Ganpati Overseas, reported in (2023) 11 Centax 101 (S.C.), wherein while dismissing the Appeal of the revenue, in para 27 & 28 held that;

27. Again, in Union of India v. Padam Narain Aggarwal, AIR 2009 SC 254/2008 (231) E.L.T. 397 (S.C), this court considered the provision of Section 108 of the Customs Act in great detail and thereafter observed that the said section obliges the person summoned to state the truth upon any subject in respect of which he is being examined. He is not absolved from speaking the truth on the ground that such statement is admissible in evidence and could be used against him. The provision thus enables the custom officer to elicit the truth from the person examined. The underlying object of Section 108 is to ensure that the officer questioning the person gets all the truth concerning the

incident. However, a person called upon to make a statement before the Customs authorities is not an accused. The entire idea behind Section 108 is that the Customs officer questioning the person must gather all the truth concerning the episode. If the statement so extracted is untrue, its utility for the officer gets lost. Therefore, statements recorded under section 108 of the Customs Act are distinct and different from statements recorded by a police officer during the course of investigation under the Criminal Procedure Code.

28. Thus, what is deducible from an analysis of the relevant legal provisions and the Corresponding judicial pronouncements is that a customs officer is not a police officer. Further, the person summoned and who makes a statement under section 108 is not an accused. However, a statement made by a person under section 108 of the Customs Act before the concerned customs officer is admissible in evidence and can be used against such a person. Object underlying Section 108 is to elicit the truth from the person who is being examined regarding the incident of customs infringement. Since the objective is to ascertain the truth, the customs officer must ensure the truthfulness of the statement so recorded. If the statement recorded is not correct, then, the very utility of recording such a statement would get lost. It is in this context that the customs officer who is empowered under section 108 to record statement etc. has the onerous responsibility to see to it that the statement is recorded in a fair and judicious manner providing for procedural safeguards to the concerned person to ensure that the statement so recorded, which is admissible in evidence, can meet the standard of basic judicial principles and natural justice. It is axiomatic that when a statement is admissible as a piece of evidence, the same has to conform to minimum judicial standards. Certainly, a statement recorded under duress or coercion cannot be used against the person making the statement. It is for the adjudicating authority to find out whether there was any duress or coercion in the recording of such a statement since the adjudicating authority exercises quasi-judicial powers. [Emphasis supplied].

vii) Ratio of the above decisions is squarely applicable to the present case, in as much as that the statements recorded by the officer to the extent of advising the client in respect of RE-44 Notification, BIS, IPR Rules and Allied acts are contradictory. In such a situation, the officer should have confronted the said persons or should have produced corroborative evidence to ensure the truth and correctness of the statement. No efforts have been made by the custom officer recording the statement to find out the truth and correctness of the incidence in a fair and judicious manner. In absence of which utility of recording the statement is lost. Therefore, statement of the importer recorded on 02/03/2023 under Section 108 of the Customs Act 1962, is not admissible as evidence to allege noncompliance against the noticee. Accordingly, SCN is required to be dropped.

viii) In the present case, CB vide letter dated 24/12/2022, acknowledged by the importer M/s. Aahana Enterprise, informed regarding compliance of BIS, IPR, ETA and other allied acts pertaining to their shipment clearly proves the bona-fide of the CB of discharging obligation in terms of CBLR 2018. The importer must be made available for cross-examination.

ix) The above truth has also been confirmed by Shri Vinod Nanda, Power of Attorney of CB in his statement recorded on 06/02/2023 about informing the importer of the above compliances as well as RE 44 Notification.

x) The noticee submits that he was present during the examination of the goods by the Docks officer on 25/01/2023. The goods were examined after opening the cartons before the customs authority. The officer completed examination and gave out of charge on 25/01/2023. No discrepancy in terms of Quantity, RE-44 Notification, BIS, ETA or IPR regulation was reported by the officer. In the circumstances, when the Docks officer after verifying all the aspects has given out of charge without raising any discrepancy or objection, how the Noticee or a CB can be held responsible for not informing DC/Docks about the discrepancy? As a matter of fact, there was no discrepancy raised by the Docks officer at the time of examination on 25/01/2023 who gave out of charge. Therefore, when the discrepancy did not exist, question of reporting to DC/Docks did not arise at all.

xi) In fact, it was the duty of the Docks officer to report the discrepancy, if noticed at the time of examination to DC/Docks and subsequently to the respective group for further action which is not done in the present case. In fact, he gave a clean report and out of charge. The Investigation Report and SCN do not highlight any lapse on part of the officer. It only alleges lapse by noticee & CB of not reporting discrepancy to DC/Docks that too after the goods were examined by CIU.

xii) The Noticee submits that CB operates on the basis of documents supplied to them by the importer and does not see goods before they arrive at the customs area. On the basis of documents provided by the importer, the CB had complied the due diligence, informed and advised the importer regarding various rules, regulations and other statutory provisions applicable to the shipment. This entire case is detected after examining the goods. In the circumstances, alleging non-compliance by the Noticee under Regulation 10 (d) of CBLR 2018, proposing cancellation of G-Card and imposing penalty for not informing DC/Docks, when the goods were found as declared in the import documents by the Docks officer is baseless and contemptuous, hence charges are required to be dropped. In the case of Jayesh Shah (W.P.No.1421/2021), the Hon'ble Bombay High Court vide its Order dated 4.10.2022 has inter alia held as under:

"In our view, if an FCL container has been loaded on board a ship, prima facie, no-one except exporter or person who stuffed the containers will know what was inside the container.

