



आयुक्त, सीमाशुल्क (सामान्य) का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS (GENERAL),
नवीन सीमाशुल्क भवन, बेलाई इस्टेट, मुंबई 400 400 -1. NEW CUSTOM
HOUSE, BALLARD ESTATE, MUMBAI - 400 001.

संचिका सं./F. No.- GEN/CB/506/2024 -CBS

आदेश दिनांक/Date of Order: 25.11.2025

CAO No. 108/2025-26/CAC/CC(G)/SJS/Adj-CBS जारी दिनांक/Date of issue: 01.12.2025

संख्या:

DIN:- 2025127700000081866E

द्वारा जारी : श्रद्धा जोशी शर्मा

Issued By : Shraddha Joshi Sharma

आयुक्त, सीमाशुल्क (सामान्य)

Commissioner of Customs (Gen.)

मुंबई -400 001

Mumbai - 400 001

ORDER-IN-ORIGINAL मूल आदेश

ध्यान दीजिए/ N.B. :

1. यह प्रति उस व्यक्ति को निजी उपयोग हेतु निःशुल्क प्रदान की जाती है, जिसे यह जारी की जा रही है।
This copy is granted free of charge for the private use of the person to whom it is issued. श्रद्धा

2. इस आदेश के विरुद्ध अपील माँगे गए राशी के 7.5% के भुगतान पर सीमाशुल्क अधिनियम, 1962 की धारा 129A(1B)(i) के संबंध में 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, 1982, 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 Tribunal as per the applicable provisions of the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

ms 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 Tribunal as per the applicable provisions of the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

3. यह सूचित किया जाता है कि 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 के अनुसार न्यायिक आदेश तदो 31.05.2018 प्रांत न्याय निर्णयन अधिकारी 'functus officio' बन जाता है

It is informed that the jurisdiction of the Adjudicating Authority stands alienated with the conclusion of the present adjudication order, and the Adjudicating

Authority attains the status of '*functus officio*' as held by Hon'ble CESTAT, Mumbai, in its decision in the case of M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai vide Order No. A/86617-86619/2018 dated 31.05.2018.

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

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

5. यह अपील फॉर्म C.A.-3 में दायर की जानी चाहिए जो कि सीमाशुल्क (अपीलस) नियमावली, १९८२ के नियम के तहत निर्धारित है एवं उसी नियमावली के नियम 3 के उपनियम 2 में उल्लेखित व्यक्ति 6 द्वारा हस्ताक्षरित एवं सत्यापित की जाएगी।

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

6. (i) यदि प्रतिवादित आदेश, जिसके विरुद्ध अपील की गई है, में शुल्क एवं मांगे गए ब्याजवलागाएगए जुर्माने की राशि रु-पाँच लाख या इस से कम होतो रु. 1000 ., (ii)यदि यह राशि रुपाँच लाख से अधिक) हो किंतु पचास लाख से अधिक न होतो रु. 5000/- एवंiii) यदि यह राशि रुपचास 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.

7. अपील की एक प्रति में कोर्ट फी अधिनियम, की अनुसूची मद 6 के तहत निर्धारित रु. 50 1870 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।

One 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. Aries Cargo Movers (PAN Based License No. ABAFA0426HCH001), having registered address: 8th floor, Office No. 801, Crystal Plaza, Guru Hargovindji Road, Opp Solitaire Corporate Park, Chakala, Andheri (East) Mumbai 400093 (hereinafter referred to as the Customs Broker/CB), is holding Customs Broker License No. (11/1774), issued by the Commissioner of Customs, Mumbai, under Regulation 7(1) of CBLR, 2013, erstwhile {now Regulation 7(2) of CBLR, 2018} and as such, they are bound by the regulations and conditions stipulated therein.

2. An Offence report issued by DC/CIU, JNCH, Nhava, Sheva, dated 10.09.2024, was received in CB Section, NCH, Mumbai through the Official e-mail of CIU, JNCH, Nhava Sheva Zone-II, wherein, inter alia, the following were informed:

2.1 CIU, JNCH is investigating two cases of import of goods vide BE Nos. 3730722 & 3729714 dated 29.05.2024 with description of goods as Process Oil-40 (For Industrial Use Only).

2.2 The importer M/s. Raj Traders and M/s Global International filed the Bill of Entry No. 3729714 and 3730722 respectively both dated 29.05.2024 for import of goods having description as 'Process Oil-40' and classified under CTH 34031900 having a duty structure of BCD 7.5%, SWS 10% and IGST 18% i.e. total duty @27.735%. For the said Bill of Entry, assessment was not prescribed and examination was ordered by Risk Management System (RMS). Further, the RMS system instructed for 100% examination for concealment, it further instructed for the drawl of the requisite sample for testing in order to ascertain classification, valuation, nature and composition of the goods.

In view of the same, the said Bill of Entry was sent for examination on first check basis on 07.06.2024 with an order to draw and forward a representative sample for testing of the goods having the following testing parameters:

1. *Nature and composition of goods*
2. *Description*
3. *Initial boiling point*
4. *Final boiling point*
5. *Content of base oil*
6. *percentage of volume (including loss)*
7. *Flash Point*
8. *Please give specific comments that goods are other than transformer oil.*
9. *whether base oil or otherwise, it is other than light oils and preparations, solvents (125/240, 60/80, 50/120, 145/205) IS 91475, Kerosene (IS:1459/IS: 1571), kerosene intermediate (IS 17793), Gas oil (IS 17789), Vacuum gas oil (IS 17792), light diesel oil (IS:15770), automotive diesel fuel not containing bio diesel (IS:1460), diesel blend (IS:16531) and HFHSD fuel (IS:16861).*

2.3 Thereafter, based upon the clarification dated 24.07.2024 made by the Docks officer, the goods were examined by the Docks Officer on 10.06.2024 and 11.06.2024 and accordingly, two sets of representative samples were drawn by extracting small portion of samples each from all the 20 containers, ensuring that representative sample represents the entire lot, and the same was handed over on 12.06.2024 to Central Revenues Control Laboratory (CRCL), Jawaharlal Nehru Custom House (JNCH) for testing as per the above-mentioned parameters vide Test Report No. 177 and 178 dated 10.06.2024. The CRCL, JNCH a government approved lab, submitted its report dated 15.06.2024, which is as follows: -

“The sample as received is in the form of yellowish oily liquid. It is composed of mixture of hydrocarbon more than 70% by weight having following constants:

Density at 15 degree Celsius = 0.8530 gm/ml.

Flash Point (COC) = 230.10 degree Celsius

Kinematics Viscosity at 40 degree Celsius = 30.78 Cst

Kinematics Viscosity at 100 degree Celsius = 5.55 Cst

Ash Content = NIL

Total Acid Number (TAN) = NIL

On the basis of above analytical findings, the sample under reference has the **characteristics of Base oil (IS: 18722: 2024)**, Rest of the queries raised are not relevant to the sample under reference. Sealed remnant sample returned.”

2.4 Vide the above-mentioned Test Report, the CRCL, JNCH reported that the goods have the characteristics of Base Oil (**IS:18722:2024**) whereas the importer had declared the goods as "Process Oil-40" and had classified them under CTH 34031900 under self-assessment. The importer could not submit any Certificate of Analysis (COA) or related documents mentioning the chemical properties of the imported goods in support of CTH **34031900**. Therefore, prima facie it appeared that goods had been mis-declared by the importer in terms of description & classification.

2.5 As per the CRCL test report, the goods have been found as 'Base Oil' which is classifiable under CTH 27101971 having a duty structure of BCD 5%, SWS 10% and IGST 18% i.e. total duty@24.49. For Valuation, import data of Base Oil imported from UAE was viewed in ICES system for the month of May and June 2024. As seen from import data, Base Oil has valuation ranging from USD 525 to USD 1440 per MTS with an average price of USD 983.52 per MTS. Under the present Bill of Entry, importer has declared the unit price as USD 430 per MTS which is much lower than the average import price of Base Oil seen from Import data. Therefore, it appears that the goods have been mis declared in terms of classification as well as valuation to evade the payment of applicable import duty. On the pretext of which in response to the query raised by the assessing officer, the importer has agreed for value loading and reclassification of the goods. Thus, the importer has clearly accepted that they have mis-declared the impugned goods by classifying them under

CTH 3403 instead of CTH 2710 and also under valued the said goods to avoid legitimate Customs duty.

2.6 Further, it appears that the filing of Bill of Entry in second check basis under Chapter 34 has been done wilfully to avoid the rigours of Chapter 27 i.e. to avoid the mandatory first check procedure and sample drawing which is mandated by Public Notice No. 34/2019-20-JNCH dated 27.03.2020 and Public Notice No. 08/2022-JNCH dated 31.01.2022.

2.7 However, the Appraising Group 2 (C-F), JNCH has highlighted the modus operandi to National Customs Targeting Centre (NCTC), Mumbai and Special Investigation and Intelligence Branch (Import), Jawaharlal Nehru Custom House vide letter dated 21.05.2024 that several importers are importing goods like Diesel, Adulterated Diesel by mis-declaring goods as 'Process Oil-40' by classifying them under CTH 3403.

2.8 Meanwhile, the importer vide the letter dated 26.06.2024 addressed to Chairman, CBIC, alleging that the assessing officers have demanded bribe from the authorized representative of the importer. However, to date, the importer has not submitted any proof of the same.

2.9 As per para 4 of the Office Order No. 138/2023 in respect of Re-Structuring of the Intelligence and investigation Units of JNCH, the Central Intelligence Unit (CIU) has been mandated to deal in the investigations with respect to the complaints and detection of irregularities involving loss of revenue where vigilance angle is also noticed. Hence, the case was transferred to the Central Intelligence Unit, JNCH on 26.06.2024.

2.10 The office of CIU, JNCH vide the emails had requested the importer multiple times to participate in the investigation and sampling process. However, in his every reply, the importer refused to participate in the sampling process and had sent baseless, threatening and provocative emails which were unwarranted.

2.11 Further, this office also requested the CHA firm M/s Aries Cargo Movers to join the sampling/examination process. Shri Hakeem Shaikh responded on behalf of the CB firm M/s Aries Cargo Movers stating that the importer has terminated the service of his CHA firm but he sent Shri Sagar Mhatre for assistance during the sampling/examination process. Accordingly, office of CIU, JNCH carried out the sampling/ examination process under panchanama dated 10.07.2024.

2.12 Thereafter, the said 20 samples drawn from each of the 20 containers were forwarded to Central Revenues Control Laboratory (CRCL), JNCH on 11.07.2024 for testing.

2.13 Further, it is submitted that this office has received the Test Reports in respect of all the twenty (20) containers and the findings of these test reports are reproduced as under:

"The sample after removal of adulterants meets the requirements of Automotive Diesel Fuel as per IS: 1460:2017 except the Sulphur content. As per the definition of "adulteration" mentioned in the motor speed and High-speed Diesel (Regulation of Supply, Distribution and Prevention of malpractices) Order, 2005, the sample under reference is Adulterated Diesel Fuel."

The test reports also confirmed that the percentage of adulterants present in the sample varied from 2 to 3% only indicating purity of 97% to 98% Diesel fuel.

Further, Test Report also reveals that CRCL, JNCH conducted Tests- (i). Without removal of adulterants as received, and (ii). After removal of adulterants. In the first case, the FLASH points were found as between 6.6 to 16.6 (6.6, 7.6, 7.6, 10.1, 10.6, 10.6, 13.1, 15.1, 16.6 & 16.6) Degree Celsius, whereas in second case (after removal of adulterants) the FLASH point was found between 45.5 to 60.1 (45.5, 46.9 47.0, 51.0, 52.5, 52.5, 55.0, 55.1, 56.4 & 60.1) Degree Celsius. It may be mentioned that flash point of the samples in the second case (after removal of adulterants) confirms to the standards of High-Speed Diesel Oil.

