



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

संचिका सं /F. No.- GEN/CB/435/2022 –CBS

आदेश दिनांक/Date of Order: 26.04.2024

CAO No. 05/CAC/PCC(G)/SJ/CBS-Adj

जारी दिनांक/Date of issue: 26.04.2024

संख्या:

**DIN** : 20240479OC0000333CFF

द्वारा जारी : **सुनील जैन**

**Issued By : Sunil Jain**

प्रधान आयुक्त, सीमाशुल्क(सामान्य)  
मुंबई -400 001

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

**ORDER-IN-ORIGINAL मूल आदेश**

**ध्यान दीजिए/ N.B. :**

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

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

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

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

25. 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.

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

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

27. (i) यदि प्रतिवादित आदेश, जिसके विरुद्ध अपील की गई है, में शुल्क एवं मांगे गए ब्याजवलगाए गए जुर्माने की राशि रु. पाँच लाख या इस से कम होतो रु. 1000/-, (ii) यदि यह राशि रु. पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न होतो रु. 5000/- एवं (iii) यदि यह राशि रु. पचास लाख से अधिक होतो रु. 10000/- के शुल्क का भुगतान क्रॉस्ड बैंक ड्राफ्ट के माध्यम से अधिकरण की खंडपीठ के सहायक पंजीयक के पक्ष में जिस स्थान पर खंडपीठ स्थित है, के किसी भी राष्ट्रीय क्रत बैंक की शाखा में किया जाए एवं डिमांड ड्राफ्ट अपील के साथ संलग्न किया जाए।

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

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

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

## **Brief Facts**

M/S. Beejay Clearing & Forwarding Agency, (PAN: AEZPM6919B), having address registered at Room NO. 19, 1st Floor, Contractor Building 15, Vaju Kotak Marg, Fort, Mumbai 400 001 (hereinafter referred as the Customs Broker/ CB) holder Of Customs Broker License No. 11/707, issued by the Commissioner of Customs, Mumbai under regulations of CHALR, 1984, [Now regulation 7(2) of CBLR, 2018] and as such they are bound by the regulations and conditions stipulated therein.

**2.** On the basis of specific information received by the DRI, MZU, Mumbai investigation was conducted and it was found that fake invoices were used to over-valued export goods so as to claim undue drawback. Investigation revealed that various export firms including M/s. Basar Jewels Pvt. Ltd. were procuring fake purchase bills against the export consignments from one Mr. Suhel Ansari, through fake firms floated by him.

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

**4.** During the course of investigation, statements of Shri Suhel Parvez Ansari and Shri Shaikh Mohammed Arshad (employee of Shri Suhel Parvez Ansari) were recorded on 24.08.2015 by DRI, Mumbai. Both of them stated that they supplied fake invoices to the various export firms including M/s. Basar Jewels Pvt. Ltd. Shri Shaikh Mohammed Arshad stated that there were about 22 firms in whose name fake invoices were issued.

**5.** DRI, MZU, Mumbai forwarded the case to SIIB(X)/ACC, Mumbai for carrying out further investigation, along with the details of exporters including M/s. Basar Jewels Pvt. Ltd, who have claimed undue drawback by overvaluing the exports on the basis of fake invoices taken from Shri Suhel Ansari where, cheaper material was exported on higher value/price to claim higher amount of undue benefit of export incentives.

**6.** During investigation, Summons were issued several times by investigating agency SIIB(X) to Shri Uzair Basar, Ms Huma Basar and Shri Abdul Khalique Baser Suleiman respectively of M/s. Basar Jewels Pvt. Ltd., however statements

could not be recorded, as they have not presented themselves before the investigating agency.

**7.** Since the exporter never appeared for statement and when summons returned stating address "left", a visit was made by the officer of SIIB(X) to verify the address of the exporter. The premises i.e 103/104, 1 floor, Ratan Heights Opp. Navjeevan Society, Lamington Road, Mumbai-08 was visited by SIIB(X) office on 19.03.2022 and it was noticed that some other firm was occupying the said address and it was informed that the exporter had already left, before the present occupant occupied the said address.

**8.** During investigation, the details of exports made by the exporter M/s. Basar Jewels Pvt. Ltd., were retrieved from the ICES System. During the period from 2012-2016, the exporter made total exports of 06 Shipping Bills and fraudulently availed total drawback amount of Rs. 2.83 Lakhs, it was found that the Customs Brokers, M/s Beejay Clearing and Forwarding Agency has cleared consignments/shipping bills of the said exporter.

