



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

संचिका सं./F. No.- CUS/2712/2022- CBS

आदेश दिनांक/Date of Order: 12.01.2024

CAO No. 64/CAC/PCC(G)/SJ/CBS-Adj

जारी दिनांक/Date of issue: 12.01.2024

संख्या:

DIN : 20240177000000338806

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

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

**ORDER-IN-ORIGINAL मूल आदेश**

**ध्यान दीजिए/ N.B. :**

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

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

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

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

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

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

5. यह अपील फॉर्म C.A.-3 में दायर की जानी चाहिए जो कि सीमाशुल्क (अपीलस) नियमावली, 1982 के नियम 6 के तहत निर्धारित है एवं उसी नियमावली के नियम 3 के उपनियम 2 में उल्लेखित व्यक्ति द्वारा हस्ताक्षरित एवं सत्यापित की जाएगी।

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

6. (i) यदि प्रतिवादित आदेश, जिसके विरुद्ध अपील की गई है, में शुल्क एवं मांगे गए ब्याजवतलाए गए जुर्माने की राशि रु. पाँच लाख या इस से कम होती रु. 1000/-, (ii) यदि यह राशि रु. पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न होती रु. 5000/- एवं (iii) यदि यह राशि रु. पचास लाख से अधिक होती रु. 10000/- के शुल्क का भुगतान 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.

7. अपील की एक प्रति में कोर्ट फी अधिनियम, 1870 की अनुसूची मद 6 के तहत निर्धारित रु. 50 का कोर्ट फी स्टैम्प लगा होना चाहिए एवं इसके साथ संलग्न इस आदेश की उक्त प्रति में रु. 50 का कोर्ट फी स्टैम्प लगा होना चाहिए।

Once copy of the Appeal should bear a Court Fee Stamp of Rs. 50 and said copy of this order attached therein should bear a Court Fee Stamp of Rs. 50 as prescribed under Schedule item 6 of the Court Fee Act, 1870, as amended.

## **BRIEF FACTS OF THE CASE**

M/s. O.K. Cargo Craft Pvt. Ltd., (PAN: AAAC03043J), having registered address at Office No 28, Ambika Terrace, 1st Floor, 66/4 Clive Cross Lane, Dana Bunder, Masjid (East) Mumbai-400009 (hereinafter referred to as the Customs Broker/CB) holder of Customs Broker License No. 11/887, 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. An offence report with respect to the role of the CB, M/s. O.K. Cargo Craft Pvt. Ltd. was received from SIIB(X), ACC, Mumbai, wherein inter alia following was informed: -

2.1. Information was received by the DRI, MZU, Mumbai, that from investigation it was revealed that various export firms including M/s Janman Lifestyle Pvt Ltd (IEC - 0314034366) were 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.

2.2. Office premises of Shri Suhel Ansari, situated at Room No. 30, 4th Floor, Chunnwala Building, 38-Kolsa Street, Pochonic, Mumbai -400003, were searched by DRI on 14.08.2015. During the course of search of the said premises, certain incriminating records/documents, three laptops and one hard disk and various rubber stamps were recovered.

2.3. Statement of Shri Suhel Parvez Ansari and Shri Shaikh Mohammed Arshad employee of Shri Suhel Parvez Ansari were recorded on 24.08.2015 by DRI, Mumbai, wherein they inter-alia stated that they supplied fake invoices to the export firms including M/s Vaishnavi Exports and Imports Co. and M/s Janman Lifestyle Pvt Ltd. Shri Shaikh Mohammed Arshad stated that there were about 22 firms in whose name fake invoices were issued by them.

2.4. During the course of investigation, DRI enquired with the Consulate General of India, Dubai, UAE, who vide their 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

2.5. DRI, MZU, Mumbai forwarded the case to the SIIB(X)/ACC, Mumbai for carrying out further investigation. The details of exporters including M/s Janman Lifestyle Pvt Ltd who have claimed undue drawback by overvaluing the exports and exporting cheaper materials to justify the value of the exported goods. In the

said case, fake invoices obtained from Shri Suhel Ansari by the exporter, showing the higher purchase price were submitted.

**2.6.** During the course of investigation, SIIB(X), ACC, Mumbai issued various summons by post to Shri Uday Bharat Desai, Shri Tushar Ashwin Bhatt and Rahul Kanaiyalal Gandhi, directors of M/s. Janman Lifestyles Pvt. Ltd. (IEC-0314034366) however, all summons were returned back with postal remark "Unclaimed/Left".

**2.7.** Efforts were made to deliver the summons by hand to Shri Tusar Ashwin Bhatt, Proprietor of M/s. Janman Lifestyles Pvt. Ltd. at his address, "C/3-22, Pramod CHS, Chaittranjan Nagar, Rajawadi, Ghatkopar East, Mumbai-400067", on 04.06.2019, however, it was found that Shri Tusar Ashwin Bhatt was not residing at the given address and the said building is under re-construction.

**2.8.** Summons were issued to Shri Faiyaz Ismail Anware who vide his statement dated 10.03.2022 stated that he works as freight forwarder and that Shri Uday Desai has approached him for export related work. He used to collect all export related documents from exporter and gave them to CHA. He visited M/s. Janman Lifestyles Pvt. Ltd. office, personally and completed the KYC. Further he stated that he has no idea from where exporter purchases the goods, exporter used to prepare all export related documents. He further stated that as and when required, the exporter submitted/showed the samples of the consignments exported by them and he used to give the same to CHA.

