



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/549/2022 -CBS

आदेश दिनांक/Date of Order: 28.02.2024

CAO No. 75/CAC/PCC(G)/SJ/CBS-Adj

जारी दिनांक/Date of issue: 28.02.2024

संख्या:

DIN : 20240277000000888A0B

द्वारा जारी : सुनील जैन

Issued By : Sunil Jain

प्रधान आयुक्त, सीमाशुल्क(सामान्य)

Pr. Commissioner of Customs(Gen.),

मुंबई -400 001

Mumbai - 400 001.

ORDER-IN-ORIGINAL मूल आदेश

ध्यान दीजिए/ N.B. :

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, यथोत्तराधिकार 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 क्षेत्रीय खंडपीठ, के M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai के संदर्भ में जारी आदेश क्रमांक A/86617-86619/2018 दिनांक 31.05.2018 के अनुसार न्यायिक आदेश तदोत्तराधिकार में 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 ब्याजवलगाए गए जुर्माने की राशि रु. पाँच लाख या इस से कम होतो रु. 1000/-, (ii) यदि यह राशि रु. पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न होतो रु. 5000/- एवं (iii) यदि यह राशि रु. पचास लाख से अधिक होतो रु. 10000/- के शुल्क का भुगतान क्रॉस्ड बैंक ड्राफ्ट के माध्यम से अधिकरण की खंडपीठ के सहायक पंजीयक के पक्ष में जिस स्थान पर खंडपीठ स्थित है, के किसी भी राष्ट्रीय क्रत बैंक की शाखा में किया जाए एवं डिमांड ड्राफ्ट अपील के साथ संलग्न किया जाए।

A fee of (i) Rs. 1000/- in case where the amount of duty and interest demanded and the penalty imposed in the impugned order appealed against is Rupees Five Lakhs or less, (ii) Rs. 5000/- in case where such amount exceeds Rupees Five Lakhs but not exceeding Rupees Fifty Lakhs and (iii) Rs. 10000/- in case where such amount exceeds Rupees Fifty Lakhs, is required to be paid through a crossed bank draft in favour of the Assistant registrar of the Bench of the Tribunal on a branch of any nationalized bank located at the place where the bench is situated and demand draft shall be attached to the Appeal.

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. Rupali Logistics Clearing And Forwarding Pvt. Ltd. (hereinafter referred as the Customs Broker/CB) (PAN:AAGCR6697F) having registered address at 9 D'Mello HOU, Sahar Village, Tank Pakhady, Vile Parle, Opp. Fish Market, Mumbai-400099. The CB possess Customs Broker License No. 11/2000, issued by the Commissioner of Customs, Mumbai, under regulations 7(1) of the CBLR, 2013 (Now regulation 7(2) of CBLR, 2018). As such, they are bound by the regulations and conditions stipulated therein.

2. An offence report in the form of Show Cause Notice No. - 35/ADJ(X)/2022-23 dated 15.11.2022 was received from ADC, Export Assessment, ACC, Mumbai on 01.12.2022, regarding fraudulent export of goods affected by an exporter, M/s. World Wide Export (IEC No. 0303025581), by using fake and bogus Bills of supplies through ACC, Mumbai, with the help of the Customs Broker (11/2000).

3. On the basis of specific information received by DRI, MZU, Mumbai, investigation was conducted. Investigation revealed that various export firms including M/s World Wide Export was procuring fake purchase bills against the export consignments from one Mr. Suhel Ansari, through fake firms floated by him. Searches were conducted at the premises of Suhel Ansari, which led to the recovery of copies of bogus bills in the names of several companies issued by him. During the course of search, certain records/documents, three laptops and one hard disk and various rubber stamps were recovered, which are incriminating.

4. During investigation, DRI, Mumbai recorded statements on 24.08.2015 of Shri Suhel Parvez Ansari and Shri Shaikh Mohammed Arshad, an employee of Shri Suhel Parvez Ansari. They stated that they supplied fake invoices to export firms, including M/s World Wide Export. Shri Shaikh Mohammed Arshad mentioned that approximately 22 firms, in whose name fake invoices were issued, were involved in the process.

5. DRI, MZU, Mumbai forwarded the case to SIIB(X)/ACC for further investigation into the details of exporters including M/s World Wide Export. These exporters claimed undue drawback by overvaluing their exports. Cheaper material was exported and to justify the value of the goods, fake invoices from Shri Suhel Ansari, were procured showing the higher purchase price.

6 During the course of investigation summons were issued by SIIB(X) to Sh. Moize Ahmed Ali Angoothiwala, partner of M/s World Wide Export who in his statement dated 09.03.2022 inter-alia stated that:

- a) M/s. World Wide Exporters is their partnership firm. They had obtained IEC from DGFT in August, 2008 and they are merchant exporter.

