



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/569/2022/CBS

आदेश दिनांक/Date of Order: 02.05.2024

CAO No. 08/CAC/PCC(G)/SJ/CBS-Adj

जारी दिनांक/Date of issue: 02.05.2024

संख्या:

DIN : 20240579OC000000FD28

द्वारा जारी : सुनील जैन

प्रधान आयुक्त, सीमाशुल्क(सामान्य)
मुंबई -400 001

Issued By : Sunil Jain

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

ORDER-IN-ORIGINAL मूल आदेश

ध्यान दीजिए/ N.B. :

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

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2. इस आदेश के विरुद्ध अपील माँगे गए राशी के **7.5%** के भुगतान पर सीमाशुल्क अधिनियम, 1962 की धारा 129A(1B)(i) के संबंधमें सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण में स्वीकार्य है, जहाँ शुल्क या शुल्क एवं जुर्माना विवादित हों, या जुर्माना, जहाँ सिर्फ जुर्माना ही विवादित हो। यह अपील इस आदेश के संप्रेषण की तारीख के तीन महीने के अंदर दायर की जाएगी। यह अपील सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण (कार्यविधि) नियमावली, १९८२, के प्रावधानों के अंतर्गत, 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.

3. यह सूचित किया जाता है की इस आदेश के अमल में आते ही, न्याय निर्णयन अधिकारी का अधिकार क्षेत्र समाप्त होता है और सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण, पश्चिम क्षेत्रीय खंडपीठ, के M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai के संदर्भ में जारी आदेश क्रमांक A/86617-86619/2018 दिनांक 31.05.2018 के अनुसार न्यायिक आदेश तदोत्त 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 6 के तहत निर्धारित है एवं उसी नियमावली के नियम 3 के उपनियम 2 में उल्लेखित व्यक्ति द्वारा हस्ताक्षरित एवं सत्यापित की जाएगी।

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

6. (i) यदि प्रतिवादित आदेश, जिसके विरुद्ध अपील की गई है, में शुल्क एवं मांगे गए 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.

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

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

Brief Facts of the Case:

M/s. Popatlal Jetshi & Co. (now known as M/s Palak Logistics Pvt. Ltd.) (11/296), having office address at 808, Shelton Cubix, Plot No. 87, Sector-15, CBD Belapur, Navi Mumbai - 400614 [hereinafter referred to as the Customs Broker/CB], bearing PAN based Registration No. AAGCP3651DCH001 are holding a regular Custom Broker License No 11/296 issued by Commissioner of Customs, Mumbai under Regulation 10(1) of the Customs House Agents Licensing Regulations (CHALR), 1984 [Now regulation 7(2) of Customs Broker Licensing Regulations (CBLR, 2018)] and as such they are bound by the regulation and condition stipulated therein.

2. On the basis of specific information received by DRI, MZU, investigation was conducted which revealed that various export firms including M/s. Hasi Gold (IEC – 0312018321) were procuring fake purchase bills against the export consignments from one Mr. Suhel Ansari, through fake firms floated by him.

3. An offence report in the form of SCN No. 36/Adj(X)/ADC/2022-23 issued by Additional Commissioner of Customs, Export, ACC was received wherein it was mentioned that exporter M/s. Hasi Gold was procuring fake purchase bills from one Mr Suhel Ansari where the shipping bills were handled by the CB firm M/s. Popatlal Jetshi & Co. (now known as M/s Palak Logistics Pvt. Ltd.).

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

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

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

7. During the investigation it was revealed that the Customs Broker M/s. Popatlal Jetshi & Co. (now known as M/s Palak Logistics Pvt. Ltd.) had facilitated clearance of 14 consignments / shipping bills of the said exporter.

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

8.1 Shri Hasmukh Bhimraj Bagrecha, Power of Attorney holder of M/s. Hasi Gold vide his statement dated 06.03.2019 inter-alia stated that:

- a. He used to replicate the samples brought by clients and source them through the local suppliers.
- b. Goods were exported from Air Cargo Complex and JNCH, Nhava Sheva.
- c. He used to go to Saudi Arabia, Qatar, Bahrain and Dubai to meet customers and study markets.
- d. He contacted suppliers as per requirement of clients, after clients approved the sample, a complete order was kept at his shop for packaging.
- e. Thereafter they prepared a packing list and invoice and handed over it to CHA M/s. Sandeep freight Forwarders and M/s TICC container line Pvt Ltd for filing the Shipping Bills.
- f. After receiving the invoice and packing list, the CHA contacted the freight forwarder and they booked the flight to export the goods.
- g. Thereafter, they booked tempo which took the goods from the shop and delivered the goods to Air Cargo Complex, Mumbai, after that the CHA handled the further customs proceedings till LEO.
- h. He authorized the CHA M/s. Sandeep Freight Forwarders and M/s. TICC container line Pvt Ltd for export.
- i. He used to contact Shri Sandeep, who is proprietor of CHA M/s. Sandeep Freight Forwarders and Shri Atul, Director of M/s. TICC container line Pvt Ltd.
- j. He handed over the invoice and packing list along with goods to the tempo driver and telephonically informed CHA.
- k. Sometimes goods were kept at CHA's warehouse. The CHA contacted the freight forwarder and booked the flight.
- l. CHA raised the invoice and payment was done through cheque/RTGS/NEFT.
- m. He knew Shri. Suhel Parvez Ansari through local brokers. Shri. Suhel Parvez Ansari was a supplier of Readymade Garments and imitation jewellery. He contacted Shri. Suhel Parvez Ansari telephonically who showed the samples to the client at the exporters office and after getting approval from clients.