**9.** During the course of investigations, Summons were issued to CB M/s. Beejay Clearing & Forwarding Agency (11/707) and statement of proprietor Shri John Poovampallil Kurien Mathew was recorded, wherein he inter-alia stated that:-

(i) He is the proprietor of the Customs Broker Firm M/s. Beejay Clearing and Forwarding Agency; Shri Abdul Khaliq Basar, the first Director approached him and requested to clear his goods for export purpose;

(iii) They had done the KYC of the exporter, but the said KYC documents were destroyed in rainfall of July, 2018. He did the address verification by himself.

(iv) He was not aware of the goods from where it was acquired by the exporter, also he had no concern regarding that.

(v) The time they received documents from the exporter for export of goods, based on the same they prepared the check list as per the invoice and packing list received from the Exporter and shared the check list with the Exporter for approval over email. After approval of checklist the documents were then filed for clearance in customs.

(vi) The exporter himself used to prepare all the documents viz invoice, packing list etc. They only prepared the checklist and filed the shipping bills.

(vii) They used to verify the correctness of invoice, packing lists etc. in respect of goods produced for exportation, but they never verified the value of goods.

(viii) He was not aware of the correctness of the fictitious invoices raised by Mr Suhel Ansari and he also did not know Mr. Ansari.

(ix) He never noticed that the declared value of the goods of M/s Basar Jewels Pvt. Ltd. was highly inflated. In 2015, some cases were booked by DRI, Mumbai, M/s Basar Jewels Pvt. Ltd. was one of them. Hence, they stopped working with them and now they were not in contact with them.

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

**11.** During investigation a statement dated 01.07.2016 of Shri Suryabhan Eknath Dhurphate, Proprietor of M/s. Sanket Overseas, Navi Mumbai, was recorded before the DRI, MZU, Mumbai, who was logistics provider and was involved in clearing the consignments through CHA, M/s. Indo Foreign Agents.

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

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

Therefore, it appears from investigation that necessary ingredient of second proviso to Rule 3(1) Drawback Rule, 1995 is attracted in this case which does not permit any amount of drawback in such cases where no duty has been paid.

**13.** From investigations made by DRI, MZU and the investigations conducted by SIIB(X), ACC, Mumbai, it appears that M/s. Basar Jewels Pvt. Ltd. procured goods (of inferior quality and having low value) from local market and to show

the higher value of the goods to claim export benefits, procured fake and bogus invoices from Sh. Suhel Ansari.

**14.** From perusal of the Offence Report, it appears that:

- a)** The CB did not advise the exporter about the Drawback Rules and abetted the exporter by declaring the incorrect value of the goods in shipping bills against the fake invoices to avail undue drawback and did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Thus, the CB appears to have violated Regulation 10(d) of CBLR, 2018.
- b)** The CB failed to exercise due diligence and aided the exporter in availing the undue drawback by overvaluing the exports, whereas cheaper material was exported, and to justify the value of the goods, fake invoices were procured showing higher purchase price. On scrutiny of the subject case, it appears that CB did not exercise due diligence and did not impart the information relating to Drawback Rules. Thus, the CB appears to have violated Regulation 10(e) of CBLR, 2018
- c)** The CB did not inform the exporter about the instructions, circulars and public notice regarding the claiming of drawback. It was the responsibility of the CB to ensure that exporter declares the name and complete address of the traders from whom goods has been purchased in order to claim Drawback. It appeared that CB did not advise the exporter to comply with Rule 3, Rule 16 and Rule 16A of Drawback Rules, 1995 and abetted the exporter by declaring incorrect value of the goods in shipping bills against the fake invoices to avail undue drawback. Thus, the CB appears to have violated Regulation 10(f) of CBLR, 2018.
- d)** The CB has failed to maintain records as they had stated that they carried out the address verification of M/s Basar jewels Pvt. Ltd but do not have the documents for the same. Thus, it appears that CB appears to have violated the regulation 10(k), of CBLR 2018.
- e)** The CB in his statements stated that he completed KYC of the said exporter but was unable to produce the same as it was destroyed in the rainfall of July, 2018. It appears that CB has not done the KYC and did not verify exporter's antecedent. Therefore, under the fact and such circumstances, the CB actively connived with exporters by claiming undue Drawback and over valuing the export goods and mis-declaring in the Shipping Bills. Further the summons issued by the investigating agency was returned with the remark "Left" and none of the exporters

appeared in response to the summons issued.. Thus, it appears that the said CB has not verified the antecedents properly of the said exporter, thus violating the regulation 10(n) of CBLR 2018.