**2.9.** During investigation, the details of exports made by the exporter M/s Janman Lifestyles Pvt. Ltd., were retrieved from the ICES System. It was found that for the period from 2012-2016, the exporter made total exports under 59 Shipping Bills and availed total drawback of Rs.33.10 lakh, by way of overvaluation.

**2.10.** From scrutiny of the Shipping Bills filed by the exporter M/s Janman Lifestyles Pvt. Ltd., it was found that the Customs Broker, M/s. O.K. Cargo Craft Pvt. Ltd, (11/887) had cleared consignments under 04 Shipping Bills of the exporter.

**2.11** From perusal of the statement dated 01.07.2016 of Shri Suryabhan Eknath Dhurphate, Proprietor of M/s. Sanket Overseas, Navi Mumbai, who was the logistics provider and was involved in clearing the consignments through CHA, M/s. Indo Foreign Agents, recorded before the DRI, MZU, it was revealed 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 the basis of fake supplier's invoice.

**2.12.** 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, or 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 the impugned exported goods, though he was having enough opportunity as he presented himself for recording of his statement. Therefore, it appears from investigation that necessary ingredient of second proviso to Rule 3 is not fulfilled.

*"(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."*

**2.13.** From the investigations made by DRI, MZU and the investigations conducted by SIIB(X), ACC, Mumbai the following facts appears that;

- i. The exporter M/s. Janman Lifestyles Pvt. Ltd. made exports vide 59 Shipping Bills and availed total drawback amount of Rs 33.10 Lakhs, by way of over valuation.
- ii. that excess drawback amount of Rs. 33.10 Lakhs is already disbursed to the exporter.
- iii. M/s. Janman Lifestyles Pvt. Ltd. (IEC- 0314034366) has procured fake and bogus invoices from Shri Suhel Ansari for affecting the exports.
- iv. Goods of inferior quality were procured from the local market without any invoice.
- v. Incorrect transactions were shown to be made with the fake suppliers, whose invoices were raised by Shri Suhel Ansari. This was done to conceal the actual transactions and give cover to the bogus transactions.
- vi. There was no physical movement of the goods, against the fake invoice raised by Shri Suhel Ansari.
- vii. The exported goods were procured from local market which were of inferior quality and having low value. Hence it appeared, that the impugned export by M/s. Janman Lifestyles Pvt. Ltd. (IEC- 0314034366) was grossly overvalued and only done for the purpose of fraudulent claim of drawback.

**2.14.** It is found from the investigation that Customs Broker M/s. O.K. Cargo

Craft Pvt. Ltd, facilitated the clearance of 04 consignments / Shipping Bills out of the total 59 Shipping Bills of the said exporter. During investigation, no one from M/s. O.K. Cargo Craft Pvt. Ltd (11/887) appeared before SIIB(X), ACC to record their statement.

**2.15.** The CHA is an agent of exporter and works on behalf of the exporter. He also takes authorization to work on behalf of exporter. All CHAs are fully aware that omission and commission by the exporter, affects working image of the CHA. It is a business practice, that CHA knows on whose behalf they are working, as CHA can face investigation for omission and commission at any time. As per CHA Regulation, a CHA also requires to know their client. Even in the absence of such requirement it is business practice that the CHA knows on whose behalf they are working as the relation between CHA and exporter is a long time relation.

**2.16** Unlike retail business where customer comes to retail shop and transaction concludes in a moment, the relationship between CHA and exporter is on a long-term relationship, so it is not possible that CHA does not know the exporter. The CHA had been dealing with such individuals to collect documents and collect goods and must have raised his fees from the same source. It is also not possible for CHA to deal with non-existing persons.

**2.17** This is a case where the real culprit was very well existing and also dealing with CHA. The exports were fictitious, as Purchase Bills were also fictitious. Actual movements of goods are always under cover of Challan and Invoices. There are some other requirements of local Government which prevent movement of goods without documentation. It is also unlikely that CHA has been receiving goods based on fictitious Bills and he was not aware at all. Further, the CHA has responsibility to guide exporter and inform about the requirement that only in certain cases, both types of Drawbacks can be claimed by the exporter. Had the CHA seen these documents relating to meeting the criteria to claim both types of Drawbacks and checked the correctness of relevant declaration, such fraudulent export could not have been possible. The CHA M/s. O.K. Cargo Craft Pvt. Ltd (11/887), in his letter dated 06.05.2022 has not clarified whether exporter's address was verified physically and whether all export related documents were carefully verified. Since fraud of drawback has been committed, therefore, it appears that CHA has not done the KYC and did not verify exporter's antecedents. Therefore, it seems that M/s. O.K. Cargo Craft Pvt. Ltd. has connived with the exporter in claiming undue drawback, overvaluation and mis-declaration i.r.o. the subject goods and defrauding the government. Therefore, under the facts and circumstances, it appears that CHA has actively connived with the exporter in claiming undue Drawback and over valuing the export goods and mis-declaring in

the Shipping Bill. While conniving with the exporter, they did not care to follow the obligation imposed through Regulations and the Customs Act, 1962.