- n. He purchased approved goods from Shri Suhel Parvez Ansari and paid through cheque/RTGS/NEFT. Invoice was handed over to him by employee of Shri Suhel Parvez Ansari which was raised in the name of M/s Cadillac Pvt Ltd., M/s Combo Traders Pvt., Ltd, M/s Alaska Trading, M/s Mahavir Enterprises, M/s Snehal Enterprises.

8.2 Further statement of Shri Hasmukh Bhimraj Bagrecha, Power of Attorney holder of M/s. Hasi Gold vide his statement dated 11.03.2019 inter-alia stated that:

- a. He did not know the office address of Shri Suhel Parvez Ansari.
- b. Whenever he got the orders from client telephonically, he contacted Shri Suhel Parvez Ansari as well as other local buyers and enquired about the availability of the goods.
- c. When the goods were ready, then Shri Suhel Parvez Ansari or his employee used to come with goods and invoices which were raised in the name of M/s Cadillac Pvt Ltd., M/s Combo Traders Pvt., Ltd, M/s Alaska Trading, M/s Mahavir Enterprises, M/s Snehal Enterprises and he paid the amount through cheque/RTGS/NEFT upon receiving of amount from his clients in his bank account. Bank account details had been given by Shri Suhel Parvez Ansari or his employee. He also stated that these companies reflect in his book of accounts for the purchases made by him against the exported goods.
- d. He did not know whether aforesaid companies exist or not on whose names the invoices were raised.
- e. He also did not know whether invoices supplied by Shri Suhel Ansari were fictitious. He purchased the goods from Shri Suhel Parvez Ansari and the same were delivered by Shri Suhail Ansari or his employees in his office and same were exported to the clients and after receiving the amount from the clients, he paid the amount in the bank account of suppliers whose details have given by Shri Suhel Ansari or his employees.
- f. Total export was genuine and he has received all remittances for the export affected by them. He also stated that the whole export transactions were legitimate and the export value of goods/FOB value was correct.
- g. On being shown the copies of statements dated 29.07.2015 & 30.07.2015 of Shri Karan Ashoklal Ranka explicitly stating that there is no physical movement of goods from suppliers (M/s Alaska Trading, M/s Cadillac Pvt Ltd., M/s Combo Traders Pvt., Ltd, M/s Mahavir Enterprises, M/s Imperious Mercantile, M/s Suman Impex, M/s Rubby Trading &Co. and M/s Sumangal Enterprises) which exist only on paper, although payments have been shown to be made by the exporter to the suppliers through RTGS in bank. In this regard, Shri Bagrecha had stated that he purchased

the goods and same were delivered by Shri Suhel Ansari or his employees in his office and same were exported to the clients and after receiving the amount from the clients, he had paid the amount in the bank account of supplier whose details have been provided by Shri Suhel Ansari or his employees.

- h. He didn't have any transport documents and vehicle numbers which carried and delivered the goods by Shri Suhel Ansari or his employees in his office.

9. Statement of Shri Santosh Hande, representative of Shri Atul P Thakkar who was earlier partner of M/s. Popatlal Jetsi and Co was recorded on 23.12.2021 wherein he inter-alia stated that:

- a. Mr. Mitin Hasmukh Bagrecha, proprietor of M/s. Hasi Gold personally approached M/s. Popatlal Jetsi and Co to assist in the clearance of export and he submitted all KYC documents.
- b. He provided self-certified copies of authority letters issued to Popatlal Jetsi and Co, KYC document, PAN registration and IEC of the said exporter. He stated that they had carried out the address verification of the exporter but do not have any documentary proof.
- c. He does not remember whether they had carried out the first time export procedure and the exporter has been exporting goods since 2012 through them.
- d. He did not find any discrepancy regarding value declared by the exporter.
- e. They never noticed that the declared value is highly inflated.
- f. He does not know the correctness of the fictitious bills raised by Suhel Ansari.
- g. He further stated that they assisted the exporter in export of shipments from December 2012 to March 2014 and he does not remember the number of documents filed for M/s Hasi Gold and submitted a copy of one Shipping Bill No. 1934614 dated 01.04.2014, its invoice No. 14 dated 01.04.2014, packing list, export terminal charges challan, Airway Bill No. 312-91415960 and stated that he does not have any other documents.

10. The DRI vide its letter dated 04.10.2016 issued vide F.No.DRI/MZU/D/INT-31/2015/7766 conducted enquiry with the Consulate General of India, Dubai, UAE.

The Consulate General of India, Dubai vide letter dated 08.03.2018 reported that from the scrutiny of the documents, it emerged that goods had been cleared and unit value had been much lower than what has been declared

to Indian Customs. As per DRI the instant exporter i.e. M/s Hasi Gold has also adopted the similar modus- operandi.