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

Legal Provision of the CBLR, 2018:-

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

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

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

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

**Regulation 10 (n) of the CBLR, 2018:-** *A Customs Broker shall verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;*

**16. Suspension/Revocation of the License:**

In pursuance of the offence report received in the said matter, the license of the CB firm M/s. Beejay Clearing & Forwarding Agency (11/707) was ordered to be placed under suspension, vide Order No. 60/2023-24 dated 30.12.2023 in contravention of Regulations 10(d), 10(e), 10(f), 10(k) & 10(n) of CBLR, 2018.

Thereafter, giving the opportunity of personal hearing to the CB, suspension of the license was revoked vide Order No. 87/2022-23 dated 10.03.2023.

#### **17. Show Cause Notice:**

Inquiry proceedings were initiated against CB firm M/s. Beejay Clearing & Forwarding Agency (11/707) vide Show Cause Notice No. 57/2022-23 dated 29.03.2023 issued under Regulation 17 of CBLR 2018 and vide the said notice, CB M/s. Beejay Clearing & Forwarding Agency were called upon to show cause as to why the licence bearing no. 11/707 issued to them should not be revoked and security deposited should not be forfeited and/or penalty should not be imposed upon them under Regulation 14 read with 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018, as elaborated in the Show Cause Notice.

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

#### **18. INQUIRY REPORT:**

Inquiry officer submitted her report dated 22.12.2023 wherein the charges against the said CB M/s Beejay Clearing & Forwarding Agency in respect of violation of Regulation 10(d), 10(e), 10(f), 10(k) & 10(n) of CBLR, 2018 were all held as "Proved".

##### **18.1 Details of Personal Hearing**

Inquiry officer in her report has stated that in compliance of the SCN No. 57/2022-23 dated 29.03.2023, the said CB firm was directed to appear for hearing & submit the evidences/documents in their defence on 25.09.2023 but on the request letter of CB firm, PH date was adjourned and again PH was fixed vide letter dated 03.10.2023 and CB firm was directed to submit the evidences/documents in their defence on 05.10.2023.

In response to PH letter dated 03.10.2023, Shri John Mathew, proprietor of M/s Beejay Clearing and Forwarding Agency accompanied by Mr. Vikas



Shinde attended the hearing on 05.10.2023 and reiterated the submission already made in their reply.

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

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

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

In her report, IO submitted that the CB M/s. Beejay Clearing & Forwarding Agency had filed Shipping Bills on behalf of M/s. Basar Jewels Pvt Ltd, during the investigation period i.e 2012-2016 and DRI, MZU, Mumbai investigated the case and found that impugned goods were of inferior quality.

Further IO submitted that these goods were procured from local market without any invoice & the exporter M/s Basar Jewels had procured fake and bogus invoices from Sh. Suhel Ansari & the CB has failed to bring anything substantial on record that they were not aware of these facts. IO also submitted that without wilful collusion of the CB, the exporter could not have exported the said goods. Therefore, the CB cannot be absolved from the responsibilities & obligations cast upon them under the CBLR, 2018 and has violated Regulation 10(d) of CBLR, 2018

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

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

Inquiry Officer submitted that the exporter M/s. Basar Jewels Pvt. Ltd procured fake purchase bills against the export consignments from one Mr. Suhel Ansari, & claimed undue export benefits by overvaluing the exports. The impugned goods were of cheaper material and to justify the value of the goods, fake invoices showing the higher purchase price.

IO submitted that it is the duty of the CB to verify the authenticity of any documents in reference to the Cargo produced by the exporter but in the given case, the CB has failed to perform his duties as per regulation mandated in the CBLR, 2018 & violated the regulations 10(e) of CBLR, 2018.