2.14 In the view of the above test reports, it is evident that impugned goods are adulterated diesel fuel with only 2.0-3.0% of adulterants. It is clear that the adulterants have been deliberately mixed in diesel in order to camouflage the actual goods i.e. Automotive

Diesel Fuel as per IS: 1460:2017. Further, said diesel with more than 97% to 98% percent purity can straight away be used as Automotive Diesel Fuel in automobiles and in the open market as no further processing is required on diesel fuel/oil with purity 97 to 98% which can be used as such in Automobiles.

2.15 Further, it is submitted that based upon the outcome of the test reports of the CRCL, JNCH, it is evident that the subject goods are actually Automotive Diesel Fuel as per IS:1460:2017 (97%-98% purity) except Sulphur contents, adding that such Automotive Diesel Fuel does not require any further processing to be used as Automobile Fuel in the domestic market the moment the same are cleared from the Customs, whereas the Base Oil (which is the outcome of the initial test report dated 15.06.2024) requires further processing for its end use as a lubricant. This is further evident from the contents of the 06 CRCL, JNCH test reports which clearly indicate that after the removal of adulterants, the subject goods are established by CRCL, JNCH as Automotive Diesel Fuel as per IS:1460:2017 and thus, the mixing of adulterants appears to be an ingenious modus operandi and the mens rea (conspiracy/malafide intention) to smuggle Diesel into the Indian Territory which is contrary to the restrictions/Prohibitions imposed by the existing Laws, Rules and Regulations (viz. Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Preventive of Malpractices) Order, 2005, Petroleum Act, 1934, Petroleum Rules 2002). Further, such adulterated Automotive Diesel Fuel is an environmental hazard and injurious to public health at large. Hence, allowing adulterated Diesel Fuel to enter into domestic market outside Customs Area will tantamount to violations of fundamental rights of the Indian citizen to use unadulterated Diesel fuel, adding that the use of adulterated Diesel fuel is also environmental hazard which is clearly banned under Motor Spirit and High-Speed Diesel (Regulation of Supply, Distribution and Preventive of Malpractices) Order, 2005.

2.16 Further, it is pertinent to mention that the initial CRCL test report dated 15.06.2024 in respect of the sample drawn by the Docks officer on 11.06.2024 stated that the goods meet the characteristics of Base Oil (containing more than 70% hydrocarbon by weight). However, the test reports received in respect of the samples drawn by CIU indicate that the goods are Automotive Diesel Fuel as per IS:1460:2017 instead of Base Oil. Such divergent results of samples drawn by Docks officer and sample drawn by CIU raise doubts regarding the genuineness of the initial sample submitted to CRCL, JNCH on 11.06.2024. Hence, it is also investigated that the matter in respect of the possibility of any replacement of the sample done in the process of forwarding the sample to CRCL, JNCH, as so much of variation in purity of Diesel Fuel is not possible even if one composite sample is made of samples drawn from all containers.

2.17 During the course of investigation, it was revealed that the representative samples were never drawn from the containers and the representative samples submitted to the CRCL, JNCH were brought from outside by Shri Sagar Mhatre with the help of Shri Rutik Nalawade and Shri Atul Mulay.

2.18 Further, Shri Sagar Mhatre vide his statement dated 13.08.2024 & 14.08.2024 had accepted that he had replaced the samples on the directions of Shri Hakeem Shaikh, Partner of M/s. Aries Cargo Movers and the same has been verified on scrutiny of the CCTV footages.

2.19 Further, their office is investigating three other cases of Smuggling of Adulterated Diesel Fuel, wherein the CB involved is M/s. Aries Cargo Movers and M/s. I.S. Machado. Further, it was learnt that Shri Hakeem Shaikh is managing the business of both the Customs Brokers M/s. Aries Cargo Movers and M/s. I.S. Machado and further, he is actively involved in the replacement of samples in all the above-mentioned cases.

2.20 Issuance of Summonses and Recording of statements:

2.20.1 Various Summons were issued to Sh. Hakeem Shaikh, Partner of M/s Aries Cargo Movers. In response, via email, he stated that he has some medical condition and therefore he is not able to visit the office of CIU. Now Sh. Hakeem Shaikh has stopped responding to the calls and is absconding since.

2.20.2 Various Summons were issued to Sh. Sagar Mhatre but he did not respond. However, during the search at his house on 13.08.2024, he agreed to accompany CIU team and his statement was recorded on 13.08.2024 and 14.08.2024. Thereafter, Shri Sagar Mhatre has been absconding and is not responding to phone calls or summonses.

2.20.3 Summons was issued to Shri Rutik Nalavade (Employee of M/s I S Machado) and Shri Atul Mulay (Employee of M/s I S Machado) but all remained unanswered.

2.21 In view of the outcome of the search conducted and summons issues, it appears that the person involved in the said case, namely Shri Hakeem Shaikh, Shri Sagar Mhatre, Shri Atul Mulay and Shri Rutik Nalavade are not cooperating with the investigation and are absconding.

3. Therefore, in view of the above-mentioned offence report, it is observed that there are gross violations of various provisions of CBLR, 2018 have been committed by the Customs Broker, the same is detailed as follows:

3.1 Regulation 10(d) of CBLR, 2018: *"advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;"*

It is evident from the offence report that representative samples submitted to the CRCL, JNCH were brought from outside by Shri Sagar Mhatre with the help of Shri Rutik Nalavade and Shri Atul Mulay on the directions of Shri Hakeem Shaikh, Partner of M/s. Aries Cargo Movers and the same has been verified on scrutiny of the CCTV footages as mention above.

Further, it came to notice that there was an ingenious modus operandi and the mens rea (conspiracy/malafide intention) to smuggle Diesel into the Indian Territory which is contrary to the restrictions/Prohibitions imposed by the existing Laws, Rules and Regulations (viz. Motor Spirit and High-Speed Diesel (Regulation of Supply, Distribution and Preventive of Malpractices) Order, 2005, Petroleum Act, 1934, Petroleum Rules 2002).

Further, to avoid the rigors of Chapter 27 i.e. to avoid the mandatory first check procedure and sample drawing which is mandated by Public Notice No. 34/2019-20-JNCH dated 27.03.2020 and Public Notice No. 08/2022-JNCH dated 31.01.2022, CB was abetted with importer to mis-declare and smuggle the impugned goods by classifying them under CTH 3403 instead of CTH 2710. Thus, it appears that there is clear connivance of CB with importer in this mis-conduct.

In light of the foregoing, it seems that the Customs Broker has not only failed to advise their client regarding relevant rules and regulations but has also neglected to inform Customs authorities about such deceptive practices, thereby knowingly aiding the importer in these illicit actions. Therefore, it appears that the Customs Broker has not adhered to the provisions of Regulation 10(d) of the Customs Broker Licensing Regulations, 2018.

3.2 Regulation 10(e) of CBLR, 2018: *“exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo of baggage;”*

As the CB involved with their client to mix of adulterants in sample, hence it appears to be an ingenious modus operandi and the mens rea (conspiracy/malafide intention) to smuggle Diesel into the Indian Territory which is contrary to the restrictions/Prohibitions imposed by the existing Laws, Rules and Regulations (viz. Motor Spirit and High-Speed Diesel (Regulation of Supply, Distribution and Preventive of Malpractices) Order, 2005, Petroleum Act, 1934, Petroleum Rules 2002).

Further, to avoid the rigors of Chapter 27 i.e. mandatory first check procedure and sample drawing which is mandated by Public Notice No. 34/2019-20-JNCH dated 27.03.2020 and Public Notice No. 08/2022-JNCH dated 31.01.2022, the Customs Broker (CB) collaborated with importer to misclassify and illegally import the disputed goods by categorizing them under CTH 3403 instead of CTH 2710. This suggests a conspiracy between the CB and the importer in this serious misconduct.

Considering the aforementioned points, it appears that the CB and his employees failed to exercise proper diligence in carrying out their responsibilities by not providing correct information to the importer, consequently breaching the provisions set forth in Regulation 10(e) of the CBLR, 2018.

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

As the CB was aware that their client has mis-declared the impugned goods by classifying them under CTH 3403 instead of CTH 2710 to escape the mandatory first check procedure and sample drawing in light of Public Notice No. 34/2019-20-JNCH dated 27.03.2020 and Public Notice No. 08/2022-JNCH dated 31.01.2022, hence, it appears that the CB & their client have violated conditions laid down in said Public Notices. Therefore, the CB has failed to comply the Regulation 10(f) of Customs Broker Licensing Regulations, 2018.

3.4 Regulation 10(m) of CBLR, 2018: *“discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;”*

The subject offence has clearly revealed that Shri Hakeem Shaikh is managing the business of the Customs Brokers M/s. Aries Cargo Movers and it has been observed that he is significantly engaged in the substitution of samples in the aforementioned instances and facilitating the illegal entry of diesel into Indian territory as the said fact was clearly

brought out in the statement of Sh. Sagar Mhatre and also caught in CCTV footage. Consequently, both the Customs Broker and his staff have not performed their responsibilities effectively, resulting in a breach of Regulation 10(m) of the Customs Broker Licensing Regulation, 2018 (CBLR).

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

Various summons issued to the person involved in the said case namely Shri Hakeem Shaikh, Shri Sagar Mhatre, Shri Atul Mulay and Shri Rutik Nalavade have not cooperated with the investigation. Now, they are reported absconding as per offence report. Thus, it appears that CB has not co-operated with the Customs authorities and failed to comply the provisions of Regulation 10(q) of CBLR, 2018.

3.6 Regulation 13(12) of CBLR, 2018: *“The Customs Broker shall exercise such supervision as may be necessary to ensure proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment.”*

In the instant case, CB has failed to supervise his employees as Sh. Hakeem Shaikh was actively involved in an ingenious modus operandi and the mens rea (conspiracy/malafide intention) to smuggle Diesel into the Indian Territory which is contrary to the restrictions/Prohibitions imposed by the existing Laws, Rules and Regulations (viz. Motor Spirit and High-Speed Diesel (Regulation of Supply, Distribution and Preventive of Malpractices) Order, 2005, Petroleum Act, 1934, Petroleum Rules 2002). Consequently, CB has failed to ensure the appropriate conduct of his employees in business transactions and may be held accountable for all actions or omissions of his employees occurring during their employment. Thus, in view of the above, it appears that CB has violated the provisions of Regulations 13(12) of CBLR, 2018.

4. Considering the observations made above, it is to mention that the CB has a very important role in customs clearances and lot of trust has been placed by the Department on the CB. In the context of trade facilitation, where an increasing number of goods are processed through Risk Management Systems without customs examination, the role of the Customs Broker (CB) has become even more critical in ensuring that the country's economic borders are effectively protected. The CB is actively connived with the importer in ingenious modus operandi and the mens rea to smuggle Diesel into the Indian Territory which is contrary to the restrictions/Prohibitions imposed by the existing Laws, Rules and Regulations. As per offence report, it appears that there is violation of various regulations of the Customs Broker Licensing Regulations, 2018 by CB M/s Aries Cargo Movers and its employee, which has made them unfit to transact any business in Mumbai Customs and also in other Customs Stations. Hence, by their acts of omission and commission, it appears that the CB has violated the provisions of Regulation 10(d), 10(e), 10(f), 10(m), 10(q) and 13(12) of the CBLR, 2018 and thus rendered themselves for penal action under CBLR, 2018.

5. In view of the above, action under Regulation 16(1) of CBLR, 2018 was taken and accordingly the CB License held by M/s Aries Cargo Movers (11/1774) was suspended by the Commissioner of Customs(G) vide order dated 37/2024-25 dated 16.10.2024 and personal hearing was granted to the CB on 24.10.2024 at 12.15 PM. However, the CB vide mail dated 24.10.2024 has requested to reschedule the date of PH, accordingly, PH was held on 14.11.2024 at 1.00 PM.

