



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

संचिका सं./F. No.- GEN/CB/361/2022 Pt-3

आदेश दिनांक/Date of Order: 18.03.2024

CAO No. 84/CAC/PCC(G)/SJ/CBS-Adj

जारी दिनांक/Date of issue: 18.03.2024

संख्या:

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द्वारा जारी : सुनील जैन

Issued By : Sunil Jain

प्रधान आयुक्त, सीमाशुल्क(सामान्य)  
मुंबई -400 001

Pr. Commissioner of Customs(Gen.),  
Mumbai - 400 001.

**ORDER-IN-ORIGINAL मूल आदेश**

**ध्यान दीजिए/ N.B. :**

8. यह प्रति उस व्यक्ति को निजी उपयोग हेतु निःशुल्क प्रदान की जाती है, जिसे यह जारी की जा रही है।  
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9. 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.

10. 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.

11. 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.

12. 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.

13. (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 होतो रु. 1000/-, (ii) यदि यह राशि रु. पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न होतो रु. 5000/- एवं (iii) यदि यह राशि रु. पचास लाख से अधिक होतो रु. 10000/- के शुल्क का भुगतान क्रॉसड 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.

14. 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 Merchant & Sons, (PAN- AAEFM0675K), having address registered at Sagar Classic, 703, Clare Road, Byculla, Mumbai- 400 008 (hereinafter referred as the Customs Broker/CB) holder of CB License No 11/678, issued by the Commissioner of Customs, Mumbai under regulations of CHALR, 1984, [now Regulation 7(2) of CBLR, 2018] and as such they are bound by the regulations and conditions stipulated therein.

**2.** On the basis of specific information received by DRI, MZU, investigation was conducted which revealed that various export firm including M/s N.S. Inc. were procuring fake purchase bills against the export consignments from one Mr. Suhel Ansari, through fake firms floated by him.

**3.** An offence report in the form of SCN No. 64/Adj(X)/ADC/2022-23 issued by Additional Commissioner of Customs, Export, ACC was received wherein it is mentioned that exporter M/s N.S.Inc was procuring fake purchase bills from one Mr Suhel Ansari where the shipping bills were handled by the CB firm M/s Merchant & Sons.

**4.** The office premises of Shri Suhel Ansari, situated at Room No. 30, 4th Floor, Chunnwala Building, 38-Kolsa Street, Pydhoni, Mumbai - 400003 was searched on 14.08.2015. During the course of search of the said premises, certain records/documents, three laptops and one hard disk and various rubber stamps along-with copies of bogus bills in the names of several companies issued by him were recovered.

**5.** During the course of investigation, statement of Shri Suhel Parvez Ansari and his employee Shri Shaikh Mohammed Arshad employee of Shri Suhel Parvez Ansari was recorded on 24.08.2015 by DRI, Mumbai, where inter-alia they stated that they supplied fake invoices to the export firms including M/s N.S.Inc.

**6.** DRI, MZU, forwarded the case to SIIB(X)/ACC for carrying out further investigation wherein exporters including M/s N.S.Inc. who have claimed undue drawback by overvaluing the exports and to justify the over-value of the goods, they procured fake invoices from Shri Suhel Ansari.

**7.** During the course of investigation by SIIB(X), statements of the following persons were recorded:-

**7.1** Shri Md. Anas Kudia Proprietor of N.S. Inc vide his statement dated 19.04.2017 stated that:

- a) He was merchant exporter of textile products and readymade garments & proprietor of firm M/s N.S.Inc. Their firm exported goods mainly to the



- African Country Sudan since 2014 & CB M/s. Merchant & Sons handled their export clearances.
- b) He does not have any manufacturing unit & he has always paid through cheques & online payments to all of his vendors from the current account of M/s N.S.Inc.
  - c) After completion of job work with regard to the export consignments, the goods were kept in the go-down of M/s Merchant & Sons, CB or sometimes the goods were directly sent for shipment from factory premises.
  - d) These consignments were cleared through CB M/s Merchant and Sons. He was not able to make invoices and used to take help of CB. Further, he has deposed that invoices & packing-list were prepared by the CB — M/s. Merchant and Sons in their office at Crawford Market, Mumbai.
  - e) He started working as a commission agent of cloths in Kalbadevi Mumbai since 2012 & he used to visit the various shops in this regard to meet various foreign buyers with whom he offered to export the goods to them. Thus, he started supply of goods directly to them under M/s N. S. Inc.
  - f) His company is exporting garments to Sudan since 2014. All the consignments have been exported to Sudan & he had received drawback amounting to Rs. 1.57 Crore Approx. from customs.
  - g) He received the remittances from his buyers M/s Mistry General Trading LLC, Dubai and M/s SIM Trading etc at Dubai. Both are the third party.
  - h) After exports, sale proceeds were received from M/s Mistry General Trading LLC & M/s SHB Trading Dubai. He used to pay them 12.5% commission but he does not have any commission agreement, as he was not aware of agreement. Also, he has not made any third-party agreement.
  - i) He was unaware of the fact that it is illegal to get remittance from Dubai instead of getting remittances from Sudan, without making any Tri party Agreement. He had no idea that Third Party Agreement is necessary for third party exports and details of third party should be mentioned in the invoices.
  - j) During the period 2012-2016, the exporter M/s N.S. Inc. made total exports of 238 shipping bills. Out of these 238 Shipping Bills, 155 SBs were cleared by CB M/s Merchant & Sons (CB No. 11/678). The Duty Drawback in respect of the 238 Shipping Bills was Rs. 157.14 lakhs. As stated in the Offence Report, FOB amount USD 6,54,896/- has not been realized against 50 Shipping Bills of M/s N.S. Inc wherein benefit of drawback amount of Rs. 31,65,951/- has already been disbursed to the exporter.