**2.18** 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(k), 10(n) & 10(q) of the CBLR, 2018 and rendered themselves for penal action under Regulations 14, 17 & 18 of CBLR, 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 (k) of the CBLR, 2018:-** "A Customs broker shall 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:-** "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;"

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

**3. SUSPENSION/REVOCAION OF LICENSE:** In view of the facts stated above, CB, M/s. O.K. Cargo Craft Pvt. Ltd (11/887) was found liable for their acts of

omission and commission leading to contraventions of the provision under Regulation 10(d), 10(e), 10(f), 10(k), 10(n) & 10(q) of CBLR, 2018. Therefore, prima facie, it appeared that the CB failed to fulfil their responsibilities as per provisions of regulations of CBLR, 2018. Hence the licence of CB was put under immediate suspension vide Order No. 58/2022-23 dated 28.12.2022. The Suspension of CB License was revoked vide Order No.70/2022-23 dated 25.01.2023 under Regulation 16(2) of the CBLR, 2018 passed by the Principal Commissioner of Customs(G), NCH.

**4. SHOW CAUSE NOTICE:** M/s. O.K. Cargo Craft Pvt. Ltd (11/887) was issued a Show Cause Notice (SCN) No. 37/2022-23 dated 27.02.2023 asking them to show cause as to why the licence bearing no. 11/887 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 Regulation 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 also directed to appear for a personal hearing and to produce proof of evidence/documents if any, in their defence to Shri Chitte Yogesh Sugdeo, Deputy Commissioner of Customs who was appointed an inquiry officer to conduct inquiry under regulation 17 of CBLR, 2018.

Shri Chitte Yogesh Sugdeo, DC had informed that he was already appointed as IO in another departmental Inquiry therefore Shri Vivek Anand, DC, APSC was appointed as IO on 21.03.2023.

Shri Vivek Anand, DC, APSC submitted that PH was held on 25.04.2023. Next hearing was held on 15.05.2023 whereby CB submitted written submission dated 25.04.2023. Another PH was given to the CB, M/s. O.K. Cargo and exporter M/s. Janman Lifestyle Pvt. Ltd. on 19.05.2023. However, CB replied vide e-mail dated 19.05.2023 and requested to postpone the hearing but exporter did not appear for hearing and cross-examination. Further, Shri Vivek Anand, DC submitted that he was on EOL to participate in a fellowship in Germany from 01.07.2023 to 31.03.2024. Therefore, Inquiry Officer was changed and Shri Ramdas Kale, DC was appointed as new IO on 20.09.2023.

**5. INQUIRY REPORT :-**

Inquiry Officer Shri Ramdas Kale, DC submitted Inquiry Report dated 03.11.2023, wherein, the charges against CB M/s. O.K. Cargo Craft Pvt. Ltd (11/887) i.e. violation of Regulation 10(d), 10(e), 10(f), 10(k), 10(n) & 10(q) of CBLR, 2018 were held as 'Proved'.

**5.2** IO submitted, that personal hearing was granted to the CB on 12.10.2023. Mr. Yogesh Bhanushali (G+ Card holder and Power of Attorney for the said CHA firm), Mr. R. K Tomar, Advocate and Authorized Representative and Mr. Gaurav Sarfare, Junior Advocate appeared in respect of Inquiry Proceedings against the said CB.

**5.3 CB Submissions:** CB submitted that the issue is relating to fake invoices produced by the exporter M/s Janman Lifestyles Pvt. Ltd. (IEC- 0314034366). They stated that there is nothing on record that the CB has not advised the exporter and abetted the exporter by declaring incorrect value. They further added that, there is nothing on record that the CB has not exercised due diligence to ascertain the correctness of any information and /or the relevant declaration which he has imparted to his client with reference to any work related to the clearance of cargo. They submitted that the allegation is based on assumption and there is nothing on record in the SCN to suggest that the CB did not inform the exporter about the instructions and Public Notices regarding claiming of Drawback. In respect of physical verification of exporter's address and verification of export related documents, CB stated that it is but natural that CB has to carefully verify the documents, he added that address was infact physically verified and found to be in existence at the address mentioned in the KYC documents. Further regarding non appearance of the CB in the hearing before the Investigation Agency, they stated that the summons were issued for production of export related documents and the said documents were submitted to the Office of SIIB (X), ACC vide their letter dated 06.05.2022. They further added that the correctness of IEC, and other details along with the antecedents of the exporter have been verified and the documents in this respect have been submitted to the Department including the Investigating Agency. He further added that there is no period beyond the period of 05 years (other than those where such export/import are under some scheme where a Bond is submitted) that any CB can be expected to preserve any documents in such cases of import and export. In respect of non-appearance of the CB before the Investigation Agency, they submitted that in case the CB was required to be interrogated, they could have been called again, SIIB(X) did not feel the need to call them again, so he did not appear before them. They prayed for closure of the issue and not to impose any further penalties on them in their written submissions.