6. Further, the subject license vide no. 11/1774 pertains to M/s Aries Cargo Movers was ordered for Continuation of Suspension Vide Order No. 46/2024-25 dated 21.11.2024 under Regulation 16(2) of the CBLR, 2018. Thus, in view of the above discussions in above paras, prime-facie, it appeared that the Customs Broker has failed to fulfil their obligations

under the provisions of Regulation 10(d), 10(e), 10(f), 10(m), 10(q) and 13(12) of the CBLR, 2018 and contravened the same.

6.1 Accordingly, under the provisions of Regulation 17(1) of CBLR, 2018, the Show Cause Notice No. 65/2024-25 dated 09.12.2024 was issued to the said Customs Broker M/s Aries Cargo Movers (11/1774) wherein the CB was called upon to show cause, as to why:

- I. The Customs Broker license bearing no. 11/1774 issued to them should not be revoked;
- II. Security deposit should not be forfeited;
- III. Penalty should not be imposed; upon them under Regulation 14 read with 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018.

6.2 Also, Shri Aditya Kumar Dutta, Assistant Commissioner of Customs was appointed as Inquiry Officer to conduct the inquiry proceedings against the CB M/s. Aries Cargo Movers (11/1774) under Regulation 17 of CBLR, 2018.

INQUIRY REPORT: -

7. The Inquiry officer (here in after referred to as the 'IO') concluded the inquiry proceedings and submitted the inquiry report dated 30.05.2025, wherein all the charges levelled against the CB of violation of Regulations 10(d), 10(e), 10(f), 10(m), 10(q) and 13(12) of the CBLR, 2018 are held as "Proved".

FINDINGS OF THE INQUIRY OFFICER: -

8. Based on the available records, deposition of Ramchnadra Maltiyal and Ms Asmita Kuvrikar (appeared advocate of the CB, M/s Aries cargo Movers), the IO submitted that the Inquiry is concluded and the conclusions of the Inquiry are as follows:

8.1 Before analysing the charges levelled against the CB vide the subject Show Cause Notice and the defence of the charges levelled vide written and oral submission by the CB through their advocate, the IO noticed that a letter dated 27.05.2025 had been sent to CB section for providing the documents which were sought by CB. The IO found that Custom

Broker section asked the documents from CIU JNCH, which vide letter F. No. CUS/APR/BE/MISC/2033/2024 Gr.2 (C-P) dated 26.11.2024 replied that the requested documents cannot be provided at this juncture since investigation is going on. Also, the IO found from the Offence report that Shri Hakeem Shaikh (G-card Holder of the CB firm, M/s Aries Cargo Movers) had stopped responding to the calls of CIU, JNCH and absconding since. The IO further found that the reason for him not appearing in before investigating agency i.e. CIU, JNCH on medical ground was just an excuse. The IO submitted that even for argument's sake if it is accepted that he is not in a position to appear in before CIU, JNCH, but what prevent him from responding to the calls? The IO further submitted that it is clear that he is intentionally avoiding the investigating agency as he is aware of his misdeeds and by requesting for documents and cross examination, is nothing but time wasting tactics. Further, the IO found merits in CIU, JNCH contention that the said documents cannot be given at this stage as investigation is still in progress and the same can be misused and weaken the case against the importer.

8.2 The IO also found that Shri Sagar Mhatre (Employee of M/s Aries Cargo Movers) in his statements dated 13.08.2024 and 14.08.2024 recorded under Section 108 of the Customs Act, 1962 had admitted that he switched the samples on the instruction of Shri Hakeem Shaikh. The IO found that it is settled law that any statement recorded under section 108 of Customs Act, 1962 is having evidential value in any court of law.

8.3 The IO submitted that in the Veerendra Singh Vs. Union of India and Ors. (Neutral Citation: 2024: DHC: 106-DB) - (High Court of Delhi) (08 Jan 2024), the Hon'ble High Court held that statement recorded under Section 108 of the Customs Act is a material piece of evidence and can be used as substantive evidence.

8.4 The IO submitted that the statement of Shri Sagar Mhatre was further corroborated by the CCTV footage. The IO found that since the recording of his statement under Section 108 of the Customs Act, 1962, he was absconding and was not responding phone calls or

summonses issued to him, which further proved that he and Shri Hakeem Shaikh were actively involvement in the conspiracy and intentionally avoiding the Investigating Agency. The IO also found that the other two persons involved namely, Shri Rautik Nalavade and Shri Atul Mulay, both Employee of M/s I S Machado, were also absconding.

8.5 Also, while going through the offence report, the IO found that the CB had violated the instruction No. 24/2023 dated 18.07.2023 and rules laid down in CBLR 2018, and had not fulfilled his obligation and made a conspiracy with importer to avoid the Customs duty, and the same had been admitted by one of their employee in his statement recorded under Section 108 of the Customs Act, 1962. Also, the IO found that the CB was not cooperating with the investigating Agency by not responding to their summons or calls, they even failed to appear even before the Inquiry Officer in persons and instead sent their authorised representatives to appear in the Personal hearing proceedings. It is, therefore, in the considered view of the IO that neither the documents asked by the CB nor the request for cross examination of the persons were required in the Inquiry proceedings, and the request for both were not acceptable for the reasons as discussed above.

9. **Violation of Regulation 10(d) of CBLR, 2018:** *"advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;"*

9.1 In IO's observation, there is a provision of mandatory first check of goods imported under Chapter 27 and the Investigation report also revealed that CB was abetted with the importer to mis declare and smuggle the impugned goods by classifying them under CTH 3403 instead of CTH 2710. Further, the IO found that in his statement recorded under Section 108 of the Customs Act, 1962, Shri Sagar Mhatre admitted that representative samples submitted to the CRCL, JNCH were brought from outside by him with the help of Shri Rutik Nalawade and Shri Atul Mulay on the directions of Shri Hakeem Shaikh, Partner of M/s. Aries Cargo Movers. Thus, it appears to the IO that there is clear connivance of CB

with importer in this mis-conduct. Hence, the IO held that the charge imposed on CB under Regulation 10(d) of CBLR, 2018 is **"Proved"**.

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

10.1 Going through the investigation report, the IO submitted that it is very clear that CB had failed to fulfil the obligatory conditions laid down in public No. 08/2022 JNCH dated 31.01.2022; that they collaborated with importer and misclassified the goods, and illegally imported the disputed goods by misclassifying under CTH 3403 instead of 2710.

10.2 Thus, in view of the observation recorded above, the IO held that the allegation of charge framed for violation of Regulation 10(e) stands **"Proved"**.

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

11.1 In IO's observation, the CB was aware of their client's mis-declaration of the imported goods under CTH 3403 instead of 2710 to avoid the mandatory First Check, and had failed to comply the instruction laid down in public notice No 34/2019-20 JNCH dated 27.03.2020 and public notice no 08/2022 JNCH dated 31.01.2022. The IO stated that the instruction given by Shri Hakeem Shaikh to Shri Sagar Mhatre to change the sample proved that the CB was aware of the mis-declaration. Thus, it is clear to the IO that with the collusion of the importer, CB had tried to escape to comply the guidelines of first check policy. Thus, in view of the observation recorded above, the IO held that the allegation of charge framed for violation of Regulation 10(e) stands **"Proved"**.

12. **Regulation 10(m) of CBLR, 2018:** *"discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;"*

12.1 The IO had gone through the investigation report. The IO stated that it is very obvious that Shri Hakeem Shaikh is managing the business of the Customs Brokers M/s.

Aries Cargo Movers and is significantly engaged in the substitution of samples in the aforementioned instances, and facilitating the illegal entry of diesel into Indian territory as the said fact was clearly brought out in the statement of Sh. Sagar Mhatre and also caught in CCTV footage. The IO also found that he is not cooperating with the investigating agency by intentionally avoiding to respond to the summons on flimsy medical ground; that not only he had not been responding to the summonses issued to him but also not receiving the calls made to him by investigating agency. Thus, the IO found that he and his staff had not performed their responsibilities effectively, resulting in a breach of Regulation 10(m) of the Customs Broker Licensing Regulation, 2018 (CBLR). Hence, the IO held that the charges imposed on Custom Broker for violation of Regulation 10(m) is **“Proved”**.

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

13.1 As discussed above, the IO found that Shri Hakeem Shaikh, Shri Sagar Mhatre, Shri Atul Mulay and Shri Rutik Nalavade had not cooperated with the investigation; that they had not submitted any reply of summons issued to them. Thus, the IO held that they had violated the Regulation 10(q) of CBLR, 2018 and the charge imposed on the CB is **“Proved”**.

14. **Regulation 13(12) of CBLR, 2018:** *“The Customs Broker shall exercise such supervision as may be necessary to ensure proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment.”*

14.1 Going through the impugned Show Cause Notice and the Offence report, the IO concluded that CB and their employees failed to appear in person before the investigating agency and also to submit the reply of summon issued to them; that the CB had failed to supervise their employees; that the CB and their employee colluded with importer for the smuggling of Diesel into the Indian Territory which is contrary to the restrictions/

Prohibitions imposed by the existing Laws, Rules and Regulations (viz. Motor Spirit and High-Speed Diesel (Regulation of Supply, Distribution and Preventive of Malpractices) Order, 2005, Petroleum Act, 1934, Petroleum Rules 2002). In IO's considered view, the ratio of case laws relied upon by the charged CB is not applicable in the present case as the conspiracy and collusion and changing of samples had already been admitted by their employee in his statements recorded under Section 108 of the Customs Act, 1962 and their subsequent absconding and non-cooperation in the investigation. Hence, the IO held that in his observation, the charge imposed for violation of Regulation 13(12) is **"Proved"**.

15. From the aforesaid discussions as mentioned above, the IO finally concluded his findings as under: -

Sr. No	Charges against the CB	Findings
1	Violations of Regulation 10(d) of CBLR, 2018	Proved
2	Violations of Regulation 10(e) of CBLR, 2018	Proved
3	Violations of Regulation 10(f) of CBLR, 2018	Proved
4	Violations of Regulation 10(m) of CBLR, 2018	Proved
5	Violations of Regulation 10(q) of CBLR, 2018	Proved
6	Violations of Regulation 13(12) of CBLR, 2018	Proved

15.1 The Inquiry Report dated 30.05.2025, submitted by the Inquiry Officer, was accepted upon and under the provisions of Regulation 17(6) of CBLR, 2018, a copy of the inquiry report was shared with the CB vide this office letter dated 18.06.2025 and for the sake of Principle of Natural Justice an opportunity of personal hearing was granted to the CB on 22.07.2025 by the then Pr. Commissioner of Customs (Gen). However, the Advocate for the CB vide their email dated 22.07.2025 informed that he was appearing in a matter listed before the Hon'ble Bombay High Court on 22.07.2025 and hence requested to adjourn the hearing. Accordingly, the date of the hearing was rescheduled on 07.08.2025. However, due to administrative reasons, the personal hearing could not be held

on 07.08.2025 and the same was adjourned to 10.09.2025, by the then Pr. Commissioner of Customs (Gen). The then Pr. Commissioner of Customs (Gen) retired on superannuation on 31.08.2025. Hence, as the new Adjudicating Authority, the personal hearing in the present matter was kept unaltered by me and the same was held on 10.09.2025.

RECORDS OF PERSONAL HEARING:-

16. The personal hearing in the matter was held on 10.09.2025 before me and Sh. Ramchandra Maltiyal and Ms. Asmita Kuvrlkar, the Authorised representatives of the CB, appeared for the hearing. They submitted their written submission dated 30.07.2025 and reiterated the facts of the same during the hearing. Additionally, they requested to provide the RUDs of the case, mentioning that they had not received them previously. Their request was granted and RUDs were provided. They were informed that the matter would be decided after receiving the final reply, if any. To uphold the Principle of Natural Justice, the CB was given 15 days to provide additional submissions, if any. The CB subsequently submitted their additional submission dated 28.10.2025. Both the initial defence submission dated 30.07.2025 and the additional submission dated 28.10.2025 were taken on record and considered for the adjudication proceedings.