- b)** They bought the goods from local market and completed the orders, thereafter, they prepared packing list and invoice and handed over it to CB and Forwarding Agency for filing the shipping bill. They booked the tempo which took the goods from the warehouse and delivered the goods to Air Cargo Complex, Mumbai. Thereafter, representative of CB, handled further customs proceedings till the LEO of export of goods.
- c)** They have given authorisation to CB, but now they don't remember the names of the CB's but they took help from local freight forwarders who handled the documentation and further necessary procedures.
- d)** The CB raised invoice containing both freight and clearance charges then they made the payment through cheque.
- e)** On being asked about whether any CB/Freight Forwarders carried out address verification of M/s. World Wide Exporter, he said physically no one came for verifying the address.
- f)** On being asked how the goods are transported by their firm, they said that they used to send goods directly to the Air Cargo Complex, Mumbai by Tempo.
- g)** On being asked about the warehouse, he said that their firm don't have any warehouse.
- h)** On being asked about the documents they provide at time of Exports he answered that they used to provide Invoice, Packing List, SDF Form at the time of export.
- i)** On being asked about his exports from 2012 to 2017, they replied that they do not remember how many consignments exported for the period 2012 to 2017 and that they do not have any Purchase Invoice, Shipping Bills, and Invoice Copies of the exported consignments.
- j)** On being asked about the method of procurement, they replied inter-alia that imitation jewellery exported were supplied by different Karigars located in the suburbs of Mumbai, as well as Jodhpur, Delhi, Agra, Rajkot etc. Further he added that as these were small time Karigars, who only provided "Kaccha Bill" and were not able to provide proper invoices as they were not registered with Excise authorities.
- k)** On being asked about any knowledge regarding invoices from M/s Ruby Trading Co., M/s Alaska Trading Company and other companies which were allegedly floated by Mr Suhel Ansari, exporter replied that they don't remember but same would be reflected in their bank statement which they would provide in few days.
- l)** Further he was shown statement of Shri Suhel Parvez Mohammed Sharif Ansari dated 24.08.2015 and mentioning of firm M/s World Wide and also the acknowledgement before DRI that he (Shri Suhel

Parvez Mohammed Sharif Ansari) submitted fake and bogus Invoices to M/s World Wide to which he (Shri. Moize Ahmed Ali Angoothiwala) replied that he did not know this person by name as there are aliases for the people in the market so he might not know his actual name. He further added that he had not received any invoices from the said person directly. Further, if any, he might have received, might have come through third party including parties mentioned above.

7. During investigation, the details of exports made by the exporter M/s World Wide Export, were retrieved from the ICES System. During the period from 2012-2017, the exporter made total exports of 31 shipping bills and fraudulently availed total drawback amount of Rs. 3.31 Lakhs, it was found that out of these 31 consignments, the Customs Brokers, M/s. Rupali Logistics Clearing and Forwarding Pvt. Ltd cleared 5 export consignments shipping bills of the said exporter.

8. Accordingly, Statement of Shri Vikas S. Bhoite, Director, of CB, M/s. Rupali Logistics Clearing & Forwarding Pvt. Ltd., was recorded under section 108 of the Customs Act, 1962, on 05.01.2022 wherein he inter alia stated that:

- a) His company M/s. Rupali Logistics Clearing & Forwarding Pvt.Ltd. (11/2000) established in 2013-14. There were two directors namely Rupali Vikas Bhoite and he himself. He had 10 employee working in Air Cargo and Nhava Sheva. Turnover was 75 Lakh (approx) and they charged Rs.1000/- per shipment.
- b) He handled custom clearance and related documentation in Air Cargo Complex. He alone handled the custom clearing service and no family members were involved. He came in contact with M/s. World Wide Export through M/s. Crosil Logistics, a freight forwarders/shipping agent. KYC details were provided by exporter M/s. World Wide Export. Authority letter, copy of PAN card of M/s. World Wide Export and self-attested copy of IEC were provided by the exporter. He physically verified the address of the exporter and found to be authentic. The exporter directly used to send the goods to Air Cargo Complex by vehicle/Tempo. He was not aware of the exporter's source of procurement of goods. On being asked the procedure of handling of export, he replied that on receipt of documents from the exporter, a check list was prepared on the basis of invoice and packing list. After verification of details of invoice such as description, value and quantity they used to get the approval from the exporter then the documents were uploaded on ICEGATE. The exporter generally used to send invoice, packing list SDF form, Annex-I&II and other required documents. The exporter used to prepare invoice and packing list himself.

He had handled only 5 consignments of M/s World Wide Exports in year 2015.

c) On being questioned regarding involvement of third party and as per RBI circular No. 70 dated 08.11.2013 and amended circular No.100 dated 04.02.2014, a Triparty Agreement is necessary into Export/Import payment realisation, he replied that the Triparty agreement was not submitted by the exporter M/s. World Wide Export. AD code registration was already done by the exporter. The exporter did not show any samples before exports.

d) he verified all the details of correctness of classification, invoice, packing list details except value of the goods and he did not notice any discrepancy during the examination of goods.

e) on being questioned regarding use of fictitious bills by M/s. World Wide Export raised by Mr. Suhel Ansari and also his admission of the same in his statement before DRI, MZU, he replied that he did not know the correctness of the said fictitious bills.

9. During investigation, DRI enquired with the Consulate General of India, Dubai, UAE who vide letter dated 08.03.2018 reported that from the scrutiny of documents provided by Federal Customs Authority, Dubai it emerged that goods had been cleared and unit values had been much lower than what has been declared to Indian Customs. As per DRI the instant exporter has also adopted the similar modus-operandi.

10. During investigation, a 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 another CHA. 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 was exporting the goods on the basis of fake supplier's invoice.

11. Further from the 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. Hence it could not be ascertained whether any duties have been paid or otherwise. During investigation exporter could not produce any such details in respect of manufacturing, production or use of any imported material in impugned export goods, though he was having enough opportunity as he presented himself for recording of his statement but he failed to produce

any such details. 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.