The Custom House Agent, which the Petitioner was, only files the Bills of Entry on behalf of the importer relying on the documents provided to him by the importer, and if there is mis-match between what is mentioned in the documents given to the Customs House Agent to file Bills of Entry and what is found in the FCL container, prima-facie, the Custom House Agent cannot be made liable.

To impose penalty on such Custom House Agent and without any satisfactory findings that he knew what was inside the 7x40 ft. containers

or he knowingly or intentionally made any declaration would certainly cause undue hardship."

7.3.3 From the offence report and submissions of Shri Jitesh P. Mav, G card holder of M/s Global, I find that on investigation of the B/Es by the CIU it was found that goods were mis-declared in several respects, and Shri Jitesh P. Mav, G card holder of the CB was present during the examination, he witnessed all these irregularity in the consignment but he failed to inform above mentioned discrepancies and violations of various allied acts to the Deputy/Assistant commissioner of Customs. Thereby contravened the provision of Regulation 10(d) of CBLR, 2018.

From the above facts and circumstances, I am of the considered view that the noticee failed to discharge his responsibilities mandated on him under 10(d) of CBLR 2018. Therefore, I hold that the CB has violated the provisions of Regulation 10(d) of the CBLR, 2018.

7.4 With regard to violation of Regulation 10(e) of CBLR, 2018:

7.4.1 Regulation 10 (e) of CBI-R 2018 reads as under:

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

I find that the said SCN alleges that in the instant case, goods declared as Mobile Back Cover, Tab Back cover, Mini Watch Strap, Digital Smart watch, Handsfree cover Wired MP3 Earphone, Audio Jack Connector, Microscope covered under Bill of Entry No. 4324995 dated 23.01.2023 and goods declared Mobile Back Cover, Massage Chair, Laptop Charger, USB Charger, various batteries covered under Bill of Entry No. 4325182 dated 23.01.2023 were found in pre-packaged condition. Goods declared as Mobile Back Cover, Handsfree cover, Mobile Charger, USB Charger, sport shoes, Mini watch Strap, watch cover, digital Smart watch, Tab Back cover, Car Mobile Holder covered under Bill of Entry No. 4325118 dated 23.01.2023 were found in pre-packaged condition. Further, the Digital Smart Watch being a wireless equipment its import requires mandatory WPC ETA certification which was not available to the Importer. The Customs Broker and their employee by not inquiring about the condition of the goods i.e. pre-packaged or bulk and by not informing the importer about the requirement compliance of RE-44, it indicates that the Customs Broker has not exercised due diligence to ascertain the correctness of information to his client thereby violating the provisions of Regulation 10(e) of the CBLR, 2018. Shri Jitesh P. Mav, G card Employee of the Customs Broker M/s Global Links was present during the examination by Dock officer on 25.01.2023 and he failed to

bring in notice before Importer and DC/Docks regarding discrepancies found in the subject goods with respect to compliance of RE-44 notification, mis-declaration regarding quantity, violations of statutory compliance of BIS and ETA Certification. Hence, it appears that CB and its employee Shri. Jitesh P. Mav failed to impart correctness of information related to clearance of cargo.

7.4.2 w.r.t. violation of Regulation 10(e) ibid the noticee submitted that:

i) It is apparent that the case of misdeclaration in quantity, non-compliance of RE44 Notification violation of statutory compliance of BIS and ETA was booked on the basis of examination of cargo by CIU after the goods were examined by the Docks Appraiser and out of charged. The case could have not been detected based on documents supplied by the importer.

ii) In fact, CB had exercised due diligence by inquiring and advising the importer about the condition (Pre-Packaged or bulk) the BIS, WPC, LMPC with the extant rules and its compliance vide letter dated 24/12/2022 (Ex-B). No evidence contradicting the above facts is coming forward in the SCN. In addition to shri Vinod Nanda Power of attorney and G card holder of the CB has also admitted about advising and informing the importer about the above rules and regulations in his statement dated 05.02.2023 recorded under section 108 of the customs Act 1962. No evidence contradicting the above facts is coming forward in the SCN.

iii) There is no allegation on CB that he had imparted wrong or incorrect information pertaining to any laws, procedures, instructions or anything else. Therefore, in absence of any evidence, the Noticee cannot be alleged for not discharging his duty under Regulation 10(e) of CBLR 2018 and charges levelled in the SCN are required to be dropped.