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

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

Inquiry Officer submitted that the exporter procured goods from Domestic Tariff Area (DTA) without any invoices, so no details of its manufacturing, production, using imported material or excisable material therein were available, so it could not be ascertained whether any duties have been paid or otherwise. Further, the exporter failed to submit/produce any such details in respect of manufacturing, production or use of any imported material in impugned export goods,

IO also submitted that during investigation exporter could not produce any such details in respect of manufacturing, production or use of any imported material in impugned export goods, though he was provided enough opportunity but he failed to produce any such details. In the said case, the CB has failed to provide all the information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities to his client i.e. to the exporter M/s. Basar Jewels Pvt. Ltd and therefore, the CB has violated the provisions Of Regulation 10(f) of the CBLR, 2018.

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

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

Inquiry Officer in his report has stated that as per regulation 10(k) of the CBLR, 2018 the CB is required to maintain upto date records such as bill of entry, shipping bill, transshipment application for at least five years and all such records and accounts shall be made available at any time for the inspection of officers authorised for this purpose. Further, the exporter claimed duty drawback using fake invoices and the CB M/s. Beejay Clearing & Forwarding Agency has not brought any records, documents or any evidence to support their defence. Therefore, the CB has violated the provisions of Regulation 10(f) of the CBLR, 2018.

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

As per regulation 10(n) of CBLR, 2018- "*verify antecedent, correctness of*

*Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information "*

Inquiry Officer in his report has stated that the investigating agency issued Summons to M/s. Basar Jewels Pvt. Ltd. which returned with the remark "left" and none of the exporter appeared in response to the summons issued. Further, Shri John Poovampalli Kurien Mathew, proprietor of the CB vide his statement admitted that they do not have the documents regarding KYC of M/s. Basar Jewels Pvt. Ltd.

IO stated that the CB also failed to submit any documentary proof to substantiate that they had verified the credentials of the said exporter including functioning of client from the declared address. From the above facts and circumstances, it appears that the CB has violated the provisions of regulation 10(n) of the CBLR, 2018.

**19. Submission of the CB & Records of the Personal Hearing:**

A personal hearing on the matter was granted to the CB on dated 25.01.2024, which was attended by their authorised representative Mr. N.D. George, advocate. Further, a written submission was submitted vide letter dated 07.02.2024 by the CB, wherein inter alia following was submitted: -

- i. The license bearing No. 11/707 issued to them should not be revoked and security deposit should not be forfeited and/ or penalty should not be imposed upon them under Regulation 14 read with 17 &18 of the CBLR, 2018.
- ii. The CB submitted that filed 3 Shipping Bills for export of imitation jewellery and garments. The said Shipping Bill was filed on the basis of document given by the exporter. Further, no draw back was claimed against the said 3 Shipping Bills. Further, there is no loss of revenue and the copies of the Shipping Bills are not furnished / annexed to the SCN issued on 29.03.2023 nor any document has been relied upon in the SCN issued on 29.03.2023.
- iii. We further say and submit that the exports made by the exporter is for the period 2012-2015, the exporter filed 6 Shipping Bills and availed draw back Rs. 2.83/- Lakhs. However, the CB has filed only three Shipping Bills.
- iv. The SCN is barred by limitation as the Shipping Bills pertains to the year 2012 to 2015 and the SCN has been issued on 29.03.2023 which is after a period of 8 years. Therefore, the said SCN is not maintainable and liable to be withdrawn. In this Context we rely on the judgment of the Hon'ble

High Court in the case of the Principal Commissioner of Customs (General) versus Mehul & Co reported in 2022 (5) TMI 30- Bombay High Court.