Rule 3 of the Drawback Rules 1995 reads as under;

"Rule 3. Drawback - (1) Subject to provisions of -

Provided further that no drawback shall be allowed: -
-----"

(ii) if the said goods are produced or manufactured, using imported materials or excisable materials in respect of which duties have not been paid."

12. From investigations made by DRI, MZU and the investigations conducted by SIIB(X), ACC, Mumbai, it appears:

- M/s World Wide Export has procured fake and bogus invoices from Sh. Suhel Ansari. Goods of inferior quality which were procured from local market without any invoice.
- Incorrect transactions were made with the fake suppliers, whose invoices were raised by Sh Suhel Ansari. This was done to conceal the actual transactions and give cover to the bogus transactions.
- As export goods were procured from local market which was of inferior quality and having low value, therefore impugned export by M/s World Wide Export were grossly overvalued and only done for purpose of fraudulent claim of drawback.

13. From the investigation it appears that it is unlikely that CB M/s. Rupali Logistics Clearing & Forwarding Pvt. Ltd. (CB No. 11/2000) was unaware that they were receiving goods based on fictitious bills. Had the CB seen these documents relating to meeting the criteria to claim both types of Drawback and checked the correctness of relevant declaration, such fraudulent export could not have been possible.

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(d), 10(e) 10(f) & 10(n) of the CBLR, 2018 and rendered himself for penal action under Regulations 14, 17 & 18 of CBLR, 2018.

15. Therefore, under the facts and such circumstances, it appears the CB actively connived with exporters in claiming undue drawback and over valuing the export goods and mis-declaring in Shipping Bills, therefore the CB has failed

to comply with following regulations of the Customs Brokers Licensing Regulations 2018.

Legal Provision of the CBLR, 2018: -

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 (n) of the CBLR, 2018:- "A CB shall verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;"

16. SHOW CAUSE NOTICE: M/s. Rupali Logistics Clearing And Forwarding Pvt. Ltd (11/2000) was issued Show Cause Notice (SCN) No. 54/2022-23 dated 21.03.2023 asking them to show cause as to why the licence bearing no. 11/2000 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 regulations 17 & 18 of the CBLR, 2018, for their failure to comply with the provisions of CBLR, 2018 as elaborated in the Show Cause Notice. They were directed to appear for a personal hearing and to produce proof of evidence/documents if any, in their defence to the inquiry officer Shri Ashok Chakravarthy, Deputy Commissioner of Customs, NS-General, Mumbai zone-II who was appointed as an inquiry officer to conduct inquiry under regulation 17 of CBLR, 2018.

Inquiry officer Shri Ashok Chakravarthy, Deputy Commissioner of Customs, was changed as he was handling busy charges in zone-II. Subsequently Shri Sanjeev Vinay Chetule Deputy Commissioner of Customs, was appointed Inquiry Officer on 23.03.2023.

17. INQUIRY REPORT: -

Inquiry Officer (hereinafter referred to as IO) submitted Inquiry Report dated 28.11.2023, wherein, the charges against CB M/s. Rupali Logistics

Clearing and Forwarding Pvt. Ltd (11/2000) i.e. violation of Regulation 10(d), 10(e), 10(f) and 10(n) of CBLR, 2018 were held as 'Proved'.

17.2. Records of the Personal Hearing:

Inquiry officer in his report submitted that a letter dated 03.07.2023 vide F.No. GEN/INV/Misc/271/2023-PCCCC was issued to Customs Broker M/s. Rupali Logistics Clearing & Forwarding Pvt. Ltd. to appear for personal hearing fixed on 10.07.2023 at 1400 hrs in the Office of Deputy Commissioner of Customs, PCCCC, APSC, Mumbai. Accordingly, Shri. R.V. Shetty, Authorised representative of M/s. Rupali Logistics Clearing &. Forwarding Pvt. Ltd. appeared for personal hearing on 10.07.2023 and submitted the copies of written submissions dated 20.01.2023 and 01.04.2023 which were addressed to the Addl. Commissioner (Exports), ACC, Mumbai. He also averred that only 5 out of 31 S/Bs were handled by M/s. Rupali Logistics Clearing &. Forwarding Pvt. Ltd. and that remittances have been received against all of them.

17.3 CB's Submission

IO stated that the CB M/s. Rupali Logistics Clearing &. Forwarding Pvt. Ltd., CB Licence No. 11/2000 has given following submission in their reply dated 01.04.2023:

- i.** The statement of the Director shows that they are innocent and there are no illegal things done by them. They are innocent and acted as per instructions of CBLR Regulations.
- ii.** CB stated and submitted that they have not dealt with the goods, as they were sent directly to Air Cargo by the Exporter and at Air Cargo it was handled by the Freight forwarder. Export invoices was prepared by the Exporter himself. They are given Annexures I & II, Packing Slip and Invoice by the exporter. They have only filed the Checklist at ICEGATE and Shipping Bill both online. These are submitted on the basis of documents supplied by the exporter.
- iii.** CB stated that the Exporter has been referred by the freight Forwarder M/s. Croscill Logistics to them. He told us that they were genuine. They had visited the office of the Exporter for verification of address as required and also gone through IEC whether any remark is there against the exporter. They did not find anything against the exporter in the Customs Portal. All exports were in 2015. Thereafter exporter did not come to them. They charged approx. Rs. 1,000/- per shipping bill. They have taken all the precautions that they could take.
- iv.** CB submitted that they did not find any mistake in the papers submitted as the papers submitted seems to be genuine and proper. Further CB added that they are not investigating agency to verify the authenticity. They have filed the Shipping Bills on the basis of records

submitted. By the name it is not possible to identify whether the exporter is good or bad. Further all their exports were being cleared smoothly by Customs Authority.