**7.2** Statement of Shri Nuvaaid Merchant, partner of CB firm M/s Merchant & Sons (11/678) was recorded on 29.12.2021 wherein he inter-alia stated that:

- a) He was looking after operations of their CB including customs clearance work and the proprietor of M/s. N.S. Inc Mr. Anas Y Kudia approached personally to assist in the clearance of his exports.
- b) Before accepting the custom clearing work of the exporter, they had taken all the necessary KYC documents & verified the address of the exporter M/s. N.S. Inc as mentioned in IEC but do not have any proof in this regard.
- c) They do not know the exact address of the exporter's warehouse, as they used to pick up the goods from Dhana Bunder, near Masjid Bunder. Sometimes the exporter directly forwarded the goods to the Air Cargo Complex or sometime in CB trucks from the exporter's warehouse.
- d) They do not have any warehouse to store the goods and they never stored the goods of any exporter. They had no idea from where the exporter procured the goods.
- e) On basis of the documents provided by the exporter, the staff of the CB firm used to prepare the checklist and the shipping bills were filed on ICEGATE after approval of the exporter.
- f) They received the documents in their office & after scrutiny of the documents, prepared the checklist accordingly.
- g) On being asked about the third party agreement, he stated that the exporter never submitted Third Party Agreement and they don't know the details of documents submitted by the exporter.
- h) On being asked about the value of the goods, he stated that they only verified the RITC and did not verify the item & value declared by the exporter.

**8.** From the offence report it is found that DRI vide its letter dated 04.10.2016 issued vide F.No.DRI/MZU/D/INT-31/2015/7766 conducted enquiry with the Consulate General of India, Dubai, UAE.

The Consulate General of India, Dubai vide letter dated 08.03.2018 reported that from the scrutiny of the documents, it emerged that goods had been cleared and unit value had been much lower than what has been declared to Indian Customs. As per DRI the instant exporter i.e. M/s N.S.Inc has also adopted the similar modus operandi.

**9.** During investigation, statement dated 01.07.2016 of Shri Suryabhan Eknath Dhurphate, Proprietor of M/s. Sanket Overseas, Navi Mumbai, was

recorded before the DRI, MZU, who was logistics provider and was involved in clearing the consignments through CHA, M/s. Indo Foreign Agents.

From the perusal of his statement, it was disclosed that usually the cost and expenses incurred on the export material was only around 35% of the drawback amount. He also stated that the benefits availed by them and the exporter was to the extent of 65%. This was the modus-operandi which was adopted by all such exporters including this exporter, who were exporting the goods on basis of the fake supplier's invoice.

**10.** Further, from investigation it appears that goods were procured from Domestic Tariff Area (DTA) without any invoices so no details of its manufacturing, production, using imported material or excisable material therein were available so it could not be ascertained whether any duties have been paid or otherwise.

Exporter in his statement has also stated that he does not have any manufacturing unit & from the investigation also it appears from investigation that goods were procured from Domestic Tariff Area (DTA) without any invoices so no details of its manufacturing, production, using imported material or excisable material therein were available, so it could not be ascertained whether any duties have been paid or otherwise. Therefore, it appears from investigation that necessary ingredient of second proviso to Rule 3(1) Drawback Rule, 1995 is attracted in this case which does not permit any amount of drawback in such cases where no duty has been paid.

**11.** From investigations made by DRI, MZU and the investigations conducted by SIIB(X), ACC, Mumbai, it appears that M/s. N.S. Inc. procured goods (of inferior quality and having low value) from local market and to show the higher value of the goods to claim export benefits, procured fake and bogus invoices from Sh. Suhel Ansari.

**12.** The exporter Mr. Anas Y. Kudia in his statement stated that Invoices and packing lists of the said consignments were prepared by the CB, M/s. Merchant & Sons in their office and Goods were stored and packed in the CB's go-down.

Therefore, under the fact and such circumstances, the CB actively connived with the exporter in claiming undue drawback and over valuing the export goods and mis-declaration in Shipping Bills.

**13.** On perusal of the Offence Report, it appears that:



- a)** The CB M/s Merchant & Sons (11/678) failed to obtain & produce the letter of authorisation from the exporter. Thus, the CB appears to have violated Regulation 10(a) of CBLR, 2018.
- b)** The CB did not advise the exporter about the Drawback Rules and abetted the exporter by declaring the incorrect value of the goods in shipping bills against the fake invoices to avail undue drawback and did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Thus, the CB appears to have violated Regulation 10(d) of CBLR, 2018.
- c)** The CB failed to exercise due diligence and aided the exporter in availing the undue drawback by overvaluing the exports, whereas cheaper material was exported, and to justify the value of the goods, fake invoices were procured showing higher purchase price. On scrutiny of the subject case, it appears that CB did not exercise due diligence and did not impart the information relating to Drawback Rules. Thus, the CB appears to have violated Regulation 10(e) of CBLR, 2018
- d)** The CB did not inform the exporter about the instructions, circulars and public notice regarding the claiming of drawback. It was the responsibility of the CB to ensure that exporter declares the name and complete address of the traders from whom goods has been purchased in order to claim Drawback. It appeared that CB did not advise the exporter to comply with Rule 3, Rule 16 and Rule 16A of Drawback Rules, 1995 and abetted the exporter by declaring incorrect value of the goods in shipping bills against the fake invoices to avail undue drawback. Thus, the CB appears to have violated Regulation 10(f) of CBLR, 2018.
- e)** The CB has failed to produce authorisation letter of exporter, KYC documents, and other requisite documents related to packing, storage of the export consignments. Further CB vide his statement has stated that that they verified the address of the exporter as mentioned in IEC but do not have any proof in this regard. Thus, it appears that CB appears to have violated the regulation 10(k), of CBLR 2018.
- f)** The CB in his statements admitted that he does not remember the said exporter and further it appears that the address of the exporter is different in IEC and KYC documents. From the statement of the CB, it becomes clear that he was aware that the exporter has started operating from other location than the one mentioned in the IEC. Further there is nothing on record or has been produced by CB firm that they have informed the Customs about it. Thus, it appears that

the said CB has not verified the antecedents properly of the said exporter, thus violating the regulation 10(n) of CBLR 2018.