**5.4 COMMENTS OF THE INQUIRY OFFICER :-**

**5.4.1 Article of Charge-I :- Violation of Regulation 10 (d) of CBLR, 2018:** IO submitted that during investigation, it was noticed that CB had not advised the exporter and abetted the exporter by declaring incorrect value of the goods in the Shipping Bills against the fake invoices to avail undue drawback and did not bring the matter to the notice of the Deputy Commissioner of the Customs or the Asistant Commissioner of the Customs. Thus, the CB had not only properly advised the exporter while filing the Shipping Bill(s) but also abetted the wrong doer and thereby

failed in his duty to inform the same to the Department. Thus, IO held that the violation of regulation 10 (d) of CBLR 2018 by the CB is conclusively proved.

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

IO submitted that during investigation, it was found that if the CB had seen documents relating to meeting the criteria to claim both types of Drawbacks and checked the correctness of relevant declaration, such fraudulent export could not have been possible. IO submitted that CB did not exercise due diligence and did not impart the information relating to Drawback Rules to the client but aided the exporter in availing the undue drawback by overvaluing the exports, whereas in reality cheaper material was exported. Thus, IO held that the violation of regulation 10 (e) of CBLR 2018 by the CB is proved.

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

IO submitted that it is the responsibility of the CB to inform the exporter about the instructions and the Public Notice regarding the claiming of drawback. In the said matter, IO found that the CB has abetted the exporter by declaring the incorrect value of the goods in the Shipping Bills against the fake invoices to avail undue drawback. It shows clearly that the CB has withheld the information from the Exporter to comply with Rule 3, Rule 16 and Rule 16A of Drawback Rules, 1995. Thus, IO submitted that the violation of regulation 10 (f) of CBLR, 2018 by the CB is proved.

**5.4.4 Article of Charge-IV :- Violation of Regulation 10 (k) of CBLR, 2018:**

IO submitted that the CB in their letter dated 06.05.2022 has not clearly brought out whether exporter's address was physically verified and all the export related documents were carefully verified by CHA. They have not provided any proof of having conducted KYC and physical verification of the exporter's address. Further during investigation, no one from CB M/s Ok Cargo Craft Pvt. Ltd (11/887) appeared in SIIB (X) office to give submissions. IO submitted that the CB failed to maintain records, therefore the CB did not appear before the Investigation Agency. Thus, IO held that the violation of regulation 10 (k) of CBLR, 2018 by the CB is proved.

**5.4.5 Article of Charge-V :- Violation of Regulation 10 (n) of CBLR, 2018:**

IO submitted that, in the present case, M/s Ok Cargo Craft Pvt. Ltd., the CB in his letter dated 06.05.2022 has not clearly brought out whether exporter's address was physically verified and all the export related documents were carefully verified by CHA. They have not provided any proof of having conducted KYC and physical verification of the exporter's address. IO submitted that the CB had not done the KYC and did not verify the exporter's antecedents. Thus, IO held that the violation

of regulation 10 (n) of CBLR 2018 by the CB is proved.

#### **5.4.6 Article of Charge-VI :- Violation of Regulation 10 (q) of CBLR, 2018:**

IO submitted that during investigation, it was found that the exporter claimed duty drawback using fake invoices and CB M/s Ok Cargo Craft Pvt. Ltd. (11/887) abetted the exporter to avail this non-eligible duty drawback and did not bring the matter to the notice of the Customs Authorities, thereby violating the Regulation 10(q) of the CBLR, 2018. Thus, IO held that the violation of regulation 10 (q) of CBLR 2018 by the CB is proved.

#### **6. PERSONAL HEARING AND RECORDS OF PERSONAL HEARING :-**

A personal hearing was granted to Customs Broker on 27.12.2023. Shri Yogesh Bhanushali, Power of Attorney holder of the CB firm, Mrs. Dhara Vasani, F-card holder, Shri R.K. Tomar Advocate, Mr. Udai Desai, Director, Janman Lifestyle Pvt. Ltd., Mr. Gaurav Surfare, Advocate appeared for personal hearing and submitted a written submission dated 26.12.2023 and reiterated the same. In his written submission they submitted the following:

i. CB submitted that the regulation 17 of the CBLR, 2018 mandates the inquiry proceedings to be completed within 270 days, however in the instant case 394 days (on 26.12.2023) have been taken from the receipt of the offence report. CB submitted that in light of this fact, the proceedings under CBLR,2018 have abated. In this regard CB relied upon the order of the Hon' Delhi High Court in the matter of Leo Cargo Services Vs. Commr. of Customs Airport & General, New delhi reported vide 2022 (382) E.L.T. 30(Del.)

ii. **In defence of violation of regulation 10(d) of the CBLR,2018:** CB submitted that it was submitted before the Inquiry Officer that while making physical verification of the office premises of the exporter, the CB had interacted with Shri Uday Desai and Shri Tushar Ashwin Bhatt, the Directors of the exporter company. There is nothing in the said SCN to suggest that the CB did not meet the exporters, their staff and key personnel and that there was no occasion for the CB to meet its obligation under Regulation 10(d) of the CBLR, 2018. There is nothing on record that the CB did not advise the exporter about declaring correct value and claiming only due drawback. There was nothing to be brought to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, as there was no non-compliance noticed by the CB.