- v. The CB submitted that no investigation was carried out with respect to the noticee nor any statement of the CB was recorded as the RUD does not rely on any statement in the SCN No.06/ADJ(X)/2022-23 dt. 22.10.2022 issued to M/s. Basar jewels, the exporter. Therefore, the IO has conducted the inquiry purely on the bases of assumption and presumption and without any documentary evidence
- vi. The CB firm M/S. Beejay Clearing & Forwarding Agency submitted that request for cross examination was not granted despite request by the noticee. In this context we rely on the judgment in the case of Shasta Freight Services Pvt Ltd versus Pr. Commr of Cus., Hyderabad reported in 2019 (368) E.L.T. 41 (Telangana). The said judgment was upheld by the Hon'ble Supreme Court reported in 2022 (381) E.L.T. 436 (S.C.) That being so the SCN is not maintainable, bad in law and liable to be withdrawn
- vii. The CB submitted that 3 Shipping Bills were filed as per the documents given by the exporter. The said documents, whether genuine or fake cannot be decided by the CB. Further, the document given by the exporter is deemed to be correct and genuine as the same has been accepted by the officers of the department. The CB's are not experts to identify whether the documents are genuine or not.
- viii. The investigations by DRI with the Consulate General of India, Dubai, UAE cannot be relied upon as the department has not furnished a copy of the letter received from the Indian Consulate, Dubai. Further, the exports pertain to Imitation Jewellery and Garments were exported to Algeria and not Dubai, UAE.
- ix. The CB has submitted that the exports pertain to the year 2012-15 & the SCN has been issued on 29.03.2023 which is after a period of more than 8 years. As per CBLR,2018 the CB has to maintain the records till the period of limitation. i.e 5 years as per CBLR, 2018. Therefore there is no violation of regulation 10(k) of CBLR, 2018.
- x. In respect of the violation under Regulation 10(d), 10(e), 10(f), 10(k) & 10(n) of CBLR, 2018, the CB has submitted that their firm has not violated any of these regulation and presented various case laws in their support. The CB further submitted that the SCN is unsustainable in law, liable to be dropped and the CB is liable to be discharged.

## **20. Discussions & Finding:**

I have gone through the case, material evidence on record, Inquiry Report dated 22.12.2023, oral submission made during personal hearing on 15.02.2024 and written submissions dated 07.02.2024.

**20.1** I observe that the charges against the said CB is of violation of regulation 10(d), 10(e), 10(f), 10(k), & 10(n) of CBLR, 2018 made vide Show Cause Notice No. 57/2022-23 dated 29.03.2023 .

The Inquiry Officer vide inquiry report dtd 22.12.2023 held all the charges of violation of regulation 10(d), 10(e), 10(f), 10(k), & 10(n) of CBLR, 2018 as "Proved".

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

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

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

*"advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be"*

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

I find that the export firm M/s. Basar Jewels Pvt. Ltd had procured fake purchase bills from one Mr. Suhel Ansari against their export consignments to show the over-pricing of the goods and so as to claim higher export incentives. Further, the fact that the impugned goods were of cheaper material is also corroborated from the report of Consulate General of India, Dubai and various statements of Mr Suhel Ansari & others.

Although the CB's contention is that the goods were not exported to Dubai, UAE, the fact can not be ignored that the goods were over-valued to claim higher drawback. Further, I observe that as per the records the export invoices did not contain name and complete address of the traders from whom impugned goods had been purchased by the exporter, as mandated in circular 16/2009 dated 25.05.2009. Thus, it appears that the CB had neither advised the exporter regarding the said circular dated 25.05.2009 nor informed the Customs authorities about the non-compliance of the same by the exporter as mandated in regulation 10(d) of the CBLR, 2018. I observe that in the era of trade facilitation a lot of trust has been placed on the CB and thus in the instant case the CB cannot take a plea that he was unaware of the Customs fraud and filed documents based on information provided by the exporter. The CB being an important actor in the export/import procedure is duty bound to examine the information provided by the exporter and to advise him suitably to comply with

the requirement of the Customs and the allied laws and to bring the non-compliance to the notice of Customs authorities. Thus, I am of the considerate view that the CB has violated regulation 10(d) of the said regulations.

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

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

In view of the above **I hold that the CB has violated the provisions of Regulation 10(d) of the CBLR. 2018.**

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

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

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

I observe that the inquiry officer in her report held the violation of regulation 10(e) of CBLR, 2018 as proved.

I observe that the CB has an important role between exporter/importers and Customs authorities. It is because of this fact that lot of obligations have been casted upon CB under the CBLR, 2018. In the instant case, I observe that the CB has acted in very callous and negligent manner. From the investigation conducted by DRI, MZU and subsequently by ACC, Mumbai it has been established that the exporter used fake invoices supplied by one Shri Suhel Ansari to over value the export goods so as to claim undue export incentives. From the offence report, I observed that as per the report from Consulate General of India, Dubai, UAE, the actual unit price of the exported goods were abnormally low compared to the declared value in the shipping Bills which clearly shows that the transaction value declared in the shipping bills were incorrect and were inflated so as to claim undue export incentives. The CB failed to exercise due diligence to ascertain the correctness of information relating to the Draw back Rules, 1995 and other related laws and thereby aided the exporter in availing undue drawback. Under the CBLR, 2018, the CB is rule bound to exercise the due diligence to ascertain the correctness of information that they provide to their client in relation to the export goods. In the instant case, I observe that the CB had not imparted information regarding fulfilment of requirement of Circular 16/2009 dated 25.05.2009, as evident from the facts that the invoices submitted by the exporter at the time of exports does not contains name & address of the trader from whom exporter had purchased the goods.