WRITTEN SUBMISSIONS OF THE CB: -

17. The CB vide letter dated 30.07.2025, submitted that at the outset, having regard to the principles of natural justice, it is submitted by the CB that they are entitled to copies of all the relied upon documents based on which their license has been suspended and now proposed to be revoked. It is further submitted by the CB that in the instant case, they are not in any way involved in the alleged mis-declaration resorted to by the importer for the following reasons:

- i. They were not aware of the alleged mis-declaration as far as the imported goods are concerned. All the import declarations were filed on the basis of the instructions of the importer.
- ii. They have not at any point advised the importer to resort to any form of misdeclaration and the importers have never made such a complaint against them.
- iii. Mr. Sagar Mhatre is not the employee of their firm and they had not instructed him or anyone else to substitute any samples.
- iv. They have at all points done their best to cooperate with the investigation.

Thus, the CB stated that they have not violated any provisions of the CBLR, 2018.

17.1 The CB submitted that the Inquiry Officer had failed to consider the detailed written submissions made before him; that the same were reiterated during the Personal Hearing too; that the charges against them had been mechanically held to be "Proved" despite a glaring lack of evidence against them; that none of the relied upon judgments had been specifically traversed or even discussed in the inquiry report which is prejudicial to them and untenable in law.

18. **Crucial documents not provided to the CB:**

18.1 The CB stated that they had not been provided any of the documents that the Adjudicating Authority had relied upon in the suspension order, including the test reports. The CB submitted such list of documents required by them to defend all the charges as below:

Sr. No.	Document	Date	Para No. of SCN No. 65/2024-25
1	Docks Officer's clarification	24.07.2024	Para 2.3
2	CRCL Test Report	15.06.2024	Para 2.3
3	Panchnama of samples drawn by CIU, JNCH	10.07.2024	Para 2.11

4	Test memo forwarded to CRCL along with samples	11.07.2024	Para 2.12
5	CRCL Test Report	-	Para 2.13
6	Statements of Mr. Sagar Mhatre	13.08.2024 & 14.08.2024	Para 2.18
7	CCTV footage	-	Para 2.18

18.2 It is submitted by the CB that they had made multiple attempts to get the documents but to no avail; that on 28.10.2024 and 31.12.2024, they wrote to the Commissioner of Customs (G), CB Section, NCH requesting for documents relied upon in the subject Show Cause Notice; that as no response was received, they sent a reminder email on 07.01.2025 with a copy of the said letter dated 31.12.2024. The CB further submitted that it was in response to this email dated 07.01.2025 that the CB Section informed vide their letter dated 08.01.2025 that all the documents could be retrieved from CIU, JNCH. Accordingly, the CB stated that they filed a letter dated 10.01.2025 with the Dy./Asst. Commissioner, Central Intelligence Unit, JNCH asking for the above-mentioned documents; that they had also filed 02 reminder letters dated 21.01.2025 and 25.01.2025 respectively, but there had been no response to any of the letters and no action had been taken to provide the documents to them.

18.3 The CB submitted that the inquiry report dismissed the request for the abovementioned documents citing the reason given by CIU, JNCH vide their letter dated 26.11.2024 addressed to the CB Section, NCH, Mumbai that the documents cannot be shared as their investigation is in progress and there is an apprehension that the documents could be misused and the case against the importer could weaken. In this regard, the CB stated that if the apprehension is that the case against the importer would weaken, it shows that the CIU, JNCH is investigating offences committed by the importer and not them. Thus, the CB submitted that the pending investigation against the importer should not prevent the concerned authority from sharing the documents to them, as the documents are

the basis of taking very serious action against them such as revocation of their license; that it is settled law that when adverse action such as revocation of CB license is proposed to be taken on the basis of any evidence/documents, such evidence/documents must be provided to the person against whom the action is proposed to be taken; that the revocation of license is a permanent act, and will set the CB back not only financially but also in terms of reputation in the trade community. The CB further submitted that in the contest of the enormity of the action proposed, it is imminent that the evidence/documents relied upon by the Department, as tabulated above, must be shared with them before finally deciding the matter; that the Article 19(1)(g) of the Indian Constitution confers a fundamental right to conduct any occupation/trade/business, and the proposed action of revocation of CB license without valid ground is a direct violation of the their fundamental right and therefore, untenable in law.

18.4 The CB submitted that in the inquiry report, it is stated that various summonses were issued to Shri Hakeem Shaikh and Shri Sagar Mhatre to record statements. In this regard, the CB submitted that Shri Hakeem Shaikh responded to the summons furnishing proof of a pre-existing medical condition, which disabled him from attending the summons on the scheduled date and time. Further, the CB submitted that summonses were not received by them because the registered address at Chakala was not functional, and despite communicating the alternative Ghatkopar address, no summons were received at the latter location.

18.5 Therefore, it is submitted by the CB that a full and complete legal defence cannot be achieved without the said documents and they cannot be denied their right to access the same.

19. **Denial of cross-examination:**

19.1 The CB found that Shri Sagar Mhatre's statements were recorded on 13.08.2024 and 14.08.2024, and in the said statements, Shri Sagar Mhatre accepted that "he had replaced

the samples on the directions of Shri Hakeem Shaikh, G Card holder of M/s. Aries Cargo Movers.” The CB further found that the replacement of samples by Shri Sagar Mhatre had been verified on scrutiny of the CCTV footages. In this regard, it is pointed out by the CB that Shri Hakeem Shaikh is an H Card holder of their firm, M/s. Aries Cargo Movers and not a G card holder. Moreover, the said CCTV footage had not been shared with the CB and thus, the CB submitted that they are helpless and has no way of cross-verifying the veracity of the statements made on the basis of the said CCTV footage. Further, the CB submitted that a request to provide the CCTV footage has already been made.

19.2 The CB stated that they had also asked for cross-examination of Sagar Mhatre and the Docks Officer in their written submissions, and the request was reiterated during the Personal Hearing before the Inquiry Officer. However, the CB submitted that the same had not been allowed by the Authority before issuing the inquiry report, and in fact, the inquiry officer observed in his report that, *"It is clear that he is intentionally avoiding the investigating agency as he is aware of his misdeeds and by requesting for documents and cross examination, is nothing but time wasting tactics"*.

19.3 In this regard, it is submitted by the CB that when adverse action is contemplated against the Customs Broker/CB on the basis of third-party statements and cross-examination of such third parties is requested, not allowing cross-examination is in violation of the principles of natural justice; that the Regulation 17(4) of the Customs Broker Licensing Regulation Rules (CBLR), 2018 itself provides for the CB's right of cross-examination:

Regulation 17(4): *"The Customs Broker shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings, and where the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines permission to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing"*.

19.4 In this regard, the CB had placed reliance on **M/s Concorde Zoom and Shri Rajendranath Bharathi vs Commissioner of Customs Hyderabad Customs 2025 (6) TMI 1104 - CESTAT HYDERABAD**, where the Tribunal remanded the matter for cross-examination despite a history of offences against the CB. In the present matter, the CB stated that their work history is spotless and this is the first time that such an issue has cropped up.

19.5 The CB found that the inquiry report had relied upon **Veerendra Singh Vs. Union of India and Ors. (Neutral Citation: 2024: DHC: 106-DB) - (High Court of Delhi) (08 Jan 2024)** to press the evidentiary value of the statements recorded under Section 108 of the Customs Act, 1962. The CB argued that while there can be no dispute that statements recorded under Section 108 are admissible evidence, it is important to note that the reliance sought to be placed upon the ratio in **Veerendra Singh** is misplaced and not relevant to the present case.

19.6 In this regard, it is submitted by the CB that the said judgment would be of no help to the Inquiry Officer as the facts involved in that case are antithetical to the case of them. The CB submitted that in the **Veerendra Singh** case, the Petitioner was caught red handed with a brown taped packet comprising 2360 pieces of memory cards and 2360 pieces of 2 GB memory cards inside the Airport at the immigration area from his personal laptop bag carried by him on his body. Further, upon his revelation, another bag containing 1 bottle Chivas Regal, 3 packets containing 7140 pieces of memory cards were recovered, after the due process of law under a Panchanama recorded in presence of two independent witnesses, from the Hong Kong duty free bag which had been placed by the Petitioner inside the cabin of the Immigration shift in-charge, in the presence of both the wings in-charge, Mr. Bagchi and Mrs. Archana, at the AFRRO arrival office. The CB further submitted that it may be pointed out that when any fact is discovered in consequence of information received from person accused of any offence, in the custody of police officer,

whether such information amounts to a confession or not, such facts are considered proved under Section 27 of the Indian Evidence Act, 1872 despite the bar of Section 24 of IEA which mandates that no confession made to police officer shall be proved as against the person accused of any offence; that in the Veerendra Singh case that the Inquiry Officer has taken shelter of, the Petitioner was not only found carrying contraband goods but further goods were recovered on his information from the place of concealment.

19.7 It is further submitted by the CB that the Hon'ble High Court recorded that there were multiple other corroborative evidences to establish the connivance of the petitioner such as mobile phone communication with the co-accused Viz. Shri Baljeet Singh and Shri Mukesh Wahi with the petitioner between 12-1-2011 and 26-1-2011 which has not been refuted at any stage by the petitioner. Another material piece of evidence which clearly established petitioner's involvement was the mobile phone communication between Shri Baljeet Singh with Shri Veerendra Singh and Shri Mukesh Wahi between 12-1-2011 and 26-11-2011, which was not refuted at any stage by the Respondent. In light of such irrefutable evidences, mere retraction of statements would have been of no consequence. He would have been found punishable under the relevant provisions of the Customs Act even without the statements. The statements tendered by the petitioner and other co-accused persons had helped as a corroborative piece of evidence bringing the chain of events in its true order. There were no incongruities in the statements of any persons recorded by AIU. The Court further noted that even the retraction was done after considerable delay in the particular nature of the offences committed.

19.8 The CB argued that in that case, the Petitioner had made self-incriminatory statements which were in complete sync with the events unfolded as evident from the seizure proceedings captured under the Panchnama. Therefore, the statement albeit retracted later, was of no consequence. The CB further argued that in the instant case, there is absolutely no evidence to connect the CB with the offences alleged against them. Further,

no self-incriminatory statements exist in the present case against the CB firm. Further, the question of the right to cross-examination was not in dispute in Veerendra Singh case at all. The CB stated that it is no longer *res integra* that the right to cross-examine in quasi-judicial proceedings exists when the statements of third parties are the sole piece of evidence relied upon to take action against a party.

19.9 Additionally, the CB submitted that the documents or cross-examination cannot be denied because they did not appear in person before the inquiry officer but instead, sent their authorized representative. The CB referred to the inquiry report, which made a peculiar finding as:

"Also, I find that the Noticee not only not cooperating with the Investigating Agency by not responding to their summons or calls, they even failed to appear even before the Inquiry Officer in persons and instead sent their authorised representatives to appear in the Personal hearing proceedings. It is, therefore, in my considered view neither the documents as mentioned in para 10.2 asked by the noticee nor the request for cross examination of the persons as mentioned in the para 10.9 are required in the Inquiry proceedings and the request for both are not acceptable for the reasons as discussed above."

In this regard, it is submitted by the CB that authorized representatives are legally competent to represent them in any proceedings and therefore, this finding against their firm is patently incorrect.

19.10 Thus, the CB submitted that the denial of cross-examination is without any basis, and they must be given an opportunity to cross-examine third parties whose statements have been relied upon to pin charges on them as explained above.

20. **The "Inquiry Officer" has not conducted an inquiry:**

20.1 The CB stated that an "inquiry" presupposes a thorough investigation into the facts of the case. However, in the present case, it is humbly submitted by the CB that the charges proposed in the Show Cause Notice have been mechanically held to be "proved" by the

Inquiry Officer without actually investigating the merits of their defence submissions. If that would have been done, the allegation of non-cooperation would have been corroborated by the Inquiry Officer by providing call data. Thus, the CB submitted that the mechanical nature of the Inquiry Report and the rejection of CB's request for documents and cross-examination is fatal to the proceedings at hand.