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

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

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

13. During investigation, the exporter could not produce any such details in respect of manufacturing, production or use of any imported material in impugned export goods, though he was having enough opportunity as he presented himself for recording of his statement but he failed to produce any such details. Therefore, it appeared from investigation that the necessary ingredient of second proviso to Rule 3(1) Drawback Rule, 1995 is attracted in this case which did not permit any amount of drawback in such cases where no duty has been paid.

14. The offence report received against the CB is the result of the investigation made by DRI, MZU and conducted by SIIB(X), ACC, Mumbai. It appears that M/s. Hasi Gold procured goods (of inferior quality and having low value) from local market and to show higher value of the goods to claim export benefits, procured fake and bogus invoices from Sh. Suhel Ansari.

15. Shri Hasmukh Bhimraj Bagrecha, Power of Attorney holder of M/s. Hasi Gold in his statement recorded during the investigation had stated that sometimes the goods were kept at CHA's warehouse and the CHA contacted the freight forwarder and booked the flight.

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

16. On perusal of the Offence Report, it appeared that:

- a. The CB did not advise the exporter about the Drawback Rules and abetted the exporter by declaring incorrect value of the goods in shipping bills against 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 11(d) of the CBLR, 2013 (now Regulation 10(d) of CBLR, 2018).
- b. The CB failed to exercise due diligence and aided the exporter in availing 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 11(e) of the CBLR, 2013 (now 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 the exporter declares the name and complete address of the traders from whom goods have 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 11(f) of the CBLR, 2013 (now Regulation 10(f) of CBLR, 2018).
- d. The CB did not advise the exporter about the relevant instructions/guidelines from RBI for realization of the foreign remittance in respect of the exported goods. On the other hand the CB abetted the exporter in the whole modus operandi for claiming undue Drawback by declaring incorrect value irrespective of the facts that the foreign remittance of all the Shipping Bills filed have not been realized till date through formal banking channel. Thus, the CB appears to have violated Regulation 11(m) of the CBLR, 2013 (now Regulation 10(m) of CBLR, 2018).

17. Thus, by their aforesaid acts of omission and commission, it appears that the CB has violated Regulation 11(d), 11(e), 11(f) & 11(m) of the Customs Brokers Licensing Regulations, 2013 (now Regulation 10(d), 10(e), 10(f) & 10(m) of the Customs Brokers Licensing Regulations, 2018) and consequently rendered themselves for penal action under Regulations 18, 20 & 22 of CBLR, 2013 (now Regulations 14, 17 & 18 of CBLR, 2018).

18. Legal Provision of the CBLR, 2013:-

Regulation 11 (d) of the CBLR, 2013:- *"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 11 (e) of the CBLR, 2013:- *"A Customs broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;"*

Regulation 11 (f) of the CBLR, 2013:- *"A Customs broker shall not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information;"*

Regulation 11 (m) of the CBLR, 2013:- *"A Customs Broker shall discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay".*

19. Show Cause Notice:

Inquiry proceedings were initiated against CB M/s. Popatlal Jetshi & Co. (now known as M/s Palak Logistics Pvt. Ltd.) vide Show Cause Notice No.47/2022-23 dated 17.03.2023 issued under Regulation 20 of CBLR 2013 (now Regulation 17 of CBLR 2018) to be read with corrigendum dated 05.09.2023. Vide said notice, the said CB were called upon to show cause as to why the licence bearing no. 11/296 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 18 read with 20 & 22 of the CBLR, 2013 (now Regulation 14 read with 17 & 18 of the CBLR, 2018) for their failure to comply with the provisions of CBLR, 2013 (now CBLR, 2018) as elaborated in the Show Cause Notice.

Further, they were directed to appear for a personal hearing and to produce proof of evidence/documents if any, in their defence to Shri Manish Yadav, Deputy Commissioner of Customs who was appointed an inquiry officer to conduct inquiry proceedings under Regulation 20 of CBLR, 2013 (now Regulation 17 of CBLR, 2018).

20. INQUIRY REPORT:

Inquiry officer submitted Inquiry report dated 03.10.2023 wherein the charges against the said CB CB M/s. Popatlal Jetshi & Co. (now known as M/s Palak Logistics Pvt. Ltd.) (11/296) in respect of violation of Regulation 11(d), 11(e), 11(f) & 11(m) of CBLR, 2013 (now Regulation 10(d), 10(e), 10(f) & 10(m) of CBLR, 2018) were held as "Not Proved".

20.1 Details of Personal Hearing:

20.1.1 In the report, the Inquiry officer has stated that Shri Pankaj Dharmshi, Director of M/s Palak Logistics Pvt. Ltd. appeared for the personal hearing on 31.07.2023 and submitted that:

- a. The issue pertains to the period of 2014 and prior to that. At that time, he was not associated with the company.
- b. The SCN has been issued to the person Sh. Atul P. Thakkar by the name and therefore neither the company i.e. M/s Palak Logistics Pvt. Ltd. & nor he can be held liable for violation under CBLR, 2018.
- c. The investigation proceedings need to be dropped as it has passed five years time.
- d. The matter related to purchase of bogus invoices for inputs by the exporter. However, the invoice produced by the exporter was correct as the same was generated by the exporter.
- e. As a CB they cannot check back end value addition, and the said verification also does not fall under the purview of the CBLR.