- g) During investigation, some contradictions were found between the statements of the exporter & the CB. Further, on being asked upon the higher value of the goods CB stated that they do not have any idea as they verified only RITC. It appears that the CB is hiding the fact and did not co-operate with the Custom Authorities by giving false statements and trying to misguide the investigation, thus the CB appears to have violated the Regulation 10(q) of CBLR, 2018.

14. In view of the above facts, it is evident that the CB was working in a seriously negligent manner and was in violation of the obligations casted upon them under the CBLR, 2018. By their acts of omission and commission, it appears that the said CB has violated Regulation 10(a),10(d), 10(e),10(f), 10(k), 10(n) & 10(q) of the Customs Brokers Licensing Regulations, 2018 and rendered himself for penal action under Regulations 14, 17 & 18 of CBLR, 2018.

**Legal Provision of the CBLR, 2018:-**

**Regulation 10(a) of the CBLR, 2018:-** *“obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be”*

**Regulation 10 (d) of the CBLR, 2018:-** *"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;"*

**Regulation 10 (e) of the CBLR, 2018:-** *"A Customs broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;"*

**Regulation 10 (f) of the CBLR, 2018:-** *"A Customs broker shall not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information;"*

**Regulation 10 (k) of the CBLR, 2018:-** *“maintain upto date records such as bill of entry, shipping bill, transshipment application, etc. and all correspondence and other papers relating to his business as Customs Broker and also accounts including financial transactions in an orderly and itemised manner as may be*



specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be; and keep them current.

**Regulation 10 (n) of the CBLR, 2018:-** *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".*

**Regulation 10 (q) of the CBLR, 2018:-** *co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees."*

#### **15. Suspension/Revocation of the License:**

The license of the CB firm M/s. Merchant & Sons (11/678) was already suspended since 21.02.2022 in compliance to the CBIC Notification No. 62/2021 dated 23.07.2021, para 9.2, vide which the licenses which were inactive for one year were made inoperative by system.

Further, in pursuance of the offence report received in the said matter, the CB license no. 11/678 was deemed suspended vide Order No. 82/2022-23 dated 08.03.2023 in contravention of Regulations 10(a), 10(d), 10(e), 10(f), 10(k), 10(n) & 10(q) of CBLR, 2018. Subsequently, the Suspension of the CB license was continued vide Order No 02/2023-24 dtd 20.04.2023 as per Regulation 16(2) of the CBLR, 2018 after giving PH opportunity to the CB.

#### **16. Show Cause Notice:**

Inquiry proceedings were initiated against CB firm M/s. Merchant & Sons (CB No.11/678) vide Show Cause Notice No.9/2023-24 dated 10.05.2023 issued under Regulation 17 of CBLR 2018 and vide the said notice, CB M/s. Merchant & Sons (CB No.11/678) were called upon to show cause as to why the licence bearing no. 11/678 issued to them should not be revoked and security deposited should not be forfeited and/or penalty should not be imposed upon them under Regulation 14 read with 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018, as elaborated in the Show Cause Notice.

Further, they were directed to appear for a personal hearing and to produce proof of evidence/documents if any, in their defence to Shri V.S.Teotia, Asst. Commissioner of Customs who was appointed an inquiry officer to conduct inquiry proceedings under regulation 17 of CBLR, 2018.

#### **17. INQUIRY REPORT:**

Inquiry officer submitted Inquiry report dated 12.12.2023 wherein the charges against the said CB M/s Merchant & Sons in respect of violation of Regulation 10(a), 10(d), 10(e), 10(f), 10(k), 10(n) & 10(q) of CBLR, 2018 were all held as "Proved".

### **17.1 Details of Personal Hearing:**

In the report, Inquiry officer has stated that in compliance of the SCN No. 9/2023-24 dated 10.05.2023, the said CB firm was directed to appear for hearing & submit the evidences/documents in their defence on 21.07.2023 but neither CB nor their representative appeared for the PH. Again, CB firm was directed to appear for PH on 09.08.2023 & 04.09.2023. On both the occasion, the CB failed to appear for PH and also failed to submit evidences/document in his defence.

Since the CB firm failed to appear in any of the 3 hearings & did not submit any written representation, the matter was decided ex-parte without further delay.

### **17.2 Comments of the Inquiry Officer:**

#### **a) Article of Charge-I:- Violation of Regulation 10(a) of CBLR, 2018**

As per Regulation 10(a) of CBLR, 2018:- *"obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be"*

In his report, IO stated that he went through the entire Show Cause Notice and the documents which were produced and he observed that the CB firm M/s Merchant & Sons has not obtained authorisation from the exporter and during investigation also, they failed to produce the authorisation which is in violation of Regulation 10(a) of the CBLR, 2018.

In view of the same, IO held the charges alleged in the show cause notice for violation of Regulation 10(a) of CBLR, 2018 as "Proved beyond Doubt."