20.2 It is further submitted by the CB that they have always cooperated with the investigation; that they have provided their address at Ghatkopar for all Departmental communication; that Mr. Hakeem Shaikh has provided proof of his persisting medical issues which prevent him from attending summons; that as far as the allegation of not responding to any phone calls is concerned, the Inquiry report has failed to adduce any evidence of missed phone calls in that regard. Thus, the CB argued that there is no proof of the allegation that their firm has been ignoring/not picking up phone calls from the Department.

20.3 Therefore, the CB stated that all the charges have been mechanically held to be "proved" by the Inquiry Officer without fully and impartially examining the merits of their case; that the allegations have been confirmed only on the basis of retracted statements sans any other evidence.

21. Regulation 10(d) of the CBLR, 2018 is not violated and cannot be invoked against the CB:

21.1 As per Regulation 10(d), 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."

21.2 In the instant case, the CB submitted that they have at all times advised the importer in question to comply with the provisions of the Customs Act; that there is no cogent evidence to prove the allegation that the alleged misdeclaration has been done on the

instructions of the Customs Broker; that the Customs Broker/CB has no authority to compel lawful performance by an importer/exporter. The CB further submitted that without specific evidence to the effect of wrong and illegal advice given by them to misclassify or any "conspiracy" between the importer and them, Regulation 10(d) cannot be invoked; that the basis for the suspension of license appears to be the reliance placed on the statement given by Mr. Sagar Mhatre that the samples were substituted by him based on the instructions of Shri Hakeem Shaikh.

21.3 It is submitted by the CB that Mr. Sagar Mhatre is not an employee of the CB firm and Mr. Hakeem Shaikh had not at any point given any instruction to him for substitution of samples, even if such allegation is true. Further, the CB also believed that no such substitution of samples has happened in reality, and it is impossible for anyone to switch samples in CFS having CCTV all around in presence of Customs officers. It is also submitted by the CB that no evidence exists to implicate that they instructed or was involved in the alleged substitution of samples. Moreover, the CB argued that it is impossible for them or anyone else to switch samples in the CFS area where there is a constant presence of officers. Without insider aid, switching cannot even be envisaged. The CB pointed out that the Inquiry Officer had failed to adduce any evidence of any punitive action taken against a Customs officer for connivance or negligence in this regard, & without proof of insider aid to switch samples and without providing the CCTV footage of the alleged wrongdoing, the charge of switching of samples cannot be proved.

21.4 Therefore, it is submitted by the CB that the provisions of Regulation 10(d) have not been violated by them. Thus, the CB submitted that for the alleged wrongdoing of a person who is not even an employee of their firm, the suspension of the license is incorrect, harsh and in gross violation of CB Regulations and advisories issued from time to time in the matter. It is also submitted by the CB that the basis for suspension does not fall within

the purview of Regulation 10(d). Therefore, Regulation 10(d) is not invocable in the facts and circumstances of the instant case.

21.5 In this regard, the CB had placed reliance on CESTAT Delhi's judgement in the case of **HIM Logistics Pvt. Ltd. 2016 (8) TMI 925-CESTAT NEW DELHI dated 20.07.2016**, wherein it was held as under:

"2. From the impugned order, it appears that the original authority has levied the penalty only on the ground that the appellant has failed to exercise due diligence to ascertain the correctness of the information as regards the correct classification of the goods being imported by his client. The appellant is mainly a CB and the issue of classification is of complex nature. It cannot be said that the CB should have information that the goods were 'Food Supplements' and not 'Medicaments' It is for the Customs Department to classify the goods. Under these circumstances, the levy of the penalty is not justified. By following the earlier decision of the Tribunal dated 28-4-2016, we find no reason to sustain the penalty and, therefore, set aside the impugned order. The appeal stands disposed of accordingly."

21.6 Further, the CB stated that the same ratio was followed by Chennai Tribunal in **Chakiat Agencies Vs Commissioner of Customs (Exp) pronounced on 08/02/2023-2023 (2) TMI 490 - CESTAT CHENNAI**, wherein it was held that *"a CB is not expected to examine and ensure nature of goods in consignment - No allegation or evidence was there to establish that CB was indulged in any overt act or played any role in any manner to assist exporter in his attempt to export goods by wrongly classifying them - Issue in question was regarding classification which was complex in nature Imposition of penalty on ground that CB did not ensure correct classification of goods so as to see whether goods were restricted items was to be set side."*

21.7 In light of the above, it is submitted by the CB that when the suspension itself is liable to be set aside, the proposal to revoke the CB's license is wholly unsustainable in law.

22. **Regulation 10(e) of the CBLR, 2018 is not violated and cannot be invoked against the CB:**

22.1 As per Regulation 10(e), 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.”

22.2 In the instant case, the CB stated that they have not imparted any incorrect information to the importer in question; that the only basis for invocation of this Regulation appears to be that the Ld. Commissioner is of the opinion that the CB is involved in the alleged adulteration of the cargo in question.

22.3 The CB argued that the Regulation 10(e) in question is invokable if the they have imparted any wrong information to the importer. In the instant case, the adulteration, if any, has been undertaken by the importer before the goods were imported into India. Further, the CB stated that they have not advised the importer in this regard and there is no evidence to indicate so. Thus, the CB submitted that the invocation of this Regulation is without any basis and is therefore incorrect.

22.4 Further, it has been held by the CB that a complaint from the importer is a prerequisite to the invocation of Regulation 10(e); that without such a complaint, the said Regulation is not triggered; that in the present case, no such complaint against their firm has been made by the importers. In this regard, the CB had placed reliance upon **Sky Shipping Versus Principal Commissioner of Customs (General), Mumbai-1, 2025 (3) TMI 1197 CESTAT MUMBAI**, wherein the Tribunal set aside the invocation of Regulation 10(e):

“13. It would appear to us that the licensing authority has mis-applied regulation 10(e) of Customs Brokers Licensing Regulations, 2018 which may be invoked only upon complaint from client of having been so misguided by customs broker. The requirements of examination was, admittedly, endorsed on the bill of entry and, in

granting 'out-of-charge', the customs officials cannot but have been privy to such instruction. Failure of such customs officials to act on the instruction cannot be attributed to the customs broker inasmuch as the latter does not have the authority to enforce compliance on the part of the customs officials. Furthermore, at no stage, had the importer suggested that they had been advised to only furnish the goods partially for examination, owing to information imparted by the customs broker. In the absence of such imputation of misconduct and any finding to that effect it cannot be said that there is breach of regulation 10(e) of Customs Brokers Licensing Regulations, 2018. There is passing reference to alleged collusion of employee of the customs broker with customs officials that does not fall within the purview of regulation 10(e) of Customs Brokers Licensing Regulations, 2018. Consequently, the facts alleged has no bearing on this particular obligation or breach thereof."

22.5 Thus, on the above grounds, the CB submitted that the Regulation 10(e) cannot be invoked against them in the present case.

23. Regulation 10(f) of the CBLR, 2018 is not violated and cannot be invoked against the CB:

23.1 As per Regulation 10(f), 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;"

23.2 It is submitted by the CB that they have not at any point withheld any information from the importer; that there was no occasion for them to inform the importer about the sampling procedures or the Public Notice as the product under import was Process Oil; that no circumstances existed for them to assume otherwise. Therefore, the CB submitted that they had not violated the provisions of Regulation 10(f).

24. The CB submitted that they have similarly not violated the provisions of Regulation 10(m) and (q) of the CBLR, 2018; that they have discharged their function on time and have co-operated completely with the investigation. Further, the CB submitted that there is no evidence to establish that Mr. Hakeem Shaikh was involved in any alleged

substitution of samples, and the finding in the Inquiry report is based on assumptions & there is no evidence to support it. Therefore, the CB stated that there has not been any violation of Regulation 10 of the CBLR, 2018.

25. Further, the CB submitted that the Jawaharlal Nehru Customs House vide Advisory No.02/2024 dated 23.10.2024 have issued instructions that only when there is clear evidence of complicity in the illegal importation of goods or wrong intent or prior knowledge about the violation, penalty can be imposed on the Customs Broker. Assuming without admitting that there is mis-declaration of the import items or switching of samples as alleged in the Offence Report, the CB stated that, there is not an iota of evidence that they were aware of mis-declaration of contents, or had done anything done in switching of samples.

26. Timeline for suspension of license as per CBIC vide Circular No 9/2010-Cus, dated 08.04.2010 has not been followed:

26.1 The CB submitted that the CBIC vide Circular No 9/2010-Cus, dated 08.04.2018 issued under F. No. 502/5/2008-Cus VI prescribed time lines for suspension of CB licence. As Per Para 7.2 of the said Circular, the investigating authority shall furnish its report to the Commissioner of Customs (Licensing authority) who had issued the CB license., within thirty days of the detection of an offence. The Licensing authority shall take necessary immediate suspension action within fifteen days of the receipt of the report of the investigating authority. A post-decisional hearing shall be granted to the party within fifteen days from the date of his suspension. The Commissioner of Customs concerned shall issue an Adjudication Order, where it is possible to do so, within fifteen days from the date of personal hearing so granted by him.

26.2 In this case, the CB stated that the Bills of Entry were filed on 29.05.2024, afterwards the CIU drew samples on 10.07.2024 whereas the offence report is dated 10.09.2024 which is after 02 months and therefore in clear violation of the guidelines

issued by the said Circular No 9/2010 Cus.; that the suspension of the CB license was done on 16.10.2024 vide the impugned order which has also breached the limitation of 15 days from the offence report as prescribed by the Circular. Therefore, the CB submitted that in this case, there is a clear breach of timelines prescribed by CBIC. In this regard, the CB had placed reliance on the decision of the Hon'ble Tribunal Ahmedabad in its Final Order dated 06.10.2023 in the case of **Krishna Shipping & Allied Services vs Commissioner of Customs, Kandla - 2023 (10) TMI 249-CESTAT AHMEDABAD**, wherein it was held that:

"Where immediate suspension of Customs Broker licence breached timelines prescribed in CBEC Circular No 9/2010 -Cus dated 08/04/2010 which was neither withdrawn nor superseded after coming into force of Custom Brokers Licensee Regulation, 2018, and was thus, mandatory and binding on Revenue officers, suspension of licence was bad in law and, hence had to be revoked. Suspension of license, therefore, is illegal and is in clear violation of CBLR 2018 and Principles of natural justice."

26.3 Further, the CB had placed reliance on Madras High Court's **Santon Shipping Services vs The Commissioner of Customs, The Customs, Excise and Service Tax Appellate Tribunal-2017 (10) TMI 621**, wherein it was categorically held that the timeline given in Regulation 17 is mandatory in nature and must be respected by the Customs authorities. The CB submitted that this judgment was relied upon by the Madras High Court to rule similarly on the mandatory nature of the timeline in **Shri. Syed Khalid Ahmed vs the Principal Commissioner of Customs (General), The Inquiry Officer/Assistance Commissioner of Customs, Chennai - 2025 (4) TMI 529**.

26.4 In the present case, the CB submitted the timeline of proceedings against them as below:

Sr. No.	Description	Date	Mandatory statutory limit (Regulation 17 (5))	Delay
1	Offence report	10.09.2024	-	-
2	Suspension order No. 37/2024-25 CBS	16.10.2024	-	-
3	Continuation of suspension order No. 46/2024-25 CBS	21.11.2024	-	-
4	Show Cause Notice No. 65/2024-25	09.12.2024	09.12.2024	-
5	Inquiry Report	30.05.2025	08.03.2025	100 days
6	Receipt of Inquiry Report by the CB	18.06.2025	-	-

Thus, the CB submitted that the timeline for suspension had not been followed in this case and the suspension is liable to be withdrawn on this ground itself.

27. It is also submitted by the CB that they had not violated any provision of Regulation 13(12) of the CBLR, 2018; that Mr. Hakeem Shaikh was not involved in modus operandi to import adulterated diesel into India; that there is also no evidence to establish the same, and all that he was involved in was to act in the capacity of the Customs Broker of the importer after having complied with the mandates under the CBLR, 2018. Therefore, the CB submitted that there had been no violation of the Regulation 13(12).