During the course of personal hearing he submitted written submission by the Shri Anil Balani, Advocate along with other documents.

20.1.2 In the report, the Inquiry officer has stated that Shri Atul Thakkar erstwhile Partner of Popatlal Joshi & Co appeared for personal hearing on 29.08.2023 wherein he inter-alia stated that:

- a. At the time of export they have verified KYC of Hasi Gold.
- b. The exporter appeared for giving their statement.
- c. He had resigned from the company on 18.12.2015.

- d. He submitted KYC documents of Hasi Gold, resignation copy and surrender of customs pass.

20.2 Written Submission of the Customs Broker before Inquiry officer: The CB vide their written submission inter-alia stated that:

- a. At the outset the CB denied the allegations and charges contained in the Notice.
- b. During the period 2012-2014, Mr. Atul Thakkar was working partner of CB and till his resignation on 4 January 2016, Mr. Thakkar was looking after all the business of the CB.
- c. Mr. Atul Thakkar in his statement recorded 24.03.2022 inter alia stated as under:
 - i. After his resignation, Popatlal Jetshi & Co. was reconstituted as Palak Logistics.
 - ii. Hasi Gold the Exporters had approached CB and gave an Authority Letter in the name of the CB.
 - iii. KYC details were provided by the Exporters.
 - iv. They had verified the exporter's address by visiting the exporter's office at the address mentioned in the IES and also submitted a copy of Exporter's IEC.
 - v. During the relevant time, they received documents from Exporters regarding export of goods.
 - vi. As a Customs Broker they use to verify the correctness of the classification declared by the exporter; restrictions or prohibitions if any on the goods meant for export.
 - vii. Export documents covered by Shipping Bills for the period 2012-2014 was submitted by Hasi Gold to Customs were scrutinized by him.
 - viii. The goods were examined by the Customs Officers in presence of their representative at the time of examination in the Customs premises.
 - ix. Representatives of the CB did not notice any discrepancy in valuation of goods covered under Shipping bills of the Exporters.

20.3.1 In defence of violation of Regulation 10(d) of CBLR, 2018: The CB submitted that:

- a. The allegation that CB failed to comply with the obligations in regulation 10(d) of CBLR, 2018 is incorrect.
- b. Mr. Atul Thakkar who at the relevant time was a Working Partner of the CB had stated that they had verified the exporter's address by visiting the

exporter's office at the address mentioned in the IEC and also submitted a copy of Exporter's IEC.

- c. They prepared checklists as per the invoice and packing list received from the Exporter & shared the same with the exporter for approval and the documents were then uploaded on ICEGATE.
- d. As a Customs Broker they used to verify the correctness of the classification declared by exporter, restrictions or prohibitions if any on the goods meant for export.
- e. Export documents covered by Shipping Bills for the period 2012-2014 was submitted by Hasi Gold to Customs were scrutinized by Mr. Atul Thakkar.
- f. The goods were examined by the Customs Officers in presence of their representative at the time of examination.
- g. Their representatives did not notice any discrepancy in the valuation of the goods covered under the SBs.
- h. The Department has no evidence to show that any advice contrary to the provisions of the Customs Act 1962 was given by them to the exporter. In absence of the same no contravention of regulation 10(d) can be alleged on them.
- i. They place reliance on the following judgements:
 - i. Geeta Clearing & Forwarding Agencies P. Ltd v CC - 2019(370) ELT 1030.
 - ii. Bajaj Enterprises 2017(347) E.L.T. 675.
- j. Notice is bereft of evidence that they were aware of the the alleged over valuation by the exporters.

20.3.2 In defence of violation of Regulation 10(e) of CBLR, 2018: The CB submitted that:

- a. Shri Hasmukh Bhimraj Bagrecha who is the proprietor of Hasi Gold has in his statement dated 11.03.2019 recorded under section 108 of the Customs Act, 1962 stated that total export was genuine.
- b. All remittances for the export affected by them have been received.
- c. The whole export transactions are legitimate and the export value of goods/FOB value was correct.
- d. None of the statements recorded by the Department state that CB was aware of any fake invoices if any or alleged over valuation and therefore the allegation that they did not exercise due diligence and aided the exporter in availing undue drawback by over valuing the export is baseless and unsubstantiated.