v. CB stated that they are one of the 9 Custom Brokers who handled the export work of M/s. World Wide Exports. They handled only five consignments during 2015. The impugned SCN is issued after 07 years of export.

vi. There is no goods seized or released on Bond in this case. Hence there cannot be any confiscation. When there is no confiscation, no penalty can be imposed.

vii. CB submitted that penalty under Section 114(i) & (ii) is not impossible against them as Section 114 is applicable in the attempt to export goods improperly. They have not handled the goods in this case. Hence no penalty can be imposed under Section 114(i) & (iii) of Customs Act, 1962.

17.4 COMMENTS OF INQUIRY OFFICER: -

IO submitted that he had gone through the Show Cause Notice No. 54/2022-23 dated 21.03.2023 and various statements of the concerned persons taken during investigation, the records of the Personal Hearings, the submissions made by the CB on record and proceeded to discuss all these submissions & examined their merits.

17.4.1 IO found that this is a case where M/s. Rupali Logistics Clearing & Forwarding Pvt. Ltd., who provided service to M/s World Wide Exports as a Customs Broker in export of goods under five Shipping Bills pertaining to the period from 2012 to 2017, where the Customs Broker was issued with SCN for violations of provisions of Regulation 10(d), 10(e), 10(f) and 10(n) of CBLR, 2018 in as much as the exporter M/s World Wide Export who claimed drawback to the extent of 3.31 lakhs for 31 Shipping Bills have fraudulently procured fake purchase bill (overvalued) through Suhel Ansari, from various non duty paid suppliers and claimed ineligible drawback besides illegal remittances for which, M/s World Wide Export were also issued with SCN, as per investigations conducted by DRI, MZU, Mumbai.

17.4.2 IO submitted that the following 5 Shipping Bills pertaining to M/s World Wide Export, were handled and cleared by the Customs Broker M/s. Rupali Logistics Clearing & Forwarding Pvt. Ltd..

Table-I

S r. No.	SB no. & Date	FO B value (in FC)	Remitta nce received (in FC)	Drawb ack amount (Rs)
0 1	1020507/05.06. 215	FOB fully realized		Rs. 48266/-
0 2	1021858/05.06. 2015	FOB fully realized		Rs. 28153/-
0 3	1143726/11.06. 2015	FOB fully realized		Rs. 148924/-
0 4	647690/19.05.2 015	263 13	26217	Rs. 87894/-
0 5	9647745/19.05. 2015	176 48	17573	Rs. 52182/-

17.4.3 IO submitted that, the Customs Broker filed the above 5 Shipping Bills for export of imitation jewellery, on the basis of document given by the exporter M/s World Wide Export during the period 2012 to 2017. As per the investigation by DRI, MZU, Mumbai in the above case conducted against M/s World Wide Exports and the Customs Brokers, the goods were procured from local market (Domestic Tariff Area) by the exporter and invoice and packing list were handed over to the Customs Broker for presenting the Shipping Bill Further as and when the goods were delivered in tempo to Air Cargo Complex, the representative of Customs Broker handled the Customs proceedings till the LEO of export goods. Further, in the statement given by Shri Moize Ahmed Ali, partner of M/s World Wide Export, he has categorically stated that the CB did not carry out address verification physically and they raised invoice containing both freight and clearance charges. The fact that the exporter does not have any warehouse, infer that they are mere traders.

17.4.4 IO submitted that the goods were procured from DTA and no imported material were used in the goods exported by M/s World Wide Exports, as such second proviso to Rule 3(1) Drawback Rule 1995 is attracted and drawback is not permitted when duty has not been paid. The above modus operandi adopted by exporters is confirmed from a statement recorded by DRI, MZU, Mumbai during the investigation from Shri Suryabhan Eknath proprietor of M/s Sanket Overseas, a logistics provider where he disclosed that usually the cost and expenses incurred on the export material was only 35% of the drawback amount and the benefits availed was to the extent of 65%.

17.4.5 IO submitted that taking into account of all the documents available and facts deliberated above, it is seen that the value of goods in question and authenticity of goods exported / exporter was not verified by Customs Broker and they merely presented the documents for export where the exported goods value is inflated, which are based on fake purchase bills procured by the exporter that are non-duty paid, evidences that exporter solely intended to claim 05 undue fraudulent drawback benefit and were abetted directly or indirectly by the Customs Broker. Besides Customs Broker feigned ignorance by stating in their reply that they merely forward the invoices/ packing list and submit the Shipping Bill and airway bill for examination by the department. This goes on to prove that the Customs Broker has not exercised due diligence and failed to comply with provisions of the CBLR Act 2018 as alleged in the SCN.