iii. **In defence of violation of regulation 10(e) of the CBLR,2018:** CB submitted that they had checked each and every document in respect of the 04 export consignments which were handled by him and found every detail correct as per law. The same have been verified by the Customs Officers also and they have also found everything in order and thereafter only allowed the exports. The valuation was also verified by the Customs officers and found to be fair. There were

goods represented by the invoices and the same were always checked and examined by the Customs Officers. The CB has very diligently ascertained the information that he had imparted to the exporter with reference to the work related to clearance of the export cargo. Again there is nothing on record that there is any lapse on the part of the CB on this count.

iv. **In defence of violation of regulation 10(f) of the CBLR,2018:** CB submitted that they had always informed all its clients including the exporter about instructions and public notices regarding the claim of the drawback. The allegation that the CB has abetted the exporter by declaring incorrect value of the goods in the Shipping Bills against fake invoices to avail undue drawback is not only incorrect, far from truth but also lack logic as the export goods and export documents including the so-called fake invoices (which in fact are real and genuine) were scrupulously verified and checked by the Customs Officers and found in order. Therefore, this allegation is also only an assumption and the same is neither correct nor proved.

v. **In defence of violation of regulation 10(k) of the CBLR,2018:**

The CB submitted that they have maintained the records very diligently. They had maintained records like KYC and Shipping Bills which are being produced herewith for verification. Further, the exports related to the present case pertain to a period which is more than 06 years old and there is no prescribed time limitations under the CBLR or the Customs Act, 1962 for which the CB has to maintain the records. CB submitted that the records pertaining to Customs Act, 1962 may have to be preserved for 05 years as this is the maximum period of limitation. Still, the relevant records, like KYC and Shipping Bills, are being produced for verification and consideration of the Competent Authority.

CB submitted that it is alleged in its letter dated 06.05.2022, that the CB has not clarified whether exporter's address physically verified and all export related documents carefully verified by the CB. It is submitted that the Customs did not ask for any specific clarification, therefore, it was not known to the CB as to whether physical verification was to be specifically answered. Since the physical verification of the address of the exporter was made, there was no issue about making this specific mention in CB's letter dated 06.05.2022.

CB submitted, it was further alleged that no one appeared on behalf of the CB in the office of the SIIB(X)/ ACC to give submissions. CB submitted that the he was issued only one Summons to which he duly and immediately replied vide his letter dated 06.05.2022. Since there was no second Summons issued and no effort to contact the CB was made by the Customs Authorities, the CB was in his rights to assume that the purpose was served as the CB had provided all the KYC documents in respect of the exporter with its letter dated 06.05.2022.

CB further submitted that lack of seriousness shown by the Investigating

Officers cannot be blamed on the CB as he was always available to the Customs Authorities and he could have been called by making a simple telephone call. Not only that, the CB would have made the exporter also available to the Customs Investigating Agency. In any case, the CB can make the exporter available to the Customs any time by making a simple phone call.

vi. **In defence of violation of regulation 10(n) of the CBLR,2018:-**

CB submitted that they had duly verified the Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of the exporter and functioning of the exporter at the declared address by using reliable, independent, authentic documents, data or information. The KYC documents being submitted along with this representation are proof that they had fully complied with this Regulation.

CB submitted that regarding place of business, at the time when the CB undertook the assignment of export of the said 04 consignments, the exporter was working from the declared premises. Not only that, the Revenue itself has verified that when the officers went for handing over the Summons to the Director Shri Tushar Ashwin Bhatt, the building was under reconstruction stage. Further, the exporter is still available and he can come to the office of the Competent Authority as and when called.

vii. **In defence of violation of regulation 10(q) of the CBLR,2018:** CB submitted that only one Summons was issued to them and at that time, he was travelling for medical emergency as his mother was sick. This was stated very clearly in the letter dated 06.05.2022. CB submitted that the said Summons required the CB to submit the KYC and export documents in respect of the exporter, which were duly submitted by the CB along with the said letter dated 06.05.2022. In case the CB was required to be examined by the Customs Authorities, issuance of another Summons was the requirement which the investigating Agency failed to do. Under the circumstances, the CB cannot be blamed for non-appearance before the Investigating Agency.

CB further submitted that the CB has to work in close proximity of the Customs Authorities and they are always available on a simple call. Any requirement of the CB's presence before the Investigating Agency could have been communicated to him and the CB would have duly complied with the same.

CB further submitted that during the relevant period i.e, 2016, the IEC of the exporter M/s. Janman Lifestyle Pvt. Ltd. was under alert as the investigations against the exporter were underway. The exporter always accompanied the CB and presented himself with the export goods as owner of the said goods before the Customs Officer examining the said goods. Therefore, the CB has not only complied with the CBLR but also ensured that in case any discrepancy is noticed in the export goods, the exporter himself would be at the spot to explain the same.

vii. CB relied upon the judgment of the Hon'ble CESTAT, Delhi in the matter of M/s. Trinity International Forwarders, Jaipur Vs. Commissioner of Customs (Preventive), Jaipur vide Final Order No. 50978/2023 dated 02-08-2023 in Appeal No. 54942 of 2023. The Appellant in this case has also provided Customs Broker's Services to the same exporter i.e., M/s. Janman Lifestyles Pvt. Ltd.

viii. The CB prayed that their Licence may not be revoked and no punitive action under the CBLR 2018, may be taken against them

## **7. DISSCUSSION AND FINDINGS:-**

I have gone through the case, material evidence on record, the Show Cause Notice dated 27.02.2023, and Inquiry Report dated 03.11.2023, written and submissions of the said CB.