From record of the case, it is apparent that the CB had failed to exercise due diligence and to sensitize the exporter to make proper declaration in terms of value & the details of procurement of the goods. Thus, I am of the considerate view that the CB has violated regulation 10(e) of the CBLR, 2018.

In view of the above, I hold that the CB has violated the provisions of Regulation 10(e) of the CBLR, 2018.

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

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

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

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

CB in his submission has stated that the SCN does not mention which instruction or public notice he had not informed to the exporter. CB further argued that SCN itself records that the CB was unaware of the fictitious bills.

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

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

From the above facts, I find that the CB was aware of the facts that the goods sought to be exported under the drawback scheme are required to compliant with the provisions of the scheme and should be backed by appropriate documentation. The CBs had to inform the exporter of the requirements of Customs Law and need to conveyed the details of all the instructions, orders and public notices issued by the Customs authorities from time to time in respect of claims of drawback on exported goods. The fact that the exporter, exported goods in violation of the Customs law indicates that the CB had withheld information to the exporter in this regard.

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

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

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

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

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



From perusal of offence report and statement of the CB, I find that the CB has claimed to have obtained the KYC document and verified the address but failed to submit the proof in this regard and also, they did not submit other requisite documents related to packing, storage of the export consignment. Further, the summons issued to the exporter by the investigating agency was returned with the remark "Left" and the exporter did not appear in response to the summons issued. The plea taken by the CB that the related documents were destroyed during rain appears to be an afterthought so as to save from clutches of law. The investigation has clearly established that this case was part of bigger racket of export fraud. From the various omissions and acts of the CB, it emerges that they act in connivance with the exporter in the said export fraud.

In view of the above, I am of the considerate view that the CB has violated the regulation 10(K) of the CBLR, 2018 by not maintaining the upto date records, correspondence, all the documents related to SBs/BEs and thus I hold that the CB has violated the Regulation 10(k), of CBLR 2018.

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

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

*"verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information "*

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

From the record of the case, I find that the CB stated that they have completed the KYC details of the exporter but they were not having the same because of rainfall in July 2018 due to which the documents were destroyed.

I find that the CB firm failed to submit any documentary proof to substantiate that they had verified the credentials of the exporter. It is a matter of fact that the summons issued to the exporters were returned undelivered. The Exporter has also never appeared for the statement and therefore same could not be recorded. Thus, it emerges that the exporter was fake or dummy exporter was created just for the purpose of export fraud and this a part of modus operandi and a systematic racket of fraudulent export so as to claim undue export incentives. In the regime of trade facilitation, a lot of trust has been placed on the CB who act as an important link between Customs authorities and the importer/exporter. From the records, it is very clear from the records that the CB had of course not done any elaborate verification of his client and had not verified the business premises of the exporter. The exporter failed to appear before the investigation agency and the summons were returned undelivered.

Further, on verification of the address, the address was not found. I also note that during the investigation the CB failed to submit any documentary proof to substantiate that they have complied with the obligation of the regulation 10(n) of the CBLR, 2018.

In view of the above, I am of the considered view that the CB violated the Regulation 10(n) of CBLR, 2018. Therefore, I hold that the CB has violated the Regulation 10(n), of CBLR 2018.

**21.** I find that CB has placed his reliance on certain case laws in his defence. I have gone through such cases laws and have noticed that the facts of the case are different in the instant case and therefore the ratio of the judgement is not squarely applicable.