17.4.6 IO submitted that on perusal of the notice issued to M/s World Wide Export under SCN No.35/ADJ(X)2022-23 dt. 15.11.2022 by Additional Commissioner of Customs Export Assessment in Table-II of para 9.2 under Sl. No. 16,17,18,27 and 28 and in comparison, with the status of Shipping Bills, it is seen that from all the five Shipping Bills, ie, 1020507 dated 05.06.2015, 1021858 dated 05.06.2015, 1143726 dated 11.06.2015, 9647690 dated 19.05.2015 and 9647745 dated 19.05.2015, filed by Customs Broker M/s. Rupali Logistics Clearing & Forwarding Pvt. Ltd., total drawback payment of Rs. 2,31,319/- has been received by the exporter. Whereas in case of two SBs 9647690 dated 19.05.2015 and 9647745 dated 19.05.2015, the FOB value has not been realized completely. On this count, the act of tacit connivance with the exporter over direct or indirect is clear and it is in violation of Customs Broker Licensing Regulations, 2018 thereby attracting penal provisions. Hence it is obvious that the goods exported in question, under the above 5 Shipping Bills as evidenced by the above deliberation that the value is inflated and have been part of a larger conspiracy to claim ineligible drawback.

17.4.7 Further IO submitted that, the Customs Broker in their written submissions and submissions during personal hearing have denied all the

allegations and contended that they have fulfilled all the obligations as per the CBLR, 2018.

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

IO submitted that the Customs Broker M/s. Rupali Logistics Clearing & Forwarding Pvt. Ltd. has merely accepted the documents and presented them without verification to the Customs. The Customs Broker was supposed to have guided the exporter and ensured the veracity of goods of inferior quality and the value thereof. Further IO stated that without sufficient precautions, just to obviate violations, the CB M/s. Rupali Logistics Clearing & Forwarding Pvt. Ltd. merely forwarded the said goods for export. It was duty of the Customs Broker to bring any discrepancies to the notice of the Customs Officers at the time of export of the said goods, but CB appears to have not done their duty. Accordingly, IO held that the Charge alleging violation of Regulation 10 (d) of the CBLR, 2018 stands "Proved".

17.4.9 Article of Charge-II:- Violation of Regulation 10 (e) of CBLR, 2018:

IO submitted that it is alleged in the Show Cause Notice that under Regulation 10(e) of CBLR 2018, M/s. Rupali Logistics Clearing &. Forwarding Pvt. Ltd. shall exercise their duties with due diligence and they shall check any scope for fraud or loss of Government Revenue. However, the Customs Broker M/s. Rupali Logistics Clearing &. Forwarding Pvt. Ltd. tacitly connived with the exporter. Further IO stated that CB should have exercised due diligence in handling such cargo. It is apparent that the CB firm did not exercise due diligence in ascertaining the correctness of any information which they impart to a client with reference to any work related to cargo, as the CB has not at all interacted with the exporter. It is evident that the CB were overtly and covertly hand in gloves with the exporter in their acts of omission and commission by remaining non-committal to the regulations. Accordingly, IO held that the Article of Charge alleging violation of Regulation 10(e) of CBLR, 2018 stands "Proved".

17.4.10 Article of Charge-III: Violation of Regulation 10(f) of CBLR, 2018

IO submitted that the CB M/s. Rupali Logistics Clearing &. Forwarding Pvt. Ltd who is bound to verify the correctness of the value and the goods to be exported and accordingly bring to the knowledge of the department and also should have sensitized the exporter regarding the same. The CB has failed to do so and has not brought to the knowledge of the exporter or the customs authorities thus violating Regulation 10(f) of CBLR, 2018. Accordingly, IO held that the Article of Charge alleging violation of Regulation 10(f) of CBLR, 2018 stands "Proved".

17.4.11 Article of Charge-III: Violation of Regulation 10(n) of CBLR, 2018:-

IO submitted that the CB M/s. Rupali Logistics Clearing & Forwarding Pvt. Ltd. appears to have not physically visited the exporters premises which is a pre-requisite and has neither provided records pertaining invoice raised and payments received nor the bank statement for having received payment from which can be inferred that they never directly interacted with the exporter M/s. World Wide Export, concerning the transaction. There is no denying the fact that the Customs Broker M/s. Rupali Logistics Clearing & Forwarding Pvt. Ltd. have not been careful and not diligent in undertaking the KYC verification of the exporter and accepted documents for namesake, which he did not verify. Accordingly, IO held that CB made himself liable for penal action for violation of Regulation 10(n) of the CBLR, 2018.

Therefore, IO stated that he was of the considered opinion that the allegations against the Charged Customs Broker M/s. Rupali Logistics Clearing & Forwarding Pvt. Ltd. are established on the count of all charges viz. 10 (d), 10 (e), 10 (f) and 10 (n) of the CBLR, 2018.