28. Intention is a key ingredient of suspension of license under CBLR, 2018:

28.1 Regulation 16(1) of the CBLR, 2018 reads as follows:

“16. Suspension of license: (1) Notwithstanding anything contained in regulation 14, the Principal Commissioner or Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the license of a Customs Broker where an enquiry against such Customs Broker is pending or contemplated.”

28.2 The CB stated that it is clear from a bare reading of the provision that suspension of license can be done in appropriate cases, only when immediate action is necessary; that the law does not envisage such a severe action for each and every suspected violation by a Customs Broker. Further, the CB stated that prima facie, a fraudulent intention, prior knowledge or criminal negligence appears to be an important ingredient of Regulation 16(1) to merit a suspension of license.

29. It is submitted by the CB that the power to suspend a Customs Broker license can have drastic and irreversible consequences for the licensee and must be exercised with caution; that the consequences of suspension are not detrimental not only for the life and livelihood of the CB, but also of their dependents, their employees and their families.

29.1. In light of the above legal and factual grounds, the CB prayed that the instant proceedings not be pursued further & suspension may be withdrawn, and since their firm has not committed any offence, there is no question of forfeiting the security deposit or imposing any penalty.

30. In addition to these, the CB had enclosed the copies of the following Judgements/Advisory/Circular in their written submission, on which they had been relied upon:

- i. M/s. Concorde Zoom and Shri Rajendranath Bharathi Vs Commissioner of Customs Hyderabad - Customs - 2025 (6) TMI 1104 - CESTAT HYDERABAD;
- ii. M/s. HIM Logistics Pvt. Ltd. Vs CC, New Delhi - 2016 (8) TMI 925 - CESTAT NEW DELHI;
- iii. M/s. Chakiat Agencies and M/s. Soji Kuriakose Vs Commissioner of Customs, Chennai - 2023 (2) TMI 490 - CESTAT CHENNAI;
- iv. Sky Shipping Versus Principal Commissioner of Customs (General), Mumbai- I, 2025 (3) TMI 1197 - CESTAT MUMBAI;
- v. Jawaharlal Nehru Customs House vide Advisory No. 02/2024 dated 23.10.2024;
- vi. CBIC Circular No. 9/2010-Customs dated 08.04.2010;

- vii. M/s. Krishna Shipping and Allied Services Vs Commissioner of Customs, Kandla - 2023 (10) TMI 249 - CESTAT AHMEDABAD;
- viii. Santon Shipping Services Vs the Commissioner of Customs, The Customs, Excise and Service Tax Appellate Tribunal - 2017 (10) TMI 621 - MADRAS HIGH COURT;
- ix. Shri. Syed Khalid Ahmed Vs the Principal Commissioner of Customs (General), The Inquiry Officer/Assistance Commissioner of Customs, Chennai - 2025 (4) TMI 529 - MADRAS HIGH COURT.

31. Further, vide letter dated 28.10.2025, the CB submitted that they have made multiple attempts to get the documents but did not receive the same; that on 28.10.2024 and 31.12.2024 the CB wrote to the Commissioner of Customs (G), CB Section, NCH requesting for documents relied upon in the subject Show Cause Notice; that no response was received, and hence the CB sent a reminder email on 07.01.2025 with a copy of the said letter dated 31.12.2024; that it was in response to this email dated 07.01.2025 that the CB Section informed vide their letter dated 08.01.2025 that all the documents can be retrieved from CIU, JNCH; that thereafter the CB filed a letter dated 10.01.2025 with the Dty./Asst. Commissioner Central Intelligence Unit, JNCH asking for the abovementioned documents; that the CB has also filed 2 reminder letters dated 21.01.2025 and 25.01.2025 respectively, however, there has been no response to any of the letters and no action has been taken to provide the documents to the CB.

31.1 The CB further submitted that pursuant to the PH held in this matter on 10.09.2025 and the specific instructions of the Commissioner of Customs (Gen) to share the RUDs with them, they were still not provided with the following documents: (i) Docks Officer's clarification dated 27.07.2024 and (ii) CCTV footage; that despite multiple efforts from the CB's side, all the documents have still not been provided to the CB; that it is pertinent to note here that the CCTV footage is the crux of the allegation against the CB as it purportedly shows replacement of samples by Shri Sagar Mhatre; that in his statements, Sagar Mhatre allegedly "accepted that he had replaced the samples on the directions of Shri

Hakeem Shaikh, G Card holder of Ms. Aries Cargo Movers; that Without a copy of the CCTV footage, the CB is helpless and has no way of cross-verifying the veracity of the statements made on the basis of the said CCTV footage. The CB also submitted that he had also asked for cross-examination of Sh. Sagar Mhatre and the Docks Officer in their written submissions and the request was reiterated during the Personal Hearing, however, the same has not been allowed yet; that when adverse action is contemplated, the Noticee must be given an opportunity to cross-examine the person whose statements are being relied upon by the Department; that the non-provision of Relied Upon Documents that are heavily relied upon by the Department, including a copy of the CCTV footage which is crucial to the case and the refusal to afford cross-examination opportunity to the CB are starkly in violation of the principles of natural justice; that the CB's livelihood is at stake and it is submitted thus that the severe action of cancellation of CB license should not be taken without hard evidence; that all the evidence must also be provided to the CB to afford an opportunity to defend himself against the charges; that in light of the above it is submitted that all the charges against the CB are liable to be dropped.

DISCUSSIONS AND FINDINGS:-

32. I have gone through the facts and records of the case; the offence report dated 09.09.2024 received from the Deputy Commissioner of Customs, Central Intelligence Unit (CIU), JNCH, Nhava Sheva; the Suspension Order No. 37/2024-25 CBS dated 16.10.2024; the Suspension Continuation Order No. 46/2024-25 CBS dated 21.11.2024; the Show Cause Notice No. 65/2024-25 dated 09.12.2024 issued under Regulation 17(1) of CBLR, 2018; the Inquiry Report dated 30.05.2025; the Show Cause Notice No. 637/2025-26/JC/GR 2(C-F)/CAC/JNCH dated 14.08.2025 issued in the present matter under Section 124 of the Customs Act, 1962, by the Joint Commissioner of Customs, Group 2(C-F), NS-I, JNCH, Nhava Sheva and the written defence submission of the CB dated 30.07.2025 and 28.10.2025.

33. I find that the present case has been booked and investigated by the Central Intelligence Unit (CIU), JNCH, Nhava Sheva, against the importers M/s. Raj Traders and M/s. Global International, who filed Bills of Entry No. 3729714 and 3730722 respectively, both dated 29.05.2024 for the import of goods having description as 'Process Oil-40' and classified under CTH 34031900 having a duty structure of BCD 7.5%, SWS 10% and IGST 18% i.e. total duty @27.735%. For the said Bill of Entry, assessment was not prescribed and examination was ordered by the Risk Management System (RMS). Further, the RMS system instructed for 100% examination for concealment, it further instructed for the drawing of the requisite sample for testing in order to ascertain classification, valuation, nature and composition of the goods. Accordingly, two sets of representative samples were drawn by extracting a small portion of samples each from all the 20 containers, ensuring that the representative sample represents the entire lot, and the same was handed over to the Central Revenues Control Laboratory (CRCL), Jawaharlal Nehru Custom House (JNCH) for testing. The CRCL, JNCH reported that the goods have the characteristics of 'Base Oil (IS:18722:2024)', whereas the importer had declared the goods as "Process Oil-40" and had classified them under CTH 34031900 under self-assessment. The importer could not submit any Certificate of Analysis (COA) or related documents mentioning the chemical properties of the imported goods in support of CTH 34031900. Therefore, prima facie it appeared that goods had been mis-declared by the importer in terms of description & classification.

33.1 However, the Appraising Group 2 (C-F), JNCH has highlighted the modus operandi to National Customs Targeting Centre (NCTC), Mumbai and Special Investigation and Intelligence Branch (Import), Jawaharlal Nehru Custom House vide letter dated 21.05.2024 that several importers are importing goods like Diesel, Adulterated Diesel by mis-declaring goods as 'Process Oil-40' by classifying them under CTH 3403. The office of CIU, JNCH, vide emails had requested the importer multiple times to participate in the

investigation and sampling process. However, in his every reply, the importer refused to participate in the sampling process and had sent baseless, threatening and provocative emails which were unwarranted. The CIU, JNCH, asked the CHA firm M/s.Aries Cargo Movers to join the sampling/examination process. Shri Hakeem Shaikh responded on behalf of the CB firm M/s Aries Cargo Movers, stating that the importer has terminated the service of his CHA firm, but he sent Shri Sagar Mhatre for assistance during the sampling/examination process. Accordingly, the office of CIU, JNCH, carried out the sampling/ examination process under panchanama dated 10.07.2024. Thereafter, the said 20 samples drawn from each of the 20 containers were forwarded to Central Revenues Control Laboratory (CRCL), JNCH on 11.07.2024 for testing. In view of the above test reports, it is evident that the impugned goods are adulterated diesel fuel with only 2.0-3.0% of adulterants. It is clear that the adulterants have been deliberately mixed in diesel in order to camouflage the actual goods, i.e. Automotive Diesel Fuel as per IS: 1460:2017. Further, said diesel with more than 97% to 98% percent purity can straight away be used as Automotive Diesel Fuel in automobiles and in the open market, as no further processing is required on diesel fuel/oil with purity 97 to 98% which can be used as such in Automobiles. During the course of the investigation, it was revealed that the previous representative samples were never drawn from the containers and the representative samples submitted to the CRCL, JNCH were brought from outside by Shri Sagar Mhatre with the help of Shri Rutik Nalawade and Shri Atul Mulay. Therefore, in view of the above-mentioned offence report, it was observed that there appeared gross violation of provisions of Regulations 10(d), 10(e), 10(f), 10(m), 10(q) and 13(12) of CBLR, 2018 by the Customs Broker M/s. Aries Cargo Movers (CB No. 11/1774). The CB license was put under Suspension under Regulation 16(1) of CBLR, 2018 and such suspension was continued under Regulation 16(2) of CBLR, 2018. A notice under Regulation 17 of CBLR, 2018, was issued and inquiry proceedings were conducted. The inquiry officer held all the charges levelled

against the CB as 'proved'. Now I proceed to sequentially discuss all the charges levelled against the CB with respect to the findings of the inquiry officer vis-à-vis the defence arguments of the CB.

34. I find that the charges of violation of Regulations 10(d), 10(e) and 10(f) of CBLR, 2018, *ibid*, have been levelled against the CB on the grounds that "the CB was involved with their client (importer) to mix the adulterants in sample, which appears to be an ingenious *modus operandi* and the *mens rea* (conspiracy/malafide intention) to smuggle Diesel into the Indian Territory which is contrary to the restrictions/Prohibitions imposed by the existing Laws, Rules and Regulations (*viz.* Motor Spirit and High-Speed Diesel (Regulation of Supply, Distribution and Preventive of Malpractices) Order, 2005, Petroleum Act, 1934, Petroleum Rules 2002); that to avoid the rigors of Chapter 27 i.e. to avoid the mandatory first check procedure and sample drawing which is mandated by Public Notice No. 34/2019-20-JNCH dated 27.03.2020 and Public Notice No. 08/2022-JNCH dated 31.01.2022, the CB was abetted with importer to mis-declare and smuggle the impugned goods by classifying them under CTH 3403 instead of CTH 2710 and hence it appears that there is clear connivance of CB with importer in this mis-conduct".