7.4.3 From the offence report and submissions of Shri Jitesh P. Mav, G card holder of M/s Global, I find that in one hand the IEC holder in his statement dated 06.02.2023 has stated that that he does not have knowledge about the requirement of compliance of RE-44 notification for the goods found in pre-packaged condition and the CB Firm had not informed him anything about the requirements of compliance of RE-44 and other compliance, however on the other hand the noticee has submitted acknowledgement letter duly signed by the importer wherein the importer has been advised to comply mandatory allied acts as LMPC, WPC and BIS. Hence, I am of the view that since the G-Card holder has submitted acknowledgement letter of the importer the charge of violation of 10(e) does not hold ground.

From the above facts and circumstances, I am of the considered view that the noticee has not violated the provisions of Regulation 10(e) of the CBLR, 2018. Therefore, I hold that the charge of violation of 10(e) ibid may

be dropped.

7.5 With regard to violation of Regulation 10(m) of CBLR, 2018:

7.5.1 Regulation 10(m): *“A Customs Broker shall discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay.”*

I find that the said SCN alleges that, in the instant case, undeclared goods, mis-declaration of goods with regard to quantity and description and violation of RE-44, BIS and WPC guidelines were found by CIU officers. Shri Jitesh P. Mav, G card Employee of the Customs Broker M/s Global Links was present during the examination by Dock officer on 25.01.2023 and he failed to bring in notice of the DC/Docks regarding discrepancies found in the subject goods with respect to compliance of RE-44 notification, mis-declaration regarding quantity, violations of statutory compliance of BIS and ETA Certification. By not informing the importer or seeking necessary clarifications from the importer regarding the same, it indicates that the Customs Broker and their employee Shri. Jitesh P. Mav have failed to discharge his duties with utmost efficiency and caused a significant delay in Customs clearance thereby violated the provisions of Regulation 10(m) of CBLR 2018.

7.5.2 w.r.t. violation of Regulation 10(m) of the noticee submitted that:

i) After filing the bill of entry, it was submitted to the Docks Appraiser for examination on 25/01/2023 the goods were examined by the docks officer on the same day. No discrepancies were noticed by the Docks Appraiser at the time of examination and bill of entry was out of charged. Since, no objection was raised at the time of examination seeking clarification from the importer did not arise.

ii) The information of holding three containers by CIU was received by Shri Vinod Nanda, Power of Attorney of CB and G-Card holder on the night of 25/01/2023 and the information was passed on to the importer immediately. The above facts have been admitted by Shri Vinod Nanda in his statement recorded on 08/02/2023 under Section 108 of the Customs Act 1962. The statement has not been refuted by the importer during the course of investigation and not reflecting in the SCN. No delay has been alleged in Investigation Report dated 20/02/2023 nor in SCN on part of the CB in performing his duties. The above facts, and circumstances, clearly go on to establish that CB had discharged his duties with utmost speed and efficiency. The SCN alleging violation of Regulation 10 (m) of CBLR 2018 is frivolous and unsubstantiated.

7.5.3 From the offence report and submissions of Shri Jitesh P. Mav, G card holder of M/s Global , I find that on investigation of the B/Es by the CIU it was found that goods were mis declared in several respects, and the Shri Jitesh P. Mav, G card holder of M/s Global was present during the examination, he

witnessed all these irregularity in the consignment but he failed to inform above mentioned discrepancies and violations of various allied acts to the Deputy/Assistant commissioner of Customs, this act of the noticee shows inefficiency on the part of the notice and thereby he contravened the provision of Regulation 10(m) of CBLR, 2018.

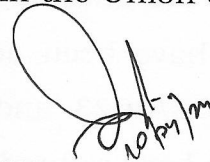
From the above facts and circumstances, I am of the considered view that the noticee failed to discharge his responsibilities mandated on him under 10(m) of CBLR 2018. The noticee did not bring the said discrepancy to the notice of the Deputy or Assistant Commissioner of Customs. Therefore, I hold that the CB has violated the provisions of Regulation 10(m) of the CBLR, 2018.

8. In view of above facts and circumstances, I hold that the charges against the noticee under Regulation 10(d), 10(m) of the CBLR, 2018 are proved & 10(e) ibid not proved. The CB is hereby liable for penal action under the CBLR, 2018. Keeping in mind the above finding, principle of proportionate punishment and considering the livelihood of the noticee as nearly 10 months have passed since the noticee has surrendered (04.05.2023) his pass, I abstain myself from further debarring the noticee from transacting the business under these regulations. Accordingly, I pass the following order:

9. I, Assistant Commissioner of Customs, Customs Broker Section, in exercise of the power conferred upon me under Regulation 17(9) and 18 of the CBLR, 2018, pass the following order:

(i) hereby impose penalty of Rs. 10,000/- (Rupees Ten Thousand only) on Sh. Jitesh P. Mav under Regulation 18 of the CBLR, 2018.

This order is passed without prejudice to any other action which may 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.



(PRAMOD ANAND MENDON)
ASSISTANT COMMISSIONER OF CUSTOMS
CB SECTION (GENERAL) MUMBAI ZONE-I

To,

Shri. Jitesh P. Mav
Address: B-13, vanroj CHS, Himalaya Society,
Asalfa Village, Mumbai, Maharashtra 400084

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. Commissioner of Customs (Export), ACC, Sahar, 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. Admin Notice Board.
12. Office Copy.
13. Guard File (Admin).