18. PERSONAL HEARING AND RECORDS OF PERSONAL HEARING:-

A personal hearing was granted to Customs Broker on 17.01.2024. Shri Vikas Bhoite, director of the CB firm and Shri R.V Shetty & S.R Shetty, authorised representatives of CB appeared for personal hearing wherein, they submitted written submission dated 15.01.2024. They reiterated the contents of their reply dated 17.01.2023 submitted earlier to the Inquiry Officer and in addition to that they submitted the following:

i. In defence of violation of regulation 10(d) of the CBLR-2018: CB submitted that they have followed all the requirements Regulation 10(d). The consignment received duly packed. The Customs Officers verified the consignment before export. They could not open the consignment as there is no place to open and repack. The goods quality was verified by Customs. They filed KYC, IEC, PAN and other documents as required. There is no violation of 10(d) by them. Further the goods were directly deposited in the Customs Cargo area by the Logistics.

ii. In defence of violation of regulation 10(e) of the CBLR-2018: CB stated that they acted as Clearing agent. If there is any Fraud it is by the exporter M/s. World Trade. They charged approx..Rs.1000/- per shipping bill. This only for filing documents to ICEGATE and after approval to file S.B. The goods were received in fully packed condition brought by Forwarder M/s. Croscill Logistics. Once it is reached Air Cargo it is in the Custody of Customs. They are not a party to any wrong done by exporter.

iii. In defence of violation of regulation 10(f) of the CBLR-2018: The valuation and verification of goods is the Customs prerogative and not them.

They verified the correctness of documents received and their submission to ICEGATE and after approval filing S.B. As per CBLR, they have to verify KYC, IEC, PAN, verification of Premises. They verified all these and they were all proper and correct. There is no allegation in the SCN in this respect.

iv. In defence of violation of regulation 10(n) of the CBLR-2018: CB submitted that they checked the IEC, during 2015 there was no CGST. The CGST was introduced in 2017. They checked the PAN, Visited the office personally to verify the address, and filed KYC with all the documents. In this case there were in all 35 Shipping Bills, out them we have attended only 5 Shipping Bills during 2015. Hence there is no suppression.

v. Further, CB submitted that they had followed all the procedures what the Custom Broker supposed to do. They had done their work diligently and properly. Not violated any Rules & Regulations. The Findings are not correct and proper. CB prayed to drop the proceeding against them.

19. DISSCUSSION AND FINDINGS: -

I have gone through the facts of the case, material evidence on record, the said Show Cause Notice dated 21.0.2023, and Inquiry Report dated 28.011.2023, written and oral submissions of the said CB.

19.1 I observe that the charges against the said CB is of violation of regulation 10(d), 10(e), 10(f) and 10(n) of CBLR, 2018 made vide Show Cause Notice No. 54/2022-23 dated 21.0.2023. The Inquiry Officer vide inquiry report dated 28.11.2023 held the charges of violation of Regulations 10(d), 10(e), 10(f) and 10(n) of CBLR, 2018 as "Proved".

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

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

19.3.1 The said 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;"

19.3.2 From the investigation, it has been revealed that in this particular case, M/s World Wide Export, the exporter, procured the impugned goods from the Domestic Tariff Area (DTA) without any invoices. Consequently, there are no details available regarding the manufacturing, production, or the use of imported or excisable material in these goods. This absence of information makes it

impossible to ascertain whether any duties have been paid. Furthermore, the exporter failed to produce any such details during the investigation, even though ample opportunities were provided, including the recording of statements. Therefore, it is evident from the investigation that the essential element of the second proviso to Rule 3(1) (Drawback Rule, 1995) is applicable in this case, disallowing any amount of drawback when no duty has been paid.

Rule 3 of the Drawback Rules 1995 reads as under;

"Rule 3. Drawback- (1) Subject to provisions of -

Provided further that no drawback shall be allowed: -

(ii) if the said goods are produced or manufactured, using imported materials or excisable materials in respect of which duties have not been paid."

Hence, the CB failed to advise the exporter on the aforementioned drawback rules. CB failed to comply with the provisions of Regulation 10(d) of the CBLR, 2018.

19.3.3 Additionally, the investigation reveals that:

- M/s World Wide Export obtained fake and bogus invoices from Mr. Suhel Ansari for goods of inferior quality sourced from the local market without any invoice.
- Incorrect transactions were conducted with the fake suppliers, whose invoices were generated by Mr. Suhel Ansari. This was done to conceal the actual transactions and provide cover for the fraudulent transactions.
- As the export goods were procured from the local market and were of inferior quality with low value, the contested exports by M/s World Wide Export were significantly overvalued, solely for the purpose of making a fraudulent claim of drawback.
- The Consulate General of India, Dubai, U.A.E., through a letter dated 08.03.2018, further confirmed that the original/actual unit value of the exported goods was abnormally low compared to the declared value in the Shipping Bills.

19.3.4 In this regard, after reviewing the Customs Broker's (CB) written submission dated 15.01.2024, it is pertinent to mention the following findings:

i. According to Regulation 10 (d) of the CBLR, 2018, the charged CB is required to advise the exporter to comply with the provisions of the Act, other allied Acts, and the rules and regulations, including the Drawback Rules 1995 and the erstwhile Central Excise Act, 1944. However, throughout the entire investigation, the CB failed to produce any evidence indicating that they advised their client to comply with the provisions of the Act, specifically Rule 3 of the Drawback Rules 1995, through any form of communication.

the

ii. In this context, the investigation reveals that Mr. Moize Ahmed Ali Angoothiwala, the partner of M/s World Wide Export, stated in his statement dated 09.03.2022 that he had given authorization to the CB. Although he couldn't recall the CB's name, he sought assistance from local freight forwarders for documentation and necessary procedures. It is evident from the statement recorded under Section 108 of the Customs Act, 1962, that the CB had not interacted with the exporter at all. Since there was no interaction between the exporter and the charged CB, the issue of advising the exporter to comply with the provisions of the Act, other allied Acts, and the rules and regulations does not arise. Consequently, it is concluded that the charged CB failed to comply with the provisions of Regulation 10(d) of the CBLR, 2018.