**7.1** I observe that the charges against the said CB is of violation of regulation 10(d), 10(e), 10(f), 10(k), 10(n) and 10(q) of CBLR, 2018 made vide Show Cause Notice No. 37/2022-23 dated 27.02.2023 issued by Pr. Commissioner of Customs (General), NCH, Mumbai. The Inquiry Officer vide inquiry report dated 03.11.2023 held the charges of violation of regulations 10(d), 10(e), 10(f), 10(k), 10(n) and 10(q) of CBLR, 2018 as "Proved"

**7.2** 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.

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

**7.3.1.1** 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;"*

**7.3.1.2** IO in his report submitted that CB had not advised the exporter and abetted the exporter by declaring incorrect value of the goods in the Shipping Bills against the fake invoices to avail undue drawback and did not bring the matter to the notice of the Deputy Commissioner of the Customs or the Assistant Commissioner of the Customs. Thus, the CB had not only properly advised the exporter while filing the Shipping Bills but also abetted the wrong doer and thereby failed in his duty to inform the same to the Department. Therefore, IO proved that CB had violated the Regulation 10(d) of the CBLR, 2018.

**7.3.1.3** CB in his defence submitted that while making physical verification of the office premises of the exporter, the CB had interacted with Shri Uday Desai and Shri Tushar Ashwin Bhatt, the Directors of the exporter company. There was no occasion for the CB to meet its obligation under Regulation 10(d) of the CBLR, 2018. There is nothing on record that the CB did not advise the exporter about

declaring correct value and claiming only due drawback. There was nothing to be brought to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, as there was no non-compliance noticed by the CB.

**7.3.1.4** I find from the offence report that various export firms including M/s Janman Lifestyle Pvt Ltd was procuring fake purchase bills against the export consignments from one Mr. Suhel Ansari. M/s Janman Lifestyle Pvt Ltd claimed undue export benefits by overvaluing the exports, whereas cheaper material is exported and to justify the value of the goods, fake invoices from Shri Suhel Ansari are procured showing the higher purchase price. As per Consulate General of India, Dubai, UAE enquiry report, original/actual unit value of the exported goods were found abnormally low compared to declared value in the Shipping Bills, which clearly shows that the transaction value is incorrect, inflated, value of goods misdeclared by the exporter M/s Janman Lifestyle Pvt Ltd. Hence, it is impossible to assume that the exporter without wilful collusion with CB could have exported the impugned goods, therefore the CB cannot shy away from the responsibilities & obligations cast upon them under the 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 may be applied to the present case. In this case, Hon'ble CESTAT, Mumbai has held at para no. 7 (relevant portion) that

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

*defrauded money due to the Government, and in good faith permit import or export of prohibited goods.”*

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

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

**7.3.2.1** 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;”*

**7.3.2.2** IO in his report submitted that it was found that if the CB had seen documents relating to meeting the criteria to claim the Drawbacks and checked the correctness of relevant declaration, such fraudulent export could not have been possible. CB did not exercise due diligence and did not impart the information relating to Drawback Rules to the client but aided the exporter in availing undue drawback by overvaluing the exports, whereas in reality cheaper material was exported. Therefore, IO proved that CB had violated the Regulation 10(e) of the CBLR, 2018.

**7.3.2.3** CB in his defence submitted that they had checked each and every document in respect of the 04 export consignments which were handled by him and found every detail correct as per law. The same have been verified by the Customs Officers also and found everything in order and thereafter only allowed the exports. The valuation was also verified by the Customs officers and found to be fair. There is nothing on record that there is any lapse on the part of the CB on this count.

**7.3.2.4** I find from the offence report that as per Consulate General of India, Dubai, UAE enquiry report, original/actual unit value of the exported goods were found abnormally low compared to the declared value in the Shipping Bills which clearly shows that transaction value is incorrect, inflated, value of goods misdeclared by the exporter. It is obligations and duty of the CB to exercise due diligence to ascertain the correctness of information imparted to a client with reference to any work related to cargo, the CB failed to do so, otherwise exporter could not have made an attempt to export goods at such high valuations on the basis of fake invoices, which is a gross violation on the part of the CB under the provisions of Regulation 10(e) of the CBLR, 2018. I also find that, the CB cannot shy away from the responsibilities cast upon them under the regulation 10(e) of the CBLR, 2018 by stating that determining the mis-declaration in terms of valuation is the officer's responsibility. Therefore, I find that there is no merit in the CB's

submission in this regard.

From the above facts and circumstances, 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.

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

**7.3.3.1** 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;"*

**7.3.3.2** IO in his report submitted that it is the responsibility of the CB to inform the exporter about the instructions and the Public Notice regarding the claiming of drawback. In the said matter, CB has abetted the exporter by declaring the incorrect value of the goods in the Shipping Bills against the fake invoices to avail undue drawback. It clearly shows that the CB has withheld the information from the exporter to comply with Rule 3, Rule 16 and Rule 16A of Drawback Rules, 1995. Therefore, IO proved that CB had violated the Regulation 10(f) of the CBLR, 2018.