**22.** Further, I find that the CB has not requested for cross examination as provided under regulation 17(4) before the Inquiry officer appointed in the case. The CB's request for cross-examination during the personal hearing after submission of the inquiry report is nothing but a tactics to delay delivery of justice. I find that such request is also devoid of any cogent and valid reason and therefore the same is not tenable under CBLR, 2018 read with the Customs Act, 1962. In this context, I rely upon the following judgment in the matter:

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

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

**23.** The CB argued that Shipping Bills pertains to the year 2012 to 2016 and the SCN has been issued on 10.05.2023 which is after a period of 8 years. In this regard, I observe that the matter was under investigation stage & the investigation against the CB was started on receiving of said SCN in the office. Under the CBLR, 2018 the timelines to start inquiry and others is computed from the date of receipt of the offence report only. Further, I find that there are plethora of judgements which have pronounced that, these guidelines are directory but not mandatory & I rely on the decision of Hon'ble High Court of Judicature at Bombay in the case of Principal Commissioner of Customs (General), Mumbai Versus Unison Clearing P. Ltd. reported in 2018 (361) E.L.T. 321 (Born.), which stipulates that:

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

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

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

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

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

i. *The very purpose of granting a licence to a person to act as a Customs House Agent is for transacting any business relating to the entry or departure of conveyance or the import or export of goods in any customs station. For that purpose, under Regulation 9 necessary examination is conducted to test the capability of the person in the matter of preparation of various documents determination of value procedures for assessment and payment of duty, the extent to which he is conversant with the provisions of certain enactments, etc. Therefore,*

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

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

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

*"Para 6.1 These provisions require the Customs Broker to exercise due diligence to ascertain the correctness of any information and to advice the client accordingly. Though the CHA was accepted as having no mens rea of the noticed mis-declaration /under- valuation or mis-quantification but from his own statement acknowledging the negligence on his part to properly ensure the same, we are of the opinion that CH definitely has committed violation of the above mentioned Regulations. These Regulations caused a mandatory duty upon the CHA, who is an important link between the Customs Authorities and the importer/exporter. Any dereliction/lack of due diligence since has caused the*

*Exchequer loss in terms of evasion of Customs Duty, the original adjudicating authority has rightly imposed the penalty upon the appellant herein."*

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

**26.** I hold that the proof of charges in inquiry are acceptable and tenable based on the available evidence, the facts and circumstances of the case, which certainly warrant penal action against the CB. Therefore, for their acts of omission and commission, CB M/s. Beejay Clearing & Forwarding Agency, (PAN: AEZPM6919B) is held liable and guilty for violating the provisions of CBLR, 2018 as mentioned above. I hold that the CB has failed to discharge his duties cast upon him with respect to Regulation 10(d), 10(e), 10(f), 10(k), & 10(n) of CBLR, 2018 and is liable for penal action. Accordingly, I pass the following order.

### **ORDER**

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

(i) The CB License No. 11/707 is ordered to be revoked under Regulation 14 of the CBLR, 2018.

(ii) I hereby order for forfeiture of entire amount of security deposit furnished by the CB, under Regulation 14 of the CBLR, 2018.

(iii) I, hereby impose penalty of Rs. 50,000/- (Fifty Thousand Rupees Only) on M/s Beejay Clearing & Forwarding Agency, (11/707) (PAN: AEZPM6919B) under Regulation 18 of the CBLR, 2018.

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

This order is passed without prejudice to any other taken or purported to be taken against the Customs Broker &

under the Customs Act, 1962, or any other act for the time being in force in the Union of India.

*AS*  
*26/4/2020*  
(SUNIL JAIN)

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

To,

M/s. Beejay Clearing & Forwarding Agency, (PAN: AEZPM6919B),  
Room No. 19, 1<sup>st</sup> Floor, Contractor Building,  
15, Vaju Kotak Marg, Fort, Mumbai – 400 001.

Copy to:

1. The Pr. Chief Commissioner/ Chief Commissioner of Customs, Mumbai I,II, III Zone.
2. All Pr. Commissioners/Commissioners of Customs, Mumbai I, II, III Zone.
3. DRI, MZU, Mumbai.
4. SIIB (X), ACC, Sahar, Mumbai.
5. CIUs of NCH, ACC & JNCH
6. EDI of NCH, ACC & JNCH
7. ACC (Admn), Mumbai with a request to circulate among all departments.
8. JNCH (Admn) with a request circulate among all the concerned.
9. Cash Department, NCH, Mumbai.
10. Notice Board
11. Office Copy
12. Guard File (Admn)