34.1 I find that the inquiry officer, in this regard, has *interalia* observed that 'in his statement recorded under Section 108 of the Customs Act, 1962, Shri Sagar Mhatre admitted that representative samples submitted to the CRCL, JNCH were brought from outside by him with the help of Shri Rutik Nalawade and Shri Atul Mulay on the directions of Shri Hakeem Shaikh, Partner of M/s. Aries Cargo Movers; that there is clear connivance of CB with importer in this mis-conduct; that going through the investigation report it is very clear that CB had failed to fulfil the obligatory conditions laid down in public No. 08/2022 JNCH dated 31.01.2022; that the CB collaborated with importer and misclassified the goods, and illegally imported the disputed goods by misclassifying under CTH 3403

instead of 2710'. Hence, the IO held that the charges imposed on CB under Regulations 10(d), 10(e) and 10(f) of CBLR, 2018, *ibid*, are "Proved".

34.2 I have also perused the defence submission of the CB wherein the CB has *inter alia* argued that 'they have at all times advised the importer in question to comply with the provisions of the Customs Act; that there is no cogent evidence to prove the allegation that the alleged mis-declaration has been done on the instructions of the Customs Broker; that the Customs Broker/CB has no authority to compel lawful performance by an importer/exporter; that without specific evidence to the effect of wrong and illegal advice given by them to misclassify or any "conspiracy" between the importer and them, Regulation 10(d) cannot be invoked; that the basis for the suspension of license appears to be the reliance placed on the statement given by Mr. Sagar Mhatre that the samples were substituted by him based on the instructions of Shri Hakeem Shaikh; that Mr. Sagar Mhatre is not an employee of the CB firm and Mr. Hakeem Shaikh had not at any point given any instruction to him for substitution of samples; that no such substitution of samples has happened in reality, and it is impossible for anyone to switch samples in CFS having CCTV all around in presence of Customs officers; that no evidence exists to implicate that they instructed or was involved in the alleged substitution of samples; that they were not aware of the alleged mis-declaration as far as the imported goods are concerned; that all the import declarations were filed on the basis of the instructions of the importer; that the charges against them had been mechanically held to be "Proved" despite a glaring lack of evidence against them; that none of the relied upon judgments had been specifically traversed or even discussed in the inquiry report which is prejudicial to them and untenable in law'.

34.3 Having perused the records of the case, the findings of the inquiry officer and the defence arguments of the CB, I find that that it is a matter of fact that the previous representative samples (w.r.t. the CRCL test report dated 15.06.2024) were never drawn

from the containers and the representative samples submitted to the CRCL, JNCH were brought from outside by Shri Sagar Mhatre with the help of Shri Rutik Nalawade and Shri Atul Mulay. I also find that Shri Sagar Mhatre vide his statement dated 13.08.2024 & 14.08.2024 had accepted that he had replaced the samples on the directions of Shri Hakeem Shaikh, Partner of M/s. Aries Cargo Movers and the same has been verified on scrutiny of the CCTV footage. The investigation by CIU, JNCH has further revealed that Shri Hakeem Shaikh is managing the business of both the Customs Brokers M/s. Aries Cargo Movers and M/s. I.S. Machado and further, he is actively involved in the replacement of samples in all the above-mentioned cases. Having taken into cognisance of all the facts and circumstances of the case, I am of the firm opinion that the CB has contravened the provisions of Regulation 10(d), 10(e) and 10(f) of CBLR, 2018, inasmuch as they have not advised their client, i.e. M/s. Raj Traders and M/s Global International to comply with and fulfil the obligatory conditions laid down in Public Notice No. 08/2022 JNCH dated 31.01.2022 and the CB was abetted by the importer to mis-declare and smuggle the impugned goods by classifying them under CTH 3403 instead of CTH 2710.

34.3.1 The CB cannot run from their obligations by citing that a Customs Broker/CB has no authority to compel lawful performance by an importer/exporter. I find that it is a matter of fact that Shri Hakeem Shaikh, Partner of the CB firm M/s. Aries Cargo Movers was managing and handling the impugned import consignments and was actively involved in the fraudulent activity of mis-declaration of goods; circumventing of sampling process and abetting the smuggling of prohibited goods. I also noted that the CB had worked in a completely negligent manner and blindly relied only on the documents provided by the importer and the CB themselves did not exercise due diligence with respect to the fact that whether the importer is complying with all the rules, regulations and Notifications pertaining to the impugned imports. Disclosing all the requisite conditions of the Customs Act, 1962 and ensuring the compliance of regulations, rules and notifications issued

thereunder is one of the primary responsibilities of a Customs Broker. However, in the present case, the CB has failed to do so.

34.3.2 I am of the firm belief that the CB was in gross negligence, as they were aware of the mis-declaration of the imported goods and smuggling of prohibited goods. The CB has an important role with respect to the filing of documents and clearance of the goods. A lot of faith has been placed in the CB by the Customs authorities in the era of trade facilitation and RMS facilitation. In this regard, reliance is also placed on the decision of the **Hon'ble Tribunal, New Delhi, in the case of KVS Cargo Vs. Commissioner of Customs (Gen.), New Delhi, reported in 2018 (363) E.L.T. 856 (Tri. – Del.)**. Relevant para 8 of the said order is re-produced as under:

“8. Regarding Regulation 11(d), the CB is expected to advise their client, to comply with the provisions of the Customs Act, it stands established that the appellant has not met the actual importer. In view of above, the failure to observe Regulation 11(d) stands established”.

34.3.3 I find that the ratio of the aforesaid judgments is applicable in the instant case. The CB has an important role in respect of documentation and Customs Clearances. I find that in the instant case, the CB did not advise the importer, which resulted in fraudulent import, also the CB did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Hence, the CB cannot shy away from the responsibilities & obligations cast upon them under the CBLR, 2018. The responsibility of a Customs Broker plays a crucial role in protecting the interest of the Revenue and at the same time, he is expected to facilitate expeditious clearance of import/export cargo by complying with all legal requirements. I find that the CB has argued that the statement recorded under section 108 of the Customs Act 1962 is not applicable in regular inquiry proceedings since the noticee was not given an opportunity to cross examine the witness. I have taken cognisance of all the facts, statements and evidence as well as the findings of the IO and defence submissions of the CB. Here, I rely on the apex court judgement in

the matter of **Surjeet Singh Chhabra Vs. Union of India** reported in 1997 (89) E.L.T. 646 (S.C.) and in the case of **Systems & Components** [2004 (165) E.L.T. 136 (S.C.)] respectively, which states as under:-

"The Customs Officials are not police officers. The confession, though retracted, is an admission and binds the petitioner".

"It is a basic and settled law that what is admitted need not be proved".

34.3.4 I find that under regulation 10(d) of CBLR, 2018, it is prescribed that *"A Custom 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 Department"*; under Regulation 10(e) of CBLR, 2018, it is stipulated that *"A Custom 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"*; and under Regulation 10(f) of CBLR, 2018 it is prescribed that *"A Custom 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"*. However, under the facts and circumstances of the case, I am of the considered view that the CB has contravened the provisions of Regulation 10(d), 10(e) and 10(f) of CBLR, 2018 and the inquiry report is tenable and acceptable as the IO has rightly held the charges of contravention of Regulations 10(d), 10(e) and 10(f) of CBLR, 2018 as 'Proved' and I uphold the same.

35. I find that the charge of violation of Regulation 10(m) of CBLR, 2018, *ibid*, has been levelled against the CB on the ground that 'the subject offence has clearly revealed that Shri Hakeem Shaikh is managing the business of the Customs Brokers M/s. Aries Cargo Movers and it has been observed that he is significantly engaged in the substitution of samples in the aforementioned instances and facilitating the illegal entry of diesel into Indian territory, as the said fact was clearly brought out in the statement of Sh. Sagar

Mhatre and also caught in CCTV footage; the Customs Broker and his staff have not performed their responsibilities effectively, resulting in a breach of Regulation 10(m) of the Customs Broker Licensing Regulation, 2018.

35.1 I find that the inquiry officer, in this regard, has observed that 'Shri Hakeem Shaikh is managing the business of the Customs Broker M/s. Aries Cargo Movers and is significantly engaged in the substitution of samples in the aforementioned instances; that the CB did not cooperate with the investigating agency by intentionally avoiding to respond to the summons on flimsy medical ground; that the CB and his staff had not performed their responsibilities effectively, resulting in a breach of Regulation 10(m) of the Customs Broker Licensing Regulation, 2018 (CBLR)'.

35.2 I find that the CB, in this regard, has interalia argued that 'they have discharged their function on time and have co-operated completely with the investigation; that there is no evidence to establish that Mr. Hakeem Shaikh was involved in any alleged substitution of samples, and the finding in the Inquiry report is based on assumptions & there is no evidence to support it; that there has not been any violation of Regulation 10 of the CBLR, 2018; that there is not an iota of evidence that they were aware of mis-declaration of contents, or had done anything done in switching of samples'.

35.3 Having carefully perused the facts of the case, I find that it is a matter of fact that Shri Hakeem Shaikh, Partner of CB firm M/s. Aries Cargo Movers, Shri Sagar Mhatre, Shri Atul Mulay and Shri Rutik Nalavade were actively involved in the conspiracy to smuggle the impugned goods. This fact has been admitted by Shri Sagar Mhatre in his statement dated 13.08.2024 & 14.08.2024, before the officers of CIU, JNCH. Hence, under the factual matrix of the case, and in view of the facts discussed under para 34.3 above (I refrain from reiterating the same for the sake of brevity) I am inclined to accept the inquiry officer's findings with respect to charge of violation of Regulation of 10(m) of CBLR,

2018 and I hold that the CB has contravened the provisions of Regulation 10(m) of CBLR, 2018.

36. I find that the charge of violation of Regulation 10(q) of CBLR, 2018, *ibid*, has been levelled against the CB on the ground that 'various summons issued to the person involved in the said case namely Shri Hakeem Shaikh, Shri Sagar Mhatre, Shri Atul Mulay and Shri Rutik Nalavade, however, they never responded to the summonses and have not cooperated with the investigation and now they are reported absconding as per offence report; that it appears that CB has not co-operated with the Customs authorities and failed to comply the provisions of Regulation 10(q) of CBLR, 2018'. I find that, appraising the same grounds of imputation of charge of violation of Regulation 10(q) of CBLR, 2018, the inquiry officer has concluded that the said charge stands proved against the CB.

36.1 Having perused the CB's defence submission I find that the CB, in this regard, has *inter alia* argued that 'they have always cooperated with the investigation; that they have provided their address at Ghatkopar for all Departmental communication; that Mr. Hakeem Shaikh has provided proof of his persisting medical issues which prevent him from attending summons; that as far as the allegation of not responding to any phone calls is concerned, the Inquiry report has failed to adduce any evidence of missed phone calls in that regard'. Thus, the CB argued that there is no proof of the allegation that their firm has been ignoring/not picking up phone calls from the Department and they have discharged their function on time and have co-operated completely with the investigation.

36.2 I find that it is a matter of fact that the CB has not actively participated in the investigation proceedings conducted by CIU, JNCH. Neither the CB has responded to the inquiry officer under CBLR. The evidence on record is sustainable enough to hold that the CB M/s. Aries Cargo Movers has contravened the provisions of Regulation 10(q) of CBLR, 2018. I am, therefore, of the considered view that the inquiry officer has rightly held the said charge as proved, and hence I approve the same.

37. I find that the charge of violation of Regulation 13(12) of CBLR, 2018, *ibid*, has been levelled against the CB on the ground that 'the CB has failed to supervise his employees as Sh. Hakeem Shaikh was actively involved in an ingenious *modus operandi* and the *mens rea* (conspiracy/malafide intention) to smuggle Diesel into the Indian Territory which is contrary to the restrictions/Prohibitions imposed by the existing Laws, Rules and Regulations (*viz.* Motor Spirit and High-Speed Diesel (Regulation of Supply, Distribution and Preventive of Malpractices) Order, 2005, Petroleum Act, 1934, Petroleum Rules 2002); that the CB has failed to ensure the appropriate conduct of his employees in business transactions and may be held accountable for all actions or omissions of his employees occurring during their employment'.