iii. Furthermore, the CB argued in their submission that they adhered to Regulation 10(d) of the CBLR, 2018, and emphasized that the quality of the goods should be verified by Customs only.

iv. In this context, I refer to the judgment of the Honourable CESTAT, Mumbai, in the case of M/s Eagle Transport Services vs. Commissioner of Customs, Mumbai, 1997 (96) E.L.T. 469 (Tribunal). Although the case was different, the judgment's ratio may be applied to the present case. The Honourable CESTAT, Mumbai, held in paragraph 7 (relevant portion) that

“a Custom house agent has a very significant role to play in the clearance of goods through Customs and Port Trust. Such clearance involves application of many specialized laws and detailed procedures often contain complex statutory requirements. It is for this reason that Customs Brokers have been licensed. Before he is granted permanent license, he has to qualify an examination in which his knowledge of relevant procedures is vested. The object of these regulations is to ensure that the Customs Brokers acts honestly and efficiently in the conduct of their business. It is not difficult to foresee the consequences that would aim the Custom House Agent does not co-act in such a manner. The Custom House Agent makes various representations before the Custom House on behalf of the importer and exporter relating to the nature of the goods conditions under which they were imported their value etc. The statements that he makes and the information that he provides are crucial for assessing the goods to duty and deciding whether the import is prohibited or not. The Custom House Agent thus can the status of a professionally qualified person akin to an advocate, Chartered Accountant or number of other professions which requires a minimum standards of knowledge for minimum standards of conduct. If the Custom House Agent acts negligently or dishonestly, the Custom House can be defrauded money due to the Government, and in good faith permit import or export of prohibited goods.”

Therefore, it is concluded that the CB holds the status of a professionally qualified person, and they cannot evade the responsibilities cast upon them under the Regulations of the CBLR, 2018, by stating that their work is limited to filing KYC, IEC, PAN, and other documents only.

v. Based on the investigation by the DRI, MZU, Mumbai, it is implausible to assume that the exporter could have exported the contested goods without wilful collusion with the CB. Therefore, the CB cannot avoid the responsibilities and obligations cast upon them under the CBLR, 2018.

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

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

19.4.1 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;"

19.4.2 Upon reviewing the case records, it is evident that the Customs Broker (CB), M/s. Rupali Logistics Clearing & Forwarding Pvt. Ltd., failed to exercise due diligence while providing information to the client. The CB operated in a seriously negligent manner, assisting the exporter in obtaining undue drawbacks by overvaluing exports with cheaper materials. To justify the value of the goods, fake invoices from Suhel Ansari were procured, indicating a higher purchase price.

19.4.3 In their defence, the CB argues that they functioned solely as a clearing agent. If any fraud occurred, it was committed by the exporter, M/s. World Trade. The CB charged approximately Rs.1000/- per shipping bill, covering document filing to ICEGATE and obtaining approval to file the Shipping Bill. The goods, received in fully packed condition by Forwarder M/s. Croscill Logistics, entered the custody of Customs once at Air Cargo. The CB claims they are not a party to any wrongdoing by the exporter.

19.4.4 Regarding Sh. Moize Ahmed Ali Angoothiwala, partner of M/s World Wide Export, and his statement dated 09.03.2022 recorded under Section 108 of the Customs Act, 1962, I have discussed in paragraph 19.3.4. He stated that he authorized the CB, with no recollection of the CB's name, seeking help from

local freight forwarders for documentation and procedures. Thus, it is evident that the CB had no direct interaction with the exporter. The CB's argument that documents were provided by the exporter holds no ground as the documents were not received directly from the exporter. Concerning the CB's assertion that Customs alone should verify the quality of the impugned goods, as discussed in paragraph 19.3.4, the CB cannot evade their responsibilities under Regulation 10(e) of the CBLR, 2018, by claiming that determining the mis-declaration in terms of valuation is solely the officer's responsibility. Therefore, the CB's submission in this regard is unfounded.

19.4.5 Additionally, upon inquiry by DRI with the Consulate General of India, Dubai, UAE, in a letter dated 08.03.2018, it was reported that the original/actual unit value of the exported goods was abnormally low compared to the declared value in the Shipping Bills. According to Regulation 10(e) of the CBLR, 2018, it is the obligation and duty of the CB to exercise due diligence and ascertain the correctness of information related to any work concerning cargo. The CB's failure to exercise due diligence led to an attempt to export goods at inflated valuations based on fake invoices.

19.4.6 The investigation reveals that various export firms, including M/s World Wide Export, procured fake purchase bills for export consignments from Mr. Suhel Ansari. M/s World Wide Export claimed undue export benefits by overvaluing exports with cheaper materials. To justify the inflated value, fake invoices from Shri Suhel Ansari were procured, showing a higher purchase price. In view of the discussion and findings, it is my considered view that the CB failed to exercise due diligence in verifying the accuracy of information regarding fraudulently exported goods. Therefore, I hold that the CB has violated the provisions of Regulation 10(e) of the CBLR, 2018.