**7.3.3.3** CB in his defence submitted that they had always informed all its clients including the exporter herein about instructions and public notices regarding the claim of the drawback. The export goods and export documents including the so-called fake invoices (which in fact are real and genuine) were scrupulously verified and checked by the Customs Officers and found in order.

**7.3.3.4** 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 export goods and were 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 Janman Lifestyle Pvt Ltd 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.

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.

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

**7.3.4.1** The said regulation 10(k) of CBLR, 2018 reads as: -

*" A Customs broker shall 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;"*

**7.3.4.2** IO in his report submitted that the CB in their letter dated 06.05.2022 has not clearly brought out whether exporters address was physically verified and all the export related documents were carefully verified. CB had not provided any proof of having conducted KYC and physical verification of the exporters address. Further during investigation, no one from CB M/s Ok Cargo Craft Pvt. Ltd (11/887) appeared before SIIB(X), ACC, Mumbai to give submissions. IO submitted that the CB failed to maintain records, therefore the CB did not appear before the Investigation Agency. Therefore, IO proved that CB had violated the Regulation 10(k) of the CBLR, 2018.

**7.3.4.3** The CB in his defence submitted that they had maintained records like KYC and Shipping Bills which are being produced for verification. Further, the exports related to the present case pertain to a period which is more than 06 years old and there is no prescribed time limitations under the CBLR or the Customs Act, 1962 for which the CB has to maintain the records. CB submitted that as per the CBLR, the records to be preserved for 05 years as this is the maximum period of limitation.

**7.3.4.4** I find that the CB in his defence submitted that the exports related to the present case is more than 06 years old and as per CBLR, 2018 the CB has to maintain the records till the period of limitation i.e. 5 years. In this regard, I find that as per Regulation 10(p) of the CBLR, 2018, CB shall maintain all records and accounts that are required to be maintained under these regulations and preserve for at least five years and all such records and accounts shall be made available at any time for the inspection of officers authorised for this purpose. Further, if the case is with any investigation agency, it cannot be argued that the CB has to maintain the records till the period of limitation i.e. 5 years as per CBLR, 2018. Therefore, the CB's argument does not hold merit on this ground.

From the above facts, I am of the considered view that the CB failed to maintain upto date records of his business as Customs Broker and accounts including financial transactions in an orderly and itemized manner. Therefore, I hold that the CB has violated the provisions of Regulation 10(k) of the CBLR, 2018.

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

**7.3.5.1** 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;"*

**7.3.5.2** IO in his report submitted that the CB in their letter dated 06.05.2022 has not clearly brought out whether exporters address was physically verified and all the export related documents were carefully verified by CB. They have not provided any proof of having conducted KYC and physical verification of the exporters address. IO in his report submitted that the CB had not done the KYC and did not verify the exporters antecedents. Therefore, IO proved that CB had violated the Regulation 10(n) of the CBLR, 2018.

**7.3.5.3** CB in his defence submitted that they had duly verified the Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of the exporter and functioning of the exporter at the declared address by using reliable, independent, authentic documents, data or information. The KYC documents are submitted along with the representation of proof that they had fully complied with this Regulation.

CB submitted that regarding place of business, at the time when they undertook the assignment of export of the said 04 consignments, the exporter was working from the declared premises. Further, the exporter is still available and he can come to the office of the Competent Authority as and when called.

**7.3.5.4** I find that during the investigation, SIIB(X), ACC, Mumbai issued many Summons on different dates to the Directors of the M/s Janman Lifestyle Pvt Ltd at their declared address but none of the Summons was received and returned back with remarks 'Unclaimed/ Left'. It is also found that investigating agency also tried to deliver the Summons by hand to Shri Tushar Ashwin Bhatt, Proprieter of M/s. Janman Lifestyles Pvt. Ltd. at their declared address but it was found that Shri Tushar Ashwin Bhatt is not residing at the declared address and the building was under re-construction stage. I also find that exporter did not produce before the investigating agency for recording the statement even after issuance of various Summons. Hence, it is proved that exporter did not exist at the declared address.

I find that under provision of the Regulation 10(n) of the CBLR, 2018, the CB 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 but on the other hand, in view of the facts brought from the investigation, I find that the CB failed to even verify the functioning of the exporting firm business by using reliable, independent and authentic source which is a gross violation of the provision of the Regulation 10(n). I opine that if the CB would have verified the functioning of the business of the exporting firm, these

fraudulent exports would not have taken place. The charged CB never produced any concrete evidence in order to prove that they verified the functioning of the exporting firm by using reliable, independent, authentic documents. Mere taking receipt of the KYC documents does not fulfill the obligations under the Regulation 10(n) of the CBLR, 2018. I find that the CB in the present case showed an act of carelessness which resulted in fraudulent activities of export, hence I don't have any doubt in holding that the CB has violated the Regulation 10(n) of the CBLR, 2018.

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.

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

**7.3.6.1** The said regulation 10(q) of CBLR, 2018 reads as: -

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

**7.3.6.2** IO in his report submitted that during investigation, it was found that the exporter claimed duty drawback using fake invoices and CB abetted the exporter to avail non-eligible duty drawback and did not bring the matter to the notice of the Customs Authorities, thereby violating the Regulation 10(q) of the CBLR, 2018. Therefore, IO proved that CB had violated the Regulation 10(n) of the CBLR, 2018.