37.1 I find that the inquiry officer, in this regard, has observed that 'the CB and their employees failed to appear in person before the investigating agency and also to submit the reply of summon issued to them; that the CB had failed to supervise their employees; that the CB and their employee colluded with importer for the smuggling of Diesel into the Indian Territory'. In IO's considered view, the ratio of case laws relied upon by the charged CB is not applicable in the present case and hence the IO concluded that the charge of violation of Regulation 13(12) of CBLR, 2018, is held as proved.

37.2 I find that the CB in this regard, has *inter alia* argued that 'they had not violated any provision of Regulation 13(12) of the CBLR, 2018; that Mr. Hakeem Shaikh was not involved in *modus operandi* to import adulterated diesel into India; that there is also no evidence to establish the same, and all that he was involved in was to act in the capacity of the Customs Broker of the importer after having complied with the mandates under the CBLR, 2018; that there had been no violation of the Regulation 13(12) of CBLR, 2018'.

37.3 Having perused the records of the case and the inquiry officer's report, I find that the factual matrix of the case clearly indicates that Mr. Hakeem Shaikh, Partner of the CB firm M/s. Aries Cargo Movers; Shri Sagar Mhatre; Shri Rutik Nalawade and Shri Atul

Mulay were involved in the conspiracy of mis-declaring the impugned goods with the malafide intention of smuggling the prohibited goods in India. I agree with the conclusion of the inquiry office and hold that the CB has not fulfilled their responsibility prescribed under Regulation 13(12) of CBLR, 2018, inasmuch as the CB has failed to exercise the necessary supervision to ensure the proper conduct of its employees in the transaction of business. Hence, in accordance with Regulation 13(12) of CBLR, 2018, the CB is held responsible for all acts or omissions of its employees during their employment.

38. Having taken cognizance of the facts of the case and on a careful perusal of the reasons assigned by the inquiry officer and as extracted above, it is evident that the inquiry officer has conducted a meticulous exercise to examine and appreciate the evidence on record and came to a categorical finding that the CB was guilty of non-performance of the statutory duties cast upon them under Regulation 10(d), 10(e), 10(f), 10(m), 10(q) and 13(12) of CBLR, 2018. Hence, in view of the above discussions and under the facts and circumstances of the present case, I am inclined to accept the inquiry officer's report, as I do not find any sustainable ground for disagreement with the inquiry report.

39. I find that a Custom Broker occupies a very important position in the Custom House and is supposed to safeguard the interests of both the importers/exporters and the Customs Department. A lot of trust is kept in CB by the Government Agencies; however, by their acts of omission and commission, it appeared that the CB M/s. Aries Cargo Movers (CB No. 11/1774) has violated Regulations 10(d), 10(e), 10(f), 10(m), 10(q) and 13(12) of CBLR, 2018. I find that for the violation of obligations provided under CBLR, 2018 and for their act of omission and commission, the CB M/s. Aries Cargo Movers (CB No. 11/1774) has rendered itself liable for penal action under CBLR, 2018. Hence, while deciding the matter, I rely on the following case laws:

a) **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:

"the CHA occupies a very important position in the Custom House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interest of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the government agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations".

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

"6.1 These provisions require the Customs Broker to exercise due diligence to ascertain the correctness of any information and to advice the client accordingly. Though the CHA was accepted as having no mensrea of the noticed 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."

- (c) 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."

(d) In the case of Pundole Shahrukh & Co. V/s. Commissioner (General), Mumbai [2012 TIOL 925 CESTAT-MUM] the Hon'ble Tribunal observed that the maximum punishment prescribed in the CHALR is attracted in cases of major involvement in aiding and abetting fraudulent exports leading to substantial loss of revenue to the exchequer.

40. As discussed above, I conclude that the CB is guilty of violations of Regulations 10(d), 10(e), 10(f), 10(m), 10(q) and 13(12) of CBLR, 2018. Considering all the facts and circumstances of the case and taking into cognisance of the above-cited case laws, I am inclined to revoke the CB license, to forfeit the security deposit and to impose a penalty under CBLR, 2018.

41. Further, I find that in the present case, the Offence Report was received on 10.09.2024 and the Show Cause Notice No. 65/2024-25, under Regulation 17(1) of CBLR, 2018, has been issued on 09.12.2024, i.e. within the specified period of ninety days from the receipt of the offence report. However, the Inquiry Report has been submitted by the inquiry officer under Regulation 17(5) of CBLR, 2018, on 30.05.2025. I also find that, under Regulation 17(6) of CBLR, 2018, a copy of the inquiry report was shared with the CB vide this office letter dated 18.06.2025 and for the sake of Principle of Natural Justice an opportunity of personal hearing was granted to the CB on 22.07.2025 by the then Pr. Commissioner of Customs (Gen). However, the Advocate for the CB vide their email dated 22.07.2025 informed that he was appearing in a matter listed before the Hon'ble Bombay

High Court on 22.07.2025 and hence requested to adjourn the hearing. Accordingly, the date of the hearing was rescheduled on 07.08.2025. However, due to administrative reasons, the personal hearing could not be held on 07.08.2025 and the same was adjourned to 10.09.2025, by the then Pr. Commissioner of Customs (Gen). The then Pr. Commissioner of Customs (Gen) retired on superannuation on 31.08.2025. Hence, as the new Adjudicating Authority, the personal hearing in the present matter was kept unaltered by me and the same was held on 10.09.2025. Also, as per request of the CB, fifteen days' time was granted to the CB to submit their additional submission. However, the CB submitted their additional submission on 28.10.2025 which caused the delay in adjudication proceedings. Hence, after the receipt of the written defence submission of the CB, the case is being adjudicated within one month of receipt of such submission from the CB. Further, with regard to the contention of the CB that the actions under Regulation 17 of CBLR, 2018 is time barred, I observe that the timelines under CHALR/CBLR, are directory in nature and not mandatory. In this regard, I place reliance on the following case laws:-

a) Hon'ble High Court of Judicature at Bombay in the case of Principal Commissioner of Customs (General), Mumbai Versus Unison Clearing P. Ltd. reported in 2018 (361) E.L.T. 321 (Born.), which stipulates that:

"15. In view of the aforesaid discussion, the time limit contained in Regulation 20 cannot be construed to be mandatory and is held to be directory. As it is already observed above that though the time line framed in the Regulation need to be rigidly applied, fairness would demand that when such time limit is crossed, the period subsequently consumed for completing the inquiry should be justified by giving reasons and the causes on account of which the time limit was not adhered to. This would ensure that the inquiry proceedings which are initiated are completed expeditiously, are not prolonged and some checks and balances must be ensured. One step by which the unnecessary delays can be curbed is recording of reasons for the delay

or non-adherence to this time limit by the Officer conducting the inquiry and making him accountable for not adhering to the time schedule. These reasons can then be tested to derive a conclusion whether the deviation from the time line prescribed in the Regulation, is "reasonable". This is the only way by which the provisions contained in Regulation 20 can be effectively implemented in the interest of both parties, namely, the Revenue and the Customs House Agent."

(b) The Hon'ble High Court of Telangana, in the matter of M/s. Shasta Freight Services Pvt. Ltd. vs Principal Commissioner Of Customs, [Writ Petition No. 29237 of 2018] held that:-

"42. Therefore, if the tests laid down in Dattatreya Moreshwar, which have so far held the field, are applied, it would be clear (i) that the time limit prescribed in Regulation 20 (7) is for the performance of a public duty and not for the exercise of a private right; (ii) that the consequences of failure to comply with the requirement are not spelt out in Regulation 20(7) (iii) that no prejudicial consequences flow to the aggrieved parties due to the non-adherence to the time limit; and (iii) that the object of the Regulations, the nature of the power and the language employed do not give scope to conclude that the time limit prescribed is mandatory. Hence, we hold that the time limit prescribed in Regulation 20 (7) is not mandatory but only directory."

(c) The Hon'ble High Court of Karnataka, in the matter of The Commissioner of Customs vs M/s. Sri Manjunatha Cargo Pvt Ltd on 12 January [C.S.T.A. No. 10/2020] held that:-

"13. A reading of Regulation 17 of the C.B.L.R., 2018 makes it very clear that though there is a time limit stipulated in the Regulations to complete a particular act, non-compliance of the same would not lead to any specific consequence.

14. A reading of the Regulation 17 would also go to show that the Inquiry Officer during the course of his inquiry is not only required to record the statement of the parties but also to give them an opportunity to cross-examine and produce oral and documentary evidence. In the

event of the respondents not co- operating, it would be difficult for the Inquiry Officer to complete the inquiry within the prescribed period of 90 days, as provided under Regulation 17(5). Therefore, we find force in the argument of the learned counsel for the appellant that the Regulation No.17 is required to be considered as directory and not mandatory. Though the word "shall" has been used in Regulation 17, an overall reading of the said provision of law makes it very clear that the said provision is procedural in nature and non-compliance of the same does not have any effect. If there is no consequence stated in the Regulation for non-adherence of time period for conducting the inquiry or passing an order thereafterwards, the time line provided under the 22 statute cannot be considered as fatal to the outcome of inquiry.

15. Under the circumstances, we are of the considered view that the provisions of Regulation 17 of the C.B.L.R., 2018 is required to be considered as directory and not mandatory and accordingly, we answer the substantial questions of law Nos.1 to 3 in favour of the appellant and against the respondent."

(d) The Hon'ble CESTAT Mumbai in the matter of M/s. Muni Cargo Movers Pvt. Ltd. Vs. Commissioner of Customs (General), Mumbai [Order No. A/996/13CSTB/C-I dated 23.04.2013] held that:-

"Para 4.2:- As regards the third issue regarding non-adherence to the time-limit prescribed in CHALR, there is some merit in the argument. But nevertheless, it has to be borne in mind that time-limit prescribed in the law though required to be followed by the enforcement officers, at times could not be adhered to for administrative reasons. That by itself does not make the impugned order bad in law".

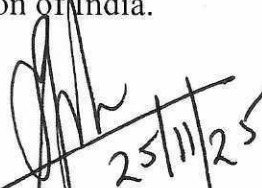
42. In view of the above-discussed facts and for their acts of omission and commission, the CB M/s. Aries Cargo Movers (CB No. 11/1774) is held liable and guilty for violating the provisions of CBLR, 2018, as mentioned above. I hold that the CB has failed to discharge his duties cast upon him with respect to Regulations 10(d), 10(e), 10(f), 10(m), 10(q) and 13(12) of CBLR, 2018 and is liable for penal action. Accordingly, I pass the following order:

ORDER

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

- (i) I hereby order for revocation of the CB license held by M/s. Aries Cargo Movers (CB No. 11/1774, ABAFA0426HCH001) under Regulation 14 of CBLR, 2018.
- (ii) I hereby order for forfeiture of the entire amount of the security deposit furnished by the CB M/s. Aries Cargo Movers (CB No. 11/1774, ABAFA0426HCH001) under Regulation 14 of CBLR, 2018.
- (iii) I, hereby impose a penalty of Rs. 50,000/- (Rs. Fifty Thousand Rupees Only) on the CB M/s. Aries Cargo Movers (CB No. 11/1774, ABAFA0426HCH001) under Regulation 18(1) of CBLR, 2018.
- (iv) I hereby order that the CB immediately surrender the original License as well as all the F, G & H cards issued thereunder 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.


(Shraddha Joshi Sharma)
Commissioner of Customs (G)
NCH, Mumbai-I

To,

M/s. Aries Cargo Movers (CB No. 11/1774),
8th floor, Office No. 801, Crystal Plaza,
Guru Hargovindji Road, Opp Solitaire Corporate Park,
Chakala, Andheri (East) Mumbai 400093

Copy to:

1. The Pr. Chief Commissioner/ Chief Commissioner of Customs, Mumbai I, II, III Zone.
2. SIIB (X), ACC, Sahar, Mumbai.
3. EDI of NCH, ACC & JNCH
4. ACC (Admn), Mumbai with a request to circulate among all departments.
5. JNCH (Admn) with a request circulate among all the concerned.