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

As per Regulation 10(d) of CBLR, 2018- *"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."*

In his report, IO submitted that since the CB didn't appear for PH, based on the material evidence on record, the IO observed that the CB failed to advise



the exporter and abetted the exporter by declaring incorrect value of the goods in the SBs against the fake invoices to avail undue drawback. Further, Mr. Anas Y. Kudia proprietor of M/s N.S. Inc. in his statement has admitted that invoices and packing lists of the said consignments quoting higher purchase prices, were prepared by the CB M/s. Merchant & Sons in their office.

Therefore, it is clear that the CB was actively involved in this commercial fraud and did not inform the misdeeds done by the exporter to the Department, which is in violation of Regulation 10(d) of CBLR 2018.

Thus, IO held the charges alleged in the show cause notice for violation of Regulation 10(d) of CBLR, 2018 as "Proved beyond Doubt."

**c) Article of Charge-III:- Violation of Regulation 10(e) of CBLR, 2018**

As per Regulation 10(e) of CBLR, 2018- "*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*"

Inquiry Officer submitted that the CB failed to exercise due diligence as the CB attended custom clearing work but still failed to notice the over-valuation of the goods as cheaper material was exported and to justify the value of the goods, fake invoices were procured showing higher prices.

Further, these invoice & packing lists were prepared by the CB as stated by the exporter which indicates that the CB was actively involved in the said fraud by aiding and abetting the exporter for availing the undue drawback which is in violation of the provisions of Regulation 10 (e) of the CBLR, 2018. Thus, Inquiry Officer held the charges alleged in SCN for violation of Regulation 10(e) of CBLR, 2018 as 'Proved' beyond doubt.

**d) Article of Charge-IV: Violation of Regulation 10(f) of CBLR, 2018**

As per Regulation 10(f) of CBLR, 2018- "*not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information;*"

Inquiry Officer submitted that it is the responsibility of the CB to inform the exporter about the instructions and public notice regarding the claiming of drawback as per Drawback Rules. IO stated that in this case, the CB was aware of the fact that the goods were of inferior quality and the prices were intentionally quoted high in the invoices. Thus, the CB has abetted the exporter by declaring the incorrect value of the goods in shipping bills against the fake invoices to avail undue drawback. Thus, the CB has violated the provisions of Regulation 10 (f) of the CBLR, 2018.

Thus, Inquiry Officer held the charges alleged in SCN for violation of Regulation 10(f) of CBLR, 2018 as 'Proved' beyond doubt.

**e) Article of Charge-V: Violation of Regulation 10(k) of CBLR, 2018**

As per Regulation 10(k) of the CBLR, 2018- "*maintain upto date records such as bill of entry, shipping bill, transshipment application, etc. and all correspondence and other papers relating to his business as Customs Broker and also accounts including financial transactions in an orderly and itemised manner as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, and keep them current;*"

Inquiry Officer in his report has stated that the CB has failed to produce authorisation letter of exporter, KYC documents, and other requisite documents related to packing, storage of the export consignments. Further, the CB in his statement has stated that they verified the address of the exporter as mentioned in IEC, However, they failed to submit proof in this regard. Thus, the CB has failed to maintain records, which is in violation of Regulation 10(k), of CBLR 2018.

Inquiry Officer held the charges alleged in SCN for violation of Regulation 10(k) of CBLR, 2018 as Proved beyond doubt.

**f) Article of Charge-IV: Violation of Regulation 10(n) of CBLR, 2018**

As per Regulation 10(n) of CBLR, 2018- "*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* "

Inquiry Officer in his report has stated that that the CB has failed to submit the KYC documents of the exporter at the time of investigation. Further the CB vide his statement has stated that they verified the address of the exporter as mentioned in IEC, however, they failed to furnish proof to the IO. IO stated that it is clear that the CB did not verify the KYC and did not verify exporter's antecedents at any point of time and the CB actively connived with exporters in claiming undue Drawback by over valuing the export goods, which is in violation of the provisions of Regulation 10 (n) of the CBLR, 2018.

Thus, Inquiry Officer held the charges alleged in SCN for violation of Regulation 10(n) of CBLR, 2018 as Proved beyond doubt.

**g) Article of Charge-IV: Violation of Regulation 10(q) of CBLR, 2018**

As per Regulation 10(q) of CBLR, 2018- "*co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees.*"



Inquiry Officer in his report has stated that that exporter in his statement admitted that invoices and packing lists of the said consignments were prepared by the CB M/s. Merchant & Sons in their office, whereas the CB stated that exporter himself prepared checklist. Further, CB stated that they completed KYC of the exporter but did not have any proof in this regard. Regarding valuation part also, the CB stated that they verified only RITC of the goods & did not verify the value.

From the offence report & the statement of the exporter & the CB, IO find that CB & exporter's versions are contradictory which indicate that CB appears to hide information or is not cooperating with custom authorities by giving false statement and thus trying to misguide the investigation, which is under violation of the provisions of Regulation 10(q) of CBLR, 2018.

Thus, Inquiry Officer held the charges alleged in SCN for violation of Regulation 10(q) of CBLR, 2018 as Proved beyond doubt.