20.3.3 In defence of violation of Regulation 10(f) of CBLR, 2018: The CB submitted that:

- a. Neither the Custom Act, 1962 nor Customs Broker Licensing Regulations, 2018 requires the Customs Broker to seek purchase bills from exporters.
- b. The Customs Broker cannot demand Procurement documents from the Exporter.
- c. They filed drawback shipping bills on the basis of the export documents supplied by the exporting firms.
- d. The checklists and shipping bills were prepared on the basis of instruction received from the exporters.
- e. Valuation and assessment are within the exclusive jurisdiction of the Customs department.
- f. They merely put up the values in the shipping bills on the basis of the values in the invoices.
- g. They placed reliance on the judgement of Hon'ble CESTAT in the case of M.M. Logistics reported in 2020 (373) E.L.T. 677 (Tri. - Del.).
- h. It may be essential for the Customs Broker to advise the Exporters to provide details of the traders from whom the goods have been purchased if the drawback claimed by the exporter was under brand rate scheme of drawback.
- i. Under the Brand Rate scheme the exporters are compensated by paying the amount of Customs, Central Excise duties and Service Tax incidence actually incurred by the export product. For this purpose, the exporter has to produce documents/proof about the actual quantity of inputs / services utilized in the manufacture of export product along with evidence of payment of duties thereon. The concerned authorities may or may not allot such additional exemption by verification of such documents. However, the present case is not where the exporter has claimed Drawback under Brand Rate but claimed drawback under All Industry Rate (AIR) of Duty Drawback.
- j. The goods were examined by the Customs Officers in the presence of representatives of CB and LEOs were passed by Proper Officers. At that time no query was raised by the Department regarding valuation of the goods.
- k. It is at the discretion of the department to accept or reject the valuation. Even today the department is free to ascertain the values and to reassess the shipping bills.

20.3.4 In defence of violation of Regulation 10(m) of CBLR, 2018: The CB submitted that:

- a. There is no allegation that there was a delay in filing Shipping Bills. Monitoring remittance is not a duty of the Customs Broker. Thus, they

discharged their duties with utmost speed and efficiency without any delay and have complied with Regulation 10(m) of CBLR, 2018.

- b. They had acted in the normal course of their business, bonafide and in good faith.
- c. They earned their normal clearing charges and fees and have not gained any share of drawback. It is not the case of the department that the CB was the beneficiary of the drawback.
- d. After several years, the DRI launched an investigation and concluded that the exporters did not have sufficient documentary evidence of procurement of goods exported. It must be appreciated that in the normal course, purchase bills are not supplied by the exporters to Customs Brokers. The usual export documents are invoice, packing list, country of origin certificate.

20.3.5 The CB has also submitted that:

- a. Show Cause Notice issued on 28.02.2023 does not mention the date of the Offence Report. It appears that the Department is treating SCN dated 15.11.2022 as the Offence Report.
- b. The SCN is issued beyond the stipulated period of 90 days from the offence report dated 15.11.2022 and should therefore be set aside on this ground alone. Reliance placed upon following judgements:
 - i. Leo Cargo Services - 2022 (382) E.L.T. 30(Del.)
 - ii. Impexnet Logistic- 2016 (338) E.L.T. 347 (Del.)
 - iii. Indair Carrier Pvt. Ltd. - 2016 (337) E.L.T. 41 (Del) Accordingly, the present
- c. The exports were of the period 2012 to 2014. Therefore, the instant proceedings are barred by time and hit by limitation. Though the CBLR, 2018 does not provide a timeline for the department to issue an offence report. The CB placed reliance on the judgement of High Court of Gujarat in the case of Pratibha Impex reported in 2013(287)ELT 290 to examine the questions as to what will be reasonable period when a statutory provision does not prescribe any period of limitation (in reference to the Drawback Rules).

20.4 Comments of the Inquiry Officer:

20.4.1 Article of Charge-I:- Violation of Regulation 11(d) of CBLR, 2013 (now Regulation 10(d) of CBLR, 2018): The IO in his report held that:

- a. In written submission given by the CB they have mentioned that they have verified all the KYC and no discrepancy was found by them. Further, nowhere in the Offence report or SCN there is evidence to show that any

advice contrary to the provision of the Customs Act, 1962 was given by the CB.

- b. The allegation that the CB abetted the exporter in declaring incorrect value is not forthcoming in the Offence Report, DRI Investigation, Statements of various persons, or in SCN.
- c. The role of CB was in preparing the checklist, and after approval of the same, filing of the documents.
- d. Nowhere he (IO) find CB was involved or had knowledge of fake invoices procured by the exporter as their input's material.
- e. Section 75(1) read along with Rule 16 of the Customs, Central Excise Duties and Services Tax Drawback Rules, 1995 mention exporter or person authorized for receiving drawback. I find in the instant case only exporter received the drawback. Further, a parallel can be drawn between recovery due to non-realization of the remittance and other import/export conditions like under EPCG, Advance Authorization which require fulfilment of certain obligations post- Import/Export. In all the cases it is exporter or importer against whom demand is raised.
- f. Moreover, CB does not have sufficient tools and departmental access to enable him to be aware of receipt/ non-receipt of foreign remittance by the exporter. CB relies on the exporter for furnishing the documents.
- g. There is nothing mentioned in any documents that indicate that the CB advised against Section 75 of the Customs Act or any provisions of the Act.
- h. On the basis of the above, the IO held the Article of Charge of violation of Regulation 11(d) of the CBLR, 2013 as 'Not Proved'.