19.5 With regard to violation of Regulation 10(f) of CBLR, 2018:

19.5.1 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; "

19.5.2 From the investigation it is revealed 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. During investigation exporter could not produce any such details in respect of manufacturing, production or use of any imported material in impugned export goods, though he was having enough opportunity as he presented himself for recording of his statement but he

failed to produce any such details. Further, it is also revealed from the investigation that exporter M/s. World Wide Export had declared high value of the goods exported to avail higher amount of export benefits which is clear violation of the Customs Valuation (Determination of value of export goods) Rules, 2007.

19.5.3 The CB in his written submission reiterated that the valuation and verification of goods is the Customs prerogative and not theirs. They verified the correctness of documents received and their submission to ICEGATE and after approval filed Shipping Bills. In this regard, I have already discussed at para no. 19.3.4 in this regard, therefore, I find that there is no water in the CB's submission in this regard.

19.5.4 Further, I find that exporter did not furnish the declarations at the time of exports in format annexed with circular No. 16/2009-Customs dated 25.05.2009. As per the said format, the exporter was inter-alia required to declare the name and complete address of the traders from who export goods had been purchased. The exporter also required to declare that they were not the manufacturer of the export goods and were not registered under the erstwhile Central Excise Act, 1944 and that 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. World Wide Export 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.

19.5.5 From the above facts, I am of the considered view that the CB failed to inform the exporter about the circular No.16/2009-Customs dated 25.05.2009. Therefore, I hold that the CB has violated the provisions of Regulation 10(f) of the CBLR, 2018.

19.6 With regard to violation of Regulation 10(n) of CBLR, 2018:

19.6.1 The said regulation 10(n) of CBLR, 2018 reads as: -

"A Customs Broker shall verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;"

19.6.2 It is alleged in the SCN that the during course of investigation process, Shri Moize Ahmed Ali Angoothiwala, partner at M/s World Wide

Export, acknowledged in his statement recorded under section 108 of the Customs Act, 1962 on 09.03.2022, inter alia admitted that no physical verification of their address took place. Thus, the CB failed to verify the address of the exporter which is a gross violation of the Regulation 10 (n) of the CBLR, 2018.

19.6.3 In this regard, I have gone through the CB written submission dated 15.01.2024 and it is pertinent to mention the following findings:

i. As per Regulation 10(n) of the CBLR9, 2018, it is duty of the CB verify functioning of their client at the declared address by using reliable, independent, authentic sources, on the other hand, despite the enough opportunities given to the charged CB, I don't find any documentary evidence to support the claim that they had indeed verified the credentials of the aforementioned exporter, including the functioning of the exporter at the declared address, utilizing trustworthy, independent, and authentic documents, data, or information such as speed post etc. and had neither provided records pertaining invoice raised and payments received nor the bank statement for having received payment from which can be inferred that they never directly interacted with the exporter M/s. World Wide Export, concerning the transaction. Further, I find from the investigation that Shri Moize Ahmed Ali Angoothiwala, partner at M/s World Wide Export, admitted in his statement dated 09.03.202 that their firm don't have any warehouse.

Therefore, there is no concrete evidence in CB' argument that they had followed the Regulation 10(n) of the CBLR, 2018 by stating they had checked the IEC, and in year 2015 there was no CGST. The CGST was introduced in 2017. They checked the PAN, Visited the office personally to verify the address, and filed KYC with all the documents. Hence, in view of the above facts, I don't find any ground in the CB submission in this regard.

19.6.3 On gone through the facts on records, I find that there is no denying the fact that the Customs Broker M/s. Rupali Logistics Clearing & Forwarding Pvt. Ltd. have not been careful and not diligent in undertaking the KYC verification of the exporter and accepted documents for namesake, which they did not verify and therefore made themselves liable for penal action for violation of Regulation 10(n) of the CBLR, 2018.

19.6.4 From the above facts and circumstances, I am of the considered view that the CB in the present case showed an act of carelessness which resulted in fraudulent activities of export. Therefore, I hold that the CB has violated the provisions of Regulation 10(n) of the CBLR, 2018.

20. While deciding the matter, I rely upon following judgements which are squarely applicable in this matter: -

20.1 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)".

20.2 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.

20.3 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."

21. 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.

22. 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. Rupali Logistics Clearing & Forwarding Pvt. Ltd. (11/2000) 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(d), 10(e), 10(f) and 10(n) of CBLR, 2018 and is liable for penal action. Accordingly, I pass the following order.

ORDER

23. 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. 11/2000 is ordered to be revoked under Regulation 14 of the CBLR, 2018.
- (ii) I hereby order for forfeiture of entire amount of security deposit furnished by the CB, under Regulation 14 of the CBLR, 2018.
- (iii) I hereby impose penalty of Rs. 50,000/- (Rupees Fifty Thousands Only) on M/s Rupali Logistics Clearing & Forwarding Pvt. Ltd., (11/2000) (PAN No. AAGCR6697F) under Regulation 18 of the CBLR, 2018.
- (iv) I hereby order that the CB surrender the original License as well as all the 'F', 'G' & 'H' cards issued there under immediately.

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


(SUNIL JAIN)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
MUMBAI ZONE-I

To,

M/s. Rupali Logistics Clearing And Forwarding Pvt. Ltd., (PAN:AAGCR6697F),
9 D'Mello HOU, Sahar Village,
Tank Pakhady, Vile Parle, Opp. Fish Market,
Mumbai-400099

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. CIU's 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 to circulate among all concerned.
9. Cash Department, NCH, Mumbai.
10. Notice Board
11. Office Copy
12. Guard File (Admin)