**18. Submission of the CB & Records of the Hearing:**

In pursuance to suspension order no. 82/2022-23 dated 08.03.2023, IO report dated 12.12.2023, CB M/s. Merchant & Sons submitted their written submission vide letter dated 25.01.2024 and Mr. N.D. George, advocate appeared on behalf of CB for Personal hearing on 25.01.2024 and gave following submissions:

- i. The license bearing No. 11/678 was suspended vide order No. 82/2022-23 dt. 08.03.2023 on the basis of investigation carried out by DRI/MZU, Mumbai and SIIB(X), ACC, into the exports made by M/s. N.S. Inc International, Mumbai.
- ii. Statement of the CB was also recorded wherein he inter-alia stated that the staff member completed the KYC formalities before accepting the customs clearance work and they used to prepare the check list and upload it in the system for generating for Shipping Bills. Further, the exporter himself prepares all the required documents such as invoice, packing list etc: that they never printed any export documents in their office.
- iii. The SCN is barred by limitation as the Shipping Bills pertains to the year 2012 to 2016 and the SCN has been issued on 10.05.2023, which is after period of 8 years. Therefore, the said SCN is not maintainable and liable to be withdrawn. In this Context, the CB rely on the judgment of the Hon'ble High Court in the case of the Principal Commissioner of Customs (General) versus Mehul & Co reported in 2022 (5) TMI 30 - Bombay High Court.

- iv. The investigations by DRI with the Consulate General of India, Dubai, UAE cannot be relied upon as the department has not furnished a copy of the letter received from the Indian Consulate, Dubai. Further, the exports pertain to Garments African Countries.
- v. The CB denied the IO report wherein it has been stated that they did not attend the Hearing as the CB was out of station and the office is non- operational as the license has been suspended.
  - a. The CB denies all the charges levelled against their firm and submitted that their firm has not violated the regulations mentioned as 10(a), 10(d), 10(e), 10(f), 10(k), 10(n) & 10(q) of CBLR, 2018. In so far as the charge of violation of regulations 10(a), 10(d), 10(e), 10(f), 10(k), 10(n) & 10(q) of CBLR, 2018 is concerned the CB submitted following submissions.
  - b. The CB submitted that Shipping Bills were filed as per the documents given by the exporter. The said documents whether genuine or fake cannot be decided by the CB. Further, the document given by the exporter is deemed to be correct and genuine as the same has been accepted by the officers of the department. The CB's are not experts to identify whether the documents are genuine or not. Further, the statements are exculpatory in nature and there is no material evidence against the CB. Therefore, the charge under Regulation 10(d) of CBLR, 2018 fails.
  - c. The CB submitted that the Shipping Bills were duly assessed by the assessing officer and thereafter LEO were granted. Therefore, there is no case of over valuation and charge under Regulation 10(e) does not survive and merits to be withdrawn.

The CB submitted that they fail to understand how the CB was responsible for informing the exporter about the instructions and public notice regarding claiming of drawback. Therefore, the question of abetting the exporter does not survive as the SCN itself records that the CB was unaware of the fictitious bills. Therefore, the SCN merits to be withdrawn as the charge under regulation 10(f) doesn't survive.

  - e. The CB submitted that they have done due diligence in respect of the KYC before the filing of the Shipping Bill which has been recorded on 16.12.2021 under Section 108 of the Customs Act, 1962 wherein it has been inter alia stated that they have complied

with KYC and verified the antecedents before filing of Shipping Bill. Therefore, the charge against the CB deserves to be set aside.

- vi. The CB firm M/s Merchant & Sons seeks cross examination of Shri. Mansurali liyakatali Khan, Shri. Suryabhan Eknath Dhurphate and the Customs officers who assessed the Shipping Bills in this regard. We crave leave to file further reply after the cross examination and receipt of the relied upon documents
- vii. The CB submitted that in the circumstances, the SCN is unsustainable in law and the CB is liable to be discharged & further denies with all the charges levelled against their firm under regulation of 10(a), 10(d), 10(e), 10(f), 10(k), 10(n) & 10(q) of CBLR, 2018.

### **19. Discussions & Finding:**

I have gone through the case, material evidence on record, the Show Cause Notice, dated 10.05.2023, Inquiry Report dated 12.12.2023 & CB Submission dated 25.01.2024.

**19.1** I observe that the charges against the said CB is of violation of regulation 10(a), 10(d), 10(e), 10(f), 10(k), 10(n) & 10(q) of CBLR, 2018 made vide Show Cause Notice No. 09/2023-24 dtd 10.05.2023.

The Inquiry Officer vide inquiry report dtd 12.12.2023 held all the charges of violation of regulation 10(a), 10(d), 10(e), 10(f), 10(k), 10(n) & 10(q) of CBLR, 2018 as "Proved".

**19.2** For brevity, I refrain from reproducing the brief facts of the case which have already been discussed above. I, now, examine the charges in the SCN sequentially

#### **19.2.1 With regard to violation of Regulation 10(a) of CBLR, 2018**

I observe that the said regulation 10(a) of CBLR, 2018 reads as: -

*"obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be."*

I find that IO in his report held that the violation of regulation 10 (a) of CBLR, 2018 by the CB stands proved.

From the scrutiny & perusal of the offence report, various statements of the CB & the exporter, I find that the CB firm did not have written agreement with the exporter M/s. N.S. Inc. and they received the Customs clearing charges from the exporter. During investigation also, CB failed to produce any such



document in his favour, hence, it is clear that the CB did not obtain the mandatory authorization from the exporter before taking the job of the clearance of the exported goods. Therefore, since the CB M/s. Merchant & Sons failed to obtain authorization from the exporter, I agree with the IO's report that CB has violated the regulation 10(a) of the CBLR, 2018.

Therefore, in view of the above, I hold that the CB has violated the provisions of Regulation 10(a) of the CBLR, 2018.

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

I observe that the said regulation 10(d) of CBLR, 2018 reads as: -

*“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 IO in his report held that the violation of regulation 10 (a) of CBLR, 2018 by the CB stands proved.