20.4.2 Article of Charge-II:- Violation of Regulation 11(e) of CBLR, 2013 (now Regulation 10(e) of CBLR, 2018): The IO in his report held that:

- a. He (IO) found merit in the submission of the CB as no-where in the documents of the department it is brought that the CB was directly or indirectly involved in fake input value addition chain of the exporter. It is far overstretched that the CB will be able to guess the correct value just by seeing the goods, had that been the case the over-valuation could have been easily detected during the examination of the goods. Thereby, he did find that the due diligence not observed by the CB cannot be substantiated.
- b. Undue Drawback was availed by the exporter by over-valuing the goods. But, no-where mention that the CB has knowledge of the same.
- c. From the statements of the exporter, Sh. Suhel Ansari, his CA and other persons recorded during investigation, it is not forthcoming that CB was involved in procurement of raw material/ bogus invoices.

- d. On the basis of the above, the IO held the Article of Charge of violation of Regulation 11(e) of the CBLR, 2013 as 'Not Proved'.

20.4.3 Article of Charge-III:- Violation of Regulation 11(f) of CBLR, 2013 (now Regulation 10(f) of CBLR, 2018): The IO in his report held that:

- a. The IO did not find any involvement of CB been mentioned in any evidence or statements in over-invoicing found during investigation. Nowhere, it is also forthcoming from the enquiry that the CB has not provided requisite information to the exporter.
- b. Applicability of the necessary documents comes to picture if it is necessitated by certain rules, regulations. When CB is filing Shipping Bills under AIR Duty drawback then he is bound to follow the requirement prescribed under that scheme only.
- c. It is seen that duty drawbacks was given to the exporter. So, it is assumed documentation was proper for AIR Drawback. Expecting from CB to provide all the documents related to input materials and expecting the CB to investigate the same appears to be farfetched.
- d. On the basis of documents submitted by the CB the goods were exported and drawback was received by the exporter. So no question arose that the CB with-held or not guided exporter properly regarding the export process.
- e. Given the resources and mandate of the CB it is not expected that the CB will go through the value addition chain to arrive at the correct value of the goods. CB has to rely on the documents provided by the exporter or importer.
- f. The IO did not find that CB with-held any information from the exporter, it seems it is the exporter who with-held correct value from the CB and Customs.
- g. On the basis of the above, the IO held the Article of Charge of violation of Regulation 11(f) of the CBLR, 2013 as 'Not Proved'.

20.4.4 Article of Charge-IV:- Violation of Regulation 11(m) of CBLR, 2013 (now Regulation 10(m) of CBLR, 2018): The IO in his report held that:

- a. Nowhere during enquiry or in any of statements active or passive role of CB has emerged in bogus invoicing. Therefore, active connivance is still not proven of the CB.
- b. IO did not find any lack of efficiency and delay in work that goes with receiving documents, preparation of checklists, filing of Shipping Bills, examination of the goods by the CB. In whole inquiry proceedings the efficiency of the CB has neither been questioned by the department nor by the exporter.

- c. On the basis of the above, the IO held the Article of Charge of violation of Regulation 11(m) of the CBLR, 2013 as 'Not Proved'.

20.5 I note that Inquiry Officer held that all the charges framed in the said SCN i.e. violation of Regulation 11(d), 11(e), 11(f) & 11(m) of the CBLR, 2013 (now Regulation 10(d), 10(e), 10(f) & 10(m) of the CBLR, 2018) are not proved.

21. Disagreement Memo: The Pr. Commissioner of Customs (General), Mumbai-I disagreed with the finding of the Inquiry Officer's report in respect of the charges of violation of Regulation 11(d), 11(e), 11(f) & 11(m) of the CBLR, 2013 and issued Disagreement Memo dated 13.03.2024.

22. Written Submission and Personal Hearing of the CB in response to Disagreement Memo:

22.1 Written Submission: The CB M/s Palak Logistics Pvt. Ltd. (11/296) submitted a written submission dated 12.04.2024 in response to the Disagreement Memo dated 13.03.2024 wherein they have inter-alia stated that:

- a. The disagreement memo is time barred and hit by limitation.
- b. Reliance on Circulars dated 25.05.2009 and 02.02.2009 is completely misplaced.
- c. They had advised their clients correctly and there is no evidence of mis-guidance.
- d. Had any declaration been mandatory, the Department should have insisted for the submission of the same. No export would have been permitted, had the declaration been mandatory. None of the shipping bills of export have been allowed on a provisional basis in the absence of such declaration.
- e. Neither any evidence has been cited where demand was made by the customs department for submission of the declaration nor any evidence has been cited where the same was furnished.
- f. Instead of closing the case in view of the favourable inquiry report a disagreement memo is issued arbitrarily.
- g. No Disagreement Memo should have been issued where charges do not get proved upon instituting an Inquiry. No purpose gets served for holding an inquiry then. On one hand department institutes an impartial inquiry, no meaning gets served through issuance of disagreement memo on other hand. Customs Broker should not be made to face endless proceedings for time barred cases.
- h. Customs Brokers should not be held liable where any compliance including year wise negative statements have not been submitted by any exporter.