**7.3.6.3** CB in his defence submitted that SIIB(X), ACC, Sahar, Mumbai issued only one Summons to them and at that time, he was travelling for medical emergency as his mother was sick. This was stated very clearly in the letter dated 06.05.2022. CB submitted that the said Summons required the CB to submit the KYC and export documents in respect of the exporter, which were duly submitted along with the letter dated 06.05.2022. In case the CB was required to be examined by the Customs Authorities, issuance of another Summons was the requirement which the Investigating Agency failed to do.

**7.3.6.4** I find from the offence report that SIIB(X), ACC, Sahar, Mumbai issued only one Summons to the CB M/s. O.K. Cargo Craft Pvt. Ltd. In response to the same the CB replied vide their letter dated 06.05.2022 and submitted the KYC and export documents and mention that due to medical emergency he was not able to attend the hearing on the said date. From the records, I find that no other Summons was issued to the CB for recording their statement or efforts were not made to contact the CB. Therefore, it cannot be said that the CB had not co-operated with the investigating agency and not joined the investigation proceedings. Hence, based on the above analysis, I hold that the CB has not violated the provisions of Regulation 10(q) of CBLR, 2018.

From the above facts and circumstances, I am of the considered view that

there is no substantial proof/ records to establish that CB has contravened provisions of Regulation 10(q) of the CBLR, 2018. Therefore, I hold that the CB has not violated the provisions of Regulation 10(q) of the CBLR, 2018.

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

**8.1** 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)".*

**8.2** 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.

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

**8.4** CB submitted in his submission that regulation 17 of the CBLR, 2018 mandates the inquiry proceedings to be completed within 270 days, however in the instant case 394 days (on 26.12.2023) have been taken from the receipt of the offence report. CB submitted that in light of this fact, the proceedings under CBLR,2018 have abated.

With regard to submission of the CB in respect of present inquiry is barred by time limitation, I rely on the decision of Hon'ble High Court of Judicature at Bombay in the case of Principal Commissioner of Customs (General), Mumbai Versus Unison Clearing P. Ltd. reported in 2018 (361) E.L.T. 321 (Bom.), which stipulates that:

*"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.

*In the light of the aforesaid discussion, the appeals filed by the Revenue succeed and the question of law framed in the appeals is answered by holding that the CESTAT was not justified in setting aside the order or suspension of the Customs Brokers' Licence on the ground of delay between suspension and the notice of deviation or omission and it cannot be laid down as an absolute proposition of law that delay in taking immediate action of suspension or initiation of inquiry within a period of 90 days would vitiate the action of the Commissioner. ....".*

In view of the above, I find that though the delay has occurred in inquiry proceedings owing to unavoidable administrative reasons such as transfer and posting of the officers etc. and to an extent due to adjournment sought by the CB from the Inquiry Officer. However, such delay cannot be fatal to outcome of inquiry and cannot neutralise the acts of omission and commission already committed by the CB. Hon'ble High Court of Judicature at Bombay also observed that the time limit contained in Regulation 20 cannot be construed to be mandatory and is held to be directory.

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

**10.** 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.

**11.** Thus in view of the above, I hold that the CB M/s. O.K. Cargo Craft Pvt. Ltd (11/887) failed to comply with the Regulation 10(d), 10(e), 10(f), 10(k) and 10(n) of

the CBLR, 2018, as discussed Supra and is liable for penal action under Regulation 14 and 18 of CBLR, 2018. However, on the basis of facts on record, I observe that the CB had filed only 04 Shipping Bills on behalf of the exporter M/s. Janman Lifestyles Pvt. Ltd. amounting to a drawback of Rs. 0.88 Lakhs. Further, it cannot be substantiated that the Custom Broker connived with the exporter in the said fraud, hence mens rea could not be established. Hence, I am of the view that maximum penalty of revocation of license under Regulation 14 of the CBLR, 2018 is not justifiable. Accordingly, I pass the following order.

**ORDER**

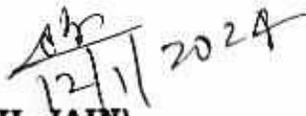
**12.** I, Principal Commissioner of Customs (General), in exercise of the power conferred upon me under Regulation 17(7) of the CBLR, 2018, pass the following order:

(i) I hereby impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on M/s. O.K. Cargo Craft Pvt. Ltd (PAN No. AAAC03043J) (CB No. 11/887) under Regulation 18 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) However, I refrain from revoking the CB License No.11/887 under Regulation 14 of the CBLR, 2018.

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. O.K. Cargo Craft Pvt. Ltd. (11/887) (Pan: Aaac03043j),  
Office No 28, Ambika Terrace, 1st Floor, 66/4 Clive Cross Lane,  
Dana Bunder, Masjid (East)  
Mumbai-400009

Copy to,

1. The Pr. Chief Commissioner/Chief Commissioner of Customs, Mumbai I, II, III Zone.
2. All Pr. Commissioners/Commissioners of Customs, Mumbai I, II, III Zone
3. CIU's of NCH, ACC & JNCH
4. DRI, MZU, Mumbai.
5. SIIB(X), ACC, Sahar, Mumbai
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)