From the offence report, I find that export firm M/s. N.S. Inc. procured fake purchase bills from one Mr. Suhel Ansari against their export consignments to show the over-pricing of the goods. Further, the fact that the impugned goods were of cheaper material is also corroborated from the report of Consulate General of India, Dubai. And various statements of Mr Suhel Ansari & others.

I find that the exporter in his statement has stated that he was unable to make invoices, so the same were prepared by the CB on his behalf and further, from the scrutiny of the documents, I find that these invoices did not contain details of the name and complete address of the traders from whom impugned goods had been purchased as mandated in circular 16/2009 dated 25.05.2009.

From perusal of offence report, I find that the exporter showed the sample of the goods to the CB whenever required but the CB firm never noticed over-pricing of the goods or they chose to be silent, so it is not possible for exporter to export the impugned goods without wilful collusion with the custom broker & it appears that the CB was well aware of the over-pricing of the goods. Still the CB did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs thereby contravening the provision of regulation 10(d) of CBLR, 2018.

Further, I find that goods were exported to Sudan while the remittance has been received by the exporter from Dubai and on being asked upon the Third Party Agreement, the exporter stated that he did not know that it is illegal to get

remittance from Dubai instead of getting remittances from Sudan and requirement of Third Party Agreement in such cases.

From the fact, it is evident that the CB failed to advise his client i.e. exporter regarding the requirement of Third Party Agreement, providing correct information in invoice (like name and complete address of the traders from whom impugned goods detail). Hence, the CB cannot shy away from the responsibilities & obligations cast upon them under regulation 10(d) of CBLR, 2018.

In this context, I rely upon the judgment of Hon'ble CESTAT, Mumbai in the case of M/s Eagle Transport Services Vs Commissioner of Customs, Mumbai in 1997 (96) E.L.T. 469 (Tribunal) wherein though the matter was different yet the ratio of judgement can be applied to the present case. In this case, Hon'ble CESTAT, Mumbai has held at para no. 7 (relevant portion) that *"a Custom house agent has a very significant role to play in the clearance of goods through Customs and Port Trust. Such clearance involves application of many specialized laws and detailed procedures often contain complex statutory requirements. It is for this reason that Customs Brokers have been licensed. Before he is granted permanent license, he has to qualify an examination in which his knowledge of relevant procedures is vested.*

*The object of these regulations is to ensure that the Customs Brokers acts honestly and efficiently in the conduct of their business. It is not difficult to foresee the consequences that would arise if the Custom House Agent does not co-act in such a manner. The Custom House Agent makes various representations before the Custom House on behalf of the importer and exporter relating to the nature of the goods conditions under which they were imported their value etc. The statements that he makes and the information that he provides are crucial for assessing the goods to duty and deciding whether the import is prohibited or not. The Custom House Agent thus has the status of a professionally qualified person akin to an advocate, Chartered Accountant or number of other professions which requires a minimum standards of knowledge for minimum standards of conduct. If the Custom House Agent acts negligently or dishonestly, the Custom House can be defrauded money due to the Government, and in good faith permit import or export of prohibited goods."*

From the above facts and circumstances, I am of the considered view that the CB failed to advise the exporter to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof and further after seeing



the sample, the gross over-valuation of the goods was not brought to the notice of Deputy Commissioner or Assistant Commissioner of Customs. **Therefore, I hold that the CB has violated the provisions of Regulation 10(d) of the CBLR, 2018.**

### **19.2.3 With regard to violation of Regulation 10(e) of CBLR, 2018**

I observe that the said regulation 10(e) of CBLR, 2018 reads as:

*“A Customs broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;”*

I find that the inquiry officer in his report held that the violation of regulation 10(e) of CBLR, 2018 stands proved & inquiry report of Consulate General of India, Dubai also confirms the same & on being asked about the over-valuation of the goods, the CB in his statement has stated that they only verified the RITC of the goods and did not verify the value of the goods and later it was found that the goods are over-valued to claim higher drawback.

From the statement of the exporter & the CB, I find that the exporter received remittance from Dubai while he exported goods only to Sudan and he failed to produce Third Party Agreement in this regard. On being asked about the same, the exporter stated that the CB did not inform him the requirement of Third Party Agreement in such cases. Further, as per the format annexed with the circular No. 16/2009-Customs dated 25.05.2009, the exporter should have furnished the complete name & address of the trader from whom they had purchased the goods but the exporter failed to do so & the CB also failed to get the correct details inserted in the invoices of the SBs

From the scrutiny of the offence report and above facts, it is apparent that the CB has failed to exercise due diligence and to sensitize the exporter to make proper declaration in terms of value & the details of procurement of the goods & requirement of Third Party Agreement. It is obligations and duty of the CB to exercise due diligence to ascertain the correctness of information in respect of any information which they impart to a client with reference to any work related to cargo and in this case the CB failed to do so.

I also find that the CB can not shy away from the responsibility cast upon them under regulation 10(e) of the CBLR, 2018 by stating that determining the mis-declaration in terms of valuation is the officer's responsibility. Therefore, I found that there is no merit in CB's submission in this regard. The CB has acted in a very casual manner and aided the exporter in this regard



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

#### **19.2.4 With regard to violation of Regulation 10(f) of CBLR, 2018:**

I observe that the said regulation 10(f) of CBLR, 2018 reads as :-

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

I find that the inquiry officer in his report held that the violation of regulation 10(f) of CBLR, 2018 by the CB stands proved.