- i. Neither the exporter has absconded nor does customs department have any evidence where customs broker has deliberately advised exporter to refrain from any compliance including submission of negative statements.
- j. Hence, under the circumstances, Regulation 11 (d) is not violated.
- k. Regulation 11 (e) is also not violated because realization of foreign remittance is the responsibility of the exporter & not of any customs broker. Customs department has the machinery, the wherewithal, the software, the power and the authority to monitor remittances.
- l. In the list of obligations of the Custom Broker, monitoring of remittances is conspicuous by its absence. In the case of M/s. A B Paul the Hon'ble CESTAT has also affirmed this view.
- m. The Disagreement Memo is contrary to and in violation of the CBLR as well as the CESTAT Judgement. For Regulation 11(f) the allegations of Regulation 11(d) are repeated unnecessarily without any application of mind.
- n. Referred to two orders passed by this office in the similar cases of M/s. Tuisidas Khimji Pvt. Ltd., vide F.No.GEN/CB/391/2022-CBS and F.No. GEN/CB/410/2022-CBS dropping revocation action against the CB.
- o. The CB prayed that the Disagreement Memo be withdrawn and the Inquiry Reports be accepted.

22.2 Personal Hearing : A personal hearing was granted to the CB on 16.04.2024. Shri Anil Balani, Advocate and Shri Pankaj Keshavji Dharamshi & Shri Priyam Pankaj Dharamshi, both Directors of the CB M/s Palak Logistics Pvt. Ltd. (11/296) appeared for personal hearing wherein they reiterated written submission dated 12.04.2024 and requested to drop the proceedings.

23. Discussions & Finding:

I have gone through the case, material evidence on record, the Show Cause Notice dated 17.03.2023 read with corrigendum dated 05.09.2023, Inquiry Report dated 03.10.2023 & written submission dated 12.04.2024 and oral submission on 16.04.2024.

23.1 I observe that the charges against the said CB is of violation of regulation Regulation 11(d), 11(e), 11(f) & 11(m) of the CBLR, 2013 (now Regulation 10(d), 10(e), 10(f) & 10(m) of the CBLR, 2018) made vide Show Cause Notice No. 47/2022-23 dated 17.03.2023. The Inquiry Officer vide inquiry report dated 03.10.2023 held all the charges of violation of regulation Regulation 11(d), 11(e), 11(f) & 11(m) of the CBLR, 2013 (now Regulation 10(d), 10(e), 10(f) & 10(m) of the CBLR, 2018) as "Not Proved". A disagreement memo dated 13.03.2024 was

issued with respect to charges under Regulation 11(d), 11(e), 11(f) & 11(m) of the CBLR, 2013 (now Regulation 10(d), 10(e), 10(f) & 10(m) of the CBLR, 2018)

23.2 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

23.2.1 With regard to violation of Regulation 11(d) of CBLR, 2013 (now Regulation 10(d) of CBLR, 2018):

a. I observe that the said regulation 11(d) of CBLR, 2013 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”

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

c. The CB's argument that the goods exported under claim for drawback were assessed and examined by the proper officers. As such the CB could not be alleged to have violated the advice mentioned in the said Drawback Circular. The CB contended that if there was any requirement of any declaration no query at the time of clearance of such goods was raised by the department.

d. It is observed from from the offence report that the exporter M/s Hasi Gold could not furnish the declarations as provided in the circular No. 16/2009-Customs dated 25.05.2009. Thus, they failed to comply with the requirements of the said circular in toto. I also find that the exporter in his statement stated that he handed over the invoices & packing list along with goods to the tempo driver and telephonically informed CHA. He has also stated that sometimes the goods were kept at CHA's warehouse. Hence, it is unlikely that CB was not aware about the overpricing of these goods.

e. In the instant case, the CB did not advise the exporter 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. Modus operandi adopted in the case could not be possible without active participation of the CB.

f. I find that the CB is an important link between importer/exporter and the Customs authorities. The role is well elaborated in form of various obligations which are casted upon the CB through CBLR, 2018. The CB has a role in advising the exporter to declare the correct valuation of the goods and not to over value the goods in order to claim undue drawback. In cases, where any deviations are noticed, the Regulation 11(d) (now Regulation 10(d)) prescribed that the CB should brought same to the knowledge of AC/DC Docs. Mere relying on the information provided by the exporter in filing the documents is not the mandate of the CBLR, 2013 (now CBLR, 2018), which expects CB to bring non-compliance to the notice of customs authorities. In the instant case, it is well established that the said exporter had over valued the goods using fake invoices supplied by Shri Suhel Ansari so as to claim undue export incentives. The case could only be detected by the investigation carried out by the DRI, MZU. Thus, I am of the considerate view that the CB cannot shy away from the responsibilities cast upon them under the Regulation 11(d) of the CBLR, 2013 (now Regulation 10(d) of the CBLR, 2018).

g. 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.”

h. Therefore, I hold that the CB has violated the provisions of Regulation 11(d) of CBLR, 2013 (now Regulation 10(d) of CBLR, 2018).

23.2.2 With regard to violation of Regulation 11(e) of CBLR, 2013 (now Regulation 10(e) of CBLR, 2018)

a. I observe that the said regulation 11(e) of CBLR, 2013 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;”

b. As discussed above, exporter firm M/s. Hasi Gold procured fake purchase bills from one Mr. Suhel Ansari against their export consignments to show the overpricing of the goods and this fact was corroborated from the report of Consulate General of India, Dubai and various statements of Mr Suhel Ansari & others.

c. The CB has argued that they used to verify the correctness of the classification declared by the exporter, restrictions or prohibitions if any on the goods meant for export. They have contended that the department has never raised any objection/query at the time of clearance of the exported goods.

d. I find that as per the format annexed with the circular No. 16/2009-Customs dated 25.05.2009, the exporter should have furnished the complete name & address of the trader from whom they had purchased the goods, however, from records available I observe that such details were not provided by the exporter at the time of filing of the Shipping Bills. From facts of the case, it is amply clear that the export goods were highly overvalued to claim undue export benefits.