From the perusal of the offence report, I find that exporter did not furnish the declarations at the time of exports in format annexed with the circular No. 16/2009-Customs dated 25.05.2009. As per the said format exporter were inter-alia required to declare the name and complete address of the traders from whom export goods had been purchased.

The exporter is also required to declare that they are not the manufacturer of the said export goods and are not registered under the erstwhile Central Excise Act, 1944 and they had purchased these goods from a trader who was also not registered under the erstwhile Central Excise Act, 1944. They were also required to declare that no rebate (input rebate or/ and final product rebate) would be taken against the exports made against the Shipping Bills.

However, during the course of investigation, M/s. N.S. Inc. failed to produce any such declaration. Thus, the CB failed to verify the declarations at the time of exports in format annexed with the circular No.16/2009-Customs dated 25.05.2009, which is gross negligence on the part of the CB. The mandatory provision of 2<sup>nd</sup> proviso to Rule 3 of Drawback Rule, 1995 is not fulfilled and not informed to the exporter by the CB.

From the above facts, I find that the CB would be well aware of the facts that the goods sought to be exported under the drawback scheme are required to compliant with the provisions of the scheme and should be backed by appropriate documentation, it was imperative that the CBs to have informed the exporter of the requirements of Customs Law and conveyed the details of all the instructions, orders and public notices issued by the Customs authorities from time to time in respect of claims of drawback on exported goods. The fact that

the exporter exported goods in violation of the Customs law indicates that the CB had withheld information to the exporter in this regard.

In view of the above, I am of the considered view that the CB failed to inform the exporter about the instructions/public notices & thus the CB failed to exercise his duties and hence I held that the CB has violated the Regulation 10(f) of CBLR, 2018.

#### **19.2.5 With regard to violation of Regulation 10(k) of CBLR, 2018**

I observe that the said regulation 10(k) of CBLR, 2018 reads as :-

*“maintain upto date records such as bill of entry, shipping bill, transshipment application, etc. and all correspondence and other papers relating to his business as Customs Broker and also accounts including financial transactions in an orderly and itemised manner as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be; and keep them current”*

I find that the inquiry officer has stated in his report that the charges held against the violation of regulation 10(K) stands proved.

From perusal of offence report, I find that before accepting custom clearing work of the exporter, CB failed to take authorisation letter and also during investigation, they failed to produce any such authorisation.

While going through the CB's statement and offence report, I find that the CB has claimed to have obtained the KYC document and verified the address but failed to submit the proof in this regard and also they did not submit other requisite documents related to packing, storage of the export consignment.

The custom broker is expected to maintain upto date records, correspondence, all the documents related to SBs/BEs and in this case I find that the CB has failed to do so. **Therefore, I held that the CB has violated the Regulation 10(k), of CBLR 2018.**

#### **19.2.6 With regard to violation of Regulation 10(n) of CBLR, 2018**

I observe that the said regulation 10(n) of CBLR, 2018 reads as :-

*“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 ”*

I find that IO in his report held that the violation of regulation 10(n) of CBLR, 2018 by the CB is “proved”.

From perusal of offence report, I find that they completed the KYC details of the exporter but they failed to submit any documentary proof to substantiate that they had verified the credentials of the exporter. Further, the CB stated that they used to pick the consignments from the exporter's warehouse but they did not know the exact address of the warehouse of the exporter which is contradictory itself & indicate that CB did not verify the antecedents properly of the said exporter, thus violating the regulation 10(n) of CBLR 2018.

I find that from plain reading of the provision of regulation 10(n), it is clear that the said regulation cast a very important obligation on the CB to know his customer by using reliable means and also to verify the identity of his client and working of his client at the declared address by using reliable and independent and authentic documents and information. The CB has neglected the said obligations which is amply proved from his statement wherein they stated that they did not feel the need to update the KYC or they did not know the warehouse address of the exporter.

It is very clear from the records that the CB failed miserably to verify even the basic requirements of knowing who is his actual client, and has of course not done any elaborate verification of his client and has not verified the business premises of the exporter.

In view of the above, I am of the considered view that the CB failed to exercise regulation and violated the Regulation 10(n) of CBLR, 2018. Therefore, I held that the CB has violated the Regulation 10(n), of CBLR 2018

#### **19.2.7 With regard to violation of Regulation 10(q) of CBLR, 2018**

I observe that the said regulation 10(q) of CBLR, 2018 reads as :-

*“co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees.”*

I find that IO in his report held that the violation of regulation 10(n) of CBLR, 2018 by the CB is “proved”.

From perusal of statements of the CB & exporter, I find their statements are contradictory in terms of preparing invoice of the impugned goods as the exporter stated that he did not know how to prepare the invoices, so the invoices were prepared by CB M/s Merchant & Sons in their office, whereas the CB stated that on the basis of documents provided by the exporter himself they prepared checklist and after approval of the exporter, the shipping bill was filed on ICEGATE, hence both the statements are contradictory. Since, the CB, as discussed earlier, also failed to comply other regulations of CBLR, 2018,



considering these two statements and the sequence of events taken place in the entire investigation, I am of the opinion that the CB was actively involved in the fraud and abetted the exporter at all times & strongly believe that the invoices and packing lists were prepared by the CB in their office. Thus, the CB did not co-operate with the Custom Authorities by giving false statements and trying to misguide the investigation, which is in violation of Regulation 10(q) of CBLR, 2018.

Further, I find that the CB during the inquiry proceedings initiated under Regulation 17 of CBLR, 2018, the charged CB, i.e., M/s Merchant & Sons had been given three opportunities of Personal Hearings to appear before the inquiry officer and to give their oral and written submissions, but they failed to attend any PH, which proved that the charged CB did not intentionally join the current inquiry proceedings launched against them under the relevant provisions of CBLR 2018, in abject violation of Regulation 10(q) of CBLR, 2018.

In view of the above, I find that the charged CB, M/s Merchant & Sons, (CB No. 11/678) utterly failed to cooperate with customs authorities and failed to join the investigations. Therefore, I hold that the CB failed to comply with the said regulation and violated the Regulation 10(q) of CBLR, 2018.

**20.** I find that CB has further relied on the following case law of Hon'ble High Court in the case of the Principal Commissioner of Customs (General) versus Mehul & Co reported in 2022 (5) TMI 30 - BOMBAY HIGH COURT.

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

**21.** Further, I find that the CB's request for cross-examination is devoid of any cogent and valid reason and therefore the same is not tenable under CBLR, 2018 read with the Customs Act, 1962. In this context, I rely upon the following judgment in the matter:

i. In the case of Fortune Impex Vs. Commissioner of Customs, Calcutta [2001(138) E.L.T.556 (Tri. -Kolkata)], Hon'ble Tribunal observed at Para 12 that:

*"...it is not required that in each and every case, cross-examination should necessarily be allowed. There is no absolute right of cross-examination provided in the Customs Act. The Advocate had given a list of 26 persons for cross-examination without indicating the specific reasons for cross-examining the...it cannot be said that there was violation of principles of natural justice.*

**22.** The CB argued that Shipping Bills pertains to the year 2012 to 2016 and the SCN has been issued on 10.05.2023 which is after a period of 8 years. In this regard, I find that these guidelines are directory but not mandatory & I rely on the decision of Hon'ble High Court of Judicature at Bombay in the case of Principal Commissioner of Customs (General), Mumbai Versus Unison Clearing P. Ltd. reported in 2018 (361) E.L.T. 321 (Born.), which stipulates that:

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

**23.** I've gone through all the case laws submitted by the CB. While deciding the matter, I rely upon following judgements: -

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

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

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

i. *The very purpose of granting a licence to a person to act as a Customs House Agent is for transacting any business relating to the entry or departure of conveyance or the import or export of goods in any customs station. For that purpose, under Regulation 9 necessary examination is conducted to test the capability of the person in the matter of preparation of various documents determination of value procedures for assessment and payment of duty, the extent to which he is conversant with the provisions of certain enactments, etc. Therefore, the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as CHA, it is seen that while CHA should be in a position to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an Agent for carrying on certain illegal activities of any of the persons who avail his services as CHA. In such circumstances, the person playing the role of CHA has got greater responsibility. The very description that one should be conversant with the various procedures including the offences under the Customs Act to act as a Custom House Agent would show that while acting as CHA, he should not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as CHA by taking advantage of his access to the Department. The grant of licence to a person to act as CHA is to some extent to assist the Department with the various procedures such as scrutinizing the various documents to be presented in the course of transaction of business for entry and exit of conveyances or the import or export of the goods. In such circumstances, great confidence is reposed in a CHA. Any misuse of such position by the CHA will have far reaching consequences in the transaction of business by the customs house officials. Therefore, when, by such malpractices, there is loss of revenue to the custom house, there is every justification for the Respondent in treating the action of the Petitioner Applicant as detrimental to the interest of the nation and accordingly, final order of revoking his licence has been passed.*

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

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

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



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

**24.** In a regime of trade facilitation, a lot of trust is being placed on the Customs Broker who directly deals with the importers/exporters. Failure to comply with regulations by the CB mandated in the CBLR, 2018 gives room for unscrupulous persons to get away with import-export violations and revenue frauds. The CB deliberately and knowingly indulged himself in declaring higher value of the goods using fake invoices, to avail higher export benefits. The facts on record prove that CB had violated various provisions of CBLR, 2018 with mens rea.

**25.** I hold that the proof of charges in inquiry are acceptable and tenable based on the available evidence, the facts and circumstances of the case, which certainly warrant penal action against the CB. Therefore, for their acts of omission and commission, CB M/s. Merchant & Sons (11/678) is held liable and guilty for violating the provisions of CBLR, 2018 as mentioned above. I hold that the CB has failed to discharge his duties cast upon him with respect to Regulation 10(a), 10(d), 10(e), 10(f), 10(k), 10(n) & 10(q) of CBLR, 2018 and is liable for penal action. Accordingly, I pass the following order.

### **ORDER**

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

- (i) The CB License No. 11/678 is ordered to be revoked under Regulation 14 of the CBLR, 2018.
- (ii) I hereby order for forfeiture of entire amount of security deposit furnished by the CB, under Regulation 14 of the CBLR, 2018.

(iii) I, hereby impose penalty of Rs. 50,000/- (Fifty Thousand Rupees Only) on M/s Merchant & Sons (11/678) (PAN – AAEFM0675K) under Regulation 18 of the CBLR, 2018.

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

*AB*  
*18/3/2024*  
(SUNIL JAIN)

Principal Commissioner of Customs(G)  
NCH, Mumbai-I

To,

M/s Merchant & Sons (PAN: AAEFM0675K)  
Sagar Classic 703,  
Clare Road, Byculla  
Mumbai – 400008.

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. DRI, MZU, Mumbai.
4. SIIB (X), ACC, Sahar, Mumbai.
5. CIUs of NCH, ACC & JNCH
6. EDI of NCH, ACC & JNCH
7. ACC (Admn), Mumbai with a request to circulate among all departments.
8. JNCH (Admn) with a request circulate among all the concerned.
9. Cash Department, NCH, Mumbai.
10. Notice Board
11. Office Copy
12. Guard File (Admn)