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

f. I observe that the CB has an important role with respect of the filing of documents and clearance of the goods. A lot of faith has been placed on the CB

by the Customs authorities in the era of trade facilitation and RMS facilitation. Thus, I am of the considered view that the CB cannot shy away from the responsibility cast upon them under Regulation 11(e) of the CBLR, 2013 (now Regulation 10(e) of the CBLR, 2018) by stating that the department has never raised any objection/query at the time of clearance of the exported goods. Therefore, I found that there is no merit in CB's submission in this regard.

h. In view of the above, I hold that the CB has violated the provisions of Regulation 11(e) of the CBLR, 2013 (now Regulation 10(e) of the CBLR, 2018).

23.2.3 With regard to violation of Regulation 11(f) of CBLR, 2013 (now Regulation 10(f) of CBLR, 2018):

a. I observe that the said regulation 11(f) of CBLR, 2013 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;"

b. From the perusal of the offence report, I find that the 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 exporters were inter-alia required to declare the name and complete address of the traders from whom export goods had been purchased. The exporter was also required to declare that they were not the manufacturer of the said export goods and were not registered under the erstwhile Central Excise Act, 1944. Further, they had purchased the export 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.

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

f. 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 hold that the CB has violated the Regulation 11(f) of CBLR, 2013 (now Regulation 10(f) of CBLR, 2018).

23.2.4 With regard to violation of Regulation 11(m) of CBLR, 2013 (now Regulation 10(m) of CBLR, 2018):

a. I observe that the said regulation 11(m) of CBLR, 2013 reads as :-

“A Customs Broker shall discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay”

b. From the facts of the case, I observe that the CB had either connived with the exporter in overvaluation of the goods or had acted in very negligent and callous manner and there abetted the exporter in over valuation of export goods so as to claim undue exports benefit. I further note that in the era of trade facilitation, lot of trust has been placed on the CB, who plays a vital link between importer/exporter and the Custom authorities. It is due to this reason that the legislature has placed number of obligations on the CB vide CBLR 2018. In the instant case, I observe that due to the role played by the CB a larger conspiracy had hatched for export of cheap material at highly overvalued rates so as to claim undue export incentives. The CB cannot take a plea that they had duty to file documents just on the information provided by the exporter when the CBLR, 2018 specifically prescribed their duties. From facts of the case, it is amply clear that the documentation filed by the CB at the time of export was deficient and incomplete. Thus, I am of the considerate view that the CB failed to perform his duties as prescribed under regulation 11(m) of the CBLR, 2013 (now Regulation 10(m) of CBLR, 2018).

c. In view of the above, I hold that the CB failed to comply with the said regulation and violated the Regulation 11(m) of CBLR, 2013 (now Regulation 10(m) of CBLR, 2018).

24. I have gone through the various case laws referred by the CB in his various submissions and observed that the ratio of judgement of the said case laws are not squarely applicable in the instant case, as the facts and circumstances are different and clearly distinguishable.

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

25.1 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)".

25.2 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."

25.3 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."

26. 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.

27. I hold that the proof of charges 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. Popatlal Jetshi & Co. (now known as M/s Palak Logistics Pvt. Ltd.) (11/296) is held liable and guilty for violating the provisions of CBLR, 2013 (now CBLR, 2018) as mentioned above. I hold that the CB has failed to discharge his duties cast upon him with respect to Regulation 11(d), 11(e), 11(f) & 11(m) of CBLR, 2013 (now Regulation 10(d), 10(e), 10(f) & 10(m) of CBLR, 2018) and is liable for penal action. Accordingly, I pass the following order:

ORDER

28. 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. 11/296 is ordered to be revoked under Regulation 18 of the CBLR, 2013 (now Regulation 14 of the CBLR, 2018).
- (ii) I hereby order for forfeiture of the entire amount of security deposit furnished by the CB, under Regulation 18 of the CBLR, 2013 (now Regulation 14 of the CBLR, 2018).
- (iii) I, hereby impose penalty of Rs. 50,000/- (Fifty Thousand Rupees Only) on M/s. Popatlal Jetshi & Co. (now known as M/s Palak Logistics Pvt. Ltd.) (11/296) (PAN – AAGCP3651D) under Regulation 22 of the CBLR, 2013 (now Regulation 18 of the CBLR, 2018).
- (iv) I hereby order that the CB surrender the original License as well as all the F, G & H cards issued under immediately

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


(SUNIL JAIN)

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

To,

M/s. Popatlal Jetshi & Co. (now known as M/s Palak Logistics Pvt. Ltd.),
808, Shelton Cubix, Plot No. 87, Sector-15,
CBD Belapur, Navi Mumbai - 400614

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